

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

**(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)**

**Second Appeal No.543/2006**

Siremal Jain (dead) through his LR

Vs.

Pankaj Kumar Jain & another

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Shri R.S Tiwari, Advocate for the appellants.

Shri Avinash Zargar and Shri Arvind Soni, Advocate for the  
respondent no.1 and 2.

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Whether approved for reporting : (Yes/No).

**J U D G M E N T**  
**(09.09.2019)**

This second appeal has been filed against the judgment and decree dated 22/12/2005 passed by the IXth Additional District Judge, Bhopal in Regular Civil Appeal No.40-A/2004, confirming the judgment and decree dated 29/07/2004 passed by the VIth Civil Judge, Class-II, Bhopal in Civil Suit No.22-A/2002, whereby the suit filed by the respondents/plaintiffs against the original appellant/defendant for eviction of the appellant on the suit premises on the ground of 12(1)(a), (c), (f) and (h) of the M.P Accomodation Control Act (hereinafter referred as Act) and for mesne profit has been decreed.

2. In the present case, it is not disputed that earlier Mulla Gulam Hussain was the owner and Landlord of the suit premises and the appellant occupied it as tenant of Mulla Gulam Hussain.

3. The respondents/plaintiffs filed this suit on 01/02/1995 with the averment that the suit premises has been purchased by the plaintiffs by registered sale deeds dated 25/04/1992 (Ex.P-9) and 27/04/1992 (Ex.P-2) separately. In other words some part of the suit premises has been purchased by respondent/plaintiff no.1 and some part by respondent/plaintiff no.2 and after purchasing of the suit premises both the plaintiffs/respondents gave joint notice to the appellant/defendant that they have purchased the suit premises and now defendant is their tenant and liable to pay Rs.431/- as rent per month as was being paid to Mulla Gulam Hussain and plaintiffs by their personal consent demanded the rent of Rs.250/- for plaintiff no.1 and the rent of Rs.181/- for plaintiff no.2. and also informed him that the house is very old and in deprecated condition and not safe for human resident, therefore re-construction is to be done and suit premises is required for bonafide need of them. But the defendant did not pay the arrears of the rent and did not vacated the house. Therefore the suit for eviction and recovery of rent and mesne profit has been filed. In the written statement the defendant denied the facts mentioned in the plaint and did not admit the fact that the respondents/plaintiffs are owner of the suit premises and he is tenant of them and also denied the fact that the plaintiffs have right to get vacant possession of the suit premises on the grounds mentioned

by them in the plaint. Therefore the plaintiff has amended the plaint and also claimed eviction of the defendant on the ground of denial of title of them which substantially effect the interest of the plaintiff. Therefore they are also entitled to possession on the ground of section 12(1) (c) of the Act. During the trial, the appellant/defendant did not pay arrear of rent, therefore his right to defend the suit against the eviction has been struck down by order dated 16/04/1998. Learned Trial court decreed the suit for eviction on the ground of section 12(1)(a), (c), (f) and (h) of Act and also directed to pay arrears of rent from 01/05/1992 to 31/05/1995 and thereafter from the date of institution of the suit till disposal of the case as *mesne profit*.

4. The defendant/appellant challenged the aforesaid decree of the learned trial court before the District Judge, Bhopal raising the objection that the suit is not maintainable as there is error of misjoinder of cause of action and the plaintiffs and the right of defence of the defendant/appellant has been wrongly struck down and the defendant/appellant has not been given due opportunity to adduce evidence and his prayer on the ground of old age to record his statement on commission in accordance with the law under Order 26 Rule 1 or 4 of the C.P.C has been wrongly dismissed. Therefore the defendant can't adduce evidence to prove his defence. Learned trial court has committed error arriving at the conclusion that the defendant is tenant of the plaintiffs and the ground of eviction under section 12(1)(a) of the Act has been proved by the plaintiffs as unless the rent is determined separately payable to both the plaintiffs, the

defendant/appellant can't be held defaulter of payment of the rent and this aspect has been ignored. Similarly the plaintiffs have failed to establish the bonafide requirement of the premises as it is not pleaded that the accommodation earlier given for non-residential purpose and also there is no evidence that the plaintiffs are the owner of the premises. Similarly for the eviction under section 12(1)(h) of the Act, the pleading under section 12(7) of the Act has not been made and also no evidence has been adduced and denial of the title of the alleged Landlord which is not attorned by the defendant can't be a ground of eviction under section 12(1)(c) of the Act. Apart from it, the statement of Manju Agrawal (PW-1) as an attorney of plaintiff Shanti Bai, in absence of statement of Shanti Bai is not considerable in evidence. Accordingly, the judgment and decree passed by the trial court is not sustainable. The First appellate Court rejected the aforesaid contention and confirmed the finding of the learned trial court. Hence this appeal.

