

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 352 of 2009****Judgment reserved on 23/09/2020****Judgment delivered on 14/12/2020**

1. Jaipal Choudhary S/o Parumal Choudhary, Aged 42 years.

2. Smt. Deepa Choudhary, W/o Jaipal Choudhary, Aged 37 years.

Both R/o Opp. Laxmi Talkies, Main Raod, Juna Bilaspur, Tahsil and Dsitric Bilaspur, Chhattisgarh.

---Appellants/Plaintiffs**Versus**

1. Chhattisgarh Wakf Board, Raipur, through Mohd. Isreal, Aged 45 years, S/o Late Mohd. Ismile, President, Management Committee (Housing), Late Abdul Rahman Khan Wakf Property, R/o Karbala Road, Juna Bilaspur, Tahsil and District Bilaspur, Chhattisgarh. **-- Defendant No. 2**

2. Gulshan @ Bunt, Aged 34 years, S/o Late Roshan Lal Punjabi, R/o Adarsh colony, Bilaspur, Tahsil and Distt. Bilaspur, Chhattisgarh.

– Defendant No. 1**---- Respondents**

For Appellants :- Mr. Ravindra Agrawal, Advocate
 For Respondent 1 :- Mr. Malay Shrivastava, Advocate
 For Respondent 2 :- Mr. A.P. Dubey and
 Mr. Ram Kumar Tiwari, Advocates

Second Appeal No. 353 of 2009

1. Jaipal Choudhary S/o Parumal Choudhary, Aged 42 years.
2. Smt. Deepa Choudhary, W/o Jaipal Choudhary, Aged 37 years.

Both R/o Opp. Laxmi Talkies, Main Raod, Juna Bilaspur, Tahsil and DsitRICT Bilaspur, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Gulshan @ Bunty, Aged 34 years, S/o Late Roshan Lal Punjabi, R/o Adarsh colony, Bilaspur, Tahsil and Distt. Bilaspur, Chhattisgarh.

– Defendant No. 1

2. Chhattisgarh Wakf Board, Raipur, through Mohd. Isreal, Aged 45 years, S/o Late Mohd. Ismile, President, Management Committee (Housing), Late Abdul Rahman Khan Wakf Property, R/o Karbala Road, Juna Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

-- Defendant No. 2

---- Respondents

For Appellants :- Mr. Ravindra Agrawal, Advocate

For Respondent 1 :- Mr. A.P. Dubey and

Mr. Ram Kumar Tiwari, Advocates

For Respondent 2 :- Mr. Kshitij Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. These two second appeals have arisen out of two judgments and decrees passed by the first appellate Court, one in Civil Appeal No. 25-A/2008 and the other in Civil Appeal No. 18-A/2008, whereby the first appellate Court has reversed the judgment and decree of the trial Court in Civil Suit No. 05-A/2007 filed by the plaintiffs which was decreed by the trial Court and dismissed the suit of the plaintiffs.

2. These appeals preferred by the plaintiffs/appellants were admitted on 02/07/2020 by formulating the following substantial question of law :-

"1. Whether the first appellate Court was justified in dismissing the suit holding that the property is Wakf property and the suit is barred under Section 85 of the Wakf Act, 1995 thereby recording a perverse finding ?"

3. Thereafter, again on 28/08/2020, the following additional substantial question of law was framed and the parties herein were noticed:-

"Whether the first appellate court is justified in holding that there is no relationship of landlord and tenant between the plaintiffs and defendant No. 1 and the plaintiffs have failed to prove the grounds enumerated under Section 12(1) (a), (c), (f) and (g) of the Chhattisgarh Accommodation Control Act, 1961 by recording a finding which is perverse to record ?"

[Parties will herein-after be referred to as per their status shown and ranking given in the suit before the trial Court.]

4. The suit accommodation is situated at Juna Bilaspur in front of Surya Bhawan and it consists of a shop in which the original defendant No. 1 Roshan Lal (now, his Lrs.) are carrying out the business of hardware. It is the case of the plaintiffs that the suit property was earlier held by one Abdul Wahid Khan and plaintiffs have purchased the said suit property by two registered sale deeds dated 02/03/1993 and 03/03/1993 [Exhibits P1(c) and P3(c)] from Abdul Wahid Khan (the erstwhile owner) and obtained its peaceful possession and thereafter, they also got their names registered in the Municipal Corporation Assessment Register and since then they have been paying taxes regularly. It has further been pleaded that defendant No. 1 was the tenant of the erstwhile owner Abdul Wahid Khan who rented the suit shop and paid a monthly rent of Rs. 100/- to him and after the registration of the sale deeds, it was agreed upon by him that he would pay the rent to the

plaintiffs, but he failed to do so and a notice was issued to him for payment of arrears of rent vide Exhibit P/16 and thereafter, notice for termination of tenancy was issued to him vide Exhibit P/15 stating that the suit shop is required bonafidely by the plaintiffs for the purpose of opening their business. Despite service of notice, defendant No. 1 refused to pay the arrears of rent to the plaintiffs and also denied their title over the suit shop which led to the filing of the suit by the plaintiffs claiming decree under Section 12(1) (a), (c), (f) and (g) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter, the 'Act of 1961').

5. Resisting the suit, defendant No. 1 filed his written statement stating *inter alia* that the suit property was the ancestral property of Abdul Wahid Khan. His ancestors had made wakf of the suit property and it has already been informed to the Wakf Board. Abdul Rahman Khan was only in possession of the suit property as a Mutwalli, therefore, his successor Abdul Wahid Khan had no right or title to alienate the suit property in favour of the plaintiffs.

He also stated that plaintiffs are not the title-holders of the suit property and the rent of the suit shop has already been paid to the Wakf Board upto December, 1995.

