

**IN THE HIGH COURT OF MADHYA PRADESH****AT INDORE****BEFORE****HON'BLE SHRI JUSTICE ANIL VERMA****ON THE 16<sup>th</sup> OF JULY, 2024****SECOND APPEAL No. 754 of 2021***(RAJMAL S/O ONKARLAL MAVAR**Vs**SHIVNARAYAN (DECEASED) THROUGH LRs KIRTINARAYAN AND ANOTHER)***Appearance:*****(SHRI NITIN PHADKE – ADVOCATE FOR THE APPELLANT)******(SHRI SATISH JAIN – ADVOCATE FOR THE RESPONDENTS)*****JUDGMENT**

Learned counsel for the appellant heard on admission.

1. Appellant/defendant has preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (in short “CPC”) being aggrieved by the impugned judgment and decree dated 24.2.2021 passed by the 2<sup>nd</sup> Addl. District Judge, Mandsaur in RCA No.82/2019, affirming the judgment and decree dated 11.10.2019 passed by the 4<sup>th</sup> Civil Judge Class-2, Mandsaur in Civil Suit No.54-A/2017, whereby suit filed by the respondents/plaintiffs for eviction, recovery of arrears of rent and mesne profit has been decreed.

2. Respondents/plaintiffs have filed the civil suit for eviction, recovery of arrears of rent and mesne profit by stating that they are the owner of the land admeasuring 35 x 35 ft. Situated at Purana Lakkadpitha, Mandsaur (suit premises) and the suit premises was granted by the plaintiffs to the appellant/defendant on rent of Rs.2,000/-

per month. Appellant/defendant did not pay rent from July 2016. Plaintiff also issued several notice to the appellant for eviction of the suit premises. Thereafter plaintiff filed civil suit for eviction on the ground that the suit premises was required by the plaintiff for construction.

3. Appellant/defendant denied all the plaint averments by contending in the written statement that he has regularly paid the rent of the suit premises. He has paid rent for the period of July 2016 to July 2017 in the trial Court. Earlier plaintiffs did not receive the rent amount which has been given by him. Plaintiffs were not in need of the suit premises for construction, except the suit land plaintiffs are owner of several land and complex situated at Mandsaur. Appellant was the tenant of the plaintiff from the time of their forefather and he is carrying his small business on the suit land.

4. On the basis of the aforesaid pleadings, the trial Court has framed the issues and directed both the parties to lead their evidence. After recording and appreciating the evidence, the trial court partly allowed the suit filed by the plaintiffs. Thereafter appellant/defendant preferred first appeal against the impugned judgment and decree but upon re-appreciating entire evidence available on record, the same has also been dismissed by the first appellate court. Being aggrieved by the same, appellant/defendant has preferred this second appeal before this Court.

5. Learned counsel for the appellant contended that the impugned judgment and decree passed by the trial Court as well as the first appellate court are against the law and facts available on record. Both

the courts below have not considered oral as well as the documentary evidence available on record. The appellate court has committed grave illegality in misinterpreting the provisions of Section 12(1)(a) & 13 of the M.P. Accommodation Control Act (in short "MPAC Act"). After the death of original plaintiff, his legal heirs did not prove their bonafide need for the suit premises. Thus, in view of the aforesaid, it is prayed that the present appeal deserves to be allowed on the substantial questions of law as proposed by the appellant.

6. Heard learned counsel for the appellant at length and perused the entire record with due care.

7. In the instant case civil suit has been filed by the respondent/plaintiff against the appellant on the ground that the suit premises is required by the plaintiff for the purpose of construction. Initially suit has been filed by Shivnarayan Kashyap who was father of the present respondents/plaintiffs. Shivnarayan Kashyap (PW-1) has been examined during his lifetime before the trial Court. He categorically stated that he needs the suit premises for construction of the building and for the same purpose he has no alternate premises. Although in cross-examination in Para-15 he admits that in front of the jail building he possesses a house which is built on 30 x 90 ft. Land and he has also a plot in Meghdoot Nagar, but he has two sons; one is doing practice as an Advocate and second one is doing agriculture job. Statement of the plaintiff Shivnarayan was well supported by Ajay (PW-2). Although the defendant Rajmal (DW-1) categorically stated

that plaintiffs have no bonafide need of the suit premises and so many alternate premises are available to the plaintiffs.

8. The crucial question is, whether the bonafide requirement, as established by the original landlord Shivnarayan, would meet the requirement under Section 12(1)(a) of the MPAC Act as far as surviving legal heirs are concerned.

9. This court in the matter of **Radheshyam Soni Vs. Kamta Prasad Shukla reported in ILR 2001 MP 1374** it has been held as under:-

“The concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. Though these observations have been made in the context of section 12(1)(e) of the Act same would apply while considering the case under section 12(1)(f) of the Act.”

