

(2010) 11 CHH CK 0025
In the Chhattisgarh High Court
Case No : Second Appeal No. 20 of 1994

Smt. Hansa Devi

APPELLANT

Vs

Kartar Singh Arora (dead) Smt. Sobhagywati Arora and
Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 1, Order 8 Rule 2,
Order 8 Rule 3, Order 8 Rule 4
Criminal Procedure Code, 1973 (CrPC) — Section 107, 151
Evidence Act, 1872 — Section 116, 58
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1),
13(1), 23A

Citation : (2010) 11 CHH CK 0025

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.P. Sharma, J.—By this second appeal u/s 100 of the Code of Civil Procedure, 1908 (for short "the Code"), the Appellant has challenged legality & propriety of the judgment & decree dated 29-10-93 passed by the 5th Additional District Judge, Bilaspur in Civil Appeal No. 1A/93 reversing the judgment & decree dated 30-1-93 passed by the 4th Civil Judge Class-II, Bilaspur in Civil Suit No. 160A/90, whereby the decree for eviction on the ground of bona fide need for non-residential purpose passed by the 4th Civil Judge Class-II was reversed by the lower appellate Court.

2. Present appeal has been admitted for consideration on the following substantial questions of law:

1. Whether the lower appellate Court was justified in reversing the judgment and decree of the trial Court in view of the evidence of Respondent No. 1?

Additional question

1. Whether the lower Appellate Court erred in reversing the decree for eviction passed by the trial Court u/s 12(1)(f) of the M.P. Accommodation Control Act, 1961 on the ground that the Plaintiff led no evidence to prove existence of an alternative accommodation, due to ignoring that there was no specific denial of the pleadings contained in para 3 of the plaint regarding non availability of any alternative accommodation by the Defendant and also that in view of the statement on oath of the Defendant in para 9, no prejudice was caused to the Defendant due to the fact that the Plaintiff did not lead oral evidence to that effect?

2(a) Whether the Respondent/Defendant did not comply with Section 13(1) of the Accommodation Control Act?

2(b) If yes, whether due to non-compliance of Section 13(1) and a concurrent finding recorded by both the Courts that the Defendant was in arrears of rent, a decree for eviction u/s 12(1)(a) of the Accommodation Control Act ought to have been passed by the trial Court against the Defendant?

3. Whether the lower Appellate Court was not justified in holding that the Appellant/Plaintiff has not been able to prove ownership over the suit accommodation in view of the admission of the Respondent/Defendant in para 9 of the statement?

3. The Appellant has also filed I.A. No. 5106/98, an application under Order 41 Rule 27 of the Code for taking additional evidence relating to the will deed executed by Mathura Prasad in favour of the Plaintiff, and I.A. No. 647/2007, an application under Order 41 Rule 27 read with Section 151 of the Code for taking additional evidence relating to judgment & decree passed by the civil Courts in respect of other part of the suit premises where the suit accommodation is situated. I have heard learned Counsel for the parties on these applications also.

4. Brief case of the Plaintiff, as per the plaint allegation, is that the Plaintiff/Appellant is land lord and owner of the suit property situate at Sadar Bazaar, Bilaspur. Original Defendant Kartar Chand Arora (since deceased) -predecessor of the Respondents herein was tenant in the suit premises on Rs. 300/- per month rent. Originally Mathura Prasad Dubey was owner of the suit property in which Kartar Chand was running his business and the tenancy was for non-residential purpose. Civil Suit No. 21A/76 was pending and decided between Mathura Prasad Dubey and Kartar Chand Arora on the basis of compromise on 25-8-75 in which Kartar Chand has admitted ownership of Mathura Prasad Dubey over the suit property. Mathura Prasad has executed will in favour of the Plaintiff and after the death of Mathura Prasad, the Plaintiff became sole owner of the suit property along with other properties. Original Defendant Kartar Chand has admitted ownership and landlordship of the Plaintiff/Appellant herein over the suit property. The then Defendant Kartar Chand was also served with notice on behalf of the Plaintiff relating to increase of rent from Rs. 85/- to Rs. 125/- per month and from Rs. 125/- to Rs. 300/- per month, same was accepted by original

tenant Kartar Chand. Kartar Chand was also served with notice by the Plaintiff on the basis of will executed by Mathura Prasad that she became owner of the property after the death of Mathura Prasad and in compliance of such notice, Kartar Chand continued payment of rent to the Plaintiff and accepted ownership and landlordship of the Plaintiff/Appellant herein.

5. The suit accommodation is situate in commercial area and fit for running lodge business. The Appellant wants to run lodge business and she is not in possession of suitable alternate accommodation for running such business in, Bilaspur city. Notice for eviction for bona fide need of the Appellant herein has been issued on behalf of the Appellant herein to Kartar Chand and tenancy was terminated vide notice dated 15-3-90 which was replied by Kartar Chand who also denied ownership of the Plaintiff and her predecessor Mathura Prasad which became additional ground for eviction on the ground of disclaimer of title. On the basis of aforesaid ground, suit for eviction and recovery of rent was filed on behalf of the Appellant herein.

6. By filing written statement, original Defendant Kartar Chand has admitted tenancy over the suit property and alleged that Mahadev Prasad Tiwari was the original landlord. Defendant Kartar Chand has further alleged in his written statement relating to different stages of tenancy and transaction between Mathura Prasad Dubey and the Appellant herein. The Defendant has also admitted receipt of notice issued by the Plaintiff. The Defendant has denied bona fide need of the Plaintiff for running lodge business and has specifically alleged that only with a view to increase rent of the suit property, the Plaintiff has filed suit for eviction on the ground of her bona need for non-residential purpose.

7. On the basis of pleadings of the parties, issues were framed and after providing opportunity of hearing to the parties, vide judgment & decree dated 30-1-93 the suit was decreed against Defendant Kartar Chand on the ground of bona fide need for non-residential purpose of the Plaintiff which was challenged in appeal before the lower appellate Court and the lower appellate Court vide judgment & decree dated 29-10-93 reversed the judgment & decree of the trial Court substantially on the ground that the Plaintiff has failed to prove her ownership over the property for eviction u/s 12(1) (f) of the Chhattisgarh Accommodation Control Act, 1961 (for short "the Act") and also failed to prove the fact that she was not in possession of suitable alternate accommodation.

