

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

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON 03RD OF JULY, 2025

SECOND APPEAL No. 663 of 2003

KHIRODCHAND (DEAD) THR. LRs GOUTAM AND ORS.

Versus

TOLARAM (DEAD) THR. LR. NANDU

Appearance

Shri Jaideep Sirpurkar - Advocate for the appellants.

None for respondent, though served.

JUDGMENT

This second appeal is preferred by the original appellant/plaintiff-Khirodchand (now dead, through LRs.) challenging the judgment and decree dated 12.03.2003 passed by Third Additional District Judge, Chhindwara in civil appeal No. 3-A/2002 reversing the judgment and decree dated 12.04.2002 passed by Fifth Civil Judge Class-II, Chhindwara in civil suit No.7-A/2001 whereby trial Court decreed the suit on the grounds under Section 12(1)(a)&(e) of the M.P. Accommodation Control Act, 1961 (in short 'the Act') and in civil appeal filed by defendant/tenant-Tolaram, first appellate Court reversed the judgment and decree of trial Court and dismissed the suit in its entirety.

2. In short the facts are that the plaintiff had instituted the civil suit against the defendant for eviction of residential premises with the allegations that the defendant is tenant in the accommodation on monthly rent of Rs.300/-, who has not paid rent despite making demand w.e.f. January, 1993. It is alleged that there are two blocks owned by the plaintiff, which are adjacent to each other. In

one block plaintiff is residing with his family members and another block is in occupation of the defendant. In paragraph 5 of the plaint, it is contended that the plaintiff is in need of the rented accommodation, as the available block is not sufficient for residential need of the plaintiff. On *inter alia* allegations the suit was filed.

3. The defendant appeared and filed written statement denying the plaint averments and contended that the plaintiff entered into an agreement of sale of the rented house and executed agreement after receipt of cash amount of Rs.24,000/- and handed over possession, since then he is in possession of the accommodation as owner. It is contended that the suit house is constructed on the government land, which was received by the plaintiff on patta and just with a view to get decree of eviction, the defendant has been shown as tenant. It is also contended that defendant is not in arrears of rent and the plaintiff is not in need of the rented accommodation. Although the need alleged by the plaintiff has been denied, but the defendant has not stated anything in the written statement that the plaintiff is in possession of other alternative accommodation in the township of Chhindwara. On *inter alia* contentions, the suit was prayed to be dismissed.

4. 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 the defendant is tenant of the plaintiff on rent of Rs.300/- per month and is in need of the rented accommodation for residence of himself and his family members and that there is no other alternative accommodation available in the township. It is also held that the defendant has not paid monthly rent in spite of service of notice of demand and accordingly decreed the suit for eviction on the ground under Section 12(1)(a)&(e) of the Act vide its judgment and decree dated 12.04.2002.

5. Against the aforesaid judgment and decree passed by trial Court, defendant/tenant preferred regular civil appeal. After hearing the parties, first appellate Court although vide paragraph 19 affirmed the finding of relationship of landlord and tenant in between the parties, but allowed the appeal and dismissed the suit for want of pleading in the plaint regarding non-availability of alternative accommodation in the township of Chhindwara.

6. Against the aforesaid judgment and decree passed by first appellate Court, the plaintiff/appellant preferred second appeal, which was admitted for final hearing on 19.11.2003 on the following substantial question of law :

“Whether under the facts and circumstances of the case the lower appellate court erred in law in holding that absence of the pleading regarding non-availability of suitable alternative accommodation was fatal to the ground provided under section 12(1)(e) of the Act ?”

7. Learned counsel for the appellant submits that although in the plaint the plaintiff has not specifically alleged that there is no other alternative accommodation available in the township of Chhindwara, but in paragraph 5 it has been clearly alleged that the accommodation available with the plaintiff is not sufficient for residence of the plaintiff and his family members and has proved that except this accommodation, there is no other alternative accommodation with the plaintiff in the township of Chhindwara. At the same time the defendant has also not been able to demonstrate and prove that there is some other alternative accommodation available with the plaintiff for satisfying his existing need. He submits that in presence of evidence in respect of non-availability of alternative accommodation, specific pleading in the plaint in that regard, is not fatal to the suit and first appellate Court has committed illegality in dismissing the suit only on that ground. In support of his submissions he placed reliance on the decisions given by Hon’ble Supreme Court in the case of

M.L. Prabhakar vs. Rajiv Singal, **(2001) 2 SCC 355** and by a coordinate Bench of this Court in Sujata Sarkar vs. Anil Kumar Duttani, **2009(2) MPLJ 156**. With these submissions he prays for allowing the second appeal.

8. No one is appearing on behalf of the respondent, though served.

9. In the present case both the Courts below have concurrently held that there is relationship of landlord and tenant in between the plaintiff and defendant and defendant is tenant in the rented residential accommodation on rent of Rs.300/- per month. Although trial Court decreed the suit on the ground of default in making payment of rent available under Section 12(1)(a) of the Act as well as on the ground of bonafide need of residential accommodation available under Section 12(1)(e) of the Act, but first appellate Court has reversed the decree on both the grounds and this second appeal has been admitted only in relation to bonafide need of residential accommodation, which has been denied by first appellate Court for want of specific pleadings in the plaint regarding non-availability of alternative accommodation in the township of Chhindwara.

10. The plaintiff himself and witnesses examined on his behalf have clearly stated that there are two blocks in the ownership of the plaintiff. In one block the plaintiff is residing with his family members and in another adjacent block the defendant is tenant, which is not sufficient for satisfying the existing need. It is also apparent from the record that there are seven members in the family of the plaintiff and one son of the plaintiff has married and during pendency of the suit family of the plaintiff grown up.

11. Perusal of the impugned judgment and decreed passed by first appellate Court shows that the Court has not even doubted bonafide requirement of the plaintiff and has not recorded any adverse finding with regard to bonafide requirement of the plaintiff and only on the sole ground of absence of pleadings

in respect of non-availability of alternative accommodation in the township of Chhindwara, reversed the judgment and decree of trial Court and dismissed the suit.

12. As has been held by Hon'ble Supreme Court in the case of M.L. Prabhakar (**supra**) and by a coordinate Bench of this Court in the case of Sujata Sarkar (**supra**), absence of pleadings in the plaint in respect of non-availability of alternate suitable accommodation is not fatal to the suit, when there is sufficient oral evidence on record to the effect that the plaintiff does not possess any other suitable accommodation in the township.

13. In view of the aforesaid, it can very well be said that if evidence is available on record with regard to availability/non-availability of alternative accommodation, then absence of pleading in that regard is not fatal and only on that ground, the suit cannot be dismissed, ignoring the available evidence. Even otherwise it is the burden of the defendant/tenant to prove availability of suitable alternative vacant accommodation with the plaintiff/landlord but in the present case, neither there is any pleading in the written statement, nor has been proved by the defendant.

14. In view of the aforesaid discussion, I am of the considered opinion that first appellate Court has committed illegality in dismissing the suit for want of pleadings regarding non-availability of alternative accommodation. Consequently, the substantial question of law formulated by this Court is decided in affirmative and in favour of the appellants/plaintiffs.

15. Resultantly, second appeal stands allowed and by setting aside impugned judgment and decree passed by first appellate Court, the judgment and decree passed by trial Court is hereby restored, however only in respect of decree of eviction on the ground of bonafide requirement available under Section 12(1)(e) of the Act .

16. With the aforesaid, this second appeal stands **allowed**.
17. Misc. application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE

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