

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 536 of 2003**

Bihari Lal Sharma (Since dead), through Legal Heirs :-

1. Smt. Bharti Devi Wd/o Late Bihari Lal Sharma, aged about 80 years, R/o Ward No. 14, Near Peepal Tree, Baikunthpur, Raigarh (C.G.)
2. Dashrathi Sharma S/o Late Bihari Lal Sharma, aged about 60 years, R/o Ward No. 14, Near Peepal Tree, Baikunthpur, Raigarh (C.G.)
3. Devendra Kumar S/o Late Bihari Lal Sharma, aged about 55 years, Occupation – Service, R/o Talapara, Bilaspur (C.G.), presently posted in postal Department, Jaistambah Chowk, Raipur (C.G.)
4. Anand Sharma S/o Late Bihari Lal Sharma, aged about 47 years, R/o Infront of P.W.D. Office, Raigarh (C.G.)
5. Hutendra Sharma S/o Late Bihari Lal Sharma, aged about 43 years, R/o Ward No. 14, Near Peepal Tree, Baikunthpur, Raigarh (C.G.)

---- Appellants / Defendants

Versus

1. Avadha Kumar Tripathi S/o Shri R. P. Tripathi, aged about 37 years, Profession Advocate, R/o at Present Vinoba Nagar, Bilapsur, Tahsil and District Bilaspur (C.G.).....[Plaintiff]
2. Brijmohan, aged about 80 years, S/o Late Ramdayal Aghariya, R/o Village Pendarwa, Tahsil Sakti, District (now) Janjgir – Champa (C.G.)
3. Smt. Koushilya, aged about 80 years (Now dead), Wd/o Ramdayal Aghariya,
4. Trilochan, aged about 42 years, S/o Late Ramdayal Aghariya, R/o Village Pendarwa, Tahsil Sakti, District (now) Janjgir – Champa (C.G.)
5. Bhavgrahi, aged about 64 years, S/o Maniram Aghariya, R/o Village Pendarwa, Tahsil Sakti, District (now) Janjgir – Champa (C.G.)

---- Respondents / Defendants

For Appellants	:	Shri B. D. Badgayan, Advocate.
For Respondents	:	Shri Sunil Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**04/10/18**

1. The substantial questions of law involved, formulated and to be answered by this Court in the defendant's second appeal are as under :-

“(1) Whether on the factual premises that the appellant / tenant was in possession of the suit accommodation even before the transfer deed was executed in favour of the plaintiff, learned Appellate Court was justified in holding that the relationship of landlord and tenant existed between the plaintiff and the defendants in the absence of notice of attornment from the side of seller and purchaser to the tenant ?

(2) Whether the first Appellate Court was justified in reversing the findings of the learned Civil Judge that the plaintiff has failed to prove the relationship of landlord and tenant between the plaintiff and defendant No. 1 on the ground that to arrive at this conclusion the learned Civil Judge has referred to the pleadings and documents submitted in the other suit between the same parties particularly in the light of the fact that the issue involved in both the suits was between the same parties and identical and for this reason the same were transferred to one court with a direction to dispose of the same simultaneously ?

2. The imperative facts required for determination of above-stated substantial questions of law are as under :-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

(2.1) Plaintiff filed a suit for arrears of rent and eviction from the suit accommodation on the grounds mentioned under Section 12(1)(a) and 12(1)(c) of the Chhattisgarh Accommodation Control Act, 1961 stating *inter-alia* that he has purchased the suit house on 30.07.1982 vide Exhibit- P/1 from one Ramhari Mishra and obtained peaceful possession of the same and the said accommodation was leased out to defendant No. 1 as a tenant at the monthly rent of Rs.100/-. It is further case of the plaintiff that defendants stopped paying rent from August, 1997 and entered into conspiracy with defendants No. 2 to 5 to grab the suit accommodation. The instant suit was filed on 12.09.1981 for ejectment and recovery of rent.

(2.2) Defendant No. 1 has filed his written statement stating *inter-alia* that there was no relationship of landlord and tenant between the plaintiff and defendants. The suit accommodation is the property of defendants No. 2 to 4 who have already instituted suit for declaration of title and permanent injunction against the plaintiff which is pending consideration. It is further pleaded that the suit accommodation was purchased by the father of defendants No. 2 to 4 and defendant No. 1 is continuously residing in the suit house as the licensee of defendants No. 2 to 4 since 1972.

(2.3) Defendants No. 2 to 4 have also filed their written statement and categorically submitted that the suit property was purchased by their father on 22.05.1953, as such they are the title holders of the suit accommodation.

