

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

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

SECOND APPEAL NO.843 OF 2002

BETWEEN:-

**GANGARAM SAHU (DEAD) THROUGH
L.RS.:-**

- a) **SMT. KESHARBAI SAHU W/O LATE SHRI
GANGARAM SAHU, AGED ABOUT 67
YEARS**
- b) **KRISHNA KUMAR SAHU S/O LATE SHRI
GANGARAM SAHU, AGED 44 YEARS,**
- c) **HARISH KUMAR SAHU S/O LATE SHRI
GANGARAM SAHU, AGED 44 YEARS,**
- d) **PAWAN KUMAR SAHU S/O LATE SHRI
GANGARAM SAHU, AGED 44 YEARS,**
- e) **SMT. KAMLA SAHU, W/O RAM KISHAN
SAHU, AGED ABOUT 42 YEARS, R/O BADA
BAZAR, HATA DISTRICT DAMOH (M.P.)**
- f) **SMT. JAYANTI SAHU W/O JAGDISH
PRASAD SAHU, AGED ABOUT 40 YEARS,
R/O PURANA BAZAR, MAJHOLI DISTRICT
JABALPUR (M.P.)**
- g) **SMT. PUSHPA SAHU, W/O TRILOK CHAND
SAHU, AGED 38 YEARS, NEAR BUS STAND
MAJHOLI DISTRICT JABALPUR (M.P.)**
- h) **SMT. GEETA SAHU W/O RAJENDRA SAHU,
AGED 30 YEARS, R/O BAZAR CHOWK,
GAIRATGANJ, DISTRICT RAISEN (M.P.)**

.....APPELLANTS

(BY SHRI AVINASH JARGAR - ADVOCATE)

AND

**BALDEV PRASAD SEN (DEAD) THROUGH
LRS:**

- i) ASHOK KUMAR S/O LATE SHRI BALDEO
PRASAD (DEAD)**
- ii) MUNNA LAL S/O LATE SHRI BALDEO
PRASAD SEN AGED ABOUT 43
YEARS,**
- iii) CHANDRABHAN (DEAD)**

**R/O GUJRATI BAZAR, KATRA WARD,
SAGAR**
- iv) SMT. KUNTI W/O SHRI BHAGWAN DAS
SEN, AGED ABOUT 53 YEARS,
R/O STATE BANK COLONY, JABALPUR**
- v) SMT. HEMLATA W/O RAVINDRA PRASAD
SEN, AGED ABOUT 47 YEARS, NEAR
RAILWAY STATION, DAMOH.**

**L.RS. OF ASHOK KUMAR (DEAD)
THROUGH L.RS.**

- (i) ASHISH SEN S/O LATE SHRI ASHOK SEN
AGED ABOUT 27 YEARS**
- (ii) AMIT SEN, S/O LATE SHRI ASHOK SEN,
AGED ABOUT 25 YEARS,**
- (iii) ARPIT SEN, S/O LATE SHRI ASHOK SEN,
AGED ABOUT 22 YEARS,
ALL R/O GUJRATI BAZAR, KATRA WARD,
SAUGAR (M.P.)**

....RESPONDENTS

(SHRI SAKET AGRAWAL - ADVOCATE)

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Reserved on : 07.12.2022

Pronounced on : 12.12.2022

This appeal having been heard and reserved for judgment, coming on for pronouncement this day, the Court pronounced the following:

JUDGMENT

This second appeal is filed by the plaintiff Gangaram Sahu (since died now LRs Smt. Kesharbai Sahu and others) challenging the judgment and decree dated 12.09.2002 passed by 1st Additional District Judge, Sagar in Civil Appeal no. 4-A/2002 reversing the judgment and decree dated 21.12.2001 passed by 3rd Civil Judge Class-II, Sagar in Civil Suit no.9A/1998, whereby suit for eviction was decreed on the ground under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (in short “the Act”) which has been dismissed in appeal by first appellate Court.

2. In short, the facts are that, the original plaintiff Gangaram Sahu had instituted a civil suit for eviction and arrears of rent on the grounds available under Sections 12(1)(a),(c) and (f) of the Act with the allegations that the defendant Baldev Prasad (since died now LRs Munna Lal and others) is tenant in the disputed shop no.29 area 8’x5’ on rent of Rs.400/- per month. It is alleged that the defendant is carrying out the business in the name and style ‘Saurashtra Hair Cutting Saloon’ and in the adjacent shop, the son of plaintiff namely Pawan Sahu is carrying out his business in the name and style ‘Surabhi TV Center’ in which he is selling and repairing TV. The son of plaintiff is in need of the disputed shop for expansion of his existing business, because the shop of his possession

area 9'x11' is not sufficient for the existing business and he has also taken distributorship of Salora TV. It is also alleged that the defendant has already constructed another shop and is demanding an amount of Rs.20,000/- for vacating the shop in question. It is also alleged that the defendant is creating nuisance by getting assembled unsocial elements in the shop. The defendant has never paid rent timely, therefore, the plaintiff has by issuing notice dated 21.11.1996 terminated tenancy of the defendant. On *inter alia* allegations, the suit was filed.

3. The defendant appeared and filed written statement denying the plaintiff allegations and contended that he is tenant in the shop on rent at the rate of Rs.325/- per month and there is sufficient accommodation available with the plaintiff for carrying out the business of Surabhi T.V. Center and there is other accommodation available with the plaintiff on first floor, where the plaintiff is keeping the stock and in the same building there is a shop, in which the sons of plaintiffs are carrying out business in the name of Sahu Music Center. As such, the plaintiff is not in need of the disputed shop, who is in habit of increasing monthly rent and with this intention, the suit has been filed. It is also contended that previously, the defendant was tenant in other portion but upon reconstruction of the building, the defendant was given a small shop at ground floor. The defendant has never committed any default in making payment of rent. On *inter alia* contentions, the suit was prayed to be dismissed.

