



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 645 of 2022**

- Praveen Kumar Jain S/o Late Shri Kastur Chand Jain Aged About 55 Years R/o Ward No. 12, Manendragarh, Tahsil Manendragarh, District Koriya Chhattisgarh. ---- **Petitioner**

Versus

- Hari Lal Yadav S/o Late Shri Ramdhari Yadav Aged About 54 Years R/o Near Bus Stand, Kali Mandir Road, Manendragarh, Tahsil Manendragarh, District Koriya Chhattisgarh.

---- **Respondent**

For Petitioner :- Ms. Priyanka Rai, Advocate
For Respondent :- Mr. Akhtar Hussain, Advocate

Hon'ble Shri Justice Goutam Bhaduri
Hon'ble Shri Justice N.K. Chandravanshi
Order On Board

Per Goutam Bhaduri, J.

31/1/2023

1. Heard.
2. By way of instant petition, the order dated 06.5.2022 passed by the Rent Control Tribunal, Raipur is under challenge whereby the Tribunal has affirmed the order passed by the Rent Control Authority, Manendragarh on 08.2.2021.
3. The present petition is by the landlord against the dismissal of application for eviction against the respondent / tenant.
4. The brief facts of this case are that the petitioner Praveen



Kumar Jain had filed an eviction petition against respondent Hari Lal Yadav stating that father of Hari Lal Yadav was the tenant of the subject suit premises and was carrying on a business of Hotel. After death of Ramdhari Yadav, the father of respondent, the respondent became the tenant and for last two year, the premises was placed under a lock. It was further stated that respondent has not paid the rent from 30.12.2000. The petitioner, landlord further pleaded that a notice dated 03.2.2016 was served to the tenant under the Chhattisgarh Rent Control Act, 2011 (for short 'the Act, 2011') claiming vacant possession of the subject suit premises, but, instead of vacating the said premises, it is stated that the tenant/ respondent raised the plea of adverse possession and claimed to have become the owner. Consequently, on 28.3.2018, an application was preferred by the petitioner before the Rent Control Authority, Manendragarh claiming vacant possession of premises along with arrears of rent.

5. The respondent / tenant filed his reply and stated that his father namely Ramdhari Yadav was the tenant of the suit premises and after his death the landlord and tenant relation in between the parties came to an end. It was further stated that after the year 2000, the relation between the parties as a landlord and tenant never subsisted and no rent was paid or claimed for the last 18 years and has become owner of premises, therefore, the petitioner is not entitled to receive any rent and claimed for dismissal of the petition.



6. Ms. Priyanka Rai, learned counsel for the petitioner would submit that both the orders of the Rent Control Authority and the Rent Control Tribunal are misconceived and she referred to the affidavit and admission to submit that the tenancy was admitted and as per Section 12(4) (ii)(b) of the Act, 2011, the respondent having stepped into the shoes of his father would be a tenant as per the definition of the Act, 2011. She would further submit that though the adverse possession plea was raised, but, nothing is on record to show that such claim was slated anywhere so as to fortify the same by way of tax receipt to claim the ownership. She would further submit that though the tenancy was denied but the rent receipt was produced vide Ex. D1 which in turn would show the relation of landlord and tenant was admitted. Consequently, the finding arrived at by both the Courts below is completely misconceived and liable to be set-aside along with the arrears of rent to which the petitioner is entitled.

7. *Per contra*, learned counsel for the respondent would submit that the finding arrived at by both the Court below are well merited. He would submit that the petitioner though claimed himself to be a landlord did not produce any document to show that the ownership vested with them at any point of time. He would further submit that not a single rent receipt after death of Ramdhari Yadav has been placed on record to show the landlord and tenant relation. He would submit that when the relation of ownership and the tenancy has not been established, the operation of the Act, 2011 cannot be set into motion thereby



the judgment and the order of the Rent Control Authority and the Rent Control Tribunal do not call for any interference.

8. We have heard learned counsel for the parties at length and perused the record.

9. The petitioner had filed an application seeking eviction after issuance of notice (Ex. P1) on 03.2.2016 which was replied vide Ex. P2 on 05.3.2016. Perusal of Ex. P1, the notice would show that the tenancy was terminated on 01.8.2016 and six months time was given to vacate the suit premises along with arrears of rent and the rent was said to be of Rs.300/- per month and in the notice an arrears of Rs. 54000/- was claimed.

