

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

SECOND APPEAL No. 451 of 2019

BETWEEN:-

**NARENDRA S/O NATHULAL MAHAJAN, AGED
ABOUT 49 YEARS, OCCUPATION: BUSINESS
SIDHAMATA MOHALLA KHARGONE (MADHYA
PRADESH)**

.....APPELLANT

(BY SHRI DATTATRAY KALE - ADVOCATE)

AND

**1. NARENDRA S/O LATE SHANTILAL JAIN,
AGED ABOUT 60 YEARS, OCCUPATION:
BUSINESS GRAIN SHOP NO.56 TILAL PATH
KHARGONE (MADHYA PRADESH)**

**2. INDRAKUMAR S/O LATE SHANTILAL JAIN,
AGED ABOUT 55 YEARS, OCCUPATION:
BUSINESS ADD. G RAIN SHOP NO.-56, TILAK
PATH, (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MANJU RAJ SINGH - ADVOCATE FOR RESPONDENTS)

Reserved on : 21.11.2022

Pronounced on : 22.12.2022

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*This appeal coming on for hearing this day, the court passed the
following:*

J U D G M E N T

This appeal under Section 100 of the CPC has been preferred by the plaintiff against the judgment and decree dated 16-11-2018 passed in Regular Civil Appeal No.14/2015 by the First Additional District Judge, Khargone (West Nimar) reversing the judgment and decree dated 24-01-2015 passed in Civil Suit No. 12-A/2014 by the Second Civil Judge, Class-I, District Khargone and dismissing his claim for eviction of the defendants from the suit shop situated at Tilak road, Khargone.

2. As per the plaintiff he is the owner of the suit shop having obtained the same from Nagar Palika, Khargone on lease on 24.05.2008 for a period of thirty years. Earlier the same had been taken on lease by his grandfather late Kanhaiyalal Onkarlal from Nagar Palika Khargone. By a will dated 09.09.1986 Kanhaiyalal had bequeathed the suit shop in his favour and upon his death he became the sole owner thereof. On the basis of the will Nagar Palika, Khargone executed fresh lease in his favour. The father of defendants late Shantilal had taken the suit shop from Kanhaiyalal on rent at Rs. 50/- per month in the year 1975. Upon death of his grandfather plaintiff had communicated the fact of him having acquired the suit shop under a will from him to father of defendants after which he started paying rent to him and upon his death in 2005 the defendants became his tenants in the suit shop at Rs. 60/- per month. The defendants have not been paying rent to plaintiff for past five years despite repeated demands hence by a notice dated 16-04-2013 the plaintiff terminated their tenancy. The defendants sent a reply dated 11.06.2013 and tendered the arrears of rent for past five years amounting to Rs. 3600/- but did not vacate the suit shop. On such contentions the

plaintiff instituted the claim for eviction of the defendants from the suit shop, for damages @ Rs 60/- per month till the date of decree and @ 1000/- per month till date of delivery of possession.

3. The defendants contested the plaintiff's claim by filing their written statement submitting inter-alia that plaintiff is not the owner of the suit shop, that the same was not given on lease to plaintiff's grandfather by the Nagar Palika, that no will was executed by him in favour of plaintiff, that no lease was executed in favour of plaintiff by the Nagar Palika on 24.05.2008, that plaintiff never intimated them regarding the alleged will executed by Kanhaiyalal in his favour and no such will was executed by him, that there is no relationship of landlord and tenant between them and plaintiff, that no rent was ever paid by their father to plaintiff, that there are other heirs also of late Kanhaiyalal to whom rent was tried to be paid but they did not accept the same, that the notice served by plaintiff was incorrect which was suitably replied to by them and that the suit has been filed by plaintiff for selling the suit shop.

4. The trial court decreed the plaintiff's claim finding that the suit shop is owned by Nagar Palika Parishad, Khargone hence the provisions of M.P. Accommodation Control Act, 1961 (hereinafter referred to as '*the Act, 1961*') would not be applicable to it, that defendants have admitted late Kanhaiyalal to be the landlord and their father to be a tenant in the suit shop, that the will dated 09.09.1986 set up by plaintiff has been proved by him, that defendants have admitted that after death of Kanhaiyalal their father and after his death they tried to sent the rent to his heirs, that in reply to plaintiff's notice dated 16.04.2013 the defendants tendered the arrears of rent which shows that they have admitted

themselves to be tenants in the suit shop and plaintiff to be the owner thereof, that plaintiff has also proved the lease deed dated 24.05.2008 executed in his favour by the Nagar Palika and that tenancy of defendants has been validly terminated by plaintiff.

