

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 697 of 2019

1. Purshottam Das Agrawal S/o. Biharilal Agrawal, Aged About 93 Years, R/o. Village Pendra Road, Near Kamaniya Gate, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Rajendra Agrawal Alias Rajju S/o. Shri Purshottam Agrawal, R/o. Village Bilhari, Tehsil and District Katni Madhya Pradesh.
3. Jagmohan Alias Jaggu S/o. Shri Purshottam Agrawal, R/o. Village Bilhari, Tehsil and District Katni Madhya Pradesh.
4. Smt. Meera Agrawal Wd/o. Late Santosh Agrawal, R/o. Village Bilhari, Tehsil and District Katni Madhya Pradesh.
5. Parag Agrawal S/o. Late Santosh Agrawal, Aged About 18 Years, R/o. Village Bilhari, Tehsil and District Katni Madhya Pradesh., District : Katni *, Madhya Pradesh
6. Ku. Priya Agrawal S/o. Late Santosh Agrawal, Aged About 16 Years, Minor through legal guardian Mother Meera Agrawal, W/o. Santosh Agrawal, R/o. Village Bilhari, Tehsil and District Katni Madhya Pradesh., District : Katni *, Madhya Pradesh
7. Suresh Alias Mujju Agrawal S/o. Late Purshottam Agrawal, R/o. Village Bilhari, Tehsil and District Katni Madhya Pradesh.

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Versus

1. Ratanchand S/o. Bhaiyalal Jain, R/o. Haal Mukaam Priyadarshni Nagar, Vyapar Vihar, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Premchand (dead and deleted) through legal representative Mani Jain S/o. Late Premchand Jain, R/o. Haal Mukaam Mano Chikitsalaya, Indore Madhya Pradesh., District : Indore, Madhya Pradesh
3. Dr. Nemchand S/o. Bhaiyalal Jain, R/o. Village Aprichitpur Road, Calcutta.
4. Sumeerchand Nemchand S/o. Bhaiyalal Jain, R/o. Hel Bhopal Madhya Pradesh., District : Bhopal, Madhya Pradesh
5. Komalchand (Deleted) Through Legal Representative
 - 5a. Smt. Rajni Jain Wd/o. Late Vimal Chand Jain
 - 5b. Vinay Jain S/o. Vimal Kumar Jain
 - 5c. Vaibhav Jain S/o. Vimalchand Jain
 - 5d. Rajkumar Jain S/o. Late Komalchand Jain
 - 5e. Ajit Kumar Jain S/o. Late Komalchand Jain(Respondent No. 5a to 5e residents of Village- Pendra, Near Chetan Chowk, Pendra, District- Bilaspur., Chhattisgarh)
6. Smt. Saraswati Bai, W/o. Singhai Mahendra Kumar (Deleted) Through Lrs. Pramod Kumar S/o. Sanghai Mahendra Kumar, Aged About 65 Years, R/o. Village Sarafa, Ward Mandala, Tehsil and District- Mandala Madhya Pradesh., District : Mandla, Madhya Pradesh
7. Smt. Chameli Bai Jain, D/o. Singhai Sumerchand, R/o. Village- R.P., District Wardha (Maharashtra)., District : Wardha, Maharashtra

---- Respondents

For Petitioners – Dr. N.K. Shukla, Senior Advocate with Ms. Abhunnati Singh, Advocate.

For Respondent No.1/caveator – Mr. Manoj Paranjpe, Mr. Anurag Singh and Mr. P.R. Patankar, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

07-07-2021

Heard on admission.

1. It is submitted by learned counsel for the appellants that the civil suit was filed by respondent No.1 on 09-12-1975 the issue that was raised, was this, that respondent No.1 has bonafide requirement of the suit premises for the purposes of his own business of his family and further the disputed premises needs reconstruction and modification. It is submitted that the ground of bonafide requirement that was raised in the civil suit filed in 1975 is no longer relevant. The plaintiff has deposed before the Court that there is requirement of the suit premises for the business of his son. The respondent No.1 has admitted in his cross-examination that he is no longer continuing with the business because of his ill health. Therefore, the proof in the civil suit is not in accordance with the plaint. The circumstances have changed, hence, the purpose for which the suit was filed has been defeated. The son of the respondent No.1/plaintiff is engaged in some other business. Therefore, there is no bonafide requirement present at this stage. Hence, the appeal is arguable which may be admitted for hearing.

2. Learned counsel for the respondent No.1 opposes the submission made by learned counsel for the appellants. It is submitted that, it is a clear case of landlord and tenant. The tenancy has continued since 1928, however, the suit was filed in the year 1975. It is submitted that the bonafide requirement as pleaded is still continuing. There is clear view of Hon'ble the Supreme Court on

this point, that in a suit where bonafide requirement is pleaded any subsequent event cannot be taken cognizance of. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Hukum Chandra (dead) through legal representatives Vs. Nemi Chand Jain and others**, (2019) 13 SCC 363 and **Shakuntala Bai and others Vs. Narayan Das and others**, (2004) 5 SCC 772.

It is submitted that in the case of **Anil Bajaj and another Vs. Vinod Ahuja**, (2014) 15 SCC 610, it is held that it was not for the tenant to dictate to the landlord as to how property belonging to landlord should be utilized by him for his business. Landlord doing business from various other premises cannot foreclose his right to seek eviction from tenanted premises so long as he intends to use said tenanted premises for his own business.

Reliance has also been placed on the judgment of Chhattisgarh High Court in the case of **P. Rammurti Vs. Radhamohan Agrawal**, 2013 (2) Cg LJ 258, **Kamal Sharma Vs. Jethi Bai**, 2014 (2) Cg LJ 432 and the judgment passed by this Court in Second Appeal No.55 of 2001 (Rameshlal & others Vs. M/s. National Stationery Mart and others) decided on 28-03-2014.