5. In this appeal, again on the basis of aforesaid grounds, it is submitted that the impugned judgments and decrees are based on erroneous findings. If suit is filed for bonafide need the plaintiffs have to plead to be owner of the property then defendant/tenant has right to deny the fact of ownership and such denial cannot be said to be a ground under section 12(1)(c) of the Act. Learned appellate court has also not taken pain to re-appreciate the entire evidence independently before confirming the finding of the lower court. Therefore the impugned judgments and decrees deserve to be set aside.

6. This Court by order dated 24/07/2006 admitted this appeal on the following substantial questions of law:-

- (1) Whether the suit of the plaintiffs is barred under Order 2 Rule 3 of the C.P.C ?
- (2) Whether the determination of proportion of rent of the suit house payable by the defendant and splitting of his tenancy, unilaterally by the plaintiffs, is contrary to the provision of Section 109 of the Transfer of Property Act, 1882 ?
- (3) Whether the learned trial court was not justified in closing the right of the defendant to cross examine plaintiffs' witness and in rejecting the application of the defendant filed under the provisions of Order 26 Rule 1 C.P.C for his examination on commission on the ground of illness supported with medical certificate ?
- (4) Whether the findings of the learned Courts below that the plaintiffs are entitled to evict the defendant under section 12(1)(a) of the M.P Accommodation Control Act, 1961, even without service of separate notice of demand to the defendant by the plaintiffs ?
- (5) Whether tenant can challenge the derivative title of the plaintiff and if the derivative title has been challenged, whether a decree under section 12(1)(c) of the M.P Accommodation Control Act, 1961 can be validly be granted ?
- (6) Whether without any pleading in the plaint that the suit house was let out to the defendant for non-residential purposes, the plaintiffs are entitled to evict the defendant on the ground of bonafide requirement under section 12(1)(f) of the M.P Accommodation Control Act, 1961 ?
- (7) Whether the findings of the learned Courts below that the plaintiffs required the suit house for reconstruction

are perverse, contrary to and in the absence of proof of the mandatory requirements of the provision of section 12(7) of the M.P Accommodation Control Act, 1961, and based on no evidence, hence not sustainable in law?

- (8) Whether the Courts below were justified in granting the decree under section 12(1)(c) of the M.P Accommodation Control Act, 1961, in view of the judgment passed by this Court in the case of **Bhojraj Ramesh Chandra and Others Vs. Ghanshyamdas Agrawal**, 2000(II) MPJR 355 ?

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7. Learned counsel appearing on behalf of the respondents/plaintiffs submitted that the findings of the learned both courts below are in accordance with law and there is no need of any interference and sufficient opportunity of hearing was given to the defendant to cross examine plaintiff Pankaj Jain and to examine himself and their defence against the eviction was struck down on account of non-payment of the rent as required under the law and all the necessary ingredient required to get order of eviction against the defendant have been proved. Looking to concurrent finding of the both courts below, without any legal error can't be set aside. Hence the appeal be dismissed.

8. During the pendency of the appeal on behalf of the appellant/defendant, IA No.12545/2018 dated 09/09/2018 has been filed to amend the memo of the appeal and to add new ground based on subsequent events stating that other tenants of the suit premises have vacated the accommodation against whom suits were filed by the plaintiff on the ground of bonafide need. Therefore the bonafide

need of the suit premises has been ceased. In this regard IA No.12542/2018 dated 09/09/2018 under Order 6 Rule 17 of the C.P.C has also been filed for amendment in the written statement and IA No.12543/2018 dated 09/09/2018 under Order 41 Rule 27 of the C.P.C and IA No. 9716/2013 under Order 41 Rule 27 for permitting to adduce the evidence to prove the aforesaid fact in order to establish that no cause is survived with regard to said bonafide need of the accommodation.