5. The aforesaid judgment and decree has been reversed by the lower appellate Court upon holding that the exemption provided under Section 3 (1) (b) of the Act, 1961 would not be applicable in the present case since the suit shop has been let out by the plaintiff i.e. the lessee in favour of the defendants i.e. the sub-lessees as the same is applicable only between the owner and the lessee and not between the lessee and the sub-lessee hence the present suit would be governed by the provisions of the Act, 1961. It has further held that the only ground taken by plaintiff for eviction of the defendants is under Section 12 (1) (a) of the Act, 1961 which has not been proved by him. The decree of recovery of rent though has been confirmed but the decree for eviction has been set aside.

6. By order dated 15.04.2019 the appeal was admitted for final hearing on the following substantial questions of law:-

“(i) Whether provisions of the M.P Accommodation Control Act, 1961 is applicable for eviction of sub tenant by lessee from suit accommodation owned by Municipal Corporation, Khargone, in the light of Section 3(b) of the said Act and judgment passed by the Hon'ble Supreme Court in the case of Parvatibai Vs. Radhika reported in 2003(I) MPJR 531 in Civil Appeal No.2704/2000 decided on 01.05.2003 ?

(ii) Weather the appellate Court was justified in reversing eviction decree dated 16.11.2018 passed by ADJ, Khargone ?”

7. Learned counsel for plaintiff submits that the lower appellate Court has committed a gross error of law in holding that the provisions of the Act, 1961 would be applicable to the suit by plaintiff seeking eviction of the defendants from the suit shop. The exemption under Section 3 (1) (b) of the Act, 1961 is available in respect of the accommodation and not in respect of the parties. The trial Court had rightly held that the exemption is in respect of the accommodation hence the suit between the plaintiff and defendants would be exempted from the provisions of Act, 1961. The tenancy of defendants had validly been terminated by a notice hence plaintiff was entitled for the eviction decree. Reliance has been placed by him on the decision of the Hon'ble Supreme Court in **Parwati Bai Vs. Radhika, 2003 (I) MPJR 531, Rajendra Sales Corporation Vs. Indermull Himtaji, (1994) 2 SCC 286** and of this Court in **Radhey Lal Somsingh Vs. Ratan Singh Kishansingh and A. M. Qureshi Vs. M/s Shakti Pictures Circuit Limited Amravati 2001(2) MPHT 215.**

8. Per contra learned counsel for the defendants has submitted that the lower appellate Court has rightly held that the exemption under Section 3 (1) (b) of the Act, 1961 would be applicable only in respect of a suit between the owner and the lessee and not between the lessee and sub-lessee. Since the present suit is by a lessee against a sub-lessee, the exemption was not applicable and the plaintiff was required to prove a ground for eviction as contemplated under Section 12 (1) of the Act, 1961 which he has failed to do. It is further submitted that the lower appellate Court has not adverted to the findings of the trial Court recorded against them which had specifically been challenged by them in the appeal and which are also being challenged by them in this appeal. For the purpose

of such a challenge a cross objection is not required to be filed since such findings can be assailed at any time of final hearing. Reliance has been placed by him on a decision of this Court in **Dr Kailashchandra Vs. Damodar (Dead) through Lrs and others, 2020 (2) MPLJ 40**. It is submitted that plaintiff has not proved that the suit shop was given on lease by Nagar Palika to his grandfather hence there was no question of the same being bequeathed by him to plaintiff. No evidence was adduced by plaintiff in this regard and the will as set up by him has also not been proved. Neither grandfather of plaintiff nor plaintiff ever intimated the defendants as regards the suit shop having been bequeathed to plaintiff and there was no attornment by defendants in favour of plaintiff hence relationship of landlord and tenant between the parties is not established. The defendants had been making repeated efforts to pay rent to the other heirs of Kanhaiyalal who have not been impleaded as parties hence the suit itself was bad for non-joinder of necessary parties. It is hence submitted that the impugned decree deserves to be sustained.

