

## **Dilbagrai Punjabi vs Sharad Chandra on 8 August, 1988**

**Equivalent citations: 1988 AIR 1858, 1988 SCR SUPL. (2) 276, AIR 1988 SUPREME COURT 1858, (1988) JAB LJ 560, (1988) 3 JT 308 (SC), 1988 SCC (SUPP) 710, (1988) 2 KER LT 51, (1988) 2 LS 11**

**Author: L.M. Sharma**

**Bench: L.M. Sharma, R.S. Pathak**

PETITIONER:  
DILBAGRAI PUNJABI

Vs.

RESPONDENT:  
SHARAD CHANDRA

DATE OF JUDGMENT 08/08/1988

BENCH:  
SHARMA, L.M. (J)  
BENCH:  
SHARMA, L.M. (J)  
PATHAK, R.S. (CJ)

CITATION:  
1988 AIR 1858                      1988 SCR Supl. (2) 276  
1988 SCC Supl. 710              JT 1988 (3) 308  
1988 SCALE (2) 523

ACT:

Civil Procedure Code. Section 100-Appeal-Subordinate courts refuse to consider evidence having direct bearing on disputed issue Error arising gives birth to a substantial question of law-Whether High Court has jurisdiction to set aside finding.

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Madhya Pradesh Accommodation Control Act, 1961, Section 12(1) (f)-Suit for eviction of tenant for personal necessity-Essential for plaintiff to prove ownership of property-Partition deed by which ownership claimed not produced-Effect of Court under duty to examine other relevant evidence on record.

HEADNOTE:

The respondent-plaintiff filed a suit under s. 12(1)(f)

of the Madhya Pradesh Accommodation Control Act, 1961, for eviction of the appellant-tenant, on the ground of personal necessity. The trial court rejected the plaintiffs claim that he was the owner of the house in question.

On appeal, the Additional District Judge confirmed the finding of the trial court on the ground that the plaintiff did not produce the deed of partition, alleged to have been executed by the parties and, under which the house in question was said to have been allotted to him. In second appeal, the High Court reversed the finding and decreed the suit.

In the appeal to this Court, on behalf of the tenant it was contended that it was essential for the plaintiff-respondent to establish that he was the owner of the premises, and that the concurrent finding of fact recorded by first two courts was binding on the High Court under s. 100 of the Code of Civil Procedure and its reversal was illegal.

Dismissing the appeal,

HELD: 1.1 The High Court's power to interfere with the finding of fact reached by the first appellate court cannot be denied if, when the lower appellate court decides an issue of fact, a substantial question of law arises, even

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though the High Court, while hearing the appeal under s. 100 of the Code of Civil Procedure, has no jurisdiction to re-appraise the evidence and reverse the conclusion reached by the first appellate court.[280C]

The court is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding. [280D]

1.2 A perusal of the language of the clause (f) of s. 12(l) of the Madhya Pradesh Accommodation Control Act, 1961, and comparison thereof with that in the other clauses clearly indicates that it is essential for the plaintiff who claims that he requires the shop personally for starting a business, to establish that he is the owner of the premises. [278G-H]

In the instant case, though the partition deed under which the plaintiff claims exclusive title to the property was not produced in court, the first appellate court was under a duty to consider all the relevant evidence led by the parties along with the circumstances. The Civil Judge, who tried the suit as well as the Additional District Judge, confirming the decision of the trial court, had seriously erred in not considering the entire evidence on record including the reply to the notice sent by the plaintiff-respondent, wherein the tenant-appellant has accepted the plaintiff's title and counter-foil receipts

signed by the appellant in which the plaintiff had been described as the owner of the property. In the circumstances, the High Court was fully justified in reversing the finding of the courts below. [279E, F-G, 280A]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3387 of From the Judgment and Order dated 20.8.1981 of the Madhya Pradesh High Court in Second Appeal No. 33 of 1978. S.N. Kacker, Sanjay Sareen and S.K. Gambhir for the Appellant.