3. In Civil Revision No. 10/1994 filed by defendant No. 4, learned District Judge by order dated 07.07.1994 transferred Civil Suit No. 97-A/1992 (suit from which this appeal has arisen) for ejectment and the earlier suit No. 60-A/85 for declaration of title and perpetual injunction to the Court of Civil Judge, Class-I, Raigarh with a direction to deliver the judgment in both the cases simultaneously, as the issue involved in both the cases is between the same parties and the nature of dispute was also identical. Accordingly, both the suits were tried and disposed of together by the learned trial Court on 30.11.1999. The suit for ejectment was dismissed by the trial Court holding that plaintiff has failed to establish the relationship of landlord and tenant between him and defendant No. 1.

4. The First Appellate Court, by the impugned judgment reversed the above stated finding on the ground that the suit of the plaintiff has been dismissed by taking recourse to the pleading, evidence and documents filed in connected civil suit which could not be read in the present suit and decreed the suit on the ground of denial of title and arrears of rent.

5. In second appeal preferred by the appellants / defendant No. 1, the substantial questions of law have been framed and set out in the opening paragraph of the judgment.

6. Mr. B. D. Badgayan, learned counsel appearing for the appellant / defendant No. 1 would submit that the first Appellate Court is absolutely unjustified in holding that the relationship of landlord and tenant is established between the plaintiff and defendant No. 1 and there is no

notice of attornment from the side of seller and purchaser (plaintiff) to defendant No. 1 and would further submit that the First Appellate Court is also unjustified in holding that the evidence of civil suit filed by defendants No. 2 to 4 could not be read into in the present suit for ejectment ignoring the order dated 7.7.1994 passed in Civil Revision No. 10/1994 passed by the learned District Judge, Raigarh for hearing the cases simultaneously and delivering both the suits together, as such the impugned judgment and decree deserves to be set aside.

7. Mr. Sunil Sahu, learned counsel appearing for respondent No. 1 / plaintiff would support the impugned decree and submit that since defendant No. 1 was introduced as tenant with effect from 01.08.1982 therefore, notice for attornment was not required at all and would further submit that by the order of District Judge in Civil Revision No. 10/1994 suit for ejectment and suit for declaration of title filed by defendants No. 2 to 4 were directed to be tried together and dispose of simultaneously but there was no order of consolidation and admittedly, the evidence of both the cases were recorded separately therefore, the First Appellate Court is absolutely justified in holding that the evidence of the civil suit filed by defendants No. 2 to 4 cannot be read into as evidence in the present suit. Therefore, the finding of the First Appellate Court holding that relationship of landlord and tenant is established is a finding of fact based on evidence available on record and, therefore, no interference is required in exercise of jurisdiction under Section 100 of CPC.

8. I have heard learned counsel for the parties, considered their rival

submissions made hereinabove and went through the records with utmost circumspection.

Substantial Question of Law No. 2 :-

9. The present plaintiff/respondent filed a suit for ejectment and arrears of rent holding that he is the title holder of the suit land and he also pleaded that he purchased the suit property from one Ram Hari Mishra on 30.07.1982 vide Exhibit – P/1 whereas, defendants No. 2 to 4 filed suit for declaration of title and injunction against the plaintiff bearing Civil Suit No. 60-A/85. Since, the suit property was same in both the cases; one filed by the plaintiff and other filed by defendants No. 2 to 4 therefore, in order to avoid contradictory judgment, the District Judge has rightly directed to be heard by one Court and to deliver the judgment simultaneously but admittedly the findings in both the cases were recorded separately and in both the cases judgments were delivered separately. In fact, that was an order of hearing both the cases analogously therefore, the First Appellate Court has rightly held that evidence of the title suit filed by defendants No. 2 to 4 cannot be read into ejectment suit filed by the plaintiff as there was no order of consolidation of both the suits. As such, I do not find any illegality or perversity in the said finding recorded by the First Appellate Court and the said finding has been re-affirmed.

10. Reverting to the first substantial question of law, the First Appellate Court has relied upon the testimony of plaintiff and his witnesses Phoolnath (PW-2) and Ramashray (PW-4) and has clearly held that the

suit accommodation was let out by the plaintiff to defendant No. 1 with effect from 1.08.1982 with monthly rent of Rs.100/- per month and the First Appellate Court has clearly and rightly held that the evidence of the title suit cannot be relied upon to hold that defendant No. 1 is not the tenant of the plaintiff. The finding recorded by the First Appellate Court that the evidence of title suit filed by defendants No. 2 to 4 cannot be relied upon in this ejectment suit and plaintiff has established relationship of landlord and tenant by oral evidence which is finding of fact based on evidence available on record in which I do not find any illegality or perversity. In view of the aforesaid findings that the plaintiff inducted defendant No. 1 as tenant with effect from 1.08.1982 therefore, notice of attornment was not required at all to prove landlord and tenant relationship.

12. In view of the aforesaid analysis, the substantial questions of law are answered against the defendants and in favour of the plaintiff and resultantly, the second appeal filed by the defendants is hereby dismissed leaving the parties to bear their own costs.

13. A decree be drawn up accordingly.

SD/-

(Sanjay K. Agrawal)
Judge