10. Perusal of contents of Ex. P1, the notice would show that it was issued in accordance with Section 12(2) Schedule 2 serial No. 11(a) and (h) of the Act, 2011. For sake of ready reference, the said Sections are produced hereunder:-

“11.Right to seek from the Rent Controller eviction of the tenant on the following grounds:

(a) If the tenant is a habitual defaulter in payment of rent and / or other dues.

XXX XXX XXX

XXX XXX XXX

(h) On 6 months notice to the tenant in writing, without any obligation to assign any reason, but on the condition that the accommodation will not be leased out at a higher rent for atleast 12 months thereafter:

Provided, however, that in case of the following special



categories of landlords and / or their spouse desiring the accommodation back for own use, the period of notice shall be one month: current or retired government servants, widows, personnel of the armed forces, persons coming to physical or mental handicap, and senior citizens (above the age of 65 years).”

11. In reply to the notice (Ex.P1) by way of Ex. P2, the respondent admitted the fact that till year 2000 his father was the tenant. Reply further purports that since after the year 2000 no amount by way of rent was paid and he (respondent) has become the owner by way of adverse possession.

12. The suit premises was not vacated after the statutory notice and the application for ejection was filed. Before the Rent Control Authority, the respondent admitted the fact that father of respondent namely Late Ramdhari Yadav was the tenant and after his death the son Hari Lal Yadav, the respondent is not a tenant as tenancy came to an end after death of his father in the year 1999.

13. The Act, 2011 defines the words landlord and tenant. Section 2 sub-Section 5 of the Act, 2011 defines the word 'landlord' which reads as under:-

“ “Landlord” means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the



accommodations were let to a tenant.”

14. Likewise, the word 'tenant' is defined under Section 2 sub-section 14 of the Act, 2011 which reads as under:-

“ “Tenant” means--

(i) the person by whom or on whose account or behalf rent is, or but for, a contract express or implied, would be payable for any accommodation to his landlord including the person who is continuing its possession after the termination of his tenancy otherwise than by an order or decree for eviction passed under the provisions of this Act; and

(ii) in the event of death of the person referred to in sub-clause (i)--

(a) in case of accommodation let out for residential purposes, his surviving spouse, son daughter, mother and father who had been ordinarily residing with him in such accommodation as member of his family up to his death;

(b) in case of accommodation let out for commercial or business purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily carrying on business with him in such accommodation as member of his family up to his death.”

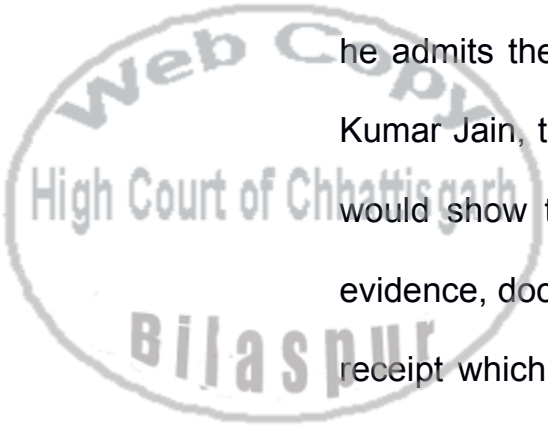
15. Reading of the aforesaid provisions would show that the word 'tenant' includes a person to say that accommodation when let out for commercial or business purposes, his surviving spouse, son etc, who carries on the business in such accommodation would be a tenant and the landlord means a person who





receives or is entitled to receive the rent. The said definitions when are translated into the pleading made by the respondent it would amount to envelope the respondent within the definition of tenant inasmuch as the respondent admitted the fact that his father Ramdhari Yadav was the initial tenant and after his death he is carrying on his business on the said premises since the year 2000. Therefore, there is no ambiguity nor any cloud is cast over the status of the respondent to be the tenant within the definition as laid down by the Act, 2011.

