

**HIGH COURT OF MADHYA PRADESH:
PRINCIPAL SEAT AT JABALPUR**

S.B. : Hon. Shri Justice Ashok Kumar Joshi

S.A. No.1139/2005

Ku. Shakuntala Guha and others

.....Appellants

Vs.

Jasmit Kaur Narula and others

..... Respondents

Shri Atulanand Awasthy, counsel for the appellants.

Shri R.P. Agrawal, learned Senior Counsel with Shri R.K.Jaiswal, counsel for respondent no.6.

Ms. Sudipta Choubey, learned counsel for respondent no.17.

J U D G M E N T

(Pronounced on /02/2017)

1. This second appeal is filed by the substituted defendants under Section 100 of the C.P.C. against the judgment and decree passed on 21/3/2005 in Civil Appeal No.59-A/2004 by Sixth Additional District Judge, Jabalpur affirming the decree of eviction of tenant and other reliefs passed by Fifteenth Civil Judge, Class-II on 7/6/2000 passed in Civil Suit No.230-A/1994 only on the ground of Section 12(1)(c) of the M.P. Accommodation Control Act, whereas the above-mentioned trial Court has decreed the suit filed by the respondents/plaintiffs on two grounds of Section 12(1)(a) and (c) of the above-mentioned Act.

2. This appeal was admitted on 8/7/2015 on the following substantial questions of law:-

“(i) Whether there was any attornment of tenancy in favour of the respondents by operation of law and the respondents became the landlord in relation to the property in suit and whether the appellants can be termed as tenant

of the respondents/plaintiffs?

(ii) Whether the suit of the respondents/plaintiffs is barred by the period of limitation and whether the appellants/defendants have perfected their title by way of adverse possession?

(iii) Whether the appellants/defendants have rightly denied the title of the plaintiffs or the act of the defendants is bona fide, hence they are not liable to be evicted from the suit premises under the provisions of Section 12(1) (a) and 12(1)(c) of the M.P. Accommodation Control Act?"

3. In order to get grips with the core controversy development of undisputed facts may be noticed. Disputed premises (suit accommodation) was previously part of evacuee property situated in Gorakhpur, Jabalpur. A portion of open land of property bearing diverted plot nos.531 and 534 of Nazul sheet no.293 was allotted to the original defendant (Late) Shri Anil Kumar Guha on lease by the custodian from 1/9/1953 at the rate of rent of Rs.15/- per month on the condition that he could construct over it, but on receiving intimation, he would have to remove his construction within seven days. Shri A.K. Guha made some construction over it, which later on had been given municipal house no. 281-A by Municipal Corporation Jabalpur. In November, 1955 some evacuee properties including house nos.281, 281/1 to 281/22 on open plot nos.534 and 531, whose previous evacuee owner was Hamid Ahmed and others were sold by Regional Settlement Commissioner of M.P. by Government auction. Sardar Amir Singh (original plaintiff no.1) and his ten other associates purchased this property in auction sale. After finalization of sale, a sale certificate dated 19/9/1963 was issued in favour of purchasers. After this auction sale, some open land previously in possession of Shri A.K. Guha was left by Shri Guha and thus, the custodian of evacuee property reduced the rent of the land leased out to Mr. Guha from June 1957 to Rs.2.50/- per

month. A "deed of conveyance of building constructed on lease-hold sites sold otherwise than by public auction" executed on 4/2/1985 in favour of Shri A.K. Guha was executed in the name of president of India, under which the premium was fixed as Rs.2507.50/-. During the pendency of the civil suit before the trial Court, all the three plaintiffs and original defendant Shri A.K. Guha expired and substituted by their legal representatives.

