AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 387 of 2005

Reserved on : 09.02.2023

Delivered on : 21.06.2023

1. Kalyan Singh (Died) Through Lrs. as per Hon'ble Court Order Dated 06-04-2022.

   1(A). Prabhat Singh Bais, S/o Late Shri Kalyan Singh, Aged About 52 Years.

2. Rita Singh, D/o Shiv Mohan Singh Thakur, Aged About 45 Years.

   Both are R/o House No. 13/541, Nayapara Ward, G.E. Road, Raipur, Chhattisgarh.

---- Appellants

Versus

1. 1(a). Smt. Sarita Mishra, W/o Late Deepak Mishra, Aged About 56 Years.

   (b). Kum. Ruchi Mishra, D/o Late Deepak Mishra, Aged About 15 Years

   (c). Kum. Swati Mishra, D/o Late Deepak Mishra, Aged About 13 Years.

   Respondents/plaintiffs No. 1 (b) & (c) above are represented through their Mother Smt. Sarita Mishra.

2. Kamlesh Mishra, S/o Jagdish Mishra, Aged About 53 Years.
3. Prabhat Kumar Mishra, S/o Jagdish Mishra, Aged About 49 Years.
4. Rajendra Mishra, S/o Jagdish Mishra, Aged About 27 Years.

   All the above respondents/plaintiffs are residents of Phool Chowk, Nayapara, Raipur, Tehsil and District Raipur Chhattisgarh.

5. Smt. Aashalata Dixit, W/o Vyas Nsarayan Dixit, Aged About 59 Years, R/o Chaunda, District- Chandrapur, Maharashtra.
6. Sadhana Mishra, W/o Vijhay Kumar Mishra, Aged About 50 Years, R/o Baloda Bazaar, Tehsil Baloda Bazaar, District- Raipur, Chhattisgarh.

---- Respondents

and

SA No. 59 of 2005

1. Smt.Sarita Mishra, Widow of Late Deepak Kumar Mishra, Aged About 35 Years.

(a) Ku. Ruchi Mishra, Aged About 9 Years.

(b) Ku. Swati Mishra, Aged About 7 Years.

(a) and (b) minors are D/o Late Deepak Kumar Mishra through her mother Smt. Sarita Mishra, widow of Late Deepak Kumar Mishra.

2. Kamlesh Kumar Mishra, Aged About 32 Years.

3. Prabhat Kumar Misrha, Aged About 28 Years.

4. Rajendra Kumar Mishra, Aged About 26 Years, Pisran Late Jagdish Prasad Mishra, R/o Gan Phool Chowk, Naya Para, Ward, Raipur (C.G.)

5. Smt. Asha Lata Dixit, Aged About 38 Years, W/o Shri Vyas Narayan Dixit, R/o Chanda, District- Chandrapur (Maharashtra)

6. Smt. Sadhna Mishra, Aged About 30 Years, W/o Shri Vijay Kumar Mishra, R/o Baloda Bazar, District- Raipur (C.G.)

---- Appellants

Versus

1. (Deleted) Smt. Tara Devi as per Hon'ble Court order dated 12.01.2023.

2. Praveen Sharma, Aged About 42 Years, S/o Late Kalyan Sharma.

3. Pramod Sharma, Aged About 38 Years, S/o Late Kalyan Sharma.

All are R/o House No. 13/540, Nayapara Ward, Near Bansal Lodge, District- Raipur (C.G.)

---- Respondents

For appellants in SA No. 387 of 2005	:	Mr. Sourabh Sharma & Mr. Shailesh Tiwari, Advocates.
For the appellants in S.A. No. 59 of 2005 and for respondents in S.A. No. 387 of 2005.	:	Mr. Rajeev Shrivastava, Sr. Advocate with Mr. Sourabh Sahu, Advocate.
For respondents in S.A. No. 59 of 2005.	:	Mr. B.P. Sharma, Mr. M.L. Sakat & Ms. Sameeksha Gupta, Advocates.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. JUDGMENT

1. Record of the case would demonstrate that the learned trial Court has decided the Civil Suit No. 84A/2000 & 85A/2000 by consolidating both the suits on 14.12.1994 and by common

Judgment and decree dated 30.12.2003 decided both the suits . Common Judgment and decree were challenged in separate First Appeals before District Judge, Raipur in Civil Appeal No. 1A/2004 in case of Kalyan Singh Vs. Sarita Mishra & others (decided on 30.07.2005) and in Civil Appeal No. 18A/2004 in case of Smt. Tara Devi Vs. Sarita Devi (decided on 16.12.2004), the Second Appeals have been filed before this Court being registered as Second Appeal No. 387/2005 & 59/2005. Considering the fact that the trial Court has consolidated the suits and decided by common judgment and decree this Court has directed for deciding both the appeals analogously vide its order dated 28.11.2005 in Second Appeal No. 387/2005, therefore, both these appeals are being decided by this common order.

2. Second Appeal No. 387/2005 is being filed by the appellants/defendants under Section 100 of the C.P.C. against judgment and decree dated 30.07.2005 passed by learned Third Additional District Judge, Raipur, District- Raipur (C.G.) in Civil Appeal No. 1A/2004 in case of Kalyan Singh Vs. Sarita Mishra & others dismissing the appeal filed by the defendants /tenant against the judgment and decree dated 30.12.2003 passed by Fifth Civil Judge Raipur in Civil Suit No. 85/2000. Second Appeal No. 59/2005 is being filed by the plaintiffs Section 100 of the C.P.C. against judgment and decree dated 30.07.2005 passed by learned Thirteenth Additional District Judge (F.T.C.), Raipur, District- Raipur (C.G.) in Civil Appeal No. 18A/2004 in case of Smt. Tara Devi Vs. Sarita Devi, by which the learned Thirteenth Additional District Judge (F.T.C.) has allowed the appeal filed by the defendants/ teanant -Smt. Tara Devi & others and set aside the judgment and decree passed by the learned trial Court.

3. Second Appeal No. 387/2005 has been admitted by this Court on 24.12.2019 on following substantial question of law:-

> “Whether (wrongly typed as ‘Wherein’) the Court below justified in holding that appellant/tenants are

liable to be evicted on the ground of 12(1) (e) and 12(1)(c) of the Chhattisgarh Accommodation Control Act, 1961.

4. Second Appeal No. 59/2005 has been admitted by this Court on 23.03.2005 on following substantial question of law:- Whether under the facts and circumstances of the case, learned First Appellate Court was justified in reversing the judgment and decree passed by the trial Court?

5. For the sake of convenience, the parties shall be referred to in terms of their status in Civil Suit No. 85A/2000 & 84/2000 which have been filed by the plaintiffs for eviction of the defendants and vacant possession of the suit property as described in the respective suits.

Facts of Civil Suit No. 84A/2000 & Civil Appeal No. 1A/2004 (Second Appeal No. 387/2005)

6. The brief facts, as reflected from the plaint averments are that the plaintiff Smt. Revti Bai, widow of Jagdish Prasad Mishra filed an application before the Rent Controlling Authority under Section 23 (a) of the Madhya Pradesh Accommodation Control Act on 14.09.1984 for eviction of tenant Shiv Mohan Singh from house no. 13/540 situated at Nayapara Ward, Tahsil & District-Raipur, which has been transferred to Civil Court on 27.10.1990 which was registered as Civil Suit No. 116A/91 and finally registered as Civil Suit No. 84A/2000, against the original tenant Shiv Mohan Singh on the ground that the suit land was owned and possessed by Tulsi Ram Tiwari who died on 29.10.1975 predeceased by his wife Rampyari Bai in 1973 and he died issueless. After the death of Tulsi Ram Tiwari, all the properties owned by him were inherited by Jamuna Bai, Kedar Prasad Mishra, Badri Prasad Mishra and Jagdish Prasad's legal heirs Smt. Revati Bai and after death of Revati Bai, her son and daughters and they were living jointly. It has also been contended that after increase in the family, they have decided through family arrangement that House No. 13/541 & 13/540 will be given to deceased Revati Bai and her family members. As

per family arrangement after getting the said house in their share, the deceased Revati Bai has given her share on rent to deceased Shiv Mohan Singh for residential purpose, but he was using one portion of the suit property for running business in the name and style of rubber stamp works.