16. Further reading the statement of Hari Lal Yadav, the respondent, he admits the fact that his father has paid the rent to Praveen Kumar Jain, the petitioner till the year 2000. Further statement would show that father died in the year 1999 and during the evidence, document Ex. D1 was produced to show that its a rent receipt which purports that Praveen Kumar Jain, as a landlord has received the rent from Hari Lal Yadav of Rs.5400/- on 25.7.2000. At para 10 of the cross-examination of respondent, he admits the fact the said receipt (Ex. D1) was produced by him. Landlord has produced another copy of receipt vide Ex. P4 (c) to show the tender of monthly rent of Rs.300/- from Hari Lal Yadav. The question which looms large that when the respondent claims that he was not a tenant and became the owner and after death of his father he did not pay the rent, how he came into possession of Ex. D1?. The very fact of holding the document Ex. D1, i.e., the rent receipt would show that he has paid the rent and accepted the petitioner to be the landlord





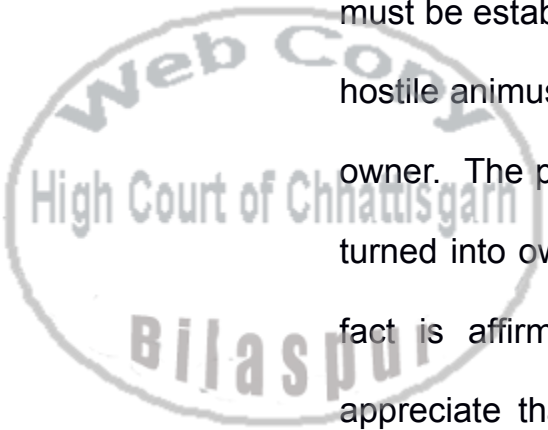
of the suit premises.

17. The respondent further has raised the claim of adverse possession on the ground that after death of his father in the year 1999, no rent was paid after the year 2000 and the ejectment suit was filed in the year 2018. There is no document on record to show that the subject premises was recorded in the name of respondent to claim the ownership, asserted by way of tax receipt or any other similar document.

18. Such permissive possession of like nature to turn into adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. The possession for howsoever length of time cannot be turned into ownership on the basis of adverse unless the same fact is affirmatively proved. There is nothing on record to appreciate that respondent has taken any steps to show that possession is adverse.

19. The Article 65 of the Limitation Act, 1963 presupposes that the limitation starts only if one claims the adverse possession affirmatively from a particular date so as to show that there is exclusive or implied denial of title of the true owner, therefore, the person who bases his title on adverse possession must show, by clear and unequivocal evidence, that the possession was hostile to the real owner and it amounted to the denial of his title to the property claimed.

20. The perusal of the records of the learned Rent Control Authority





would show that after service of notice in terms of Schedule 2 of Section 12 of the Act, 2011, the premises was not vacated. In the statement of the petitioner/landlord he has claimed the arrears along with prayer to get the vacant premises. In the cross-examination, nothing has come on rebuttal which can attribute the non-compliance of service of notice as the service of notice and the reply have already been proved by Ex.P1 and Ex.P2 respectively.

21. Consequently, we are of the view that the orders of the Rent Control Authority and Rent Control Tribunal are liable to be set-aside. Accordingly, we allow this petition and direct the respondent to vacate the premises within a further period of two months. The petition was filed on 28.3.2018 and as per the Article 52 of the Limitation Act, 1963, the petitioner would only be entitled for three years of rent, when it has become due. Meaning thereby, the rent he would be entitled for from 28.3.2015 till the premises is vacated at the rate of Rs.300/- per month.

22. Accordingly, the petition is allowed to the above extent.

SD/-
(Goutam Bhaduri)
Judge

SD/-
(N.K. Chandravanshi)
Judge

**Head Note**

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When surviving son or spouse carries on business, on death of original tenant he would be deemed to be a tenant under the Chhattisgarh Rent Control Act, 2011.

मूल किरायेदार की मृत्यु पर, जब उत्तरजीवी पुत्र या पति/पत्नी व्यवसाय का संचालन कर रहे हैं तो उन्हें छत्तीसगढ़ भाड़ा नियंत्रण अधिनियम, 2011 के तहत किरायेदार समझा जावेगा।