4. The litigation history between parties includes first eviction suit filed by Sardar Amir Singh only against Shri A.K. Guha, which was finally decided by this Court by a judgment (Ex.P-1=D-6) and decree dated 20/8/1976 passed in S.A.No.483/1971, whereby the suit of Amir Singh was dismissed on the ground that other co-owners were not joined in that eviction suit, but in the judgment passed by this Court, it was held that the portion occupied by Shri A.K. Guha is included in the property sold by above-mentioned auction sale to Sardar Amir Singh and his other associates. The SLP petition filed by Shri A.K. Guha against the aforesaid judgment was dismissed by the Supreme Court. By an order (Ex.P-2) dated 22/11/1989 passed in Misc. Petition No.1331/1985 filed by Sardar Ranjeet Singh and seven others, this Court quashed the order dated 9/1/1985 passed by the authority concerned, by which the portion of diverted plot nos.531 and 534 of Nazul Sheet no.293, Gorakhpur Jabalpur were allotted to Anil Kumar Guha and above-mentioned conveyance deed of lease dated 4/2/1985. The SLP petition filed by A.K. Guha against the above-mentioned order dated 22/11/1989 passed by this Court was also dismissed by the Hon'ble Supreme Court on 30/4/1990 (Ex.P-3).

5. The subsequent eviction suit was filed on 2/11/1983 by plaintiff no.1 Sardar Amir Singh, plaintiff no.2 Shri Meharchand and plaintiff no.3 Sardar Pyara Singh on pleadings that suit plot no.534/1 area 7139 sq.ft. is a part of the property purchased in auction sale. Managing Director of the evacuee property had issued a sale-certificate, on the basis of which plaintiffs became owners of the suit property. Previous suit No.59-A/1968 filed by Sardar Amir Singh was finally decided by this Court in Second

Appeal on 20/8/1976 and the suit was dismissed on the ground that according to the legal position prevailing at that time, other co-owners were not joined as co-plaintiffs. In oral partition happened on 29/3/1964 among auction purchasers, the suit property had fallen in share of three original plaintiffs. The defendant had never paid rent to the plaintiffs, but he became tenant in the suit accommodation of the plaintiffs by operation of law. The defendant had denied the title of the plaintiffs and claimed his own title. Plaintiffs are desirous of construction of house over the suit land. Demanded arrears of rent were not paid or tendered by the defendant after receiving the notice dated 26/2/1982 sent by registered post to the defendant prior to the suit and after receiving it, though defendant sent its reply dated 7/3/1982. Thus, tenant's eviction was sought on the grounds envisaged under Section 12(1)(a), (c) and (n) of the M.P. Accommodation Control Act.

6. It were the pleadings of the original defendant that the suit property was not included in the auction-sale and plaintiffs have purchased only adjacent immovable property. The relationship of landlord and tenant had never existed between plaintiffs and defendant. The plaintiff had terminated the tenancy of the defendant by a notice dated 19/5/1967 given prior to filing of the earlier eviction suit and as till date, suit for possession on the basis of title was not filed by the plaintiffs against the defendant, thus the defendant has acquired title over suit property on the basis of adverse possession. The plaintiffs are not entitled for any relief.

7. Issues were framed by the trial Court. Before trial Court, Jaspal Singh (P.W.-1) was examined for the plaintiffs and Kumari Shyama Guha (D.W-1) and her brother-in-law Corneal Narayan Chand Das (D.W-2) were examined for the defendant. After hearing the parties, trial Court found that the ground under Section 12(1)(n) of the Act was not proved, but trial Court decreed the suit for eviction of tenant, arrears of rent for the period of three years just prior to the filing of the suit and for *mesne profit* at higher rate on two other grounds namely, under

Sections 12(1)(a) and 12(1)(c) of the Act. The First Appellate Court recorded the finding that the ground of Section 12(1)(a) of the Act is not proved, but it affirmed the decree passed by the trial Court on the ground envisaged under Section 12(1)(c) of the M.P. Accommodation Control Act.

