



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

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

**SECOND APPEAL No. 298 of 2016**

***PARAS CHAND JAIN AND OTHERS***

***Versus***

***RASHID (SINCE DEAD) THROUGH LRs***

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**Appearance:**

***Mr. Santosh Agrawal - Advocate for appellants.***

***Mr. Anil Kumar Jain and Mr. Sanjay Kumar – Advocates for respondent.***

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Reserved on : 02/09/2025  
Pronounced on : 04/09/2025

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**JUDGMENT**

This appeal being arguable is admitted on the following substantial questions of law:

“(i) Whether the Courts below erred in law by holding that the appellants have failed to establish landlord–tenant relationship?



(ii) Whether the Courts below erred in law by holding that the original defendant Rashid was not in arrears of rent and the appellants have failed to prove their *bona fide* need for residential purposes?

(iii) Whether the appellants are entitled for decree under section 12(1)(c) of the M.P. Accommodation Control Act on the ground of denial of title ?

2. Since the parties are represented by their counsel, therefore, this appeal is heard finally.

3. This second appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 23-04-2015 passed by First Additional District Judge, Sheopur in Regular Civil Appeal No. 30A/2015, as well as the judgment and decree dated 26-04-2013 passed by First Civil Judge Class-II, Sheopur in Regular Civil Suit No. 61A/2011.

4. The appellants are the plaintiffs who have lost their case from both the Courts below. The original defendant died during the pendency of this appeal and is being represented by his legal representatives.

5. The facts necessary for disposal of present appeal, in short, are that appellants had filed a suit for eviction as well as for recovery of rent and *mesne* profits in respect of the part of the house situated in Sutandi Mohalla, Ward No. 4, Baroda, District Sheopur, which is marked with blue lines in the plaint map. It is the case of appellants that they had purchased the house in question from Mohanlal, son of Kalyanchand, by registered sale deed dated 19-06-1986. At the time of sale deed, respondent was already in possession



of the disputed property as a tenant on monthly rent of Rs. 10/-. After purchasing the property, original defendant also became the tenant of plaintiffs. Defendant has not paid the rent to plaintiffs so far. Portion of the house, which is in possession of plaintiffs, is not sufficient to cater their needs, and accordingly, they bona fide require the remaining part of the house for their residential purposes. It was further pleaded that the house in question is in a dilapidated condition which requires maintenance. It was further pleaded by plaintiffs that defendant had filed a suit for specific performance of contract and for recovery of possession for part of the property which is in possession of plaintiffs. The said suit has already been dismissed by the trial court, and the regular civil appeal has also been dismissed. In the said suit, defendant had admitted that he was in possession of the property in dispute as a tenant. Plaintiffs, by sending a notice dated 04-02-2011, has terminated the tenancy of original defendant. However, in spite of service of notice, defendant has not vacated the suit premises.

6. Original defendant filed his written statement and claimed that prior to 1986, original defendant had entered into an agreement to purchase the house in question from Mohanlal for a consideration of Rs. 34,000/-. Said agreement was made in the month of May 1983. An amount of Rs. 3,000/- in advance was given by original defendant to Mohanlal. It was claimed that defendant was in possession of a part of the house on a monthly rent of Rs. 10/-. Original owner Mohanlal did not execute the sale deed in favour of defendant and sold the property to the plaintiffs in an illegal manner. Accordingly, it was pleaded that plaintiffs would not acquire any right or



title by virtue of sale deed dated 19-06-1986 executed by Mohanlal in their favour. It was further pleaded that Mohanlal had filed a suit for redemption of mortgage which was dismissed by the trial court as well as by the appellate court. Even the second appeal was also dismissed. Since the defendant was no more tenant, therefore, there was no need for him to pay the rent. It was further submitted that since defendant is in possession of the property in dispute by virtue of agreement to sell, therefore, he is entitled to protect his possession in the light of Section 53-A of the Transfer of Property Act. Accordingly, it was pleaded that the suit filed by plaintiffs for eviction as well as for recovery of rent and *mesne* profits is not maintainable.