4. On the basis of pleadings of the parties, learned trial Court framed issues and recorded evidence and after due consideration of the same, vide judgment and decree dated 21.12.2001, decreed the suit for eviction

on the ground of bonafide need of his son (Pawan Sahu) under Section 12(1)(f) of the Act, but refused to pass decree on the grounds under Section 12(1)(a) and (c) of the Act. While deciding issue no.2, learned trial Court has in para 15 of its judgment held that the plaintiff is in need of the disputed shop for expansion of existing business of his son Pawan Sahu, which will facilitate him to do his existing business efficiently. At the same time, it was also held that the defendant has failed to prove that there is sufficient accommodation available with the plaintiff's son Pawan Sahu. As the disputed shop and the shop of the possession of Pawan Sahu, both are adjacent to each other, therefore, learned trial Court held that the disputed shop is suitable for expanding the existing business by removing the existing wall in between the two shops.

5. The judgment and decree dated 21.12.2001 was challenged by defendant Baldev Prasad by filing civil appeal, however, the plaintiff also filed cross objection under Order 41 rule 22 CPC. After hearing arguments of the parties, learned first appellate court vide impugned judgment and decree dated 12.09.2002 reversed the judgment and decree of trial Court and dismissed the suit in its entirety.

6. This Court vide order dated 15.05.2003 admitted the second appeal on the following substantial question of law:-

“Whether under the garb of re-appreciation of evidence, the finding arrived at by the Appellate Court, are perverse being based on no evidence ?”

7. Learned counsel for the appellants/plaintiffs submits that learned first appellate Court has on presumptions and wrong assumptions not acceptable in the eyes of law, erred in reversing the judgment and decree

of trial Court and further erred in dismissing the suit for eviction filed on the ground of *bonafide* requirement of plaintiff's son Pawan Sahu. He further submits that learned first appellate Court although has reversed the judgment and decree of trial Court, but has not reversed the findings of trial Court recorded by it in para 15 of the judgment and decree. In support of his submissions, he placed reliance on the decision of Supreme Court in the case of ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs. (2001) 3 SCC 179***, ***Ragavendra Kumar Vs. Firm Prem Machinery and Co. (2000) 1 SCC 679*** (para 10) and in the case of ***Radheshyam vs. Ramakant (Deceased) through Lrs. 2004 (2) MPLJ 332***. With these submissions, he prays for allowing the appeal.

8. Learned counsel for the respondents supports the impugned judgment and decree and submits that learned first appellate Court is a final Court of fact and law and the finding on the question of bonafide requirement recorded by learned first appellate Court being finding of fact is not liable to be interfered with in the limited scope of second appeal. He further submits that son of the plaintiff Pawan Sahu is already doing business in the shop and he cannot be said to be in need of disputed shop, especially in the circumstances where grant of distributorship of Salora TV was not proved by the plaintiff. By placing reliance on the decision of Supreme Court in the case of ***Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Ors (1999) 3 SCC 722*** (Para 3-5), he prays for dismissal of the second appeal.

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

10. From bare perusal of the judgment and decree passed by learned Courts below it is undisputed fact that the son of plaintiff Pawan Sahu is

involved in the business of repairing and sale of TV and shop of the possession of Pawan Sahu having an area 9'x11' is adjacent to the disputed shop area 8'x5'. It is also apparent from the judgment of first appellate Court that it has reversed the judgment and decree of trial Court on the ground that the plaintiff has failed to produce the appointment letter/certificate of wholesale distributorship by Salora Company and except this negative finding with regard to the non grant of distributorship of Salora Company, the first appellate Court has not said any thing adverse to the need of plaintiff's son and in the entire judgment has not reversed the findings recorded by learned trial Court in para 15 of judgment and decree dated 21.12.2001.

11. The Supreme Court has in the case of ***Ragavendra Kumar Vs. Firm Prem Machinery and Co. (2000) 1 SCC 679*** held as under:-

“10. The learned single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff-landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff-landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. [See - Prativa Devi (Smt.) v. T.V. Krishnan, 1996(5) SCC 353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.”

12. The Supreme Court has in the case of *Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs. (2001) 3 SCC 179* held as under:-

"The Appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate Court."

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While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it."

13. Apparently, first appellate Court has not cared to consider the original pleadings relating to bonafide need made in para 2 of the plaint dtd.11.03.1997, whereby the plaintiff alleged need of his son for expansion of his existing business for keeping the goods and sitting arrangement of customers. In addition to the pleaded need, in the year 2001 amendment was proposed in the plaint with regard to grant of distributorship of Salora TV, which in absence of certificate of appointment of distributorship, has not been found proved by learned first appellate Court. At the same time first appellate Court has not said anything about the need originally pleaded by the plaintiff and was also found proved by learned trial Court. As such the finding of bonafide requirement for expansion of existing business, is still in existence, sufficient to grant decree of eviction on the ground of section 12(1)(f) of the Act.

14. As such in the light of aforesaid discussion and in absence of reversal of finding recorded by learned trial court in para 15 of its judgment, I am of the opinion that negative finding of first appellate

Court with regard to bonafide need, is perverse and learned first appellate Court has erred in reversing the judgment and decree of eviction passed by learned trial Court.

15. Resultantly, appeal succeeds and is hereby **allowed** and by setting aside the judgment and decree dtd. 12.09.2002 passed by learned first appellate Court, the judgment and decree dtd. 21.12.2001 passed by learned trial Court is restored.

16. However, no order as to costs.

17. Interim application(s), if any, shall stand disposed off.

(DWARKA DHISH BANSAL)
JUDGE