

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ASHISH SHROTI
SECOND APPEAL No.1544 of 2005
SMT.VIJAYA RIZBUD
Versus
DEEPAK KUMAR MISHRA AND ORS.

Appearance:

Shri P.K. Gohadkar - learned counsel for the appellant.

Shri J.P. Mishra - learned counsel for respondents no.1, 3 and 5.

Reserved on : 29/07/2026

Delivered on : 07/08/2026

ORDER

1. Whether the term "Son" used in Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 would include "Stepson" is the question involved in this appeal.
2. The appellant is aggrieved by the judgment and decree dated 08/08/2005 passed by Second Additional District Judge to the Court of First Additional District Judge, Guna in Civil Appeal No.35-A/2003, whereby the judgment and decree dated 04/10/2002 passed by the Second Civil Judge, Class-II, Guna in Civil Suit No.33-A/2002 has been reversed and the suit for eviction filed by the appellant has been dismissed.
3. For purposes of convenience, the appellant is referred to as "plaintiff" while respondents are referred to as "defendants" as per their respective status in the civil suit. The suit shop, in this order, would mean the shop in the premises situated at Matkari Colony, Guna commonly known as "Anand

Bhawan". The identity of the shop is not disputed between the parties.

Admitted facts:

4. The facts which are no more in dispute are that the suit shop initially belongs to one Anand Rao Matkari. The plaintiff- Vijaya is the daughter of Anand Rao Matkari. It is also not in dispute that the present suit was filed pleading need of one Ashutosh who is stated to be plaintiff's son. However, it has come on record that Ashutosh was the son of one Anand Kumar (not Anand Rao Matkari) from his earlier wife- Smt. Aarti. After death of Aarti in the year 1992, Anand Kumar married to plaintiff on 23/02/1993; however, they have no issue out of their wedlock. Thus, it is not disputed between the parties that Ashutosh is the stepson of the plaintiff, being the son of Anand Kumar from his earlier wife.

5. The defendant was inducted as tenant in the suit shop in the year 1972 by Anand Rao Matkari for non-residential purposes. After the death of Anand Rao Matkari, the shop fell to the plaintiff's share and accordingly, the defendant started paying rent to her. Thus, the relationship of landlord and tenant between the plaintiff and defendants is also not in dispute.

6. The present suit was filed by the plaintiff seeking defendants' eviction from the suit shop on the grounds under Section 12(1)(a) & (f) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as "Act"). The ground under Section 12(1)(a) of the Act has been negated by both the Courts and the same has not been challenged by the plaintiff any further.

7. Learned trial Court decreed the suit on the ground under Section 12(1) (f) of the Act. However, the Appellate Court has reversed this finding also and consequently, dismissed the suit. The Appellate Court held that the plaintiff cannot ask for defendants' eviction for the need of her stepson. It is also held that the plaintiff has alternate accommodation available on first floor of the building.

8. In her plaint, the plaintiff pleaded that the suit shop is bona-fide required for the business of her son- Ashutosh for which she does not have any other suitable accommodation in the city. The Appellate Court has declined eviction decree on the ground that Ashutosh, being the plaintiff's stepson, is not covered within the definition of "member of the family" under Section 2(e) of the Act and thus, is not entitled to the decree of eviction.

Contention of Plaintiff's counsel:

9. Challenging the judgment and decree, learned counsel for the plaintiff submitted that Section 12(1)(e) & (f) only mentions about the term son and does not differentiate between the son and the stepson. It is his submission that Ashutosh is residing with plaintiff could not be disputed by the tenant. Therefore, when the plaintiff treats Ashutosh as her son and there is no *inter-se* dispute between the plaintiff and Ashutosh, the plaintiff could not have been denied decree for eviction for the need of Ashutosh. Learned counsel, thus, submitted that the judgment and decree passed by the trial Court is illegal and needs to be set-aside.

Contention of Defendants' counsel:

10. On the other hand, learned counsel appearing for the defendants supported the impugned judgment and decree. He placed reliance upon the Apex Court judgment in the case of ***Lachman Singh Vs. Kirpa Singh & others*** reported in (1987)2 SCC 547 and the order of the Coordinate Bench of this Court in the case ***Gopinath Nainsukh Vs. Girdhardass Visheshwardas*** reported in 1977 M.P.L.J. 358 and submitted that the son does not include step son, is the law settled by the Apex Court.