8. I have heard learned Counsel for the parties and perused judgment & decree and records of both the Courts below.

9. Mr. R.P. Agrawal, learned Senior Advocate appearing on behalf of the Appellant, submitted that both the Courts below have arrived at a finding that the Plaintiff is in bona fide need of the suit accommodation for non-residential purpose, judgment & decree of the trial Court has been reversed by the lower appellate Court on the ground that in order to prove bona fide need of the suit accommodation for non-residential purpose, the Plaintiff was under obligation to

prove ownership over the suit property and also to prove the fact that the Plaintiff is not in possession of alternate suitable accommodation in Bilaspur city to satisfy her need, however, the Plaintiff has not proved ownership over the suit property and the fact that she is not in possession of alternate suitable accommodation in Bilaspur city. Therefore, the Plaintiff is not entitled for eviction of the suit accommodation.

10. Mr. R.P. Agrawal, learned Senior Advocate, further submitted that finding of the lower appellate Court relating to ownership and absence of alternate suitable accommodation is not based on evidence of the parties and same is perverse. In the present case, Defendant Kartar Chand has specifically admitted ownership of the Plaintiff in his pleading and notice. Defendant Kartar Chand has also not specifically denied the allegation of non-availability of alternate suitable accommodation made in the plaint by necessary implication as required under Order 8 Rules 2, 3 & 5 of the Code, same shall be treated as admission and in case of admission of facts by the Defendant i.e. the interested person, it is the best evidence for proving the facts and, therefore, no further proof was necessary to the Plaintiff to prove her ownership and non-availability of alternate suitable accommodation. Even otherwise, the Plaintiff has examined herself and her husband who have deposed in their evidence that the Plaintiff has succeeded the property on the basis of testamentary succession from her father-in-law Mathura Prasad Dubey and that she has informed Defendant Kartar Chand by issuance of notice Ex.P-2 which has not been replied by Kartar Chand and has been complied by him. The Plaintiff has also proved Ex.P-1 - certified copy of the assessment register showing Hansa Devi, the Appellant herein, as owner of the property; notice Ex.P-6; and reply Ex.P-9. These are sufficient for proving the fact that Plaintiff is owner of the suit accommodation. This is summary suit for eviction of tenant and in summary suit owner/Plaintiff is not required to prove his ownership like in suit for declaration of title or declaration of ownership over the property and the evidence adduced on behalf of the Plaintiff not rebutted by the Defendant was sufficient to prove the fact that the Plaintiff was owner of the suit property.

11. Mr. R.P. Agrawal, learned Senior Advocate, contended that Defendant Kartar Chand had been served with notice Ex.P-6 in which it has been specifically mentioned that the Plaintiff is not having suitable alternate accommodation in Bilaspur city but same has not been denied by Defendant Kartar Chand by replying to the notice vide Ex.P-9. Absence of any denial amounts to admission of Kartar Chand, the original Defendant, relating to nonavailability of alternate suitable accommodation in Bilaspur city. The Plaintiff has also made specific allegation in para 3 of her plaint, but by filing written statement Defendant Kartar Chand has denied only the part of allegation relating to bona fide need. The Defendant has not specifically denied the fact that the Plaintiff is not having any suitable alternate accommodation in Bilaspur city and, therefore, the only denial that other allegation of para 3 is specifically denied is not denial by necessary implication, but is evasive denial which amounts to admission of the

facts pleaded by the Plaintiff in para 3 of her plaint. Defendant Kartar Chand has specifically deposed in para 9 of his evidence that he do not know as to whether the Plaintiff is having any alternate suitable accommodation in Bilaspur city or not. These facts are sufficient to prove the fact that the Plaintiff is not in possession of alternate suitable accommodation. Therefore, only the fact that the Plaintiff has not stated specifically relating to non-availability of suitable accommodation in her evidence, will not suffice the other evidence for drawing inference that she is not in possession of suitable alternate accommodation in Bilaspur city. Learned Senior Advocate also submitted that both the parties were knowing the case of each other, they have joint issue and have led evidence and, therefore, any defect in pleading and question of burden of proof loses its importance.

12. Mr. R.P. Agrawal, learned Senior Advocate appearing on behalf of the Appellant, placed reliance in the matter of Narayan Bhagwantrao Gosavi Balajiware Vs. Gopal Vinayak Gosavi and Others, in which the Supreme Court has held that an admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. The Supreme Court has also held that when both sides have let in evidence, question of burden of proof loses its importance. Mr. R.P. Agrawal further placed reliance in the matter of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, , in which the Supreme Court has held that if Plaintiff is able to create high degree of probability to shift onus on Defendant, it is for Defendant to discharge his onus and in such circumstances, the burden of proof on Plaintiff, would be discharged, which would amount to proof of Plaintiffs title. Mr. R.P. Agrawal also placed reliance in the matter of Sheela and Others Vs. Firm Prahlad Rai Prem Prakash, in which the Supreme Court has held that in Rent Control Legislation, burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the Plaintiff. Mr. R.P. Agrawal relied upon the matter of Dilbagrai Punjabi Vs. Sharad Chandra, in which the Supreme Court has held that admission of ownership in reply of notice of Defendant is sufficient to prove the factum of ownership in eviction suit and non-production of deed or basis of deriving title is not fatal to the Plaintiff and will not effect the case of the Plaintiff, the Courts are required to consider the factum of proof on the basis of evidence in totality and not on the basis of isolated evidence. Mr. R. P. Agrawal further relied upon the matter of Anar Devi v. Nathuram 1994 JLJ 486 in which the Supreme Court has held that after acknowledgment of landlordship of subsequent landlord by tenant, tenant is stopped from challenging the title of his landlord. The words used in Section 23-A(b) of the Act viz., "if he is the owner thereof do not require landlord to plead and prove his title over the tenanted premises. Mr. R.P. Agrawal also relied upon the matter of Zehra Bai (Mst.) v. Jagmohan Arora 2000 (11) MPWN

