KNOWLEDGE BANK™
Always stay curious

MCO LEGALS

10th March, 2020

DEFENSE OF ADVERSE POSSESSION TO EVICTION SUIT

1. Tribhuvanshankar v. Amrutlal, 13.11.2013, [(2014) 2 SCC 788], Relevant Paras 25-37

- Existence of landlord-tenant sine qua non for grant of eviction suit.
- The Court under Rent Control not empowered to go into the question of title.
- The eviction suit can be decreed only on the basis of the grounds given in the Rent Control Act.
- Possession stating that title belonged to the Plaintiff beyond the powers of Courts under Rent Control
- Recording on findings on title beyond the scope of the powers of the Courts
- The Proper Court for declaration of title and for Possession and/or adverse Possession is under the Civil Procedure Code, 1908

A copy of the judgment attached hereto at **page no. 2 to 20.**

2. Rajendra Tiwary v. Basudeo Prasad, 09.11.2001, [(2002) 1 SCC 90], Relevant Paras 7, 8, 14, 15, 16, 17

- Held Landlord-tenant very foundation of eviction suit
- If landlord- tenant relationship not established, the enquiry into title is beyond the scope of court under Rent Act
- Court under Rent Court has limited jurisdiction and cannot pass decree for eviction apart from the grounds under Rent Act
- However, the Plaintiff always entitled to file a suit for declaration and title under the CPC, 1908

A copy of the judgment attached hereto at **page no. 21 to 27.**

3. Bhagwati Prasad v. Chandramaul, 19.10.1965, [(1966) 2 SCR 286], Relevant Paras 13, 14, 15

- Eviction decree passed on the basis of the title
- Specific admission of the status of the tenant as well as the land belonging to the Landowner

- Admission of the title of the Landowner
- Pleadings to state all the pleas that are to be taken as a defence in eviction suit

A copy of the judgment attached hereto at **page no. 28 to 33.**

4. Biswanath Agarwalla v. Sabitri Bera, 04.08.2009, [(2009) 15 SCC 693], Relevant Paras 29, 30

- The Court took note of the concept of general title and the plausible plea of adverse possession and granted liberty to the plaintiff to amend the plaint seeking a decree for recovery of possession and pay the required court fee under the Court Fees Act, 1870.
- However, the suit was instituted under the Transfer of Property Act and not Rent Control Act.

A copy of the judgment attached hereto at **page no. 34 to 45.**

5. Ranbir Singh (Dr) v. Asharfi Lal, 21.09.1995, [(1995) 6 SCC 580], Relevant Paras 9, 11

- Question of title of Property can be examined incidentally but not germane and cannot be decided in eviction suit.
- The eviction suit to fail even if the title is proved but the privity of contract for tenancy is not established and thus to establish the relationship between parties, the title can be looked into only incidentally.

A copy of the judgment attached hereto at **page no. 46 to 55.**

(2014) 2 Supreme Court Cases 788

(BEFORE ANIL R. DAVE AND DIPAK MISRA, JJ.)

TRIBHUVANSHANKAR .. Appellant;

Versus

AMRUTLAL .. Respondent.

Civil Appeal No. 10316 of 2013†, decided on November 13, 2013

A. **Rent Control and Eviction — Eviction suit under Rent Control Act — Maintainability — Matters/Issues/Questions at large in such suit — Jurisdiction of Rent Controller/Court under Rent Control Act — Eviction decree — Existence of landlord-tenant relationship between parties sine qua non for grant of, where eviction suit is filed under Rent Control Act — Hence enquiry in such suit should be limited to existence of landlord-tenant relationship — If such relationship is found to be not existing, eviction suit is liable to be dismissed — Question of plaintiff's title based on his purchase of suit property or adverse possession thereof by defendant is beyond scope of enquiry in eviction suit under Rent Control Act — However, question of title can be considered incidentally, but only to ascertain bona fides of denial of plaintiff's title by defendant — Jurisdiction under Rent Control Act to try eviction suit is limited to grounds specified therein only, except where alternative remedy is permissible thereunder — Position is different where eviction suit is filed under Transfer of Property Act, in which case civil court can grant equitable relief under Or. 7 R. 7 CPC on basis of title of plaintiff even in absence of landlord-tenant relationship — On facts held, plaintiff having failed to establish landlord-tenant relationship, defendant not liable for eviction — However, trial court's finding that defendant had perfected his title by adverse possession was beyond its jurisdiction and High Court also erred in affirming trial court's judgment to that extent — Under these circumstances, plaintiff entitled to file fresh suit for recovery of possession — Civil Procedure Code, 1908 — Or. 7 R. 7 — Transfer of Property Act, 1882 — Ss. 111 and 105 — M.P. Accommodation Control Act, 1961 (41 of 1961) — Ss. 12(1)(a) & (e) — Equity — Equitable relief — Specific Relief Act, 1963, S. 5**