11. As per his submission, since the property exclusively belongs to the plaintiff, having received the same from her father in partition, the son of her husband from first wife would not be entitled to the benefits which are available to the plaintiff's own son. Learned counsel justified the impugned

judgment and decree passed by the learned Appellate Court and prayed for dismissal of the appeal.

12. This Court vide order dated 06/08/2015 admitted the appeal on the following substantial question of law:

“Whether, the First Appellate Court was justified in reversing the judgment of the lower Court.”

13. Based upon the submissions made by the counsel for respective parties, this Court deems it appropriate to formulate specific substantial questions of law arising for consideration in this appeal. Accordingly, following additional substantial questions of law are framed:

“(1) Whether, the son would include the stepson within the meaning of Section 12(1)(f) of the M.P. Accommodation Control Act, 1961?

(2) Whether the learned first appellate court substantially erred in denying the eviction decree holding that the plaintiff has an alternate accommodation on the first floor of the house without considering its suitability?”

14. With the consent of counsel for the parties, arguments are heard finally on the aforesaid additional substantial questions of law also.

15. The suit for eviction is governed by the provisions of the M.P. Accommodation Control Act, 1961, (in short ‘Act’). Section 2(e) of the Act defines “the member of the family” as under: -

“**member of the family**” in case of any person means the spouse, son, unmarried daughter, father, grand-father, mother, grand-mother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow, or brother's son or unmarried daughter living jointly with, or any other relation dependent on him.”

16. Further, section 12(1)(e) & (f) provides for eviction of a tenant on the ground of bona-fide requirement of landlord for residential and non-

residential purpose respectively. Section 12(1)(e) & (f) of the Act reads as under: -

“(e) that the accommodation let for residential purposes is required bona-fide by the landlord for occupation as a residence **for himself or for any member of his family**, if he is the owner thereof, or **for any person for whose benefit the accommodation is held** and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting **his business or that of any of his major sons or unmarried daughters** if he is the owner thereof or **for any person for whose benefit the accommodation is held** and that the landlord or such person has no other reasonably non-residential accommodation of his own in his occupation in the city or town concerned.”

17. Basic difference between Section 12(1)(e) & (f) is that under Section 12(1)(e), the eviction of a tenant can be sought not only for the bona-fide need of landlord himself but also for any other member of his family. The term ‘member of the family’ is defined in Section 2(e) of the Act. On the other hand, under Section 12(1)(f), the term ‘member of his family’ is not used. The eviction can be sought on the ground of bona-fide need of landlord himself or for the need of any of his major sons or unmarried daughters. The scope of Section 12(1)(e) is thus wider than Section 12(1)(f) of the Act. However, for purposes of this case, since under both the provisions, son is included, the aforesaid difference is not very much relevant. The observations in this para are made by this Court only because the learned Appellate Court has labored hard in interpreting the term ‘member of family’ in its judgment which is not applicable in this case as the eviction is sought under Section 12(1)(f) of the Act.

18. Learned counsel for the defendants has placed heavy reliance upon the Apex Court judgment in the case of *Lachman Singh* (supra). It was a case

where the Apex Court was considering the provisions of Section 15(1) & (2) of Hindu Succession Act, 1956, in relation to the right of stepson of a female Hindu who died intestate. The Court held as under: -

“5. The only question which is to be determined here is whether the expression “sons” in clause (a) of Section 15(1) of the Act includes stepsons also i.e. sons of the husband of the deceased by another wife. In order to decide it, it is necessary to refer to some of the provisions of the Act. Section 3(j) of the Act defines “related” as related by legitimate kinship but the proviso thereto states that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another and that any word expressing relationship or denoting a relative shall be construed accordingly. Section 6 and Section 7 of the Act respectively deal with devolution of interest in coparcenary property and devolution of interest in the property of a *tarwad*, *tavazhi*, *kutumba*, *kavaru* and *illom*. Sections 8 to 13 of the Act deal with rules of succession to the property of a male Hindu dying intestate. We are concerned in this case with the rules of succession to the property of a female Hindu dying intestate. Sections 15 and 16 of the Act are material for our purpose. Ordinarily laws of succession to property follow the natural inclinations of men and women. The list of heirs in Section 15(1) of the Act is enumerated having regard to the current notions about propinquity or nearness of relationship. The words “son” and “stepson” are not defined in the Act. According to Collins *English Dictionary* a “son” means a male offspring and “stepson” means a son of one's husband or wife by a former union. Under the Act a son of a female by her first marriage will not succeed to the estate of her “second husband” on his dying intestate. In the case of a woman it is natural that a stepson, that is, the son of her husband by his another wife is a step away from the son who has come out of her own womb. But under the Act a stepson of a female dying intestate is an heir and that is so because the family headed by a male is considered as a social unit. If a stepson does not fall within the