9. Having heard learned counsel for the parties and on perusal of the record, the aforesaid substantial legal questions are being answered in the following manner :-

**Question No.1:-**The appellant has contended that the suit is barred under Order 2 Rule 3 of the C.P.C as two different purchaser of separate portion of tenanted premises can't bring joint suit for eviction or arrears of the rent. But this contention has no merit. The aforesaid objection will not govern by the provision of Order 2 Rule 3 of the C.P.C as the provision of Order 2 Rule 3 is related to joinder of cause of action by one plaintiff against defendant or defendants jointly. While the objection is that the plaintiffs jointly can't bring the present suit. It means there is misjoinder of the plaintiff. This objection will be governed by the provision of Order 1 Rule 1 of the C.P.C, which is as under:-

#### **1. Who may be joined as plaintiffs**

All persons may be joined in one suit as plaintiffs where--

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to

exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.

10. This Court in the judgment of **Banke Lal Vs. Madho Prasad (1997)2 MPJR 303** followed the judgment of **M/s Hari Ram Fatan Das & others Vs. Kanhaiya Lal & others (AIR 1975 Rajasthan 23)** held that when the suit property are purchased by separate persons by separate deeds, then the suit by all of them for eviction of the whole property is maintainable. Accordingly this Court has given answer of the aforesaid legal question earlier. Therefore, the question does not fall within the purview of the question of substantial question of law as it is already answered by the aforesaid judgment of this Court. This court is bound to follow the same and no challenge is made about the correctness of the aforesaid judgment. Hence the question no.1 is determined accordingly.

11. **Question no.2:-** It is contended by the learned counsel for the appellant that for determination of proportion of the rent payable by the defendant splitting of his tenancy unilaterally by the plaintiffs is contrary to the provision of section 109 of the Transfer of the Property Act and in this regard learned counsel for the appellant has placed reliance on the judgment of this Court passed in the case of **Kajodimal Vijaylal Vs. Darbarilal Devilal (1960 M.PL.J 172)**, but this judgment has not laid down any law on the question raised here. In the judgment it is laid down that leased premises in possession of lessee sold in parts by lessor to different purchasers.



The possession of lessee does not become wrongful and the suit by purchaser against lessee for recovery of damages or *mesne profit* is incompetent and he should sue for determination of rent in proportion as the lessee has right to continue in possession as tenant. He would be liable for payment of the rent, the proportion of which would be determinable in a suit designed for the purpose in the absence of any amicable settlement amongst all the parties concerned.

12. In the present case the situation is different both the plaintiffs/respondents have claimed jointly the rent, which was payable to the erstwhile Landlord and the amount of rent is not disputed. The appellant being a tenant is under obligation to pay the rent and in the present case determination of the apportionment of the rent by the plaintiff unilaterally does not adversely effects any right of the appellant/defendant and the plaintiffs have not claimed that the possession of the defendant/appellant is as trespasser or he is not their tenant for getting the relief. In the present case, the plaintiffs are not required to take course of provision of Section 109 of the Transfer of the property Act and the defendant in the present suit can't take any advantage of unilateral determination of the proportionate of rent by the plaintiff. Therefore it can't be held that the aforesaid act of the plaintiff is contrary to the provision of section 109 of the Transfer of the Property Act. The aforesaid question is answered accordingly.

13. **Question no.4:-** It is concurrent finding of the both courts below that the appellant/defendant had not paid arrears of

the rent despite of the demand by notice in stipulated period and as per the requirement of section 13(1) of the Act, therefore his defense against the eviction was struck down, as per the provision of section 13(6) of the Act. On the aforesaid fact, the ground under section 12(1)(a) of the Act has been found to be proved. Against it, the objection of the appellant/defendant is that as no separate notice of demand was given by the plaintiffs to the defendant, therefore the ground of eviction under section 12 (1)(a) of the Act is not established. The aforesaid contention has no worth. The tenant is bound to pay the rent if he wants to enjoy the protection given under the Act. Even if he has objection with regard to the entitlement of the rent amount apportioned by them without the consent of the tenant. The amount should be deposited before the trial court subject to adjudication of the dispute with regard to the apportionment of the rent and entitlement of the rent separately by the plaintiffs. Merely raising the issue he can't claim that he is not under obligation to pay the rent to the plaintiffs and has right to enjoy the fruit of the tenancy without paying rent to anybody until the objection is adjudicated by competent court. The object of the demand notice under the Act is to provide an opportunity to the tenant to pay the amount within 2 months after receiving of the notice. In case of any dispute raised under section 13(1) of the Act with regard to amount of rent payable by the tenant within stipulated time, after adjudication of this objection he will pay whole amount in accordance with the direction of the Court and further deposit the rent every month till the

disposal of the case. In non-compliance of such provision the tenant is liable to be evicted as per provision of section 12 (1)(a) of the Act. Therefore in the present case, it can't be held that the learned both courts below has committed any error holding that the plaintiffs are entitled to decree under section 12(1)(a) of the Act as the separate notice of demand is not requirement of the law in the present case.

