

**Sunil and ors. and Manohar and ors. Vs. Smt. Vimla Bai and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/502572](http://sooperkanoon.com/502572)

**Court :** Madhya Pradesh

**Decided On :** Apr-19-2007

**Reported in :** 2007(3)MPHT95; 2007(2)MPLJ438

**Judge :** S.A. Naqvi, J.

**Appellant :** Sunil and ors. and Manohar and ors.

**Respondent :** Smt. Vimla Bai and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**S.A. Naqvi, J.**

1. Appellants have preferred this appeal aggrieved by the impugned judgment and decree dated 7-7-2000 passed by 9th ADJ, Gwalior in F.A. No. 6-A of 1998 whereby, setting aside judgment and decree dated 6-1-1998 passed by 11th Civil Judge, Class II, Gwalior in Civil Suit No. 485-A of 1994 and decreeing the suit for eviction of respondents/plaintiffs on the ground under Section 12(1)(b) of the M.P. Accommodation Control Act, (hereinafter referred as to 'the Act'). This judgment shall also dispose of Second Appeal No. 344 of 2000 arising out of the same impugned judgment.

2. Plaintiff/respondent Nos. 1 and 2 filed a suit for eviction of suit premises against original tenant Laxman Das on the ground under Sections 12(1)(a), 12(1)(b) and 12(1)(i) of the Act. Laxman Das was tenant in the suit premises since 1976. Rent of suit premises was Rs. 80/- per month. The suit premise is situated in BARF WAIT GALI Daulat Ganj, Lashker. The suit premises is shown in the plaint map. No rent has been paid since 1-4-1978 to 31-10-1978 by tenant. Original tenant Laxman Das has parted with the possession of the suit premises. Kishanlal has been in occupation of the suit premises as sub tenant of Laxman Das. Laxman Das is residing in another house. On 26-9-1978, plaintiffs served a notice to pay arrears of rent to the defendants/appellants but defendants have not paid arrears of rent and did not vacate the suit premises. After death of Laxman Das, respondents were brought on record as his L.Rs.

3. Appellants/defendants filed their written statement. They pleaded that in suit premises, Parashuram Sindhi was tenant in 1947 at the rent of Rs. 20/-per month. He vacated the suit premises in 1954. Thereafter, Dwarika Prasad was tenant till 1966 and rent of the suit premises was Rs. 30/- per month. Thereafter, the respondents were residing in the suit premises as tenant and initially, the rent of the suit premises was Rs. 70/- per month. In the year 1976, the rent was enhanced from Rs. 70/- per month to Rs. 80/- per month. Mukhtiar Aam of plaintiff Radhakishan gave assurance to the respondents to repair suit premises within one month and he agreed that if he will not repair the suit premises within one month, then, defendants shall themselves get it repaired and the expenses of the repair shall be adjusted towards the accrued rent. Consequently, respondents spent Rs. 1000/- on repair. They are entitled to get adjusted this amount towards arrears of rent and also the amount which defendants have paid towards the electricity connection. Defendants took water connection and spent Rs. 600/- towards it. They are entitled to get adjusted this amount towards arrears of rent. Defendants insisted to pay rent to the plaintiffs but they refused it. On 30-10-1978, defendants sent arrears of rent by money order but it has been refused by respondent/plaintiff. Defendants are not at fault in this respect.

4. Kishanlal is real brother of Laxman Das. He was residing in the suit premises since inception of the tenancy. Defendants are residing in the suit premises. They

have not occupied any other accommodation in the city of Gwalior for their residence. Laxman Das defendant has not departed with the possession of the suit premises. Kishan Lal is not sub tenant in the suit premises. Mukhtiar Aam of the plaintiff Radhakishan on 19-7-1983 entered into a contract with defendant Nos. 2 and 3 to sell a part of the house situated beneath the suit premises for consideration of Rs. 40,000/-. Defendant Nos. 2 and 3 paid Rs. 2000/- as advance. The suit premises was burnt in the riots of 1984 and it was not suitable for residence. Plaintiffs received Rs. 2000/- advance from the respondents to repair the house. Defendants are entitled to adjust this amount towards the rent. Plaintiffs have not right to get the evicted appellants from the suit premises.