7. It has been further contended that deceased Shiv Mohan Singh has accepted her to be the landlord and started paying rent. The tenancy was for each month. The plaintiff has terminated the tenancy on 31.08.1984 after issuance of registered notice through their counsel on 23.07.1884 asking for vacant possession of the suit property w.e.f. 01.09.1984. Despite this, he has not handed over vacant possession of the suit property, which has necessitated her to file a civil suit and after her death, her family members to continue with the suit. The aforesaid application/suit was filed on the ground of bonafide need as the family members have already increased and marriage of son and daughters have to be performed causing difficulties to live smoothly in the house of Shri Badri Prasad. As such, the house was bonafidely required for them. It has also been contended that they have one house bearing House No. 13/540 wherein one Kalyan Prasad Sharma is residing as tenant and they have already terminated the tenancy on 01.08.1984 but he has not vacated the possession of that house . As such, they have no other accommodation except to the suit house. On the above factual matrix, the plaintiffs have prayed for eviction of the tenant. Original plaintiff Smt. Revati Bai Mishra died on 27.09.1989.

8. The defendant filed his written statement denying the fact that Revati Bai or the present plaintiffs ever became the owner of the suit land, relationship as claimed was denied and the bonafide need was also denied. The present plaintiffs have no legal right to continue with the suit and it was further pleaded that the suit house No. 13/541 was obtained by Late Shiv Mohan Singh 47 years back from Late Tulsi Ram Tiwari. It was also pleaded that

the present plaintiffs, Revati Bai had never been the title holder of the suit land, as such, they have no right to continue with the suit. It was seriously disputed that the Ramratan Mishra was brother of Late Tulsi Ram Tiwari, the present plaintiffs are not the legal heirs of deceased Tulsi Ram Tiwari, therefore, they have no right to inherit the property of deceased Tulsi Ram Tiwari. As such, the question of Parivarik Vyavastha is also untrue and not the correct statement and no such information was ever given to the original defendant Late Shiv Mohan Singh. There is no bonafide need as alleged by the plaintiff, it was also pleaded that the suit house was let out for non-residential purpose, therefore, it cannot be got vacated for residential purpose for plaintiff and prayed for dismissal of the suit.

9. On pleadings of the parties, the trial Court has framed as many as 7 issues and the plaintiff to substantiate their case has filed documents notice (Ex. P/1), Postal receipt (Ex. P/2), registered envelope (Ex P/3), Bainama (Ex. P/4), tax receipt issued by Municipal Corporation (Ex. P/5), copy of statement of Revati Bai (Ex. P/6) recorded in case no. 152/90(8)/83-84 recorded in the application which has been transferred to civil suit and registered as Civil Suit No. 84A/2000, Badri Prasad Mishra (Ex. P/7), Bhagwati Prasad (PW-8), receipt given by Shiv Mohan Thakur (Ex. P/9), Bainama (Ex. P/10). The plaintiff to substantiate their case has examined Kamlesh Kumar Mishra (PW-1) & Samir Mishra (PW-2). The defendants to substantiate their case has examined Kalyan Singh (DW-1) & Surendra Kumar Verma (DW-2). The defendants to substantiate their case has exhibited documents namely registration certificate issued under the Shop Establishment Act (Ex. D/1), receipt (Ex. D/2 & D/3), estimate regarding electricity (Ex. D/4).

10. The plaintiff examined Kamlesh Kumar Mishra (PW-1), who has stated at paragraph 2 that Shiv Mohan Singh used to pay rent to his mother to the tune of Rs. 200/- per month, apart of this he used to pay electricity and municipal taxes also. At paragraph 8

& 9 he has explained about the family arrangement and has stated that the family arrangement was oral and as per the family arrangement, the house No. 13/540 and 13/541 were rented. After family arrangement, he & his mother orally informed to the tenants about the family arrangement which was accepted by the Shiv Mohan Thakur and has given rent for 8 months. Once the tenancy was accepted, his mother has also given receipt of rent for one month wherein Shiv Mohan Thakur has signed as tenant and his mother has signed as landlady. The witness was cross-examined by the defendants and in the cross-examination, he has stated that Tulsi Ram Tiwari was his grandfather and Ramratan Mishra was also his grandfather. He has also denied that Tulsi Ram's father Ayodhya and Ramratan's mother was not real brother and sister. He has also stated that statement of his mother has already been recorded before the Rent Controlling Authority and copy of which is also filed as Ex. P/6 wherein she was extensively cross-examined by the defendants. He has denied that family arrangement has not been made in writing because it is not their property. He has also denied that they have not given information about family arrangement to Thakur Singh, Mohan Singh & Kalyan Singh.

11. The plaintiff examined Samir Mishra (PW-2), who has stated that they need the suit house bonafidely. The witness was cross-examined, but nothing was brought on record.

12. The defendants examined Kalyan Singh (DW-1), who has stated that his father Shiv Mohan Singh Thakur used to pay rent to Tulsi Ram Tiwari and has stated that Revati Bai's name is Jagdish Prasad Mishra and also admitted that they are three brothers Jagdish Prasad, Keshav Prasad and Badri Prasad. All of them died and they were living in the house of Tulsi Ram Tiwari. The witness was cross-examined wherein he has stated that his father expired in the year 1985 and after death of Tulsi Ram, the rent is given to whom is not known to him.

13. The defendants also examined Surendra Kumar Verma (DW-2),

who has not stated anything about the issue raised in the plaint.

Facts of Civil Suit No. 85A/2000 & Civil Appeal No. 18A/2004 (Second Appeal No. 59/2005)

14. The brief facts, as reflected from plaint averments that plaintiff Smt. Revti Bai, widow of Jagdish Prasad Mishra filed an application on 03.09.1984 before the Rent Controlling Authority under Section 23 (a) of the Madhya Pradesh Accommodation Control Act for eviction of tenant Kalyan Prasad Sharma from the house no. 13/540 situated at Nayapara Ward, Tahsil & District-Raipur, which has been transferred to Civil Court on 22.08.1990 which was registered as Civil Suit No. 40A/91 and finally registered as Civil Suit No. 85A/2000, against the original tenant Shiv Mohan Singh on the ground that the suit land was owned and possessed by Tulsi Ram Tiwari who died on 29.10.1975 predeceased by his wife Rampyari Bai in 1973 and he died issueless. After the death of Tulsi Ram Tiwari, all the properties owned by him were inherited by Jamuna Bai, Kedar Prasad Mishra, Badri Prasad Mishra and Jagdish Prasad's legal heirs Smt. Revati Bai and after death of Revati Bai, her son and daughters and they were living jointly. It has also been contended that after increase in the family, they have decided through family arrangement that House No. 13/541 will be given to deceased Revati Bai and her family members. As per family arrangement after getting the said house in their share, the deceased Revati Bai has given her share on rent to Kalyan Prasad who has accepted her to be the landlord and started paying rent. The tenancy for every month and the deceased Kalyan Prasad has not paid rent to Revati Bai from January 1984 to July 1984 which comes to Rs. 840/- despite demands, which has necessitated her family members to file a suit. The aforesaid application was filed on the ground of bonafide need as the family members have already increased and marriage of son and daughters have to be performed causing difficulties to live smoothly in the house of Shri Badri Prasad. As such, the

house was bonafidely required for them. It has also been contended that they have one house bearing House No. 13/541 wherein one Shiv Mohan Singh Thakur is residing as tenant and they have already terminated the tenancy on 31.08.1984. As such, they have no other accommodation except to the suit house. On the above factual matrix, the plaintiffs have prayed for eviction of the tenant. Original plaintiff Smt. Revati Bai Mishra died on 27.09.1989.

15. The defendant filed his written statement denying the fact that Revati Bai or the present plaintiffs ever became the owner of the suit land, relationship as claimed was denied and the bonafide need was also denied. The present plaintiffs have no legal right to continue with the suit. It has been specifically denied that Kalyan Prasad Sharma was tenant of the deceased- Revati Bai of the house bearing Municipal No. 13/540. It is contended that there is no relationship of landlord and tenant ever subsisted. It is specifically denied that Smt. Jamuna Bai, Kedar Prasad Mishra, Badri Prasad Mishra and the heirs of Late Jagdish Prasad Mishra are the legal heirs of Late Tulsi Ram Tiwari. It is also denied that the heads of the alleged three family made any family arrangement and the suit house was allocated to the plaintiff or his legal heirs. It is also denied that the defendant has ever paid rent to Revati Bai. It is also denied that house is bonafidely required by the plaintiff. It is also denied that during pendency of the suit, the plaintiff has changed the use of the suit premises as last several years the suit premises bears a board of Mahakoushal Kala Parishad. It is further submitted that the alleged family arrangement is a shame transaction to get a eviction against the defendants. Some of the plaintiff and the said Badri Prasad Mishra openly stated their object behind the alleged family arrangement and increase in rental in front of several persons including (a) Shri Chandra Sharan Sharma and Shri Shankar Sharma, Ramnagar (b) Tapas Mukherjee of Bhilai (c) Dr. Kailash Sharma. It is further submitted that the plaintiffs

have sufficient accommodation, therefore, they cannot claim ejectment against the defendants and would pray for rejection of the suit.

