

**HIGH COURT OF MADHYA PRADESH: SINGLE BENCH AT  
INDORE BEFORE HON. SHRI JUSTICE ALOK VERMA,J.**

**S.A. No.826/2004**

**Manjula Bai W/o Nirmal Kumar Patni**

**Vs.**

**Premchand S/o Phoolchand Jain & Ors.**

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Shri D.S. Kale, learned counsel for the appellant.  
Shri V.K. Jain, learned counsel for respondents.  
Shri P.C. Nair, learned counsel and Ms. Kiran Pal, learned  
counsel for the intervenor.

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**JUDGMENT**

**(Passed on 02/11/2016)**

This second appeal arises out of judgment and decree passed by the learned 2<sup>nd</sup> Additional District Judge, Indore in Civil Appeal No.32/2004 dated 19.08.2004 whereby the learned Additional District Judge admitted the appeal and set aside the judgment and decree passed by the learned 11<sup>th</sup> Civil Judge, Class-I, Indore in Civil Suit No.70-A/2013 dated 19.04.2004.

2. The admitted facts in this case are that the respondents are a tenant in a portion of House No.13 (old

No.19) Sitlamata Bazar, Indore on ground floor. The suit property belonged to one Birdi Bai. Birdi Bai during her lifetime executed a registered document and endowed her property including the property, suit property of which is a part, to a charitable trust known as “Birdi Bai Shankarlal Patni, Digambar Jain, Charitable Trust” (hereinafter referred to as “the Trust”). It is also admitted that Birdi Bai revoked this document by another document dated 03.11.1979, subsequently, Birdi Bai expired.

3. The appellant filed a suit before the trial court below averting that Birdi Bai was mother-in-law of the appellant. She executed a will dated 24.10.1979 in favour of the plaintiff and due to which the property belonged to Birdi Bai including the house and the suit property devolved upon the plaintiff. The respondents have been a tenant in the suit property. Their tenancy was for residential purpose and rent of the accommodation was Rs.121/- per month. Their tenancy started from 11<sup>th</sup> of each month. The suit was filed on the ground that the respondents did not pay the arrears of land after receiving notice under Section 12(1)(A) of M.P. Accommodation Act within the specified period of two

months. The plaintiff needs the accommodation for residence of herself and members of her family. The respondents challenged title of the plaintiff and also created nuisance. The respondents changed use of the suit property. It was given to them for residential purposes but they converted it into non residential purpose and running a factory in a suit premises. The respondents had acquired the sufficient accommodation for their residence and were not living in the suit property. It was prayed that on these grounds eviction decree be passed in favour of the plaintiff.

**4.** The respondents did not admit the facts stated by the plaintiff. According to them, the plaintiff was not the owner of the suit premises. Birdi Bai created a charitable trust on 08.01.1971 and she had no power to withdraw the same, and accordingly, the deed of withdrawal executed on 03.11.1979 was bad in law. When the respondents became tenant of the trust, he was permitted to start commercial activity from the premises, and therefore, by consent of the trust, the tenancy was converted into tenancy for non commercial purpose. On 11.10.1973, deed of tenancy was executed in favour of the trust. The learned trial court found that the plaintiff is the

landlord of the suit premises. According to learned Civil Judge, Civil Suit No.69-A/1986 was decreed in favour of the plaintiff by judgment and decree dated 18.09.1996 in which the plaintiff was declared owner of the suit property. It was also taken into consideration by the learned Civil Judge that though the first appeal was pending before this Court against the order passed in Civil Suit No.69-A/1986, still, there was a judicial order in faovur of the appellant, and therefore, the Civil Judge proceed to hold that the plaintiff is the owner and landlord of the respondents. The remaining grounds taken by plaintiff were also accepted by the Civil Judge and decree was passed in favour of the plaintiff.