5. Learned Trial Court framed seven issues. Plaintiffs examined three witnesses and defendants had examined four witnesses.

6. After hearing both the parties and perusing evidence of both the parties and material on record, learned Trial Court held that the respondents/plaintiffs have not proved their case and dismissed the suit.

7. Aggrieved by the impugned judgment and decree passed by Trial Court, respondents/plaintiffs preferred first appeal. After hearing both the parties and perusing record of Trial Court, learned First Appellate Court found that the respondents/plaintiffs have proved their case under Section 12(1)(b) of the Act and setting aside the judgment and decree passed by the Trial Court decreed the suit of the respondents/plaintiffs.

8. Aggrieved by the impugned judgment and decree appellants/defendants have preferred both these appeals on the grounds that the impugned judgment passed by First Appellate Court is against law and material on record. Learned Trial Court erred in appreciating the fact and evidence produced by both the parties. Learned Appellate Court erred in holding that the brother of original tenant Laxman Das is not member of his family as defined in Section 2(e) of the Act. Learned Appellate Court erred in holding Kishanlal a sub tenant of Laxman Das. Learned Appellate Court oversighted evidence led by both the parties and admission by plaintiff Vimla Bai. The impugned judgment passed by learned First Appellate Court is perverse and illegal. He prayed to allow the appeal and set aside the impugned judgment

and decree.

9. Learned Counsel for the respondents/plaintiffs supported impugned judgment and decree and prayed to dismiss the appeal.

10. Following substantial questions of law have been framed in both the appeals:

(i) 'Whether, Kishanlal who is brother of original tenant, Laxman Das and is in possession of the suit property can be said to be a sub-tenant;

(ii) Whether, a decree of eviction can be passed under Section 12

(1) (b) of the M.P. Accommodation Control Act against the appellant when the respondent has parted with the possession of the suit property ?

11. I have heard both the parties at length, perused the impugned judgment of the Trial Court, evidence led by both the parties and material on record.

12. Substantial question of law Nos. 1 and 2 are inter-connected, that is why, both these substantial questions of law are being decided together.

13. Learned Counsel for the appellants argued that Kishanlal is brother of Laxmandas. They belong to Joint Hindu Family and Laxmandas is KARTA of family. He also argued that Laxman Das took tenanted house for his joint family including his brother, consequently, real brother of Laxmandas, i.e., Kishanlal cannot be said to be a sub-tenant. Learned Counsel for the appellants drew my attention to the definition of family under Section 2(e) of M.P. Accommodation Control Act argued that this definition includes brother also as member of family. Word used 'any person' in the definition shows that it applies to the tenant also. He also contended that learned First Appellate Court holding that definition of family under Section 2(e) of the Act does not apply to tenant and base its whole judgment on this basis, consequently, decided issues of sub-tenancy against appellants. Definition of family under Section 2(e) is as under:

member of the family' in case of any person means the spouse, son, unmarried daughter, father, grand father, mother, grand mother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow, or brother's son or unmarried

daughter living jointly with, or any other relation dependent on him.

14. In 1974 JIJ 12 Kulwant Kaur and Ors. v. Collector, Jabalpur and Ors. a Division Bench of this Court considered the scope of definition of family under Section 2(c) of the Act has held as under:

The contention of the learned Counsel for the petitioner is that in view of this definition. Awatarsingh's sister-in-law and niece, who are dependent on him require the premises and, therefore, they can claim to continue to occupy the house. In our opinion, this is a fallacious argument. The definition clause itself states that the definition will prevail unless the context otherwise requires. We can very well envisage situations where a person is transferred and he himself goes to the place where he is transferred, but on account of certain circumstances, he is required to keep his entire family in the rented premises. In that event, although his tenancy may stand terminated by virtue of Section 42 of the M.P. Accommodation Control Act, 1961, the fact that the landlord may permit his family members to continue to occupy the house will be a mere concession, which cannot be claimed as of right. Even if it were to be assumed that the petitioners are dependents of the tenant, S. Awatarsingh, they cannot claim to continue to occupy the premises on the assumption that they need it. It is not the need of the tenant that is material under the M.P. Accommodation Control Act, 1961, but it is the need of the landlord, which is material and the landlord can get the premises vacated not only for his own need, but for the members of the family mentioned in Section 2(e) of the Act. Once the tenant has given up the tenancy and has secured an alternative accommodation, his dependents cannot claim that a fresh tenancy ought to be created in their favour merely because, they do not want to shift to the newly constructed premises occupied by the head of the family. Therefore, this line of reasoning is obviously fallacious and if we were to accept the same, it will lead to the provisions of the M.P. Accommodation Control Act, 1961, being rendered nugatory and will create scope for committing frauds on the statute. Such an interpretation can evidently not be accepted by a Court of law. Moreover, the question, if the petitioners are dependents of S. Awatarsingh, was never raised before the Rent Controlling Authority. On the other hand, the petitioners' contention was that Harbanslal was the tenant and the tenancy

devolved on the petitioners, while Awatarsingh being the brother of Harbanslal, was a mere licensee. Had the petitioners put up the case before the Rent Controlling Authorities as they now want to present before this Court, the Rent Controlling Authorities would have had an occasion to consider this aspect. But it is absolutely unfair on the part of the petitioners to put up a case, which was never put up before the Rent Controlling Authorities. Consequently, we would reject the contention that the petitioners are entitled to continue to occupy the house as dependents of S. Awatarsingh. They must succeed or fail on their contention that Harbanslal was the tenant of the rented premises. Once that is found against them, the petitioners have no case, whatsoever, even as dependents of Awatarsingh, they have no independent right and their right to occupy will come to an end upon Awatarsingh giving up the premises and shifting to his own newly constructed house.

15. On going through above citation, it is clear that definition of family does not apply to a tenant because in the definition of the tenant, the members of his family are not included. It is also clear that where a tenant gives up the tenanted premises and parted with the possession and occupies an alternate accommodation, his dependents or other members of the family cannot claim that a fresh tenancy ought to be created in their favour merely because they want to continue in tenanted premises occupied by the head of the family. Learned First Appellate Court rightly held that brother of Laxmandas including Kishanlal is not member of his family in respect of tenanted premises.

16. Learned Counsel for the appellants vehemently argue that Laxmandas took tenanted house on rent, for his Joint Hindu Family including his brothers. He also argued that Kishanlal cannot be held sub-tenant being real brother of Laxman Das and member of Joint Hindu Family.

17. On going through Para 1 of written statement and lease deed Exh. P-2, it is crystal clear that Laxmandas took tenanted house on rent of his own and not for his joint family. It has not been pleaded by appellants/defendants that Laxmandas being KARTA of Joint Hindu Family took tenanted house for the residence of joint family and not for his own family. Appellants cannot be benefited by the evidence

of Vimla Bai (P.W. 3) to argue that she admitted in her cross-examinations that Laxmandas took tenanted house on rent for his family and he and his brothers are members of Joint Hindu Family and consequently, Kishanlal cannot be held sub-tenant. The case of either party is not that Laxmandas being KARTA of Joint Hindu Family inclusive of his four brothers took tenanted house on rent for the benefit and residence of every family member of joint family. Hence, admission by Vimla Bai that Laxmandas was KARTA of joint family and his brothers were members of joint family and he took tenanted house for the residence against the pleadings of both the parties. No evidence out of pleadings of parties, irrelevant to the case can be admitted in evidence. It is not fair to the part of appellants to put up case which was never put-up before the Trial Court through pleadings. Arguments advanced by learned Counsel for appellants are devoid of substance. Learned First Appellate Court rightly held that Kishanlal brother of Laxmandas is not member of his family for the purposes of provisions of the Act, he can be said to be sub-tenant in tenanted house.