S.K. Jain for the Respondent.

The Judgment of the Court was delivered by PG NO 278 SHARMA,J. The appellant is in possession of a shop in a town in Madhya Pradesh as a tenant under the respondent who filed a suit out of which the present appeal arises for his eviction on the ground of personal necessity. The suit was dismissed by the trial court and the first appellate court. The High Court in second appeal has reversed the decision and passed a decree.

2. The case is governed by the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as the Act) and s. 12(1)(f) deals with the ground of landlord's bona fide necessity with reference to buildings let out for non-residential purposes, in the following words:

"12. Restriction on eviction of tenants-(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a) -----

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(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the land- lord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned ;

(g) .....

.....

3. The plaintiff claims that he requires the shop personally for starting a business and it is rightly contended by Mr. Kacker, learned counsel appearing for the appellant, that it is essential for him to establish that he is the owner of the premises. A perusal of the language of the clause (f) and a comparison thereof with that in the other clauses clearly leads to this conclusion. The issue in the case is whether the plaintiff, respondent before us, has been able to establish this condition.

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4. The defendant has been admittedly paying the rent to the plaintiff who, therefore, is included in the expression 'landlord' as defined in the Act as a person receiving or entitled to receive the rent whether on his own account or on account of any other person. In the register of the Municipal Corporation the property stands in the name of the plaintiff's brother Hukum Chand Jain. On this ground the trial court rejected the plaintiff's case that the shop belongs to him. On appeal the Additional District Judge, Gwalior confirmed the finding mainly on the ground that the plaintiff did not produce the deed of partition which is alleged to have been executed by the parties and under which the house was claimed by the plaintiff to have been allotted to him. The Court also held that since the plaintiff failed to plead his ownership and further neglected to get his plaint amended after his title was denied in the written statement, he was not entitled to rely on any evidence in support of his title. On the plaintiff filing a second appeal, the Madhya Pradesh High Court reversed the finding and decreed the suit.

5. Mr. Kacker strongly urged that the concurrent finding of fact recorded by the first two courts was binding on the High Court under s. 100 of the Code of Civil Procedure and its reversal is illegal. We have gone through all the three judgments and some of the documents placed before us by the learned counsel for the parties and we find that the High Court was fully justified in reversing the finding. The first appellate court was not correct in assuming that the plaintiff had failed to assert in the plaint his ownership of the disputed shop. The necessary pleading is to be found in paragraph 1 of the plaint, which of course was denied in the written statement and the parties led their evidence on this question at the trial. It is true that the partition deed under which the plaintiff claims exclusive title to the property was not produced in court, but the first appellate court was under a duty to consider all the relevant evidence led by the parties along with the circumstances. Unfortunately neither the Civil Judge who tried the suit nor the Additional District Judge confirming the decision of the trial court adverted to important items of relevant evidence which were considered and relied upon by the High Court. The plaintiff, before filing the suit, sent a notice through his counsel, to the appellant in which it was stated that the shop in question belongs to him. In his reply sent through an advocate the appellant, while denying the other statements in the notice, accepted the plaintiff's title in the following words :

"That it is admitted that my client is occupying the shop situated at Dal Bazar belonging to your client. . . ."

PG NO 280 The plaintiff also produced counter foil receipts signed by the tenant-appellant in which the plaintiff was described as "the owner of property". It was not a case of an isolated single receipt-quite a number of such documents were produced in the trial court. The High Court was

right in pointing out that the courts below had seriously erred in not considering the entire evidence on the record including the aforesaid documents. It is true that the High Court while hearing the appeal under s. 100 of the Code of Civil Procedure has no jurisdiction to re-appraise the evidence and reverse the conclusion reached by the first appellate court, but at the same time its power to interfere with the finding cannot be denied if when the lower appellate court decides an issue of fact a substantial question of law arises. The court is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding. This is the situation in the present case. We, therefore, do not discover any defect in the judgment of the High Court, and the appeal is accordingly dismissed with costs.

N.P.V.

Appeal dismissed.