

(2019) 02 CHH CK 0488
Chhattisgarh High Court
Case No: Second Appeal No. 279 Of 2002

Balram Kodwani And Ors

APPELLANT

Vs

Reema Sahu And Ors

RESPONDENT

Date of Decision: Feb. 27, 2019

Acts Referred:

- Chattisgarh Accommodation Control Act, 1961 - Section 12(1)(f), 2(e)

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Malay Kumar Bhaduri, Anand Kumar Gupta

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. The substantial questions of law formulated for determination during the course of admission of appeal preferred by the LR's of the original

defendant, state as under: -

1. Whether the suit for eviction by the landlord respondent No.1 was maintainable under Section 12 (1) (f) of M.P./C.G. Accommodation Control

Act, 1961?

2. Whether for the determination of bonafide need of the plaintiff/respondent in this case was required to be considered on the basis of the pleading

alone?

(Parties hereinafter will be referred as per their status and ranking shown in the plaint before the trial Court.)

2. Original plaintiff Timanlal filed suit for eviction against the original defendant Rajesh Kumar stating inter alia that he has let out the suit

accommodation to the defendant on monthly rent of ₹ 300/- for non-residential purpose which is bona fide required for his younger brother Gulalram

for opening a shop for selling cement and for that he has sufficient fund and he has no other reasonably alternative suitable vacant accommodation in

his possession at Korba for opening the said shop.

3. The defendant filed his written statement denying the need and stating inter alia that the suit has been filed only for enhancing the rent. On 12-1-

1993, the written statement was amended stating that the plaintiff's brother Gulalram has already joined the service in South Eastern Coalfields

Limited (SECL) and therefore he is no longer in the requirement of the suit accommodation and bona fide need, if any, has come to an end.

4. The trial Court dismissed the suit holding that since the plaintiff's brother has already joined the service of SECL, therefore, the suit accommodation

is not required which the first appellate has reversed granting decree under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961

(for short, 'the Act') against which this second appeal has been preferred in which substantial questions of law have been formulated and set-out in the

opening paragraph of this judgment.

5. Mr. Malay Kumar Bhaduri, learned counsel appearing for the appellants / defendants, would submit that brother's need cannot be need of landlord,

therefore the first appellate Court is absolutely unjustified in reversing the judgment & decree of the trial Court. As such the appeal be allowed.

6. Mr. Anand Kumar Gupta, learned counsel appearing for the respondents / plaintiffs, would submit that the first appellate Court has rightly granted

decree in favour of the original plaintiff, as such, the appeal deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions and also went through the records with utmost circumspection.

Answer to both the substantial questions of law: -

8. Original plaintiff Timanlal filed suit for eviction of the original defendant / tenant on the ground enumerated under Section 12(1)(f) of the Act that

the suit accommodation is bona fide required for non-residential purpose of his younger brother Gulalram Sao, as he wish to open shop for selling

cement for which he has sufficient fund, and he and his brother both do not have any suitable alternative vacant accommodation in the township of

Korba. It was also pleaded that defendant is his tenant for monthly rent of ₹ 300/- and despite the legal notice having been served, the suit

accommodation was not vacated leading to filing of instant suit. The defendant denied the plaintiff's allegation and stated that the suit accommodation is

not required bona fide and only in order to enhance the rent, suit has been filed which deserves to be dismissed with cost. The trial Court dismissed

the suit finding the relationship of landlord and tenant established, but bona fide need under Section 12(1)(f) of the Act has come to an end, as the

plaintiff's brother has already joined service in SECL, Kusmunda. The said finding was reversed by the first appellate Court.

9. The first question for consideration is, whether the bona fide need set up by the plaintiff for non-residential purpose is covered by Section 12(1)(f)

of the Act or not. Section 12(1)(f) of the Act states as under:-

12. Restriction on eviction of tenants.-(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in Civil

Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(a) to (e) *****

(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or

that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that

the landlord or such person has no other reasonably suitable non- residential accommodation of his own in his occupation in the city or town

concerned;

10. Under Section 12(1)(f) of the Act, eviction can be sought for bona fide non-residential need of landlord, his major sons, unmarried daughter or for

any other person for whose benefit the accommodation is held.

