

**(2018) 08 CHH CK 0377**

**Chhattisgarh High Court**

**Case No:** Second Appeal No. 1057 Of 1997

Kishanchand And Ors

APPELLANT

Vs

Harishchand Yadav And Ors

RESPONDENT

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**Date of Decision:** Aug. 31, 2018

**Acts Referred:**

- Chhattisgarh Accommodation Control Act, 1961 - Section 12(1)(a), 12(1)(c), 12(1)(e)
- Transfer Of Property Act, 1882 - Section 53A
- Trusts Act, 1882 - Section 91

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** Indrasen Sahu, Akash Pandey, Arun Sao

**Final Decision:** Dismissed

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### **Judgement**

Sanjay K. Agrawal, J

1. The substantial question of law involved, formulated and to be answered in this defendant's second appeal is as under: -

Whether the Courts below while recording the finding of relationship of landlord and tenant between the plaintiff and defendants misconstrued the

agreement (Ex.D.1) which has vitiated their finding?

[The parties will hereinafter be referred as per their status shown in the plaint before the trial Court.]

2. The plaintiff filed a suit for eviction and arrears of rent / mesne profit with respect to the suit house situate at Seat No.77, Plot No.114/1 & 115/2,

Sadar Ward, Jagdalpur, stating inter alia that the defendant is his tenant and the suit house was let out for residential purpose at the monthly rent of ₹

65/- which he has not paid since June, 1976 and as such, the suit accommodation is required for his bona fide need and he has no other alternative

suitable accommodation in S.A.No.1057/1997 the township of Jagdalpur. He has also claimed eviction on the ground of denial of title by the tenant

under Section 12(1)(c) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961').

3. The defendant filed his written statement stating inter alia that he has entered into agreement to sell in favour of the plaintiff on 21-5- 1976, but

admitted to be tenant of the plaintiff till 20-5-1976, and also paid ₹ 5,000/- towards the sale consideration. The defendant further stated that he has

become title holder of the suit house and the plaintiff is not entitled for eviction.

4. The trial Court upon appreciation of oral and documentary evidence on record, granted decree in favour of the plaintiff under Sections 12(1)(a),

12(1)(c) and 12(1)(e) of the Act of 1961. In appeal preferred, the first appellate Court affirmed the judgment & decree of the trial Court and in the

second appeal filed by the defendant tenant, substantial question of law has been formulated and set out in the opening paragraph of this judgment.

5. Mr. Indrasen Sahu, learned counsel for the appellants/defendants, would submit that both the Courts below have erred in misconstruing the

document Ex.D-1 which is the agreement to sell entered into between the plaintiff and the defendant as such, the relationship of landlord and tenant

has come to an end after entering into the agreement to sell dated 21-5-1976 and therefore the judgment & decree passed by both the Courts below

are liable to be set aside.

6. Mr. Akash Pandey, learned counsel for the respondents/plaintiffs, S.A.No.1057/1997 would support the findings of the Courts below.

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

8. It is true that the trial Court has also recorded a finding that the plaintiff has entered into agreement to sell on 21-5-1976 and obtained ₹ 5,000/- and

thereafter, on 5-8-1976 and on 21-9-1976, the plaintiff obtained ₹ 500/- and ₹ 450/-, respectively, but the trial Court granted decree in favour of the

plaintiff finding the bona fide need and finding the ground under Sections 12(1)(a), 12(1)(c) and 12(1)(e) of the Act of 1961 in favour of the plaintiff. It

is also admitted fact that the defendant's suit for specific performance has been dismissed as withdrawn on 13-1-1993 and his counter claim has also

been dismissed on 14-12-1989 which is not in dispute. Ex.D-1 is an agreement to sell dated 21-5-1976 by which, according to the defendant, his status

would be a person already in possession in other capacity by virtue of Section 53-A of the Transfer of Property Act, 1882 and he is entitled to protect

his possession.

9. The question would be whether the tenant / defendant is liable to suffer eviction based on landlord-tenant relationship in view of the agreement to

sell dated 21-5-1976 (Ex.D-1)?

10. The question is no longer res integra and stood determined by the authoritative pronouncement of the Supreme Court rendered in the matter of

D.S. Parvatham v. A. Srinivasan (2003) 4 SCC 705 in which the question posed for consideration was whether the appellant tenant was entitled to

protect his possession under Section 53-A of the Transfer of Property Act, 1882 and not liable to suffer eviction based on landlord-tenant relationship.

