

(2019) 10 CHH CK 0208

Chhattisgarh High Court

Case No: First Appeal No. 100 Of 2008

Dwarika Prasad And Ors

APPELLANT

Vs

Murari Lal Soni

RESPONDENT

Date of Decision: Oct. 24, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96
- Chhattisgarh Accommodation Control Act, 1961 - Section 12(1)(c), 12(1)(f)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: P.R. Patankar, Vivek Tripathi, Sunil Otwani, Amit Soni

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 31-3-2008 passed by the

Additional District Judge, (FTC), Pendra Road (CG) in Civil Suit No. 16-A/2006 wherein the said court dismissed the suit filed by Ramsharan and

Dwarika Prasad and Sudarshan Prasad/original plaintiffs for eviction of respondent from shop which is mentioned and marked in red ink in Schedule-

A of the plaint situated at village Gourela, Pendra Road.

2. Eviction suit was filed by the appellants against the respondent that property in question is owned by Ramsharan and Santoshilal who acquired

property by way of purchase on 15-2-1977 from one Ajit Pratap Singh and others. Appellant Dwarika Prasad and original appellant Sudarshan Prasad

were sons of Ramsharan. Dwarika Prasad has three sons namely Deepak, Prakash

and Subhash and Sudarshan Prasad had two sons namely Vikash

and Vivek. In civil suit No. 4-A/2003 there was compromise between Ramsharan and Santoshilal and thereafter Ramsharan was absolute owner of

the property in question. Ramsharan has six son and there was oral partition between six sons on 7-3-2016 and subsequently it was registered on 29-3-

2006. The premise in question was given on rent to respondent for his business and he is tenant for the last twenty years. The respondent earlier

assured that he will vacate the premise in question on 20-11-1997 but he did not vacate the premise and did not deposit the rent after 7-11-1997. Rent

is Rs.12/- per month. A notice was served on respondent on 13-2-2006 and it was replied by the respondent as per Ex.P/27 dated 5-3-2006. Even

after notice the premise in question was not vacated by the respondent. The premise in question is bona fide required for sons of the appellants for

starting jewellery business and there is no other reasonably suitable accommodation available to them in the locality of Gourela. It is further case of

the appellants that the respondent created nuisance and he is liable to be evicted under Sections 12(1)(c) and 12(1)(f) of the Chhattisgarh

Accommodation Control Act, 1961 (for short, ""the Act, 1961""), but the trial court dismissed the suit contrary to factual matrix and legal aspect of the

matter.

3. Learned counsel for the appellants would submit as under:

i) Original appellant Ramsharan was owner of the property in question who has six sons and after partition the property in question was allotted to the

appellant Dwarika Prasad and other original appellant Sudarshan Prasad as per registered partition (Ex.P/1) dated 3-2- 2006.

ii) The status of respondent remained that of tenant and therefore, he is tenant of the appellants. The trial court recorded finding that the appellants

have no other alternate accommodation in the city of Gourela and that finding attained finality since the same is not challenged by other side.

iii) The evaluation of the evidence by the trial court that property in question is not sufficient for opening jewellery shop is not proper because it is

landlord who is the best judge for deciding which premise is suitable for opening the shop.

iv) Finding of the trial court that property is not partitioned between Santoshilal and Remsharan is irrelevant because the issue is related to landlord and tenant which is admitted, therefore, title of other co-sharer is not relevant and any co-owner of the property being landlord can file the suit for eviction.

v) The property in question is required bona fide for two sons of Dwarika Prasad and Vikash and Vivek and Vivek (PW/4) established the bona fide requirement and the trial court has also concluded that there is no alternate premise, therefore, decree ought to have been passed.