B. **Limitation Act, 1963 — S. 27 and Art. 65 — Acquisition of title by adverse possession — Jurisdiction to determine — Proper court is civil court in a properly constituted suit under CPC — Civil court/Rent Controller in eviction suit filed under Rent Control Act, held, cannot determine such question — Civil Procedure Code, 1908, S. 9**

C. **Limitation Act, 1963 — S. 27 and Art. 65 — Adverse possession — Period of limitation for perfecting title by adverse possession stops running with filing of suit for recovery of possession, even if such suit/action is filed in the wrong forum, as in the present case — Specific Relief Act, 1963 — S. 5 — Recovery of possession based on title — Proper forum is civil court in a properly constituted suit under CPC — Civil Procedure Code, 1908, S. 9**

† Arising out of SLP (C) No. 15927 of 2008. From the Judgment and Order dated 8-2-2008 of the High Court of Madhya Pradesh at Indore in SA No. 33 of 1995

D. **Limitation Act, 1963 — S. 27 and Art. 65 — Adverse possession — Concept — Principles reiterated — It must be actual, open, hostile, exclusive and continuous**

E. **Limitation — Limitation Acts — Fundamental policy thereunder**

The appellant-plaintiff instituted a suit in 1986 in the civil court for eviction of the respondent-defendant from the suit premises and for mesne profits under the M.P. Accommodation Control Act, 1961. The case of the plaintiff was that he had purchased the suit property vide a registered sale deed dated 1-4-1976 on payment of sale consideration of Rs 4500 to the vendor. The defendant was in possession of the property as a tenant under the earlier owner in terms of an oral tenancy. Despite the plaintiff having informed the defendant about the purchase of the property by him and despite assurance given by the defendant to pay the rent to him, the defendant defaulted which led to termination of the tenancy w.e.f. 31-1-1978.

In the written statement the defendant disputed the right, title and interest of the plaintiff, denied the landlord-tenant relationship between them and urged that the plaintiff had no right under the M.P. Accommodation Control Act to file the suit for eviction. It was set forth by the defendant that he was never a tenant under the previous owner, that the premises were in dilapidated condition and a banjar land, which was in his uninterrupted and peaceful possession for 18-19 years to the knowledge of the original owner and over which he had constructed a gumti and fixed a gate and commenced furniture business without any objection of the original owner. It was also set forth that when the original owner desired to sell the premises, he was put to notice about the ownership of the defendant but he sold the property without obtaining sale consideration with the sole intention to obtain possession by colluding with the appellant-plaintiff.

The trial court dismissed the suit on the basis of its findings that the sale deed executed by the original owner in favour of the appellant was without any sale consideration; that the relationship of landlord and tenant between the parties had not been established; and that the respondent had become the owner of the suit accommodation on the basis of adverse possession. The first appellate court, reappreciating the evidence on record and considering the submissions raised at the Bar, held that the appellant-plaintiff had not been able to prove the relationship of landlord and tenant; that the conclusion arrived at by the trial court that the sale deed due to absence of sale consideration was invalid, was neither justified nor correct; and that there being no clinching evidence to establish that the defendant had perfected his title by adverse possession the finding recorded by the trial Judge on that score was indefensible.

In the second appeal preferred by the defendant, the Single Judge of the High Court adverted to Sections 12(1)(*a*) and 12(1)(*e*) of the 1961 Act and came to hold that once the plaintiff had failed to establish the relationship of landlord and tenant which is the sine qua non in a suit for eviction, the plaintiff could not have fallen back on his title to seek eviction of the tenant. The Single Judge dislodged the judgment and decree passed by the lower appellate court and affirmed that of the trial court.

