



2025:CGHC:39708



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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 157 of 2002****Judgment Reserved on : 24.06.2025****Judgment Delivered on : 08.08.2025**

1. Smt. Tika Bai Dead Through Lrs
 - 1(a). Smt. Rajni Parita W/o Suresh Kumar Parita, Aged about 47 years, R/o Shanti Nagar, Bilaspur (C.G.)
 - 1(b). Smt. Vimla Garwal W/o Pradeep Garwal, Aged about 45 years, R/o In Front of Gurudwara, Near Bus Stand, Kandeli, District - Narsinghpur (M.P.)
 - 1(c). Smt. Pushpa Koshta W/o Vijay Kumar Koshta, Aged about 40 years, R/o Near Shalimar Garden, Ghaziabad (U.P.)
2. Vidyadhar Prasad S/o Late Chandulal Sao, Aged about 29 years, R/o Balaji-Ward Jagdalpur, Tahsil - Jagdalpur, District - Bastar (Chhattisgarh)
3. Narendra Sao S/o Late Chandulal Sao, Aged about 27 years, R/o Balaji-Ward Jagdalpur, Tahsil - Jagdalpur, District - Bastar (Chhattisgarh)
4. Rohit Kumar Sao S/o Late Chandulal Sao, Aged about 20 years, R/o Balaji-Ward Jagdalpur, Tahsil - Jagdalpur, District - Bastar (Chhattisgarh)

... Appellant(s)**versus**

1. Govindram Dead Through Lrs.
 - 1(i). Tulo Bai Dead Through Lrs.
 - 1(i)(a). Ghasiram S/o Lt. Mituram Baghel, Aged about 31 years, R/o Guru Ghasi Das Ward, Ward No. 28, Jagdalpur, District - Bastar (C.G.)
 - 1(i)(b). Smt. Meena Baghel W/o Rameshvar Rao, Aged about 30 years, R/o Guru Ghasi Das Ward, Ward No. 28, Jagdalpur, District - Bastar (C.G.)



1(ii). Phulwati D/o Govind Ram, Aged about 36 years, R/o Keoramunda Ward, Jagdalpur, District - Bastar (C.G.)

1(iii). Jaywati D/o Govind Ram, Aged about 32 years, R/o Keoramunda Ward, Jagdalpur, District - Bastar (C.G.)

... Respondent(s)

For Appellant(s) : Mr. P.N. Bharat, Senior Advocate along with
Mr. Keshav Dewangan, Advocate

For Respondent(s) : Mr. B.P. Sharma and Mr. Pushp Gupta, Advocates

Hon'ble Shri Justice Narendra Kumar Vyas
(CAV Judgment)

1. The appellants/plaintiffs have filed this second appeal under Section 100 of Civil Procedure Code against the judgment and decree dated 22.03.2002 passed by the learned Second Additional District Judge, Jagdalpur (C.G.) in Civil Appeal No. 68-A/2002 by which first appellate Court has dismissed the appeal against the judgment and decree dated 11.01.2000 passed by the learned First Civil Judge, Class-II, Bastar at Jagdalpur in Civil Suit No. 17-A/1993 by which the suit filed by the plaintiffs has been dismissed.
2. The parties have been described as per their description before the trial Court in Civil Suit No. 17-A/1993.
3. The second appeal has been admitted by this Court on 13.09.2018 on the following substantial questions of law:-

“1. Whether the trial Court is justified in holding that the defendants have perfected their title by adverse possession in the suit for ejectment filed by the appellants/plaintiffs?

2. Whether the First Appellate Court is justified in dismissing the suit after having held that plaintiffs are the owner of the suit land by recording a perverse finding and affirming the judgment and decree of the trial



Court?”