9. I have heard leaned counsel for the parties and have perused the record.

10. While it is true that findings of trial Court on any issue decided against the respondent can be assailed before the appellate Court at any time of final hearing without filing cross objection, but in a second appeal the rider is that such a challenge has to go through the rigor of Section 100 of the CPC i.e framing of substantial question of law in respect of the same as a Second Appeal or a cross objection therein can only be heard on a substantial question of law. This has categorically been held by this

Court in Chandrawati Vs. Ganesh Prasad Lakshmi Prasad, 1999(1) MPLJ 107 in which it has been held in paragraph-14 as under :-

“14. Question, therefore, is as to whether in appeal from appellate decree, i.e., second appeal the respondents can be heard to say that the findings against them in the Courts below in respect of any issue ought to have been in his favour notwithstanding the rider of [Section 100](#) or Order 42, Rule 2, Civil Procedure Code? In other words whether involvement of substantial question of law shall or shall not operate against respondent. It is worthwhile mentioning here that the rules of Order 41, apply in the case of appeal from appellate decrees so far as may be, in view of Order 42, Rule 1, Civil Procedure Code. I am of the opinion that different yard stick cannot be applied in the case of appellants and respondent on an issue of fact. In case, the appellant in second appeal from an appellate decree cannot be heard on an issue of fact, unless the same involves substantial question of law, for parity of reasons respondents will also have to pass the same test and satisfy to the Court that the decision on an issue involves substantial question of law. In my opinion, provisions of Order 41, Rule 22, Civil Procedure Code shall be applicable in the case of appeal from appellate decree only when the appellate Court is satisfied that the issue decided against the respondents is fit to be gone into as it involves substantial question of law. I am of the considered opinion that when the appellants in appeal from appellate decree has to pass through a prescribed test and satisfy to the second appellate Court that the appeal involves substantial question of law, respondent in such appeal cannot be heard to say that the finding against him in the Courts below on any issue ought to have been in his favour without facing the same rigor i.e. to satisfy to the second appellate Court that it involves substantial question of law. In my

opinion, same yardstick has to be applied in case of the respondent as that of the appellant when the respondent questions the finding of the Court below in second appeal.”

The defendants have not proposed any substantial question of law as regards the findings which they wish to challenge in this appeal in absence of which their submissions in that regard cannot be considered.

11. As regards the substantial questions of law framed in this appeal it is seen that in **Parwati Bai (supra)** and **Radheylal Somsingh (supra)** the question for consideration was also in respect of exemption conferred under Section 3 (1) (b) of the Act, 1961 and it was held that the exemption is not conferred on the relationship of landlord and tenant but on the premises itself which thereafter is not subjected to the provisions of the Act, 1961. In **Parwati Bai (supra)** it was held in paragraph-4 as under:-

“4. It is well settled by a decision of this Court in Bhatia Cooperative Housing Society Ltd. vs. D.C. Patel 1953 (4) SCR 185 wherein pari materia provisions contained in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 came up for consideration of this Court. It was held that the exemption is not conferred on the relationship of landlord and tenant but on the premises itself making it immune from the operation of the Act. In identical facts, as the present case is, the decision of this Court was followed by the High Court of Madhya Pradesh in Radheylal Somsingh vs. Ratansingh Kishansingh 1977 MPLJ, 335 and it was held that the immunity from operation of the Madhya Pradesh Accommodation Control Act, 1961 is in respect of the premises and not with respect to the parties. If a tenant in municipal premises lets out the premises to another, a suit by the tenant for ejection of his tenant and arrears of rent would not be governed by the Act as the premises are exempt under Section 3 (1)(b) of Act though the suit is not between the municipality as landlord and against its tenant. We find ourselves in agreement with the view taken by the High Court of Madhya

Pradesh in Radheylal's case. It is unfortunate that this decision binding in the State of Madhya Pradesh was not taken note of by the courts below as also by the High Court. “