(142) in which the High Court of Madhya Pradesh has held that tenant paying rent to landlord cannot object landlordship and ownership of landlord, landlord need not produce his title deeds for eviction of tenant for his own use. Mr. R.P. Agrawal placed reliance in the matter of Jagdamba Prasad Khandelwal v. Smt. Shanti Devi 2002 (1) MPWN (12) in which the High Court of Madhya Pradesh has held that tenants have not right to challenge Will. Mr. R.P. Agrawal further placed reliance in the matter of Deen Dayal Ram Ratan v. Sita Ram and Ors. 1983 MPLJ 350 in which the High Court of Madhya Pradesh has held that tenant is stopped from denying landlord's title. Mr. R.P. Agrawal also placed reliance in the matter of Indian Bank, Sagar v. Purshottam Lal and Anr. 1991 (2) JDD (Civil) 15 (Note) in which the High Court of Madhya Pradesh has held that notice sent by Plaintiff to Defendant not replied denying facts described in notice, further denial of facts in pleading and evidence be treated as after thought. Mr. R.P. Agrawal relied upon the matter of Raghunathi and another Vs. Raju Ramappa Shetty, in which the Supreme Court has held that if parties are permitted to produce evidence in support of their respective cases, question of placing of burden of proof loses significance. Mr. R.P. Agrawal further relied upon the matter of Pawan Kumar Vs. Hajarilal, in which the High Court of Madhya Pradesh has held that question of bona fide need is required to be decided on the basis of material produced on behalf of the parties, it is immaterial whether the Plaintiff has stated in his statement that he needs the accommodation bona fide or not. Mr. R.P. Agrawal also relied upon the matter of Ram Narain Arora Vs. Asha Rani and Others, in which the Supreme Court has held that non-disclosure by landlord about his having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced.

13. On the other hand, Mr. Ravish Chand Agrawal, learned Senior Advocate appearing on behalf of the Respondents, vehemently argued that for decree of eviction u/s 12(1)(f) of the Act, the Appellant/Plaintiff was under obligation to prove the fact that she was owner thereof of the suit property and she is not having alternate vacant suitable accommodation in Bilaspur city, although she has pleaded in her plaint, but she or her husband Bhagwat Dubey (PW-2) has not stated single word relating to non-availability of alternate suitable accommodation. This is not a simple suit under the Chhattisgarh Accommodation Control Act, 1961, but was a suit for eviction for bona fide need of landlord for non-residential purpose for which only owner of the suit property is entitled for eviction. Therefore, the Plaintiff/Appellant was under obligation to prove her title by necessary implication and by adducing evidence. The Plaintiff was also under obligation to prove the fact that no suitable alternate accommodation is in her possession to run the business. The Defendant has denied the allegation made in the plaint relating to the aforesaid pleading and the trial Court has framed specific issue. Therefore, the Plaintiff was under obligation to adduce evidence and prove the aforesaid question in accordance with proviso to Section 58 of the Indian Evidence Act, 1872 and proviso to Order 8 Rule 5(1) of the Code. Framing

of issue itself is evident that the Court requires the Plaintiff to prove the aforesaid facts even after admission by opposite party.

14. Mr. Ravish Chand Agrawal, learned Senior Advocate, contended that by filing written statement, the original Defendant has specifically denied the aforesaid allegation. Provisions of Rules 3, 4 & 5 of Order 8 of the Code are applicable in pleading. The word "pleading" has been defined in Rule 1 of Order 6 of the Code which means plaint or written statement. Notice or other evidence cannot be considereu as pleading in accordance with Order 6 Rule 1 of the Code. Learned Senior Advocate further argued that the Plaintiff is required to prove her case by adducing necessary evidence and any failure on the part of the Defendant or non-production of evidence in support of his claim would be of no use for proving the case of the Plaintiff. The Plaintiff has examined herself and her husband Bhagwat Dubey (PW-2) in support of her plaint, but for the reasons best known to them they have not stated a single word relating to non-availability of alternate vacant suitable accommodation in Bilaspur city. This shows that the Plaintiff has deliberately withheld the evidence and the lower appellate Court has rightly reversed the judgment & decree of the trial Court. The judgment & decree passed by the trial Court were not based on the facts proved by the Plaintiff, but was based on assumptions and presumptions. Therefore, the lower appellate Court has rightly corrected the findings of the trial Court and dismissed the suit. Learned Senior Advocate also argued that using the words "denied specifically" while replying the plaint is sufficient compliance under Order 8 Rules 3, 4 & 5 of the Code.

15. Mr. Ravish Chand Agrawal, learned Senior Advocate appearing on behalf of the Respondents, placed reliance in the matter of Nilkanth Purushottam Bhawe v. Gopaldas Phoolchand and Anr. 1961 MPLJ 135 in which the High Court of Madhya Pradesh has held that denying of contents of plaint in written statement by writing "contents of paras, so and so denied" does not amount to implied admission. Express denial of main allegations is necessary and the words "not admitted" do not mean implied admission. Mr. Ravish Chand Agrawal further placed reliance in the matter of Sheel Chand Vs. Prakash Chand, in which the Supreme Court has held that question of bona fide requirement of the Appellant is not the substantial question of law in deciding the second appeal and this is a pure question of fact. Mr. Ravish Chand Agrawal also placed reliance in the matter of Tej Bhan Madan Vs. II Additional District Judge and Others, in which the Supreme Court has held that there can be a denial of the title of his landlord without the tenant renouncing his character. Mr. Ravish Chand Agrawal relied upon the matter of Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, in which the Supreme Court has held that adequacy or sufficiency of evidence to support a finding of fact is not a ground of second appeal. Mr. Ravish Chand Agrawal further relied upon the matter of Hero Vinoth (minor) Vs. Seshammal, in which the Supreme Court has held that substantial question of law involved in the case means the substantial question of law which affects rights of the parties to the suit and not only the academic question or question of general