5. Against the findings given by the Civil Judge, an appeal was filed by the respondents before the learned 2<sup>nd</sup> Additional District Judge, Indore. The learned Sessions Judge opined that once public trust is created, it cannot be desolved by the creator of the trust. The property endowed upon the trust got vested into the trust and also taking into consideration that the order passed by the learned 4<sup>th</sup> Civil Judge was challenged before the High Court and appeal was pending and on this ground, it was held that the plaintiff was

not landlord of the respondents. So far as decree under Section 12(1)(A) of M.P. Accommodation Act is concerned, the learned appellate court opined that delay was condoned by trial court, and therefore, there is no question of grant of decree on this point and eviction of the respondents was not allowed on this ground. In respect of bonafide need the trial court observed that though it was proved that the appellant required the suit premises for her bonafide use still as she was not proved to be an owner of the suit property. This ground was also not allowed. Similarly, according to learned appellate court, no ground is made out on the ground of disclaimer. On change of nature of tenancy from residential to non residential, the appellate court observed that trust permitted the respondents to start commercial activity from the premises, and therefore, this ground was also not made out. The appellate court found that it was proved that the respondents acquired a suitable accommodation for themselves and they were not residing in the suit premises, however, looking to the fact that the appellant was not held to be a landlord, this ground was also not allowed and on this premise, the appeal was dismissed.

6. In light of above factual background, this appeal was

admitted for consideration of following substantial questions of law :

(i) Whether the lower appellate court was justified in reversing the judgment and decree passed by the trial court in favour of the appellant ?

(ii) Whether the lower appellate court was justified in holding that the appellant/plaintiff had acquired no right, title and interest in the suit-property as a landlady in view of the Trust created by Virdibai which was successfully challenged by the appellant in a subsequent civil suit ?

(iii) Whether a valid Trust was created by Virdibai in respect of the suit-property ?

7. Before considering the merit of the case, first I would proceed to dispose of various applications which are pending in this case and which the Court ordered that they would be disposed of at the time of final hearing.

8. The application I.A. No.6133/2013 filed by the respondents. This application is filed for framing additional substantial questions of law for consideration in this appeal.

9. According to the counsel for the respondents, the Trust which was created by late Birdi Bai as owner of the

suit property and the Trust was the landlord of the present respondents. However, the Trust was not made party in this case. According to him, the present appellant claims her title over the suit property on the basis of a will supposedly executed by Birdi Bai on 24.10.1979. However, this will was challenged before three different courts and the will was not found valid. The order passed by various courts were not challenged by the present appellant.

**10.** According to the respondents, following is the list of orders passed by various courts.

(i) Order dated 13.06.1988 passed by 6<sup>th</sup> Civil Judge, Class-II, Indore in Civil Suit No.244-A/1972.

(ii) Order dated 24.07.1981 passed by the learned 1<sup>st</sup> Civil Judge, Class-II, Indore in Civil Suit No.106-A/1977.

(iii) Order dated 19.08.2004 passed by learned 2<sup>nd</sup> Additional District Judge, Indore in Civil Appeal No.32/2004.

**11.** A gift deed was executed by Birdi Bai on 21.01.2015 in which it was clearly mentioned that Birdi Bai had no sons or daughters. It was also mentioned that Birdi Bai donated the property to the Trust. Further, a direction was issued by this Court in Civil Revision No.918/1980 by

order dated 14.07.1983 and the trial court was directed to decide the question of valid legal representative regarding the suit property. It was held by the trial court that the present appellant is not the legal representative of said Birdi Bai and the Trust was the legal representative, and therefore, the respondents proposed that substantial questions of law may be framed to consider that whether the present appellant can be treated as landlord and owner of the property in light of various judgments and orders passed by the different courts as stated above and also Trust to be decided whether Birdi Bai had any authority to revoke the public charitable trust created by her by a register deed.

**12.** Learned counsel for the appellant opposes the application on the ground that these questions were not directly and substantially in issue and all the cases were against the other tenant where the question of ownership and representative was only decided as collateral purpose. He further submits that in light of order passed by this Court in F.A. No.22/1997 dated 18.11.2008, where the question of validity of revocation of Trust was directly under consideration of this Court in a suit filed between the present appellant and the Trust. In this order, the order



passed by the learned 4<sup>th</sup> Additional District Judge in Civil Suit No.69-A/1986 dated 18.09.1996 was affirmed and it was held that the Trust was validly revoked by the appellant, and therefore, in light of this judgment the question in respect of revocation had already been settled and cannot be agitated again in this appeal.

**13.** After taking into consideration the rival contentions of both the counsel, I find that the proposed questions of law are squarely covered by three substantial questions of law framed in this appeal by this Court, and therefore, no framing of additional substantial questions of law is required. The issues raised by the respondents can be considered while deciding the substantial questions of law framed in this appeal, and accordingly, this application has no force, and therefore, dismissed.

**14.** I.A. No.440/2011 is filed by the respondents under Section 12 of M.P. Public Trust Act. By this application, it is prayed that as provided by Section 12 of M.P. Public Trust Act when a document purporting to create a public trust is filed before the Civil Court, a notice should be given to the Registrar, however, in this case, no notice was given, and therefore, it is prayed that a notice be issued to the

Registrar.

15. The application has opposed by the counsel for the appellant.

16. As per the Section 12 of M.P. Public Trust Act which is reproduced below :-

**“Section 12: Notice to Registrar in a proceeding in which a document purporting to create a Public trust in Produced.:- If, in any proceeding before a civil court or a revenue officer, any document purporting to create a public trust is produced on any question before such court or officer is likely to affect any entry in the register such court or officer shall give notice to the registrar of such proceedings and shall, if the registrar applies in that behalf, make him a party to such proceedings.”**

17. It is apparent that notice is only to be given when there is likelihood of affecting any entry in the register. In this case, however, a Trust was never registered.

18. As per the counsel for the appellant, appellant-Birdi Bai filed an application for registration of the Trust, however, she did not pursue an application and ultimately, it was dismissed in default. However, the respondents challenged this fact that whether any application was filed by Birdi Bai, the fact remains that for whatever reason it

was the Trust was never registered during the lifetime of Birdi Bai till it was revoked and when it was not registered there is no question of affecting any entry in the register, and therefore, this application has no force, liable to be dismissed and dismissed accordingly.

**19.** I.A. Nos.8953/2009, 4720/2011 and 5586/2011 are filed under Order 41 Rule 27 for taking additional documents on record.

**20.** By I.A. No.8953/2009, certified copy of order passed by this Court in F.A. No.22/1997 is prayed to be brought on record by the appellant. By I.A. No.4720/2011 various documents which are public documents in nature or a gift deed executed in favour of Lokendra Kumar son of the present appellant were prayed to be brought on record. These documents were not challenged by the appellant, and therefore, the application is allowed and the documents are taken on record. By I.A. No.5586/2011, the respondents seeks to place certified copy on record the order passed by various courts as listed above while dealing with I.A. No.440/2011. These are all public documents and not disputed by the appellant, and therefore, all the three applications are allowed. The documents filed by the

appellant/respondent are taken on record. It is further clarified that since there are public documents and not disputed, and therefore, no further evidence are required to consider them while disposing of this appeal.

21. I.A. No.5703/2013 is filed on behalf of intervenor/Trust. The Trust earlier filed another application before this Court. This application bearing No.4306/2010 was dismissed by Court order dated 24.09.2010. The Court while dismissing the application observed as under :-

**“After hearing the learned counsel for the parties and taking into consideration the fact that the present litigation is only between the plaintiff, who claims to be the landlord, and the tenant-respondents, the impleadment of the Trust is wholly unnecessary. As a matter of fact, the Trust being not a party in the proceedings before the Courts below, cannot be ordered to be impleaded as party, in the present appeal so as to contest the claim made by the present appellant. As a matter of fact, the impleadment of the aforesaid party, would raise such questions of title, which are totally irrelevant for the adjudication of the present appeal.”**

22. Now this application is again filed by the Trust to intervene in the matter on the ground that on 21.12.1994, an application was filed by one of the trustees for

registration of the Trust. This application was allowed by the Registrar Public Trust on 02.07.2010. By his order passed on 02.07.2010, the trust was allowed to be registered under Section 6 of M.P. Public Trust Act and under Section 7 of the Act, the necessary entries were ordered to be made in the relevant register. A certificate was also issued for registration of the Trust. The present appellant challenged this order for filing a civil suit under Section 8 of the Act which was dismissed.

**23.** Learned counsel appearing for appellant submits that due to the subsequent development that the trust was registered, this application is filed.