Reliance has also been placed on the judgment of M.P. High Court in the case of **Rajendra Prasad Rajoriya Vs. Shivcharan Malviya (dead) through L.Rs.**, 2015(4) M.P.L.J. 338, in which it was held that the High Court cannot interfere with the concurrent finding of fact until or unless the same is perverse or contrary to material on record.

Therefore, there is no ground to frame any substantial question of law. The grounds raised are only question of facts, the same also are not admissible in view of the settled principle laid down by the Apex Court. Hence, this second appeal be dismissed at motion stage.

3. Learned counsel for the appellant submits that if this Court feels inclined

to dismiss this second appeal, then the petitioners/appellants should be granted sufficient time atleast of one year to make alternative arrangement for vacating the suit premises.

4. Heard learned counsel for the parties and perused the documents.

5. The civil suit filed by respondent No.1 in the year 1975 dealt with issues framed under the provisions of M.P./C.G. Accommodation Control Act, 1961 (in short 'the Act, 1961), under Section 12(1)(f), 12(1)(h) of the Act, 1961. The civil suit No.65A/2014 was decreed in favour of respondent No.1 on 04-03-2016. then, appeal was preferred which was registered as First Appeal No.37A/2016 and the same has been dismissed by the impugned judgment and decree.

6. On close scrutiny of the pleadings in the plaint it is found that the bonafide requirement, that has been pleaded, was for respondent No.1 himself initially, but later on amendment was made in which requirement of son of the plaintiff/respondent No.1 was also added. The issue of bonafide requirement is pure question of fact. The only ground raised by the appellants in the second appeal is this, that the ground of bonafide requirement is no longer relevant as there are change in circumstances. It has been observed by Hon'ble the Supreme Court in Hukum Chandra (dead) through legal representatives Vs. Nemi Chand Jain and others (supra) in paragraph 15 that:-

“15. Rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, court can take note of all the subsequent events. Observing that the court may permit subsequent event being introduced into the pleadings by way of amendment as it would be necessary to do so for the performance of determining the rule in controversy for the parties provided certain conditions are being satisfied, in Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 256, it was held as under :(SCC pp. 262-63, para 11)

“11. The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and,

therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu Vs. The Motor & General Traders*, (1975) 1 SCC 770 this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautions, and (iv) the rules of fairness to both sides should be scrupulously obeyed."

7. It was decided in this case that Court would not be justified in taking notice of any subsequent fact. In case of *Shakuntala Bai and others Vs. Narayan Das and others* (supra), it was held by Hon'ble the Supreme Court that LR's of deceased landlord are entitled to defend the appeal on the same ground. Therefore, bonafide requirement pleaded in a suit continues with the successors of the landlord. In this case, the son of respondent No.1 is ready to

step into the shoes of his father.

8. In the case of Rajendra Prasad Rajoriya Vs. Shivcharan Malviya (dead) through L.Rs. (supra), M.P. High Court has held in para No.13 that:

“13. Having perused the record, I find that the Courts below have already recorded a concurrent finding of fact in respect of the ground mentioned in sections 12(1)(e) of the Act. For the aforementioned reasons, I am of the considered opinion that no substantial question of law arises for consideration in this appeal as the jurisdiction of this Court to interfere with the findings of fact under Section 100 of CPC is limited to the case where the finding is either perverse or based on no evidence. This Court cannot interfere with the concurrent finding of fact until or unless the same is perverse or contrary to material on record as has been held by the Supreme Court in the cases of Narayan Rajendran and another Vs. Lekshmy Sarojini and Others, (2009) 5 SCC 264, Nafazat Hussain Vs. Abdul Majeed and Others, (2011) 7 SCC 189 and D.R.Rathna Murthy Vs. Ramappa, 2011(2) MPLJ (S.C.) 507 = (2011) 1 SCC 158 and Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288, Union of India Vs. Ibrahim Uddin and another, (2012) 8 SCC 148, Vanchala Bai Raghunath Ithape (dead) by LR Vs. Shankar Rao Babu Rao Bhilare (dead) by Lrs. and Others, 2013(4) MPLJ (S.C.) 251 = (2013) 7 SCC 173.”

9. Hence, the argument of the appellants side which is limited to the change of circumstances, is not sufficient and on this basis it can be held that there is no material present to frame substantial question of law as it is required under Section 100 of the CPC for admitting any second appeal for hearing. Therefore, this Court being convinced that there is no ground present on which this appeal can be held maintainable, therefore, the second appeal is liable to be dismissed.

10. Considered on the prayer made by learned counsel for the appellants for grant of time of one year to the appellants for vacating the suit premises. As the relevant law involved in this matter is M.P./C.G. Accommodation Control Act, 1961, therefore, provision in this Act are required to be followed. Section

12(6) of the Act, 1961 provides that where an order of vacation of a tenant is made on the ground specified in Section 12(1)(f), in that case a relief period of two months is granted to the tenant for vacating premises. As there is statutory provision by which a time has been fixed for vacating the premises, therefore, this appellate Court cannot go beyond the statute. The appellants have time of two months to vacate the suit premises. Subsequent to which respondent No.1 shall have entitlement for executing the decree.

11. On the basis of the discussions made hereinabove, this second appeal is found to be devoid of merits, hence, it is dismissed at motion stage. The appellants have time of two months from the date of this order to vacate the suit premises. Subsequent to which respondent No.1 shall become entitled for executing the decree.

Sd/-

(Rajendra Chandra Singh Samant)
Judge