

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 20th OF NOVEMBER, 2024

S.A. No.628 of 2024

Yogesh Kumar Singh and another

Versus

Kemli Bai

Appearance :

Shri Kamlesh Kumar Dwivedi – Advocate for the appellants.

Reserved on : 11.09.2024

Pronounced on : 20.11.2024

ORDER

Heard on the question of admission.

2. This second appeal under Section 100 of the Code of Civil Procedure has been filed by the defendants/appellants assailing the judgment and decree dated 27.01.2024 passed by the 3rd District Judge, Shahdol, in RCA No.19/2023 dismissing the appeal under Section 96 of CPC preferred against the judgment and decree dated 12.05.2023 passed by the 3rd Civil Judge, Senior Division, Shahdol in Civil Suit No.106-A/2017. As such, this appeal is against the concurrent finding of both the Courts below.

3. The facts leading to the present appeal in brief are that the plaintiff/respondent herein was a retired government employee and the defendants/appellants herein were her tenants. The defendants have

taken the suit house on rent @ Rs.700/- per month and they were residing there for more than 7-8 years. The suit house has been shown in the plaint map attached with the plaint by boundaries 'A,B,C,D'. The defendants/appellants have stated that since 2010-11, they sent rent of the house in question @ Rs.700/- per month through money order and in the month of December, 2012, the plaintiff enhanced the rent of the suit house from Rs.700/- to Rs.800/- and the defendants/appellants have also paid the rent at the said rate which was received by the plaintiff.

4. The plaintiff's case was that w.e.f. 17.01.2012, the defendants/appellants have not paid the rent of the suit house and therefore, the plaintiff made a request to the defendants and as such, there was an outstanding of Rs.56,000/- from 17.01.2012 till November, 2017, total 70 months and therefore, the suit had been filed by the plaintiff to recover the rent i.e. Rs.28,800/- which was the rent of three years because recovery of arrears of rent shown to be outstanding cannot be made of more than three years. It was also claimed by the plaintiff that she needs the suit house for her personal requirements, therefore, she is also seeking eviction of the defendants/appellants from the suit house so that she may live there along with her other relatives.

5. Written-statement was filed by the defendants/appellants denying the averments made in the plaint saying that they have been residing in the suit house since last 25 years and all rent has been paid by them, therefore, the recovery of outstanding shown to be Rs.28,800/- cannot be made and the plaintiff is also not entitled to get the decree of eviction and possession of the suit house.

6. The trial Court has framed as many as seven issues and decreed

the suit directing that the suit house shown in the plaint map as per its boundaries 'A,B,C,D' be vacated and vacant possession of the same be handed over to the plaintiff. Further, whatever rent deposited by the defendants can be withdrawn by the plaintiff and both the parties shall bear their own costs.

7. An appeal was preferred against the said judgment and decree passed by the trial Court, but the appellate Court has affirmed the said judgment and decree observing therein that there is nothing perverse or contrary to material on record, on the basis of which the finding given by the trial Court can be interfered with. As such, the appeal was dismissed.

8. Against the said concurrent finding of *bona fide* need and also the arrears of rent, the defendants/appellants have filed this appeal.

9. Learned counsel appearing for the appellants has submitted that both the Courts below failed to consider the fact that the suit was not maintainable for the reason that the plaintiff was not the owner of suit premises as she herself had admitted in paragraph-15 of her cross-examination. Further, the suit house was in the name of her brother Ramanand Chaturvedi and as such, only Ramanand or his legal heirs can file suit for eviction. He has further submitted that both the Courts below further failed to consider the documentary as well as oral evidence produced by the defendants/appellants. As such, both the Courts below have committed an error while passing the impugned judgment and decree, therefore, the same are liable to be dismissed.

10. Considering the aforesaid, since the finding given by both the

Courts below are concurrent finding of fact and during the course of arguments, learned counsel for the appellants has also failed to establish any perversity in the judgment and decree passed by both the Courts below and taking into account the law laid down by the Supreme Court consistently holding that the jurisdiction of this Court to interfere with the concurrent finding of fact under Section 100 of the Code of Civil Procedure is very limited, until the finding is either perverse or based on no evidence, this Court cannot interfere with the concurrent finding of fact until and unless the same is perverse or contrary to material on record. [See: **Sugani (Mst.) v. Rameshwar Das (2006) 11 SCC 587, Gurdev Kaur vs. Kaki (2007) 1 SCC 546, Prakash Kumar v. State of Gujrat (2004) 5 SCC 140, Thiagarajan v. Sri Venugopalaswamy B. Koil (2004) 5 SCC 762 and Narayanan Rajendran v. Lekshmy Sarojini (2009) 5 SCC 264**].

11. It is equally well settled that this Court in exercise of power under Section 100 of the Code of Civil Procedure cannot reappreciate the evidence. [See: **Thimmaiah v. Ningamma (2000) 7 SCC 409**]. It is also well settled that where on appreciation of evidence, even if two views are possible, this Court in exercise of powers under Section 100 of the Code of Civil Procedure would not interfere. [See: **Kondiba Dagadu Kadam v. Savitribai Sopan Guzar (1999) 3 SCC 722 and Veerayee Ammal v. Seeni Ammal (2002) 1 SCC 134**]. It has further been held by the Supreme Court that interference with a question of fact is not permissible. [See: **Basayya I. Mathad v. Rudrayya S. Mathad (2008) 3 SCC 120**]. In **S. Appadurai Nadar v. A. Chokalinga Nadar (2007) 12 SCC 774**. At the same time, it has been held by the Supreme Court that in exercise of power under Section 100 of the Code of Civil

Procedure, the Courts should be slow in reversing the finding of fact. The finding of fact even if erroneous would not be disturbed in second appeal unless the finding is shown to be perverse and based on surmises and conjectures. [See: **Kulwant Kaur v. Gurdial Singh Mann (2001) 4 SCC 262, Hafazat Hussain v. Abdul Majeed (2001) 7 SCC 189 and Bharath Matha v. R. Vijay Rengandathan (2010) 11 SCC 483**].

12. With the aforesaid observations, I do not find any substance in the appeal as the same does not involve any substantial question of law. The appeal is, accordingly, **dismissed**.

(SANJAY DWIVEDI)
JUDGE

ac/-