8. The learned counsel for the appellants vehemently contended that there was no privity of contract between the plaintiffs and late Shri A.K. Guha and as the question of ownership and title on the suit land was actually disputed, thus the suit filed under above-mentioned Act was not maintainable. It was proved by the defendant that the suit property occupied by the defendant, settled and apportioned in favour of original defendant by reducing the premium and rent of the aforesaid property, thus the lower Courts had erred in establishing the relationship of landlord and tenant between the parties. The tenancy of the original defendant was terminated much before filing of the subsequent suit and suit for possession on the basis of title was not brought within a period of 12 years from the date of terminating the tenancy and as the original defendant was claiming himself the owner of the suit property since the very beginning, i.e. from the date of allotment of the property, hence he had perfected his title by way of adverse possession. In peculiar facts and circumstances of the case, the denial of the title and ownership of the plaintiffs over the suit land by the defendant is totally *bonafide*. Thus, it is prayed that this second appeal be allowed and respondents' suit be totally dismissed.

9. On the other hand, the learned Senior Counsel for the respondents contended that admittedly, late A.K. Guha was inducted as a tenant by the custodian and later on, the custodian has informed him after auction-sale by a letter to pay the rent to the auction purchasers. A tenant remains always a tenant and could not become a owner of the tenanted premises, even if he had not paid rent to the auction purchasers for any month. It has also under Order 41 Rule 33 of CPC been argued that the First Appellate Court has committed an error in not decreeing the suit of the respondents on the ground of Section 12(1)(a) of the

M.P. Accommodation Control Act and thus, it is prayed that this second appeal be dismissed and the respondents' suit be decreed also on the ground envisaged under Section 12(1)(a) of the above-mentioned Act.

Substantial Question of Law No.1.

10. Admittedly, rent was never paid by Shri A.K. Guha in his lifetime and thereafter by appellants to any of the auction-purchasers. Substantial question of law no.1 is framed in relation to the attornment by the tenant to new landlord. But, this question has been answered long back by the Supreme Court in the case of **Mahendra Raghunathdas Gupta vs. Vishwanath Bhikaji Mogul and others (AIR 1997 SC 2437)** in following words in last lines of para no.6:-

"It is well settled that a transferee of the lands right steps into the shoes of the landlord with all the rights and the liability of the transferor landlord in respect of the subsisting tenancy. The section does not require the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlords rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejection."

11. Both of the lower Courts have concurrently found that the challenge to plaintiffs' title by the defendant has already been rejected by this Court in the judgment dated 20/8/1976 (Ex.D-6=P-1) and it was held that the present suit-accommodation was included in the above-mentioned auction sale of the evacuee property. Later on, this Court again in its order (Ex.P-2) dated 22/11/1989 passed in Misc. Petition No.1331/1985 again recorded its conclusion in last lines of para 7 in following words:-

"From all these documents referred to above, our conclusion is that all the lands comprised in plot nos.531 and 534 were put to auction and sold including the portion of the land in possession of respondent no.8 (Shri

A.K. Guha). Respondent no.8 was required to attorn in favour of the auction-purchasers as admittedly he was then lessee of the custodian.”

12. Present appellant no.2 Kumari Shyama Guha (DW-1) has admitted in her deposition (para 13) that the Managing-Officer-cum-Custodian of evacuee property, Indore had sent a written intimation that the suit plot had been sold to Amar Singh thus, in future rent be paid to Amar Singh, but her father nor she paid any rent to Amar Singh.

13. These findings were recorded by this Court on 20/8/1976 and 22/11/1989 in above-mentioned judgments passed in Second Appeal and Misc. Petition respectively and it is clear that these findings have attained finality. It is highly regrettable that the question of relationship of landlord and tenant though attained finality on 20/8/1976 between the parties, but it is being challenged by A.K. Guha and his LR's till date. It has been held by this Court in the case of **Ashfaq Ahmad and others vs. Nehru Singh and others (1989 JIJ 223)** that binding decisions of Supreme Court and High Court are binding on all and no exception can be made and faulty party is liable to be punished.