scope of the expression “sons” in clause (a) of Section 15(1) of the Act, he is sure to fall under clause (b) thereof being an heir of the husband. The word “sons” in clause (a) of Section 15(1) of the Act includes (i) sons born out of the womb of a female by the same husband or by different husbands including illegitimate sons too in view of Section 30 of the Act and (a) adopted sons who are deemed to be sons for purposes of inheritance. Children of any predeceased son or adopted son also fall within the meaning of the expression “sons”. If Parliament had felt that the word “sons” should include “stepsons” also it would have said so in express terms. We should remember that under the Hindu law as it stood prior to the coming into force of the Act, a stepson i.e. a son of the husband of a female by another wife did not simultaneously succeed to the stridhana of the female on her dying intestate. In that case the son born out of her womb had precedence over a stepson. Parliament would have made express provision in the Act if it intended that there should be such a radical departure from the past. We are of the view that the word “sons” in clause (a) of Section 15(1) of the Act does not include “stepsons” and that stepsons fall in the category of the heirs of the husband referred to in clause (6) thereof.”

19. The Court thus held that the word ‘sons’ in clause (a) of Section 15 of the Act does not include ‘stepsons’. When once a property becomes the absolute property of a female Hindu it shall devolve first on her children (including children of the predeceased son and daughter) as provided in Section 15(1)(a) and then on other heirs subject only to the limited change introduced in Section 15(2). The stepsons or stepdaughters will come in as heirs only under clause (b) of Section 5(1) or under clause (b) of Section 15(2).

20. It is thus seen that Apex Court interpreted provisions of Section 15 of Act of 1856 for purposes of devolution of estate of a female Hindu after she die intestate. Here is a case, where the Hindu woman wants the suit premises

for her stepson during her lifetime. Therefore, *Lachman Singh* (supra), would not apply in the fact of this case.

21. Even otherwise, the stepson is excluded only for purposes of Section 15(1)(a) of Act of 1956 but is very much included for purposes of Section 15(1)(b) of the Act of 1956. Meaning thereby, in absence of husband, son or daughter, the property would devolve upon heirs of her husband which would then include stepson of female. In the instant case, it has come on record that the plaintiff has no issues from her wedlock with Anand Kumar. Therefore, by virtue of Section 15(1)(b) of Act of 1956, Ashutosh, the plaintiff's stepson, would be covered.

22. The larger issue for consideration is as to whether the law laid down by Apex Court in *Lachman Singh* (supra), can be applied for purposes of Section 12(1)(e) & (f) of Act.

23. The Apex Court considered somewhat similar issue in an eviction matter governed by T.N. Buildings (Lease and Rent Control) Act, 1960, in the case of *K.V. Muthu v. Angamuthu Ammal* reported in (1997)2 SCC 53, the definition of term 'member of family' is interpreted as under:

“9. Section 2(6-A) provides as under:

“2. (6-A) ‘member of his family’ in relation to a landlord means his spouse, son, daughter, grandchild or dependant parent.”

10. Apparently, it appears that the definition is conclusive as the word “means” has been used to specify the members, namely, spouse, son, daughter, grandchild or dependant parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, opens with the words “in this Act, unless the context otherwise requires” which indicates that the definitions, as for example, that of “family”, which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words “unless the context otherwise requires”, the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.

14. In its ordinary and primary sense, the term “family” signifies the collective body of persons living in one house or under one head or manager or one domestic government. In its restricted sense, “family” would include only parents and their children. It may include even grandchildren and all the persons of the same blood living together. In its broader sense, it may include persons who are not connected by blood depending upon the context in which the word is used.

