

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

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 24th OF APRIL, 2025**

SECOND APPEAL No. 2294 of 2024

M/S JAGANNATH KASTURCHAND

Versus

SMT. RASHMI JAIN AND OTHERS

Appearance:

Shri Vipin Yadav and Shri Raunak Yadav - Advocates for the appellant.

Ms. Priyanka Tiwari - Advocate for respondents.

ORDER

This second appeal has been preferred by the appellant/defendant 1/tenant challenging the judgment and decree dated 12.08.2024 passed by 23rd District Judge, Jabalpur in RCA No.186/2023 affirming the judgment and decree dated 29.04.2023 passed by 22nd Civil Judge Senior Division, Jabalpur in RCSA No.3200103/2013 whereby Courts below concurrently decreed the respondents 1-2/plaintiffs' suit for eviction on the grounds under section 12(1)(a),(c) & (f) of the M.P. Accommodation Control Act, 1961 (in short 'the Act').

2. Learned counsel for the appellant submits that original owner of the suit property was Sawai Singhai Munna Lal, who had let out a shop admeasuring 540 sq.ft. to Kasturchand, situated in survey No.772, Jawaharganj, Jabalpur. He

submits that previously a civil suit was filed for eviction against the defendant in respect of said property by daughter-in-law and grand son of Sawai Singhai Munna Lal, namely Bhuri Bai and Rajkumar on the ground of bonafide requirement available under Section 12(1) of the Act, but was dismissed by trial Court on 27.08.1986 and First Appeal filed against which was also dismissed on 30.08.1990. He submits that vide judgment and decree dated 13.02.2001, second appeal filed by the landlord was allowed, but Hon'ble Supreme Court vide final judgment dated 10.12.2007 set aside the judgment and decree of High Court and remanded the matter for decision of second appeal afresh, but thereafter the second appeal has been dismissed on 19.08.2011 for want of prosecution. He submits that during that period plaintiff 1- Rashmi Jain on the basis of false and fabricated registered power of attorney dated 18.05.2009 (Ex.P/2) got executed registered sale deed in her favour on 21.12.2009 (Ex.P/1) in respect of part of the rented property admeasuring 243 sq.ft. and on that basis instituted instant civil suit on 26.04.2011 for eviction on the grounds under Section 12(1)(a),(c) & (f) of the Act, which has wrongly been decreed by trial Court and affirmed by first appellate Court vide impugned judgment and decree dated 12.08.2024.

3. Learned counsel for the appellant submits that undisputedly tenancy was in respect of an area 540 sq.ft. and as per settled law, tenancy cannot be split up and as such decree granted by Courts below in respect of part of the property

having an area 243 sq.ft. is not sustainable. He further submits that although the plaintiffs have produced and marked registered sale deed dated 21.12.2009 in evidence as Ex.P/1, but in presence of denial of execution of sale deed in the written statement, the same was required to be proved as per provisions of the Evidence Act and in absence thereof, the same is not admissible in evidence. He submits that Courts below have committed illegality in taking into consideration the aforesaid sale deed without its proof in accordance with the provisions of Evidence Act and without considering this aspect of the matter, committed illegality in decreeing the suit.

4. In support of his submissions, learned counsel for the appellant placed reliance on the decisions in the case of Rekha wd/o Vijay Singh Rana and Ors. vs. Smt. Ratnashree w/o Rajendra Kumar Jain, **AIR 2006 MP 107**; Khuman Singh vs. Nathuram, **(1991) JLJ 348**; Ram Sewak and Ors. vs. Chakresh Kumar Jain, **(2002) 3 MPLJ 604**; Manisha Lalwani vs. Dr. D.V. Paul, **(2007) 2 MPLJ 52**; Gyanchand Badkul vs. Shalegram and another, **(2002) 2 MPLJ 362**; Kajodimal Vijaylal vs. Darbarilal Devilal, **1960 MPLJ 172**; Bachchoobhai vs. Premanand Bhiogadhe, **AIR 1976 MP 8**; Chhoglal vs. Idol Of Bhagwan Shri Satyanarayan Through Pujari Kamaldas Guru, Narayandas Bairagi, **AIR 1976 MP 5**; Kumar Krishna Prosad Lal Singha Deo vs. Baraboni Coal Concern Ltd. and Ors., **AIR 1937 PC 251**; Sheela and Ors. vs. Firm Prahlad Rai Prem Prakash, **(2002) 3 SCC 375**; and Sait Tarajee Khimchand and Ors. vs.

Yelamarti Satyam and others, **AIR 1971 SC 1865**. With these submissions he prays for admission of second appeal.