Their Lordships of the Supreme Court answered the question by holding that having entered into possession as a tenant and having continued to

remain in possession in that capacity he cannot be heard to say that by reason of the agreement to sell his possession was no longer that of a tenant

and observed as under: -

9. Secondly, the appellant has failed to allege and prove that he was delivered possession in part- performance of the contract or he, being already in

possession as lessee, continued in possession in part- performance of the agreement to purchase i.e. by mutual agreement between the parties his

possession as lessee ceased and commenced as that of a transferee under the contract. On the contrary, there is a finding recorded in the earlier suit

that in spite of his having entered into a contract to purchase the property he had not disowned his character as lessee and he was treated as such by

the parties. The judgment dated 1-9-1999 in the civil suit notes the conduct of the plaintiff inconsistent with his conduct as a vendee-in-possession.

When a person already in possession of the property in some other capacity enters into a contract to purchase the property, to confer the benefit of protecting possession under the plea of part-performance, his act effective from that day must be consistent with the contract alleged and also such as cannot be referred to the preceding title. The High Court of Madhya Pradesh had occasion to deal with the facts very near to the facts before us in *Bhagwandas Parsadilal v. Surajmal* AIR 1961 MP 237. A tenant-in-possession entered into an agreement to purchase the house forming subject-matter of tenancy. However, he failed to show his nature of possession having altered from that of a tenant into that of a transferee. In a suit of ejectment based on landlord-tenant relationship, the tenant sought to protect his possession by raising the plea of part-performance as against the subsequent purchaser of the property. Referring to Section 91 of the Indian Trust Act, the High Court held that a subsequent purchaser of the property with notice of an existing contract affecting that property must hold the property for the benefit of the person in whose favour the prior agreement to sell has been executed to the extent it is necessary to give effect to that contract. But that does not mean that till a final decision has been reached the contract creates a right in the person-in-possession i.e. the tenant, to refuse to surrender possession of the premises even if such possession was obtained by him not in part-performance of the contract but in his capacity as a tenant. Having entered into possession as a tenant and having continued to remain in possession in that capacity he cannot be heard to say that by reason of the agreement to sell his possession was no longer that of a tenant. (Also see *Dakshinamurthi Mudaliar v. Dhanakoti Ammal* AIR 1925 Mad 965 and *A.M.A. Sultan v. Seydu Zohra Beevi* AIR 1990 Ker 186.) In our opinion the law has been correctly stated by the High Court of Madhya Pradesh in the abovesaid decision.

11. The aforesaid principle of law laid down in the aforesaid judgment squarely applies to the facts of the present case. Here the defendant has stated in paragraph 7(a) of the written statement that he was inducted as tenant by the plaintiff and he remained tenant of the plaintiff prior to 21-5-1976 and after he entered possession in the capacity of tenant, as he has not obtained possession pursuant to the agreement to sell Ex.D-1, therefore, the

plaintiff cannot be heard to say that by reason of the agreement to sell dated 21-5-1976 his possession was no longer that of a tenant and he is not

liable to be evicted and entitled to protect his possession under Section 53-A of the T.P. Act. As such, both the Courts below are absolutely justified in

granting decree in favour of the plaintiff, particularly when the defendant tenant's suit for specific performance has been dismissed as withdrawn on

13-1-993 and counter claim made in the suit has been dismissed on 14-12-1989.

12. In light of the aforesaid analysis, the substantial question of law is answered against the defendant tenant and in favour of the plaintiff and

resultantly, the appeal is dismissed reaffirming the judgment and decree passed by the first appellate Court.

13. Since the appellants / defendants are in occupation of the suit house for last more than 30 days, I deem it appropriate to grant them time up to 12-

11-2018 to vacate and handover peaceful possession of the suit house to the respondents/plaintiffs subject to the appellants' filing usual undertakings

before the trial Court within three weeks from the date of this judgment. In case no such undertakings are filed by each of the appellants within the

time so stipulated, the respondents shall be free to execute the decree for eviction of the suit house.

14. The appeal stands dismissed in the aforesaid terms without any order as to costs.

15. A decree be drawn-up accordingly.