Allowing the appeal, the Supreme Court

Held :

There is a difference in exercise of jurisdiction when the civil court deals with a lis relating to eviction brought before it under the provisions of the

Transfer of Property Act, 1882 where the equitable relief under Order 7 Rule 7 could be granted and under any special enactment pertaining to eviction on specified grounds. The sine qua non for granting the relief in the suit for eviction under the Rent Control Act (M.P. Accommodation Control Act in this case), is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts is limited to the question: as to whether the grounds for eviction specified in the Rent Control Act have been made out under the Rent Control Act. A Court of Rent Controller cannot pass a decree for eviction on a ground other than the one specified in the Rent Control Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" under the Rent Control Act. However if alternative relief is permissible within the ambit of the Rent Control Act, the position would be different. It would depend upon the scheme of the Rent Control Act whether an alternative relief is permissible under the Rent Control Act. That apart, the court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. (Paras 25 to 31)

Rajendra Tiwary v. *Basudeo Prasad*, (2002) 1 SCC 90, *followed*

Ranbir Singh v. *Asharfi Lal*, (1995) 6 SCC 580; *LIC* v. *India Automobiles & Co.*, (1990) 4 SCC 286, *relied on*

Bhagwati Prasad v. *Chandramaul*, AIR 1966 SC 735; *Biswanath Agarwalla* v. *Sabitri Bera*, (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695, *distinguished*

Ponnia Pillai v. *Pannai*, AIR 1947 Mad 282; *Abdul Ghani* v. *Babni*, ILR (1903) 25 All 256; *Balmakund* v. *Dalu*, ILR (1903) 25 All 498; *Amulya Ratan Mukherjee* v. *Kali Pada Tah*, AIR 1975 Cal 200; *Firm Sriniwas Ram Kumar* v. *Mahabir Prasad*, AIR 1951 SC 177, *referred to*

Thus, a limited enquiry pertaining to the status of the parties i.e. relationship of landlord and tenant could have been undertaken in the eviction suit filed under the Rent Control Act by the appellant. However, once a finding was recorded that there was no relationship of landlord and tenant under the scheme of the Act, there was no necessity to enter into an enquiry with regard to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession. Similarly, when the Single Judge of the High Court, upheld the finding of the trial court that there was no relationship of landlord and tenant between the parties, there was no warrant to reappreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Rent Control Act. But, it has committed an illegality by affirming the judgment and decree passed by the trial Judge because by such affirmation the defendant becomes the owner of the premises by acquisition of title by prescription. When such an enquiry could not have been entered upon and no finding could have been recorded and, in fact, the High Court has correctly not dwelled upon it, the impugned judgment to that extent is vulnerable and accordingly, the said affirmation is set aside. (Para 31)

The conception of adverse possession fundamentally contemplates a hostile possession by which there is a denial of title of the true owner. By virtue of remaining in possession the possessor takes an adverse stance to the title of the true owner. In fact, he disputes the same. A mere possession or user or permissive possession does not remotely come near the spectrum of adverse

possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession. Adverse possession, as a right, does not come in aid solely on the base that the owner loses his right to reclaim the property because of his wilful neglect but also on account of the possessor's constant positive intent to remain in possession. (Paras 34 and 37)

Secy. of State for India in Council v. *Debendra Lal Khan*, (1933-34) 61 IA 78 : (1934) 39 LW 257 : AIR 1934 PC 23; *S.M. Karim* v. *Bibi Sakina*, AIR 1964 SC 1254; *Karnataka Board of Wakf* v. *Govt. of India*, (2004) 10 SCC 779; *P.T. Munichikkanna Reddy* v. *Revamma*, (2007) 6 SCC 59, *relied on*

Thus the judgment of the High Court is affirmed only to the extent that as the relationship of landlord and tenant was not established the defendant was not liable for eviction under the Act. The issue of right, title and interest is definitely open. The appellant is required to establish the same in a fresh suit as required under law and the defendant is entitled to resist the same by putting forth all his stand and stance including the plea of adverse possession. The fulcrum of the matter is whether the institution of the instant suit for eviction under the Rent Control Act would arrest running of time regard being had to the concept of adverse possession as well as the concept of limitation. (Para 33)

The Acts of Limitation fundamentally are principles relating to "repose" or of "peace". The fundamental policy behind limitation is that if a person does not pursue his remedy within the specified time-frame, the right to sue gets extinguished. In the present case the pivotal point is whether a good cause, because a litigant cannot deprive the benefit acquired by another in equity by his own inaction and negligence, as assumed by the plaintiff, has been lost forever as he has not been able to prove the relationship of landlord and tenant in a suit for eviction which includes delivery of possession. (Paras 38 and 39)

