

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 1st OF OCTOBER, 2024

SECOND APPEAL No. 116 of 2022

M/S A K BUILDERS THROUGH ITS PROP. SMT NEELIMA DUBEY

Versus

*SHRI VAISHNAV SHAIKSHNIK AND PARMARTHIK TRUST THR. ITS
TRUSTEE SHRI GIRDHAR GOPAL*

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Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

.....
WITH

SECOND APPEAL No. 117 of 2022

M/S JAKRUSH THROUGH ITS PROP. BHARAT SOOD

Versus

*SHRI VAISHNAV SHAIKSHNIK AND PARMARTHIK TRUST THR. ITS
AUTHORIZED TRUSTEE SHRI GIRDHAR GOPAL*

.....
Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 125 of 2022

M/S PERFECT SOLUTIONS THROUGH PROP. NEERAJ KAWADIYA

Versus

SHRI VAISHNAV SHAIKSHNIK AND PARMARTHIK TRUST

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Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 126 of 2022

*M/S MANOJ TRADING COMPANY THROUGH ITS PROP. MANOJ
SHRAMA*

Versus

*SHRI VAISHNAV SHAIKSHNIK AND PARMARTHIC TRUST
THROUGH AUTHORIZED TRUSTEE SHRI GIRDHAR GOPAL*

.....
Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 127 of 2022

*M/S SAGAR AUTO DEAL THROUGH ITS PARTNER RAJESH
BHANDARI*

Versus

*SHRI VAISHNAV SHAIKSHNIK AND PARMARTHIC TRUSTTHRU.
AUTHORIZED TRUSTEE SHRI GIRDHAR GOPAL*

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Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 128 of 2022

M/S UDAY TRAVELS THROUGH ITS PROP. VIRENDRA

Versus

*SHRI VAISHNAV SHAIKSHNIK AND PARMARTHIC TRHUST THRU.
ITS AUTHORIZED TRUSTEE SHRI GIRDHAR GOPAL*

.....
Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 133 of 2022

*M/S GANESH GAJAK AND KULFI CORNER THROUGH PROP. AJAY
RATHORE*

Versus

SHRI VAISHNAV SHAIKSHNIK EVAM PARMARTHIC NYAS

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Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 136 of 2022

*M/S ARCHANA JUICE CENTER THROUGH PROP. VASUDEV
PANDYA*

Versus

*SHRI VAISHNA V SHAIKSHNIK EVAM PARMARTHIC NYAS THR.
ITS AUTHORIZED TRUSTEE SHRI GIRDHAR GOPAL*

.....
Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 138 of 2022

*M/S KUSHWAH AGRO TRADING COMPANY THR. PROPRIETOR
SHIV NARAYAN S/O SHRI RAM PRASAD KUSHWAH (DEAD) THR*

Versus

*SHRI VAISHNA V SHAIKSHNIK EVAM PARMARTHIC NYAS THR.
ITS AUTHORIZED TRUSTEE SHRI GIRDHAR GOPAL*

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Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 140 of 2022

M/S BAJAJ TYRES THROUGH ITS PROP. SURENDRA BAJAJ

Versus

*SHRI VAISHNA V SHAIKSHNIK AVAM PARMARTHIC NYAS THR
ITS AUTHORIZED TRUSTEE SHRI GIRDHAR GOPAL*

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Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

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SECOND APPEAL No. 141 of 2022

M/S GUPTA BROS THROUGH ITS PROP. JAY GUPTA

Versus

***SHRI VAISHNA V SHAIKSHNIK AYAM PARMARTHIK NYAS THR.
ITS TRUSTEE SHRI GIRDHAR GOPAL***

Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

SECOND APPEAL No. 169 of 2022

M/S NULTANI SONA TRAVELS THROUGH ITS PROP KAMAL JAIN

Versus

SHRI VAISHNA V SHAIKSHNIK EVAM PARMARTHIK NYAS

Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

SECOND APPEAL No. 562 of 2022

M/S PARMESHWARI BHOJANALAY THROUGH PROP. DEEPAK

Versus

***SHRI VAISHNA V SHAIKSHNIK AND PARMARTHIK TRUST
THROUGH ITS AUTHORIZED TURSTEE SHRI GIRDHAR GOPAL***

Appearance:

Shri Pramod C. Nair - Advocate for appellant.

