



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

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

SECOND APPEAL No. 2616 of 2024

LAXMINARAYANA SHIVHARE AND OTHERS

Versus

ALOK JOSHI

Appearance:

Shri H.K. Shukla and Shri Prashant Singh Kaurav- Advocates for appellants.

Shri F.A. Shah- Advocate for respondent.

&

SECOND APPEAL No. 3136 of 2024

ALOK JOSHI

Versus

SMT BHAVNA SHIVHARE

Appearance:

Shri F.A. Shah- Advocate for appellant.

Shri Vivek Khedkar- Senior Advocate with Shri Rishibh Singh Chouhan, Advocate for respondent.

Reserved on : 10/03/2025

Pronounced on : 19/03/2025

**JUDGMENT**

By this common order, S.A. No.2616/2024 and S.A. No.3136/2024 are being decided.

2. S.A. No.2616/2024 has been filed by Laxminarayan Shivhare, Smt. Sunita Shivhare and Smt. Shakuntala Shivhare, against common judgment dated 02/09/2024 passed by XV District Judge, Gwalior in RCA No.180/2023 arising out of the judgment and decree dated 12/08/2023 passed by V Civil Judge, Junior Division, Gwalior in RCSA No.591/2017.

S.A. No.3136/2024 has been filed by Alok Joshi against common judgment dated 02/09/2024 passed by XV District Judge, Gwalior in RCA No.146/2023 arising out of judgment and decree dated 12/07/2023 passed by XI Civil Judge, Junior Division, Gwalior in RCSA No.832/2018.

3. Facts necessary for disposal of present appeals, in short, are that Bhogiram Shivhare was the owner of Municipal Building No. 58 (New No. 1151), Ward No.11, Kapil Market, Hazira, Gwalior. Alok Joshi, who had filed RCA No.146/2023 & S.A. No.3136/2024, was inducted by Bhogiram Shivhare as his tenant. Bhogiram Shivhare expired sometimes in the month of December, 2016. Bhavna Shivhare, who is respondent in S.A. No.3136/2024 filed a suit (RCSA No.832/2018) for eviction against Alok Joshi claiming herself to be the owner, being legally wedded wife of Bhogiram Shivhare, whereas Laxminarayan Shivhare, Sunita Shivhare and Shakuntala Shivhare (appellants in S.A. No.2616/2024) also filed RCSA No.591/2017 for eviction. The XI Civil Judge, Junior Division, Gwalior, by judgment and decree dated 12/07/2023 decreed the suit (RCSA No.832A/2018) in favour of Bhavna Shivhare for eviction on the ground of arrears of rent by holding that Alok Joshi was tenant at the rate of Rs.7500/- per month. Similarly, the V Civil Judge, Junior Division, Gwalior, by



judgment and decree dated 12/8/2023 decreed the suit (RCSA No.591A/2017) in favour of Laxminarayan Shivhare, Smt. Sunita Shivhare and Shakuntala Shivhare on the ground of arrears of rent by holding that Alok Joshi was their tenant at monthly rent of Rs.5500/-. Thus, in respect of same building and same tenant, two different civil suits were filed by two set of persons before two different trial Courts and both the trial Courts decreed the respective suits.

Being aggrieved by the judgment and decree dated 12/7/2023 passed in RCSA No.832/2018 which was filed by Bhavna Shivhare, tenant Alok Joshi preferred RCA No.146/2023. Similarly against the judgment and decree dated 12/8/2023 passed in RCSA No.591A/2017, tenant Alok Joshi preferred RCA No. 180/2023. Both the Regular Civil Appeal Nos. 146/2023 and 180/2023 filed by tenant Alok Joshi have been decided by XV District Judge, Gwalior by common impugned judgment and decree dated 02/09/2024. It was held by the appellate Court that since Bhavna Shivhare had collected rent for a period of two months i.e. January and February, 2017, therefore, she has to be treated as *Bhumiswami*/owner and, therefore, the suit filed by Bhavna Shivhare (RCSA No.832/2018) was decreed whereas the suit filed by Laxminarayan Shivhare, Smt. Sunita Shivhare and Smt. Shakuntala Shivhare (RCSA No.591/2017) was dismissed being barred by *res judicata* in view of judgment and decree dated 12.07.2024 passed in RCSA No.832/2018.

Laxminarayan Shivhare, Smt. Sunita Shivhare and Shakuntala Shivhare have filed S.A. No.2616/2024 against dismissal of their suit, whereas Alok Joshi has filed S.A. No.3136/2024 against judgment of eviction passed against him.