Babu Khan v. *Nazim Khan*, (2001) 5 SCC 375, *relied on*

Sultan Jehan Begum v. *Gul Mohd.*, AIR 1973 MP 72; *Sultan Khan* v. *State of M.P*, 1991 MPLJ 81, *held, approved*

Ragho Prasad v. *Pratap Narain Agarwal*, 1969 All LJ 975, *referred to*

Halsbury's Laws of England, 4th Edn., Vol. 28, Para 605, *relied on*

The appellant had filed the suit for eviction though under the Rent Control Act. The relief sought in the plaint was for delivery of possession. It was not a forum that lacked inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the plaintiff to act and to take back the possession. Under these circumstances, after the institution of the suit, the time for acquiring title by adverse possession has been arrested or remained in a state of suspension till the entire proceedings arising out of suit are terminated. If by the date of present suit the defendant had already perfected title by adverse possession that would stand on a different footing. (Para 44)

Accordingly, the appellant-plaintiff is permitted to institute a fresh suit for title and recovery of possession and such other reliefs as the law permits within a period of two months from the date of this judgment. (Para 45)

Amrutlal v. *Tribhuvan Shankar*, Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP), *partly affirmed* and *partly reversed*

R-D/52560/CV

Advocates who appeared in this case :

A.K. Chitale, Senior Advocate (Niraj Sharma and Sumit Kr. Sharma, Advocates) for the Appellant;

Puneet Jain, Christi Jain, Ms Chhaya, Asgar Ali and Ms Pratibha Jain, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695, *Biswanath Agarwalla* v. *Sabitri Bera* 797*e*, 797*e-f*, 798*b*, 798*d*, 799*b*, 801*g-h*
2. Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP), *Amrutlal* v. *Tribhuvan Shankar* **(partly reversed)** 792*f-g*, 794*g*
3. (2007) 6 SCC 59, *P.T. Munichikkanna Reddy* v. *Revamma* 804*d*
4. (2004) 10 SCC 779, *Karnataka Board of Wakf* v. *Govt. of India* 803*g*, 804*b*
5. (2002) 1 SCC 90, *Rajendra Tiwary* v. *Basudeo Prasad* 795*a*, 795*c*, 795*g*, 797*e*, 799*d*, 799*f*, 799*g*, 800*d*, 800*e-f*, 802*a-b*, 802*e-f*
6. (2001) 5 SCC 375, *Babu Khan* v. *Nazim Khan* 806*a-b*, 806*b*
7. (1995) 6 SCC 580, *Ranbir Singh* v. *Asharfi Lal* 801*a*, 801*a-b*, 801*c-d*
8. 1991 MPLJ 81, *Sultan Khan* v. *State of M.P.* 805*f*
9. (1990) 4 SCC 286, *LIC* v. *India Automobiles & Co.* 801*c-d*
10. AIR 1975 Cal 200, *Amulya Ratan Mukherjee* v. *Kali Pada Tah* 794*e*
11. AIR 1973 MP 72, *Sultan Jehan Begum* v. *Gul Mohd.* 805*a*
12. 1969 All LJ 975, *Ragho Prasad* v. *Pratap Narain Agarwal* 806*a-b*
13. AIR 1966 SC 735, *Bhagwati Prasad* v. *Chandramaul* 794*d-e*, 795*a*, 795*c*, 795*g*, 796*e*, 796*e-f*, 796*g-h*, 797*a-b*, 797*c*, 798*b*, 799*a-b*, 800*d*, 801*g-h*
14. AIR 1964 SC 1254, *S.M. Karim* v. *Bibi Sakina* 803*f*
15. AIR 1951 SC 177, *Firm Sriniwas Ram Kumar* v. *Mahabir Prasad* 800*d*
16. AIR 1947 Mad 282, *Ponnia Pillai* v. *Pannai* 794*d-e*
17. (1933-34) 61 IA 78 : (1934) 39 LW 257 : AIR 1934 PC 23, *Secy. of State for India in Council* v. *Debendra Lal Khan* 803*e-f*
18. ILR (1903) 25 All 498, *Balmakund* v. *Dalu* 797*b-c*
19. ILR (1903) 25 All 256, *Abdul Ghani* v. *Babni* 797*b*

The Judgment of the Court was delivered by

DIPAK MISRA, J.— Leave granted. This appeal, by special leave, is from the judgment and order of the High Court of Madhya Pradesh, Bench at Indore, in *Amrutlal* v. *Tribhuvan Shankar*[1] passed on 8-2-2008.