16. The learned trial Court on pleadings of the parties, framed as many as 10 issues.

17. The plaintiff to substantiate her case has filed documents notice (Ex. P/1), Bainama (Ex. P/2), tax receipt issued by Municipal Corporation (Ex. P/3), copy of statement of Revati Bai (Ex. P/4). The plaintiff to substantiate their case has examined Kamlesh Kumar Mishra (PW-1), who has stated in the examination-in-chief at paragraph 7 that Kalyan Prasad has given the rent to his mother from November, 1983 and after January, 1984, he has not paid the rent. He has also stated at paragraph 10 that during pendency of the suit before death of their mother, marriage of brother Deepak Kumar, his marriage was solemnized and his sisters marriage was also solemnized. He has stated that due to non-availability of space, they are facing difficulties, as such, they started living in the dispute house and house no. 13/351, as such, they have bonafide requirement of the house. This witness has further stated that in their family, 13 persons are residing and has also detailed about their family. The witness was extensively cross-examined, wherein at paragraph 25, he has stated that Tulsi Ram Tiwari and Ramratan Tiwari were his grandfathers. Tulsi Ram was died issueless and he has no relative also. He has voluntarily stated that Tulsi Ram Tiwari's aunt has a son Ramratan Mishra, as such, Tulsi Ram Tiwari and Ramratan Mishra were cousin brothers. He has specifically denied that there is no relationship between Tulsi Ram Tiwari and Ramratan Mishra. He has also stated that the elder family members have informed that Tulsi Ram Tiwari and Ramratan Mishra were real maternal uncles. He has also admitted that Tulsi Ram Tiwari has not executed any will in their favour. He has also stated at paragraph 30 that Late Kalyan Sharma has given two months' rent to Revati Bai.

18. The other witness Samir Mishra (PW-2) was examined before the trial Court wherein he has stated that the defendants are residing in the suit property and also running training class in the name and style of Mahakoushal Fine Art since 1991. He has denied that he is claiming illegal possession over the suit property on the basis of false family arrangement.

19. The defendants examined Dr. Pravin Kumar Sharma (DW-1) who has stated at paragraph 4 that during lifetime of Tulsi Ram, they have never given rent to Ramratan Mishra, Jagdish Prasad Mishra, after death of Tulsi Ram Tiwari and Rampyari Bai, they have given two months rent to the plaintiff. He has stated at paragraph 10 that the defendants have not recognized the plaintiff as landlord. In the cross-examination, he has admitted that the disputed house is belonged to Tulsi Ram and his father has taken house on rent from Tulsi Ram. He has also admitted that he has made an attempt to search about the information with regard to sister of Tulsi Ram but he has not received any information. The witness has again stated in the cross-examination that when Tulsi Ram Tiwari was alive they used to pay rent to him and after death, they have paid rent to wife Rampyari Bai and after death of Rampyari Bai they have given two months rent to the plaintiff and after that they have not given rent to anybody.

20. The defendants examined Chandra Shekhar Sharma (DW-2), wherein he has admitted in the cross-examination that before death of Tulsi Ram, the rent was given to him after his death, his brother is paying rent to whom is not known to him. He has again stated that according the information, after death of Tulsi Ram Tiwari, rent has not been paid to anybody, but he has stated that it is being deposited in the court.

21. The defendants examined Shri Ramswaroop Sharma (DW-3), who is said to be friend of Kalyan Prasad Sharma, who in the cross-examination has admitted that he is not aware about terms of tenancy between Tulsi Ram Tiwari and Kalyan Prasad

Sharma. He has also stated that disputed house belongs to Tulsi Ram Tiwari and Kalyan Prasad Sharma was his tenant.

22. The learned trial Court after appreciating the evidence, material on record has allowed both the suits. The learned trial Court while deciding issue No. 1 to 3 in both the suits has recorded its finding at paragraph 12 that original defendant Shiv Mohan Singh was tenant of Tulsi Ram and after death of Tulsi Ram, who will be the landlord. The learned trial Court has also recorded its finding at paragraph 15 that Tulsi Ram was son of real maternal uncle of Ramratan, as such, Ramratan's mother Makhna Bai was aunt of Tulsi and there was no other legal heirs were available therefore Section 8 of the Hindu Succession Act and entry 7 of Schedule-II, the property can be inherited to them also but that was not the issue as it relates to landlord and tenancy. Even otherwise from bare perusal of Ex. P/9 receipt given by original plaintiff Revati Bai as landlord, wherein Shiv Mohan Singh has put his signature as tenant and has also admitted his signature, therefore, presumption can be drawn that Shiv Mohan was a tenant of original plaintiff Revati Bai. The defendants have also not claimed that other person is landlord, as such the trial Court has recorded its finding that Revati Bai was landlord, therefore, after death of Revati Bai, the present plaintiffs have right to continue with the suit.

23. The learned trial Court while deciding issue No. 4 & 5, has recorded its finding at paragraph 24 that original landlord Tulsi Ram and original tenant Shiv Mohan was not available on account of death and the terms and condition of tenancy can be known to them only. The evidence brought on record would also demonstrate that the present defendant is presently residing at house of his family and his marriage, death of his father was also in the same house, therefore, the contention putforward by the defendant that the house was given only for commercial purposes cannot be accepted. The learned trial Court has also recorded its finding that in Ex. D/3, there is manipulation as there

is no signature of Tulsi Ram Tiwari original landlord and it is a printed proforma, thus, decided issue No. 4 & 5 in favour of the plaintiff. The learned trial Court while deciding the issue No. 5A & 5B in Civil Suit No. 84/2000 and issue No. 7 & 10 in Civil Suit No. 85/2000, has recorded its finding that after the increase in the family members, the house is bonafidely required by the plaintiffs . The learned trial Court has also recorded its finding that the plaintiff's have no other suitable accommodation for residential purpose is available.

24. The learned trial Court while deciding issue No. 7 & 10 has recorded its finding that defendant Shiv Mohan has purchased one house at Chirolidih and subsequently one house in the name of his son Kalyan in R.D.A. building as well as one house at Rajendra Nagar, Katora Talab and at Nayapara which was admitted by the defendants as such other accommodation are available to him. The learned trial Court while deciding issue No. 6 in both the suits has recorded its finding that the plaintiff has terminated the tenancy on 31.08.1994 as such, decided the issues in favour of the plaintiff. The learned trial Court while decided issue No. 7 in Civil Suit No. 84A/2000 and issue No. 9 in Civil Suit N. 85/2000 has recorded its finding that the plaintiff's on the basis of pleadings, evidence, material on record, have been able to establish that bonafide requirement of the house, change of purpose and other availability of other accommodation to defendant has allowed the suit and directed for eviction of the defendant from the suit property. The learned trial Court has also directed the defendant to pay rent @ Rs. 200/- per month from 01.09.1984.

25. Both the defendants have preferred first appeal under Section 96 of the C.P.C. The appeal filed by son of Kalyan Singh, S/o Shiv Mohan Singh was registered as Civil Appeal No. 1A/2004 and appeal preferred by Smt. Taradevi Wd/o Kalyan Prasad Sharma, was registered as Civil Appeal No. 18A/2004. The learned Third Additional District Judge, while dismissing Civil Appeal No.

1A/2004, has recorded its finding that the appellant has separate house still they are residing in the suit property and tried to get advantage of situation of being issueless of Tulsi Ram Tiwari and legal representatives of Tulsi Ram have undergone litigation for such a long period of 21 years and also being paid property tax to the Corporation without being received any penny towards rent. The learned trial Court has appreciated the entire evidence which cannot said to be perverse, contrary to the record, therefore, the appeal deserve to be dismissed and accordingly, the learned Third Additional District Judge has dismissed the same.

26. The defendant Taradevi Tiwari Wd/o Kalyan Prasad Sharma filed Civil Appeal No. 18A/2004 which has been decided by the learned Thirteenth Additional District Judge (F.T.C.), Raipur on 16.12.2004 by recording its finding at paragraph 16 that the plaintiffs are unable to prove their title over the suit property and also unable to establish landlord and tenant relationship with the defendants. The plaintiffs have also not proved beyond reasonable doubt that the plaintiffs are legal representatives of deceased Tulsi Ram Tiwari and have also recorded its finding that the plaintiffs have not obtained any declaration from competent court with regard to their title, accordingly, it has allowed the appeal.