14. **Question no.5 & 8:-** On behalf of the appellant, it is contended that the denial of the derivative title of the plaintiffs is not a ground for eviction under section 12(1)(c) of the Act and in this regard reliance has been placed on the judgment of this Court passed in the case of **Bhojraj Ramesh Chandra and Others Vs. Ghanshyamdas Agrawal, 2000(II) MPJR 355** in which it is held that when the suit is filed for eviction under section 12(1)(e) and 12(1) (f) of the Act and the title of the Landlord has been denied no rule of estoppels will be applied to case of eviction and the denial will not form a ground of disclaimer under section 12(1)(c) of the Act as suit filed for eviction on ground of bonafide requirement, the plaintiff is required to prove his ownership in such cases the denial of the title in written statement is no ground of eviction under section 12(1)(c) of the Act. In the case of **Ram Sewak Vs. Dr. Chakresh Kumar 2002 (3) M.PLJ 604** this Court has held that mere denial of the acquisition of title of suit house by plaintiff on basis of Will by defendant cannot be termed as disclaimer of title so as to furnish a ground for eviction under section 12(1)(c) of the Act.

15. In reply the learned counsel of the plaintiff/respondent has placed reliance on the Three Judges Bench judgment passed by the Apex Court in the case of **Tej Bhan Madan Vs. II Additional District Judge & others (1988)3 SCC 137** in which it is held that the denial of derivative title of vendee-landlord on ground that the vendor of the premises, to whom the tenant had attorned, had himself no title and the act amount to denial of Landlord's title. But in this case, the tenancy was attorned by the tenant and the rent was also paid by the tenant to successor-in-interest of reversion ever since such assignment or succession. Contrary to it, in the present case there is no attornment of the tenancy and there is no payment of rent to the plaintiffs by the defendant/tenant. Hence the aforesaid judgment is not applicable in the present case.

16. Learned counsel for the respondents/plaintiffs has also placed reliance on the judgment of the Apex Court passed in the case of **Keshar Bai Vs. Chhunulal (2014)11 SCC 438** in which it is held that if title of the Landlord has been denied in the written statement, it creates a ground of eviction under section 12(1)(c) of the Act. When there is sufficient evidence to prove the title of the plaintiffs and the defendant is aware about the sale deeds the denial of the title led his eviction from the tenanted premises on the ground of section 12(1)(c) of the Act. But this case has been decreed mainly on the ground of section 12(1)(c) of the Act and other ground of bonafide requirement was not found to be proved. In the present case, the defendant/appellant has challenged the title of the plain-

tiffs/respondents from the beginning. In the reply of the notice Ex.P-5, the title of the plaintiff/respondents has been denied and civil suit was also filed against the plaintiff/respondent and the previous owner and the judgment of that suit is Ex.P-6. These circumstance shows that the defendant/appellant challenged the title bonafidely claiming that they have entered into contract with the previous owner to purchase suit premises despite of plaintiff/defendant claim that with the connivance of the previous owner purchased by fraud. However the suit was dismissed but when the derived title has not been accepted and no rent has been paid and the validity of the transaction has been challenged by separate suit. It can't be said that such act of the defendant adversely effect the interest of the landlord. Hence it is held that the defendant/tenant can challenge the derived title of the plaintiffs and if the challenge is bonafide, the decree under section 12(1)(c) of the Act can't be granted and in the present case both the courts are not justified in granting the decree under section 12(1)(c) of the Act in view of the judgment passed by this Court in the case of ***Bhojraj Ramesh Chandra and Others Vs. Ghanshyamdas Agrawal*** (supra).

17. **Question No.7:-** It is contended by learned counsel for the appellant that the findings with regard to requirement of the suit house for re-construction are perverse and contrary to law. In absence of the pleading required under the provision of section 12(7) of the Act, and lacking of the evidence to prove such facts, the ground can't be said to be proved.