2. The appellant-plaintiff instituted Civil Suit No. 259A of 1986 in the Court of Civil Judge Class II, Mhow, District Indore, for eviction of the respondent-defendant from the suit premises and for mesne profits. The case of the appellant-plaintiff was that he had purchased the suit property vide registered sale deed dated 1-4-1976 on payment of sale consideration of Rs 4500 to the vendor, one Kishanlal. The respondent-defendant was in possession of the said suit property as a tenant under the earlier owner Kishorilal on payment of rent of Rs 15 per month. It was averred in the plaint that it was an oral tenancy and after acquiring the title the appellant informed

1 Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP)

the respondent about the sale by the earlier owner. Despite assurance given by the respondent to pay the rent to him, it was not honoured which compelled the appellant to send a notice on 14-12-1977 and, eventually, he terminated the tenancy with effect from 31-1-1978. The respondent, as pleaded, had replied to the notice stating, inter alia, that the appellant was neither the landlord nor the owner of the property. On the contrary, it was stated in the reply that the respondent was the owner of the premises.

3. The grounds that were urged while seeking eviction were:

(*i*) the defendant was in arrears of rent since 1-4-1976 and same was demanded vide notice dated 14-12-1977, which was received on 3-1-1978 and despite receiving the notice, the defendant defaulted by not paying the rent within two months;

(*ii*) that the said accommodation was bona fide required by the plaintiff for construction of his house and the accommodation is an open land;

(*iii*) the said accommodation was bona fide required by the plaintiff for general merchant shop i.e. non-residential purpose and for the said purpose the plaintiff did not have any alternative accommodation in his possession in Mhow City.

4. In the written statement, the defendant disputed the right, title and interest of the plaintiff, and denied the relationship of landlord and tenant. That apart, a further stand was taken that the appellant had no right under the M.P. Accommodation Control Act, 1961 (for brevity "the Act") to file the suit for eviction. It was set forth by the respondent-defendant that he was never a tenant under Kishorilal and, in fact, the accommodation was in a dilapidated condition and a *banjar* land and the respondent was in possession for 18 to 19 years and it was to the knowledge of Kishorilal and his elder brother. For the purpose of business he had constructed a *gumti*, got the gate fixed and when the business relating to sale of furniture commenced there was no objection from Kishorilal or his brother or any family member. The possession, as put forth by the respondent, was uninterrupted, peaceful and to the knowledge of Kishorilal who was the actual owner. It was also set forth that when Kishorilal desired to sell the premises, he was put to notice about the ownership of the defendant but he sold the property without obtaining sale consideration with the sole intention to obtain possession by colluding with the appellant-plaintiff. Alternatively, it was pleaded that the premises is situate in the Cantonment area and the Cantonment Board has the control over the land and neither Kishorilal nor the appellant had any title to the same.

5. The learned trial Judge framed as many as 26 issues. The relevant issues are, whether the suit accommodation was taken on rent by the defendant for running his wood business in the year 1973 from the earlier landlord Kishorilal; whether defendant is in continuous, unobstructed and peaceful possession since 18 years which was within the knowledge of Kishorilal, his elder brother and their family members; whether the defendant

had become owner of the suit accommodation by way of adverse possession; and whether the sale deed had been executed without any consideration for causing damage to the title of the defendant.

6. The learned trial Judge, on the basis of evidence brought on record, came to hold that the sale deed executed by Kishorilal in favour of the appellant was without any sale consideration; that the relationship of landlord and tenant between the parties had not been established; and that the respondent had become the owner of the suit accommodation on the basis of adverse possession. Being of this view, the trial court dismissed the suit.