27. Being aggrieved with the judgment and decree passed in Civil Appeal No. 18A/2004, the plaintiff has preferred Second Appeal No. 59/2005 and the defendant of other case Kalyan Singh has filed Second Appeal No. 387/2005 against the judgment and decree passed in Civil Appeal No. 1A/2004. Both the appeals have been admitted by this Court on substantial question of law as stated in foregoing paragraph.

28. Mr. B.P. Sharma, learned counsel for the appellant in S.A. No. 59/2005 would submit that the defendants have proved that the suit property was within the exclusive ownership of Tulsiram and since he has not left behind any legal heir

with whom it can be said that landlord-tenant relationship may be treated to exist. As such, the plaintiffs are not the landlords. He would draw attention of this Court towards Section 2(b) & 2(i) of CG Accommodation Control Act, 1961. He would further submit that the defendants have established during the course of examination and cross-examination that the claim of plaintiffs with regard to landlord tenant relationship is false and baseless and would draw attention towards statement of Dr. Praveeen Kumar Sharma (DW-1). He would further submit that the defendants have also proved that plaintiff is unable to prove himself to the owner for seeking decree under Section 12 (1) (e) & (f) of the Act, 1961.

29. He would further submit that despite aforesaid categorical pleadings and evidence about no relationship between the parties, the trial Court has committed illegality in decreeing the suit which has been rightly set aside by the learned first appellate Court and would pray for dismissal of S.A. No. 59/2005. To substantiate his submission, he would draw attention of this Court towards the judgment passed by Hon'ble Apex Court in **Tribhuwan Shankar vs. Amrutlal** reported in **(2014) 2 SCC 788**.

30. He would further submit that as per Section 29 of the Hindu Succession Act, if there is no legal heir then what will be the fate of the property, has been well defined under the Act. The learned Courts below have not taken care about this provision, as such, the judgment and decree passed by the learned trial Court as well as the appellate Court is bad in law.

31. He would further submit that in the present case it has been established that Tulsiram Tiwari has not left any legal heirs much less legal heirs as defined in

Schedule appended to Hindu Succession Act either in Class-I or II. There is no relationship between Tulsiram Tiwari and person claiming themselves legal heirs of Tulsiram of son, daughter, widow, mother, son of pre-deceased son…….. daughter of pre-deceased son and also of Class II i.e. father, son's daughter son…… mother's brother, mother's sister. Only these categories of heirs are recognized under Hindu Succession Act and if there is no such person of aforementioned categories, the property will be reverted to the State and would draw attention of this Court towards judgment passed in **Sheo Nand v. Dy. Director of Consolidation** reported in **(2000) 3 SCC 103** and would submit that it is clear that in absence of any legal heir of said Tulsiram Tiwari, the property escheated and it becomes the property of the government and it is only the State who, if can be allowed to be treated as landlord can take steps for eviction of defendants in accordance with law and in other words, the appellants have no right, title and interest over the suit property and the findings of the first appellate court of dismissal of civil suit giving liberty to the plaintiff to file suit for declaration, injunction with regard to title and possession based on title. Thus, no resort can be allowed to be made to the provisions of the Act of 1961 on which firstly matter has been filed before the Rent Controlling Authority and thereafter before the civil court and would pray for dismissal of the appeal.

32. Mr. Sourabh Sharma, counsel for the appellant in S.A. No. 387/2005 would submit that the plaintiffs are required to prove whether the plaintiffs is landlord or not and "*owner thereof*" to seek a decree under Section 12 (1)(e) of the Act of 1961 and in the instant case the plaintiffs have failed to establish that he or

she is the owner thereof, as such the decree passed by both the Courts below is liable to be set-aside. He would further submit that merely recording of finding that the deceased defendant Shiv Mohan Singh has accepted the deceased plaintiff Revati Bai as landlord, does not fulfill the statutory requirement under Section 12 (1)(e) of the Act, 1961 and the plaintiff is entitled for decree only on the strict prove that he must be "*owner thereof*" then only entitled for decree. He would further submit that the reliance of Ex. P/1 by the Courts below for holding the landlord-tenant relationship between plaintiff Revati Bai and Shiv Mohan Singh is contrary to law, as nothing has been mentioned in Ex.P/1 with regard to the particulars of House No, status, name of the landlord etc. recording such finding on the basis of Ex.P/1 cannot be sustained and liable to be set-aside.

33. He would also submit that it is admitted position on record from the plaint that the suit house was let out for non-residential purpose and therefore cannot be got vacated for residential purpose and the finding in this regard is absolutely perverse and contrary to the record. The defendants have already filed documents Ex.D/1, D/2 and D/3 clearly showing that suit house was used and let out for non-residential purpose for last 50 years and no objection what so ever raised. He would further submit that the application filed under Order 41 Rule 27 of CPC and the application filed under Order 6 Rule 17 of CPC for bringing on record judgment and decree passed in Civil Appeal No. 18-A/2004 (Tara Devi vs. Sarita Mishra) rejecting the same is unsustainable, the aforesaid documents are very much relevant and necessary for passing judgment in this case as in both case plaintiffs are common and are not the legal heirs of the Tulsi Ram Tiwari within the meaning of Section 8 (2) entry 7 of the Hindu Succession Act and for the adjacent suit accommodation by the same Court two different findings with respect to ownership has been recorded. He would further submit that the alleged Vyavashtha Patra under Section 58 (1)

(a) of the Indian Stamp Act required to be stamped and it requires to be registered under Section 17 of the Indian Registration Act for transfer of valid title and would pray for allowing the appeal.

34. Mr. Rajeev Shrivastava, Senior Advocate along with Mr. Sourabh Sahu, Advocate for respondents in S.A. No. 387/2005 would submit that the judgment and decree passed by the both the court below has been passed after properly appreciating the evidence brought on record and therefore it cannot be interfered, as the plaintiffs have proved the fact that the plaintiffs are landlords. He would further submit that in order to show their title over the suit house the plaintiffs have exhibited the rental receipt of June 1984, wherein Shivmohan (original defendant) signed as tenant and Revti Bai (original plaintiff) signed as landlord. The signature of the defendant Shivmohan has been admitted by the defendant witness and thus it is apparent that, the Rewati Bai is the landlord of deceased Kalyan Singh. He would further submit that a tenant who has been let into possession cannot deny his landlord's title and would draw attention of this Court towards judgment passed in the matter of ***Joginder Singh v. Jogindero*****,** reported in **(1996) 7 SCC 555** and would pray for dismissal of the appeal.

35. Mr. Rajeev Shrivastava, Senior Advocate along with Mr. Sourabh Sahu, Advocate for respondents in S.A. No. 59/2005 would submit that the judgment and decree passed by the first appellate court is not sustainable as the Court below has reversed the findings of the Trial Court without properly appreciating the evidence brought on record i.e. statements of P.W. 1 and P.W. 2, which has been firm and was never challenged. Thus, the defendant witnesses, D.W.1 has also clearly admitted that, they have paid rent of two months to the plaintiffs, yet the finding has been reversed. He would further submit that the plaintiffs are the family members of late Tulsiram Tiwari, who was the original owner and the defendants are the

tenant of Tulsiram Tiwari and thus the plaintiffs have a better title than the defendant and thus it is sufficient for being the landlord and would draw attention of this Court towards judgment passed in the matter of ***Swadesh Ranjan Sinha v. Haradeb Banerjee*****, (1991) 4 SCC 572**.

36. He would further submit that the statement with regard to family settlement and the admission on the part of defendants about payment of rent for two months to plaintiffs (**para 4 of D.W.1)** is sufficient to prove the title of the plaintiffs over the suit property as it has been held by the Hon`ble Supreme Court in catena of judgments that, Landlord is not required to prove its title as it is required to be proved in title suit and would refer to the judgment rendered by Hon'ble the Supreme Court in ***Sheela v. Firm Prahlad Rai Prem Prakash*****, (2002) 3 SCC 375**, ***Boorugu Mahadev & Sons v. Sirigiri Narasing Rao*****, (2016) 3 SCC 343**, ***Apollo Zipper India Ltd. v. W. Newman & Co. Ltd.*****, (2018) 6 SCC 744**.