6. During the pendency of the suit, by order dated 10/01/2005, Chhattisgarh Wakf Board was impleaded as a party/defendant No. 2 in the suit on the application made by him. He also filed his written statement stating *inter alia* that the suit property is a wakf property which was earlier held by Abdul Rahman Khan which he purchased from one Mus. Panna by sale deed dated 26/02/1912 for a cash consideration of Rs. 450/-. Abdul Rahman Khan subjected the suit property to wakf by registered Wakf deed dated 19/09/1932 (Ex. D/10) and during his lifetime he only worked as a Mutwalli of the suit property, therefore, his successor Abdul Wahid Khan, from whom the plaintiffs have purchased the suit property, had no right or title to alienate the suit property in favour of the plaintiffs. It was also pleaded that by virtue of the provisions contained under Section 43 and Section 64 of the Wakf Act, 1995, Abdul Wahid Khan had no right or title to alienate

the suit property in favour of the plaintiffs and furthermore, the suit as framed and filed by the plaintiffs is barred by Section 85 of the Wakf Act, therefore, it deserves to be dismissed as barred.

7. Learned trial Court, after appreciation and evaluation of oral and documentary evidence on record, decreed the suit vide its judgment and decree dated 02/04/2008 holding that the suit property is not wakf property and therefore, jurisdiction of Civil Court is not barred by Section 85 of the Wakf Act, 1995. The trial Court granted decree for eviction in favour of the plaintiffs on grounds enumerated under Sections 12(1)(f), (c) and (g) of the Act of 1961 holding that the suit shop is required for the *bona fide* need of the plaintiffs for the purpose of opening their business and they have no alternative suitable accommodation in the township of Bilaspur and also on the ground that defendant No. 1 denied the title of plaintiffs over the suit property which is a ground for eviction under Section 12(1)(c) of the Act of 1961 and held that plaintiffs are also entitled for decree for eviction under

Section 12(1)(g) of the Act of 1961 and further directed defendant No. 1 to pay Rs. 3,100/- to the plaintiffs as arrears of rent.

8. Being aggrieved by the judgment and decree of the trial Court, defendant No. 1 preferred Civil Appeal No. 18-A/2008 and defendant No. 2 i.e. the Wakf Board preferred Civil Appeal No. 25-A/2008 against the plaintiffs. Learned first appellate Court allowed both of these appeals preferred by defendants No. 1 and 2 and dismissed the suit of the plaintiffs vide its common judgment and decree dated 25/02/2009 and held that the suit property is wakf property, therefore, jurisdiction of the Civil Court is barred by Section 85 of the Wakf Act. The said Court further held that plaintiffs have failed to prove the grounds for eviction under Sections 12(1)(c), (f) and (g) of the Act of 1961.
9. Questioning the impugned judgment and decree passed by the first appellate Court, these two second appeals have been preferred by the plaintiffs in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

10. Mr. Ravindra Agrawal, learned counsel appearing for the appellants/plaintiffs, would make the following submissions :-

(11.1) That the first appellate Court has clearly erred in holding that the suit property is wakf property by relying upon Exhibit D/10 which is the copy of the alleged wakf deed as it is not a primary evidence, being a copy made from the copy of the original document, and no foundation was laid for leading secondary evidence and unless foundation is laid for leading secondary evidence, the certified copy of the wakf deed (Ex. D/10) has to be excluded from consideration as a piece of admissible evidence. He would also submit that Section 90 of the Evidence Act would not be applicable as for its applicability, the foundation has to be laid to lead secondary evidence, as such, the first appellate Court went wrong in holding that in view of Exhibit D/10 filed by defendant No. 2, the suit property is wakf property and therefore, jurisdiction of the Civil Court is barred by Section 85 of the Wakf Act.

(10.2) He would further submit that the first appellate Court has also erred in holding that

there is no relationship of landlord-tenant between the plaintiffs and defendant No. 1 and grounds under Section 12(1)(c), (f) and (g) are also not established by the plaintiffs by recording a perverse finding ignoring the admission made by defendant No. 1 himself in favour of the plaintiffs.

(10.3) Combating the submission made on behalf of defendant No. 2 i.e. Wakf Board in rejoinder submission, learned counsel for the appellants/plaintiffs would further submit that the instant suit was filed before the trial Court on 06/10/1995 and the Wakf Act came into force w.e.f. 22/11/1995 and though defendant No. 2 was impleaded as a party/defendant in the suit by order dated 10/01/2005, since the suit had already been instituted prior to coming into force of the Wakf Act, 1995, therefore, by virtue of Section 7(5) of the Wakf Act, 1995, the suit is not barred by Section 85 of the Wakf Act as it was instituted on 06/10/1995 which is prior to the date of coming into force of the Wakf Act on 22/11/1995. In support of his submission that the civil suit as framed and filed was not barred by Section 85 of the

Wakf Act, he would rely upon the decision rendered by the Supreme Court in the matter of **Bhanwar Lal and Another v. Rajasthan Board of Muslim Wakf and Others**¹.

(10.4) He would finally submit that the first appellate Court is absolutely unjustified in dismissing the suit by granting both of the appeals, as the grounds under Sections 12(1) (c), (f) and (g) are clearly established, as such, the judgment and decree of the first appellate Court be set aside and that of the trial Court be restored with cost throughout.

11. Mr. A.P. Dubey and Mr. Ram Kumar Tiwari, learned counsel appearing for defendant No. 1/respondent No. 2 in Second Appeal No. 352/2009 and for respondent No. 1 in Second Appeal No. 353/2009, would submit that the suit property is wakf property, therefore, the purchase made by the plaintiffs vide Exhibits P1(c) and P3(c) does not confer any title upon them and as such, defendant No. 1 has paid the rent to defendant No. 2 i.e. the Wakf Board. Even otherwise, grounds under Section 12(1)(c), (f) and (g) have not been established by the plaintiffs which has rightly been recorded by

¹ (2014) 16 SCC 51

the first appellate Court, therefore, both the second appeals deserve to be dismissed.