7. The trial court, after framing issues and recording evidence, dismissed the suit on the ground that plaintiffs have failed to prove landlord–tenant relationship between them and the original defendant. It was further held that plaintiffs have failed to prove that they are in *bona fide* need of the disputed property for their residential purposes and the decree on the ground of non-payment of rent as well as on the ground of denial of title was also denied. It was also held that plaintiffs are not entitled for recovery of rent and are also not entitled for mesne profits at the rate of Rs. 500/- per month from the date of institution of suit till recovery of possession.

8. Being aggrieved by judgment and decree passed by the trial court, appellants/plaintiffs preferred an appeal, which too has been dismissed by the impugned judgment and decree dated 23-04-2015 passed by First Additional District Judge, Sheopur in Regular Civil Appeal No. 30A/2015.



9. Challenging the judgment and decree passed by the courts below, it is submitted by counsel for appellants that the original defendant, who is being represented by his legal representatives, had filed a suit for specific performance of contract against Mohanlal, as well as present appellants. The suit was dismissed by the trial court as well as the appellate court. Original defendant had filed Second Appeal No. 87/2011, which has been dismissed by this Court by order dated 2/9/2025, and it has been held that defendant has failed to prove that any agreement to sell was executed between the original defendant and Mohanlal and respondent has also failed to prove that any advance amount of Rs. 3,000/- and Rs. 5,000/- was ever given to Mohanlal. It is submitted that since original defendant had admitted that he was in possession of part of the house in the capacity of a tenant, therefore, after having purchased the house in question, the original defendant became the tenant of plaintiffs. It is submitted that the courts below have committed a material illegality by holding that appellants do not require the suit premises *bona fide* for their residential purposes. It is further submitted that once the defendant himself has pleaded that he has not paid the rent, then the courts below have committed a material illegality by not granting a decree under Section 12(1)(a) of the M.P. Accommodation Control Act. It is further submitted that since the original defendant has denied the title of plaintiffs/appellants, therefore, they are also entitled for a decree under Section 12(1)(c) of the M.P. Accommodation Control Act.

10. *Per contra*, the appeal is vehemently opposed by counsel for the respondent.



11. Heard the learned counsel for the parties.

12. It is not out of place to mention here that original defendant, who is being represented by his legal representatives, had filed a suit for specific performance of contract against the appellants as well as Mohanlal, who was the original owner of the property in dispute. The said suit was dismissed, and even the regular civil appeal was also dismissed. Against which, original defendant had filed Second Appeal No. 87/2011. On 02.09.2025, this Court, by a separate judgment passed in Second Appeal No. 87/2011, has affirmed the judgment and decree passed by the courts below and has held that original defendant has failed to prove that any agreement to sell was ever executed between him and the original owner Mohanlal. This Court has also held that original defendant/respondent has failed to prove that any advance payment, i.e., Rs. 3,000/- and Rs. 5,000/-, total Rs. 8,000/-, were ever paid to original owner Mohanlal.

13. Thus, it is clear that the case of defendant that an agreement to sell was executed between him and Mohanlal has not been found to be proved by this Court in the separate judgment passed on 02.09.2025 in Second Appeal No. 87/2011.

14. The next question for consideration is what would be the status of the original defendant?

15. As already pointed out, original defendant in his written statement had categorically admitted that he was inducted as a tenant on a monthly tenancy



of Rs. 10/-. Thereafter, he entered into an agreement to purchase the property from Mohanlal. As already pointed out, the suit filed by original defendant for specific performance of contract has been dismissed. Thus, status of original defendant shall continue to be that of a tenant.

16. The Supreme Court, in the case of **H.K. Sharma v. Ram Lal** reported in **(2019) 4 SCC 153**, has held as under:

**22.** The question, which arises for consideration in these appeals, is when the lessor and the lessee enters into an agreement for sale/purchase of the tenanted premises where the lessor agrees to sell the tenanted premises to his lessee for consideration on certain conditions, whether, as a result of entering into such agreement, the jural relationship of lessor and the lessee in relation to the leased property comes to an end and, if so, whether it results in determination of the lease.

**23.** In other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property.

**24.** In our considered opinion, the aforementioned question has to be decided keeping in view the provisions of Section 111 of the TP Act and the intention of the parties to the lease — whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement.