37. He would also submit that so far as the pleading with regard to family settlement and the plaintiffs getting the suit house has not been specifically denied by the defendants and the same has been denied for want of knowledge. That, the law with regard to denial is settled that, "denial must be specific and denial for want of knowledge amounts to an admission and would draw attention of this Court towards judgment rendered by Hon'ble the Supreme Court in the case of **Jafauri Sah and Others vs. Dwarika Prasad Jhunjhunwala, (AIR 1967 SC 109**). He would further submit that the issue with regard to bonafide need of the suit house is concerned the same has been also settled by the Hon`ble Supreme Court in **Balwant Singh @ Bant Singh and Anr vs. Sudarshan Kumar and Anr. 2021 SCC OnLine SC 114** and **Harish Kumar (since dead) vs. Pankaj Kumar Garg 2022 live law SC 239 decided on 07.01.2022** and would pray for allowing the appeal by setting aside the judgment and decree passed by the First Appellate Court.

38. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

39. Since the arguments were raised that the property owned by Tulsi Ram Tiwari dissolved to the government as Smt. Savita Mishra and their family members are not the legal heirs in view of Section 29 of the Hindu Succession Act. The issue raised by Mr. B.P. Sharma, counsel for the appellant in S.A. No. 59/2005 is being examined first as it goes to the root cause of the case though in the written statement filed by the defendant before the trial Court, no such plea was raised even in the appeal before the First Appellate Court, no such plea of failure of heirs was raised in the memo of Second Appeal No. 59/2005, but arguments were raised. Since it is purely question of law, therefore, the respondents were allowed to argue. On the other hand, learned counsel for the appellant in S.A. No. 59/2005 has raised objection about agitating this issue. Learned counsel for the respondent- Mr. B.P. Sharma would submit that the issue raised by the respondent before this Court regarding failure of heirs is necessary for deciding the question of law framed by this Court on 23.03.2005 as well as its strictly legal submission as it can be pressed into service. Since it is purely question of law, this Court is examining the same. For better understanding the submission it is expedient for this court to extract Section 29 of the Hindu Succession Act, which reads as under:-

> "**29. Failure of heirs** .—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subject. State Amendments Chapter IIA Andhra Pradesh: After Chapter II, insert the following Chapter, namely:— "Chapter IIA Succession by survivorship."

40. Learned counsel for the appellant in S.A. No. 59/2005 would submit that since Smt. Sarita Mishra and their family members are not the legal heirs of deceased Tulsi Ram Tiwari, therefore,

as per Section 29 of the Hindu Succession Act, the suit property shall be dissolved on the government, therefore, family of Sarita Mishra and others will not be treated as landlord as such, the suit framed and filed by them should have been dismissed by the trial Court, which has been rightly dismissed by the first appellate Court. To substance his submission, he has referred to the judgment rendered by Hon'ble the Supreme Court in **Sheo Nand (Supra)** and would refer to the paragraphs 7 to 14, which are as under:-

> "7. Escheat" literally means "to revert to the State". This event takes place in default of heirs or devisees. Under the old feudal system, if the person to whom the property was let out or who was in possession of that property, had died intestate or without leaving any heir, the property would revert to the landlord or Zamindar, but if there was no landlord or intermediary, the property would vest in the State or, during the British days, in the Crown (King). This principle was also judicially laid down in A.G. of Ontario v. Mercer 8 Appeal Cases 767 as also in St. Catherine's Co. v. The Queen 14 Appeal Cases 46. This was followed and applied in A.G. for Quebec v. A.G. for Canada [1921] 1 A.C. 401.
>
> 8. In Rex v. Attorney-General of British Columbia [1924] Appeal Cases 213 (PC), it was observed as under :
>
> "Except for the difference between a right to lands, the title to which is ultimately in the Crown, and a right to personality, which is complete in a private person if there be a private person entitled, the principle on which bona vacantia and escheat fall to Crown is the same, that is, that there being no private persons entitled, the Crown takes."
>
> 9. We may point out that property vesting in the State by the principle of Escheat is not new and should not surprise the counsel for the appellants. Under the Act of 1853, made by the British Parliament [An Act to provide for the Government of India (1853), Statute 16 and 17 Victoria, C.95, S.27.], it was specifically provided as under :
>
> "All real and personal estate within the said territories escheating or lapsing for want of an heir or successor and all property within the said territories devolving, as bona vacantia for want of a rightful owner, shall (as part of the revenues of

India) belong to the East India Company in trust for Her Majesty for the service of the Government of India."

10. The above provision thus dealt with two situations, namely, (i) where there was no heir or successor; and (ii) where there was even no owner of the property. The first of the two situations was described in terms of "Escheat or lapse" and the second in terms of "bona vacantia". This provision was retained in Section 54 of the Government of India Act, 1858. The successor Act, namely, the Government of India Act, 1915, provided in Section 20(3)(iii) that the revenues of India received for His Majesty would include all movable or immovable property in British India escheating or lapsing for want of an heir or successor, and all property in British India devolving as bona vacantia for want of a rightful owner. Thus, the dichotomy between Escheat or lapse and bona vacantia was retained in this Act.

11. A similar provision was contained in Section 174 of the Governent of India Act, 1935, which provided, inter alia, as under:

"174. Subject as hereinafter provided any property in India accruing to His Majesty by escheat or lapse or as bona vacantia for want of a rightful owner shall, if it is property situate in a Province, vest in His Majesty….."

12. Thus, in this Act also, it was provided that the property would vest by escheat or lapse or as bona vacantia.

13. Coming now to the Constitution of India, we find a similar provision contained in Article 296 which provides as under:

"296. Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union."

14. Legislative competence to enact Legislation as to Escheat is relatable to the Entries 35 & 44 in the State List and Entry 32 in the Union List set out in the Seventh Schedule to the Constitution."

41. So far as the legal position as put forward by Mr. B.P.Sharma is concerned, it is not in dispute but this court has to see whether

in the present case and circumstance of case essential requirement for application under Section 29 of Hindu Succession Act 1956 is fullfilled or not has to be seen. From perusal of section 29 of Act 1956 it is crystal clear that any enquiry with regard to existence or non-existence of legal heirs of deceased has to be carried out by the State for devolving the property and order of Competent Authority in favour of the Government in a suit filed by Government for devolving the property on the Government, but the same has not been placed on record by the respondents before the trial Court or before this Court. It is well settled position of law that in absence of any enquiry with regard to existence or non-existence of legal heirs of deceased, the suit property could not be vested with the State Government in view of escheat as per Section 29 of the Hindu Succession Act. The Hon'ble High Court of Himachal Pradesh in case reported in **2001(3) Shim LC292** in case of **Bhagat Ram and others Vs. Kuldip Raj in RSA No .338/2000** has considered this issue and held as under:-

> "8.In State of Bihar and Ors. v. Sri Radha Krishna Singh and MANU/SC/0303/1983 : AIR 1983 SC 684, the Hon'ble Supreme Court while dealing09-06-2023 (Page 2 of 4) www.manupatra.com Hon'ble Mr. Justice Ram Prasanna Sharmawith the question of "escheat" of the estate of the deceased Maharaja HarendraKishore Singh, who died issueless on 26.3.1893, has held:Before closing the colourful chapter of this historical case we would now liketo deal with the last point which remains to be considered and that is the question of Escheat. So far as this question is concerned, M.M. Prasad, J. has rightly pointed out that as the State of Bihar did not enter the arena as a Plaintiff to claim the properties by pleading that the late Maharaja had left no heir at all and, hence, the properties should vest in the State of Bihar, it would be difficult to hold that merely in the event of the failure of the Plaintiffs' case the properties would vest in the State of Bihar. It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the Appellant to prove the absence ofany heir of the Respondent anywhere in the world. Normally, the Court frowns on the estate being taken by escheat

unless the essential conditions for escheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the Plaintiffs-Respondents. Even if they succeed in showing that the Plaintiffs were not the nearest reversioners of the late Maharaja, it does not follow as a logical corollary that the failure of the Plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties.

9. Again in State of Punjab v. Balwant Singh and Ors. AIR 1991 SC 2301, it has been held:

The property is escheated to the Government when an intestate has left no heir qualified to succeed to his or her property. The property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities of the property. It is only in the event of the deceased leaving behind no heir to succeed, the State steps in to take the property.

10. It was further held that Section 29, shall not operate in favour of the State if there is any other legal heir of the intestate. Section 29 itself indicates that the remust be failure of heirs. 'Failure' of heirs means total absence of heirs to the intestate.

11. The only question before the two courts below was whether the Plaintiff hasinherited the property of deceased Jhallu or whether the Defendant has succeeded tothe property of the deceased Jhallu under the Will. There was no question before thetwo courts below if the deceased Jhallu had left behind any legal heir. Neither anyclaim was put forth by the State as to escheat, nor any inquiry was held by the twocourts below to find out if there was any other legal heir of deceased Jhallu. In theabsence of any inquiry with regard to existence or non-existence of legal heir ofdeceased Jhallu, the estate could not have been ordered to have been vested in theState Government by way of escheat under Section 29 of the Hindu Succession Act,1956."

42. The record would show that even there was no order of escheat in favour of the Government, thus submission raised by the respondent deserves to be rejected. Hon'ble the Supreme Court in case of **Kutchi Lal Rameshwar Ashram Trust Evam Anna**

Kshetra Trust through Velji Devshi Patel Vs. Collector, Haridwawr & others reported in **2017 (16) 418** has examined Section 29 of the Hindu Succession Act, wherein it has been held at paragraph 20, 21, 24 & 25 as under:-

> "20. Section 29 of the Hindu Succession Act, 1956 has been invoked by the Collector. Section 29 provides as follows:
>
> "29. Failure of heirs- if an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject."
>
> Section 29 embodies the principle of escheat. The doctrine of escheat postulates that where an individual dies intestate and does not leave behind an heir who is qualified to succeed to the property, the property devolves on government. Though the property devolves on government in such an eventuality, yet the government 4 (2008) 12 SCC 541 takes it subject to all its obligations and liabilities. The state in other words does not take the property "as a rival or preferential heir of the deceased but as the lord paramount of the whole soil of the country", as held in State of Punjab v Balwant Singh5. This principle from Halsbury's Laws of England6 was adopted by this Court while explaining the ambit of Section 29. Section 29 comes into operation only on there being a failure of heirs. Failure means a total absence of any heir to the person dying intestate. When a question of escheat arises, the onus rests heavily on the person who asserts the absence of an heir qualified to succeed to the estate of the individual who has died intestate to establish the case. The law does not readily accept such a consequence. In State of Bihar v Radha Krishna Singh7, a Bench of three Judges of this Court formulated the principle in the following observations :
>
> "272. It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Normally, the court frowns on the estate being taken by escheat unless the essential conditions for escheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there

must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the plaintiffs-respondents. Even if they succeed in showing that the plaintiffs were not the nearest reversioners of the late Maharaja, it does not follow as a logical corollary that the failure of the plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties." (id at p. 216)

21. Mulla's Hindu Law8 succinctly summarises the position thus :

"Where the Crown or Government claims by escheat, the onus 5 (1992) Suppl (3) SCC 108 6 4th Ed. Vol 17, para 1439 (1983) 3 SCC 118 Twenty – second edition, pp. 1260-1261 lies on it to show that the owner of the estate died without heirs. An estate taken by escheat is subject to the trusts, charges and legal obligations (if any) previously affecting the estate, e.g., mortgages and other encumbrances. This section rules that in case of failure of all the heirs recognised under the Act, on the death of the owner intestate, his or her property devolves on the Government. The Government takes the property subject to all legal obligations and liabilities to which an heir would have been subject if the property had devolved upon the heir by succession. The word 'failure' used in the section is very clear and indicative of the fact that there must be a absence of heirs of the intestate.

24. The basic issue which has to be addressed in the light of the above principles is whether the Collector had jurisdiction to decide a question of title by assuming to himself the power of an adjudicatory forum. The order of the Collector indicates that 10 AIR 1954 SC 606 the issue as to whether the property would vest in the state government as a result of a failure of heirs within the meaning of Section 29 was a seriously disputed issue turning upon an adjudication of conflicting claims. In the process of determining the issue purportedly under Section 29, the Collector has adjudicated upon various factual matters including (i) whether the property was purchased in 1955 by Mohan Lal with the funds provided by Swamy Udhav Das; (ii) the legality of the registered will stated to have been

executed by the Swamy on 22 October 1956; (iii) the identity of the person who executed the deed of acceptance dated 23 March 1958 in comparison with the person in whose name the patta had been acquired in 1955; (iv) whether Mohan Lal died prior to the execution of the deed of Trust on 11 November 1957; and (v) whether a presumption in regard to the death of Mohan Lal would arise upon his not being heard of allegedly for seven years. The Collector has proceeded to adjudicate on these, among other, factual issues. Section 29, it may be noted, embodies a principle but does not provide a procedural mechanism for adjudication upon disputed questions. The canvas of the controversy before the Court is an abundant indication of matters which were seriously in dispute. The contention of the state that the property would devolve upon it as a result of Mohan Lal being presumed to be dead and having left behind no legal heir is seriously in question. Such a matter could not have been adjudicated upon by the Collector by assuming to himself a jurisdiction which is not conferred upon him by law.

25. The principle that the law does not readily accept a claim to escheat and that the onus rests heavily on the person who asserts that an individual has died intestate, leaving no legal heir, qualified to succeed to the property, is founded on a sound rationale. Escheat is a doctrine which recognises the state as a paramount sovereign in whom property would vest only upon a clear and established case of a failure of heirs. This principle is based on the norm that in a society governed by the rule of law, the court will not presume that private titles are overridden in favour of the state, in the absence of a clear case being made out on the basis of a governing statutory provision. To allow administrative authorities of the state – including the Collector, as in the present case – to adjudicate upon matters of tittle involving civil disputes would be destructive of the rule of law. The Collector is an officer of the state. He can exercise only such powers as the law specifically confers upon him to enter upon private disputes. In contrast, a civil court has the jurisdiction to adjudicate upon all matters involving civil disputes except where the jurisdiction of the court is taken away, either expressly or by necessary implication, by statute. In holding that the Collector acted without jurisdiction in the present case, it is not necessary for the court to go as far as to validate the title which is claimed by the petitioner

> to the property. The court is not called upon to decide whether the possession claimed by the trust of over forty-five years is backed by a credible title. The essential point is that such an adjudicatory function could not have been arrogated to himself by the Collector. Adjudication on titles must follow recourse to the ordinary civil jurisdiction of a court of competent jurisdiction under Section 9 of the Code of Civil Procedure 1908."

43. From the above stated factual matrix, considering the provision of Section 29 of Hindu Succession Act and also considering the records of the trial Court, it is quite vivid that neither the proceeding was initiated by the Government nor any order in favour of the Government in the suit filed by the Government, regarding the plea of failure of legal heirs to succeed the suit property has ever been passed by competent Court ordering suit property is dissolved on the government, therefore, the submission made by learned counsel for the respondent cannot be considered and accordingly, it is rejected.

44. Now this Court is examining the question of law framed in this appeal. For examining the question of law, the relevant provisions which are necessary to ascertain the substantial question law, they are being extracted below:-

> "The Act defines 'landlord' as under :-
>
> **"Landlord" -** 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 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.
>
> Section 12 (1) (a), (b) & (f) of the Act provides as under :-
>
> **"12. Restriction on eviction of tenants –** (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :-
>
> (a) that 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 a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner ;
>
> (b)that the tenant has, whether before or after the commencement of this Act, unlawfully sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise;
>
> (e)that the accommodation let for residential purposes is required *bonafide* by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned."

45. Considering the evidence on Civil Suit No. 85A/2000 and the statement of Revati Bai which was recorded before the Rent Controlling Authority in the present case and cross-examined by the defendant, it is quite vivid that she has denied that Kalyan Prasad original tenant has not accepted him his landlord but she voluntarily stated that he has given two months rent to her. The appellant's witness in the said case also examined Ramratan Mishra who was also cross-examined before Rent Controlling Authority who has also stated that after death of Tulsi Ram, Kalyan Prasad used to pay rent to him and he used to give him receipt and as per family arrangement, the house was given to him and also stated that the house, in which, they are residing is not having sufficient accommodation as the family members have already increased. He has also stated that the house No. 13/540 and 13/541 has been given to his sister-in-law Revati Bai and no other accommodation is available to her and her family members. The plaintiff has also examined Bhagwati Prasad Mishra, who has also adduced the same evidence and other witnesses have also deposed in the same manner. The witnesses have been extensively cross-examined, but the facts were not rebutted by the defendants. Even the defendant has

not produced any cogent evidence to rebut the said contentions of the appellant. The learned trial Court after appreciating the evidence and law, has decreed the suit in favour of the appellant which has been illegally reversed by the learned Appellate Court without assigning any reason on the count that the plaintiff was unable to prove their title or landlord and tenancy relationship. The learned trial Court while allowing the appeal has not examined the other contention with regard to the bonafide requirement of the suit property or not. Thus, the substantial question of law framed by this Court in S.A. No. 59/2005 deserves to be answered in favour of the appellant and against the defendant.