12. Mr. Malay Shrivastava, learned counsel appearing for defendant No. 2 i.e. the Wakf Board in Second Appeal No. 352/2009, would submit that with regard to the question as to whether the suit property is a wakf property has to be decided only by the Wakf Tribunal after coming into force of the Wakf Act w.e.f. 22/11/1995, as such, the jurisdiction of the Civil Court is absolutely barred by virtue of Section 85 of the Wakf Act and only the Wakf Tribunal could have taken cognizance of Lis brought by the plaintiffs before the trial Court in light of the decision of the Supreme Court in the matter of Punjab Wakf Board v. Sham Singh Harike². Controverting the submission made by learned counsel for the appellants/plaintiffs, he would submit that the pertinent date for determining the jurisdiction of the civil Court would be the date of impleading defendant No. 2 i.e. the Wakf Board as a party/defendant in the suit as in the suit defendant No. 2 was impleaded on 10/05/2005 by the order of the Court , as such, the

jurisdiction of the Civil Court is absolutely barred which has rightly been held by the first appellate Court, therefore, both the appeals deserve to be dismissed.

13. Mr. Kshitij Sharma, learned counsel appearing for defendant No. 2 i.e. the Wakf Board in Second Appeal No. 353/2009, would submit that even if it is held that Section 85 of the Wakf Act, 1995 is not applicable, then also by virtue of Section 55-C of the Wakf Act, 1954, the jurisdiction of the Civil Court is barred by virtue of Section 6-A of the Madhya Pradesh Wakf (Amendment) Act, 1994 that has to be decided by the Wakf Tribunal constituted under the Act. He would rely upon the decision of the Madhya Pradesh High Court in **Subhan Shah (died) through LRs. v. M.P. Wakf Board**³ and Others and finally submit that the second appeals deserve to be dismissed, being meritless.

14. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

Answer to substantial question of law No. 1 :-

15. Learned first appellate Court has held that the suit property is a wakf property, therefore, jurisdiction of civil Court is barred by Section 85 of the Wakf Act and based upon that this substantial question of law has been framed. This substantial question of law is in two parts, first, whether the suit property is wakf property, and second, if yes, whether the jurisdiction of the civil Court is barred by Section 85 of the Wakf Act.

16. In order to consider the first part of this question i.e. whether the suit property is a wakf property, it would be appropriate to notice the relevant facts. The suit property was originally held by one Abdul Wahid Khan from whom plaintiffs purchased the said suit property by two registered sale deeds dated 02/03/1993 and 03/03/1993 [Exhibits P-1(c) and P-3(c)] and thereafter, they got their names mutated into the revenue records and obtained its peaceful possession thereof. Defendant No. 1 was the tenant of the erstwhile owner Abdul Wahid Khan and thereafter the tenant of the plaintiffs after they purchased the suit property from him. When defendant No. 1 failed

to pay the rent, a notice for attornment was issued to him on 04/10/1993 (Ex. P/16) which is admitted by defendant No. 1 in his statement. The civil suit was filed by the plaintiffs before the trial Court on 06/10/1995 and defendant No. 2 - Wakf Baord got himself impleaded in the suit by order dated 10/01/2005 and claimed that the suit property was subjected to wakf by its erstwhile owner Abhul Rahman Khan vide Exhibit D/10 which he has purchased vide Exhibit D/11 on 26/02/1912, as such, Abdul Wahid Khan (grandson of Abdul Rahman Khan), from whom the plaintiffs have purchased the suit property did not have the right or title to alienate the suit property in their favour.

17. The suit filed by the plaintiffs was for ejectment and arrears of rent in which defendant No. 2 - Wakf Board got himself impleaded as party defendant on 10/01/2005 and raised a plea that the jurisdiction of the civil Court is barred by virtue of 7(5) of the Wakf Act as the suit property is a wakf property in view of Exhibit D/10 which was opposed by the plaintiffs stating that Exhibit D/10 which is the certified copy of

the alleged wakf deed which he has obtained from office of the Sub-Registrar, therefore, unless foundation is laid for leading secondary evidence in terms of Section 65 of the Evidence Act, the said wakf deed (Ex. D/10) cannot be exhibited and cannot be relied upon as admissible piece of evidence.

18. Learned trial Court, on 26/02/2007, while examining defendant No. 2 (Sheikh Mohd. Ismail), has recorded his finding on his objection in paragraph 10 as under :-

“10. मैंने अब्दुल रहमान खान के वक्फ नामा की प्रमाणित प्रतिलिपि पेश किया है | विक्रय पत्र की प्रमाणित प्रतिलिपि पेश किया है |

आपत्ति - वादी अधिवक्ता ने वक्फ नामा और विक्रय पत्र को प्रदर्श अंकित करने में इसलिए आपत्ति प्रकट किया की उसे प्रदर्श चिन्हांकित नहीं किया जा सकता क्योंकि यह द्वितीयक साक्ष्य है |

निष्कर्ष - आपत्ति के सम्बन्ध में प्रस्तुत दस्तावेज का अवलोकन किया गया | दस्तावेज द्वितीयक साक्ष्य है जिसका प्राथमिक साक्ष्य पंजीयन कार्यालय में होने के कारण यदि प्रति क्र. ०२ उक्त दस्तावेज को प्रदर्श अंकित कराना चाहे तो अनुप्रमाणिक अधिकारी के द्वारा प्रमाणित करा कर दस्तावेज का प्रदर्श अंकन करा सकते हैं |”

19. In paragraphs 26 and 27 of the statement of D.W.

2 Sheikh Mohd. Ismail, it has been stated as under :-

“26. मैंने अब्दुल रहमान खान द्वारा निष्पादित वक्फ नामा की प्रमाणित प्रतिलिपि न्यायालय चतुर्थ व्यवहार न्यायाधीश, वर्ग 2