7. Being dissatisfied with the aforesaid judgment and decree the plaintiff preferred Civil Regular Appeal No. 5 of 1994 and the lower appellate court, reappreciating the evidence on record and considering the submissions raised at the Bar, came to hold that the appellant-plaintiff had not been able to prove the relationship of landlord and tenant; that the conclusion arrived at by the learned trial Judge that the sale deed dated 1-4-1976 due to absence of sale consideration was invalid, was neither justified nor correct; and that there being no clinching evidence to establish that the defendant had perfected his title by adverse possession the finding recorded by the learned trial Judge on that score was indefensible. After so holding, the learned appellate Judge proceeded to hold that as the plaintiff had established his title and the defendant had miserably failed to substantiate his assertion as regards the claim of perfection of title by way of adverse possession, the plaintiff on the basis of his ownership was entitled to a decree for possession. To arrive at the said conclusion he placed reliance on *Ponnia Pillai* v. *Pannai*[2], *Bhagwati Prasad* v. *Chandramaul*[3] and *Amulya Ratan Mukherjee* v. *Kali Pada Tah*[4].

8. Facing failure before the appellate court the defendant preferred Second Appeal No. 33 of 1995 before the High Court. The appeal was admitted on the following substantial questions of law:

> "(*1*) Whether a decree could be passed in favour of the plaintiff though such plaintiff fails to establish the relationship of landlord and tenant?
>
> (*2*) Whether the first appellate court committed the error of law in pronouncing the judgment and decree on question of title? and
>
> (*3*) Whether the first appellate court has erred in law in holding that the possession of the defendant is not proved and that the defendant has not acquired the title by adverse possession?"

9. The learned Single Judge by the judgment dated 8-2-2008[1] adverted to Sections 12(1)(*a*) and 12(1)(*e*) of the Act and came to hold that once the plaintiff had failed to establish the relationship of landlord and tenant which is the sine qua non in a suit for eviction, the plaintiff could not have fallen back on his title to seek eviction of the tenant. Be it noted, the learned Single

2 AIR 1947 Mad 282
3 AIR 1966 SC 735
4 AIR 1975 Cal 200
1 *Amrutlal* v. *Tribhuvan Shankar*, Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP)

Judge placed reliance upon *Rajendra Tiwary* v. *Basudeo Prasad*[5] wherein the decision in *Bhagwati Prasad*[3] had been distinguished. The learned Single Judge dislodged the judgment and decree passed by the lower appellate court and affirmed that of the learned trial Judge.

10. We have heard Mr A.K. Chitale, learned Senior Counsel appearing for the appellant and Mr Puneet Jain, learned counsel appearing for the respondent.

11. Questioning the legal acceptableness of the decision of the High Court the learned Senior Counsel has raised the following contentions:

11.1. The learned Single Judge has erroneously opined that a suit cannot be decreed by the civil court for possession on the basis of general title even if the landlord-tenant relationship is not proved. A manifest error has been committed by the learned Judge in not following the law laid down in *Bhagwati Prasad*[3] which is applicable on all fours to the case at hand, solely on the ground that the said decision has been distinguished in *Rajendra Tiwary case*[5].

11.2. Though three substantial questions of law were framed, yet the learned Single Judge without considering all the questions affirmed the judgment of the trial court wherein it had come to hold that the defendant had established his title by adverse possession despite the same had already been annulled on reappreciation of evidence by the lower appellate court.

11.3. Assuming a conclusion is arrived at that there should have been a prayer for recovery of possession by paying the requisite court fee, the appellant, who has been fighting the litigation since decades should be allowed to amend the plaint and on payment of requisite court fee apposite relief should be granted.

12. Countering the aforesaid submissions, Mr Puneet Jain, learned counsel appearing for the respondent, has proponed thus:

12.1. The analysis made by the High Court that when the relationship between the landlord and tenant is not proven in a suit for eviction, possession cannot be delivered solely on the bedrock of right, title and interest cannot be found fault with. There is a difference between a suit for eviction based on landlord-tenant relationship and suit for possession based on title, and once the relationship of landlord and tenant is not proven there cannot be a decree for eviction.

12.2. The High Court has correctly distinguished the decision rendered in *Bhagwati Prasad*[3] in *Rajendra Tiwary*[5] as the law laid down in *Bhagwati Prasad*[3] is not applicable to the present case and hence, the submission raised on behalf of the appellant that once the right, title and interest is established, on the basis of general title, possession can be recovered is unacceptable.

12.3. The alternative submission that liberty should be granted to amend the plaint for inclusion of the relief for recovery of possession would convert

5 (2002) 1 SCC 90 : AIR 2002 SC 136

3 *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735

the suit from one for eviction simpliciter to another for right, title and interest and recovery of possession which is impermissible. That apart, when the suit was dismissed and the controversy travelled to the appellate court the plaintiff was aware of the whole situation but chose not to seek the alternative relief that was available which is presently barred by limitation. It is well settled in law that the Court should decline to allow the prayer to amend the plaint if a fresh suit based on the amended claim would be barred by limitation on the date of application.

