

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 659 of 2003**

Chandramala Singh, W/o Kamal Dau, aged about 49 years, Occupation – Housewife,
Resident of Gadh Bhitari, Rajapara, Raigarh, Distt. Raigarh (C.G.)

----Appellant/defendant

Versus

Milap Singh, S/o. Ishwar Singh Gond, aged about 33 years, Serviceman in WCL,
Bilaspur, R/o Gadh Bhitari, Rajapara, Raigarh (C.G.)

---- Respondent/plaintiffs

For Appellant	:	Mr. B.P. Gupta, Advocate.
For Respondent	:	Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/02/2019

(1) The substantial questions of law involved, formulated and to be answered in this defendant's second appeal state as under:

“1. Whether the finding of the first appellate Court that the plaintiff has proved that there was a relationship of landlord and tenant between the plaintiff and the defendant is without evidence and material on record ?

2. Whether the finding of the first appellate Court recorded in paragraph 16 of the impugned judgment that the contention of the appellant that after grant of lease by the Government, he constructed the house over the suit land is not unacceptable, is without any foundation and perverse particularly in the light of the finding of the trial Court in paragraph 12 of the judgment ?

3. Whether the first appellate Court was justified in decreeing the suit of the plaintiff without setting aside the finding of the trial Court recorded against issue No. 6 that the suit of the plaintiff was barred by law of limitation ?

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

2.1 The plaintiff filed a suit for eviction of the defendant from the suit accommodation based on relationship of landlord and tenant between the plaintiff and defendant, in which the defendant set up a plea of title over the suit land by way of adverse possession.

2.2 Trial Court dismissed the suit finding that relationship of landlord and tenant between the plaintiff and defendant is not established and the also held that suit to be barred by law of limitation. Plaintiff preferred first appeal thereagainst. First appellate Court by its impugned judgment and decree, allowed the appeal holding that grounds under Section 12(1)(a) & 12(1)(c) is made out by the plaintiff for eviction of the defendant but did not reverse the issue of limitation as the suit is held to be barred by limitation.

(3) Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellant/defendant in which the substantial question of law has been formulated for consideration, which has been set out in the opening paragraph of the judgment.

(4) Learned counsel for the appellant/defendant would submit that the first appellant has committed legal error in allowing the appeal filed by the plaintiff without setting aside the finding of the trial Court recorded against issue No. 6 that the plaintiff's suit is barred by limitation, as such, the impugned judgment and decree passed by the first appellate Court deserves to be set aside.

(5) On the other hand, counsel for the respondent/plaintiff would support the impugned judgment and decree.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made herein and went through the record of both the courts below with utmost

circumspection.

(7) In order to decide the appeal, substantial question of law No. 3 is considered first that whether the first appellate Court was justified in decreeing the suit of the plaintiff without setting aside the finding of the trial Court recorded against issue No. 6 that the suit of the plaintiff was barred by law of limitation

(8) Admittedly, the suit is dismissed by the trial Court as barred by limitation; and the first appellate Court has held that ground under Section 12(1)(a) & 12(1)(c) is made out for eviction of the defendant but neither issue of limitation, which was decided against the plaintiff, was decided nor set aside the finding of the trial court recorded against the plaintiff that suit is barred by limitation. Firstly, the first appellate Court was required to consider the plea of limitation and then would have proceeded to decide the appeal on merits depending upon outcome of finding on limitation, which the appellate Court has not done, therefore, the impugned judgment & decree is liable to be set aside.

(9) Accordingly, the impugned judgment and decree is set aside. The matter is remitted to the first appellate court for hearing and disposal in accordance with law. First appellate Court should firstly decide the issue of limitation and depending upon the result thereof, proceeded further with the appeal on merits in accordance with law without being prejudiced by the impugned order. The First appellate Court would consider and decide the appeal expeditiously preferably within a period of 45 days from the date of receipt of certified copy of this order as the first appeal was preferred on 8.1.2002.

(10) Parties are directed to appear before the first appellate Court on 5th March, 2019.

(11) Record of courts below be sent back forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