18. Having perused the record, in view of this Court the finding with regard to the requirement of the suit house for reconstruction has been established by the plaintiff can't be said to be perverse as there are statement of plaintiff Pankaj Jain, and Manju Agrawal and independent witness of Chaganlal with regard to deprecated condition of the house and non-suitable for human habitant, which has remained unimpeachable during the cross examination and there is no evidence in defence to revert the evidence as the defence was struck down and the plaintiffs have also proved availability of money required for re-construction and Bank officer S.S Saxena & Azad Kumar Jain has proved FDRs of the plaintiffs and Chartered Accountant Vinod Jain has proved the financial capacity of the plaintiff stating that as per the record of the business transaction of Pankaj Jain, he can spent 5 to 6 lacs on the reconstruction of the house. Therefore the contention has no substance and the finding that the plaintiff required suit house for reconstruction can't be said to be perverse as there are sufficient evidence on record to establish the fact.

19. However in the present case, there is no averment in the pleading and there is no evidence with regard to plan of reconstruction and estimation of expenditure and as per provision of section 12(7) of the Act no order of the eviction of the tenant shall be made on the ground of specified under Clause (h) of sub section (1) of Section 12 unless the Court is satisfied that the plan and estimation of such reconstruction have been properly prepared and that necessary

fund for reconstruction are available with the Landlord. On record Ex.P-3 is a map about which Manju Agrawal (PW-1) has stated that it is a part of the sale deed Ex.P-2. As in this Case no such plan and estimation are available therefore it can't be said that the available fund was sufficient to meet the requirement. Hence in absence of the proof of the aforesaid mandatory requirement of provision of section 12(7) of the Act, the finding that the plaintiffs have established a ground of eviction of defendant/appellant under section 12(1)(h) of the Act is not sustainable. Accordingly, this question is determined in favour of the appellant.

20. **Question No.6:-** On behalf of the learned counsel for the appellant, it is contended that there is no pleading of the plaintiff that the suit premises was let out to the defendant for non-residential purpose. Therefore, it can't be said that the plaintiffs have established the ground of eviction under section 12(1)(f) of the Act. In view of this Court the aforesaid contention has no substance as in paragraph 2 of the plaint, it is described that the suit premises is a shop and in ordinary meaning the accommodation calling in the name of the shop is used for business purpose. In the written statement it is not replied that the suit premises is not the shop and was not using for non-residential purpose and in this regard no objection has been made before the trial court or first appellate court and there is no evidence on record that suit premises was let out to the defendant other than non-residential purpose. Therefore the objection of the appellant/defendant that on account of the aforesaid rea-

son the plaintiffs are not entitled to get order of eviction of the defendant/appellant under section 12(1)(f) of the Act is rejected.

21. **Question No.3:-** On behalf of the appellant, it is submitted that the learned trial court was not justified in closing the right of the defendant to cross examine the plaintiff witnesses and rejecting the application of the defendant filed under Order 26 of the C.P.C for his examination on the commission on the ground of illness supported with the medical certificate. But this contention has no substance. On perusal of the order sheet of the trial court, it appears that sufficient opportunities have been given to cross examine the plaintiffs witnesses. The order sheet dated 21/01/2004 is the evidence on fact that numbers of time the case was adjourned for providing the opportunity but no cross examination was made to Pankaj Jain and lastly the request for adjournment for cross examination to the witness has been refused. In such circumstance, it can't be said that no due opportunity have been given to the defendant/appellant to cross examine the plaintiffs witnesses. Thereafter trial court has fixed the case on 07/02/2004 for evidence of the defendant/appellant but despite of producing the evidence, the application for recalling of the order dated 21/01/2004 was filed, which was rejected with cost on 31/03/2004 after due consideration and passing speaking order and the case was further fixed for the defendant/appellant evidence and the case was adjourned on 15/04/2004 and thereafter on 27/04/2004 despite of producing the evidence an interlocutory application was filed which was rejected by order dated 01/05/2004