14. On the point of attornment, in reference to the provision of Section 109 of the Transfer of Property Act, the Full Bench decision of this Court in the case of **Sardarimal vs. Narayanlal (AIR 1980 MP 8)** and in the cases of **M/S Haji K.Assainar and company vs. Chacko Joseph (AIR 1984 Kerala 113)**, **Smt. Kalawati Tripathi and others vs. Smt. Damyanti Devi and another (AIR 1993 Patna 1)** and **Brij Bihari Prasad and another vs. Smt. Deoki Devi and another (AIR 1978 Patna 117)** are referable. In the light of the above-mentioned and previous binding judgments of this Court, it is clear that the original defendant and his LR's never attorned in favour of auction-purchasers, but by operation of law (Section 109 of T.P. Act) the respondents became the landlord in relation to the suit-accommodation and appellants became their

tenant. Substantial question no.1 is answered accordingly.

Substantial Question Nos.2 and 3.

15. Both these substantial questions of law are relating to title and ownership of the suit accommodation, thus they are being dealt with simultaneously.

16. From deposition of Jaspal Singh (P.W-1) and certified copy of the entry of the amendment register of the office of Superintendent of Land Record dated 10/8/1982 (Ex.P-5), it is clear that area of 7139 sq.ft. of the plot no.534 of Gorakhpur Jabalpur has been mutated in the names of Sardar Amir Singh, Pyara Singh and Meharchand, because due to partition between auction-purchasers above mentioned portion has fallen in share of above-mentioned three original plaintiffs and it was not divided between them as it was in possession of original defendant. From previous judgments of this Court passed in Second Appeal (Ex.P-1= Ex.D-2) and Ex.P-2 passed in misc. petition, it is clear that the land under the house no.281-A occupied by the defendant was included in the auction-sale and as these findings have attained finality, it is proved that the present plaintiffs are the owners of the suit accommodation.

17. The learned counsel for the appellants contended that under Article 67 of the Schedule of the Limitation Act, 1963, the prescribed period for getting possession from a tenant by landlord is within 12 years from the date when tenancy of the tenant is determined. It has been argued that before filing of the previous eviction suit against the defendant by Sardar Amir Singh only tenancy was terminated by notice dated 19/5/1967 in the year 1967 itself, thus the subsequent eviction suit filed by the three original plaintiffs on 02/11/1983 is clearly time barred. Previous suit filed by Sardar Amir Singh only was finally dismissed by judgment passed by this Court in above-mentioned second appeal and the relating conclusion of this Court in last lines of para no.9 were as follows:-

"Therefore, the plaintiff not being the sole owner and landlord of the suit land, he alone has no right to terminate the tenancy and file the suit for

eviction. The suit is liable to fail on this count alone.”

18. Thus, it is clear that by the notice dated 19/5/1967 given by Sardar Amir Singh only, the tenancy of the defendant was not terminated. Present plaintiffs have clearly pleaded in their plaint that before filing of the subsequent eviction suit, a notice (Ex.P-4) dated 26/2/1982 was sent, by which terminating the tenancy of the defendant, vacant possession and arrears of rent were also demanded, though the defendant did not comply with this notice and he sent his reply dated 7/3/1982 to it. Original defendant has clearly pleaded in beginning line of para no.13 of his written statement that his tenancy has not been determined vide notice dated 26/2/1982. It appears that the learned First Appellate Court had erred in recording the finding that in absence of postal receipt of the notice and acknowledgment, plaintiff remained unsuccessful in proving that before filing subsequent eviction suit, above mentioned notice dated 26/2/1982 was received by the defendant. The defendant has not specifically denied the fact of receiving notice dated 26/2/1982 and from sending its reply dated 7/3/1982, as was clearly pleaded in the plaint by three plaintiffs. In absence of specific denial of receiving notice and sending its reply, it should have been found proved that the defendant had received the notice dated 26/2/1982.

19. The learned counsel for the appellants has tried to challenge the partition between auction-purchasers, but now in changed legal position in the light of the cases of **Smt. Kanta Goyal vs. B.P. Pathak and others (AIR 1977 SC 1599)** and **M/S India Umbrella Manufacturing Co. and others vs. Bhagabandei agarwala (AIR 2004 SC 1321)**, it is well established that one co-owner and one co-landlord can file a suit for eviction against the tenant. Similarly, in the light of citation **Mohanlal Mintoal and another vs. Hakimsingh Gopalsingh and another (1980 M.P.L.J. 1961)**, where accommodation control Act is applicable, there is no necessity of any notice under Section 106 of the Transfer of Property Act

regarding termination of tenancy of the tenant.