Shri Vishal Baheti - Advocate for respondent / caveator.

ORDER

The issue involve in all these appeals is common, therefore, they have been heard analogously and are being decided by this common order. For the sake of convenience, facts are taken from Second Appeal No.116/2022.

2.Heard on the question of admission.

3. The appellant / defendant is aggrieved by impugned judgment and decree dated 01/03/2019 passed by VIII Civil Judge, Class-II, Indore in RCS A No.5100034/2016, thereby decreeing the suit in favour of the plaintiff /

respondent. This judgment and decree when assailed in Regular Civil Appeal No.65/2019, the XXII Additional District Judge, Indore *vide* judgment and decree dated 30/09/2021 has dismissed the appeal by affirming the judgment and decree of the trial Court.

4. The suit filed for eviction, recovery of rent and mesne profit from the disputed shop situated at Jawahar Marg, Dhar Road Side, Indore was decreed in favour of the plaintiff with a direction that vacant possession of the disputed shop will be surrendered to the respondent / plaintiff and he will also be entitled for recovery of arrears of rent. Learned First Appellate Court by giving due weightage to the arguments advanced on behalf of the tenant dismissed the appeal against which this second appeal under Section 100 of CPC has been filed.

5. Learned counsel for the appellant / defendant submits that the suit was not properly instituted. For this he has referred Order XXXI of CPC and Section 3 of M. P. Accommodation Control Act, 1961 with respect to the ownership of the plaintiff on the dispute shop. He has further raised contention that Clause 20 of the Tenancy Agreement (Ex.-P/16) contains arbitration clause, which was to be acted upon. Firstly, on the objection of the respondent it was held that when the respondent would rely upon this document, the objection regarding arbitration clause can be raised but even after that the objection was not taken into account. Learned counsel has also referred Section 8 of the Arbitration and Conciliation Act, 1996 and paras 21 to 29, 33 to 41 and 43 of the impugned judgment by the First Appellate Court. He has also relied upon the judgment by the Apex Court in the case of

Satyadhyan Ghosal and Others Vs. Smt. Deorajin Debi and Another reported in 1960 AIR 941 . He has also placed reliance on the judgment by the Delhi High Court in the case of **Duli Chand Vs. Mahabir Pershad Trilok Chand** reported in AIR 1984 Delhi 144. Learned counsel has further placed reliance upon the orders by the co-ordinate Bench of this Court in the case of **M/s. Shivani Electric Vs. Shri Vaishnav Shaikshanik Evam Parmarthik Trust & Another** (order dated 27/08/2014, passed in Writ Petition No.2768/2014) and **Vishnu Vs. Smt. Shakkarbai Manakchand Chhabra Parmarthik Trust Through Trustee Smt. Nirmala** (order dated 10/10/2017, passed in Writ Petition No.2771/2017).

6. Heard learned counsel for the appellant and perused the record.

7. The Trial Court though not elaborately dealt with the contention raised but reached to the just conclusion by decreeing the suit. When the judgment of the Trial Court was assailed before the First Appellate Court, each and every issue as mentioned aforesaid have been dealt with elaborately by giving due weightage to the judgments on which reliance has been placed. Even if on re-appreciation of evidence another view is possible but it is not required in second appeal when concurrent findings of facts have been recorded by the Courts below on disputed facts. The findings are not shown to be perverse or contrary to the record. No substantial question of law is found involved as proposed by learned counsel for the appellant, therefore, there is no justification in disturbing the concurrent findings of fact recorded by both the Courts below. In view of the aforesaid, the judgments and orders relied upon by counsel for the appellant in the case of **Satyadhyan Ghosal**

(Supra), Duli Chand (Supra), M/s. Shivani Electric (Supra) and Vishnu (Supra) are of no avail to the appellant as they are distinguishable on facts.

8. Hence, all the appeals fail and are hereby dismissed.

9. Let a copy of this order be kept in the record of all other connected appeals.

Certified copy as per rules.

(BINOD KUMAR DWIVEDI)
JUDGE

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