

(2019) 03 CHH CK 0240
In the Chhattisgarh High Court
Case No : First Appeal No. 03 Of 2014

Shyam Sunder Kesharwani And Ors

APPELLANT

Vs

Jyotiprasad Shukla

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 96, Order 41 Rule 22
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a)

Citation : (2019) 03 CHH CK 0240

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Shreekumar Agrawal, Anand Kumar Gupta, Ram Kumar Tiwari,
Ayodhya Prasad Dubey

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 30.11.2013 passed by Third Additional District Judge, Bilaspur, District- Bilaspur (C.G.) in Civil Suit No. 42A/2011, wherein the said court decreed the suit filed by the respondent/ plaintiff against the appellants/ defendants for eviction from the suit premises and for recovery of arrears of rent.

2. In the present case, the suit premises is situated near Darbar Lodge, Telipara, Bilaspur. It is alleged that the suit premises was rented to the appellants which is bonafidely required for residence of the respondent, his son and family and for arrears of rent. The trial court after evaluating the evidence of both sides, recorded finding in favour of the respondents and passed the decree as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) The trial court recorded inadmissible evidence of power of attorney holder

namely Sharad Kumar Shukla who admitted that he is not aware about tenancy agreement and about monthly rent, but the trial court did not consider these aspects of the matter.

(ii) This court has fixed rent @ 1200/- per month against which the appellants preferred a petition before Hon'ble the Supreme Court and on 22nd July, 2013, Hon'ble the Supreme Court has passed the following order in favour of the appellants:-

"Until further orders, the petitioners shall deposit the rent at the old rate which was Rs. 600/- PM."

(iii) The original landlord namely Jyotiprasad Shukla has not been examined, therefore, adverse inference was to be drawn against him.

(iv) It is pleaded in plaint (Para 3) that another residential accommodation is available at Khaparganj which is not enough for their residence. For proving this fact, respondent- Jyotiprasad Shukla did not examine himself, therefore, adverse inference should have been drawn by the trial court.

(v) The respondent did not examine to rebut evidence of the appellants that Shayam Sunder Kesharwani evicted the premises in the year 1991 and it was let out to other appellants.

(vi) The trial court has not considered evidence of respondent's son that Jyotiprasad Shukla is owner of a big chawl which consist of several residential blocks and two blocks are still vacate in possession of the respondent, therefore, finding on the basis of power of attorney is not sustainable.

4. Learned counsel for the appellants placed reliance in the matter of Pishta Bai Jain Vs. Vonod Solanki reported in 2007 (2) CGLJ 288, Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. and others reported in AIR 2005 SC 439, Plasto Pack, Mumbai and another Vs. Ratnakar Bank Ltd. reported in (2001) 6 SCC 683 & Chandrakali Bai and others Vs. Jagdish Singh and another reported in 1978 JIJ 1.

5. On the other hand, learned counsel for the respondent submits that landlord is best judge of his requirement and it is not necessary both for the court and tenant to make endeavor to show the landlord how he should adjust himself. Sharad Kumar Shukla is son of the respondent who is power of attorney holder in the present case and suit is filed for his requirement also, therefore, his version is sufficient to establish bonafide requirement for residing of family members of the respondent. In the present case, tenant/ appellants did not deposit arrears of rent before filing of suit or during pendency before this Court, but deposited fraction of the rent at belated stage, therefore, they are not entitled to get statutory protection and they are also liable to be evicted as per Section 12 (1) (a) of the Madhya Pradesh/ Chhattisgarh Accommodation Control Act, 1961 (for short "the Act, 1961"). He placed reliance in the matter of R.C. Tamrakar & another Vs. Nidi Lekha reported in 2002(1) CGLJ 408.

6. Cross appeal/ objection filed by the respondent under Order 41 Rule 22 of C.P.C. that finding of the trial court on issue No. 1, 2 & 6 are not in accordance with evidence available on record of trial court, therefore, same should be set aside which is opposed by the appellants side.

7. Sharad Kumar Shukla (PW-1) is son of the respondent and is power of attorney holder, Sanjay Shukla (PW-2) deposed on behalf of the respondent/ plaintiff while Shyam Sunder Kesharwani (DW-1), Chironnjilal Kesharwani (DW-2), Shravan Kumar (DW-3) on behalf of the appellants.

