

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

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 19th OF JUNE, 2025

SECOND APPEAL No. 157 of 1999

SMT.KESHAR BAI (DEAD) VIMLA SINGH AND ANOTHER

Versus

SMT.VIJAY RANI (DEAD) YASH KUMAR JAIN AND OTHERS

Appearance:

Shri Ravish Agrawal Sr. Advocate with Shri Jaspreet Gulati – Advocate for the appellants.

Shri R.P. Khare – Advocate for the respondents.

J U D G M E N T

This second appeal has been preferred by the appellants/defendants challenging the judgment and decree dated 11.01.1999 passed by Fourth Additional District Judge, Jabalpur, in Civil Appeal No.28-A/1998 affirming the judgment and decree dated 22.01.1997 passed by Third Civil Judge Class-I, Jabalpur in Civil Suit No.485-A/1995 whereby Courts below have concurrently decreed the suit for eviction filed by the original respondent/plaintiff- Smt. Vijay Rani (Now dead through LRs).

2. Facts in short are that the original respondent/plaintiff- Smt. Vijay Rani instituted a suit for eviction against the appellants/defendants in respect of the premises consisting of two rooms with the allegations that husband of the

defendant 1- Smt. Keshar Bai was employee of the plaintiff, therefore he was given disputed rooms for residence as a licensee. It is alleged that after death of husband, namely Khadak Singh on 06.12.1989, the defendant Smt. Keshar Bai illegally handed over possession of the rooms to the defendant 2-Devi Singh in the year 1992. As such, eviction was sought along with decree of mesne profits.

3. The defendants appeared and filed separate written statements denying the plaintiff allegations and contended that they are tenants in the disputed rooms and are not licensee and accordingly prayed for dismissal of the suit.

4. Thereafter, in the light of pleadings made in the written statement, the plaintiff amended the plaint to the effect that if the defendants are not found to be licensee, the decree be passed under the provisions of M.P. Accommodation Control Act and accordingly sought decree of eviction on the grounds available under Section 12(1)(b),(j)&(o) of the M.P. Accommodation Control Act, 1961.

5. On the basis of pleadings of the parties, trial Court framed issues and recorded evidence of the parties and upon due consideration of the material available on record found that husband of the defendant 1-Smt. Keshar Bai, namely, Khadak Singh was employee of the plaintiff and he was given the rooms for residence and after death of Khadak Singh in the year 1989, the defendant 1-Keshar Bai handed over possession of rooms to Devi Singh in the year 1992, and accordingly decreed the suit for eviction vide judgment and decree dated 22.01.1997. Against which the defendants preferred regular civil appeal which by the impugned judgment and decree dated 11.01.1999 has been dismissed.

6. Against the aforesaid judgment and decree passed by Courts below Second Appeal was preferred, which was admitted for final hearing on 08.04.1999 on the following substantial questions of law :-

- “(1) Whether the Court below could decree the suit of the respondent/plaintiff by ignoring the material and vital evidence on record including certain admissions made on behalf of the respondent ?
- (2) Whether under the facts and circumstances of the case the appellants were lessee or licensee of the suit-house ?
- (3) What is the effect of non-framing of the issues regarding the alternative case of the respondent/plaintiff ?
- (4) Whether the application under Order 41 Rule 27 of the Code of Civil Procedure filed by the appellants in the appellate Court could be rejected on the ground mentioned in the impugned judgment ? ”

7. Learned counsel for the appellants/defendants submits that the appellants are not licensee but they were inducted as tenant in the disputed rooms and Courts below have ignored vital piece of evidence as well as admissions made by the plaintiff in that regard while recording findings regarding relationship of licensor and licensee. He also submits that despite taking alternative plea by the plaintiff in the plaint regarding tenancy, no issue was framed in that regard, which has vitiated entire trial. He also submits that first appellate Court has committed illegality in dismissing the application under Order 41 Rule 27 CPC and submits that the documents filed before this Court by way of application under Order 41 Rule 27 CPC dtd. 24.01.1999 go to the roots of the case as the entries made in the house tax register show that the appellants were inducted as tenants in the disputed rooms and not as licensee. With these submissions he prays for allowing the second appeal.

8. Learned counsel appearing for the respondents/plaintiff supports the impugned judgment and decree passed by Courts below and prays for dismissal of the second appeal with the further submissions that the finding in relation to licensor and licensee is a pure finding of fact and is not liable to be interfered with within the limited scope of Section 100 of CPC.

9. Heard learned counsel for the parties and perused the record.

10. All the aforementioned four substantial questions of law formulated by this Court are related to each other, therefore, are being decided jointly.

11. In the present case, undisputedly the plaintiff is owner of the disputed rooms. It is also undisputed fact on record that defendant 1-Keshar Bai's husband namely, Khadak Singh was employee of the plaintiff and was given the disputed rooms for residence. As to whether he was licensee or tenant, Courts below in detail have taken into consideration the oral and documentary evidence available on record and in absence of any evidence regarding induction of the defendants as tenants, concluded that the defendants are licensee in the rooms. Upon due consideration of the entire material available on record, the said finding does not appear to be illegal or perverse. Further, the concurrent findings based on pleadings and evidence adduced by the parties, are not vitiated only on the ground of non framing of issue on alternative pleas, because the same has also been taken into consideration by Courts below.

12. Perusal of the record shows that the defendants have not produced any documentary evidence before trial Court regarding their status as tenants in the

disputed rooms. Even before the first appellate Court two rent receipts were filed along with the application under Order 41 Rule 27 CPC but they don't suggest anything about relationship of landlord and tenant amongst the plaintiff and defendants. Also before this Court, an application under Order 41 Rule 27 CPC has been filed annexing the copies of house tax register showing status of defendants as tenants in the disputed rooms, but that itself cannot be considered as an evidence of tenancy over and above the concurrent findings of facts recorded by Courts below regarding relationship of licensor and licensee, amongst the plaintiff and defendants. Upon due consideration, the application under Order 41 Rule 27 CPC filed before this Court on 24.01.1999 is **dismissed**.

13. It is pertinent to mention here that the plaintiff has by issuing registered notice dtd.07.01.1993 (Ex.P/1), already cancelled the license and despite service of notice, no reply was given by the defendants.

14. Resultantly, all the four substantial questions of law are decided against the appellants/defendants.

15. Accordingly, this second appeal fails and is hereby **dismissed**.

16. Misc. application(s), pending if any, shall stand closed and interim order of stay, if any, shall stand vacated.

(DWARKA DHISH BANSAL)
JUDGE