and the case was fixed for defendant evidence on 06/05/2004 and on 06/05/2004 further time was sought by the defendant/appellant and the case was adjourned on 13/05/2004 and despite of producing the evidence the interlocutory application was filed, which was rejected on 08/07/2004 and last opportunity was given and the case was fixed for the defendant evidence on 16/07/2004 and on 16/07/2004 despite of adducing any evidence an application under Order 26 of the C.P.C was filed by junior counsel on behalf of engaged counsel stating that the counsel is out of station while there was signature of the counsel on the application dated 16/07/2004. Therefore considering the fact that the counsel is deliberately absent and the application for taking statement on commission is not supported by any government medical doctor and only supported by retired medical practitioner and considering the previous conduct of the defendant, the application was rejected as it was intended to cause delay in the trial being a tenant. In the aforesaid circumstance, it can't be said that learned trial court has committed legal error in rejecting the application even supported by registered medical practitioner to show illness of the witness. If the defendant had been actually ill and was not in a position to move to the court this fact would have been brought to the notice of the trial court earlier during the period the case was adjourned several times for the evidence of the defendant. The whole conduct of the defendant categorically established the fact that he was interested to delay the case by adopting every delaying tactics. Therefore it can be held that the rejection

of the application under Order 26 of the C.P.C for examination on the commission on the ground of illness supported with medical certificate was unjustified.

22. On behalf of the appellant/defendant, IA No. 12545/2018 dated 09/09/2018 for an amendment in the memo of appeal and IA No. 12542/2018 dated 09/09/2018 and IA No. 12543/2018 dated 09/09/2018 under Order 41 Rule 27 of the C.PC have been filed with a view to amend the written statement and to prove the fact that during the pendency of this appeal other tenant of the suit house have evicted the premises in compliance of the decrees passed against them on the ground of bonafide need of the plaintiff/respondent and to establish that bonafide need of the plaintiff of the suit premises has been ceased, therefore they are not entitled to get order of the eviction against the appellant/defendant to evict the suit premises on the ground of section 12(1)(f) of the Act.

23. Learned counsel for the appellant has placed reliance on the judgment of Three Judges Bench of the Apex Court in the case of ***Hasmat Rai & another Vs. Raghunath Prasad AIR 1981 SC 1711*** in which it is held that the subsequent changes in the circumstances, establish the end of the need of the Landlord should be considered and opportunity be given to the defendant to establish the fact.

24. Learned counsel for the defendant/appellant has also raised objection that learned first appellate court has not exercised it's power judiciously as no independent appreciation of the evi-

dence has been made and the objection raised by the appellant in the appeal have not been considered in accordance with the law. Therefore, the decree passed by the Additional District Judge in appeal deserve to be set aside and the case be remanded to the appellate court for rehearing and fresh disposal and in this regard reliance has been placed on the judgments of the Apex Court in the case of **United Engineers & Contractors Vs. Secretary to Government of Andhra Pradesh & others (2014)16 SCC 109, C. Venkata Swamy Vs. H.N. Shivanna (dead) by legal Representatives & another (2018)1 SCC 604, Sudarsan Puhan Vs. Jayanta Ku. Mohanty & others 2019 (3) MPLJ 13** in which it is held that the first appellate court is under legal obligation to decide all issues arising in the case both on law and facts after appreciating the entire evidence keeping in view requirement of Order 20 Rule 4(2) read with Order 41, Rule 31 of the C.P.C and in the present case, learned first appellate court has not made any attempt to re-appreciate the evidence while the first appellate court is the final court on the finding of fact. In present case, the first appellate court has not appreciated the evidence with regard to grounds of eviction under section 12(1)(f) and 12(1)(h) of the Act.

25. Learned counsel for the plaintiffs/respondents has submitted that the plaintiffs have filed this case in the year 1995 and this appeal is also pending since 2006. The concurrent fact finding of the both courts below about the bonafide need can't be substituted in the light of the changed circumstance. Apart from it, in the

present case the plaintiff has also established other grounds of eviction and if other grounds are also established no purpose will be served except to delay the case, if such opportunity is given. Hence all the aforesaid applications and contention be rejected.

26. On perusal of the record, it is found that the contention has substance as learned first appellate court has not made any attempt to appreciate the evidence on the facts required to be proved for establishing the ground under section 12(1)(f) and 12(1)(h) of the Act. But in view of this Court the aforesaid error is not sufficient in the present case to set aside the decree and send the case to First appellate court for fresh adjudication as in this appeal the decree of eviction is not based only on the ground of section 12(1)(f) and 12(1)(h) of the Act. The ground of section 12(1)(h) has not been found to be proved by this Court and the aforesaid error will effect only the ground of section 12(1)(f) of the Act.

