



**SOURABH
BHILWAR**

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 152 of 2015

1 - Arun Kumar S/o Banshilal Gupta Aged About 61 Years R/o Basantpur, Rajnandgaon, Tahsil And District Rajnandgaon. Civil And Revenue District Rajnandgaon, Chhattisgarh

2 - Suresh Kumar (Died And Deleted) As Per Court Order Dated 05-02-2026, Through LRs-

2.1 - Godavari W/o Late Suresh Kumar Aged About 60 Years R/o Basantpur, Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

2.2 - Nishan S/o Late Suresh Kumar Aged About 27 Years R/o Basantpur, Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

2.3 - Simran D/o Late Suresh Kumar Aged About 31 Years R/o Basantpur, Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

3 - Hemant Kumar S/o Banshilal Gupta Aged About 54 Years R/o Basantpur, Rajnandgaon, Tahsil And District Rajnandgaon. Civil And Revenue District Rajnandgaon, Chhattisgarh

4 - Mahesh Kumar S/o Banshilal Gupta Aged About 45 Years R/o

Basantpur, Rajnandgaon, Tahsil And District Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh

5 - Smt. Prabha Devi Gupta (Died And Deleted) W/o As Per Court Order Dated 05-02-2026, Through Lrs-

5.1 - Soniya D/o Late Smt. Prabha Devi Gupta Aged About 67 Years R/o Basantpur Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

5.2 - Rekha D/o Late Smt. Prabha Devi Gupta Aged About 65 Years R/o Basantpur Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

5.3 - Neeta D/o Late Smt. Prabha Devi Gupta Aged About 63 Years R/o Basantpur Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

5.4 - Jyoti D/o Late Smt. Prabha Devi Gupta Aged About 59 Years R/o Basantpur Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

5.5 - Kiran D/o Late Smt. Prabha Devi Gupta Aged About 57 Years R/o Basantpur Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh.

5.6 - Shivani D/o Late Smt. Prabha Devi Gupta Aged About 45 Years R/o Basantpur Rajnandgaon, Tahsil And Distt. Rajnandgaon, Civil And Revenue District Rajnandgaon, Chhattisgarh. (Other Three Remaining Legal Heirs, Arun, Hemant Kumar And Mahesh Kumar, Are Already As Appellant Nos. 1 To 3.)

... Appellant(s)

versus

1 - Srikant Sarda S/o Ratanlal Sarda Aged About 58 Years R/o Thethwarpara, Rajnandgaon, Tahsil, Chhattisgarh

.... Respondent(s)

(Cause title is taken from CIS)

For Appellant(s)	: Mr. Sameer Oraon and Mr. K.N. Singh, Advocates on behalf of Mr. B.P. Sharma, Advocate
For Respondent	: Mr. Anand Shukla, Advocate

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

26/02/2026

1. The present Second Appeal has been filed by the defendants under Section 100 of the Code of Civil Procedure, 1908, assailing the impugned judgment and decree dated 28.02.2015 passed by the learned 1st Additional District Judge, Rajnandgaon (C.G.) in Civil Appeal No. 19-A/2014 (Arun Kumar & Ors. vs. Srikant Sarda), affirming the judgment and decree dated 10.05.2010 passed by the learned 1st Civil Judge, Class-II, Rajnandgaon (C.G.), in Civil Suit No. 71-A/2009 (Srikant Sarda vs. Arun Kumar & Ors.), whereby the civil appeal filed by the appellants/defendants was dismissed. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.

2. The plaintiff instituted the suit seeking eviction of the defendants from the premises described in Schedule "A" (hereinafter referred to as 'the suit premises') and for recovery of arrears of rent, pleading *inter alia* that the suit premises consist of two blocks constructed over converted land bearing Khasra Nos. 34/19 and 34/20, purchased by the plaintiff from Gajendra Bahadur by registered sale deed dated 27.12.1989. It is pleaded that late Shri Banshilal Gupta, father/husband of the defendants, was a tenant

under the previous owner at a monthly rent of Rs.30/- per block, but failed to pay rent despite notice dated 09.06.1992. The plaintiff has further pleaded bona fide requirement of the premises for his own residence and absence of any alternative accommodation within Rajnandgaon. Since the defendants have denied the plaintiff's title and defaulted in payment of rent, they are liable for eviction under Section 12(1)(a), (c) and (e) of the Accommodation Control Act, along with payment of arrears and costs.

3. *Per contra*, the defendants, in their written statement, denied the plaint averments as vague and false and contended that the plaintiff has no locus standi to institute the suit, as neither Gajendra Bahadur Singh nor the present plaintiff ever obtained lawful possession or ownership of the suit premises. It was pleaded that the two blocks were separately let out to late Banshilal Gupta and his son Arun Kumar at monthly rent of Rs.35/- and Rs.30/- respectively, and after the death of Banshilal on 09.04.1989, the defendants continued in possession in their respective portions. The defendants further contended that the notice issued by the plaintiff was invalid and not served upon all legal heirs, and the plaintiff has no bona fide need as he resides with his joint family and owns other residential and commercial properties in the city, including property purchased in the name of his wife. It is also pleaded therein that the sale deeds in favour of Gajendra Bahadur and thereafter in favour of the plaintiff are benami, illegal and void, and therefore confer no title. The

defendants further raised the plea of res judicata in view of earlier eviction proceedings having been dismissed up to the High Court, and prayed for dismissal of the suit.

4. After framing the issues and upon due appreciation of the oral as well as documentary evidence available on record, the learned Trial Court allowed the suit in part filed by the plaintiff, holding that the plaintiff has established his claim over the suit land. Aggrieved by the said judgment and decree dated 10/05/2010, the defendants preferred a First Appeal under Section 96 of the Code of Civil Procedure before the learned First Appellate Court. The learned First Appellate Court, on re-appreciation of the entire evidence on record, affirmed the findings recorded by the Trial Court and dismissed the appeal by the impugned judgment. Hence, the present appeal.
5. Learned counsel for the appellants submits that the impugned decree of eviction passed by both the learned Courts is wholly unsustainable in law. He submits that the plaintiff/respondent has improperly joined two separate and distinct tenancies of two different accommodations, occupied by different persons, in a single suit, which is not maintainable under law. He further submits that non-joinder of co-tenants, i.e. the daughters of the deceased tenant Banshilal Gupta, materially affects the maintainability of the suit, and the failure to implead them despite objections renders the suit liable to be dismissed under the

proviso to Order 1 Rule 9 of CPC. Learned counsel also challenges the findings of the learned Courts regarding the alleged bona fide need of the plaintiff for the suit premises, asserting that such findings are perverse. He further contends that the tenancy rights in favour of the appellants, as surviving tenants, are exclusive, and no eviction could be granted against them without their lawful consent. Hence, he submits that the decree passed by both the learned Courts suffer from misapplication of law, improper appreciation of evidence, and are liable to be set aside.

6. I have heard learned counsel for the appellants on the question of admission, and the impugned judgments and decrees passed by the learned trial Court as also the learned First Appellate Court have been carefully examined.
7. In the present case, both the learned Trial Court as well as the learned First Appellate Court, upon due consideration of the pleadings and the oral and documentary evidence on record, have concurrently held that the plaintiff has validly established his ownership over the suit premises described in Schedule "A" on the basis of the registered sale deed (Exhibit P-10), and that the plea of benami transaction raised by the defendants has remained wholly unproved. The Courts have categorically recorded that the defendants are tenants under the plaintiff and that their denial of the plaintiff's title attracts the provisions of Section 12(1)(c) of the

Chhattisgarh Accommodation Control Act. It has further been held that the plaintiff has successfully demonstrated his bona fide residential requirement under Section 12(1)(e), and that the house standing in the name of his wife cannot be treated as alternative suitable accommodation available to him. The objection regarding res judicata has also been rejected on the ground that the earlier proceedings were based on different cause of action and the present plaintiff was not a party therein. Accordingly, the decree for eviction and delivery of vacant possession has been concurrently affirmed, and no perversity or substantial question of law arises warranting interference under Section 100 of the Code of Civil Procedure.

8. As regards the plea regarding maintainability of the suit, raised by the appellants that the plaintiff/respondent improperly joined two separate and distinct tenancies of different accommodations, occupied by different persons, in a single suit, it has been observed that no objection regarding maintainability of the suit on this ground was ever raised by the defendants in the written statement before the Trial Court. Although the appellants now contend that such joinder renders the suit non-maintainable under law, this argument is raised belatedly and has not been substantiated by any record or evidence. Consequently, the contention regarding improper joinder of tenancies does not merit acceptance and cannot affect the concurrent findings on the merits of the plaintiff's claim.

9. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely limited. Interference is permissible only when the appeal involves a substantial question of law. Concurrent findings of fact recorded by both the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.
10. In the present case, both the Trial Court and the First Appellate Court have concurrently recorded findings, on the basis of evidence available on record, that the appellants/ defendants failed to establish their case by placing cogent and sufficient material. The appellants failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.
11. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
12. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.
13. In the matter of ***State of Rajasthan and others Vs. Shiv Dayal and another***, reported in **(2019) 8 SCC 637**, reiterating the settled

proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.

14. Be that as it may, the argument advanced by learned counsel for the appellants and the proposed question of law cannot be regarded as satisfying the test of being 'substantial question of law' within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellants failed to raise any substantial question of law which is required under Section 100 of the CPC. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of the CPC, no case is made out by the appellants herein. The judgments impugned passed by the learned trial Court as as well as by the learned First Appellate Court are just and proper and there is no illegality and infirmity at all.
15. Having heard learned counsel for the appellants and on perusal of the record of the case and in view of the above settled legal proposition, I find absolutely no merit in this appeal, involving no question of law much less substantial question of law within the meaning of Section 100 of the CPC. In my view, the judgment and

decree passed by both the Courts appear to be just, proper and legal. The findings recorded are based on proper appreciation of evidence available on record and there is no illegality or perversity in the same and they does not call for any interference.

16. Accordingly, the Second Appeal fails and is hereby **dismissed** resulting in upholding of the judgment and decree of the trial Court as well as the Appellate Court.

Sd/-
(Bibhu Datta Guru)
Judge

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