46. Considering the submission made by learned counsel for the parties, it is quite vivid that the plaintiff to substantiate his contention made in the plaint has exhibited the documents and statement of Revati Bai, Badri Prasad Mishra, Bhagwati Prasad and sale-deed and also the statement of Kamlesh Kumar Mishra and Samir Mishra, they have meticulously proved that the original defendant was the tenant and the suit property was bonafidely required for them. On the contrary, the defendant/present appellant has not produced any evidence to substantiate their contention. As such, the findings recorded by the learned trial Court and affirmed by the First Appellate Court is legal, justified and does not suffer from perversity, which warrants any interference by this Court, therefore, the substantial question of law framed by this Court in S.A. No. 387/2005 deserves to be answered in negative against the appellant/tenant.

47. It is well settled position that tenant cannot dictate the landlord's bonafide requirements of the tenancy land. Hon'ble Supreme Court in case of **Prativa Devi (Smt) vs. T.V. Krishnan (1996) 5 SCC 353** has held as under :-

> “2.The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv

Nath Mukherjee, has been staying as a guest with Shri N. C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjung Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.

3. The learned counsel for the appellant however relies on the following observations made by a learned Single Judge (T. P. S. Chawla, J.) supposed to be based on the decision of this Court in Phiroze Bamanji Desai v. Chandrakant N. Patel [(1974) 1 SCC 661 : (1974) 3 SCR 267] to the effect

"I think, the true test is whether, on an overall and reasonable view, it can be said that the landlord has suitable accommodation available for his use. In deciding this question one should certainly have regard to the fact that the landlord has no legal right to the other accommodation, but that is only a factor and not the end of the matter."

These observations proceed on a misunderstanding of the ratio of the decision of this Court in Phiroze Bamanji Desai case [(1974) 1 SCC 661 : (1974) 3 SCR 267]. The High Court was in error in laying down that the test is availability of alternative accommodation and not the legal right to such occupation in adjudging the bona fides of the claim of the landlord under Section 14(1)(e) of the

Act. The decision of this Court in Phiroze Bamanji Desai case [(1974) 1 SCC 661 : (1974) 3 SCR 267] does not lay down any such proposition. On the contrary, this Court reversed the judgment of the Bombay High Court which proceeded upon that basis. In that case, the first floor was in occupation of the mother of the appellant as a tenant and the question was as to the availability of the Truth Bungalow which was given on leave and licence to one Dr. Bharucha. The High Court came to the conclusion that the requirement of the appellant for the ground floor of the demised premises was not reasonable and bona fide since the appellant was in juridical possession of the Truth Bungalow. This Court in allowing the appeal observed : (SCC p. 668, para 8).

"Now, it is true that when premises are given on leave and licence, the licensor continues, from a juridical point of view, to be in possession of the premises and the licensee is merely given occupation and therefore, strictly speaking the High Court was right in observing that the Truth Bungalow, which was given on leave and licence to Dr. Bharucha, was in the possession of the appellant."

The Court then pointed out : (SCC p. 668, para 8)

"But for the purpose of determining whether the requirement of the appellant for the ground floor premises was reasonable and bona fide, what is necessary to be considered is not whether the appellant was juridically in possession of the Truth Bungalow, but whether the Truth Bungalow was available to the appellant for occupation so that he could not be said to need the ground floor premises. If the Truth Bungalow was in occupation of Dr. Bharucha on leave and licence, it was obviously not available to the appellant for occupation and it could not be taken into account for negativing the need of the appellant for the ground floor premises."

48. The Hon’ble Supreme Court in **Civil Appeal No. 231-232 of 2021 (Balwant Singh @ Bant Singh and Anr vs. Sudarshan Kumar and Anr) decided on 27.01.2021** has held that adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate. The Hon’ble Supreme Court in para 11 and 12 of the judgment held as under:-

“11. On the above aspect, it is not for the tenant to

> dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the concerned vacant shops under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business. On the age aspect, it is seen that the respondents are also senior citizens but that has not affected their desire to continue their business in the tenanted premises. Therefore, age cannot be factored against the landlords in their proposed business.
> 12. The Rent Controller in denying right to contest to the tenants and ordering handover of vacant possession to the landlord had noted that the landlord had returned to India and required the premises for his bona fide need and accordingly, the summary proceedings under Section 13B for recovery of possession of the entire building was found to be justified. It was also adverted that the present proceedings under Section 13B is the first one filed by the landlord to secure eviction and the earlier proceedings was under Section 13 of the Act. Moreover, there is no bar for a Non-resident Indian to get a building of choice vacated, under Section 13B of the Act."

49. The Hon'ble Surpeme Court in case of **Harish Kumar (since dead) vs. Pankaj Kumar Garg 2022 live law SC 239** decided on 07.01.2022 has held as under:-

> "It is quite clear that afore stated provision seeking release of the premises on the ground of bonafide requirement does not strictly require the landlord to be "unemployed" to maintain an action. All that the provision contemplates is that the requirment so pleaded by the landlord must be bona fide.
> It is to be noted that the instant premises have been in the occupation of the tenant for more than 30 years and are situated in Jawalapur near Haridwar. The facts on record indicate that the appellant had suffered an accident and he genuinely wanted his son to be settled in 5 business. It may be that the son of the appellant was have some income but that by itself would not disentitle him for claiming release of the premises on the ground of bona fide need. The need pleaded by the appellant was foun to be genuine and was accepted by the appellant authority which is the final fact finding authority. The issue with

regard to comparative hardship was also answered in favour of the appellant."

50. Again Hon'ble the Supreme Court in case of **Abid-ul Islam Vs. Inder Sain Dua** reported in **AIR 2022 SC 1778** has held at paragraph 17, 18 & 25 to 27 as under:-

"17. Dealing with a pari materia provision, this Court in Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778, was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. One cannot lose sight of the object behind Section 25B in facilitating not only the expeditious but effective remedy for a class of landlords, sans the normal procedural route. In this regard, we wish to quote the decision of this court in Baldev Singh (supra):

"14. The phrase "bona fide requirement" or "bona fide need" or "required reasonably in good faith" or "required", occurs in almost all Rent Control Acts with the underlying legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to. In Ram Dass v. Ishwar Chander [(1988) 3 SCC 131] it is said that the bona fide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it, and that desire, to become a "requirement" in law must have the objective element of a "need", which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

15. In Bega Begum v. Abdul Ahad Khan [(1979) 1 SCC 273] it was held by this Court that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

16. In Surjit Singh Kalra v. Union of India [(1991) 2 SCC 87] a three-Judge Bench of this Court has held as under: (SCC p. 99, para 20)

"20. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the words bona fide requirement in Sections 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states 'special procedure for the disposal of applications for eviction on the ground of bona fide requirement'."

17. In Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222] this Court while dealing with the aspect of bona fide requirement has said that the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.

xxx xxx xxx

19. … In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to the tenant's right to rebut it but with strong and cogent evidence. In our view, in the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the

tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

18. We further wish to place reliance upon a recent decision of this Court in Ram Krishan Grover v. Union of India, (2020) 12 SCC 506, wherein this Court considered the aforesaid decisions in Inderjeet Kaur (supra) and Baldev Singh (supra) and interpreted the burden on the tenant to be rebutted at the stage of leave to defend and observed:

"39. The requirement of a "strong case" for obtaining leave to defend means a good case that brings to fore reasonable and well-grounded basis on which the tenant seeks leave to contest the eviction proceedings. It does not mean setting up and establishing at that stage a case beyond any scintilla of doubt and debate. The grounds and pleas raised should reflect clear and strong defence and relate to the grounds mentioned in para 25 in Baldev Singh Bajwa [Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778] . The standard applied is similar to parameters elucidated in Inderjeet Kaur v. Nirpal Singh [(2001) 1 SCC 706], in which this Court had held that the leave to defend should not be granted on mere asking but when the pleas and contentions raise triable issues and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth of affidavits filed by the witnesses in their cross-examination. Each case has to be decided on its merits and not on the basis of any preconceived suppositions and presumptions. By providing for a simplified procedure of eviction by the Non-Resident Indians, Section 13-B does not dilute the rights of tenants. It gives a chance to the tenants on merits to establish their case and when justified and necessary to take the matter to trial. By no means, therefore, Section 13-B can be held to be arbitrary and unreasonable."