In **Radheylal Somsingh (supra)** it was held in paragraph No.9 as under :-

“9. Having heard the arguments on both sides, I am of the firm opinion that the Act does not apply to the suit premises and its provisions cannot be brought into play for the decision of the present suit. The first part of the reasoning of the learned counsel for the appellant deserves to be repelled on the short ground that immunity from the operation of the Act is in respect of the premises and is not with respect to the parties as is evident on a plain reading of the expression "Nothing in this Act shall apply.....(b) Accommodation which is the property of a local authority used exclusively for non-residential purposes." This question is fully covered by the decision of their Lordships of the Supreme Court in *Messrs Bhatia Co-operative Housing Society Ltd v. D. C. Patel*'. In this case, a question had arisen with respect to the applicability provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act (47 of 1947) (hereinafter referred to as the Bombay Act), wherein Section 4 of that Act came up for construction and while construing the language, of this section their Lordships of the Supreme Court held that exemption from the operation of the Act was with respect to the premises. The provisions contained in section 4 (1) of the said Act are *pari materia* to the provisions contained in section 3 of the Act.

In **A.M. Qureshi (supra)** it was held in paragraph No.9 as under :-

“9. Now, the notification issued under sub-section (2) of Section 3 of the Act is confined to the immovable properties

defines "accommodation" under the Act. It does not and cannot deal in terms who shall be the beneficiary of the notification. The contract of tenancy does not come into play in the context of our case. The notification is equally applicable to a lessee and sub-lessee because in such a case, the lessee becomes the landlord and the sub-lessee becomes the tenant under the Act. The paramount landlord, i.e., Dudhadhari Shri Vaishnava Trust Fund, Raipur may be lesser qua plaintiff in this case and by virtue of this relationship, the notification issued by the State Government exempts the accommodation belonging to the paramount landlord. It is neither here nor there to argue that sub-lessee had let out the property to him. In fact, the Act itself provides that a sub-lease can be granted only as per Section 14 (2) of the Act having obtained the consent therefor, from the paramount landlord in writing. There are elaborate provisions in Sections 14, 15 and 16 of the Act in what cases how a sub-tenant can be treated as tenant. There appears to be no valid reason to hold that a sub-lessee shall be governed by these provisions, in case where the notification exempts the accommodation mentioned in Section 3 (2) of the Act. A lessee can create a sub-lease in accordance with the general law of contract and Transfer of Property Act. It would be anomalous to hold that the exemption from the operation of the Act applies to these sections on account of the notification but it does not apply to a case where a sub-lessee files a suit to evict another sub-lessee under the general law. This Court is firmly of the view that the provisions of Section 3 (2) of the Act should be given full effect and not piecemeal effect. Section 3 (2) of the Act and notification made thereunder apply to the accommodation alone and it is not affected by a contract between lessee and a sub-lessee. If the accommodation is exempted, then it does not matter, whether the suit is filed by a paramount landlord or the lessee against the sub-lessee, and the Act would not come into operation."

12. The ratio of the aforesaid decisions is that the exemption which is provided is to the premises itself and not in respect of a relationship of landlord and tenant, meaning thereby that such exemption would be in respect of the premises regardless of the parties to the suit which may be either the owner or lessee or the lessee or the sub-lessee. That would not make any difference and the exemption would still be applicable and the

provisions of the Act, 1961 would stand excluded regardless of the fact as to between which parties the suit has been instituted.

13. Thus, the lower appellate Court has committed an error in holding that the provisions of the Act, 1961 would be applicable to the present case and the plaintiff was required to prove a ground under Section 12(1) of the Act, 1961 and on him not having done so his claim could not have been decreed. The Nagar Palika Parishad being the owner of the suit shop had leased out the same to the plaintiff. The defendants are his sub-lessee in the suit shop whose tenancy has been validly terminated by the plaintiff by notice dated 16.04.2013 in view of which he is entitled for recovery of possession of the suit shop from the defendants as had rightly been held by the trial Court.

14. Thus, the substantial questions of law as framed by this Court are answered in favor of the plaintiff and against the defendants. Consequently, the judgment and decree passed by the lower appellate Court is set-aside and that passed by the trial Court decreeing the plaintiff's claim for eviction is hereby restored.

No costs.

(PRANAY VERMA)
JUDGE