

**Harakchand Vs. Karodimal**

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**SooperKanoon Citation :** [sooperkanoon.com/497301](http://sooperkanoon.com/497301)

**Court :** Madhya Pradesh

**Decided On :** Mar-25-1957

**Reported in :** AIR1958MP5

**Judge :** Dixit, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11; Madhya Bharat Accommodation Control Act, 1955 - Sections 4

**Appeal No. :** Civil Revn. No. 150 of 1957

**Appellant :** Harakchand

**Respondent :** Karodimal

**Advocate for Def. :** C.S. Chhazed, Adv.

**Advocate for Pet/Ap. :** M.L. Seth, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**Dixit, J.**

1. This revision-petition arises out of a suit filed by the non-applicant Karodimal for the ejection of the petitioner from a house on the ground that the plaintiff needed

the premises for his own residence. On the pleadings of the parties the trial Court framed issues as regards the genuine requirement of the plaintiff and the date of the commencement of the tenancy. The plaintiff had previously filed a suit for ejectment on the ground that he needed the premises for own use. In that suit, the trial Court found the genuine necessity of the plaintiff established but rejected the plaintiff's claim for ejectment on the other grounds.

Relying on the finding in the previous suit on the question of the genuine requirement in respect of the house, the plaintiff made an application to the lower Court that as the aforesaid finding in the previous suit would be binding on the parties, therefore, issues Nos. 1, 2 and 3 framed in the case covering the same points be deleted. This prayer was granted by the lower Court. The defendant has now filed this petition for setting aside the order of the trial Court deleting issues Nos. 1, 2 and 3.

2. The order of the trial Court is clearly wrong and cannot be upheld. The learned trial Judge failed to comprehend the fact that the finding in the previous suit on the question of the plaintiff's genuine necessity for the house existing at the time of the institution of that suit could not on any reasoning operate as *res judicata* in the present case where the basis is the plaintiff's genuine necessity as existing on the date of the subsequent suit. When this petition came up for hearing, Mr. Chhazed, learned counsel for the non-applicant, intervened and frankly and rightly admitted that the principle of *res judicata* could not be invoked in this case.

The order dated 1st February, 1957, of the Civil Judge, First Class, Ujjain, is set aside. Issues Nos. 1, 2 and 3 framed in the suit shall be restored and the parties shall lead their evidence on these issues. There will be no order as to costs of this petition.