

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

FIRST APPEAL NO. 214 OF 2004

BETWEEN:-

**KAILASH NARAYAN S/O JAGANNATH PRASAD
BHARGAVA, AGED 58 YEARS, OCCUPATION
-TEACHER R/O ASHOK VIHAR COLONY, T.V.
TOWER KE PAS, SHIVPURI (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI D.K. AGRAWAL - ADVOCATE)

AND

1. **SMT. SHYAMLATA W/O BRIJMOHAN AGED 69
YEARS, OCCUPATION -HOUSEWIFE R/O A.B.
ROAD, SHIVPURI DISTRICT SHIVPURI
(MADHYA PRADESH)**
2. **CHATUR BIHARI (DEAD) THROUGH L.RS.
(A) RAJ BIHARI LAL SHRIVASTAVA S/O LATE SH.
CHATUR BIHARI LAL SHRIVASTAVA
OCCUPATION – ADVOCATE R/O ADARSH
COLONY SHIVPURI (MADHYA PRADESH)
(B) KRISHNA BIHARI LAL SHRIVASTAVA S/O LATE
SHRI CHATUR BIHARI LAL SHRIVASTAVA OCC.-
CONTACTOR R/O ADARSH COLONY SHIVPURI
(M.P.)
(C) SMT. PADMA KHARE S/O LATE SHRI CHATUR
BIHARI LAL SHRIVASTAVA (W/O SHRI JAGDISH
PRASAD KHARE) OCC. HOUSE WIFE R/O MAHAL
COLONY SHIVPURI (M.P.)
(D) SAT. KUSUM LATA D/O LATE SHRI CHATUR
BIHARI LAL SHRIVASTAVA W/O SHRI JAGDISH
PRASAD) OCC.- HOUSE WIFE R/O AWASH VIKAS
COLONY JHANSI (U.P.)
(E) SMT. POONAM SHRIVASTAVA D/O LATE SHRI
CHATUR BIHARI LAL SHRIVASTAVA (W/O SHRI
MAITHLISHARAN SHRIVASTAVA) OCC.-HOUSE
WIFE R/O SIPRI BAZAR JHANSI (U.P.)**

(F) SMT. MADHU SHRIVASTAVA D/O LATE SHRI CHATUR BIHARI LAL SHRIVASTAVA (W/O SHRI RAJ KUMAR SHRIVASTAVA) OCC. HOUSE WIFE R/O NEAR PITAMBARA PEETH DATIA (M.P.)

(G) SMT. ALKA SHRIVASTAVA D/O LATE SHRI CHATUR BIHARI LAL SHRIVASTAVA (W/O SHRI BHUVNESHWAR SHRIVASTAVA) OCC.- HOUSE WIFE R/O VIVEKANAND COLONY SHIVPURI (M.P.)

3. ASHUTOSH S/O KAILASH NARAYAN SHARMA, AGED 29 YEARS, R/O SADAR BAZAAR, TEKARI DISTRICT SHIVPURI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI RAM KRISHNA SONI – ADVOCATE FOR RESPONDENT NO.1 AND SHRI H.K. SHUKLA – ADVOCATE FOR RESPONDENTS NO.2 AND 3)

Reserved on	:	12-12-2023
Delivered on	:	17-01-2024

This appeal having been heard and reserved for orders coming on for pronouncement this day, delivered the following:-

JUDGMENT

- The instant appeal under Section 96 of the Code of Civil Procedure, 1908 is preferred by the **appellant/defendant No.1/tenant** being crestfallen by the judgment and decree dated 23-08-2004 passed by II Additional District Judge, Shivpuri in Civil Suit No.13-A/1996 whereby the suit of the plaintiff/respondent No.1 has been decreed.
- Facts in brief are that **plaintiff/respondent No.1 Smt. Shyamlata** along with her husband Brijmohan Das (since deceased) filed a suit for eviction and arrears of rent against the present appellant/defendant No.1. Initially, two defendants were arrayed as parties in which defendant No.2 – Chatur Bihari Shrivastava was a

person who stood guarantor for payment of rent, therefore, arrayed as defendant.