बिलासपुर का प्रस्तुत किया हूँ जो प्र.डी. 1 है | मैंने पन्ना बेवा घीसा विक्रेता के द्वारा निष्पादित विक्रय पत्र की प्रमाणित प्रतिलिपि पेश किया हूँ जो प्र.डी. 1 है |

टीप - इस स्टार पर वादी आधी. द्वारा उन दस्तावेजों पर प्रदर्श चिन्हांकित किये जाने पर वादी आधी. द्वारा आपत्ति की गयी की उक्त दस्तावेज का मूल पेश नहीं हुआ है |

प्रतिपरीक्षण द्वारा श्री गुप्ता आधी. वास्ते वादी

27. यह बात सही है की प्र.डी. 01 का दस्तावेज जो वक्फ नामा है उक्त दस्तावेज उप पंजीयक कार्यालय बिलासपुर द्वारा जारी नहीं किया गया है | स्वतः कहा की, उप पंजीयक कार्यालय की प्रतिलिपि की प्रतिलिपि है | स्वतः समाप्त | यह बात सही है की प्र.डी. 1 एवं डी 1 का मूल दस्तावेज हमारे पास नहीं है | यह बात सही है की, वक्फ संपत्ति के सम्बन्ध में निष्पादित वक्फ नामा को वक्फ बोर्ड को भेजी जाती है | स्वतः कहता है की जिस समय वक्फ किया गया उस समय वक्फ बोर्ड का गठन नहीं हुआ था | स्वतः समाप्त |”

20. It has clearly been recorded by the trial Court that since the original Wakf deed has not been produced, and Exhibit D/10 is only a copy made from the copy, being a piece of secondary evidence. In paragraph 27 of the cross-examination, the defendant has clearly stated that Ex. D/10 has not been issued by the office of the Sub-Registrar and the original copy of Ex. D/10 and D/11 are not available and have not been produced. The fact remains that no foundation for secondary evidence has been laid by defendant No. 2 with regard to Exhibit D/10 i.e. alleged wakf deed.

21. Section 65 of the Evidence Act permits secondary evidence to be given of the existence, condition or contents of documents under the seven exceptional cases in which secondary evidence is admissible. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section. (See J. Yashoda v. K. Shobha Rani.)⁴

22. It is well settled law that foundation must be first laid for reception of secondary evidence.

23. In the matter of H. Siddiqui (Dead) by LRs. v. A. Ramalingam⁵, their Lordships of the Supreme Court have laid down the principles of law regarding granting of secondary evidence as under:-

"12. The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a

4 (2007) 5 SCC 730

5 (2011) 4 SCC 240

party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide *Roman Catholic Mission v. State of Madras*⁶, *State of Rajasthan v. Khemraj*⁷, *LIC v. Ram Pal Singh Bisen*⁸ and *M. Chandra v. M. Thangamuthu*⁹.) "

24. Similarly, in the matter of **Kaliya v. State of Madhya Pradesh**¹⁰, the Supreme Court has held that the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced and held as under: -

"13. Section 65(c) of the 1872 Act provides that secondary evidence can be adduced relating to a document when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produce it in reasonable time. The court is obliged to examine the probative value of documents produced in the court or their contents and decide the question of admissibility of a document in secondary evidence. (Vide *H. Siddiqui v. A. Ramalingam* (supra) and

6 AIR 1966 SC 1457

7 (2000) 9 SCC 241

8 (2010) 4 SCC 491

9 (2010) 9 SCC 712

10 (2013) 10 SCC 758

*Rasiklal Manikchand Dhariwal v. M.S.S. Food Products*¹¹.) However, the secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. When the party gives in evidence a certified copy/secondary evidence without proving the circumstances entitling him to give secondary evidence, the opposite party must raise an objection at the time of admission. In case, an objection is not raised at that point of time, it is precluded from being raised at a belated stage. Further, mere admission of a document in evidence does not amount to its proof. Nor mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law. (Vide *Roman Catholic Mission v. State of Madras* (supra), *Marwari Khumhar v. Bhagwanpuri Guru Ganeshpuri*¹², *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple*¹³, *Dayamathi Bai v. K.M. Shaffi*¹⁴ and *LIC v. Rampal Singh Bisen* (supra).)"

25. The Supreme Court also in the matter of **Lakhi Baruah and others v. Padma Kanta Kalita and others**¹⁵ with reference to Section 90 of the Evidence Act has clearly held that foundation having not been laid for admission of secondary evidence under Section 63 by proof of loss or

11 (2012) 2 SCC 196

12 (2000) 6 SCC 735

13 (2003) 8 SCC 752

14 (2004) 7 SCC 107

15 (1996) 8 SCC 357

destruction of the original and the copy having not been produced from proper custody, presumption would not be available. It has been observed as under: -

"17. The position since the aforesaid Privy Council decisions being followed by later decisions of different High Courts, is that presumption under Section 90 does not apply to a copy or a certified copy even though thirty years old: but if a foundation is laid for the admission of secondary evidence under Section 63 of the Evidence Act, 1872 by proof of loss or destruction of the original and the copy which is thirty years old is produced from proper custody, then only the signature authenticating the copy may under Section 90 be presumed to be genuine."