interpretation. Mr. Ravish Chand Agrawal also relied upon the matter of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., in which the Supreme Court has held that the High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal. Mr. Ravish Chand Agrawal placed reliance in the matter of Rajendra Kumar Mahawar v. Smt. Shakuntala Makhanlal Kesarwani 2000 (1) MPLJ 44 in which the High Court of Madhya Pradesh has held that deriving of title of the Defendant/tenant from the very inception, only payment of rent to the Plaintiff at the instance of previous landlord/true owner will stop the tenant from denying such title and in absence of such registered document of acquisition of title, the Plaintiff cannot claim to have stepped in the shoes of the previous landlord merely because rent was being paid to her. Mr. Ravish Chand Agrawal further placed reliance in the matter of Ambika Prasad Thakur and Ors. etc. v. Ram Ekbal Rai (dead) by his legal representatives and Ors. etc. AIR 1966 SC 605 in which the Supreme Court has held that in case of title suit, title cannot pass by mere admission and the Plaintiff is required to prove acquisition of title by adducing necessary evidence.

16. Mr. Ravish Chand Agrawal, learned Senior Advocate appearing on behalf of the Respondents, further submitted that by filing two applications (I.A. Nos. 5106/98 & 647/2007) under Order 41 Rule 27 of the Code for taking additional evidence, the Appellant has tried to file copy of will deed and copies of judgments delivered by the civil Courts. Mere filing of copy of will deed will not serve any purpose for proving ownership of the Appellant unless the will deed is proved in accordance with law. Copies of judgments are not relevant in this case for proving the title of the Appellant. In order to accept additional evidence at the appellate stage the party who seeks permission to adduce such evidence is required to satisfy the Court that in exercise of due diligence such evidence was not within his knowledge at the time of adducing evidence and the evidence is necessary for adjudication of dispute between the parties.

17. As held by the Supreme Court in the matters of Sheel Chand Vs. Prakash Chand, , Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, , Hero Vinoth (minor) Vs. Seshammal, and Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., , question of bona fide requirement is not the substantial question of law, substantial question of law involved in the case means the substantial question of law which affects rights of the parties to the suit and not only the academic question or question of general interpretation, and the High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal.

18. In the present case, question of bona fide need is not in dispute at the stage of second appeal and as per findings of both the Courts below, the Appellant herein is in bona fide need of the suit property. Substantial question of law No. 1, additional substantial question of law No. 1 and substantial question of law No. 3 are relating to the need of proof of specific fact in absence of oral evidence, degree of proof and need of proof of ownership of the suit property in rent

control suit which are substantial questions of law for decision in this appeal and will affect rights of the parties. This Court has formulated substantial questions of law for the decision of the appeal.

19. In the matter of Sheel Chand Vs. Prakash Chand, , on the basis of concurrent findings of both the Courts below the Supreme Court has held that in absence of perversity, illegality or irregularity in the findings, the finding relating to bona fide need is not a substantial question of fact. Therefore, facts of Sheel Chand Vs. Prakash Chand, , Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, , Hero Vinoth (minor) Vs. Seshammal, & Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., are distinguishable to that of the present case.

20. The Appellant/Plaintiff has pleaded in para 2 of her plaint that she has derived the title from Mathura Prasad Dubey, who was owner of the property, by registered will deed and ownership of Mathura Prasad Dubey has been admitted by original Defendant Kartar Chand in previous suit bearing Civil Suit No. 21A/76. The Plaintiff has also served notice dated 18-6-80 (Ex.P-2) to original Defendant Kartar Chand that she is owner of the suit property on the basis of will deed which has not been denied by Kartar Chand. In para 3 of her plaint she has further pleaded that she is in need of suit accommodation for lodge business and she was not in possession of suitable alternate accommodation situated at Bilaspur to satisfy her need. By filing written statement, original Defendant Kartar Chand has made averment relating to different circumstances and has pleaded in para 2() of his written statement as under:

21. The trial Court has framed issues including issue No. 2 which reads as follows:

22. Both the parties have led oral and documentary evidence. In order to discharge her burden, the Plaintiff has examined herself as PW-1 and has deposed that her father-in-law Mathura Prasad Dubey has executed will of the suit property in her favour and after the death of Mathura Prasad Dubey she succeeded the property, she served notice to all tenants including the original Defendant vide Ex.P-2 and in compliance of such notice, original Defendant Kartar Chand has admitted her ownership and had continued to pay rent. During the lifetime of Mathura Prasad suit for eviction was filed against Kartar Chand which was decreed on the basis of compromise Ex.P-3 and judgment & decree were passed vide Exs-.P-4 & P-5. The Plaintiff has also deposed that she is owner of the suit property and her name was mutated in the assessment register of Municipal Corporation, Bilaspur vide Ex.P-1, she had issued notice for eviction vide Ex.P-6 to Defendant Kartar Chand which was replied on behalf of Kartar Chand vide Ex.P-9. Bhagwat Dubey (PW-2) - husband of the Plaintiff has substantially corroborated the evidence of the Plaintiff/Appellant. Definitely, both the witnesses have not stated anything relating to non-availability of alternate suitable accommodation in possession of the Plaintiff.

23. Defendant Kartar Chand has examined himself and witnesses Hakikat Rai Arora (DW-2) & Shree Kumar Agrawal (DW-3). Shree Kumar Agrawal (DW-3) has

only proved the factum of compromise between Mathura Prasad Dubey and Kartar Chand vide Ex.P-3 which has also been alleged by the Plaintiff in order to prove the title of her predecessor. Hakikat Rai Arora (DW-2) has not stated anything relating to ownership and availability of alternate suitable accommodation.