10. The Coordinate Bench in case of **Mohan Vs. Babulal (dead) through L.R. Dilip Kumar reported in 2015(2) MPLC 125 (MP)** has held that the choice is that of the landlord and not that of the tenant and it cannot be said that merely because alternative accommodation is available in a different place, need explained by respondent was not bonafide.

11. In case of **Buddhprakash Sharma Vs. Sanjeev Jain ILR 2015 MP 998** it has been held that 'ownership of the suit property of the plaintiff grants the plaintiff the right to use his property as per his wish or priority or choice or suitability or compatibility and he cannot be

asked to settle with whatever property the defendant may state is alternative/suitable.'

12. On the basis of forgoing analysis and the law laid down by the Apex court and High court, it is clear that landlord is the best judge of his requirement. Merely because it is shown by other party that landlord has some other vacant premises in his possession, that itself will not be sufficient to negative the landlord's claim because the choice is that of the landlord and not that of the tenant.

13. The term bonafide or genuine speaks the state of mind of the landlord. Therefore, on the basis of the cogent evidence of plaintiff, bonafide need of landlord has been duly proved. The trial court while deciding issue No.3 in favour of respondent/plaintiff has rightly held that appellant/defendant is liable to be evicted on the ground of bonafide requirement of plaintiffs.

14. Learned counsel for the appellant contended that eviction sought for personal need of landlord for constructing building and original landlord has been died, therefore, no decree of eviction can be passed in favour of his LRs because the need being personal vanished with the death of landlord. He has placed reliance upon the judgment of this Court and Hon'ble Apex Court in the case of **Sonabai and others Vs. Arvind Kumar reported in 1995 JIJ 764**, in the case of **Seshambal (dead) Through LRs Vs. M/s. Chelur Corporation, Chelur Building & Ors. Reported in AIR 2010 SC 1521** and in the case of **Mohd. Ismail Vs. Dinkar Vinayakrao Dorlikar reported in (2009) 10 SCC 193**.

15. It is not disputed that the agriculture and advocacy, that had been carried on by the Late Shivnarayan, is being continued by his legal heirs. If that be so, the requirement, as established and which has been upheld by the first appellate court, in view of this Court, satisfies the requirements of bona fide need of the landlord. No doubt, in a given case the bona fide requirement of the original landlord and that of the surviving legal heirs may vary. But in the case before this Court, since the same business is continued by the legal heirs of the deceased-plaintiff Shivnarayan, this Court is of the view that it is not necessary to relegate the legal heirs for another round of litigation for eviction. Coordinate Bench of this Court in the case of **Rajendra Kumar Jain Vs. Laxmi Bai reported in 2006(4) MPLJ 115** has held as under:-

“The rights of landlord are heritable and devolved after his death on his legal heirs. If a suit is filed on a ground which may be available to the legal heirs after the death of original landlord a legal representatives will be entitled to continue with the need and the decree cannot be set aside merely on the ground of death of landlord.”

16. The Hon’ble Apex Court in the case of **Shakuntala Bai and others Vs. Narayan Das and others reported in (2004) 5 SCC 772** held as under:-

“If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same

thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a rent control legislation in such a manner, the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come.”

17. Same principle has been laid down in the case of *Sayeda Akhtar Vs. Abdul Ahad reported in (2003) 7 SCC 52* and in the case of *Satish Chander Aggarwal (D) by LRs Vs. Shyam Lal Om Prakash and Another reported in AIR 2017 SC 2480*.

18. In view of the aforesaid and placing reliance upon the judgments of the Hon’ble Apex Court and Coordinate Bench of this Court, this Court is of the considered opinion that both the courts below have rightly concluded that the respondents/plaintiffs succeeded in establishing their bonafide need for the suit premises and also right in holding that there are no other suitable premises available to them for their bonafide requirement and the decree passed in favour of the deceased-landlord cannot be set aside merely because of death of original landlord.

19. Therefore, on the basis of the aforesaid, the trial court while deciding issue No.3 in favour of the respondents/plaintiffs, has rightly held that the appellant/defendant is liable to be evicted on the ground of bonafide need of the plaintiffs.

20. Learned counsel for appellant has failed to show that how the findings of fact recorded by both the courts below are illegal, perverse or based upon no evidence. Thus, no substantial question of law arises for consideration in the present second appeal. The Supreme court in number of cases has held that in exercise of powers under Section 100 of CPC, the Court can interfere with the findings of fact only if the same is shown to be perverse and based upon no evidence. Some of these judgments are **Hafazat Hussan Vs. Abdul Majeed and others reported in 2011(7) SCC 189**, **Union of India Vs. Ibrahim Uddin reported in 2012(8) SCC 148** and **Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal reported in 2012(7) SCC 288**.

21. For the aforesaid reasons, no substantial questions of law arises for consideration in this appeal. The appeal fails and is hereby dismissed in limine.

C.C. as per rules.

**(ANIL VERMA)**  
**JUDGE**

Trilok/-