**24.** Learned counsel for the appellant opposes the application on the ground that the Trust was registered after special leave appeal filed by the Trust against the order passed by this Court in F.A. No.22/1997 was dismissed, and therefore, the order passed by the Registrar was null and void. He further pointed out that in the judgment passed by the learned 5<sup>th</sup> Additional District Judge in Civil Suit No.11-A/2013 which was filed by the present appellant against the Trust under Section 8 of the Act while deciding issue no.1 relating to legality of order passed by the

Registrar dated 02.07.2010, the learned Court made following observations in para 26 of the judgment:-

“बिरदीबाई द्वारा प्रस्तुत किया गया आवेदन पूर्व में निरस्त हो चुका था इस संबंध में प्रतिवादी ने न्याय दृष्टांत प्रस्तुत किया है कि ट्रस्ट के पंजीयन हेतु प्रस्तुत किया गया आवेदन अनुपस्थिति में निरस्त नहीं किया जा सकता है और पंजीयक को यह निर्धारित करना है कि ट्रस्ट सार्वजनिक ट्रस्ट है अथवा व्यक्तिगत ट्रस्ट और उसी के आधार पर ट्रस्ट के पंजीयन हेतु आदेश देना है इस संबंध में ए आई आर 1977 एम पी 102 स्वामी इन्द्रदेवानंद वि० रजिस्ट्रार पब्लिक ट्रस्ट प्रस्तुत किया है। क्योंकि ट्रस्ट के पंजीयन के पूर्व ट्रस्टडीड को सक्षम न्यायालय द्वारा निरस्त कर दिया है और उक्त ट्रस्टडीड के आधार पर बिना यह जांच करे कि ट्रस्टडीड निरस्त हो चुकी है, पंजीयन का आदेश दिया है। प्रतिवादीगण ने भी ट्रस्टडीड के संबंध में हुए आदेशों को पंजीयक के सामने प्रस्तुत नहीं किया है और इन तथ्यों को छिपाते हुए ट्रस्ट का पंजीयन कराया है। इस प्रकार से विखंडित की गई ट्रस्टडीड के आधार पर पंजीयन द्वारा ट्रस्ट का पंजीयन किया है, जिसे किसी भी दृष्टि में वैध नहीं माना जा सकता है। अतः वादप्रश्न क्र.1 का निराकरण हां में किया जाता है”।

25. It is apparent that this issue was decided in favour of of the present appellant. The order was held to be void and illegal in light of the fact that the Trust was already revoked by the deed executed by Birdi Bai during her lifetime and the revocation of the Trust was upheld by this Court in F.A. No.22/1997. Accordingly, the Trust is not in existence, and accordingly, there is no change in circumstances, this application is accordingly dismissed. Two other applications filed by the intervenor/Trust I.A.

Nos.6258/2016 and 6890/2016 under Order 41 Rule 27 and under Section 340 CPC respectively are also dismissed, as the Trust is not allowed to intervene in this case and has no right to file such application.

**26.** Now I shall proceed to consider merit of the case and first take a substantial question nos.2 and 3 into consideration.

**27.** It is apparent that these two questions were framed in respect of creation of Trust, its subsequent revocation by the owner/creator Birdi Bai and also whether a valid trust was created by her.

**28.** It is admitted in this case that Birdi Bai executed a deed by which she proposed to create a public trust. Subsequently, she revoked the trust by another deed. Prior to such revocation, she bequeath the suit property on the present appellant allegedly executing a will in her favour. The question whether a public trust created by a register deed can be revoked by its creator during his/her lifetime was directly and substantially in issue in a civil suit filed by the present appellant for declaration against the trust. The suit was decreed by 4<sup>th</sup> Additional District Judge, Indore by judgment dated 18.09.1996. Against the judgment and

decree passed by the 4<sup>th</sup> Additional District Judge, first appeal was filed before this Court which was disposed of by co-ordinate Bench of this Court in F.A. No.22/1997 dated 11.11.2008. The Court observed as under :-

**“In the present case, it is proved by the plaintiff, and is not even disputed at the hands of the defendants, that an application had been filed by Birdi Bai before the Additional Collector for registration of the trust. Vide an order dated October 20, 1976, Exhibit P-3, the Additional Collector had required the managing trustee (Birdi Bai) to remain personally present on the next date. However, Birdi Bai chose not to remain present. On account of the aforesaid default, the application filed by Birdi Bai was dismissed. Thereafter no process for registration of the public trust under the MP Act had ever been initiated or continued by Birdi Bai or any other person. At no stage, the aforesaid trust was ever registered as public trust nor its name entered in the Register of Public Trusts. Thus, once the procedure under Sections 4 to 7 of the M.P. Act had never been followed for registration of the public trust, obviously the question of coming into existence of such a trust would not even arise. Whereas the provisions of the Indian Trusts Act, being the general law, are required to be followed, but the provisions of the local Act i.e. the M.P. Act provide for a procedure and the manner in which the trust is to come into existence. Once, the procedure of the Local act had not been followed, then the trust, though intended to be formed through the deed**