24. Kartar Chand (DW-1) has deposed in his evidence that originally he was tenant of Mahadev Prasad Tiwari, thereafter, Shivrani Bai became owner of the property and after the death of Shivrani Bai, Mathura Prasad became owner of the property. He has admitted the factum of compromise between him and Mathura Prasad Dubey. In para 4 of his evidence he has admitted that after the death of Mathura Prasad, the Appellant herein became owner of the suit accommodation. He has also deposed that he received notice Ex.P-2 and in compliance of said notice he paid rent to the Plaintiff. He has not stated anything relating to availability of alternate suit accommodation in possession of the Plaintiff. In his cross-examination he has stated that did not know as to whether the Plaintiff is having any other accommodation in Bilaspur city or not. In para 10 he has specifically admitted that the Plaintiff is owner of the suit accommodation. He has further deposed that he has never denied title of the Plaintiff.

25. In case of eviction u/s 12(1)(f) of the Act, burden to prove ownership was on the Plaintiff, but this is eviction suit in which tenant is not having any right other than the right to continue his tenancy or non-entitlement of the Plaintiff for evicting him and tenant cannot claim title over the suit property. Burden of proving title is not so heavy as required in a title suit. In the matter of Sheela³ (supra), the Supreme Court has observed in para 10 as follows:

...we may hasten to add, that the concept of ownership in a landlord-tenant litigation governed by Rent Control Law has to be distinguished from the one in a title suit. Ownership is a relative term the import whereof depends on the context in which it is used. In Rent Control Legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. In *M.M. Quasim Vs. Manohar Lal Sharma and others*, , it was held that an "owner-landlord" who can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own. In *Dilbagrai Punjabi Vs. Sharad Chandra*, , this Court held that it was essential to sustain a claim of eviction u/s 12(1)(f) of the Act to establish that the Plaintiff was the owner of the premises. However, the Court upheld the ownership of the landlord having been proved on the basis of an admission of the ownership of the Plaintiff made by the Defendant in reply to notice given before the institution of the suit and the recital of the name of the Plaintiff as the owner of the property contained in the receipts

issued by the landlord to the tenant over a period of time. Thus, the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the Plaintiff. Nevertheless pleading and proving ownership, in the sense as it carries in Rent Control Law, is one of the ingredients of the ground u/s 12(1)(f) of the Act.

26. While dealing with degree of proof of title in tenancy suit, the Supreme Court in the matter of Dilbagrai Punjabi Vs. Sharad Chandra, has observed that admission of ownership in reply to notice issued by the Plaintiff is sufficient to prove ownership of the Plaintiff over the suit property and in order to prove such fact the Court is required to consider entire evidence adduced on behalf of the parties, non-production of document of acquisition of title in case of admission made by tenant in reply to notice will not affect the admission of tenant made in reply to the notice.

27. While dealing with the question of proof of ownership in case of bona fide need of landlord though u/s 23-A(b) of the Act, the Supreme Court in the matter of Anar Devi 1994 JLJ 486 (supra) has held that landlord is not required to plead and prove the factum of ownership and tenant cannot deny the title of landlord who had derived title from the former landlord. In para 13 of the said judgment the Supreme Court has observed that:

... Ever since, the accepted position is that Section 116 of the Evidence Act applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attornment or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter's title, even when he is sought to be evicted by the latter on a permitted ground.

28. While dealing with the question of necessity of proving ownership in tenancy suit, the Supreme Court in the matter of Anar Devi 1994 JLJ 486 (supra) and the High Court of Madhya Pradesh in the matters of Zehra Bai 2000 (2) MPWN (142), Jagdamba Prasad 2002(1) MPWN (12) & Deen Dayal Ram 1983 MPLJ 350 (supra) have held that for proving title no need is necessary and tenant has no right to challenge the title of landlord.

29. While dealing with same question, the Supreme Court in the matter of Ambika Prasad AIR 1966 SC 605 (supra) has held that in case of title suit, title cannot pass by mere admission and the Plaintiff is required to prove acquisition of title by adducing necessary evidence. This is not a title suit in which the tenant has claimed any right other than the fact that he is tenant of landlord, as held in the matter of Sheela and Others Vs. Firm Prahlad Rai Prem Prakash, .

30. In the present case, the Plaintiff has examined herself and has deposed that she is owner of the suit property. She has proved the document of mutation of her ownership in municipal record as Ex.P-1; notice Ex.P-2 in which she has specifically mentioned that she became owner of the property which was not replied by Defendant Kartar Chand; and compromise petition, judgment & decree of previous suit Exs.P-3, P-4 & P-5, respectively, in which Mathura Prasad Dubey - predecessor of the Plaintiff was accepted as owner of the suit property by Defendant Kartar Chand. Defendant Kartar Chand has also specifically admitted the title of the Plaintiff in paras 4 & 10 of his evidence.

31. As discussed, in summary suit for eviction filed by landlord against his tenant and against tenant for landlords bona fide need, the landlord is not required to prove ownership or title like in title suit and admission of title of landlord by tenant in reply to notice, written statement, evidence, and evasive denial of aforesaid facts are sufficient for proving the title of landlord in tenancy suit for eviction.

32. In the present case, these evidence are sufficient to prove the fact that the Plaintiff is owner of the suit accommodation and no further proof is required for proving ownership of the suit accommodation in case of eviction suit.

33. The Plaintiff and her witness Bhagwat Dubey (PW-2), have not deposed anything in their evidence relating to availability of alternate sufficient accommodation.

34. Mr. R.P. Agrawal, learned Senior Advocate appearing on behalf of the Appellant, argued that the Appellant has made allegation in her notice and also in the plaint, same was not denied specifically by necessary implication by the original Defendant. In the circumstances, evasive denial becomes admission of the Defendant relating to the aforesaid facts and the Plaintiff is not required to adduce any evidence for further proof in the light of admission of the Defendant. In reply to the plaint allegation, the Defendant is required to make specific averment in his written statement and in case of denial of pleading, the Defendant requires to deny the pleading specifically. In absence of such specific denial same may be treated as evasive denial and in these circumstances, evasive denial shall be taken as admission of the allegation made in the plaint in terms of Rules 3, 4 & 5 of Order 8 of the Code which read thus,

3. Denial to be specific: It shall not be sufficient for a Defendant in his written statement to deny generally the grounds alleged by the Plaintiff, but the Defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive denial.: Where a Defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an

allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial.: (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the Defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the Defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to Sub-rule (1) or under Sub-rule (2), the Court shall have due regard to the fact whether the Defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

35. Per contra, Mr. Ravish Chand Agrawal, learned Senior Advocate appearing on behalf of the Respondents, opposed the arguments advanced on behalf of the Appellant and submitted that the Defendant has not admitted the aforesaid allegation made in the plaint, but has specifically denied the allegation made in the plaint. Even otherwise, specific issue No. 2 was framed by the trial Court which reveals that even after the alleged admission the Plaintiff was under obligation to prove the fact of availability of alternate suitable accommodation in accordance with proviso to Rule 5(1) of Order 8 of the Code and proviso to Section 58 of the Indian Evidence Act, 1872.

36. In para 3 of the written statement the Defendant has denied the allegation made in para 3 of the plaint relating to the aforesaid facts and has also denied by necessary implication that the Plaintiff is not in bona fide need of the suit property, but with a view to increase the rent the Plaintiff has filed the present suit. The Defendant has also alleged that the Plaintiff has not prepared any map for construction of lodge or further preparation for construction of lodge. Further, in para 7 of the written statement, the Defendant has denied all the adverse allegations made in the plaint.

37. As per Section 58 of the Indian Evidence Act, 1872, facts admitted are not required to be proved, but the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. Section 58 of the Indian Evidence Act, 1872 reads as follows:

58. Facts admitted need not be proved.: No fact need to be proved in any

proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

38. As per para 3 of the written statement, the Defendant has alleged that the allegation of para 3 of the plaint is denied. The Defendant has made other allegations relating to denial of bona fide need of the plaint for running lodge by detailed necessary implication. Further, the Defendant has made allegation that other allegations of para 3 of the plaint are denied specifically. Para 7 of the written statement further reveals that the Defendant has alleged that pleadings adverse to the Defendant, if not denied in the written statement, shall be treated as denied. As per para 3 of the plaint, the Plaintiff has pleaded bona fide need of the suit accommodation and non-availability of alternate accommodation. The Defendant has specifically denied the allegation relating to bona fide need, but the allegation relating to non-availability of alternate accommodation has not been denied by necessary implication. The Defendant has denied other allegations of para 3 of the plaint and also denied the other allegations not denied by the Defendant vide para 7 of the written statement.

39. As held by the High Court of Madhya Pradesh in the matter of Nilkanth Purushottam 1961 MPLJ 135 (supra), it is not necessary for the Defendant to reproduce the allegation made in the plaint, in his written statement for the purpose of denial, but the main allegation on which the suit is based must be expressly denied. It is further held that denial of allegation of the plaint by using words like "paragraph No. 5 is denied" is sufficient denial of the allegation made in the plaint and cannot be treated as admission.

40. While dealing with the question of need of specific denial of pleading, the Supreme Court in the matter of Raj Bahadur Sharma (Dead) Thr. L.RS. Vs. Union of India and Others, has held that facts or averments not specifically denied must be treated as acceptance on behalf of the parties. In this case, the Supreme Court has observed that factum of relieving order and necessary passes was not denied by the opposite party specifically and only allegation was made that there is no material on record to show that the pass etc. were not issued to the Petitioner. In these circumstances, absence of specific denial relating to relieving order must be treated as admission. Paras 10 & 11 of the said judgment read thus,

10. Learned Counsel appearing for the Appellant submitted that though it was brought to the notice of the Tribunal that the Appellant was not at fault in not joining at the transferred place, without giving any finding on that, the Tribunal has deprived the Appellant of the salary for the period in question. He also brought to our notice that there was a specific plea, namely, that the Appellant

could not join at the transferred place in the absence of relieving order and necessary passes. The Respondents never came forward to deny that assertion of the Appellant. In other words, while the Appellant was prepared to join the duty it was the administration which disabled the Appellant to join the duty and, therefore, the Appellant cannot be blamed.

11. Learned Counsel appearing for the Respondents could not deny the position and as a matter of fact, in the counter-affidavit filed instead of directly replying the point it is stated as follows:

That in reply to para 2(ix) it is submitted that there is no material on record to show that the pass etc. were not issued to the Petitioner.

There is no plea positively denying the averments of the Appellant in para 2(ix) in the appeal.

41. While dealing with same question in terms of Order 8 Rules 3, 4 & 5 proviso of the Code, the Supreme Court in the matter of Badat and Co. Vs. East India Trading Co., has held that proviso to Rule 5 can be invoked only in exceptional circumstances, evasive or vague denial of facts in written statement may be taken to have been admitted. Relevant portions of paras 11 & 13 of the said judgment are as follows:

(11) xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written-statement must deal specifically with each allegation of fact in the plaint and when a Defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary. The first paragraph of Rule 5 is a re-production of Order XIX, Rule 13, of the English rules made under the Judicature Acts. But in mofussil Courts in India, where pleadings were not precisely drawn, it was found in practice that if they were strictly construed in terms of the said provisions, grave injustice would be done to parties with genuine claims. To do justice between those parties, for which Courts are intended, the rigor of Rule 5 has been modified by the introduction of the proviso thereto. Under that proviso the Court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. In the matter of mofussil pleadings, Courts, presumably relying upon the said proviso, tolerated more laxity in the pleadings in the interest of justice. But on the Original Side of the Bombay High Court, we are told, the pleadings are drafted by trained lawyers bestowing serious thought and with precision. In construing such pleadings the proviso can be invoked only in exceptional

circumstances to prevent obvious injustice to a party or to relieve him from the results of an accidental slip or omission, but not to help a party who designedly made vague denials and thereafter sought to rely upon them for non-suiting the Plaintiff. The discretion under the proviso must be exercised by a Court having regard to the justice of a cause with particular reference to the nature of the parties, the standard of drafting obtaining in a locality, and the traditions and conventions of a Court wherein such pleadings are filed. In this context the decision in *Tildesley v. Harper* (1878) 7 Ch D 403 will be useful.