13. At the very outset, we may straightaway proceed to state that the finding returned by the courts below that has been concurred with by the High Court to the effect that there is no relationship of landlord and tenant between the parties is absolutely impeccable and, in fact, the legality and propriety of the said finding has not been assailed by the learned Senior Counsel for the appellant. As far as right, title and interest is concerned, the learned trial Judge had not believed the sale deed executed by the vendor of the appellant-plaintiff in his favour for lack of consideration and also returned an affirmative finding that the defendant was in possession for long and hence, had acquired title by prescription. The learned appellate Judge on reappreciation of the evidence brought on record had unsettled the findings with regard to the title of the plaintiff as well as the acquisition of title by the defendant by way of adverse possession. He had granted relief to the plaintiff on the ground that in a suit for eviction when the title was proven and assertion of adverse possession was negatived by the court, there could be a direction for delivery of possession. As has been stated earlier the High Court has reversed the same by distinguishing the law laid down in *Bhagwati Prasad*[3] and restored the verdict of the learned trial Judge.

14. Keeping these broad facts in view, it is necessary to scrutinise whether the decision in *Bhagwati Prasad*[3] which has been assiduously commended to us by Mr Chitale, is applicable to the case.

15. In *Bhagwati Prasad*[3] the defendant was the appellant before this Court. The case of the plaintiff was that the defendant was in possession of the house as the tenant of the plaintiff. The defendant admitted that the land over which the house stood belonged to the plaintiff. He, however, pleaded that the house had been constructed by the defendant at his own cost and that too at the request of the plaintiff because the plaintiff had no funds to construct the building on his own. Having constructed the house at his own cost, the defendant entered into possession of the house on condition that the defendant would continue to occupy the same until the amount spent by him on the construction was repaid to him by the plaintiff.

16. In this backdrop, the defendant in *Bhagwati Prasad*[3] resisted the claim made by the plaintiff for ejectment as well as for rent. The learned trial Judge held that the suit was competent and came to the conclusion that the plaintiff was entitled to a decree for ejectment as well as for rent. The High Court agreed with the trial court in disbelieving the defendant's version about

3 *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735

the construction of the house and about the terms and conditions on which he had been let into possession. The High Court opined that the defendant must be deemed to have been in possession of the house as a licensee and accordingly opined that a decree for ejectment should be passed.

17. Dealing with various contentions raised before this Court in *Bhagwati Prasad*[3], it was ruled that the defendant could not have taken any other plea barring that of a licensee in view of the pleadings already put forth and the evidence already adduced. In that context, this Court opined that the High Court had correctly relied upon the earlier Full Bench decision in *Abdul Ghani* v. *Babni*[6] and *Balmakund* v. *Dalu*[7]. An opinion was expressed by this Court that once the finding was returned that the defendant was in possession as a licensee, there was no difficulty in affirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. In that context it was observed thus: (*Bhagwati Prasad case*[3], AIR p. 740, para 15)

> "*15.* ... In the present case, having regard to all the facts, we are unable to hold that the High Court erred in confirming the decree for ejectment passed by the trial court on the ground that the defendant was in possession of the suit premises as a licensee. In this case, the High Court was obviously impressed by the thought that once the defendant was shown to be in possession of the suit premises as a licensee, it would be futile to require the plaintiff to file another suit against the defendant for ejectment on that basis. We are not prepared to hold that in adopting this approach in the circumstances of this case, the High Court can be said to have gone wrong in law."

18. Before we proceed to state the ratio in *Rajendra Tiwary case*[5], we think it seemly to advert to the principle stated in *Biswanath Agarwalla* v. *Sabitri Bera*[8] as the same has been strongly relied upon by the learned Senior Counsel for the appellant.

19. In *Sabitri Bera*[8], the question that was posed was whether a civil court can pass a decree on the ground that the defendant is a trespasser in a simple suit for eviction. In the said case the learned Single Judge of the Calcutta High Court, considering the issues framed and the evidence laid, had held that although the plaintiffs had failed to prove the relationship of landlord and tenant by and between them and the defendant or that the defendant had been let into the tenanted premises on leave and licence basis, the respondent-plaintiffs were entitled to a decree for possession on the basis of their general title.