4. Brief facts as reflected from the record are that:

- (a) The plaintiffs have filed a suit on 12.04.1993 for vacant possession of property bearing Plot No. 10 admeasuring area about 6958 sq. ft. Nazul sheet No. 116 situated at Kumharpara Ward Jagdalpur wherein in one portion a house has been constructed and other part of the plot is lying vacant, (hereinafter referred to as “suit property”). The plaintiff has also claimed remaining rent from November 1989 to November 1992 mainly contending that Smt. Tikabai was the wife of Chandulal Sao and plaintiffs No. 2, 3 and 4 are the sons of the plaintiff No. 1. The plaintiff No. 1 along with her sons and daughters were in possession of the suit property.
- (b) The plaintiff’s husband Chandulal Sao has given the said house to the defendant on rent in the year 1981 at the rate of Rs. 30/- per month and since then there was a landlord and tenant relationship between Chandulal Sao and the defendant, Chandulal expired in the year 1984, accordingly, the plaintiff No. 1 has become the owner of the suit property. The tenancy was effective from the 1st day of month till the last day. The defendant paid from the year 1981 till 1989, thereafter, he stopped paying the rent. It is also the case of the plaintiffs that the plaintiffs moved an application for mutation of their names in the revenue records on 28.02.1986. In the said proceedings, the defendant has raised objection and since then they stopped paying rent. The plaintiffs have claimed



vacant possession of the house as she has bonafide need of the house and also on account of failure of the defendant to pay rent for the last 3 years. It is also the case of the plaintiffs that their names have been mutated in the revenue records against that the defendant has preferred an appeal before the Commissioner Bastar Division which has been rejected by the appellate Court.

5. The defendant filed his written statement as well as counter claim mainly contending that:

- (a) The suit property is not in possession of the plaintiff's husband, therefore, no question of landlord and tenant relationship exists between them, as such, plaintiff's husband cannot give the suit property on rent to the defendant. It has also been contended that despite decision of the revenue Court, they have not acquired any right and the sale deed executed in favour of the Chandulal Sao by Jhariyar Gond is null and void as the suit property was never recorded in the name of Jhariyar Gond, as such, the mutation of their names in the suit property does not confer any right upon the plaintiffs and prayed for dismissal of the suit.
- (b) The defendant has also filed counter claim contending that defendant is residing since 1981 in the suit property and prior to it, it was in possession of Jhadu who expired in the year 1950 and he has no legal heirs. The suit property was lying vacant wherein defendant has constructed a house. It has also been contended by the defendant that when plaintiffs



moved an application for mutation, an objection was raised by him, therefore, it cannot be said that the suit property is in the name of Chandulal, as such, the legal heirs cannot claim any right over the suit property. It is also the case of the defendant that since the property is in possession of the defendant, therefore, no question of interference in peaceful possession of the plaintiff arose at all. The defendant has acquired the title over the suit property as per principle of adverse possession and prayed for declaration of title over the suit property.

6. The plaintiffs filed reply to the counter claim raised by the defendant denying the fact that the suit property is recorded in the name of Jhadu Gond who expired before the year 1950 and since he has no legal heirs, the property was lying vacant wherein defendant has constructed the house. In fact the suit property was recorded in the name of Chandulal Sao, thereafter, after death of Chandulal, plaintiffs are entitled to inherit the suit property. It was also contended that Chandulal Sao has purchased the suit property on 07.11.1951 from Jhariyar Gond S/o Bhaiya Ram Gond and through registered sale deed, thereafter, in the revenue records the name of the plaintiff's husband Chandulal Sao was recorded wherein the defendant was residing as tenant. It has also been denied that sale deed executed between Jhariyar Gond and Chandulal Sao is null and void. It has also been contended that on account of payment of light tax by the defendant which has been paid by tenant only, he cannot be acquired title of the suit property. It has also been contended that the plaintiff demanded rent by sending notice to



defendant, but he has not paid the rent, thereafter, the suit has been filed by the plaintiff, as such the suit is maintainable and prayed for rejection of counter claim.

7. On the pleadings of the parties, learned trial Court has framed as many as 6 issues. Issues No. 1, 2, 3 and 5 are relevant, therefore, they are extracted below:-

- “1. क्या विवादित शीट नं. 116, प्लॉट नं. 10 में रकबा 6958 वर्गफुट व उसके भाग पर निर्मित मकान स्व. चन्दूलाल के आधिपत्य एवं स्वत्व का है?
2. क्या प्रतिवादी, वादी क्र. 1 के पति चन्दूलाल के मध्य किरायेदार व मकान मालिक का संबंध था?
3. क्या प्रतिवादी को प्रतिकूल कब्जा के आधार पर स्वत्व व अधिकार प्राप्त हो गया है?
5. क्या वादीगण को वाद-मकान की सद्भावनापूर्वक आवश्यकता है?”

8. The plaintiff to substantiate the case has exhibited Sale deed (Exhibit P/1), Copy of the order (Exhibit P/2), Copy of Revenue Records (Exhibit P/3 to P/5), Copy of Nazul records of the years 1943-44 to 1945-46 (Exhibit P/6), Copy of Nazul records of the years 1948 to 1951-52 (Exhibit P/6 to P/7). The plaintiff examined Vidya Prasad Sao plaintiff No. 2 as PW-1, Saraswati plaintiff No. 3 as PW-2, Suresh Kumar as PW-3 and Narendra Kumar Sao as PW-4. The defendant exhibited documents: Map (Exhibit D/1) Nazul Khasra (Exhibit D/2), Copy of sale deed (Exhibit D/3), Statement of Tikabai (Exhibit D/4), Receipts of water and light taxes (Exhibit D/5 to D/10). Defendant examined Govind Ram as DW-1, Roop Singh as DW-2, Mahesh Prasad Panigrahi as DW-3, Bali Ram Bisai as DW-4.
9. The plaintiff witness Vidya Prasad Sao in his examination-in-chief has reiterated the averments made in the plaint and in the cross-



examination he has stated that his father Chandulal has purchased suit property from one Jhariyar Gond vide sale deed (Exhibit-P/1) and he has denied that the defendant is residing since 1951 in the suit property and has voluntarily stated that defendant is tenant since 1981. He has also admitted that the defendant stopped payment of rent since 1985, still they have not filed the suit till 1993. He has also admitted that an oral agreement was executed between the plaintiff and defendant regarding tenancy. He has stated that only with regard to house a tenancy oral agreement was executed between his father and defendant. He has also admitted that after death of his father, in the revenue records names of the plaintiffs have been recorded, therefore, they have right of title over the suit property. The other witnesses PW-2 Saraswati and PW-4 Narendar Kumar Sao have also supported the case of the plaintiff and stated that defendant is tenant of the plaintiff's suit property on rent at the rate of Rs. 30 per month. The other witness PW-3 Suresh Kumar Manjhi who was working as Revenue Collector in the Municipal Corporation has placed on record the assessment register and light tax register which is started from 1995-96 wherein the name of Chandulal Sao has been recorded as owner of the suit property. He has stated that payment of all the tax is being done by the Chandulal Sao. The witness was cross-examined wherein he has admitted that the register has not been certified by any of the officer.

10. The defendant's witness DW-1 in his examination-in-chief has reiterated the stand which he has taken in the written statement as well as counter claim. The witness was cross-examined wherein he



has stated that the house has been recorded in his name, but he has admitted that he has not produced any document before the trial Court wherein the name of the defendant has been mentioned. He has stated that he has been granted lease of the house and has stated that he will produce the same in future. The defendant has neither produced the lease before the trial Court, nor before the first appellate Court nor before this Court.

11. The learned trial Court considering the evidence, document on record has dismissed the suit vide its judgment and decree dated 11.01.2000. The learned trial Court while dismissing the suit decided the issue No. 2 against the plaintiff by recording its finding that no landlord and tenant relationship exists between plaintiff and the defendant, therefore, it was not required for the trial Court to decide other issue regarding bonafide need of house. The learned trial Court has allowed the counter claim of the defendant and has granted decree of possession of suit property in his favour on account of adverse possession of the defendant. The learned trial Court while granting decree on the basis of adverse possession has recorded its finding in paragraph 16 that the defendant is residing prior to 12 years in the suit property, therefore, he has obtained the decree of title on the basis of adverse possession.
12. Being aggrieved with this judgment and decree, the plaintiff has preferred an appeal before the learned first appellate Court. The plaintiff along with his appeal has also filed an application under Order 41 Rule 27 CPC which was allowed at the time of final hearing and exhibited as P/1 to P/7 as these documents are related to the documents which have been filed before the trial Court by the



plaintiff. The appellants by the said application have filed order sheet of revenue case wherein proceedings for recording of name of Jhariyar Gond were initiated and the order by which name of Jhariyar Gond was recorded. The plaintiff has also filed order sheet of revenue case dated 03.05.1951 by which proceeding of recording of name of Chandulal Sao was initiated and order was also annexed wherein name of Chandulal Koshta was recorded. The learned first appellate Court though dismissed the appeal but has recorded its finding that the plaintiff is the title holder of the suit property and affirmed the finding of adverse possession recorded in favour of the defendant by the trial Court. Being aggrieved with judgment and decree passed by the learned first appellate Court, the plaintiffs have preferred second appeal before this Court which has been admitted on substantial question of law as mentioned above.

13. Learned senior counsel for the plaintiffs would submit that the first appellate Court has rightly recorded its finding in paragraph 11 and 12 of its judgment that the plaintiff is the title holder of the suit property, but has committed illegality in applying the principle of adverse possession without considering the parameters which are required to be proved. Therefore, the finding with regard to adverse possession is illegal. It has been contended that the plaintiffs by cogent material has already established that the defendant was tenant and he was not paid the rent from 1989 to 1992, as such the same is liable to be ejected from the suit property as per the Chhattisgarh/Madhya Pradesh Accommodation Control Act, 1961. Thus, he would pray for allowing the appeal and to substantiate his



submission he would refer to the judgment of Hon'ble Supreme Court in case of **Chatti Konati Rao and Ors. Vs. Palle Venkata Subba Rao** reported in **(2010) 14 SCC 316**, **Uttamchand Vs. Nathuram** reported in **(2020) 11 SCC 263**, **Tribhuvan Shankar Vs. Amrutlal** reported in **(2014) 2 SCC 788**, **M/s Parkstreet Properties Pvt. Ltd., Vs. Deepak Kumar Singh and Another** reported in **AIR 2016 SC 4038**, **Ahmad @ Mohd. Ahmad Vs. Mohd Usman** reported in **(2017) 13 SCC 252**, **Shivaji Balram Haibatti Avinash Maruthi Pawar** reported in **(2018) 11 SCC 652**, **Biswajeet Sukul Vs. Deochand Sarda and Ors.** reported in **(2018) 10 SCC 584**, **Laxman Tatyaba Kankete Vs. Taramati Harishchand Dhatrak** reported in **(2010) 7 SCC 717**.

14. Per contra, learned counsel for the defendant would submit that no substantial question of law exists in the second appeal as both the Courts below have recorded concurrent finding of fact in favour of the defendant and said finding is not liable to be dismissed in exercise its power under Section 100 of CPC by this Court. He would further submit that for obtaining the decree of ejectment under Section 12(1)(a) of Chhattisgarh Accommodation Control Act, 1961 is landlord and tenant relationship which should be established by the plaintiff, but in absence of any such evidence and material on record the trial Court has rightly recorded its finding. So far as adverse possession is concerned, he would submit that the defendant by his evidence established that he is in possession of the suit property since 1950 which is more than 50 years, therefore, finding recorded by the trial Court with regard to adverse possession cannot be said to suffer from perversity,



illegality which warrants interference by this Court, thus, he would pray for dismissal of the appeal. To substantiate his submission he has referred to the judgments of Hon'ble Supreme Court in case of **M. Radheshyamlal vs. V. Sandhya** reported in **AIR 2024 SC 1595**, **Vinay Eknath Lad vs. Chiu Mao Chen** reported in **2019 (20) SCC 182**, **Nazir Mohamed vs. J. Kamala & Others** reported in **2020 (19) SCC 57**, judgment of this Court in case of **Hero Vinoth vs. Seshammal** reported in **2006 (5) SCC 545**.

15. I have heard learned counsel for the parties and perused the record with utmost satisfaction.
16. Before advertng to the substantial question of law, it is expedient for this Court to consider the submission made by the learned counsel for the defendant that this Court has framed substantial question of law, but in fact it does not fall within the ambit of substantial question of law which is required for deciding the appeal under Section 100 of CPC. Learned counsel for the defendant would further submit that no substantial question of law is involved in the appeal or exists as it's a concurrent finding of facts by both the Courts below.
17. Per contra, learned senior counsel for the plaintiffs would submit that since right of the parties is being adversely affected, therefore, it falls within the ambit of substantial question of law, as such, this Court has rightly framed the substantial question of law which has to be answered by this Court on the basis of material already on record.
18. The submission made by the learned counsel for the defendant that



the substantial question of law framed by this Court is not a substantial question of law which deserves to be rejected as wrong application of principle of law and it gives rise to a question of law and a question of law having a material bearing on decision of case (i.e a question, answer to which rights of a party to suit) will be a substantial question of law, if it is not covered by specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issues. From the records, prima-facie it is quite vivid that both the Courts below have granted the decree of title on the basis of adverse possession without considering the law in this regard, as such substantial question of law exists and requires to be answered by this Court, accordingly, in foregoing paragraphs it will be answered by this Court. What will be substantial question of law for hearing the second appeal under Section 100 of CPC has come up for consideration before the Hon'ble Supreme Court in case of **Chandrabhan (deceased) through legal representatives and Others vs. Saraswati and Others** reported in **2022 (20) SCC 199** wherein the Hon'ble Supreme Court in paragraphs 29 to 32.3 has held as under:

"29. The relevant paragraphs of the judgment of this Court in Hero Vinodh are set out hereinbelow: (SCC p. 554, para 21)

"21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, of having substance, essential, as qualifying "question of law", means real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal



shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta* the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Chunilal* case the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju*: (*Chunilal* case, SCC OnLine SC para 5)

"5. ... [W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law." "

30. The proper test for determining whether a question of law raised in the case is substantial would be, whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or the question raised is palpably absurd, the question would not be a substantial question of law.

31. To be "substantial", a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involved in the case" there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding



prolongation in the life of any lis. (See Santosh Hazari v. Purushottam Tiwari¹⁰.)

32. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

32.1. An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

32.2. The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

32.3. The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

Discussion and finding on substantial question of law No. 1:

19. The learned counsel for the defendant has contended that non-acknowledgment of title of the plaintiff, he is entitled to take a plea of adverse possess as the plaintiff itself cannot claim rightful title over the property. To substantiate this submission he has referred to



the judgment of Hon'ble Sureme Court in case of **Vinay Eknath Lad (Supra)**. This submission made in this regard may be attractive, but not applicable in the present facts of the case. Even the judgment cited by the defendant is also not applicable to the present facts of the case as in the present case the learned first appellate Court after appreciating the evidence material on record has recorded its finding that the plaintiff is the title holder of the suit property and there is no cross-objection filed by the defendant to challenge the said finding, thus, the finding with regard to title of the plaintiff over the suit property is affirmed. The further submission of the learned counsel for the defendant is that acknowledgment of other person's title is sufficient for claiming adverse possession is also misconceive in the facts and circumstances of the case. The plaintiff has placed documents (Exhibit P/1 to P/7) before the first appellate Court by way of application under Order 41 Rule 27 of CPC wherein the document pertaining to the recording of name Jhariyar Gond by the Municipal Corporation and recording of name of Chandulal Sao was placed on record and on that basis the trial Court has recorded its finding that the plaintiffs are the title holder of the property, as such, there is no doubt about title of the plaintiff, therefore, the submission that defendant has entitled to get decree of title on the basis of adverse possession without admitting the title of the plaintiff on the basis of alleged possession for more than 50 years is deserves to be rejected, accordingly it is rejected.

20. It is quite vivid that the defendant has taken plea of adverse possession which has been accepted by both the Courts below, as it has recorded its finding that for more than 12 years there was



uninterrupted possession of the defendant. Both the Courts below have committed illegality in recording this finding as the defendant on the one hand denied the title of the plaintiffs over the suit property and has filed counter claim claiming title over the suit property, but no document/revenue records to claim title over the suit property has been placed by the defendant. In fact the defendant in his evidence has categorically admitted that he has not produced any document with regard to the title in his favour. It is well settled position of law that a plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other, as such, it is incumbent upon the defendant to admit the title then only he can take a plea of adverse possession and in fact the possession should be adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Both the Courts below have also failed to consider this vital aspect to prove the plea of adverse possession as well as other parameters required to obtain the decree of adverse possession i.e. a person who claims adverse possession should show (a) on what date he came into possession (b) what was the nature of his possession (c) whether the factum of possession was known to other party (d) how long his possession has continued and (e) his possession was open and undisturbed. It is also well settled position of law that a person pleading adverse possession has no equity in his favour since he is trying to defeat right of true owner, as such it is for him to clearly plead and establish all facts necessary to prove his adverse possession. This



issue with regard to adverse possession has come up for consideration before the Hon'ble Supreme Court in the case of **Vasantha (dead) through Legal Representative vs. Rajalakshmi**

Alias Rajam (dead) through Legal Representatives 2024 (5)

SCC 282 wherein the Hon'ble Supreme Court has held as under:-

“40. In *Saroop Singh v. Banto* (Two Judge Bench) 2005(8) SCC 330 this Court observed that Article 65 states that the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. Further relying on *Karnataka Board of Wakf v. Govt. of India* 2004(10) SCC 779 (2-Judge Bench), it observed that the physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases related to adverse possession. Plea of adverse possession is not a pure question of law but a blend of fact and law. Therefore, a person who claims adverse possession should show

- (a) on what date he came into possession;
- (b) what was the nature of his possession;
- (c) whether the factum of possession was known to the other party;
- (d) how long his possession has continued; and
- (e) his possession was open and undisturbed.

A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

21. The Hon'ble Supreme Court in the case reported in the case of

Neelam Gupta and Others vs. Rajendra Kumar Gupta and

Another reported in 2024 SCC Online SC 2824 wherein the

Hon'ble Supreme Court has held as under:-

44. In *M. Siddiq's case* (supra) paragraphs 1142 and 1143 assume relevance and they, in so far as relevant to this case, run as under: -

“1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in *Suit*



ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case."

22. Thus, the substantial question of law No. 1 deserves to be answered against the defendant and in favour of the plaintiff and it is held that the defendant is unable to protect their title over the suit property by adverse possession in the suit for ejectment filed by the plaintiff. Even otherwise, the defendant in landlord and tenant suit cannot challenge the title of the landlord for the reasons as stated above, therefore, the substantial question of law No. 1 is answered against the defendant and in favour of the plaintiff.

Discussion and finding on substantial question of law No. 2:-

23. From the records, evidence adduced before the trial Court, it is quite vivid that the plaintiff has contended and proved before the trial Court that late Chandulal Sao has purchased the suit property vide sale deed dated 07.11.1951 (Exhibit P/1) and thereafter, in the revenue records the name of Chandulal Sao was recorded and



after his death names of the plaintiffs have been mutated in the revenue records and since then they are in possession of the suit property. The defendant has taken a specific stand that Jhariyar Gond was the owner of the suit property, but after death of Jhariyar Gond since he has no legal heirs, therefore, plaintiff has encroached the said land. These contentions have not been established before the trial Court as reflected from the document filed by the appellants under Order 41 Rule 27 of CPC wherein the name of Chandulal Sao has been recorded in the Nazul record maintained by the Municipal Corporation. Even the objection raised by the defendant has also been rejected by the revenue authorities and despite the admission of the defendant that he has not produced any document/revenue records wherein the name of the defendant has been recorded, the trial Court has committed illegality in recording its finding that the plaintiff is unable to establish his title over the suit property which has been rightly corrected by the first appellate Court which is not subject matter of challenge by the defendant, but has committed illegality in affirming the judgment and decree of the trial Court by wrongly affirming the finding of adverse possession in favour of the defendant.

24. This Court while deciding the substantial question of law No. 1 in favour of the plaintiffs against defendant has already recorded its finding that the defendant has not protected his title on account of adverse possession, therefore, his possession in the suit property is only tenant in view of the evidence and material placed on record by the plaintiffs. PW-1 has stated in his evidence that defendant was tenant and has not paid the rent for 3 years despite demand of



rent by them. The said witness in his cross-examination has admitted that they have not demanded the rent from 1985, but since 1989 they have demanded the rent. Whereas the defendant has not produced any evidence to rebut the same, as such, the plaintiff is entitled to get decree of ejectment as per provisions of Section 12(1)(a) of the Chhattisgarh/Madhya Pradesh Accommodation Act, 1961 as the Section 12(1)(a) provides that if the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner. As such, the substantial question of law No. 2 is answered in favour of the plaintiffs and against the defendant by recording that the first appellate Court has committed illegality in dismissing the appeal after having held that the plaintiff is the owner of the suit land, but on a perverse finding has wrongly affirmed the judgment and decree of the trial Court.

25. Consequently, the appeal is allowed.
26. The judgment and decree passed by the First appellate Court as well as trial Court are set aside. The defendant is directed to vacate the suit premises within 4 months from the date of receipt of copy of judgment and decree of this Court. No order as to cost.
27. A decree be drawn up accordingly.

Sd/-
(Narendra Kumar Vyas)
Judge