

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

SECOND APPEAL No. 241 of 2022

BETWEEN:-

**SMT. IKLAS BANO W/O IKTIKAR AHMED,
AGED ABOUT 75 YEARS,
OCCUPATION: HOSUEWIFE 222,
GANDHINAGAR (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI PRANAV MANDHANYA, ADVOCATE)

AND

**SMT. HASINA BEE W/O LT. SUKHAWAT KHA,
AGED ABOUT 65 YEARS, 62/3,
KUSHALPURA DRAVID ROAD,
INFRONT OF TRIMURTI TALKIES,
STREET NO. 4 (MADHYA PRADESH)**

.....RESPONDENT

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

J U D G E M E N T
(Delivered on 31.10.2022)

1. This appeal under Section 100 of the Code of Civil Procedure has been preferred by the plaintiff/appellant against the judgment and decree dated 01.11.2021 passed in Civil Appeal No.4A/21 by the 5th Additional District Judge, District Ujjain affirming the judgment and decree dated 07.03.2020 passed in Civil Suit No.193A/2017 by the 7th Civil Judge, Class-2, District Ujjain whereby her claim for eviction of the defendant from the suit premises on grounds enumerated under Section 12 (1) of the M.P. Accommodation Control Act, 1961 has been dismissed.

2. As per the plaintiff, she had purchased house No.62/3, Kushalपुरa, Gali No.4, Ujjain from defendant by a registered sale deed dated 03.02.2010. After the sale deed the defendant was not getting any accommodation for herself hence requested plaintiff to let out the suit premises to her for a period of 6 months at monthly rent of Rs.700/- which she did. The tenancy was oral and besides the tenanted premise the remaining part was in possession of plaintiff. Defendant paid rent upto August,2010 but thereafter stopped doing so and on being asked refused to deliver vacant possession of the suit premises to her despite issuance of notice to her in that regard. The suit premises are bona fide required by the plaintiff for her own residence and for many other reasons. On such grounds the suit was instituted by the plaintiff.

3. The defence of the defendant was that she had never sold the house to the plaintiff nor had ever delivered possession of the same to

her. She has been residing in the house since a long time and has never paid rent to plaintiff. The plaintiff had fraudulently got registered the sale deed from her. She is residing along with her family in the ground floor of the house. There is no relationship of landlord and tenant between her and plaintiff and the suit premises are not bona fide required by the plaintiff for her residence.

4. The defendant also laid a counter claim for permanent injunction restraining the plaintiff or her son or any other person from damaging the house and from alienating the same in favour of any third person. The plaintiff contested the counter claim of the defendant by filing her written statement to the same.

5. The trial Court dismissed the plaintiff's claim by holding that relationship of landlord and tenant between the parties has not been proved though it upheld the sale deed dated 03.02.2010 executed by the defendant in favour of the plaintiff. The counter claim of the defendant was also dismissed. The said findings have been maintained by the lower appellate Court in appeal having been preferred before it by the plaintiff. Hence, this appeal.

6. Learned counsel for the plaintiff submits that the Courts below have erred in holding that the relationship of landlord and tenant between the parties has not been established by the plaintiff. Though there might not be any documentary evidence in respect of relationship of tenancy, but the said fact categorically stands proved from the oral

evidence adduced by the plaintiff which has not been appreciated in proper perspective by both the Courts. It is not mandatory that a written document has to be executed for creation of tenancy. The defendant had orally requested the plaintiff to let out the suit premises to her which she had done and had paid rent for the period as agreed but thereafter did not vacate the suit premises and pay the rent. From perusal of statements of plaintiff's witnesses creation of relationship of landlord and tenant between the parties is duly established. The evidence is also supported by the documentary evidence brought on record by the plaintiff.

7. I have heard learned counsel for the plaintiff and have perused the record. Admittedly no document of creation of tenancy between the parties has been executed. There is no documentary proof of payment of rent by the defendant to the plaintiff ever or rent receipts having been issued by plaintiff to her. The documents adduced by the plaintiff do not support the stand of plaintiff of creation of tenancy. They are primarily related to title to the property. The statements of plaintiff's witnesses namely Mohammad Yaqub (PW-1), the plaintiff Iqbal Bano (PW-2) and Ikrar Ahmed (PW-3) have been carefully perused and from them the fact of letting out of the suit premises by plaintiff to defendant cannot be stated to be proved. The statements have been challenged by defendant and are not rebutted. The same are not of such a nature from which it can be said that it has been clearly established that the

suit premises were let out to the defendant by plaintiff. In absence of any written document of creation of tenancy and payment of rent by defendant to plaintiff and issuance of rent receipt by plaintiff to defendant it cannot be held that the Courts below have in any manner erred in negating plaintiff's contention that defendant is her tenant in the suit premises.

8. The findings arrived at by the Courts below that plaintiff has failed to prove the relationship of landlord and tenant between her and defendant are based upon the material available on record and cannot be said to be perverse or illegal in any manner. The same are pure findings of facts and are not liable to be interfered with in second appellate jurisdiction. Thus, I do not find any reason to interfere with the judgment and decree passed by the Courts below. No substantial question of law arises for determination in this appeal which is consequently dismissed in limine.

(PRANAY VERMA)
JUDGE

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