5. Learned counsel appearing for respondents/plaintiffs supports the impugned judgment and decree passed by courts below and submits that in pursuance of the judgment and decree of eviction, executing Court has already delivered possession of the rented shop to the plaintiffs on 06.09.2024.

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

7. In the present case, title of Sawai Singhai Munna Lal and status of the appellant/defendant as tenant in the suit property is not in dispute. Previously instituted suit was filed by daughter-in-law-Bhuri Bai and grandson-Rajkumar, of Sawai Singhai Munna Lal. This civil suit has come to an end, by way of order dated 19.08.2011 passed in second appeal, whereby second appeal has been dismissed for want of prosecution. In the previously instituted suit, title of the plaintiffs (of previous suit) was not under challenge.

8. In the present case, a part of the rented property had been purchased by plaintiff 1-Rashmi Jain vide registered sale deed dated 21.12.2009. By issuing the notice dt.09.12.2010 (Ex.P/5) the plaintiff apprised the defendant 1 from purchase of the property vide regd. sale deed. Firstly, in the reply notice and then in the written statement also the defendant 1/appellant did not deny execution of sale deed. However, in paragraph 1(h) of the written statement, the defendant 1 has challenged execution of power of attorney but has not examined

any person to disprove the registered power of attorney. Apparently the defendant (DW-1) in his oral testimony has not stated anything about veracity of the sale deed or the power of attorney. In the case of Prem Singh and Ors. vs. Birbal and Ors., (2006) 5 SCC 353 Hon'ble Supreme Court has held that there is presumption of valid execution in respect of registered document.

9. In the case of Rekha wd/o Vijay Singh (**supra**), a Division Bench of this Court, has held as under :

"In a suit for ejectment filed by the purchaser of a property against the tenant, if the tenant admits that his landlord has executed a sale deed in favour of a purchaser (present landlord) in regard to the property in his occupation, it may be sufficient for the present landlord to merely mark the original deed or a certified copy of the sale deed to prove the contents of the sale-deed. On the other hand, if the tenant denies the execution of the deed of sale by his landlord in favour of the person filing the suit for ejectment as purchaser, mere production and marking of the original or certified copy of the sale deed will not be sufficient to prove of the sale deed. In that event, as noted above, it will be merely proof of the fact that an original document was registered in the Registration Office, The sale will have to be established by production of the original sale deed, or a certified copy after laying foundation for receipt of secondary evidence under Clauses (a) or (b) or (c) of [Section 65](#), and then establishing the execution of the sale deed."

10. In the present case, as the defendant has not denied execution of sale deed executed in favour of respondent/plaintiff - Rashmi Jain, therefore, original sale deed which has been marked as Ex.P-1 is sufficient proof of transfer of ownership to the respondent/plaintiff 1. It is well settled that upon transfer of rented property by way of execution of regd. sale deed by previous landlord, the purchaser becomes owner and landlord by operation of law. It is apparent from

the record that immediately after purchase of the property the plaintiff had also issued notice dated 09.12.2010 (Ex.P/5) to the appellant/defendant and in the reply notice there is no denial about execution of sale deed in favour of respondent.

11. In the present case it is undisputed position available on record and has also been found by Courts below that upon issuance of notice by respondent/plaintiff the defendant 1 did not pay the monthly rent to the plaintiff and denied her title. After appreciation of oral and documentary evidence available on record both the courts below have decreed the suit on the grounds of arrears of rent, denial of title as well as on the ground of bonafide requirement of plaintiff 2, who is husband of plaintiff 1.

12. In the case of Kishore Singh vs. Satish Kumar Singhvi, **2017(3) J LJ 375** a coordinate Bench of this Court has relied upon the decision of Hon'ble Supreme Court in the case of Ragavendra Kumar vs. Firm Prem Machinery and Company, **AIR 2000 SC 534**, and held that the findings recorded on the question of bonafide requirement do not give rise to any substantial question of law.

13. In so far as the argument about split up of tenancy is concerned, previous landlord and owners of the property, have by way of regd. sale deed transferred specific part of the property and on that basis, the plaintiffs instituted the suit for eviction of that part and according to the portion came in their ownership

demanded rent of Rs.40/- p.m., which has also been deposited by the defendant 1 in the Court. As such there is no question of split up of tenancy.

14. In view of aforesaid discussion this Court does not find any substantial question of law involved in the present second appeal.

15. Resultantly, declining interference in the concurrent judgment and decree passed by Courts below, instant **second appeal fails and is hereby dismissed.**

16. Misc. application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE