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**(2010) 02 RAJ CK 0062**  
**In the Rajasthan High Court**

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|--------------------------------------|------------|
| L.Rs. of Late Sumer Chand and Others | APPELLANT  |
| Vs                                   |            |
| Laxmi Chand                          | RESPONDENT |

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**Date of Decision :** 02-02-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151  
Criminal Procedure Code, 1973 (CrPC) — Section 243  
Evidence Act, 1872 — Section 115, 45, 73  
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2010) 2 RLW 1435 : (2010) 2 WLN 247

**Hon'ble Judges :** H.R. Panwar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

H.R. Panwar, J.—This civil first appeal is directed against the judgment and decree dated 29.1.2002 passed by Additional District Judge No. 2, Jodhpur (for short "the trial Court" hereinafter) whereby the suit filed by the respondent-Laxmi Chand against Sumer Chand and Ors. for possession of the suit premises and mesne profit, was decreed.

2. Briefly stated facts to the extent they are relevant and necessary for the decision of the appeal as also cross-objection filed by the respondent-plaintiff Laxmi Chand are that the respondent-plaintiff Laxmi Chand filed a suit against Sumer Chand and three others, the appellants herein are the legal representatives of Sumer Chand, on the ground that immovable property i.e. residential house situated at Chandi Hall, Jodhpur was originally owned by Ummed Chand, the father of defendant-Sumer Chand and plaintiff-Laxmi Chand. The said immovable property was partitioned by a registered partition-deed on 14.11.1974. The plaintiff claimed that he was in possession of the property of his share till July, 1989 and thereafter, the plaintiff shifted to the rented house as there were some disputes between the family members. It was alleged that thereafter, the defendant-Sumer Chand took the possession of the house. The defendant-Sumer Chand, in life time, filed the written statement to the suit and

came with a plea that by a notice, plaintiff-respondent resiled from partition-deed and therefore, the partition-deed has not been acted upon. On the pleadings of the parties, the trial Court framed issues and tried the suit. The parties led the evidence and on appreciation of evidence, the trial Court decided the material issue in favour of the plaintiff-respondent and against the appellant-defendant and accordingly, decreed the suit. Aggrieved by the judgment and decree impugned, the appellants, who are the legal representatives of the defendant-Sumer Chand filed this appeal.

3. The respondent-Laxmi Chand filed cross-objection to the finding of issue No. 6 which relates to the grant of mesne profit.

4. This appeal came to be filed in the month of September, 2002. When the appeal came up for hearing, the appellants-defendant filed an application u/s 45 of the Indian Evidence Act read with Section 151 CPC being IA No. 106/2010 on 5.1.2010. I have heard learned Counsel for the parties on application.

5. It is contended by learned Counsel for the appellants that the plaintiff-respondent by notice dated 9.7.1976 cancelled the partition deed dated 14.11.1972. The notice alleged to have been issued by the respondent-plaintiff has been filed by the appellants-defendant during the trial of the case and marked as Exhibit A-1. However, the plaintiff-respondent denied the issuance of the said notice and disputed his signature on it and therefore, to establish that notice Exhibit A-1 dated 9.7.1976, the trial Court framed the issue No. 7-A and burden to prove this issue was on the defendant-appellant which the appellant failed to discharge the burden before the trial Court, and therefore, the appellant-defendant now want to prove that the alleged notice Exhibit A-I was issued and signed by the plaintiff-respondent and for that it is necessary to get the said document examined by the handwriting expert, more particularly the alleged signature of the plaintiff-respondent.

6. According to learned Counsel for the appellants, Section 45 of the Evidence Act provides that when the Court has an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specifically skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts and therefore, expert opinion of handwriting expert be called for by sending the notice Exhibit A-I for examination by expert.

7. According to learned Counsel for the appellants, opinion of the handwriting expert is necessary to establish the signature of the plaintiff-respondent on the notice Exhibit A-I when the plaintiff-respondent has denied having issued and signed such notice. Learned Counsel has relied on a decision of Hon''ble Supreme Court in Mrs. Kalyani Baskar Vs. Mrs. M.S. Sampornam, wherein the Hon''ble Supreme Court while considering the provision of Section 243(2) of the Criminal Procedure Code, 1973 (for short Section 243(2) of the Criminal Procedure Code,

1973 (for short "the Cr.P.C." hereinafter) held that Section 243(2) Cr.P.C. is clear that a Magistrate holding an inquiry under Cr.P.C. in respect of an offence triable by him does not exceed his powers u/s 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach to his own conclusion with the assistance of the expert.

8. Learned Counsel appearing for the plaintiff-respondent submits that the appellants-defendant had an ample opportunity before the trial Court to prove the notice Exhibit A-1 and despite the ample opportunity, he did not lead reliable evidence to prove this fact and now, in order to delay the hearing of the appeal, an attempt has been made seeking opinion of the handwriting expert which is unfounded for the reason that at no point of time, the appellants-defendant made such an efforts before the trial Court. Learned Counsel for the respondent further submits that Section 73 of the Indian Evidence Act empowers the Court to compare the signature, writing or seal with others admitted or proved fact and therefore, there is hardly any necessity of sending the document to handwriting expert for establishing the signature over the said notice. Section 73 of the Indian Evidence Act provides that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although, that signature, writing, or seal has not been produced or proved for any other purpose. This section further provides that the Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

9. In the decision of Hon"ble Supreme Court relied on by learned Counsel for the appellants in Kalyani Baskar's case (supra), a criminal complaint came to be filed u/s 138 of the Negotiable Instruments Act on the ground that a cheque was issued by the accused and on presentation to the bank, the cheque was dishonoured for insufficient funds. The accused appeared before the Court and made an application that neither the cheque was signed by him nor issued by him. The facts of the instant case are totally different from the facts of that case and therefore, the decision relied on by learned Counsel for the appellants is of no help to the appellants.

10. In the instant case, the alleged signature of the plaintiff-respondent are available on record as he has signed each page of the plaint, verification, affidavits and statements made before the court. Thus, there is ample material before the court to compare the admitted signature of the plaintiff-respondent with the alleged signature over the notice Exhibit A-I and therefore, in my view, there is absolute no necessity of sending the document at this stage to the

handwriting expert for examination and obtaining the opinion of handwriting expert. Moreso, the burden of prove was on the defendant and the defendant did not lead reliable evidence and failed to discharge the burden and now, he cannot be permitted to reopen the issue.

11. In the circumstances, therefore, I do not find any merit in the application seeking handwriting expert opinion in respect of the signature alleged to be on the notice Exhibit A-1. The application being IA No. 106/2010 filed by the appellants-defendant, is therefore, dismissed.

12. I have heard learned Counsel for the parties on merit of the appeal as well. Carefully gone through the judgment and decree impugned as also record of the trial court.

13. It is contended by learned Counsel for the appellants that upto 1976, the defendant-Sumer Chand and respondent-Laxmi Chand were living in the same house i.e. disputed house and thereafter, the notice Exhibit A-1 dated 9.7.1976, which according to the appellants, was sent by the respondent-plaintiff addressed to Smt. Bhiki Bai received back undelivered at the address of the same disputed house where the appellant-defendant Sumer Chand was residing and that is how the appellant-Sumer Chand came in possession of the notice Exhibit A-1. It is further contended that entire property which was subject matter of the registered partition-deed was purchased by defendant Sumer Chand alone and therefore, it was not liable to be partitioned and therefore, the plaintiff-respondent has no share in the suit property since the property was purchased by the appellant-defendant-Sumer Chand alone. It has further been contended that at any rate, the partition-deed has not been acted upon. Ummed Chand left behind four sons and his wife. The defendant Sumer Chand and respondent-plaintiff Laxmi Chand are the real brothers. Three sons of Ummed Chand acted upon the partition-deed dated 14.11.1972. However, the plaintiff-respondent did not act upon the partition-deed and that is how the appellant-defendant Sumer Chand continued to be in possession over the portion of alleged share of the plaintiff-respondent and therefore, the defendant-appellant Sumer Chand raised construction over the property in dispute and the plaintiff-respondent never objected for raising such construction. Lastly, it has been contended that the plaintiff-respondent was never in exclusive possession of his share as per partition-deed dated 14.11.1972 and the appellant-defendant remained in possession of the share of the plaintiff-respondent since from the date of partition-deed and therefore, the appellant-defendant claims adverse possession.

14. According to learned Counsel for the appellants, the suit was barred by period of limitation since the plaintiff-respondent did not come in exclusive possession of his share and the possession of the disputed property continued to be remained with the appellant-defendant even from the date of partition deed i.e. 14.11.1972 and the suit came to be filed in the year 1991 and thus, it is barred by period of limitation.

15. Learned Counsel appearing for the plaintiff-respondent supported the judgment and decree impugned except the finding on issue No. 6 whereby the mesne profit i.e. for use and occupation of the share of the plaintiff-respondent was decreed at the rate of Rs. 375/- per month as against claim of Rs. 600/- per month and contended that the plaintiff-respondent has filed the cross-objection claiming the mesne profit for the use and occupation of the share of the plaintiff-respondent at the rate of Rs. 600/-. According to learned Counsel for the respondent, the respondent plaintiff led the evidence to the effect that for the portion which has been possessed by the defendant-Sumer Chand, normally monthly rent is Rs. 600/- per month. He submits that this fact has been established by the statement of plaintiff-respondent supported by the statement of PW.3 Jugal Kishore who stated that the monthly rent of the disputed property could be between Rs. 500-600 per month.

16. According to learned Counsel for the appellants, the appellant-defendant was in lawful possession of the share of the plaintiff-respondent and therefore, mesne profit cannot be claimed. He has relied on a decision of this Court in *Neeraj Lunawat and Anr. v. Gyanchand Chawrdia and Ors.* 2007 (3) Civil Court Case 340 (Raj.) wherein this Court in para 5 of the report held as under:

In view of the nature of dispute and undivided half portion of common flat No. 204 having been agreed to be sold to two brothers and one sale-deed being not in dispute or challenged, and the challenge being limited to the extent of other sale-deed in favour of defendant No. 2 alone by the plaintiff, this does not appear to be a case prima facie of the nature that the defendant No. 2 can be said to be in wrongful and unlawful possession of the half portion of the said property nor plaintiff Gyandchand Chowrdia can be said to have any specified portion of the said suit property.

17. The decision relied on by learned Counsel for the appellants-defendant turns on their own facts and has no application to the facts and circumstances of the present case. In the instant case, indisputably the property partitioned was registered by partition deed dated 14.11.1972 and share of each of the parties to the partition-deed was specified and the plaintiff-respondent remained in possession of his share upto 1989 after locking the house of his share, he started living in a rented house in the same city and therefore, it cannot be said that the defendant-appellant was in lawful possession by taking possession of portion of plaintiffs share in house. In the circumstances, therefore, the trial Court was justified in awarding mesne profit. However, the question as at what rate, the mesne profit can be granted in favour of the plaintiff-respondent in view of the evidence available on record is concerned, in my view, issue No. 6 has rightly been decided by the trial Court since the plaintiff-respondent himself claimed to be a tenant in a premises paying the monthly rent at the rate of Rs. 375/- and even the witness PW.3 Jugal Kishore also could not make a definite statement that portion of the house in share of plaintiff could fetch a rent of Rs. 600/- per month. In the circumstances, therefore, I do not find any error in the finding

arrived at by the trial Court on issue No. 6 and therefore, the cross objection filed by the respondent-plaintiff deserves to be dismissed.

18. Learned Counsel for the appellants contended that the plaintiff-respondent has waived his right to recover the possession of his share under the registered partition-deed and therefore, the plaintiff-respondent is estopped by a principle of estoppel as envisaged u/s 115 of the Indian Evidence Act to seek the possession of the premises. Learned Counsel has relied on a decision this Court in Praveen Sahani and Another (Ku.) Vs. Smt. Sushila Devi, where this Court while considering the provision of Section 8 of the Rajasthan Pre-emption Act, 1966 held that from the evidence, it is clear that the entire action of sale/purchase of the suit property took place in full knowledge of the plaintiff and she did not at any point of time assert her right of pre-emption over the suit property, she cannot be now permitted to re-assert the said right as she had waived it by acquiescence.

19. The decision relied on by learned Counsel for the appellants turns on their own facts and has absolutely no application to the facts and circumstances of the present case. It cannot be said that the plaintiff-respondent waived his right to re-possess his property i.e. the portion of the house to his share by a registered partition-deed. The evidence available on record clearly goes to show that upto 1989, the plaintiff-respondent was in possession of his share. Though at the time of partition-deed, the plaintiff-respondent was minor and under the guardianship of Sumer Chand but continued to be in possession of the house and in individual capacity, he was in possession of the property in dispute till 1989 and only in 1989, the plaintiff-respondent left the house locked and went in rented premises in the same city and therefore, leaving house locked and going to a rented premises and thereafter said to have wrongfully or unlawfully coming in possession of said house by appellant-defendant "cannot be said to amount to waiver or acquiescence by the respondent-plaintiff of his right to recover the possession of his share.

20. According to counsel, the plaintiff-respondent resiled from the partition-deed by notice Exhibit A/1 and thereafter, only the course open to the plaintiff-respondent is reopening of the partition. He has relied on a Full Bench decision of Bombay High Court in Krishtappa Venkappa Gadad and Others Vs. Gopal Shivaji Ramchandra Kulkarni and Others, wherein it was held that in reopening a partition, made between the surviving members of a joint Hindu family, at the instance of a son adopted by the widow of a deceased co-parcener, the adopted son is entitled to claim that the properties alienated not for justifying necessity by the surviving co-parceners should be assigned to their shares and that he should be awarded his share in the property existing at the date of his adoptive father's death. Whenever a partition is re-opened, shares must be allocated on a fair and equitable principle. Equity in such a case could only be satisfied if, in determining the share of the adopted son, the alienation made by one of the co-parceners is allotted to his share and the partition is re-opened on that basis and

the properties are re-allotted on that basis. By doing so no question of interfering with the right of a divided co-parcener to deal with his share as his own or of impairing the principle that an adopted son is bound by all lawful alienations made prior to the adoption does arise.

21. In another decision of Hon<sup>ble</sup> Supreme Court, relied on by learned Counsel for the appellants, in the case of Ratnam Chettiar and Others Vs. S.M. Kuppuswami Chettiar and Others, the Hon<sup>ble</sup> Supreme Court held that a partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case, the court should require a strict proof of facts because an act inter vivos cannot be lightly set aside. It has been further held that when the partition is effected between the members of the Hindu Undivided Family which consists of minor co-parceners it is binding on the minors also if it is done in good faith and in bona fide manner keeping into account the interests of the minors and where, however, a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place.

22. Both the decisions relied on by learned Counsel for the appellants turn on their own facts and are of no help to the appellants. The facts of the aforesaid cases relied on by learned Counsel for the appellants are totally different from the facts of the instant case. In the instant case, though the partition-deed took place while the respondent-plaintiff was minor but at no point of time, the respondent-plaintiff on attaining majority challenged the partition-deed by which the immovable which was partitioned. It is not the case by either parties to suit that the partition of house by deed dated 14.11.1972 was unfair or by a coercion or by misrepresentation.

23. So far as the contention of learned Counsel for the appellants that the entire property was purchased by the appellant-defendant Sumer Chand, a reliance has been placed on a decision of Hon<sup>ble</sup> Supreme Court in G. Mahalingappa v. G.M. Savitha 2005 (2) WLC (SC) Civil 357, According to learned Counsel for the appellants, the appellant-defendant Sumer Chand purchased the entire property in the name of his father and other brothers and therefore, so far as the name of father and brother mentioned in the purchase deed dated 1.1.1964, it was benami. The decision relied on by learned Counsel for the appellants in that respect also turns on their own facts and is of no help to the appellants for the reason that if it was benami transaction and the appellants claim to be the sole owner of the property then there is no reason to have entered into a partition-deed on 14.11.1972. The appellant was indisputably a signatory to the partition-deed dated 14.11.1972 and therefore, the appellant-defendant himself admitted that the property has jointly been purchased by his father. At any rate, the evidence available on record shows that the property was purchased by Ummad

Chand, the father of the appellant-defendant and respondent-plaintiff. Had the case of the appellant-defendant that the appellant was sole owner of the property then the property was purchased on 1.1.1964 and partition of which took place on 14.11.1972 by a registered partition deed, there was no compulsion for the appellant to have the partition of whole of the property when he claimed to be the sole owner. In my view, it is not open for the appellant to now claim that he is sole owner of the property in dispute after having been a party to the partition-deed as also signatory to the partition deed dated 14.11.1972.

24. Learned Counsel for the appellant has relied on a decision of Hon'ble Supreme Court in B.K. Sri Harsha (D) By L.R. and Anr. v. Bharath Heavy Electricals Ltd. 2008 (2) Civil Court Cases 050 (SC) wherein the Hon'ble Apex Court held that when trible issues are involved, the appeal should not be summarily dismissed or disposed of. I failed to understand as to how this decision is applied in this case. The present appeal has already been admitted and has been heard finally, therefore, the question deciding the appeal summarily does not arise.

25. On careful perusal of the judgment and decree impugned, it appears that the trial Court framed as many as eight issues. Issue No. 1 is as to whether the entire house purchased on 1.1.1964 was by the defendant-Sumer Chand and it was defendant-Sumer Chand who only paid the purchase amount and mentioning the name of his father and brother was benami? The trial Court considered this issue elaborately and declined to accept the plea of appellant-defendant for the reason that in the partition-deed dated 14.11 1972, it has specifically been mentioned that the father of Sumer Chand and respondent-plaintiff, namely, Shri Ummed Chand left behind the property for which all the brothers partitioned the said property by a registered partition-deed and averment made therein clearly goes to show that the property was acquired by Ummed Chand and the appellant-defendant Sumer Chand being the signatory to that document having admitted that the property was acquired by his father Ummed Chand and it came to be partitioned between sons of Ummed Chand and even according to the appellant-defendant, three brothers have already acted upon the partition-deed. As to whether it is now open to the appellants-defendant now to claim that he is the sole owner of the property in dispute, in my view, the trial Court has rightly decided issue No. 1 against the appellant defendant and in favour of the respondent-plaintiff.

26. Issue No. 2 is as to whether the partition-deed dated 14.11.1972 has not been acted upon. According to learned Counsel for the appellants, three persons to the partition-deed have acted upon which includes the appellant-defendant. There could be no reason for the fourth one not to act upon when the other persons, parties to the partition-deed, have taken their share. Indisputably, the plaintiff-respondent at the relevant time of partition i.e. on 14.11.1972 was minor, about 15 years of age and continued to remain in same house even upto

attaining the majority and thereafter upto 1989. It cannot be said that the partition has not been acted upon. On the contrary, when three persons have acted upon the partition-deed including the appellants-defendant Sumer Chand, there could be no reason why the forth son could not act upon the partition. In the instant case, the position was somewhat different. The parties have already acted upon the partition deed including the appellant-defendant Sumer Chand. Thus, the trial Court has rightly decided issue No. 2 in favour of plaintiff-respondent and against the appellant-defendant.

27. So far as issue No. 3 is concerned, it has been established that the share of the plaintiff-respondent was used and occupied by the appellant-defendant Sumer Chand. In the partition-deed, it has been mentioned that the plaintiff-respondent Laxmi Chand is minor about 15 years of age and at the time of partition-deed, would continue to be under the guardianship and care of the appellant-defendant Sumer Chand and in that situation, even if the portion which fell in the share of Laxmi Chand was jointly used by the appellant-defendant and respondent-plaintiff, it cannot be said that appellant-defendant was in exclusive possession of share of the plaintiff-respondent. So far as incurring expenses of Rs. 50,000/- for the construction work in the said house is concerned, the defendant himself stated in his statement that from 1964 to 1980 whenever there were need, he incurred the expenses. However, he failed to state as to when he incurred the expenses and to what extent. He has not placed on record any account incurring the expenses. Thus, the defendant failed to establish that he has incurred Rs. 50,000/- for raising the construction over the portion of the plaintiff-respondent. In the circumstances, therefore, I find no error in the conclusion arrived at by learned trial Court on issue Nos. 2 and 3.

28. So far as issue No. 4 is concerned, the finding of issue No. 4, in my view, cannot be said to be erroneous for the reason that from the evidence available on record, it has been established that after the purchase of the disputed house in the year 1964, the father of the parties and parties to lis along with their other brothers, have been residing in the disputed house jointly and on 14.11.1972, they partitioned the house and entered into a registered partition-deed and thereafter, every share-holder was living in his own share. So far as the plaintiff-respondent Laxmi Chand is concerned, at the relevant time, he was about 15 years of age and in partition-deed, it has been mentioned that he was under the guardianship of the appellant-defendant Sumer Chand. The plaintiff-respondent continuously lived in that house and even if the appellant-defendant jointly used the share of the plaintiff-respondent during the period when respondent-plaintiff was minor, it cannot be said that the defendant appellant has ousted completely the plaintiff respondent from that portion of house which was in his share from the date of partition-deed.

29. Issue No. 5 is not very relevant to decide the controversy between the parties. Even if Ugamraj and Parasmal, who were said to have been the persons intervened. These are the persons being the close relative of the appellant-

defendant even did not support the case of the plaintiff-respondent. Even if they did not support the case of the plaintiff-respondent, it does not go to the root of the case or to decide the controversy between the parties. So far as issue No. 7-A is concerned, except the statement of defendant appellant, there is no evidence. On the contrary, the notice Exhibit A-1 is more suspicious in the manner it has been produced by the defendant-appellant. If the notice Exhibit A-1 is returned undelivered or with the endorsement of refusal by the addressee then the notice could have been returned to the sender and not in the hands of the appellant. At any rate, the appellant is not the sender. The notice dated 9.7.1976 alleged to have been send by plaintiff-respondent Laxmi Chand Patwa addressed to Bhiki Bai, Prakash Chand Patwa and Shanti Chand Patwa. Admittedly, it was not addressed to the defendant-appellant. The notice is typed one and it bears the signature of Laxmi Chand Patwa in Hindi. The address on Inland latter to addressee Smt. Bhiki Bai W/o Umaid Chand Ji Patwa, resident of Kesar Bari (Chandi Hall), Jodhpur is written in English. The endorsement by the postman is refused. On such refusal by addresses Smt. Bhiki Bai, the notice was to return back to the sender Laxmi Chand Patwa, the plaintiff-respondent. At any rate, it would not go to the appellant-defendant-Sumer Chand. Moreso the signature on the notice Exhibit A-1 is in Hindi and all the admitted signature of the plaintiff-respondent Laxmi Chand including the signatures on the plaint, vakalatnama and on the statement made before the trial Court are in English and not in Hindi as is evident from the notice Exhibit A-1. Alleged signature of respondent-plaintiff on said notice Exhibit A-1 when compared with the admitted signature then it can safely be said that the notice Exhibit A-1 has not been signed by respondent-plaintiff. In the circumstances, therefore, in my view, the trial Court was justified in holding that the appellant-defendant failed to prove the notice Exhibit A-1.

30. So far as the question of limitation is concerned, from the evidence of the plaintiff-respondent and the witnesses produced by him, it has been established that upto 1989, the plaintiff-respondent continued to be in possession of the disputed house. In the year 1972 when the partition took place i.e. on 14.11.1972, he was about 15 years of age. Thereafter, he got married in the month of February, 1987 and it was stated by the witnesses that after two years of marriage, there had been dispute between the wives of Sumer Chand and plaintiff-respondent. There being ladies quarrel on the trifle issues, the plaintiff-respondent thought fit to shift in the rented house in order to avoid unrest between two families and thereafter, as has been established that the appellant-defendant un-lawfully broke open the lock and door and took over the possession of disputed house, may be some where in the year 1989 or 1990. The suit came to be filed on 11.4.1991 almost within three years. Be that as it may, it cannot be said that after leaving the house by the plaintiff-respondent for this period, even if the appellant took the possession lawfully, he cannot claim that he has adverse possession over the period of 12 years. Thus, in my view, the suit was neither barred by period of limitation nor it was delayed in any manner.

31. In view of the aforesaid discussions, I am of the considered opinion that the trial Court decided all the issues on sound and proper appreciation of evidence produced by the parties and therefore, I do not find any error in the judgment and decree impugned.

32. Consequently, the appeal as well as cross-objection fail and are hereby dismissed. There shall be no order as to costs.