**25.** Chapter V of the TP Act deals with the leases of immovable property. This chapter consists of Section 105 to Section 117.

**26.** A lease of an immovable property is a contract between the lessor and the lessee. Their rights are governed by Sections 105 to 117 of the TP Act read with the respective State rent laws enacted



by the State. Section 111 of the TP Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immovable property can be determined. Clauses (e) and (f) with which we are concerned here provide that a lease can be determined by an express surrender; in case, the lessee yields up his interest under the lease to the lessor by mutual agreement between them whereas clause (f) provides that the lease can be determined by implied surrender.

**27.** This Court in *Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage* [*Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage*, (1976) 3 SCC 660] considered the scope of clauses (e) and (f) of Section 111 of the TP Act and laid down the following principle in para 19 as under: (SCC p. 665)

“19. A surrender under clauses (e) and (f) of Section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by mutual consent on the lessor's acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact.”

**28.** It is in the light of the aforementioned legal principle, the question involved in this case has to be examined.

**29.** Perusal of agreement to sell dated 13-5-1993 (Annexure P-1) shows that though the agreement contains 9 conditions but none of the conditions provides, much less in specific terms, as to what will





be the fate of the tenancy. In other words, none of the conditions set out in the agreement dated 13-5-1993 can be construed for holding that the parties intended to surrender the tenancy rights.

**30.** A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act.

**31.** It is for this reason, the law laid down by this Court in *R. Kanthimathi* [*R. Kanthimathi v. Beatrice Xavier*, (2000) 9 SCC 339] has no application to the facts of this case and is, therefore, distinguishable on facts. Indeed, it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow: (SCC p. 341)

“4. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale record the following:

‘I the aforesaid Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs 25,000.

I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs 5000 (Rupees five thousand only) at the time of registration *and shall complete the transaction of sale and*



*conveyance as the property demised has already been surrendered to your possession.”*

(emphasis in original)

The words highlighted in italics of the agreement were construed by their Lordships for holding that these italicised words in the agreement clearly indicate that the parties had really intended to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of the landlord and tenant.

**32.** As observed supra, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13-5-1993 and nor we find that the existing conditions in the agreement discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly.

**33.** In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of the TP Act due to execution of the agreement dated 13-5-1993 between the parties for sale of the suit house and the same remained unaffected notwithstanding execution of the agreement dated 13-5-1993

**34.** A fortiori, the respondent (lessor) was rightly held entitled to file an application against the appellant (lessee) under Section 21(1)(a) of the U.P. Act and seek the appellant's eviction from the suit house after determining the tenancy in question.”

17. It is not out of place to mention here that the agreement to sell, on which the defendant was trying to rely, was never filed before the Courts, either in the suit for specific performance of contract or in this case. In fact, it was the case of original defendant that the said document was forcibly taken away by plaintiffs and it was torn. Therefore, whether the parties, while entering into the alleged agreement to sell, had brought the tenancy to



an end, and whether the parties had really intended to surrender their tenancy rights could not be proved by the original defendant.

18. Under these circumstances, since the suit filed by original defendant for specific performance of contract has been dismissed with a specific finding that no agreement to sell was ever executed between the original defendant and Mohanlal, therefore, it is held that status of the original defendant shall continue to be that of a tenant.

19. The Supreme Court, in the case of **Mahendra Raghunathdas Gupta vs. Vishwanath Bhikaji Moghul**, reported in (1997) 5 SCC 329, has held that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. It does not require that the transfer of the right of the landlord can take effect only if the tenants attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of landlord's rights. Since attornment by the tenant is not required a notice under Section 106 in terms of the old terms of lease by the transferor landlord would proper and so also the suit for ejectment. Attornment would, however, be desirable as it means the acknowledgment of relationship of a tenant to a new landlord. It also implies continuity of tenancy.

20. Under these circumstances, as appellants had purchased the property in question from Mohanlal, which has been admitted by original defendant himself, it is clear that after the execution of sale deed dated 19/6/1986 (Ex.P/1), the original defendant became tenant of the appellants.



21. Accordingly, the first substantial question of law is answered in affirmative, and it is held that the courts below committed a material illegality by holding that appellants have failed to prove the landlord-tenant relationship. Accordingly, it is held that original defendant became the tenant of appellants.