3. The suit was filed by the plaintiffs with the allegations that they are having two storey house at Sadar Bazaar Tekari, Shivpuri of ownership and possession of plaintiffs, four corners of which are mentioned in the plaint. Defendant No.1 (Kailash Narayan present appellant) took the said house (except some portion) for residential purpose on 01-05-1994 on rent of Rs.2300/- per month as per the rent note dated 01-05-1994 and conditions contained therein. Defendant No.2 -Chatur Bihari Shrivastava stood guarantor for payment of rent.
4. Appellant/defendant No.1 as per the agreement, paid rent till 15-04-1995 and thereafter stopped paying rent to the landlords. Receipt for the rent was given by the plaintiffs to defendant No.1 and last receipt is of 15-04-1995 for paying rent till March, 1995. Since 01-04-1995 payment was not made. As per condition No.12 of the rent note, some rooms which were in possession of plaintiffs were taken by defendant No.1 with forcible possession and therefore, on report of plaintiffs, police intervened and gave possession of the said rooms to the plaintiffs.
5. It is the allegation of plaintiffs that defendant No.1 without permission from the plaintiffs used the house for the purpose of school (commercial activities) and changed the use of tenancy from residential to commercial. Plaintiffs wanted to live in house because the house was situated in the center of city of Shivpuri and is easily accessible, therefore, they have bona fide requirement for personal use.
6. Against defendant No.3 -Ashutosh (impleaded later) it was the

allegation of plaintiffs that Ashutosh is son of defendant No.1 and he colluded with defendant No.1 and by misrepresentation defendant No.1 got his son adopted by plaintiffs by way of registered Adoption Deed. Later on realising the mischief at the hands of defendant No.1, for cancellation of said Adoption Deed, a suit has been filed by the plaintiff before III Civil Judge Class -II, Shivpuri. Defendant No.3 colluded with defendant No.1 to the extent that he represented himself as landlord. Defendant No.1 also mentioned the fact in his reply to the notice that since defendant No.3 is receiving rent w.e.f. 01-04-1995, therefore, there is no arrears of rent exists and all rent has been duly paid to landlord.

7. According to plaintiff total arrears of rent between 01-04-1995 to 31-01-1996 (total 10 months) comes to Rs.23,000/- and with interest its comes to Rs.24,265/- which plaintiff deserves to receive from defendant No.1. On this ground also, eviction decree be drawn against the defendants.
8. Contesting defendant – Kailash Narayan/present appellant filed his written statement and contested the case. According to appellant/defendant No.1 right of recovery of rent lies with plaintiffs as well as their son Ashutosh (defendant No.3 herein) and since Ashutosh had the right to receive the rent, therefore, rent has been received by him and defendant No.1 paid this rent to defendant No.3. In the disputed house, one room is occupied by defendant No.3 and some other rooms are occupied by the plaintiffs. Use of the house is in possession of defendant No.1. Since that part which is occupied by defendant No.3, a school is

being run and one room is occupied by defendant No.3, therefore, defendant No.1 is not liable for payment of rent since payment which is to be made to him, is to be determined, therefore, provisional rent be fixed.

9. Defendant No.1 raised the plea of Adoption Deed also by which defendant No.3 who is biological son of defendant No.1 allegedly adopted by plaintiff vide Adoption Deed dated 26-07-1994, the date on which deed was registered. As submitted, since he is an adopted son of plaintiff, therefore, as per Section 16 of the Hindu Adoptions and Maintenance Act, 1956, it would be presumed that documents of adoption are proper till they are set aside as per law.
10. Since defendant No.1 has given rent to defendant No.3, therefore, the case of arrears of rent does not arise. In special objections, it has been mentioned by defendant No.1 that before the Rent Controlling Authority, Shivpuri an application has been filed by plaintiff against the defendants, therefore, present case is not maintainable. Since plaintiff has filed another suit against defendant No.3 for rescinding the Adoption Deed before the competent civil Court, therefore, till the civil suit is decided, this case is not maintainable.
11. Defendant No.2 also filed formal written statement.
12. Defendant No.3 Ashutosh also filed written statement and referred the fact of adoption by the plaintiff. It is his submission that on 01-05-1994 house was given by plaintiff to defendant No.1 on rent. On 26-07-1994 defendant No.3 went to the plaintiffs through registered Adoption Deed as their son, therefore, he also had a

claim over the property. Since 01-05-1995, one room has been taken by defendant No.3 for his personal use and defendant No.1 is running his school namely, Shakti Shikshan Sansthan.