**Exhibit P-1, would be taken to have never come into existence. In such a situation, the provisions of the Section 78 of the Indian Trusts Act, 1882 would not even be attracted.**

**The findings of fact with regard to the execution of the revocation deed Exhibit P-2 and the execution of the will Exhibit P-4 in favour of the plaintiff, though challenged at some stage by the defendants before the trial Court, have not been contested before this Court, during the course of first appeal. Consequently, the findings recorded by the trial Court on the aforesaid questions are affirmed.**

**No other point has been urged.**

**In these circumstances, I do not find any merit in the present appeal. The same is dismissed.**

**However, there shall be no order as to costs.**

**C.C. as per rules.”**

**29.** Learned counsel for the respondents places reliance on judgment of Hon'ble Apex Court in case of **A.V. Papayya Sastry and others vs. Govt. of A.P. and others;** **(2007) 4 SCC 221.** In this case, it was held that if a judgment is obtained by fraud it is not binding. The Hon'ble Apex Court held that such judgment and decree can be challenged in any court at any time and when a judgment is obtained by a fraud, this is an exception to Article 141 of the Constitution of India and doctrine of merger. He also places reliance on judgment of Hon'ble Apex Court in case

of Kunhayammed and others vs. State of Kerala and another; (2000) 6 SCC 359. In this case, it was held that when an SLP dismissed by the Hon'ble Apex Court without passing a speaking order, its an exception to the Rule of merger and it does not constitute res-judicata and such order can be reviewed without considering the fact that an SLP filed against the order was dismissed. But going through the judgment, it is apparent that only when a review is filed, the principle laid down in the present case applies. However, for other proceedings which are collateral in nature the order passed by co-ordinate Bench of this Court in F.A. No.22/1997 attained finality and cannot now be looked into, and therefore, the argument of the counsel for the respondents that this Court can consider the issues relating to revocation of the trust cannot be accepted. This issue has been decided between the trust and the present appellant, and therefore, it cannot be re-agitated in this case. Further a judgment can be discarded on ground of that it was obtained by fraud only when in a subsequent suit, it was proved that it was obtained by fraud. Merely alleging fraud is not enough. The counsel also cited judgment of Hon'ble Apex Court on the point that public

trust once created cannot be revoked, in case of **Nachi Muthu Gounder vs. Raju Thevar; 1985 M.P.W.N.339 (SC)** and the case of **Sri Agasthyar Trust, Madras vs. Commissioner of Income Tax, Madras; (1998) 5 SCC 588**. These two judgments and principle laid down therein cannot be taken into consideration, as this issue has already been decided by this Court in F.A. No.22/1997.

30. Learned counsel for the respondents further places reliance on judgment of Honble Apex Court in case of **Jagdish Chand Sharma vs. Narain Singh Saini; (2015) 8 SCC 615**, in which it was held that the will has to be proved strictly in accordance with provision of Section 68 of Evidence Act. However, the trust is a third party to the will, revocation of the trust by Birdi Bai was held to be proper. Once the deed, by which the trust was created, was revoked, it applied retrospectively from the date when the trust was created, and accordingly, when the will was executed, the property belonged to Birdi Bai. The ownership of the appellant can only be seen for collateral purpose of her being landlord, in the present case no detailed inquiry is required.

31. Learned counsel for the respondents further submits

that in cases filed against the other tenants the will was declared to be invalid and this order was never challenged by the present appellant. However, those were also cases filed on the basis of defendant being tenants and any finding by the Court will not be a binding in the present case because that was between other party and also in those cases also the ownership of the appellant was considered only for the collateral purpose. Accordingly, it is apparent that the trust was validly revoked and on the basis of the will, present appellant became owner of the property.