15. There is a consensus among the High Courts in India that the word “family” is a word of great flexibility and is capable of different meanings.

16. In *Ram Pershad Singh v. Mukand Lal* [AIR 1952 Punj 189 : 6 DLR Punj 251] nephews who were brought up by the landlord and were set up in business by him and were also married by him, were held to be members of the family. The Calcutta High Court in *Puspalata Debi v. Dinesh Chandra Das* [85 Cal LJ 74], in *Syed Shah Maidal Islam v. Commr. of Wakfs* [AIR 1943 Cal 635 : 47 CWN 315] and again in *Sukumar Guha v. Naresh Chandra Ghosh* [AIR 1968 Cal 49] ; the Madras High Court in *Asha Bibi v. Nabissa Sahib* [AIR 1957 Mad 583] ; the Bombay High Court in *Ramubai v. Jiyaram Sharma* [AIR 1964 Bom 96 : 65 Bom LR 647] ; the Delhi High Court in *Govind Dassv. Kuldip Singh* [AIR 1971 Del 151 : 1970 Ren CR 511] and again in *Abdul Hamid v. Nur Mohd.* [AIR 1976 Del 328 : ILR (1976) 2 Del 250] have all held that the word “family” is a flexible word and it may, in certain circumstances, specially in the context in which it is used, may include persons who are not directly related by blood.

18. It is in the background of the above discussion relating to the cases decided by various High Courts and this Court that it is to be seen whether a “foster son” would be covered by the word “family” as defined in the Act.

19. “Son” as understood in common parlance means a natural son born to a person after marriage. It is the direct blood relationship which is the essence of the term in which “son” is usually understood, emphasis being on legitimacy. In legal parlance, however, “son” has a little wider connotation. It may include not only the natural son but also son's son, namely, the grandchild, and where the personal law permits adoption, it also includes an adopted son.

21. Relying upon this definition, the Lahore High Court in *Divi Ditta, In re* [AIR 1931 Lah 661 : ILR 12 Lah 50] held that where the personal law of the parties permits adoption, the word “son” will include an adopted son. In *Adit Narayan Singh v. Mahabir Prasad Tiwari* [(1920-21) 48 IA 86] the Privy Council held that “sons” in Mitakshara Chapter II 6(1) include a grandson. In the ancient Hindu Law, twelve sons are mentioned by the truth-seeing sages all of whom need not be mentioned here. The attempt only is to indicate that the term “son” itself is a flexible term and may not be limited to the direct descendant. Its true meaning, like the term “family” discussed above, will depend upon the context in which it is used. Even illegitimate son may be treated as legitimate, as for example, the “son” referred to in Section 16 of the Hindu Marriage Act, as originally enacted.

22. Coming now to “foster son”, it may be pointed out that a “foster son” is a son who is not the real son or direct descendant of a person after his marriage.

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26. If a child comes to a person or is found by that person as forlorn child or the parents of that child, may be, on account of their poverty or their family circumstances, bring that child to the other person and request him to bring up that child which is accepted by that person and such child is brought up from the infancy as the own son by that person who loves that child as his own, nourishes and brings him up, looks after his education in the school, college or university and bears all the expenses, such child has to be treated as the son of that person particularly if that person holds the child out as his own. Care, therefore, in rearing

up the child need not always be parental. It can be even that of a “foster father”. In such a situation, the son so brought up would be the “foster son” of that person and since the devotion with which he was brought up, the love and care which he received from that person were like those which that person would have given to his real son, the “foster son” would certainly be a member of the family.

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31. From the above, it would appear that it is not in every case that a son who is not the real son of a person would be treated to be a member of family of that person but would depend upon the facts and circumstances of a particular case.”

24. Thus, the issue involved in this case is covered by this decision of Apex Court. When a ‘foster son’ is included within the meaning of a ‘son’ for purposes of eviction suit, there is no reason for not including a ‘stepson’ for purposes of need under Section 12(1)(e) & (f) of the Act. It is thus held that a stepson would be a son within the meaning of Section 12(1)(e) & (f) of the Act.

25. The learned counsel for defendants also placed reliance upon judgment of this Court in the case of **Gopinath Nainsukh (supra)**. However, this judgment deals with need of a daughter-in-law and her son and, therefore, is not relevant for decision of this case.