13. It is also submitted that defendant No.3 is receiving rent from defendant No.1 and receipts are given accordingly. Rent by defendant No.1 has been given to the plaintiff till 31-03-1995 and since 01-04-1995 being owner of the house, defendant No.3 is receiving the rent.
14. He denied collusion with defendant No.1 and submits that plaintiff has levelled the false allegation of collusion against him and defendant No.1. He is validly adopted by the plaintiff. Plaintiff No.1 Brijmohan has expired and he has all rights as son and he is Karta of Hindu undivided family in which plaintiff -Shyamalata is a member only. She cannot prosecute the civil suit alone. Since adoption of son /daughter cannot be rescinded or set aside under Hindu Law and status of son cannot be terminated, therefore, this suit is not maintainable till other case is decided whereby plaintiff has filed a suit against defendant No.3 for setting aside of Adoption Deed.
15. Learned counsel for the appellant Shri Agrawal canvassed the arguments in detail. It is submitted by learned counsel for the appellant that written tenancy has been alleged from 01-05-1994 for 11 months, however document i.e. alleged Tenancy Agreement has not been produced in evidence by the plaintiff. Entire conclusions are unsustainable because trial Court misled and misinterpreted Section 35 of the Indian Stamps Act, 1899 (hereinafter referred to as "the Stamps Act") and ignored Sections

91 and 92 of Indian Evidence. In absence of “Material Facts” and “Material Particulars”, suit itself was not maintainable. Unstamped tenancy agreement neither in the shape of secondary evidence is admissible nor contents of the said agreement can be read in evidence even though stated in oral statement. He relied upon **(1971) 1 SCC 545 Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao and others.**

- 16.** Once unstamped document of tenancy allegedly created on 05-05-1995 between the appellant/defendant No.1/tenant and defendant No.3 was found inadmissible in evidence by the trial Court in terms of Section 35 of the Stamps Act then alleged tenancy agreement dated 01-05-1994 between the appellant and plaintiff has also become inadmissible in evidence. No decree can be passed on such inadmissible document even if the parties have admitted existence of such document. He relied upon **Yasoda Amaal Vs. Janaki Ammal AIR 1968 Madras 264 (DB), Mallappa Vs. Nalam Naga Shetty AIR 1919 Madras 833, Alapati Achutaramana Vs. Nasireddi Jagannadham AIR 1933 Madras 117.** Tenancy agreement dated 01-05-1994 neither exhibited in evidence nor admitted in evidence because it was never produced before the Court, therefore, there is no question of applicability of Section 36 of the Indian Stamps Act and relaxation of Section 36 of the Stamps Act would not be attracted. He relied upon the judgments of Apex Court in the cases of **2009 (2) SCC 532, Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, (2018) 7 SCC 646 Shyam Narayan Prasad Vs. Krishna Prasad and Ors., (2015) 14 SCC 341 Nanjappan**

Vs. Ramasamy and Ors, (2015) 9 SCC 287 S.M. Asif Vs. Virender Kumar Bajaj and (2008) 5 SCC 58 Vimlesh Kumari Kulshrestha vs. Sambhajirao and another.

17. Uncertainty of description of property is palpably proved. Description of disputed property was not sufficiently elaborated to identify the property in dispute. He refers the submission of plaintiff (PW-1) in this regard to submit that in absence of clear identification of property, trial Court erred in passing the impugned judgment and decree. He relied upon **2020 (3) MPLJ 173 Satish Kumar Khandelwal Vs. Rajendra Jain.**
18. The ground for eviction under Section 12(1)(c) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the Act of 1961) as framed in issue No.6 was in fact abandoned by the order dated 07-04-2003 by the trial Court. However observations and findings in para 37 to 43 of the impugned judgment has been recorded by the trial Court which resulted into miscarriage of justice. The observations/findings of Court below regarding collusion between defendant No.1 and 3 resulted into miscarriage of justice. There was no collusion between the two parties (defendant No.1 and 3) and still findings have been given.
19. It is further submitted that once the adjudication over issue No.2(ब) was not pressed by the plaintiff and no evidence was led by the plaintiff, trial Court committed serious error of law on procedure in holding that rent of the arrears from 01-04-1995 and non payment of rent by defendant No.1 to the plaintiff has resulted in collusion between defendant No.1 to 3. Similarly existence of document Ex-D/122 (consent letter of plaintiff No.1

Brijmohan Das in favour of defendant No.3) in which payment of rent was permissible for defendant No.3 to receive and because of that document, plea of arrears of rent does not stand to legal scrutiny. Document dated 15-08-1994 Ex-D/122 is title document in the case and was jointly executed by plaintiff No.1 -Brijmohan Das and plaintiff's adopted son Ashutosh -defendant No.3. Trial Court decided the suit without considering the said aspect and caused illegality.

20. Learned counsel for the appellant referred testimony of the appellant (DW-1) to submit that it was known to the plaintiff that appellant used to run a school that too with the consent of the plaintiff. According to him, adoption deed dated 26-07-1994 till passing of the impugned judgment dated 23-08-2004, adoption deed was in existence and was operative. Although thereafter trial Court allowed the suit filed by the plaintiff and cancelled the adoption deed vide impugned judgment dated 02-02-2005, however said dissolution of adoption deed does not come in the way of appellant as defendant No.1.
21. According to learned counsel for appellant, findings are arrived at without proper pleadings and necessary issues, therefore, same cannot bind any of the parties to the suit.
22. On the other hand, learned counsel for respondent No.1/plaintiff who is contesting respondent in the case opposed the prayer and supported the impugned judgment. According to learned counsel for respondent No.1, the appellant -Kailash Narayan and respondent No.3/defendant No.3 with collusion denied title of respondent No.1. Once Ashutosh/defendant No.3 had no right

over the property, appellant Kailash Narayan cannot take shelter on the ground that rent was paid to defendant No.3 Ashutosh. Once the tenancy is admitted, the amount of rent is also admitted thus, the appellant was bound to comply the provisions of Section 13(1) of the Act of 1961 as from the date of notice, appellant was bound to deposit the rent before the trial Court.

23. In the present case, appellant failed to comply the provisions of Section 13(1) of the Act of 1961 and during pendency of the case also he did not deposit the rent, therefore, the trial Court rightly passed the impugned judgment and decree on the ground under Section 12(1)(a) of the Act of 1961.
24. It is further submitted that rent note dated 01-05-1994 is admitted by the appellant in the written statement and in his deposition also as DW-1 and rent note dated 01-05-1994 was filed along with plaint as part of the plaint and in such rent note whole description of the property was mentioned. Therefore, the submission of appellant that description was not properly written lacks merits. It is further submitted by learned counsel for respondent No.1 that admitted facts need not to be required to be proved as per Order XII Rule 2 A of the CPC and also as per Section 58 of the Evidence Act. Once the rent note is admitted by the appellant as DW-1 in his pleadings and deposition then in view of such admission, the concerned document need not to be admitted in evidence. When appellant/defendant No.1 admitted the said document even during cross-examination also and never raised the objection, therefore, at a later stage, it is not thus proper for him to raise grievance at the time of final hearing of suit or at the

time of hearing of first appeal.

25. Clear finding has been recorded by the trial Court regarding collusion between the appellant and defendant No.3 Ashutosh because Ashutosh was biological son of appellant and after tenancy they forged the document of Adoption Deed in such a fashion in which plaintiff had to go to the Civil Court for cancellation of such Adoption Deed. Incidentally, vide judgment dated 02-02-2005, the trial Court decreed the suit of respondent No.1 and adoption deed was declared as void by the Court of Civil Judge Class -I Shivpuri in case No.102-A/2002. Therefore, collusion stood proved.
26. According to learned counsel for respondent No.1, arguments advanced by learned counsel for the appellant before this Court are contrary to the record. Trial Court rightly passed the impugned judgment and decree against the appellant under Section 12(1)(a), 12(1)(c) and 12(1)(o) of the Act of 1961. He relied upon **1996 (2) MPWN SN 143 Nand Kishore Vs. Ramniwas, 2004(3) MPLJ 162 Devendra s/o Chandmal Choudhary Vs. Warsilal s/o Diwanchandji Dua, 2005(2) MPLJ 583 Meenamal Vs. Madan Mohan Agrawal, 2008(1) MPLJ 349 Indira Kumari d/o Sagarmalji Jain, 2008(3) MPLJ 239 Vraj s/o Baldev Prasad Sharma Vs. Ina Devnani w/o Ramesh Devnani and others, 2009(3) MPLJ 445 Sahibram Dhindra Vs. Shivshankar Goyal and 2011 (1) MPLJ 675 Neelu Bai Vs. Phagumal s/o Ishwardas**. Thus, prayed for dismissal of this appeal.
27. Counsel for respondent No.3, Ashutosh also advanced the

arguments and supported the arguments of appellant.

28. Heard learned counsel for the parties at length and perused the record of the case.
29. In the case in hand, appellant is taking exception to the judgment and decree dated 23-08-2004 passed by II Additional District Judge, Shivpuri in Civil Suit No.13-A/1996 whereby the suit of the plaintiff (respondent No.1 herein) has been decreed and appellant has been directed to evict the suit premises.
30. This case has very peculiar factual contours. Initially, plaintiffs filed a suit for eviction against defendant No.1/tenant. Later, on the occasion of death of plaintiff No.1 Brijmohan, defendant No.3 Ashutosh tried to implead himself as plaintiff by moving an application under Order XXII Rule 3 CPC but failed partly. Trial Court declined to implead him as plaintiff, but impleaded him as defendant No.3. As defendant No.3 also, he supported defendant No.1, rather than plaintiff.
31. Interestingly he claimed himself to be the adopted son of plaintiff and for that he relied upon the adoption deed 26-07-1994 allegedly executed by the plaintiff to adopt defendant No.3 Ashutosh. After being adopted allegedly, he should have lived with the adopted parents (plaintiffs herein) and had to shoulder the responsibility as their son, but he continued to align with defendant No.1 and the whole pleadings and evidence revolves round the collusion between defendant No.1 and defendant No.3 to frustrate the cause of plaintiff.
32. Trial Court in a very candid manner discussed in details about collusion and rightly held that because of the fraud perpetrated

over the plaintiff by the collusion of defendant No.1 and defendant No.3, their evidence deserve to be discarded and evidence of plaintiff was rightly appreciated. Although issue No.6 which was framed earlier was deleted by order dated 07-04-2003 by trial Court but it had different tenor and texture of collusion. It was regarding grabbing of property by collusion. However, trial Court could always resort to facts regarding collusion to arrive to its conclusion. Otherwise, it would have been the travesty of justice and it would have amounted to perpetuate fraud.

33. In the case in hand, plaintiffs averred in relation to fraud being perpetrated over them by defendant No.1 (and defendant No.3) in relation to adoption deed. It is settled in law that fraud vitiates all solemn proceedings. Here action of appellant suggests that he and defendant No.3 played fraud over plaintiffs, initially by adoption deed and later in their deposition.
34. It is well settled principle of law that **Fraud Vitiates Everything**. This principle has been dealt with by the Apex Court in its various judgments viz. in the case of **R. Ravindra Reddy Vs. H. Ramaiah Reddy, (2010) 3 SCC 214, Badami Bai (D) Tr. L.R. Vs. Bhali, (2012) 11 SCC 574, Uddar Gagan Properties Ltd. Vs. Sant Singh, (2016) 11 SCC 378, K.D. Sharma Vs. SAIL, (2008) 12 SCC 481, Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133, DDA Vs. Skipper Construction, (2007) 15 SCC 601** and in the case of **Jai Narain Parasrampuriah Vs. Pushpa Devi Saraf**, reported in **(2006) 7 SCC 756**. In **R. Ravindra Reddy (supra)**, the Apex Court held as under:

“39. As far as fraud is concerned, it is no doubt true, as submitted by Mr Ramachandran, that fraud vitiates all actions taken pursuant thereto and in Lord Denning’s words “fraud unravels everything.....”

35. This is the ground alone on which decree could have been passed. Because this aspect has been discussed and held against defendants by the trial Court in detail and different paragraphs of impugned judgment. This Court affirms such finding and intends to discuss it one by one, from para No.15 itself. When rent note dated 01-05-1994 executed between plaintiff and defendant No.1 was admitted by defendant No.1 Kailash Narayan in his evidence in different paragraphs, then to frustrate that evidence, defendant No.3 moved an application under Section 35 of the Stamps Act to submit that neither such document has been exhibited nor stamp duty with penalty has been paid over the said document, therefore, document is inadmissible in evidence. When defendant No.3 happens to be the adopted son of plaintiff then if he goes against the interest of his own parents, then it is the question which required discussion and rightly discussed in detail by the trial Court. Defendant No.3 is biological son of defendant No.1, therefore, it appears that to save his biological father from eviction, he subterfuged the cause of plaintiff and her legitimate claim. When trial Court did not consider the said plea then, a writ petition was also filed vide Writ Petition No.857 of 2004 with the prayer that defendant No.1 be removed as party defendant so that defendant No.3 may proceed with trial. On close scrutiny, it appears that collusion was writ large and they were playing with

the plaintiff.

Regarding collusion between defendant No.1 and defendant No.3:

36. It is worth mentioning the fact that adoption deed by which defendant No.3 was allegedly tried to establish himself as adopted son of plaintiff was challenged by the plaintiff in different proceedings by way of Civil Suit No.102-A/2002 RCS and vide judgment dated 02-02-2005 adoption deed was declared void by Civil Judge Class -I, Shivpuri. Appeal was preferred by defendant No.3 and the said appeal No.53-A/2005 was also dismissed vide judgment dated 24-03-2005. Thereafter, second appeal was preferred vide Second Appeal No.464/2005 and the same was also dismissed vide judgment dated 09-11-2005 and thereafter Special Leave Petition (Civil) No.2941/2006 was preferred and the same was also dismissed vide order dated 17-02-2006. All the orders/judgments were placed on record, therefore, it was not a case simplicitor of eviction. In fact it is a case where plaintiffs were fighting for eviction of tenant (since 1996) in which collusion of defendant No.1 and defendant No.3 was established through their conduct.
37. Very cleverly, defendant No.3 raised the plea that on 05-05-1995 a rent note was executed between defendant No.1 and defendant No.3 which was not exhibited by the defendants but tried to rely upon on the ground that rent was given by defendant No.1 to defendant No.3 w.e.f. 01-04-1995 but the trial Court did not find relationship of landlord and tenant between defendant No.1 and defendant No.3 as established because it was tainted with

collusion. Without attornment, relationship of landlord -tenant could not have been established. In para 19 of the impugned judgment, this aspect has been discussed in detail. In para 21, 22 and 23 also the fact of collusion has been discussed in detail. Trial Court held that when the order dated 12-01-2004 was passed by the Court directing defendant No.1 not to pay rent to defendant No.3 but to be paid to the plaintiff then on 26-02-2004 defendant No.1 made an application before the trial Court with the allegations that on 31-01-2004, defendant No.3 evicted him from the suit premises. Reason shown was solemnization of marriage of defendant No.3 and his consequent requirement of space for his family.

38. However, in his deposition, defendant No.3 makes a statement that he does not remember about fixing of provisional rent which is to be given to the plaintiff. Here the question arises when defendant No.1 was already evicted as deposed by defendant No.1 then why he was litigating with such vehemence against his own biological son. Therefore, the plea of defendant No.1 gets falsified. In paragraphs 27, 28 and 30 of the impugned judgment the plea of fraud, collusion and misrepresentation of facts were again discussed in detail. Trial Court categorically held that defendant No.1 and defendant No.3 were making false statements on record just to frustrate the cause of plaintiffs. Therefore, on the plea of fraud, collusion and misrepresentation of facts, trial Court rightly appreciated the evidence available on record and passed the impugned judgment. **Defendants No.1 and 3 cannot be given premium to their mischief and collusion.**

For that, any separate issue was not required to be framed. On grounds available, element of Fraud and misrepresentation had to be seen.

39. One more fact deserves consideration is that against the judgment and decree dated 23-08-2004, defendant No.3 preferred First Appeal No.242/2004 but the same was dismissed because decree was not at all against him. Preferring First Appeal when he did not suffer any adversity, further smacked fraud and malice.

