

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.199 of 2021

Kodumal, S/o Shri Tekchand, Aged about 68 years (Presently Aged about 86 years), R/o Masjid Road, Ward No.3, Gourella, Tehsil Pendra Road, District Gourella-Pendra-Marwahi (Earlier District Bilaspur) (C.G.)

Through Power of Attorney Holder namely:- Sanjay Kumar Lalchandani, S/o Shri Kodumal, Aged about 51 years, R/o Village Gourella, Tehsil Pendra Road, District Gourella-Pendra-Marwahi (C.G.)

(Defendant)
---- Appellant

Versus

1. Mohammad Riyaz, S/o Mohammad Ilyaz, Aged about 55 years,
2. Mohammad Ayaz, S/o Mohammad Ilyaz, Aged about 46 years,
3. Mohammad Ahteyaz, S/o Mohammad Ilyaz, Aged about 40 years,

Respondents No.1 to 3 are R/o Ward No.3, Masjid Road, Gourella, Tehsil Pendra Road, District Gourella-Pendra-Marwahi (Earlier District Bilaspur) (C.G.)

(Plaintiffs)

4. State of Chhattisgarh, through Collector Gourella-Pendra-Marwahi, District Gourella-Pendra-Marwahi (Earlier District Bilaspur) (C.G.)
---- Respondents

For Appellant: Mr. Sufaraj Khan, Advocate.

For Respondent No.4 / State: -

Mr. Siddharth Dubey, Deputy Government Advocate and
Mr. Sanjay Pathak, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/09/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein / defendant. By the impugned judgment, the first appellate Court has reversed the judgment & decree of the trial Court and decreed the suit in favour of the plaintiffs granting decree for eviction on the grounds enumerated under Section 12(1)(f) & (g) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961').

2. Mr. Surfaraj Khan, learned counsel appearing for the appellant herein / defendant, would submit that the first appellate Court is absolutely unjustified in holding that the suit land is owned by the original plaintiff No.1 and his sons, therefore, they are entitled for decree under Section 12(1)(f) & (g) of the Act of 1961, as the suit land is Government land and as such, it could not have been decreed in favour of the plaintiffs. He would further submit that the plaintiffs have failed to prove the grounds enumerated under Section 12(1)(f) & (g) of the Act of 1961. As such, the first appellate Court has committed a grave legal error by recording a finding which is perverse to the record and by reversing the well reasoned judgment of the trial Court. Therefore, the appeal involves substantial question of law for determination and it be admitted accordingly.
3. I have considered the submissions of learned counsel for the appellant herein / defendant and went through the records with utmost circumspection.
4. The suit was filed by Mohd. Iliyas and his three sons claiming the suit accommodation for bona fide need of sons of the original plaintiff No.1 (for need of plaintiffs No.2 to 4) for non-residential purpose and also eventually on the ground enumerated under Section 12(1)(g) of the Act of 1961, as the Nagar Panchayat, Gourela has issued notice to the plaintiffs that the suit accommodation has become dilapidated and it is 100 years' old construction without any support of column or pillar, unsafe for human inhabitation. It has been averred in the plaint that 30 years ago, the suit accommodation has been given on rent to the predecessor-in-title of the defendant on monthly rent of ₹ 60/-. The plaintiffs have issued notice Ex.P-1 dated 29-1-2009 to the defendant for vacating the suit premises, but it has not been vacated leading to filing of suit.

5. It is the claim of the plaintiffs that plaintiffs No.2 to 4 are sons of the original plaintiff No.1, plaintiff No.2, who is carrying on his cosmetic and daily need business, has no accommodation of his own and therefore he is running his shop on footpath, likewise, plaintiff No.3 is also carrying on his temporary work / seasonal business of Rakhi, rang-gulal, etc. due to non-availability of permanent shop and plaintiff No.4 wanted to start a photography shop but he is working in Raju Photo Studio because of not having any permanent shop, and they have no alternative suitable accommodation in the township of Gaurela. The plaintiffs wanted to reconstruct the structure after demolishing the said accommodation. They filed documents Exs.P-1 to P-4, Ex.P-1 is the notice issued by the Nagar Panchayat, Gourela; Ex.P-2 is reply to the said notice; Ex.P-3 is the certificate issued by the Engineer; and Ex.P-4 is the notice issued by Mr. K.A. Ansari, Advocate and accordingly claimed decree for eviction against the defendant.
6. The defendant filed written statement stating inter alia that the suit property has not been partitioned and more advance was asked i.e. ₹ 20,000/-, but it has not been given, therefore, suit was filed for eviction.
7. The trial Court framed as many as four issues and finding that the landlord-tenant relationship is not established and grounds enumerated under Section 12(1)(f) & (g) of the Act of 1961 are not proved, dismissed the suit which the first appellate Court has reversed.
8. The trial Court has recorded a finding that the plaintiffs are not exclusive owners of the suit property and thereby dismissed the suit, but the first appellate Court has reversed the decree of the trial Court and decreed the suit for eviction and recorded a finding that one co-owner, out of four landlords, can file suit for eviction relying upon the decisions of the Supreme Court. The first appellate Court has also clearly recorded a finding that defendant witness Mohd. Ahmed (DW-2) has admitted in the

cross-examination that the suit accommodation was alleged to have been partitioned and fell in favour of original plaintiff No.1 Mohd. Ilyas and he was receiving rent from the tenants as landlord and as such, the defendant is tenant of the plaintiffs and thereby, the first appellate Court has also recorded a finding that the defendant is tenant of the original plaintiff No.1. Similarly, the first appellate Court has clearly recorded that the suit accommodation is required bona fide by the plaintiffs for the bona fide need of plaintiffs No.2 to 4 who are sons of the original plaintiff No.1 (who died during the pendency of civil suit) and they have no other alternative suitable accommodation in the township of Gourela for starting their proposed business, as one son is running his shop on footpath, another son is carrying on the temporary business and third son is working in a photo studio of some other person for want of accommodation. As such, the finding recorded by the first appellate Court that the suit accommodation is required for the bona fide need of sons of the original plaintiff No.1 (that is for plaintiffs No.2 to 4), is a finding of fact based on the evidence available on record.

9. Similarly, the first appellate Court has rightly held based on the notice Ex.P-1 issued by the Nagar Panchayat, Gourela that the suit accommodation has become unfit and unsafe for human habitation and deserves to be demolished or repaired as per Ex.P-3 and it cannot be rebuild without vacating the suit premises and therefore directed for vacating the suit premises by decreeing the suit and passed the decree for eviction relying upon the decision of the Supreme Court in the matter of **Metalware and Co. etc. v. Bansilal Sarma and Co. etc.**¹ holding that the building is 100 years old and notice has already been issued by the Nagar Panchayat. As such, the finding recorded by the first appellate Court qua the relationship between the landlord and tenant and the finding in respect of the grounds enumerated under Section 12(1)(f) & (g)

1 (1979) 3 SCC 398

of the Act of 1961 are established, is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record.

10. The submission of learned counsel for the appellant / defendant that the suit accommodation / land is a Government land deserves to be rejected, as there is no such pleading raised by the appellant / defendant in the written statement filed before the trial Court and even before the first appellate Court also, no such plea was raised and as such, the appellant cannot be permitted to raise altogether a new plea before this Court by impleading the State as a party respondent.
11. No other point was raised before this Court.
12. I do not find any merit in the second appeal much less substantial question of law for admission of the second appeal. Accordingly, the second appeal is dismissed in limine without notice to the other side, as no substantial question of law is involved for admission of appeal. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge