



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

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 11<sup>th</sup> OF MARCH, 2025**

**SECOND APPEAL No. 31 of 2004**

***GOPALDAS GUPTA***

*Versus*

***RAKESH JAIN***

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**Appearance:**

Shri N.K. Gupta, Senior Advocate with Shri Saket Sharma, Advocate for appellant.

None for respondent.

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**J U D G M E N T**

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, has been filed against the judgment and decree dated 23/12/2003 passed by XII<sup>th</sup> Additional District Judge (Fast Track Court), Gwalior (M.P.) in Civil Appeal No.8A/2003, by which judgment and decree dated 23.4.2003 passed by X<sup>th</sup> Civil Judge Class-II, Gwalior in Civil Suit No.14A/2001 was set aside and suit filed by plaintiff/appellant for eviction on the ground of arrears of rent, denial of title and bonafide need for non residential purposes, has been dismissed.



2. None appears for respondent.
3. On 25.07.2022, Shri Anil Sharma, Advocate appeared on behalf of respondent. Thereafter, on 2/8/2022, the matter was directed to be listed along with S.A. No.756/2007. As this matter was tagged with S.A. No.756/2007 where also the defendant is being represented by Shri Anil Sharma, Advocate, therefore, from a perusal of order-sheets of this case, as well as, of aforesaid connected matter, it is clear that none appeared for respondent on 23.08.2022 and 19.09.2022. Thereafter, on 22.09.2022 and 21.11.2022, again Shri Anil Sharma, Advocate, appeared for respondent. Thereafter, on 14.05.2024, 31.07.2024, 29.08.2024, 30.09.2024, 21.10.2024, 07.11.2024, 06.12.2024, 28.01.2025 and 05.03.2025, none appeared for respondent. On 05.03.2025, by way of last indulgence, the matter was adjourned. Today also, none appears for respondent. Therefore, this Court is left with no other option but to proceed *ex parte* against respondent.
4. Facts necessary for disposal of present appeal, in short, are that appellant/plaintiff filed a suit for eviction as well as for recovery of arrears of rent. It is the case of plaintiff that defendant is in possession of disputed shop on monthly tenancy of Rs.500/-. Defendant is carrying out the business of hardware from the lifetime of his mother Smt. Shakuntala Devi. It was pleaded that the defendant is in the habit of non-payment of rent regularly and from the month of September, 1996 he has not paid the rent. Accordingly, on 19.07.1996, a registered notice was sent and thereafter on 14.09.1996, defendant paid the rent of suit shop from the month of January, 1996 to August, 1996 and thereafter, defendant has not paid rent. Accordingly, by another registered notice dated 13.08.1999, arrears of rent were demanded but rent was not paid.

It appears that defendant denied the title of plaintiff in the written



statement. Accordingly, petitioner amended the plaint and decree under Section 12(1)(c) of the Act was also sought on the ground of denial of title.

It was further pleaded by plaintiff that suit shop is bonafidely required for non-residential purposes of his son for running a business as his major son Deepak Gupta is unemployed. It was further pleaded that adjoining to the suit shop, another shop which has been rented out to Triloki Nath Gupta would also be required for making a shop for his son. It was pleaded that plaintiff/appellant has no other vacant and alternative shop in the city of Gwalior and, thus, eviction under section 12(1)(f) of the Act was also sought.

Defendant filed written statement denying the title of plaintiff, as well as, the fact that he is tenant of plaintiff. He claimed that shop in question was let out by Smt. Shakuntala Devi and since the lifetime of Smt. Shakuntala Devi, he is in possession of the shop in question in the capacity of tenant. It was denied that in response to registered notice dated 19.07.1996, defendant had paid rent to plaintiff. Defendant denied receipt of notice and also denied that he had ever paid rent to plaintiff. It was pleaded that during her lifetime, Smt. Shakuntala Devi had executed a will in favour of her son Santosh Gupta and after death of Santosh Gupta, his legal representatives Raksha Gupta, Aman Gupta and Aastha Gupta are recovering the rent. He denied to be in arrears of rent and accordingly it was pleaded that plaintiff has no right or title to recover the rent from the defendant. It was pleaded that plaintiff himself has filed a succession suit (Case No.25/98) and the same is fixed for 7/9/2001 for recording of evidence. Similarly receipt of registered notice dated 13.08.1999 was also denied and it was pleaded that defendant is neither defaulter nor is in arrears of rent and the plaintiff has no right to file suit for eviction under section 12(1)(a) of the Act.

The bonafide requirement, as pleaded by plaintiff/appellant was also



denied. It was further pleaded that neither son of plaintiff requires property in dispute for non residential purposes nor has any experience of doing the business of running Iron shop. It was also pleaded that plaintiff is also not in possession of sufficient funds to start the business.

5. The Trial Court after framing issues and recording evidence of parties, by judgment and decree dated 23/4/2003 decreed the suit and held that defendant is tenant of plaintiff and tenancy was terminated by notice dated 12/8/1999 and defendant is also in arrears of rent from September, 1996 and in spite of service of notice and demand of arrears of rent, the same has not been paid. Plaintiff is in need of suit shop for non residential purposes for opening a business for his son and plaintiff has no alternative accommodation in the city of Gwalior. Plaintiff is also entitled for *mesne* profit at the rate of Rs.500/- from the month of September, 1996. It was also held that defendant has failed to prove that suit shop was bequeathed by Smt. Shakuntala Devi Gupta to her son Santosh Gupta. However, decree was denied on the ground of denial of title.

6. Being aggrieved by the judgment and decree passed by the trial Court, defendant preferred an appeal which was decreed by the impugned judgment and decree passed by the appellate Court.

7. By order dated 23/11/2007, this second appeal has been admitted on the following substantial questions of law:-

“Whether the lower appellate Court erred in passing the decree and reversing the judgment and decree of the trial Court, on the ground that appellant was not the owner and landlord of the suit property and dismissing the suit under Section 12(1)(a) & (f) of the M.P. Accommodation Control Act, 1961?”

8. Appellant has filed I.A. No.10222/10 under Order 41 Rule 27, CPC along with certified copy of order dated 19/4/2010 passed by III Additional



District Judge, Gwalior in Civil Suit No.58/09. The aforesaid civil suit was filed by one Pradeep Gupta against appellant, as well as, legal representatives of Santosh Gupta for partition of suit premises as well as for rent. Accordingly, by order dated 28/8/2004, a preliminary decree was passed in Civil Suit No.22A/02 and by final order dated 19/4/2010, it was observed that plaintiff therein namely Pradeep Gupta is also entitled for share in the suit premises along with appellant, as well as, legal representatives of Santosh Gupta.

It is submitted by counsel for appellant that since appellant is intending to file certified copy of judicial proceedings, therefore, it is not necessary for this Court to remand the matter under Order 41 Rule 28 CPC and this Court can also take additional evidence.

Since none appears for respondent and no reply to this application has been filed therefore this application is allowed and certified copy of order dated 19.04.2010 passed by III Additional District Judge, Gwalior (M.P.) in Case No.58/2009 is taken on record.

**9.** Challenging the judgment and decree passed by the Court below, it is submitted by counsel for appellant that since appellant is one of the legal heirs of Smt. Shakuntala Devi, therefore, being one of the owners of property, he was entitled to file suit for eviction. The appellate Court has wrongly held that since appellant has failed to prove that he had ever received the rent therefore he can not maintain the suit. It is submitted that “Landlord” has been defined under section 2(b) of the Act and a landlord cannot have title better than that of the owner. It is further submitted that even otherwise it is clear from order dated 19/4/2010 passed by III Additional District Judge, Gwalior in Case No.58/09 that Pradeep Gupta, appellant and legal heirs of Santosh Gupta have equal share.

**10.** Heard, learned counsel for appellant.



**11.** From the record of trial Court, it is clear that defendant did not lead any evidence and, ultimately, by order dated 24/02/2003, right of defendant to lead evidence was closed. Thus, not a single witness was examined by the defendant in his defence. Although, defendant in his written statement had claimed that Smt. Shakuntala Devi had executed a Will in favour of Santosh Gupta and after the death of Santosh Gupta, his legal heirs are receiving the rent, but in absence of any proof that Smt. Shakuntala Devi had executed the Will in favour of Santosh Gupta, coupled with the fact that III Additional District Judge, Gwalior by order dated 19/4/2010 passed in Case No.58/09 has held that Pradeep Gupta, appellant and legal heirs of Santosh Gupta have equal share in the property, it is held that appellant is co-owner of property in dispute and thus he is entitled to file suit for eviction.

**12.** So far as decree granted by trial Court under section 12(1)(a) of the Act. i.e. arrears of rent is concerned, trial Court, after considering the evidence on record, has given a specific finding that defendant has not deposited the rent as required under S.13 of the Act. Since defendant did not lead any evidence to rebut the contention of plaintiff that defendant has not deposited rent, therefore, the decree awarded by trial Court under section 12(1)(a) of the Act on the ground of arrears of rent is hereby affirmed.

**13.** So far as the ground under section 12(1)(f) of the Act of bonafide need for non residential purposes is concerned, the appellate Court after having come to the conclusion that appellant is not the owner of property in dispute, has held that son of appellant did not enter into witness box and, therefore, adverse inference can be drawn.

**14.** Considered the submissions made by counsel for appellant with regard to decree of eviction on the ground of bonafide need for non residential purposes.



15. It was the case of appellant that his son is an unemployed person and he would also assist him and the suit shop is required for non residential purposes of his son. The appellant, in his examination-in-chief, has specifically stated that the suit shop is bonafidely required for non-residential purposes for running a shop for his son. A very short cross-examination was done by defendant on this issue. In paragraph 29 it was replied by appellant that by investing Rs.2 lacs his son is intending to run a shop and, at present, he is not working at any other shop. He also stated that his son has experience of running the business of hardware and at present he is studying in MLB College.

16. Thus, the pleadings, as well as, evidence of appellant with regard to bonafide need for non residential purposes was not seriously challenged by the defendant. No question was put to plaintiff with regard to availability of alternative and suitable accommodation. It is for the owner to decide that where and in what manner, he wants to open a business for himself, as well as, for his children. Defendant cannot dictate his terms for plaintiff in this regard.

17. The Supreme Court in the case of **Prativa Devi (Smt.) Vs. T.V. Krishnan** reported in (1996) 5 SCC 353 has held that a tenant cannot dictate the terms of use of property to landlord and the landlord is the best judge of his requirements. It is not for the Courts to dictate that in what manner and how the landlord should live.

18. The Delhi High Court in the case of **R.S. Chadha (through SPA) Vs. Thakur Dass** decided on 3/1/2024 in **RC.REV.109/2023 and CM No.20693/2023** has held as under:-

13.1 It is settled law that the tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. It is also not for the



Courts to adjudicate that the landlord has a bonafide need or not. The Courts will generally accept the landlords need as bonafide. The Supreme Court in the case of **Prativa Devi (Smt) v. T.V. Krishnan** ((1996) 5 SCC 353) has directed:

"2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjang Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. **The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.** The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. **We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property.** We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances."

[Emphasis supplied]

13.2 In any event, it is only the Respondent/landlord and his family who can decide what is sufficient space as per their needs





and requirements. Sufficiency of residential accommodation for any person would essentially be dependent on multiple factors, including his living standard and general status in society. In view of the fact that admittedly the Respondent/landlord has a large family, it is not open to the Petitioner/tenant to contend that requirement of 6 rooms as pleaded by the Respondent/landlord, is not bonafide.

13.3 The Trial Court has dealt with the sufficiency of accommodation of the Respondent/landlord in the Impugned Order. This Court finds no reason to impugn these findings.”

**19.** The Supreme Court in the case of **Kanhaiya Lal Arya Vs. Md. Ehshan & Ors. decided on 25.02.2025 in Civil Appeal No.3222 of 2025** has held as under:

“10. The law with regard to eviction of a tenant from the suit premises on the ground of bona fide need of the landlord is well settled. The need has to be a real one rather than a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction.”

**20.** Under these circumstances, this Court is of considered opinion that the appellate Court committed material illegality by holding that appellant has failed to prove that the suit shop is bonafidely required for non residential purposes.

**21.** Accordingly, judgment and decree passed by the appellate Court dated 23/12/2003 passed by XII<sup>th</sup> Additional District Judge (Fast Track Court), Gwalior (M.P.) in Civil Appeal No.8A/2003 is hereby set aside. As a consequence thereof, judgment and decree dated 23.4.2003 passed by X<sup>th</sup> Civil Judge Class-II, Gwalior in Civil Suit No.14A/2001 is hereby restored.

**22.** Registry is directed to draw the decree accordingly.



**23.** Appeal succeeds and is, hereby, allowed.

**(G.S. Ahluwalia)**

**Judge**

(and)