

**Mangilal Vs. Ramchandra**

**Mangilal Vs. Ramchandra**

**SooperKanoon Citation :** [sooperkanoon.com/499656](http://sooperkanoon.com/499656)

**Court :** Madhya Pradesh

**Decided On :** Jul-26-1984

**Reported in :** AIR1984MP154

**Judge :** R.K. Vijayvargiya, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

**Appeal No. :** Second Appeal No. 262 of 1982

**Appellant :** Mangilal

**Respondent :** Ramchandra

**Advocate for Def. :** T.N. Singh, Adv.

**Advocate for Pet/Ap. :** B.I. Mehta, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**R.K. Vijayvargiya, J.**

1. This appeal by the plaintiff is directed against the judgment and decree dated 6-2-1982 passed by the first additional judge to the court of District Judge Mandsaur in Civil Appeal No. 41-A of 1981 arising out of the judgment and decree dated 30-3-1981 passed by the civil judge class II, Mandsaur in Civil Suit No. 364-A of 1980.

2. The plaintiff appellant filed the present suit for eviction of the defendant respondent from the tenanted residential accommodation on the ground that the plaintiff required the accommodation for residence of himself and members of his family and that the accommodation in his occupation was insufficient for his requirement. The defendant resisted the suit. He denied that the plaintiff required the tenanted accommodation for residence of himself and members of his family. The trial court held that the requirement of the plaintiff was proved and decreed the suit. On appeal by the defendant the appellate court held that it was not proved that the accommodation in occupation of the plaintiff was insufficient for the residence of himself and members of his family. The appellate court consequently allowed the appeal and dismissed the plaintiff's suit. Aggrieved by the judgment and decree of the appellate court the plaintiff has preferred this appeal.

3. The only question which arises in this appeal is whether the appellate court has committed an error of law in holding that the accommodation already in possession of the plaintiff is sufficient for his requirement. The accommodation in possession of the plaintiff consists of two rooms on the ground floor, two rooms on the first floor and two rooms on the second floor. The plaintiff's family consist of himself his wife his mother two children of the age of 15 years and four children below 12 years of age. The appellate court held the taking into consideration the size of the family of the plaintiff it was not proved that the accommodation already in possession of the plaintiff was insufficient for the requirement of the plaintiff and that he requires the tenanted accommodation for the residence of himself and members of his family. This is a finding of fact based on appreciation of evidence and is binding on this court in second appeal.

4. The learned counsel for the appellant contended that the finding of the appellate court is vitiated because it has erroneously assumed that the two covered varandahs in possession of the plaintiff are rooms and are available to the plaintiff for his residence. He contended that the two varandahs on the first floor and the second floor cannot be used as rooms and therefore the plaintiff's requirement for the additional accommodation in the occupation of the defendant is made out. The contention of the learned counsel for the appellant has no merit. It is true that the appellate court has erroneously stated that eight rooms are available to the plaintiff

for his use and occupation. However from the earlier part of the judgment it is clear that the appellate court, was aware of the fact that the plaintiff was in possession of one big covered varandha on the first floor and one big varandha on the second floor. In the circumstances it cannot be held that the finding recorded by the appellate court is vitiated because of any wrong assumption as regards the accommodation in possession of the plaintiff.

5. At the most the finding of the appellate court may be characterised as erroneous but that cannot be a ground for interference with the finding which is a finding on the question of fact and is binding in second appeal. I therefore see no reason to interfere with the judgment and decree passed by the appellate court.

6. As a result of discussion aforesaid this appeal fails and is dismissed. No order as to costs of this appeal.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**