11. A Full Bench of the Madhya Pradesh High Court in the matter of Badrilal s/o Radhakishanji Goyal v. Smt. Sita Bai w/o Birdichand Joshi (dead)

through L.Rs. Birdichand Joshi and others AIR 2011 MP 181 while considering the meaning of the phrase ""his own business"" as employed in Section

12(1)(f) of the Act has held that bona fide need of landlord will also include the need of his member of the family, who is so closely dependent on the

landlord that his need is practically the need of landlord and held as under:-

22. Keeping in view the law laid down by the Supreme Court in the judgments mentioned above and also the object of the enactment and adopting a

balanced approach, we find that phrase ""his business"" in Section 12(1)(f) of the M.P. Act not only means the need for continuing or starting the

individual business of the landlord but it also includes the need for continuing or starting the business of any member of the family covered by Section

2(e) of the M.P. Act, on whom the landlord is so closely dependent or who is so closely dependent on the landlord that his need for all practical

purposes is the need of the landlord. Since major sons and unmarried daughters have been separately included in Section 12(1)(f), therefore, they

stand on different footing and the landlord can seek eviction for their independent individual business need even if they are not dependent on landlord

or landlord is not dependent on them.

23. Thus, Section 12(1)(f) of the M.P. Act is more widely worded than the ground for eviction for business need contained in rent Act of some other

States, where landlord can seek eviction for his own business, occupation or need because under Section 12(1)(f) of the M.P. Act the landlord can

seek eviction for his own business need, business need of any member of his family on satisfaction of certain conditions, and additionally he can also

seek eviction for the individual, independent business need of his major sons and unmarried daughters.

24. The scope of Section 12(1)(f) is narrow as compared to Section 12(1)(e) of the M.P. Act because under Section 12(1)(f) a landlord cannot seek

eviction for the individual business need of a member of his family who is not dependent on him or on whom he is not dependent, other than his major

son and unmarried daughter, whereas under Section 12(1)(e) landlord can seek eviction for independent residential need of any member of his family

and dependency is not a relevant criteria.

12. The term ""member of the family"" has been defined under Section 2(e) of the Act which states as under:-

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) to (d) *****

(e) ""member of the family"" in case of any person means the spouse, son, unmarried daughter, father, grand father, mother, grand mother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow, or brother's son or unmarried daughter living jointly with or any other relation dependent on him;

13. Thus, by virtue of the provision contained in Section 2(e) of the Act read with the principle of law laid down by the Full Bench of the M.P. High

Court in Badrilal (supra), it is quite vivid that landlord can set up the need for continuing or starting the business of any member of the family which

includes brother also but caveat is that landlord must be so closely dependent on his brother or brother is so closely dependent on the landlord that his

need for all practical purposes is the need of landlord.

14. In order to find out as to whether the need set up by the plaintiff in the plaint fulfills the aforesaid requirement as laid down in Badrilal (supra), it

would be appropriate to have a brief survey of the plaint averment. Key paragraph of the plaint in this regard is contained in paragraphs 5 and 6 which

state as under:-

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15. On a careful perusal of the aforesaid pleading, it is quite vivid that the plaintiff has even not whispered in the entire plaint that his brother Gulalram

is closely dependent upon him or the plaintiff / landlord is closely dependent on his brother making his need for all practical purposes to be the need of

landlord. As such the plaintiff has failed to plead even the necessary ingredients for getting a decree under Section 12(1)(f) of the Act in terms of the

principle of law laid down by the Full Bench of Madhya Pradesh High Court in Badrilal (supra) and there is no acceptable evidence of dependency of

landlord / plaintiff on his brother for whom the eviction is sought under Section 12(1)(f) of the Act.

16. As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by first appellate Court suffers from perversity and as

such, it is liable to be set aside and is accordingly set aside by granting the appeal filed by the defendant thereby dismissing the suit filed by the plaintiff

leaving the parties to bear their own cost(s).

17. Decree be drawn up accordingly.