(13) xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

It will be seen from the said paragraphs that though the Defendants denied that at any time they entered into a contract with the Plaintiffs as alleged in the plaint or otherwise, they have not denied that the letters particularized in the plaint passed between the parties. Learned Solicitor General relied upon the expression "as alleged" in paragraphs 7 and 8 of the written statement and contended that the said words implied necessarily that the Defendants denied the passing of the correspondence. No such necessary implication can arise from the use of the said expression. That expression is consistent with the admission by the Defendants of the passing of the letters mentioned in paragraphs 2 and 3 of the plaint, coupled with a denial that such correspondence does not constitute a binding contract between them. Indeed, Rules 3 and 4 of Order VIII are aimed at such general allegations in written statements. Rule 3 demands that each allegation of fact made in the plaint must specifically be denied and Rule 4 emphasizes that such a denial shall be of the point of substance and shall not be vague. Here, in the plaint the contents of the letters dated September 7, 1948, September 13, 1948, March 8, 1949 and March 9, 1949 are given and it is specifically stated that they passed between the parties. Nowhere in the written statement there is a denial as regards the passing of the letters or the contents of those letters. The general and vague allegations in the written statement cannot possibly be construed, expressly or by necessary implication, as a denial of the specific allegations in the plaint in regard to the said correspondence.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

Therefore, there is no denial of this correspondence. Indeed there could not be, because before the Written Statement was filed inspection was given by the Plaintiffs of this correspondence and against the conscientious draftsman of the written statement could not possibly have controverted (sic) the statement that these letters passed between the parties. Therefore, in our opinion, these two letters of the 7th September. 1948 and 13th September, 1948 are admissible in

evidence, and we will formally admit them in evidence.

Then they proceeded to state:

Now, we read this denial to mean not a denial of the exchange of letters and telegrams, not a denial of the correctness of the copies of the documents of which the Defendants have taken inspection, but a submission in law that no contract emerges from the exchange of these letters and telegrams.

For the reasons already given by me, I entirely agree with the view expressed by the Division Bench on the interpretation of the pleadings and hold that the said letters have been rightly admitted in evidence. If the said letters can go in as evidence, the first condition, namely, the factum of submission has been proved in this case.

42. While dealing with same question, the Supreme Court in the matter of Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati, has held that if facts are not denied specifically then same shall be taken to be admitted. Para 23 of the said judgment reads thus,

(23) Section 58 of the Evidence Act inter alia provides that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which by any rule of pleading in force at the time they are deemed to have admitted by their pleading. Rule 5 of Order VIII, Code of Civil Procedure, provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the Defendant, shall be taken to be admitted except as against a person under disability.

43. In the matter of Pawan Kumar Vs. Hajarilal, , the High Court of Madhya Pradesh has held that only on the ground that the Plaintiff has not stated the word ""bona fide", his evidence by itself will not be sufficient to non-suit him.

44. In the present case, only on the ground that the Plaintiff has not stated about non-availability of alternate accommodation in the light of aforesaid admission of the Defendant, further her statement relating to document Ex.P-6, the notice, containing the aforesaid allegation and reply of the Defendant to the notice vide Ex.P-9 in which the Defendant has denied the aforesaid allegation, the Plaintiff cannot be non-suited only on the ground that she has not spoken the words relating to non-availability of suitable accommodation.

45. In the matter of Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar, the Supreme Court has held that the Defendant is required to deny or admit the plaint allegation by necessary implication. In this case, denial of notice of ejectment by the words "that the notice of ejectment as referred to in para 7 of the plaint is not according to law" was treated as implied admission of the party. As held by the Supreme Court in the matter of Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, , an admission is the best evidence that an opposing party can rely upon, and though

not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. In the matter of Indian Bank 1991 (2) JDD (Civil) 15 (Note) (supra), the High Court of Madhya Pradesh has held that the averments of notice not denied by the Defendant, thereafter further denial of facts in pleading and evidence be treated as after thought.

46. In the matter of Ram Singh and Others Vs. Ram Singh, the Supreme Court has held that the Defendant is required to deny the material fact by necessary implication and in absence of specific denial of the allegation same must be deemed to have admitted. Para 183 of the said judgment reads thus,

183. In the election petition it is alleged in relation to the incident at the Burthal Jat polling station that Anil Kumar and Satbir Singh are the relatives of the Respondent. There is no denial much less any specific denial of this allegation in the written statement of the Respondent though it is a material fact which ought to have been denied specifically if it was not admitted. Therefore, under Order 8 Rule 5 of the CPC which applies to proceedings in election petitions it must be deemed to have been admitted by the Respondent. Order 8 Rule 5 reads:

Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the Defendant, shall be taken to be admitted except as against a person under disability. Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

But during the trial R.W. 22 had repeatedly denied that Anil Kumar and Satbir Singh were in any way related to him though in a portion of his evidence he would say that Satbir Singh is the adopted son of Jagmal Singh, father of his wife who was divorced in 1962 and that he does not know if Anil Kumar is the brother of his brother-in-law, Surinder Kumar and he could not deny or admit that he is the brother of his brother-in-law, Surinder Kumar as Surinder Kumar has 6 or 7 brothers. He has stated that he does not know whether Anil Kumar and Satbir Singh are the two persons who were arrested in Burthal Jat village on 19.5.1982 for offences u/s 107 and 151 of the Code of Criminal Procedure and that he had not exhibited grave concern about Anil Kumar and Satbir Singh in the course of his conversation with P.W. 7 in the office of P.W. 10 at 7 or 7.30 p.m. on 19.5.1982 or told P.W. 7 that they were his relatives. But in his cross-examination in this Court he has admitted that Anil Kumar and Satbir Singh had been arrested by the police at the instance of P.W. 7 at the Burthal Jat polling station on 19.5.1982 and that he had referred to them as his relations only because P.W. 7 had not taken any steps in spite of his repeated representation in regard to the arrest of those two persons. It is not possible to accept the evidence of R.W. 22 that because no steps were taken by P.W. 7 on his repeated requests for the release of Anil Kumar and Satbir Singh he told P.W. 7 that they were his close relatives, for he had admitted in his evidence in this Court that he would have left no stone unturned if his partymen and workers were harassed even though they may not be his relatives. It appears from this portion of the

