

CASE NO.:
Appeal (civil) 3663 of 1998

PETITIONER:
RAGAVENDRA KUMAR

RESPONDENT:
FIRM PREM MACHINERY AND CO.

DATE OF JUDGMENT: 07/01/2000

BENCH:
V.N. KHARE & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2000 (1) SCR 77

The Judgment of the Court was delivered by :

PHUKAN, J. This appeal at the instance of defendant-tenant is directed against the judgment and decree dated 14.5.98 passed by the High Court of M.P. at Jabalpur in Second Appeal No. 55/98 reversing the judgment and decree of two courts below passed in favour of the appellant.

The appellant herein shall be described as plaintiff-landlord and respondent as defendant-tenant hereinafter for the sake of convenience.

The plaintiff filed a suit under Section 12(1)(f) of M.P. Accommodation Control Act, 1961 for eviction of the defendant-tenant on the ground of bona fide requirement as he required the suit premises for opening a showroom of Indo-Suzuki motor-cycles and TVS-50 mopeds for which he was appointed sub-dealer. The trial court came to the finding that the plaintiff-landlord was in bona fide need of the disputed premises for doing his own business and for this purpose no other suitable shop was available to him in the city of Chattarpur. The lower appellate court after considering the evidence on record upheld the above finding of the trial court and dismissed the appeal filed by the defendant-tenant.

The High Court in the second appeal framed the following two questions which according to the High Court were substantial questions of law.

(i) "Whether in view of the fact that the respondent admitted that there are number of plots, houses and shops in his possession, the lower appellate court could not have decreed the suit of the respondent under Section 12(1)(f) of M.P. Accommodation Control Act, 1961?

(ii) Whether in view of the admission of the respondent the trial court wrongly placed onus on the appellant to prove that the alternative accommodation is suitable for the business of the respondent?"

The learned single Judge of the High Court was of the view that the Courts below had wrongly placed the onus on the defendant-tenant of proving that alternative accommodation was not suitable for the plaintiff-landlord and that courts below had ignored the fact that plaintiff-landlord had admitted that he and his father were in possession of certain shops and had not stated why these alternative shops were not suitable for their business or they were vacant. On these grounds the learned Single Judge set aside both the judgments and decrees of the courts below.

We have heard Mr. A.K. Sanghi, learned counsel for the appellant and Mr. Satish Chandra, learned senior counsel for the respondent.

The learned counsel Mr. Sanghi for the appellant has urged that the High

Court in the second appeal erred in law by setting aside the concurrent finding of fact of the courts below by re-appreciating the evidence on record. In this connection learned counsel has placed reliance on a decision of this Court.

In *Kashibai w/o Lachiram and Another v. Parwatibai w/o Lachiram and Others*, [1995] 6 SCC 213, this Court inter alia held that there is no jurisdiction to entertain the second appeal on the ground of erroneous finding of fact, based on appreciation of the relevant evidence.

The only question to be decided in the suit was whether plaintiff-landlord wanted the suit premises for the bona fide requirement. The bona fide requirement of the landlord does not give rise to any substantial question of law and it has to be decided on the appreciation of evidence. This view was also expressed by this Court in *Ram Prasad Rajak v. Nand Kumar & Bros. & Anr.*, JT (1998) 5 SC 540. The learned Single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff-landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff-landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter, (See: *Prativa Devi (Smt.) v. T.K Krishnan*, [1996] 5 SCC 353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

After the death of the father of the plaintiff-landlord the plaint was amended and the following was added as para 6(a) :

That the father of the plaintiff had expired in the month of February, 1992 and the buildings left by the father of the plaintiff were already occupied by tenants, and the owners of these buildings are plaintiffs mother and other legal heirs of plaintiffs father Durga Prasad. No building having ownership of the plaintiffs father Durga Prasad is vacant or in possession of the plaintiff.

No additional written statement was filed on behalf of the defendant-tenant and no further evidence was adduced after the amendment by either parties.

The learned Single Judge of the High Court has found fault as the plaintiff-landlord did not give evidence after above amendment of the plaint. In our opinion it is not necessary as the above amendment was not rebutted by the defendant-tenant.

The learned Single Judge also erred in law in holding that lower appellate court wrongly placed onus on the defendant-tenant. It is true that the lower appellate court was of the view that the burden of proving that the plaintiff-landlord has many shops in the city, lied with the defendant-tenant but Court did so while appreciating the evidence on record adduced by the parties. The above view was expressed by the appellate court after holding that on preliminary documents and evidence produced before the courts below it was evident that the disputed shop was required by the plaintiff-landlord for bona fide need. On going through the judgment of the lower appellate court we find the appellate court decided the appeal on preponderance evidence not on the basis of burden of proof. We may state here that trial court clearly recorded that the burden was on the plaintiff-landlord to prove that he was in bona fide need of the suit premises.

Without considering whether the two questions framed by the learned Single Judge of the High Court in second appeal were substantial questions of law

or not, we find that these two questions were framed contrary to the judgments of the courts below. Mr. Satish Chandra, learned senior counsel while drawing our attention to the judgment of the learned Single Judge has urged that the plaintiff-landlord and his late father had number of shops, houses including the disputed shop but we find that there is nothing on record to show that any of such shop premises was vacant and suitable for the purpose of proposed business.

Mr, Satish Chandra, learned senior counsel has drawn our attention to the decision of this Court in *Dilbagrai Punjabi v. Sharad Chandra*, AIR (1988) SC 1858 - (1988) 3 JT 308 in which this Court held that the High Court in the second appeal was fully justified in reversing the findings of the courts below. This Court took note of the fact that the High Court was right in pointing out that the courts below had seriously erred in not considering the entire evidence on record including documents where there was an admission. in other words this was a case of non-consideration of evidence on record but that is not so in the case in hand. The second decision of this Court on which reliance has been placed by Mr. Satish Chandra, learned senior counsel was in *Jagdish Singh v. Natthu Singh*, AIR (1992) SC 1604. This Court held that the High Court in the second appeal is not precluded from recording proper findings if the findings of the courts below were vitiated by non-consideration on relevant evidence or by essentially erroneous approach to the matter. In the case in hand nothing has been brought to our notice that the courts below did not consider relevant evidence on record or the approach to the matter was wrong. Therefore, the above decisions are not applicable to the case in hand. For the reasons stated above we are of the considered opinion that the High Court in the second appeal erred in law by setting aside concurrent findings of facts of the courts below by re-appreciating the entire evidence on record.

In result appeal is allowed by setting aside the impugned judgment of the High Court and the judgments and decrees of the courts below are restored. Cost on the parties.