4. S.A. No.2616/2024 has been filed on the following proposed substantial questions of law:-

- i. Whether, Ld. Court below erred in law dismissing the suit of plaintiff when admittedly when defendant was tenant of father of appellant?



- ii. Whether, Bhawana Shivhare who is said to have married during the lifetime of mother of plaintiff can claim any right of the property of Late Shri Bhogiram?
- iii. Whether merely on the basis of payment of rent to Bhawana Shivhare after death of Bhogiram it can be said that she became landlord when the tenancy was created by Late Shri Bhogiram?
- iv. Whether the landlord ship is inherited by the plaintiff after the death of Bhogiram Shivhare being class-1 successors?
- v. Whether the person claiming right through void marriage can become a landlord after the death of original land lord?
- vi. Whether the Ld. Appellate court was correct in observing that the suit of plaintiff/appellant is hit by doctrine of resjudicata?

5. S.A. No. 3136/2024 has been filed on the following proposed substantial questions of law:-

- 1- Whether the Learned First Appellate court erred in law by passing judgment and decree dated 12.07.2023 and 02.09.2024 holding the plaintiff landlord who is not having clear title over the suit property?
- 2- Whether a decree can be passed in favour of one Co-owner who is in dispute of title with other CO-owner over the suit property?
- 3- Whether the Learned Court has erred in law while not considering Ex D-3 to D-14 rent receipt and tried the suit for eviction even though no cause of action arises as no suit could be tried when the rent was being paid to one co-owner claiming to be landlord?
- 4- Whether the finding recorded by the First Appellate Court in regard to landlord-tenant relationship between the appellant and the respondent is a perverse finding?
- 5- Whether the Learned Trial court as well as First Appellate Court erred in law while passing judgment and decree dated 12.07.2023 and 02.09.2024 without bringing other Legal Heirs on record even after recording objection regarding title by other Legal Heirs of Late Bhogiram?
- 6- Whether the court has erred in law by not framing an issue over pendency of suit of similar between the legal heir of deceased



Bhogiram and appellant?

- 7- Whether the subsequent suit of plaintiff/respondent directly and substantially in issue was barred by application of Section 10 of Civil Procedure Code being preferred on same substantial issue as earlier suit registered at RCS 591A/2017 under the same title?
- 8- Whether both the courts have erred in law while evaluating the evidence on record?

S.A. No.3136/2024

6. S.13(1) of the M.P. Accommodation Control Act, 1961 (*for short "the Act"*) reads as under:-

"13. When tenant can get benefit of protection against eviction -

(1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be."

Thus, it is clear that on a suit or any other proceeding instituted by landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within **such further time as the Court may**



on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent.

7. Admittedly, appellant Alok Joshi committed error in regularly depositing the rent. Since rent was not deposited regularly and no application was filed for extension of time for depositing the rent by 15th of each succeeding month, therefore, this Court is of considered opinion that the trial Court, as well as, first appellate Court did not commit any mistake by passing a decree for eviction under section 12(1)(a) of the Act.

Now the next question for consideration is as to whether appellate Court should have passed the decree for eviction in favour of Bhavna Shivhare or not ?

8. The aforesaid aspect shall be considered while deciding S.A. No.2616/2024.

S.A. No.2616/2024

9. This appeal is **admitted on the following substantial questions of law:-**

- (i) Whether, learned Court below erred in law dismissing the suit of plaintiff when admittedly when defendant was tenant of father of appellant?
- (ii) Whether, Bhawana Shivhare who is said to have married during the lifetime of mother of plaintiff can claim any right of the property of Late Shri Bhogiram?
- (iii) Whether merely on the basis of payment of rent to Bhawana Shivhare after death of Bhogiram it can be said that she became landlord when the tenancy was created by Late Shri Bhogiram?
- (iv) Whether the landlord ship is inherited by the plaintiff after the death of Bhogiram Shivhare being class-1 successors?
- (v) Whether the person claiming right through void marriage can become a landlord after the death of original land lord?