Regarding decree under Section 12(1)(a) of the Act:

40. Plaintiffs in their plaint have specifically pleaded in para 3 that on 01-05-1994 tenancy was created by the plaintiffs in favour of defendant No.1 by way of rent note dated 01-05-1994 on Rs.2300/- per month rent in which defendant No.2 stood as guarantor. It was further averred in para 4 that rent till 31-03-1995 rent was paid by defendant No.1. On 15-04-1995 and thereafter he stopped paying rent. Plaintiffs always used to give receipts to the defendant No.1 for the rent deposited but after 01-04-1995 defendant No.1 never paid rent. Thereafter, plaintiffs sent a registered AD notice to defendant No.1 and on 25-09-1995 notice returned back with the endorsement that defendant No.1 moved out of town. On 05-10-1995 again registered notice was given which was received by defendant No.1 on 07-10-1995. Those notices and rent receipts were duly exhibited. Since as per the rent note, 11 months tenancy existed which was to be renewed but neither it was renewed nor any rent was paid to the plaintiffs. Therefore, arrears of rent accumulated and not paid.
41. Incidentally, defendant No.1 admitted the fact about rent note but

made a specific pleading that biological son of defendant No.1 namely Ashutosh who is arrayed as defendant No.3 was adopted by the plaintiffs vide adoption deed dated 26-07-1994 and therefore, he became the landlord by virtue of adoption deed. From 01-04-1995 defendant No.1 started paying rent to defendant No.3 who according to defendant No.1 became landlord of the house and therefore, he started giving him the rent. That aspect has been duly considered by the trial Court while considering issue No.1, 2(a) and 2(b). It is worth mentioning the fact that while deciding issue No.2(a) and 2(b), trial Court again discussed the fact of collusion because as discussed earlier, this case suffers from peculiarity of collusion between defendant No.1 and defendant No.3 in which defendant No.3 misused the document or his position to the detriment of the plaintiffs. Assertion of defendant No.1 that since 01-04-1995 he started paying rent to defendant No.3 lacks merits because defendant No.3 had no authority to take rent from defendant No.1.

42. Tenancy in the present case started from 01-05-1994 and as per the specific submission of defendant No.1, adoption of defendant No.3 was undertaken on 26-07-1994 by way of adoption deed. It means that when landlord tenant relationship established between plaintiffs and defendant No.1 on 01-05-1994 at that time, defendant No.3 Ashutosh was not in picture in any manner as landlord, even if for a minute it is assumed that adoption deed was valid. Therefore, at the time of establishment of landlord tenant relationship on 01-05-1994 when defendant No.3 was not in

picture and thereafter Attornment was never done by plaintiffs *vis-a-vis* Ashutosh (defendant No.3) then Ashutosh had no authority to accept rent and in fact payment of rent to the Ashutosh was amounting to denial of title to the plaintiffs about their landlordship which would be discussed under different head under Section 12(1)(c) of the Act.

43. So far as arrears of rent is concerned it was never paid to the plaintiffs. If intention of defendant No.1 would have been guided by bona fide then he would have paid rent after the order dated 12-01-2004 passed by the Court directing the defendant No.1 to pay rent to the plaintiffs but instead of paying rent, defendant No.1 demonstrated that he removed his possession from the suit property. If defendant No.3 or plaintiffs would have taken possession from defendant No.1 then he certainly would have lodged the report or filed any legal proceedings but he did not prefer to do so. Therefore, it shows the wickedness of the mind and it appears that arrears of rent caused dent to the case of defendant No.1. Trial Court rightly passed the judgment on the point of arrears of rent. **Issues No.1, 2(a), 2(b) and 5 were discussed in detail.**

Regarding decree under Section 12(1)(c) of the Act.

44. Defendant No.1 although admitted the contents of rent note and in his examination-in-chief itself mentioned the fact that tenancy started on 05-05-1995 @ Rs.2300/- per month with the plaintiffs. In para 13 he admitted that he executed the rent note on 01-05-1994 in favour of plaintiffs. He reiterated this fact time and again. Therefore, it is clearly established that he accepted the

plaintiffs as his landlord and therefore, submission of defendant No.1 that he started giving rent to defendant No.3 from May, 1995 appears to be a step placing the landlordship in favour of defendant No.3 thus denying title to plaintiffs. In effect, he did so. He allegedly started paying rent to defendant No.3 and since May, 1995 he never paid rent to the plaintiffs. When trial Court issued the direction on 12-01-2004 to pay the rent to the plaintiffs then he raised the plea that he left the tenanted premises. Whereas, he never vacated the premises which itself is clear from the instant appeal preferred by him. If he would have vacated the suit premises, then why he preferred this appeal, for which no convincing answer was given by counsel for the appellant.