**32.** The substantial questions of law Sr. No. 2 and 3 framed by this Court are answered accordingly.

**33.** The substantial question no.1 is whether the lower court was justified in reversing the judgment passed by the trial court. The first appellate court below mainly reverted the judgment passed by the trial court on the ground that the property belonged to the trust, and therefore, the appellant was not the landlord of the defendant and owner of the suit property. However, now the circumstances have been changed. The revocation of the trust was held valid by coordinate Bench of this Court as stated above, and therefore, the trust is not in existence. On the basis of will, the

appellant has become owner of the property. So far as the respondents are concerned, and therefore, it is to be seen whether the present respondents are bound by the finding given by the co-ordinate Bench of this Court in F.A. No.22/1997. On this point, the learned counsel for the appellant places reliance on judgment of co-ordinate Bench of this Court in case of **Bhagwati Bai vs. Khanjuram; M.L.R. 1954 Civil 475**. In this judgment, it was held that when there is a judgment in favour of the landlord in respect of his ownership, the tenant cannot challenge the finding given in that judgment. In this case also ownership was decided in another suit as mentioned above, and therefore, the respondents are bound by the findings of the court. In this view of the matter, when the appellant became owner of the property, she also became landlord, as it is not disputed that at same point of time, rent was also given to her in any way. Once the question of ownership is settled between the present appellant and the trust by virtue of her being owner of the property, she became landlord of the tenants.

**34.** In this view of the matter, it is held that the appellant is the landlord of the respondents and the finding given by

the first appellate court below was erroneous, and therefore, liable to be set aside.

**35.** Now, we may consider other grounds on which the decree was passed by the trial court. The first ground is under Section 12(1)(A) of M.P. Accommodation Control Act which relates to default in payment of rent. The appellate court found that by order dated 13.07.1989, trial court condoned the delay in payment of arrears of rent, and thereafter, so far as rent relating to subsequent months was concerned, it was also paid according to provision of the Act, and therefore, no ground is made out for passing a decree under Section 12(1)(A) of the Act.

**36.** After going through the record of the trial court, I find that findings of the appellate court on this point is reasonable and proper. The record does not show that after 13.07.1989, when delay was condoned, there was any default in payment of rent in accordance with provision of Section 13 of the M.P. Accommodation Control Act.

**37.** The next ground is whether the finding given by the courts below in respect of bonafide need of the appellant was proper. On this point also both the courts below found that the suit accommodation was required bonafide by the

appellant for her own use and for use of her family members. The first appeal was only allowed because the appellate court found that the appellant was not the owner of the suit property. Accordingly, when it has been established that the present appellant is the owner and the landlord of the present appellant, it is held that on the ground of bonafide requirement the appellant is entitled to receive vacant possession of the suit premises.

**38.** The appellate court below found that it is not proved that the respondents tried to create an adverse title over the suit property because he only challenged the title of the appellant on the ground that it is not the appellant but the Trust was the owner of the property. Under these circumstances, it cannot be said that he created an adverse title over the suit property. In this situation, the finding given by the appellate court below appears just and proper and no interference is required.

**39.** The next question relates to change need of the premises, according to the appellant, the premise was given to him for residential purpose which the respondents converted into the composite tenancy for residential as well as for non residential purpose. Defence of the present

appellant was that he obtained a permission to do so from the Trust, however, now since the Trust was not found the landlord of the present appellant. Learned counsel for the appellant argued that such permission was a nullity, and therefore, this ground is also proved. However, in considered opinion of this Court, there was genuine dispute between the present appellant and the Trust, and therefore, at various points of time, the respondents considered the Trust as well as the plaintiff as their landlord, and therefore, in bonafide belief that the public Trust was entitled to provide him the required permission if the change in use of the premises was made after obtaining permission from the Trust, no ground is made out and therefore, it is held that on this ground, the appellant is not entitled to obtain any decree for eviction.

**40.** The next ground is that the respondents obtained alternative accommodation at 65-B, Prikanko Colony, Annapurna Road, Indore and at 21, Dravid Nagar, Indore and they are living there. This finding was given by both the courts below and again no decree was granted by the appellate court because appellant was not held to be landlord and owner of the property.



41. On the basis of aforesaid discussion, it is apparent that the appellant is entitled to get the decree for eviction on the ground of bonafide requirement by the appellant under Sections 12(1)(e) and 12(1)(i) for obtaining suitable accommodation for their residence.

42. Accordingly, this appeal is allowed. The judgment and decree passed by the first appellate court below is set aside.

It is ordered and decreed that the respondents shall hand over vacant possession of the suit property to the appellant within two months from date of this judgment. The respondents shall pay rent @ Rs.121/- per month till vacant possession of the suit premises is delivered to the appellant. Any amount deposited against the arrears of rent or by way of rent for the current months during pendency of the suit shall be paid to the appellant.

Cost of the appeal shall be born by the respondents throughout. Counsels fee as per schedule if certified.

Decree be drawn accordingly.

**( Alok Verma )**  
**Judge**