18. I have gone throughout the impugned judgment of Trial Court and First Appellate Court and evidence of Mahesh Agrawal (P. W. 1), Babulal (P.W. 2) and Vimlabai (P.W. 3), Kishanchand (D.W. 1), Sunil Katariya (D.W. 2), Premkumar Khatree (D.W. 3), Seetaram Goyal (D.W. 4) and documents on record. I am of the view that First Appellate Court did not commit any illegality or perversity in appreciating evidence on record and rightly concluded that respondents/plaintiffs' evidence is reliable and it is proved by evidence that Laxmandas parted with possession of tenanted house and sub-let it to Kishanlal and Kanhaiyalal without the written consent of landlord and no member of the family of Laxmandas is residing in the tenanted house. Once, it is found proved that Kishanlal is sub-tenant and Laxmandas parted with the possession of tenanted house appellants have no case. Where the findings of facts arrived at by learned First Appellate Court suffers from no infirmity, it is not open to the appellants to challenge them in the second appeal in the High Court and it is not for the High Court to come to a different conclusion taken by the Appellate Court. In *Gajanan Dattatraya v. Sher Banu HosangPatel and Ors.* : [1976]1SCR535 which has been considered by a Bench of this Court in Civil Appeal No. 132 of 1987, decided on 7-3-1991, held as under:

Pari materia provision contained in Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) came up for consideration before the Apex Court. There too the phrase used is 'has sublet', (just as it has been used in the M.P. Act). A notice for ejectment was served on 1-4-67 and the sub-tenant vacated the premises on 14-4-67. When the suit was filed, the sub-tenant was not in occupation of the premises. The contention of the tenant/appellant was that the plaintiff/respondent was not entitled to a decree. Having explained and distinguished therein decisions in Gappulal's case : [1969]3SCR989 , Their Lordships laid down the law as under:

The provision of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e), namely, that he has sublet. The language is that if the tenant has sublet, the protection ceases. To accede to the contention of the appellant would mean that a tenant would not be within the mischief of unlawful subletting if after the landlord gives a notice terminating the tenancy on the ground of unlawful sub-letting the sub-tenant vacates. The landlord would not be able to get any relief against the tenant in spite of unlawful subletting. In that way, the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction arises once the fact of unlawful subletting is proved. At the date of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted. Gajanan Dattatraya's case (supra), has been followed consistently by this Court in case under Section 12(1)(b) of the Act in a series of decisions. See, Arun Kumar v. Vipin Kumar 1977 J LJ-SN 85-DB; Kewal Singh v. Tribhuwan Nath 1984 MPRCJ SN 8; Ramesh Kumar v. Shri Sudarshanlal 1984 MPRCJ SN 41 and Santosh v. Kavita Devi 1986-II MPWN 135).

19. In order to prove sub-tenancy, it has to be established that the tenant must have exclusive right of possession or interest in the premises or part of the premises in question and that right must be in lieu of payment of some compensation or rent. Even if a tenant parts with possession of whole or any part of the premises without assigning or subletting the premises, without the written

consent of landlord, be liable to be evicted from the premises.

20. In the present case, it has already been noticed that in the face of averments by the parties that defendants have not come out with a specific case that Laxmandas took premises on rent as KARTA of Joint Hindu Family for the benefit and residence of every member of joint family, there is sufficient evidence on record to prove that Laxmandas parted with the possession of premises and Kishanlal is in possession of premises as sub-tenant. It is settled that sub-tenancy cannot be proved by direct evidence. It is a matter of inference to be drawn from the facts and circumstances brought on record. Both the parties agreed that in substantial question of law No. 2, the word 'respondent' has been wrongly mentioned instead it must have been Laxmandas. This is settled principle of law that if a tenant is parted with the possession, he is liable to be evicted and decree under Section 12(1)(b) of the Act can be passed in favour of landlord. Consequently, substantial question of law Nos. 1 and 2 are answered in favour of respondents/plaintiffs.

21. As per foregoing discussions, I am of the view that learned First Appellate Court did not commit any perversity or illegality in setting aside the judgment and decree of Trial Court and decreeing the suit. Both the appeals have no merit, and are dismissed with cost. Judgment and decree passed by First Appellate Court is affirmed. Appellants shall bear the cost of suit of respondents throughout. Counsel fee as per schedule if certified.