45. In para 19 of the impugned judgment, it was discussed by trial Court and rightly so, that tenancy was given for residential purpose only in 1994. In fact defendant No.1 himself pleaded and admitted that a school “Shakti Shikshan Sansthan” was being run since 1985 but this fact could not be proved by defendant No.1 that school was run prior to execution of rent note on 01-05-1994. Therefore, after discarding the documents pertaining to school, like its registration certificate etc. trial Court rightly held that defendant No.1 changed the use of tenanted premises.
46. When defendant No.1 did not pay arrears of rent and took the plea that he is paying rent to defendant No.3 who was not landlord in any manner then it amounts to placing the title/landlordship in some other person and amounting to denial of title to the plaintiffs. Element of collusion was also discussed

in detail in this issue, by trial Court. Therefore, trial Court rightly decreed the suit on the point of Section 12(1)(c) of the Act also.

47. At the cost of repetition, it is reiterated that submission of defendant No.1 that rent note dated 01-05-1994 was not exhibited or properly stamped, therefore, it cannot be read in evidence is a misconceived argument. Defendant No.1 in his pleading and deposition as DW-1 categorically admitted in different paragraphs that rent note was executed between plaintiffs and defendant No.1 vide rent note dated 01-05-1994 and tenancy was created. Such admission does not require any document to be exhibited. Defendant No.1 even accepted receiving of notice and impliedly admitted that he never paid rent after May, 1995. Payment of rent to defendant No.3 was no payment in the eyes of law made to the landlord.

Regarding decree under Section 12(1)(o) of the Act.

48. It was specifically pleaded by the plaintiffs that one platform was constructed over which defendant No.1 runs school and said platform was never given on rent. On the said platform, four shops were constructed in which two shops were forcibly occupied by defendants No.1 and 3. Police report was also made in this regard and one private complaint was filed as well. An application was also preferred before the Rent Controlling Authority. Therefore, defendant No.1 and 3 were in unauthorized possession of a portion of the accommodation not included in the lease/rent note. Defendant No.3 in his own deposition admitted the fact that on 01-05-1994 rent note was executed between the

plaintiffs and defendant No.1 and admitted that two shops are in his possession and two shops are in possession of his mother. It means that he took possession of the area which was not given by the plaintiffs to defendant No.1 as tenant. Deposition of plaintiff Shyamalata (PW-1) remained unrebutted in this regard. Therefore, on this count also, looking to the evidence of defendants No.1 and 3, it is established that they were in unauthorized possession of a portion of the accommodation not included in the lease/rent note.

Accordingly, the suit of plaintiff is rightly decreed under Section 12(1)(a), 12(1)(c) and 12(1)(o) of the Act.

49. Judgments relied upon by learned counsel for the appellant are of no help to him as they move in different factual realm and the plea of collusion is such glaring in this case which over shadows other aspects of the matter. Therefore, in those judgments relied by appellant, peculiar factual matrix was not available. Beside that, when existence of documents were specifically admitted then trial Court did not err in concluding the existence of such documents and its contents.
50. In the conspectus of facts and circumstances of the case, the judgment passed by the trial Court is hereby affirmed and suit of respondent No.1/plaintiff is decreed under Section 12(1)(a), 12(1)(c) and 12(1)(o) of the Act. Accordingly, the appeal preferred by the appellant fails and is hereby **dismissed**.
51. **I.A.No.5155/2019** an application for recalling of order dated 31-01-2019 at the instance of appellant/defendant No.1, **I.A.No.3209/2020** an application for vacating stay at the instance

of respondent No.1/plaintiff, **I.A.No.2223/2019**, an application under Section 13(6) by respondent No.1/plaintiff and **I.A.No.206/2021**, an application under Order XX Rule 26 of CPC by the plaintiffs are also considered. Since the matter is decided finally by this Court by the instant judgment and these applications are primarily in respect of interim rent/vacating stay etc. therefore, in view of the judgment passed by this Court, all these applications stand disposed of in the light of the decision of this Court reflected through this judgment. All these applications stand closed.

52. Copy of this judgment be sent to the trial Court for information and necessary compliance.

Anil*

(ANAND PATHAK)
JUDGE