26. Reverting to the facts of the present case in light of the aforesaid principle of law enunciated by their Lordships of the Supreme Court in the aforesaid judgments (supra), it is quite vivid that defendant No. 2 – Wakf Board has simply filed a copy of wakf deed (Ex. D/10) which is not an original copy and has not laid any foundation for admission of secondary evidence under Section 63 read with Section 65 of the Evidence Act by proof of loss or destruction of the original. Even for invoking Section 90 of the Evidence Act, foundation has to be laid for admission of secondary evidence as held by the Supreme Court in Lakhi Baruah (supra). The said

copy of the Wakf deed (Ex. D/10), in absence of foundation for leading secondary evidence, has to be excluded as a piece of evidence though it has been allowed to be marked and exhibited at the instance of defendant No. 2 but subject to objection of plaintiffs duly recorded in the deposition sheet at the time of exhibiting the said document and the trial Court has also recorded a finding while deciding the objection that Ex. D/10 is a piece of secondary evidence (see: para 10 of D.W. - 2 Sheikh Mohd. Ismail), as such, in absence of foundation for leading secondary evidence of Ex. D/10 - Wakf deed, the first appellate Court is absolutely unjustified in holding that the suit property is a wakf property, as such, the suit property has not been proved to be wakf property in absence of foundation for leading secondary evidence under Section 65 of the Evidence Act.

27. Now coming to the second part of the question i.e. whether the jurisdiction of the civil Court is barred by Section 85 of the Wakf Act. The suit property has not been proved to be wakf property as analyzed herein-above. The Wakf Act, 1995 came into force on 22/11/1995. Section 7(5) of the Wakf Act, 1995 provides as under :-

"7. Power of Tribunal to determine disputes regarding [auqaf] – (1) XXX

(2) XXX XXX

(3) XXX XXX

(4) XXX XXX

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of Section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be."

28. Section 85 of the Wakf Act, 1955 provides as under :-

"85. Bar of jurisdiction of civil courts.

– No suit or other legal proceeding shall lie in any [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any [waqf], [waqf] property or other matter which is required by or under this Act to be determined by a Tribunal."

29. It would be appropriate to notice that undisputedly the suit was instituted by the plaintiffs before the trial Court on 06/10/1995 whereas the Wakf Act, 1995 including Section 85 of the Act came into force w.e.f. 22/11/1995, as such, the provisions of the Wakf Act, 1995, particularly the provision contained under Section 7(5) read with Section 85 of the Wakf Act barring the jurisdiction of civil

Court in respect of wakf property which is required under the Act to be determined by a Tribunal would not be attracted in the present case as the suit had already been instituted on 06/10/1995 prior to coming into force of the Wakf Act, 1995.

30. The Supreme Court, in the matter of **Haryana Wakf Board v. Mahesh Kumar**¹⁶, while considering Section 85 of the Wakf Act, 1995, has clearly held that in view of Section 7(5) of the Act, if a suit or proceeding is already pending in Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction and laid down as under :-

“12. On conjoint reading of Section 7 and Section 85, the legal position is summed as under :

12.1.	XXX	XXX	XXX
12.2.	XXX	XXX	XXX
12.3.	XXX	XXX	XXX

12.4. There is, however, an exception made under Section 7(5) viz. Those matters which are already pending before the civil court, even if the subject matter is covered under sub-section (1) of Section 6, the civil court would continue and the Tribunal shall not have the jurisdiction to determine those matters.”

31. Therefore, it is quite clear that the present
suit filed by the plaintiffs before the trial

16 (2014) 16 SCC 45

Court on 06/10/1995 is saved by Section 7(5) of the Wakf Act, 1995 and the suit is not barred by Section 85 of the Wakf Act, 1995.

32. Faced with this situation, Mr. Kshitij Sharma, learned counsel appearing for defendant No. 2/Wakf Board in Second Appeal No. 353/2009, would submit that assuming that Wakf Act, 1995 is not applicable and the bar of jurisdiction of the Civil Court under Section 85 of the Wakf Act is not available to defendant No. 2 in the present case, but still by virtue of the M.P. Wakf (Amendment) Act, 1994, jurisdiction of the Tribunal under Section 6-A and bar of jurisdiction of civil Courts under Section 55C of the Wakf Act, 1954 was contemplated. To buttress his submission, he relied upon the decision of the M.P. High Court in **Subhan Shah Through LRs. Ramzan v. Madhya Pradesh Wakf Board & Anr.**¹⁷

33. Admittedly, by Madhya Pradesh Wakf (Amendment) Act, 1994 (Act No. 1 of 1995) amendments were made in the Wakf Act, 1954. By the Wakf (Amendment) Act, 1994, Section 6-A was inserted in the Principal Act providing for power of Tribunal to determine the dispute regarding wakf and by Section 6(5) of the said Act it was provided that no suit or other

legal proceeding shall be instituted or commenced in civil court in relation to any question referred to sub-section (1) and Sections 55-A to 55-G were incorporated in the Wakf Act, 1954. Section 55-C was with respect to bar of jurisdiction of civil Court in respect of any dispute/question or other matters relating to any wakf or wakf property which is required to be determined by the Tribunal.

34. Section 6-A of the Wakf Act provides that if, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final.

35. In **Subhan Shah** (supra), the Madhya Pradesh High Court has clearly held that the power of the Tribunal to determine the dispute regarding wakf would come into action only after publication in the official Gazette under Section 5(2) of the Act. It was held as under :-

"6. ... thus, under the scheme of the Act first the Survey Commissioner, appointed by the State Government is required to make a survey of wakf property and submit a report to the State Government, the State Government is then required to forward the same to the Board and thereafter, Board is required to publish a list of wakf in the official Gazette. It is only after publication of the official Gazette under Section 5(2) of the Act by the Wakf Board, the power of the Tribunal to determine the dispute springs into action."

36. Neither before the two Courts below nor before this Court, nothing has been brought on record that the suit property was notified and published under Section 5(2) of the Principal Act of 1954 making the suit property as wakf property giving the jurisdiction to the Tribunal to determine the dispute regarding wakf under Section 6-A of the Wakf Act, 1954 as amended by the Wakf (M.P. Amendment) Act, 1994 read with Section 55-C of the Act as amended by Act No. 1 of 1995, as such, Section 6-A of the Act as amended is not attracted in the present case and the jurisdiction of the civil Court is not barred and the decision relied upon by Mr. Kshitij Sharma i.e. Subhan Shah (supra) is not anyway furthering the cause of Respondent No. 2 Wakf Board, and this is the reason why this point based on Section 6-A of the Act read with Section 55-C of the Act was not raised before the two Courts below.

37. In my considered opinion, the defendants have failed to prove that the suit property is a wakf property and further the Wakf Act, 1995 came into force w.e.f. 22/11/1995 whereas the civil suit was already instituted on 06/10/1995 i.e. prior to coming into force of the Wakf Act, 1995, duly saved by Section 7(5) of the Act of 1995 and the suit is even not barred by Section 6-A of the Act of 1954 as intruded by the Madhya Pradesh Wakf (Amendment) Act, 1994, therefore, the suit property is neither a wakf property and nor the jurisdiction of the civil Court is barred either by Section 85 of the Wakf Act, 1995 or by Section 6-A of the Act of 1954 as inserted by the Madhya Pradesh Wakf (Amendment) Act, 1984 read with Section 55-C of the Act. Thus, the substantial question of law No. 1 is answered in favour of the plaintiffs and against the defendants and the finding recorded by the first appellate Court in this regard holding the suit property to be wakf property and further holding that jurisdiction of civil Court is barred by Section 85 of Wakf Act, 1995 are hereby set aside.

Answer to Substantial Question of Law No. 2 :-

38. The plaintiffs have purchased the suit property from Abdul Wahid Khan vide Exhibits P-1(c) and P-3(c) and become its owner. Abdul Wahid Khan served

the notice (Ex. P/16) on 04/10/1993 to the tenant/defendant No. 1 which has been admitted by the tenant Gulshan (D.W. 1) in paragraphs 10 and 12 of his statement. Even otherwise, the notice dated 04/10/1993 (Ex. P/16) has not been replied to by the defendant No. 1, as such, it is established on record that defendant No. 1 was the tenant of Abdul Wahid Khan, who has transferred the suit land in favour of the plaintiffs by registered sale deeds ([Exhibits P-1(c) and P-3(c)]).

39. At this stage, it would be appropriate to notice Section 109 of the Transfer of Property Act, 1882 (for short, 'the TP Act') which states as under:-

"109. Rights of lessor's transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the

premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

40. A careful perusal of the aforesaid provision would show that when the right, title and interest in immovable property stands transferred by operation of law, Section 109 of the TP Act would apply and the successor-in-interest would be entitled to the right of his predecessor.

41. The Supreme Court in Taraknath & Anr. v. Sushil Chandra Dey by Lrs. & Ors.¹⁸ has held that since the purchaser gets valid title to the property and the respondent was continuing as tenant, he is bound by title since the suit has been laid for eviction of the tenant and held as under:-

"4. ... The sale deed is a registered conveyance for valid consideration. Under those circumstances, by operation of Section 17 of the Registration Act, 1908, the appellant gets valid title to the property. ..."

42. The Division Bench of the Madhya Pradesh High Court in B.P. Pathak v. Dr. Riyazuddin Haji Mohammad Ali & Ors.¹⁹ held that Section 109 of the TP Act creates a statutory attornment and applies in three cases (i) where the lessor transfers the whole property leased; (ii) where the lessor transfers

18 (1996) 4 SCC 697

19 AIR 1976 MP 55

the property leased or any part thereof; and (iii) where the lessor transfers the property leased or any part of his interest thereof and held as under:-

"19. All these problems are solved by Section 109. In our opinion, that section creates what may be called statutory attornment, which substitutes, and has the same effect, as contractual attornment, so that because of a transfer of the leased property, or a part thereof, the transferee ipso facto acquires "all the rights" of the lessor, and a new relationship is created between the transferee and the lessee. Letter of attornment is not necessary to complete title to the assignee of the reversion under Section 109. Title of the assignee is complete on the execution of the deed of assignment and is not postponed till the notice of assignment. See *Pulin Bihary v. Miss Lila Dey*²⁰. This relationship is statutory. It is not dependent on the consent of the lessee (liabilities of the lessor apart). This is by force of the statute. ..."

43. In **B.P. Pathak** (supra), the Division Bench of the M.P. High Court further laid down the following principles of law with regard to Section 109 of the TP Act by observing as under: -

"28. The above discussion leads to the following conclusions:-

(1) It is settled law that in the absence of a specific provision in the statute, the tenancy cannot be split up by one of the parties without the consent of the other. The Court or the Rent Controlling Authority also cannot split up the tenancy. The lessee can be ejected from the whole of the demised property or not at all. *Miss S. Sanyal v. Gianchand* AIR 1968 SC 438 and

Shantaram v. Shyam Sunder AIR 1972 Madh Pra 17.

(2) If there is a specific provision which gives the Court or the Rent Controlling Authority power to split up the tenancy, the statute will override; for instance, clause 13 (8) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949, (Nathulal v. Ratansi 1957 MPLJ 805 = (AIR 1958 Madh Pra 218) (FB)).

(3) If the lessor transfers any part of the property leased, the transferee, by virtue of Section 109 of the Transfer of Property Act, acquires all the rights of the lessor in respect of that "part of the property". This means that the transferee possesses all the rights in that part of the property as if it had alone originally been comprised in the lease. If not already determined, the transferee is entitled to determine the lease and sue for ejectment.

(4) If the lessor transfers any part of his interest in the property leased, the transferee becomes a co-lessor and as such, the transferee alone cannot determine the tenancy or sue for ejectment without the other co-lessor joining him, or unless and until the transferee gets a partition effected.

(5) For the purposes of Section 109, a partition is a transfer of the part of the property allotted to each co-owner. It automatically splits up the tenancy.

(6) Section 109 creates statutory attornment and has the same effect as if the lessee by contract attorns to the lessor's transferee in respect of the property transferred (whole or part, as the case may be).

(7) Although the wording of Section 140 of the English Law of Property Act, 1925, is somewhat different from that of Section 109 of our Transfer of Property Act, the effect of the two provisions is the same.

(8) The right of ejectment is inherent in ownership.

(9) A transferee of a part of the property leased can determine the lease in respect of the part transferred, in any of the circumstances enumerated in section 111 of the Act, and sue for ejectment. There is nothing to restrict this right of ejectment to cases where the lease had been determined before the transfer, or to cases where the lease is determined by efflux of time."

44. The decision of the M.P. High Court (Full Bench) rendered in Sardarilal v. Narayanlal²¹ was considered by the Supreme Court with approval in the matter of Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate²² and it was held that suit for eviction filed by co-lessor to whom portion leased property fell on partition is maintainable, tenant cannot object to such partition although he can show that partition was not bona fide. It was observed by their Lordships of the Supreme Court as under: -

"37. In view of the above discussion, it is obvious that the law with regard to the splitting of tenancy is not what the High Court has set out in the impugned judgment. As pointed out earlier, a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal

21 AIR 1980 MP 8

22AIR 1997 SC 998

with that portion as also the tenant thereof as individual owner/lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves. Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them on behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of tenants except on specified grounds set out in the relevant statute."

45. Section 109 of the TP Act was also considered by the Supreme Court in Ambica Prasad v. Mohd. Alam & Anr.²³ and it was held that upon transfer of interest by lessor during subsistence of lease, immediately rights are acquired by the transferee thereupon and attornment by lessee to new lessor is not required. It was observed as under:-

"15. ... From perusal of the aforesaid Section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The Section does not insist that transfer will take effect only

when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment."

46. Thus, in the light of the provisions contained in Section 109 of the TP Act and the principles of law laid down by their Lordships of the Supreme Court and the M.P. High Court in the afore-cited judgments, it is quite vivid that Section 109 of the TP Act creates a statutory attornment and by virtue of the transfer of leased property, transferee ipso facto acquires all the rights of the lessor, and a new relationship is created between the transferee and the lessee. Letter of attornment is not necessary to complete title to assignee and thus, by virtue of Section 109 of the TP Act, there is statutory attornment and as such, the two plaintiffs have become landlords of the suit accommodation and were entitled to file suit for eviction of the defendant No. 1.

47. Now, the question would be, whether the plaintiffs have established the ground under Sections 12(1)

(C), 12(1)(f) and 12(1)(g) of the Chhattisgarh Accommodation Control Act, 1961 ?

48. Clause (f) of Section 12(1) of the Act of 1961 provides that in order to get the tenant evicted the landlord has to plead and prove that he is the owner of the suit accommodation and the accommodation let for non-residential purposes is required bona fide by himself for the purpose of continuing or starting his business or for any other person for whose benefit the accommodation is held, as the case may be.

49. At this stage, it would be appropriate to notice the definition of "landlord" employed in Section 2(b) of the Act of 1961, which states as under: -

"(b) "landlord" means a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord;"

50. The expression "if he is the owner thereof" employed in clause (f) of Section 12(1) of the Act of 1961 does not mean that apart from being a landlord the plaintiff seeking eviction of his tenant under the two clause must necessarily be

the 'absolute owner' of the accommodation or of the land on which the accommodation stands. The purpose of the Act was not merely to regulate and control the eviction of tenant from the accommodation but also to regulate and control rent of accommodation and other aspects connected with letting.

51. The effect of the definition of the term 'landlord' was that it included not only a person who had a right to occupy the accommodation for himself and in his own right but also a person who was an agent, guardian, trustee or the receiver who did not have the right to occupy it in his own right but had the said right only for the benefit of another. But, then, in the context of sub-section (1) of Section 12 of the Act, which related to regulation and control of eviction of tenants from the accommodation, while permitting the eviction of tenants from the accommodation on the ground of the landlord's *bona fide* requirement for residential or non-residential purpose, it was proper that the Legislature thought it fit to allow only such a 'landlord' to claim eviction who had a right to occupy the accommodation for himself and in his

own right. It is obvious that there was no question of 'landlord' who was a mere agent, guardian, trustee or the receiver who did not have the right to occupy the accommodation in his own right being made entitled to obtain eviction on the ground of his *bona fide* requirement for residential or non-residential purposes. It is for the said reason that to make it clear that the right to claim eviction under clauses (e) and (f) of sub-section (1) of Section 12 of the Act was available only to such a 'landlord' who had right to occupy the accommodation for himself and in his own right that the Legislature thought it fit to qualify the use of the term 'landlord' in the said clause by the words "if he is the owner thereof". (See Asif Ali v. Rahandomal²⁴.)

52. The Supreme Court in the matter of M.M. Quasim v. Manohar Lal Sharma and others²⁵, interpreting the ingredients of clause (c) of Section 11(1) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, observed as under: -

"14. ... while taking advantage of the enabling provision enacted in S. 11 (1) (c), the person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is owner of

24 1986 JLJ 313

25 AIR 1981 SC 1113

the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression landlord in its wide amplitude, cannot be treated as a landlord for the purposes of S. 11 (1) (c). This becomes manifestly clear from the explanation appended to the sub-section. By restricting the meaning of expression landlord for the purpose of S. 11 (1) (c), the legislature manifested its intention namely that the landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building himself and exclude any one holding a title lesser than his own. Such landlord who is an owner and who would have a right to occupy the building in his own right, can seek possession for his own use. ..."

53. In Asif Ali (supra), considering the meaning of the words 'if he is the owner thereof' employed in clauses (e) and (f) of sub-section (1) of Section 12 of the Act of 1961, the M.P. High Court clearly held that apart from being a landlord the plaintiff seeking eviction of his tenant under the said clauses must not necessarily be the 'absolute owner' of the accommodation or of the land on which the accommodation stands and observed as under: -

"14. In the opinion of this Court, from the abovesaid discussion, it is clear that the words 'if he is the owner thereof' as used in clauses (e) and (f) of Section 12(1) of the M.P. Accommodation Control Act, 1961 do not mean that apart from being a landlord the plaintiff seeking eviction of his tenant under the said clauses must

necessarily be the 'absolute owner' of the accommodation or of the land on which the accommodation stands. It may be that the absolute ownership of the accommodation of the land on which the accommodation stands vests in another person and the plaintiff himself is only a tenant of the said person. It may be that the person having absolute ownership may be in a position to dispossess the plaintiff on the basis of his title or on the basis of any breach of the lease. Yet, as against the defendant i.e. his tenant, the plaintiff remains the 'owner' in case he is receiving to or entitled to receive rent from the defendant on his own account i.e. in case he is the person who in the event of reversion of tenancy of the defendant has the right to occupy the accommodation in his own right.

15. The attention of this Court is drawn by the learned counsel for the defendant-appellant to a decision of this Court in *Shambhoo Khan v. Alka*²⁶. It is no doubt true that in the said case the word 'owner' occurring in clauses (e) and (f) of Section 12(1) of the Act was interpreted to mean 'absolute owner' and it was held that as a 'tenant' in relation to his sub-tenant could not be deemed to be the 'owner' of the accommodation, he had no right to evict the 'sub-tenant' under the said clause on the ground of his *bonafide* requirement. However, in view of the various decisions as mentioned above, including that of the Division Bench of this Court in *Mohammad Nurul v. Huda's* case²⁷ (supra) and that of the Supreme Court in *M.M. Quasim's* case (supra), it is submitted with due respect that Shambhoo Khan's case is not correctly decided."

54. The decision in M.M. Quasim (supra) has further been followed by the Supreme Court in the matter

26 1977 MPLJ-SN 2
27 AIR 1953 Nag. 251

of Sheela and others v. Firm Prahlad Rai Prem

Prakash²⁸. In Sheela (supra), their Lordships

held as under: -

"10. ... the concept of ownership in a landlord-tenant litigation governed by Rent Control Law has to be distinguished from the one in a title suit. Ownership is a relative term the import whereof depends on the context in which it is used. In Rent Control Legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. ..."

55. The principle of law laid down in Sheela (supra)

has been followed by the Supreme Court in the

matter of Kasthuri Radhakrishnan and others v. M.

Chinniyar and another²⁹.

56. The Supreme Court in the matter of Apollo Zipper

India Limited v. W. Newman and Company Limited³⁰

taking into consideration its earlier judgments

in Sheela (supra) and Boorugu Mahadev & Sons v.

Sirigiri Narasing Rao³¹ has clearly held that in

an eviction suit filed by the landlord against

the tenant under the rent laws, when the issue of

28 AIR 2002 SC 1264

29 (2016) 3 SCC 296

30 (2018) 6 SCC 744

31 (2016) 3 SCC 343

title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit. It was further held that the burden of proving the ownership in an eviction suit is not the same like a title suit.

57. Reverting to the facts of the present case in the light of the aforesaid meaning and definition of the term 'if he is the owner thereof' used in Section 12(1)(f) of the Act of 1961 and the principles of law enunciated by the Supreme Court and the M.P. High Court (supra) in that behalf, it is quite vivid that in the instant case, the plaintiffs purchased the suit property from the erstwhile owner Abdul Wahid Khan vide Exhibits P1(c) and P3(c) and thereafter became the owner of the suit property and also the landlords of defendant No. 1. Plaintiffs have clearly stated that they have no other alternative suitable accommodation in the township of Bilaspur and the suit accommodation is required bonafidely for starting his business, though a lengthy cross-examination has been made but nothing has been brought out to demonstrate that either their need of the suit accommodation is not bona fide or

they have any other alternative suit accommodation in the township of Bilaspur to fulfill their bona fide need. As such, the plaintiffs have successfully proved the fact that the suit accommodation has admittedly been let out by the erstwhile owner Abdul Wahid Khan for non-residential purpose to the tenant/defendant No. 1 and plaintiffs needs the suit accommodation for starting their business and he has no other alternative accommodation for carrying out their business in the township of Bilaspur, therefore, the ground under Section 12(1)(f) of the Act of 1961 is established. However, I do not find any ground established under Section 12(1)(c) and (g) for evicting the defendant No. 1 from the suit accommodation.

58. As a fallout and consequence of the aforesaid legal analysis, both the substantial questions of law are answered in favour of the plaintiffs and against the defendants and it is held that the first appellate Court is absolutely unjustified in setting aside the judgment and decree of the trial Court by recording findings which are perverse and contrary to the record, as such, the judgment and decree of the first appellate Court

is hereby set aside and that of the trial Court is restored to the extent indicated herein-above. It is ordered that defendant No. 1 will hand over the peaceful and vacant possession of the suit accommodation as mentioned in Schedule 'A' of the plaint within two months from the date on which the decree is drawn.

59. The second appeals are allowed to the extent indicated herein-above. No cost(s).

60. Decree be drawn-up accordingly and Schedule 'A' of the plaint be made part of the decree.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 352 of 2009

Appellants

Jaipal Choudhary & Anr.

Versus

Respondents

Chhattisgarh Wakf Board & Anr.

Second Appeal No. 353 of 2009

Appellants

Jaipal Choudhary & Anr.

Versus

Respondent

Gulshan @ Bunty & Anr.

POST FOR PRONOUNCEMENT OF THE JUDGMENT ON 14 /12/2020

J U D G E
/12/2020