8. The suit is filed on 1st December, 2011. From evidence of both sides, it is clear that the appellants are tenant of the respondent. Though, Shyam Sunder Kesharwani (DW-1) deposed before the trial court that he was tenant of the respondent upto year 1991 and thereafter he vacated the said premises, but it is not clear from his evidence on what date he vacated the premises. Chironnjilal Kesharwani (DW-2) and Shravan Kumar Kesharwani (DW-3) both admitted their tenancy and they deposed that they have deposited rent upto September, 2011, but it is not clear from their evidence as to why they stopped payment of rent after September, 2011. It is deposed by Chironnjilal Kesharwani (Para 5) that rent amounting to Rs. 100/- was sent by him through money order, but the same was refused by the respondent, but no refusal receipt of money order was produced before the trial court and the same is the case of appellant No. 3- Shravan Kumar Kesharwani, he has also not produced any refusal receipt of money order before the trial court.

9. In the present case, notice was sent to the appellant as per Ex. P/2 dated 5th October, 2011 for payment of arrears of rent, but it appears from the record that they have neither paid nor tendered arrears of rent legally recoverable from them even within two months of the date on which a notice of payment for the arrears of rent has been served on him by the landlord.

10. The suit was filed on 1st December, 2011 and even after filing of suit, no amount was deposited by the appellants regarding rent in the trial court. From memo of appeal, it is clear that the rent @ 600/- per month was deposited only in compliance of the order of Hon'ble the Supreme Court after July, 2013. If rent was @ 100/- per month for each of appellant No. 2 & 3, there is no explanation why the agreed rent was not deposited during pendency of the case in the trial court, therefore, ground under Section 12 (1) (a) the Act, 1961 is available to the respondent against the appellants.

11. From evidence of Sharad Kumar Shukla (PW-1), it is established that the premises in question is bonafidely required for residence of their family and house situated at Khaparganj in which they are residing is not sufficient for residence of joint family. As per version of this witness, the house is required for his son and again, it is required for himself and his wife. Version of this witness is supported by version of Sanjay Kumar Shukla (PW-3).

12. Though, Chironnjilal Kesharwani (DW-2) and Shrawan Kumar Kesharwani

(DW-3) deposed that the respondent is having some other accommodation, but the fact remains that the requirement can be assessed only by the landlord. It is not for the tenant and not for the court to make an endeavour to show the landlord how should he adjust himself. Rationing is not work of the court for landlord, therefore, evidence adduced on behalf of the appellants side is not acceptable.

13. In the present case, Sharad Kumar Shukla who is power of attorney holder of the respondent and his son and the house in question required for his residence bonafidely, therefore, it is not a case where the power of attorney holder has no knowledge regarding bonafide requirement or regarding tenancy, therefore, argument on behalf of the appellants regarding power of attorney holder who has no personal knowledge about facts of the case, is clearly distinguishable from the facts and circumstances of the case.

14. In the present case, the dispute is regarding rent and not regarding tenancy, therefore, the trial court is not right in answering issue No. 1 & 2 in negative and should have been answering that tenancy is proved. The question of rent can be determined as per provision of the Act, 1961. Cross appeal/ objection filed by the respondent is liable be accepted upto that extent and it is decided that the appellants are tenant of the respondent and amount of rent can be determined by the court as per provisions of the Act, 1961.

15. Evidence of both sides and rent receipt filed by the appellants side (Ex. D-1 to D-12) shows that tenancy started way back in the year 1982 and at that time rent was Rs. 200/- per month. The suit was filed before the trial court after 30 years of starting of the tenancy and price index gone high in the year 2012 as compare to year 1982, therefore, determination of rent by the trial court to the tune of Rs. 1200/- per month cannot be termed to be on higher side. After comparison of price index of last 30 years, the same is appeared to be on lower side which is not liable to be interfered with. It is made clear that though the decree is passed against the appellants No. 2 & 3, but in the factual scenario of the case, the appellant No. 1 is also bound by the decree.

16. With these observations, The appeal is liable to be and is hereby dismissed.

17. Accordingly, the decree is passed against the appellants and in favour of the respondent on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) The appellants to bear cost of the respondent throughout.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.