Reliance has been placed in the matter of Kanaklata Das and others vs. Naba Kumar Das and others, reported in (2018) 2 SCC 352 and M/s. India

Umbrella Manufacturing Co. and others vs. Bhagabandi Agarwalla (dead) by LRs and others, reported in AIR 2004 SC 1321

4. On the other hand, learned counsel for the respondents would submit as under:

i) Dwarika Prasad (PW/1) admitted (para 52) that Sudharshan Prasad is having one shop and that shop may be used for opening jewellery shop, therefore, bona fide requirement is not established.

ii) The trial court has evaluated the evidence in its right perspective, therefore, same is not liable to be interfered with while invoking jurisdiction of the appeal.

Reliance has been placed in the matter of Rakhav Lal vs. Sardar Kirpal Singh, reported in 2007 SCC Online MP 215 and Mattulal vs. Radhelal, reported in (1974) 2 SCC 365.

5. I have heard learned counsel for the parties and perused the record of the court below including the judgment and decree.

6. The first question for consideration of this court is whether the legal representatives of Santoshilal who is co-sharer of property in question are necessary party in the present suit regarding eviction of tenant. Admittedly, respondent is tenant of Ramsharan and Santoshilal and same is admitted by the respondent in reply given to notice served on him by the appellants as per Ex.P/27. As Ramsharan was landlord, after passing of Ramsharan

the appellants are landlords by operation of law being sons of Ramsharan. No legal representatives of Santoshilal intervened into the matter before the trial court, therefore, the trial court is not right in holding that legal representatives of Santoshilal are necessary party in the suit filed for eviction of

tenant, therefore, finding of the trial court is not sustainable and it is decided that legal representatives of Santoshilal are not necessary party in the present suit of eviction of tenant. If legal representatives of Santoshilal are claiming any right over the joint property of Ramsharan and Santoshilal, they can take legal recourse for the same.

7. The next question for consideration of this court is whether the premise in question is bona fide required for opening shop by sons of Dwarika Prasad and Sudarshan Prasad. The trial court by measuring area of shop decided (para 20) that space of shop is very less and it is insufficient for opening jewellery shop. The point for consideration of this court is whether finding arrived at by the trial court can be affirmed in a suit for eviction.

8. Vivek (PW/4) appeared in witness box before the trial court and established his requirement for opening the shop. From his evidence it is clear that he required shop bona fide for business. The landlord is the best judge to decide which premise is suitable for his business. It is not the job of the court to ration the need of the landlord or to record finding of suitability. When premise in question is suitable as per landlord the bona fide requirement is established unless it is rebutted by the tenant.

9. In the present case, it is contended on behalf of the respondent that as per version of Dwarika Prasad they are having one shop, therefore, they have not required the shop in question. In view of this court, argument is without substance. Appellant Dwarika Prasad has two sons and the original appellant Sudarshan Prasad had two sons. Each adult requires at least one shop for their business, therefore, any shop in the family of the appellants is not sufficient for requirement of all four adult members of the appellants, therefore, limitation imposed by the trial court is not sustainable and it is decided that the premise in question is bona fide required for opening the shop by the appellants. The trial court has already recorded finding that there is no other alternate premise in possession of the appellants and same is not challenged, therefore, the finding attained finality.

10. Eviction suit is filed by landlord against the tenant under the State Rent Act and the landlord and tenant are only necessary party. Any co-sharer or co-landlord can file suit for eviction against the tenant. It is not necessary that all the owners/landlords should joint in filing the eviction suit against the

tenant as held by the Hon'ble Suprme Court in the matter of Kashuri Radhakrishnan vs. M. Chinniyan, reported in (2006) 3 SCC 296.

11. In view of the above, the finding arrived at by the trial court regarding bonafide requirement is not sustainable and same is hereby set aside. It is

decided that the appellants bonafidely required the premise in question for business of their adult son and the ground under Section 12(1)(f) of the Act,

1961 is available to them. Decree of eviction should be passed against the respondent and in favour of the appellants.

12. Accordingly, the appeal is allowed and decree is passed in favour of appellants and against the respondent as under:

(i) The appeal is allowed.

(ii) Respondent to deliver possession of vacant premise in question to the appellants upto 31-12-2019.

(iii) Parties to bear their own costs..

(iv) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

(v) A decree be drawn up accordingly.