20. Even the position of a tenant after termination of his tenancy is described in the case of **Shyamcharans vs. Sheoji Bhai (AIR 1977 SC 2270)** in following words :-

“A tenant even after the termination of his contractual tenancy does not become an unauthorized occupant of the accommodation but remains a tenant, such a tenant is conveniently called a statutory tenant. Whether the expression aforesaid borrowed from the English Law is quite apposite or not, but what is certain is that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the Act and on such termination his possession does not become wrongful, until and unless a decree for eviction is made, if he continues to be in possession even after the passing of the decree, he does so as a wrongful occupant of the accommodation.”

21. The defendant has taken pleadings in his written statement that he is owner of the suit premises and in the same breath, it has also been pleaded that he has become owner on the basis of adverse possession. In the case of **Karnataka Board of Waqf vs. Govt. of India and others [(2004) 10 SCC 779]** it has been observed that the pleas of title and adverse possession are mutually inconsistent and the later does not begin to operate until the former is renounced. In para no.12 of the same judgment it has also been observed that whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property.

22. Thus, in the light of the above-mentioned citations and oral and documentary evidence available on record, it is clear that both the lower Courts have not erred in holding that the plaintiffs' suit was not time barred and the defendants have not perfected their title by way of adverse possession. Formulated substantial question of law no.2 is answered accordingly.

23. It is contended by learned counsel for the appellants that as on 4/2/1985 a 'deed of conveyance of building constructed on lease-hold sites sold otherwise than by public

auction' (Ex.D-1) was executed in favour of original defendant, though this deed has been quashed by this Court by an order (Ex.P-2) passed by this Court in Misc. Petition No.1331/1985, it should have been assumed that the denial of the title of the plaintiffs by the defendant was *bonafide* and in these special facts and circumstances of the case, decree for eviction under Section 12(1)(c) of the Accommodation Control Act should not have been passed.

24. The written statement in subsequent eviction suit by original defendant was filed in the month of April, 1984 and by amendment incorporated in the written statement on 5/2/1986, by inserting a new para no.4-A pleading about the deed dated 4/2/1985 were inserted. It is clear from the judgment and order of this Court [above-mentioned] Ex.P-1 and P-2 that from the year 1955-56 just after the Govt. auction of the evacuee property, original defendant had started his challenge to the title of auction purchasers regarding suit accommodation. Admittedly, the possession of defendant had started according to his pleadings and the contents of Ex.D-1 as a lessee from the date of 1/9/1953. Thus, it is clear that about 30 years before obtaining Ex.D-1, he started assailing the title of the auction-purchasers adamantly.

25. Even the original defendant has clearly pleaded in paragraphs no.14 and 24 of his written statement about an order dated 22/3/1961 passed by the Settlement Commissioner and Managing Officer, Indore passed under Sections 27 and 36 of the Displaced Persons (Compensation And Rehabilitation) Act, whereby it was held that the land beneath the house no.281-A had been sold to the auction-purchasers in the auction held on 24/11/1955. This Court has also discussed about the above-mentioned order in its previous judgments Ex.P-1 and P-2. This Court has clearly mentioned in paragraph no.6 of its order dated 22/11/1989 that the original defendant was well aware of the weakness of his case, it was clear from the documents submitted by him to the authorities concerned, which have been discussed in that para. This Court in its judgment (Ex.P-1) passed in

second appeal has referred the order dated 22/3/1961 passed by the Chief Settlement Commissioner, whereby Rs.2800/- as compensation payable to Shri A.K. Guha was also fixed for the cost of construction made by him under Rules concerned. After the judgment of this Court passed on 20/8/1976 in second appeal the defendant continued to challenge the title and land-lordship of the auction-purchasers. Such conduct could not be termed as *bonafide*.