evidence of R.W. 22 that it would have been unnecessary for him to claim Anil Kumar and Satbir Singh to be his close relatives merely to prevent them from being harassed by the police after their arrest on 19.5.1982. He has stated in his evidence in this Court that because he was told by his workers that two of his relatives had been arrested and their identity was not clear to him when he had the conversation with P.W. 7 in the office of P.W. 10 on 19.5.1982 he referred to them in the course of his conversation as his relatives. He has also stated that it is only after P.W. 7 mentioned their names and identity that he knew that they were Anil Kumar and Satbir Singh and that they were not his relatives. In the subsequent portion of his evidence he has stated that he had never deposed in this Court that P.W. 7 mentioned the name of Anil Kumar to him. In another portion of his evidence in cross-examination in this Court he has admitted that the statement in that conversation that he told P.W. 7 that Anil Kumar and Satbir Singh were his relatives is correct. Thus, it is seen that R.W. 22 has given varying versions on the question whether Anil Kumar and Satbir Singh were his relatives or not though he has admittedly informed P.W. 7 in the course of his conversation with him in the office of P.W. 10 on 19.5.1982 that they were his close relatives. This also shows that the evidence of R.W. 22 is not reliable.

47. The Appellant herein has examined herself and has proved issuance of notice Ex.P-6, same has been admitted by the original Defendant and the original Defendant has also replied the notice vide Ex.P-9. Para 2 of the notice Ex.P-6 reveals that the Plaintiff is not in possession of suitable alternate accommodation, same was replied by the Defendant in para 2 of Ex.P-9 in which the Defendant has denied the allegation relating to bona fide need of the Plaintiff for starting lodge business. In Ex.P-9, the Defendant has not alleged anything relating to non-availability of alternate suit accommodation, even he has admitted in para 9 of his cross-examination that he did not know as to whether the Plaintiff is having any other accommodation for non-residential purpose or not. If the allegation made in the written statement relating to denial of aforesaid facts i.e. non-availability of alternate suitable accommodation is considered as per the written statement and para 9 of the evidence of original Defendant Kartar Chand and also in the light of his statement, then denial relating to non-availability of suitable accommodation by the Defendant may be treated that the Defendant has denied the aforesaid allegation as "not known" or "having no knowledge". This is not specific denial. Virtually this is evasive denial in the light of law propounded by the Supreme Court in the aforesaid cases and in the light of judgment of the Supreme Court in the matter of Nilkanth Purushottam 1961 MPLJ 135 (supra) which also reveals that the Defendant is required to deny expressly the main allegation on which the suit is based. This is the main allegation on which the suit is based.

48. As held by the Supreme Court in the matters of Ram Narain Arora Vs. Asha Rani and Others, and Raghunathi and another Vs. Raju Ramappa Shetty, , both the parties have understood their case and have placed material before the Court, they have adduced evidence and in these circumstances, discrepancy in

pleading or placing of burden of proof loses its consequence. As held by the Supreme Court in the above two referred judgments, non-discloser by landlord about his having another accommodation would not be fatal to the eviction proceeding.

49. As discussed above, on the basis of law propounded and the proved facts emerging from pleadings, documents and evidence, the Plaintiff/Appellant was under obligation to prove non-availability of alternate suit accommodation in Bilaspur city, only on the ground that she has not stated in her evidence relating to such nonavailability, the fact cannot be treated as not proved or disproved. Factum of non-availability of alternate accommodation, in the present case, was definitely the main allegation and essential component for decreeing the suit on the ground of bona fide need. Therefore, as held by the High Court of Madhya Pradesh in the matter of Nilkanth 1961 MPLJ 135 (supra), Defendant was under obligation to deny such main allegation expressly and in absence of express denial, same would be treated as admission. In the present case, the Defendant has not expressly denied the main allegation in his written statement or even in his reply to notice Ex.P-9, which has been admitted by both the parties and same is sufficient to prove the fact that the Appellant herein is not having any suitable alternate vacant accommodation in her possession.

50. As held in the matters of Tej Bhan Madan Vs. II Additional District Judge and Others, & Rajendra Kumar 2000 (1) MPLJ 44 (supra), definitely, the tenant was entitled to deny the title of his landlord without the tenant renouncing his character. In the present case, both the Courts below have not decreed the suit on the ground of non-disclaimer of title in terms of Section 12(1)(c) of the Act. Therefore, the facts of aforecited cases are distinguishable to that of the present case.

51. Parties have not argued on other points especially relating to provisions of Section 13(1) of the Act.

52. For the foregoing reasons, substantial question of law No. 1 is decided as negative and additional substantial question of law No. 1 is decided as positive. Substantial questions of law No. 2 (a) & 2 (b) are not answered in absence of any argument on behalf of the parties. Substantial question of law No. 3 is decided as positive.

53. In the present case, the documents referred to in I.A. Nos. 647/2007 & 5106/98 are not necessary for the disposal of this appeal. The Appellant has not succeeded in making out a case for allowing the applications. Therefore, I.A. Nos. 647/2007 & 5106/98 are dismissed.

54. On the basis of aforesaid finding on the substantial questions of law formulated for the decision of this appeal, the appeal deserves to be allowed and it is hereby allowed. Judgment & decree passed by the lower appellate Court is hereby set aside and the judgment & decree passed by the trial Court i.e. 4th Civil Judge Class-11. Bilaspur in Civil Suit No. 160A/90, dated 30-1-93 are

hereby restored.

55. Parties shall bear their own costs.

56. Advocate fees as per schedule.

57. Decree be drawn up accordingly.