

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

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 29th OF JANUARY, 2025

SECOND APPEAL No. 338 of 2008

HAFEEZ KHAN (NOW DEAD THOROUGH LRS)

Versus

SMT. KHATIJA BEGUM

Appearance:

Shri Anand Chawla - Advocate for the appellant.

Shri G.S. Baghel - Advocate with Shri K.K. Raidas - Advocate for respondent.

J U D G M E N T

This second appeal is preferred by the original appellant/defendant-Hafeez Khan (now dead, through LRs Smt. Chand Bee & 9 others) challenging the judgment and decree dated 09.01.2008 passed by First Additional Judge to the Court of First Additional District Judge, Narsinghpur in Civil Appeal No.14-A/2007 reversing the judgment and decree dated 18.01.2007 passed by Civil Judge Class-I Narsinghpur, in Civil Suit No.2-A/2005, whereby trial Court dismissed respondent/plaintiff's suit for eviction filed on the ground under Section 12(1)(a)&(e) of the M.P. Accommodation Control Act, 1961 (in short "the Act") but in appeal filed by respondent/plaintiff, first appellate Court has decreed the plaintiff's suit on the ground of denial of title available under Section 12(1)(c) of the Act.

2. Facts in short are that originally the house in question was given by Sahidan Bee to original defendant Hafeez Khan on rent of Rs.350/- p.m. and after death of Sahidan Bee the rent was paid by defendant to the plaintiff (who is daughter of Sahidan Bee) upto January, 2000. As the defendant did not pay rent after February, 2000, therefore, a notice dated 22.03.2001 (Ex.P/1) was issued, which was wrongly replied by the defendant and thereafter the suit was filed by the plaintiff on the ground of non-payment of rent as well as on the ground of bonafide requirement of residence.

3. Written statement was filed by defendant in paragraph 1 of which, the defendant specifically denied title of the plaintiff and also denied arrears of rent as well as bonafide requirement of the plaintiff. However, by accepting relationship of landlord and tenant with Sahidan Bee, suit was prayed to be dismissed.

4. On the basis of pleadings of the parties, trial Court framed issues and recorded evidence of the parties and vide judgment and decree dated 18.01.2007 dismissed the suit. In appeal filed by plaintiff/respondent, first appellate Court, in the light of denial of title made by defendant in the written statement framed additional issue vide order dtd.31.08.2007 and remitted to the trial Court for recording finding in that regard. Then trial Court vide order dated 05.11.2007 returned the findings to first appellate Court to the effect that the plaintiff is not entitled for decree of eviction on the ground of denial of title.

5. Thereafter first appellate Court after hearing the parties and upon due consideration of the material available on record, decreed the suit on the ground of denial of title available under Section 12(1)(c) of the Act, vide impugned judgment and decree dated 09.01.2008.

6. Aforesaid judgment and decree passed by first appellate Court was challenged by the defendant by filing instant second appeal, which came up for hearing on 03.03.2008 and was admitted for final hearing on the following substantial question of law:-

“Whether the decree of eviction passed under Section 12(1)(c) of M.P. Accommodation Control Act, 1961 by learned first appellate Court is vitiated inasmuch as the tenant has not set up the title in him or in the persons other than the plaintiff ? If yes, whether the decree of eviction under this clause passed by learned first appellate Court is vitiated in view of the decision of Supreme Court **Sheela and others V. Firm Prahlad Rai Prem Prakash, AIR 2002 SC 1264 para 17 and 18** ?”

7. Learned counsel for the appellants submits that although in paragraph 1 of his written statement the defendant has denied title of the plaintiff, but specifically in paragraph 19 of his statement, the defendant - Hafeez Khan (DW-1) has admitted relationship of landlord and tenant in between the plaintiff and defendant as well as ownership of plaintiff over the house in question. It is also admitted that the defendant is paying rent to the plaintiff since the year 1995. As such in the light of decision of Hon'ble Supreme Court in the case of *Sheela and others vs. Firm Prahlad Rai Prem Prakash, AIR 2002 SC 1264*, it cannot be said that the defendant has denied title of the plaintiff, especially in

the circumstances where the defendant has not claimed himself to be owner of the tenanted premises. With these submissions he prays for allowing of second appeal.

8. Learned counsel appearing for the respondent/defendant supports the impugned judgment and decree of eviction passed by first appellate Court and prays for dismissal of the second appeal.

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

10. In the present case, induction of defendant in the suit house as tenant by plaintiff's mother Sahidan Bee, is not in dispute. Although in paragraph 1 of written statement, the defendant has denied title of the plaintiff, but in paragraph 19 of his statement, the defendant-Haneef Khan (DW/1) has clearly admitted that he is tenant in the house and the plaintiff is its owner. He has specifically admitted that he is paying rent of the rented house to the plaintiff since the year 1995.

11. In view of the fact that the plaintiff is daughter of Sahidan Bee (original landlord of the defendant) and the defendant has admitted in paragraph 19 of his statement, that the plaintiff is owner and landlord and he is tenant of plaintiff and paid the rent to the plaintiff, therefore, even in the light of decision of Sheela & others (**supra**) it was not open to the defendant to deny title of the defendant in the written statement. It is not the case of defendant that he was not aware of the fact that the plaintiff is daughter of Sahidan Bee or he never paid rent to the plaintiff.

12. In the case of *Majati Subbarao vs. P.V.K. Krishna Rao (deceased)* by LRs., AIR 1989 SC 2187, Hon'ble Supreme Court has held that decree of eviction on the ground under Section 12(1)(c) of the Act can be passed on the basis of plea of denial of title made by defendant in the written statement.

13. In view of the aforesaid discussion, the substantial question of law framed by this Court is decided against the appellants/defendants/tenant.

14. At this stage, learned counsel for the appellants/defendants prays for reasonable time to vacate the tenanted premises and prays that at least time upto 31.01.2026 may be granted, which is not opposed by the counsel appearing for the respondent.

15. In view of the aforesaid and declining interference in the impugned judgment and decree passed by first appellate Court, this Court deems fit to grant time for vacating the tenanted/suit accommodation upto 31.01.2026 on the following conditions:-

(i) The appellants/defendants/tenants shall vacate the tenanted/suit accommodation on or before 31.01.2026.

(ii) The appellants/defendants shall regularly pay monthly rent to the respondent/landlord and shall also clear all the dues, if any, including the costs of the litigation, if any, imposed by Courts below, within a period of 30 days.

(iii) The appellants/defendants shall not part with the suit accommodation to anybody and shall not change nature of the same.

(iv) The appellants/defendants shall furnish an undertaking with regard to the aforesaid conditions within a period of three weeks before the learned Court below/Executing Court.

(v) If the appellants/defendants fail to comply with any of the aforesaid conditions, the respondent/landlord shall be free to execute the decree forthwith.

(vi) If after filing of the undertaking, the appellants/defendants/tenants do not vacate the suit accommodation on or before 31.01.2026 and create any obstruction, they shall be liable to pay mesne profits of Rs.500/- per day, so also contempt of judgment of this Court.

(vii) It is made clear that the defendants/appellants shall not be entitled for further extension of time after 31.01.2026.

16. With the aforesaid observations, this second appeal fails and is hereby **dismissed.**

17. Misc. application(s), pending if any, shall stand closed and interim order of stay, if any, shall stand vacated.

(DWARKA DHISH BANSAL)
JUDGE