25. Section 14(1)(e) deals with only the requirement of a bona fide purpose. The contention regarding alternative accommodation can at best be only an incidental one. Such a requirement has not been found to be incorrect by the High Court, though it is not even open to it to do so, in view of the limited jurisdiction which it was supposed to exercise. Therefore, the very

> basis upon which the revision was allowed is obviously wrong being contrary to the very provision contained in Section 14(1)(e) and Section 25B(8).
>
> 26. We have already discussed the scope of Section 14(1)(e) vis a vis Section 25B(8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would not enure to the benefit of the respondent in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation.
>
> 27. The respondent made substantial claims on the judgment of this Court in Precision Steel (supra). We do not find the said decision helping the case of the respondent, in the light of the discussion made on the scope of the relevant provisions, as leave to defend cannot be granted on mere asking. We can only reiterate that we do not find any perversity in the decision rendered by the learned Rent Controller and the High Court has not only certainly abdicated its jurisdiction, but also exceeded in a way."

51. From the evidence, material placed on record and law on the subject it is quite vivid that the tenant cannot dictate the term of landlord with regard to its bonafide requirement. Learned First Appellate Court in **S.A. No. 387/2005** has appreciated the evidence, material on record and has rightly affirmed the finding recorded by the trial Court regarding bonafide requirement of suit premises, therefore, S.A. No. 387/2005 deserves to be dismissed.

52. From the evidence, material placed on record and law on the subject it is quite vivid that the tenant cannot dictate the term of landlord with regard to its bonafide requirement of the suit property and the learned First Appellate Court in **S.A. No. 59/2005** has not appreciated the evidence, material on record in right prospect with regard to the landlord and tenancy relationship between the plaintiff , the defendants and has rerecorded its perverse finding that plaintiff was unable to prove their title our suit property without considering evidence material already brought on record before the trial court thus, committed

legality perversity, therefore, the judgment and decree dated 16.12.2004 passed by the learned Thirteenth Additional District Judge (F.T.C.), Raipur in First Appeal No. 18A/2005 deserves to be set aside by this Court in view of power exercise by this court while deciding the second Appeal Under Section 100 of CPC .The Hon'ble Supreme Court in case reported in **2021(12)SCC529** in case of **Balasbramanian and others Vs. M.Arocklasamy (Dead)** has held as under:-

> "13.1. In the case of Gajaraba Bhikhubha Vadher & Ors. versus Sumara Umar Amad (dead) thr. Lrs. & Ors. (2020) 11 SCC 114 the fact situation arising therein was referred to and having taken note that five substantial questions of law had been framed, this Court had arrived at the conclusion that such substantial questions of law which arose therein had not been dealt with appropriately since it had not been considered in the light of the contentions. It is in that circumstance, this Court was of the view that the judgment of the High Court is to be set aside and the matter is to be remitted to the High Court.
>
> 13.2. In the case of Ramathal versus Maruthathal & Ors. (2018) 18 SCC 303, the issue considered was as to whether the High Court was wrong in interfering with the question of fact in the Second Appeal. It was a case where both the courts below had arrived at a concurrent finding of fact and both the Courts had disbelieved the evidence of witnesses. In such a case where such concurrent factual finding was rendered by two courts and in such situation, it had been interfered by the High Court in a Second Appeal, this Court was of the view that the interference was not justified. However, it is appropriate to notice that in the said decision this Court had also indicated that such restraint against interference is not an absolute rule but when there is perversity in findings of the court which are not based on any material or when appreciation of evidence suffers from material irregularity the High Court would be entitled to interfere on a question of fact as well.
>
> 13.3. The decision in the case of Ram Daan (dead) through Lrs. versus Urban Improvement Trust. (2014) 8 SCC 902, is a case, where in a suit for permanent injunction the plaintiff had pleaded possession from the year 1942 and the defendant

had admitted the possession of the plaintiff from 1965 though it was contended that they had re-entered the property after being evicted in 1965. It is in that circumstance the case of the plaintiff seeking to protect the possession was accepted and the necessity for seeking declaration did not arise as the defendant did not assert its right of ownership which is not so in the instant case.

13.4 In the case of P. Velayudhan & Ors. versus Kurungot Imbichia Moidu's son Ayammad & Ors. (1990) Supp. SCC 9 and in the case of Tapas Kumar Samanta versus Sarbani Sen & Anr. (2015) 12 SCC 523, the decisions are to the effect that in a Second Appeal the High Court would not be justified in interfering with the finding of fact made by the first appellate court since such finding rendered would be based on evidence. On this aspect there can be no doubt that the same is the settled position of law but it would depend on the fact situation and the manner in which the evidence is appreciated in the particular facts.

13.5. In case of Ramji Rai & Anr. versus Jagdish Mallah (dead) thr. Lrs. & Anr. (2007) 14 SCC 200 though it is held that there was no need to seek for declaration and suit for possession alone was sustainable, it was held so in the circumstance where injunction was sought in respect of the disputed land which was an area appurtenant to their building in which case possession alone was relevant and restraint sought was against preventing construction of compound wall.

14. In the background of the legal position and on reasserting the position that there is very limited scope for reappreciating the evidence or interfering with the finding of fact rendered by the trial court and the first appellate court in a second appeal under Section 100 of the Civil Procedure Code, it is necessary for us to take note as to whether in the instant facts the High Court has breached the said settled position. To that extent the factual aspects and the evidence tendered by the parties has already been noted above in brief. Further, what is distinct in the present facts of the case is that the finding rendered by the learned Munsif (Trial Court) and by the learned District Judge (First Appellate Court) are divergent. The trial court on taking note of the pleadings and the evidence available before it was of the opinion that the plaintiff has failed to prove exclusive possession and, in such light, held that the entitlement for

permanent injunction has not been established. While arriving at such conclusion the trial court had taken note of the right as claimed by the plaintiff and in that background had arrived at the conclusion that except for the say of plaintiff as PW1 there was no other evidence. On the documentary evidence it was indicated that the kist receipts at Exhibit A5 series would not establish possession merely because the name has been subsequently substituted in the patta records and the kist had been paid.

15. As against such conclusion, the first appellate court in fact has placed heavy reliance solely on the kist receipts which in fact had led the first appellate court to arrive at the conclusion that the continuous payment of kist would indicate that the plaintiff was also in possession of the property. When such divergent findings on fact were available before the High Court in an appeal under Section 100 of the Civil Procedure Code though reappreciation of the evidence was not permissible, except when it is perverse, but it was certainly open for the High Court to take note of the case pleaded, evidence tendered, as also the findings rendered by the two courts which was at variance with each other and one of the views taken by the courts below was required to be approved.

16. In view of the above, although the counsel for the appellant may be technically correct in his submission that the High Court erred in not clearly answering the question of law framed by it under Section 100, CPC, the High Court was still within its jurisdiction to determine whether the reading of the evidence on record by one of the Courts below was perverse. Question of law for consideration will not arise in abstract but in all cases will emerge from the facts peculiar to that case and there cannot be a strait jacket formula. Therefore, merely because the High Court refers to certain factual aspects in the case to raise and conclude on the question of law, the same does not mean that the factual aspect and evidence has been reappreciated. As already noted, the divergent view of the courts below on the same set of facts was available before the High Court. From the judgment rendered by the trial court, the nature of contentions as noted would disclose that the plaintiff except contending that the suit schedule property was being enjoyed for the past 40 years by paying kist has not in fact referred to the

> manner in which such right had accrued so as to suggest or indicate unassailable right to be in physical possession. On the other hand, the defendant while denying the right of the plaintiff to claim the relief had traced the manner in which the property had devolved and the right which is being claimed by the defendant. It was also contended that the defendant No.1 is residing in the thatched house which is on the property. It is in that light the trial court having taken note of the assertions made by the defendant No.1 and lack of evidence by the plaintiff had arrived at the conclusion that the possession of the plaintiff as claimed cannot be accepted and that the plaintiff has not sought for declaration despite the defendant having disputed the claim of the plaintiff."

53. In view of above factual and legal matrix, **S.A. No. 59/2005** deserves to be allowed by setting aside the impugned judgment and decree passed by the First Appellate Court.

54. Accordingly, the appeal **S.A. No. 387/2005** is **dismissed** and **S.A. No. 59/2005** is **allowed** and it is held that plaintiffs are entitled to get ejectment of decree against the defendants as per the provisions of Section 12(1)(e) of the Chhattisgarh Accommodation Act, 1961. The defendants shall vacate the suit premises on or before 01.10.2023 and also pay the arrears of rent which has been left unpaid, within two months from today and continue to pay the rent till they vacate the suit premises.

55. A decree be drawn up accordingly in both the appeals.

56. No order as to the costs.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun

Head Note

"Unless there is order of escheat in favour of the Government by the competent Court, the property cannot be dissolved in favour of the Government."

"शासन के पक्ष में राजसात्करण तब तक नही हो सकता जब तक शासन के पक्ष में सक्षम न्यायालय का आदेश न हो।"