26. The Allahabad High Court has also considered this issue in the case of **Parmeshwari Devi vs. II Addl. District Judge** reported in **1976 SCC OnLine All 250**, wherein the Court held as under:

“7. This question can also be considered from another angle. The son and grandson of Smt. Saraswati would in law be the step son and step grand son of Smt. Parmeshwari Devi. There is no provision in Act XIII of 1972 which prohibits the step son and step grandson from taking advantage of its provisions. In my view, a step son and a step grand son would be considered as a male lineal descendant, as much as the son and grandson of the landlady. In law as it exists at present, no distinction can be made in these two categories of male lineal descendant'. The District Judge has acted

illegally in excluding them from consideration while assessing the bonafide need of the landlady Smt. Parmeshwari Devi.”

27. The Delhi High Court in the case of ***Durga Devi Jain vs. Dr. Harish Chander Bangra*** reported in ***2026 SCC Online Del. 4229***, accepted the need of step-grandson of landlord relying upon ***K.V. Muthu (supra)***.

28. As seen in the facts of the case, admittedly Ashutosh is the son of Anand Kumar from his first wife. There is no dispute with regard to the plaintiff's marriage with Anand Kumar. There is no conflict between the plaintiff and Ashutosh. Therefore, merely because Ashutosh was not born from plaintiff's womb, it cannot be said that the plaintiff cannot seek defendants' eviction for the need of Ashutosh. The learned Appellate Court thus grossly erred in excluding the need of Ashutosh under Section 12(1)(f) of the Act. The reliance placed upon the Apex Court judgment in the case of ***Lachman Singh*** (supra) by learned Appellate Court, as also by counsel for defendants, is found to be misplaced. ***Lachman Singh*** would not be applicable for purposes of eviction suit while considering the need of stepson for the reasons stated hereinbefore. The findings of the learned Appellate Court on this issue are thus set aside.

29. Learned Appellate Court has also held that the plaintiff is having a shop on the first floor which satisfies her need. However, the aforesaid finding of the Appellate Court is also not acceptable inasmuch as mere availability of accommodation is not sufficient, such alternate accommodation should also be suitable for the need of plaintiff. The suit accommodation at the ground floor cannot be compared with the accommodation situated on the first floor of the building. In this regard, the Apex Court judgment in the case of ***Dhannalal Vs. Kalawatibai & others*** reported in ***(2002)6 SCC 16*** can be profitably referred wherein the Apex Court has held as under:-

“27.Another alternative accommodation pointed out by the tenant is the one situated on the first floor of the building. It

has come in the evidence that the second floor of the building is used for residence of the landlords while the first floor is used partly as a godown and partly for stitching clothes which are sold as ready-made garments in the shop of Respondent 3. To amount to an alternative non-residential accommodation so as to defeat the requirement of the landlord for the suit premises, it should be a reasonably suitable non-residential accommodation. It should be suitable in all respects as the suit accommodation is. In *Shiv Sarup Gupta v. Dr Mahesh Chand Gupta* [(1999) 6 SCC 222] this Court has held that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. The availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. The bona fides of the need of the landlord for the premises or additional premises have to be determined by the court by applying objective standards and once the court is satisfied of such bona fides then in the matter of choosing out of more accommodations than one available to the landlord, his subjective choice shall be respected by the court. For the business, which Respondents 2 and 3 propose to start or continue respectively, an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor. A shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do. Moreover, there is no evidence adduced by the appellants to show that in M.T. Cloth Market, shops are also situated on the first floor of buildings and attract the same business as the shops on the ground floor do....”

30. In view of the discussion made above, this Court is of the considered opinion that the Appellate Court grossly erred in declining the decree of eviction to the plaintiff. Both the questions of law are accordingly answered in favour of appellant/plaintiff.

31. The judgment and decree dated 08/08/2005 passed by First Additional District Judge, Guna in Civil Appeal No.35-A/2003 and the judgment and decree dated 04/10/2002 passed by the Second Civil Judge, Class-II, Guna in Civil Suit No.33-A/2002 is restored.

32. With the aforesaid, this appeal is **allowed**.

(ASHISH SHROTI)
JUDGE

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