27. Similarly allowing the application for establishing the subsequent change would also effect the ground of 12(1)(f) of the Act. But in the case there is concurrent finding of the both courts below on the ground of section 12(1)(a) of the Act, therefore despite of aforesaid error in the judgment of the first appellate court, and the entitlement of the defendant to get opportunity to establish the subsequent circumstance to negate the ground of 12(1)(f) of the Act, there is no justification to set aside the entire decree of eviction on the basis of the aforesaid reason. While the plaintiffs are litigating

this case since 1995. Hence the aforesaid contentions are rejected on the ground of the aforesaid reasons.

28. In view of the aforesaid discussions, it is held that the plaintiffs/respondents are not entitled to decree of eviction with regard to the suit premises against the appellant on the basis of ground under section 12(1)(c), 12(1)(f) and 12(1)(h) of the Act, thus, to that extent the findings of the both courts below deserves to be set aside. However in the case there is concurrent finding of the both courts below with regard to relationship of Landlord and Tenant of the plaintiffs and defendant and with regard to ground under section 12(1)(a) of the Act for entitlement of order of eviction against the appellant. Therefore this appeal against the relief of eviction of the appellant/defendant from the suit premises and payment of arrear of rent and mesne profit is dismissed and the decree be prepared accordingly.

29. The appellant will pay the cost to the plaintiff/respondent of this appeal as well cost of both courts below and counsel fee added in the cost memo on certification in accordance with the relevant rules.

30. A copy of the judgment and the decree along with the record be sent to the trial court for compliance.

**(J.P.Gupta)**  
**JUDGE**

**HIGH COURT OF MADHYA PRADESH,**  
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**(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)**

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(J.P.GUPTA)  
JUDGE  
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**HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR**

1	Case Number	S.A No. 543/2006
2	Parties Name	Siremal Jain (dead) through his LR Vs. Pankaj Kumar Jain & another
3	Date of Judgment/Order	09/09/2019
4	Bench Constituted of	Hon. Shri Justice J.P. Gupta
5	Judgment delivered by	Hon. Shri Justice J.P. Gupta
6	Whether approved for reporting	YES
7	Name of the counsel for the parties	Shri R.S Tiwari, Advocate for the appellant.  Shri Avinash Zargar and Shri Arvind Soni, Advocates for respondent no.1 and 2.
8	Law laid down & Significant paragraphs number	<p>(i) When the suit premises are purchased the plaintiffs by separate deeds then the suit by all of them for eviction of the suit premises is maintainable and such suit is also maintainable in absence of determination of apportionment of the rent under section 109 of the Transfer of Property Act.</p> <p>(ii) The Tenant has right to challenge the derivative title of the plaintiff bonafidely in absence of attornment of the tenancy or payment of the rent and no decree can be passed under section 12(1)(c) of the M.P Accommodation Control Act.</p> <p>(iii) The first appellate court is under legal obligation to decide all issues arising in the case both on law and facts after appreciating the entire evidence keeping in view requirement of Order 20 Rule 4(2) read with Order 41, Rule 31 of the C.P.C (followed the judgment of the Apex Court in the cases of <b><u>United Engineers &amp; Contractors Vs. Secretary to Government of Andhra Pradesh &amp; others (2014)16 SCC 109, C. Venkata Swamy Vs. H.N. Shivanna (dead) by legal Representatives &amp; another (2018)1 SCC 604, Sudarsan Puhan Vs. Jayanta Ku. Mohanty &amp; others 2019 (3) MPLJ 13</u></b> )</p>

		<p>(iv) The subsequent changes can be considered at the stage of second appeal with regard to negate the bonafide need of the premises on the ground that other accommodation has been vacated by other tenants to fulfill the requirement as laid by the Three Judges Bench judgment passed by the Apex Court in the case of <b><u>Tej Bhan Madan Vs. II Additional District Judge &amp; others (1988)3 SCC 137</u></b> However when other ground(s) of eviction has also been proved, there is no need to give opportunity to the tenant to get the ground adjudicated in the light of the changed circumstance.</p> <p>(v) No decree of eviction can be passed on the ground of section 12(1)(h) unless the pleading and evidence is led to establish the facts necessary to get entitlement of the order of the eviction under section 12(1)(h) of the Act.</p>
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**(J.P. GUPTA)**

**Judge**