10. Heard, learned counsel for the parties.



11. Bhavna Shivhare (PW1) in RCSA No.832A/2018 has admitted in paragraph 2 of her cross-examination that she is second wife of Bhogiram Shivhare, whereas name of his first wife was Bhaga and after the death of Bhaga, she got married to Bhogiram Shivhare. Laxminarayan, Smt. Sunita Shivhare and Smt. Shakuntala Shivhare were not party in the Civil Suit filed by Bhavna Shivhare, therefore, they could not cross-examine her about the aforesaid statement. However, one thing is clear. Bhavna Shivhare did not disclose the date of her marriage and also did not disclose the date of death of Bhaga, who was the first wife of Bhogiram Shivhare. Similarly, Laxminarayan Shivhare, who has been examined as PW1 in RCSA No.591A/2017 has denied that Bhogiram had two wives and claimed that he had only one wife. He expressed his ignorance about the status of Bhavna Shivhare. He also denied that it is not in his knowledge Bhogiram Shivhare had performed second marriage with Bhavna Shivhare. He also expressed his ignorance that Bhavna Shivhare had also instituted a civil suit against Alok Joshi for eviction. Thus, Laxminarayan Shivhare (PW1) in RCSA No.591A/2017 had specifically denied that Bhavna Shivhare is second wife of Bhogiram Shivhare.

Now the next question for consideration is as to whether Bhavna Shivhare got married to Bhogiram Shivhare after the death of Bhaga or she got married to him during the subsistence of first marriage ?

12. If the marriage of Bhavna Shivhare with Bhorigram Shivhare was void, then an illegitimate wife would not get any right in the property. It is equally true that a suit for eviction cannot be tried as a suit for title. However, for the purposes of entitlement to seek eviction, Bhavna Shivhare was required to establish the date of death of Bhaga and when she got married to Bhogiram Shivhare. These two important aspects are missing in the plaint, as well as, in her evidence. Therefore, for the purposes of this eviction suit, it is held that



Bhavna Shivhare had failed to prove that she got married to Bhogiram Shivhare after the death of Bhaga. Bhavna Shivhare (PW1) in her evidence which was recorded in RCSA No. 832A/18 has admitted in paragraph 3 that Bhogiram Shivhare was blessed with three children from his first marriage namely Laxminarayan Shivhare, Sunita Shivhare and Shakuntala Shivhare. Therefore, it is clear that Laxminarayan Shivhare, Sunita Shivhare and Shakuntala Shivhare are undisputedly the legal heirs of Bhogiram Shivhare. Thus, the appellate Court could not have held that Bhavna Shivhare is the *Bhumiswami*. In paragraph 35 of the impugned judgment, appellate Court has treated Bhavna Shivhare as *Bhumiswami*.

13. S.2(b) of the Act reads as under:-

“landlord” means a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord”

14. Since Bhavna Shivhare had pleaded that she had received rent for the months of January and February, 2017, therefore, it appears that the appellate Court did not commit any mistake by treating Bhavna Shivhare as landlord, but committed a material illegality by treating her to be a *Bhumiswami*/owner of the property. A landlord need not be *Bhumiswami*. Even otherwise, a landlord, who is not the owner, but falls within the definition of “landlord” merely because he had received the rent of any accommodation on account of or on behalf of or for the benefit of another person or as a trustee, guardian or receiver for any other person, cannot claim any title better than that of the owner. Bhavna Sharma after receiving the rent for the month of January, 2017 and February, 2017 would



certainly fall within the definition of landlord, but she cannot be declared as a *Bhumiswami*. Even if her marriage with Bhogiram Shivhare is valid, then also, at the most, she will get 1/4 share in the property along with Laxminarayan Shivhare, Sunita Shivhare and Shakuntala Shivhare. Since Bhavna Shivhare has failed to prove that she got married to Bhogiram Shivhare after the death of his first wife, therefore, the appellate Court committed material illegality by granting decree for eviction in her favour and by denying decree of eviction in favour of Laxminarayan Shivhare, Sunita Shivhare and Shakuntala Shivhare, who are undisputedly the legal heirs of Bhogiram Shivhare. Even otherwise, if the appellate Court was of the view that Bhavna Shivhare is one of the legal heirs of Bhogiram Shivhare, then too it could not have denied the decree for eviction in favour of Laxminarayan Shivhare, Sunita Shivhare and Shakuntala Shivhare. Furthermore, the principle of *res judicata* was wrongly applied as Laxminarayan, Sunita and Shakuntala were not party in the suit instituted by Bhavna Shivhare. Since this Court has already held that Bhavna Shivhare has failed to prove that she is the legally wedded wife of Bhogiram Shivhare, therefore, once again it is clarified that the aforesaid finding is in respect of present case only to meet out the peculiar circumstances where three legal heirs of Bhogiram Shivhare had filed RCSA No.591/2017 for eviction against Alok Joshi and Bhavna Shivhare who claims herself to be one of the legal heirs of Bhogiram Shivhare had filed RCSA No. 832/2018. Even otherwise, all the legal representatives are entitled for decree for possession on the ground of S.12(1)(a) of the Act.

15. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that as Bhavna Shivhare has *prima facie* failed to establish that she is the legally wedded wife of Bhogiram Shivhare, therefore, it is held that even if Bhavna Shivhare received the rent for the months of January, 2017 and February, 2017, still she cannot be treated as owner and, at the most, she can be



treated as landlord and a landlord cannot have a title better than that of the owner. Furthermore, if Bhavna Shivhare had received the rent on behalf of Laxminarayan Shivhare, Sunita Shivhare and Shakuntala Shivhare, she cannot claim decree for eviction by ignoring the title of Laxminaryaan Shivhare, Sunita Shivhare and Shakuntala Shivhare.

16. Counsel for Bhavna Shivhare has relied on the judgment passed by Supreme Court in the case of **Dhannalal Vs. Kalawatibai and others** reported in **(2002)6 SCC 16**, Full Bench of this Court in **Harbans Singh Vs. Margrat G. Bhingardive** reported in **1990 MPLJ 112** and a co-ordinate Bench of this Court in **Ramniwas Vs. Govind Ram** reported in **1980 MPCRJ 220**, and submitted that a landlord can also file a suit for eviction.

17. The aforesaid proposition of law cannot be made applicable to the present case. The judgments on which counsel for Bhavna Shivhare has placed reliance were passed in cases where suit was filed by landlord for eviction against the tenant. In those cases, other legal representatives/co-owners had never approached the Court and defence was taken by tenant that since all the co-owners have not instituted the suit therefore suit filed by one of the co-owners/landlord is not maintainable. Then, while rejecting the said contention of tenant it was held that even one of the co-owners/landlord can file the suit, but in the present case situation is peculiar and completely different. Undisputedly, Bhogiram Shivhare was survived by Laxminaryan, Sunita and Shakuntala, who filed RCSA No.591A/2017 against tenant Alok Joshi for eviction. Similarly, Bhavna Shivhare had claimed herself to be the legal heir of Bhogiram Shivhare and filed a suit for eviction which was registered as RCSA No. 832A/2018. Therefore, against a single tenant, two suits for eviction were filed by undisputed, as well as, disputed legal heir of Bhogiram Shivhare. Therefore, in this case, this Court is not required to adjudicate the objection of tenant as to whether the co-



owner or landlord can file suit for eviction or not. Here, in the present case the disputed and undisputed legal heirs of Bhogiram Shivhare have filed two different suits and, therefore, it is to be adjudicated as to who is entitled for decree of possession.

18. Since legal heirs Laxminarayan, Sunita and Shakuntala are the undisputed legal heirs of Bhogiram Shivhare and Bhavna Shivhare has failed to establish that she got married to Bhogiram Shivhare after the death of his first wife Bhaga, this Court is of considered opinion that appellate Court has committed material illegality by treating Bhavna Shivhare as *Bhumiswami* and also committed material illegality by rejecting the suit filed by Laxminarayan, Sunita and Shakuntala. Accordingly, the substantial questions of law are answered as under:-

(i) Since Bhavna Shivhare has failed to point out the date of her marriage and has also failed to point out the date of death of first wife of Bhogiram Shivhare, therefore, for the purposes of the suit and to adjudicate the right to execute the decree for eviction, it is held that Bhavna Shivhare has failed to prove that she is one of the legal heirs of Bhogiram Shivhare.

(ii) Since this Court has already held that Laxminarayan Shivhare, Smt. Sunita Shivhare and Smt. Shakuntala Shivhare are the undisputed legal heirs of Bhogiram Shivhare, therefore, it is held that Laxminarayan Shivhare, Smt. Sunita Shivhare and Smt. Shakuntala Shivhare are entitled for decree for eviction on the ground of arrears of rent.

19. Accordingly, judgment and decree dated 02/09/2024 passed by XV District Judge, Gwalior in RCA No. 146/2023 is modified only to the extent that Bhavna Shivhare is not entitled to execute the decree of eviction, whereas judgment and decree passed in RCA No.180/2023 is, hereby, set aside and it is held that Alok



Joshi is liable to be evicted on the ground of arrears of rent and Laxminarayan Shivhare, Smt. Sunita Shivhare and Smt. Shakuntala Shivhare are entitled to get the decree executed against tenant Alok Joshi.

20. With aforesaid observations, S.A. No.2616/2024 and S.A. No.3136/2024 stand *disposed of*.

(G.S. Ahluwalia)
Judge

(and)