26. Even appellant no.2 Kumari Shyama Guha (D.W-1) in her deposition given on 14/3/2000 claimed that from the year 1953 her father and thereafter she with other LR's owned the suit accommodation. The undue advantage taken by the original defendant and appellants is fairly admitted by her in cross-examination in para No. 16 that from the year 1967 her father did not pay the rent to the custodian and auction-purchasers.

27. Thus, in light of the oral and documentary evidence available on record, the eviction decree passed by each of the lower Courts under Section 12(1)(c) of the M.P. Accommodation Control Act appears to be totally justified in the light of the case of **Kewal Kishan v. Dinanath [1992 (2) M.P.W.N. 29 Supreme Court]** and **Ibrahim vs. Abdul Jabbar [1993 J.L.J. 654]**, as the original defendant had dragged the auction-purchasers in various litigations for a period more than half a century. Such act of the tenant had definitely and substantially affected the landlord's interest adversely.

28. Thus, it is clear that the act of original defendant and his LR's /present appellants regarding denial of title of plaintiffs was not *bonafide* and thus, they are liable to be evicted under Section 12(1)(c) of the M.P. Accommodation Control Act and both the lower Courts have not committed any error in decreeing the suit on this ground. Substantial question no.3 is answered accordingly.

29. The First Appellate Court had not decreed the suit on the ground envisaged under Section 12(1)(a) of the M.P. Accommodation Control Act, thus the reference of 12(1)(a) in the formulated substantial question of law no.3 appears to be

erroneous. It has been prayed by the learned counsel for the respondents that under Order 41 Rule 33 of the C.P.C., decree on the above-mentioned ground of Section 12(1)(a) of the Act be granted, though the respondents have not filed any appeal or cross-objection. In this second appeal appellants have also filed an I.A. No.16128/15 for condonation of delay in depositing the rent on 8/12/2005 alongwith an affidavit of Kumari Shyama Guha and photocopy of receipt of the CCD dated 3/12/2015 of District Court, Jabalpur regarding deposit of Rs.450/- by the appellant no.1 before the trial Court.

30. The above-mentioned I.A. filed by the appellants has been strongly opposed by the respondents. It is clear that this Court on 20/8/1976 has decided in previous second appeal that auction-purchasers are landlord of the defendant and by an another order, this Court on 22/11/1989 quashed the order and document obtained by the defendant in the year 1985. The defendants and appellants did not show any respect for the binding pronouncements of this Court and continued with their previous adamant conduct. In such circumstances, I.A. No.16128/15 could not be allowed and is hereby dismissed.

31. As previously observed, the learned First Appellate Court had erred in not confirming the decree passed by the lower Court for the ground envisaged under Section 12(1)(a) of the Accommodation Control Act, but it is clear that the respondents did not file any cross-objection under Order 41 Rule 22 of the C.P.C. regarding ground of Section 12(1)(a) of the above-mentioned Act. The provision of Order 41 Rule 33 of the CPC can be invoked only if any other decree or order or such further order appears necessary. The reliefs claimed in the plaint have already been granted to the plaintiffs on other grounds by both of the Courts. Thus, in this second appeal there appears no necessity for any other decree or order to be passed. It has been held by the Supreme Court in the case of **Prahlad and others vs. State of Maharashtra and another [(2010) 10 SCC 458]** that the powers under Order 41 Rule 33 of CPC cannot be exercised when such part of the decree which has been permitted to become final

by a party is reversed to the advantage of that party. In this case the respondents have permitted the part of the decree passed by First Appellate Court regarding dismissal of their suit on the ground of Section 12(1)(a) of the above-mentioned Act and not filed any cross-objection after receiving notice of this second appeal in prescribed period, in my humble opinion, it would not be proper and just to invoke the powers of order 41 Rule 33 of the C.P.C.

32. In the result, the second appeal filed by the appellants is dismissed and the decree passed by the above-mentioned Addl. District Judge, Jabalpur is affirmed. Appellants shall bear the cost of this second appeal incurred by the respondents. A decree be drawn up accordingly.

(Ashok Kumar Joshi)

JUDGE
/02/2017