22. The next question for consideration is as to whether the appellants have successfully proved that the suit premises are *bona fide* required for their residential purposes, as well as whether the defendant is liable for eviction on the grounds of non-payment of rent and denial of title or not?

23. So far as the question of denial of title is concerned, it is sufficient to hold that although the original defendant had admitted that plaintiffs/appellants have purchased the property from Mohanlal, but he denied their title on the ground that prior to the execution of the sale deed in favour of appellants, he had already entered into an agreement to sell. However, the suit filed by original defendant for specific performance of contract has been dismissed up to the stage of second appeal with a finding that original defendant has failed to prove the execution of agreement to sell. Under these circumstances, it is held that defendant had denied the title of appellants, and accordingly, he is liable to be evicted under Section 12(1)(c) of the M.P. Accommodation Control Act.

24. So far as the non-payment of arrears is concerned, the defendant himself has admitted that he has not paid a single penny towards the rent to appellants. In para 12 of his cross-examination, he has stated as under:-



“यह सही है कि वादीगण के नोटिस के बाद मैंने न तो कमरा खाली किया और न ही कोई कमरा किराया हर्जा वादीगण को प्रदान किया।”

Further, no application under Section 13 of the M.P. Accommodation Control Act has been filed for extension of time to pay the rent. Under these circumstances, it is held that appellants are also entitled to a decree for eviction on the ground of arrears of rent as defined under Section 12(1)(a) of the M.P. Accommodation Control Act.

25. So far as the claim of appellants that they *bona fide* require the suit property for their residential purposes is concerned, Dileep (PW-1) has admitted that he and Paraschand are residing in a house in which Paraschand is in possession of 3 to 4 rooms, whereas Dileep (PW-1) is in possession of 2 rooms. It was also claimed by Dileep (PW-1) that there are always differences between the ladies and has also stated that the house, which is in possession of co-plaintiff Paraschand and Dileep (PW-1), other brothers are also residing there and they too have their share in the property. Furthermore, Rashid (DW-1) has also stated that at present plaintiffs are residing in a house situated at Khedakhuti. However, he was not in a position to state as to whether the said house is sufficient to cater the needs of appellants.

26. Under these circumstances, once the appellants have specifically claimed that they are in *bona fide* need of the suit property for residential purposes and the alternative house, which is in their possession, is not sufficient to cater their needs, as Dileep (PW-1) has specifically stated that he is in



possession of only 2 rooms in the said house, this Court is of considered opinion that appellants have successfully proved that the house in question is *bona fide* required for their residential purposes.

27. Accordingly, the second substantial question of law is also answered in affirmative.

28. No other argument has been advanced by counsel for the parties.

29. For the reasons mentioned above, this Court is of considered opinion that the courts below committed a material illegality by dismissing the suit filed by the appellants for eviction as well as for arrears of rent.

30. As original defendant had categorically admitted that he has not paid the rent to appellants, therefore, it is held that appellants are also entitled for Rs. 360/- by way of arrears of rent, and they are also entitled for mesne profits at the rate of Rs. 500/- from the date of institution of suit, i.e., 21-04-2011, till today.

31. Accordingly, the judgment and decree dated 23-04-2015 passed by First Additional District Judge, Sheopur in Regular Civil Appeal No. 30A/2015, as well as the judgment and decree dated 26-04-2013 passed by First Civil Judge Class-II, Sheopur in Regular Civil Suit No. 61A/2011, are hereby **set aside**, and suit filed by appellants is hereby decreed and decree for eviction against the original defendant, who is being represented by his legal representatives, is passed under Sections 12(1)(a), 12(1)(c), and 12(1)(e) of the M.P. Accommodation Control Act, as well as it is further held that



appellants are entitled for Rs. 360/- by way of arrears of rent, and are also entitled for mesne profits at the rate of Rs. 500/- per month from the date of institution of suit, i.e., 21-04-2011, till the actual possession is handed over.

32. With the aforesaid, the appeal succeeds and is hereby **allowed**.

33. Decree be drawn accordingly.

**(G.S. Ahluwalia)**  
**Judge**

(and)