20. This Court took note of the relief prayed, namely, a decree for eviction of the defendant from the schedule premises and for grant of mesne

3 *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735
6 ILR (1903) 25 All 256
7 ILR (1903) 25 All 498
5 *Rajendra Tiwary* v. *Basudeo Prasad*, (2002) 1 SCC 90
8 (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695

profit in case the eviction is allowed at certain rates. The Court proceeded on the base that the plaintiff had proved his right, title and interest. The Court observed that the landlord in a given case, although may not be able to prove the relationship of landlord and tenant, yet in the event he proves the general title, may obtain a decree on the basis thereunder. But regard being had to the nature of the case the Court observed that the defendant was entitled to raise a contention that he had acquired indefeasible title by adverse possession. The Court referred to the decision in *Bhagwati Prasad*[3] and, eventually, came to hold as follows: (*Sabitri Bera case*[8], SCC p. 703, para 27)

> "*27.* The question as to whether the defendant acquired title by adverse possession was a plausible plea. He, in fact, raised the same before the appellate court. Submission before the first appellate court by the defendant that he had acquired title by adverse possession was merely argumentative in nature as neither there was a pleading nor there was an issue. The learned trial court had no occasion to go into the said question. We, therefore, are of the opinion that in a case of this nature an issue was required to be framed."

21. Thereafter, the two-Judge Bench issued the following directions: (*Sabitri Bera case*[8], SCC p. 704, para 29)

> "*29.* However, we are of the opinion that keeping in view the peculiar facts and circumstances of this case and as the plaintiffs have filed the suit as far back as in the year 1990, the interest of justice would be subserved if we in exercise of our jurisdiction under Article 142 of the Constitution of India issue the following directions with a view to do complete justice to the parties:
>
> (*i*) The plaintiffs may file an application for grant of leave to amend their plaint so as to enable them to pray for a decree for eviction of the defendant on the ground that he is a trespasser.
>
> (*ii*) For the aforementioned purpose, he shall pay the requisite court fee in terms of the provisions of the Court Fees Act, 1870.
>
> (*iii*) Such an application for grant of leave to amend the plaint as also the requisite amount of court fees should be tendered within four weeks from date.
>
> (*iv*) The appellant-defendant would, in such an event, be entitled to file his additional written statement.
>
> (*v*) The learned trial Judge shall frame an appropriate issue and the parties would be entitled to adduce any other or further evidence on such issue.
>
> (*vi*) All the evidences brought on record by the parties shall, however, be considered by the court for the purposes of disposal of the suit.
>
> (*vii*) The learned trial Judge is directed to dispose of the suit as expeditiously as possible and preferably within three months from

3 *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735

8 *Biswanath Agarwalla* v. *Sabitri Bera*, (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695

the date of filing of the application by the plaintiffs in terms of the aforementioned Direction (*i*)."

22. At this stage it is necessary to dwell upon the facet of applicability of the said authorities to the lis of the present nature. As per the exposition of facts, the analysis made and the principles laid down in both the cases, we notice that the civil action was initiated under the provisions of the Transfer of Property Act, 1882. In *Bhagwati Prasad case*[3] the Court opined that a decree for ejectment could be passed on general title as the defendant was a licensee. In *Sabitri Bera case*[8] the Court took note of the concept of general title and the plausible plea of adverse possession and granted liberty to the plaintiff to amend the plaint seeking a decree for recovery of possession and pay the required court fee under the Court Fees Act, 1870. That apart, certain other directions were issued. We may repeat at the cost of repetition that the suits were instituted under the Transfer of Property Act. The effect of the same and its impact on difference of jurisdiction on a civil court in exercising power under the Transfer of Property Act and under special enactments relating to eviction and other proceedings instituted between the landlord and tenant, we shall advert to the said aspects slightly at a later stage.

23. Presently, we shall analyse the principles stated in *Rajendra Tiwary*[5]. In the said case the respondent-plaintiff had filed a suit for eviction under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 on many a ground. The learned trial Judge, appreciating the evidence on record, dismissed the suit for eviction holding that there was no relationship of landlord and tenant between the plaintiff and the defendant. However, he had returned a finding that the plaintiff had title to the suit premises. The appellate court affirmed the judgment of the learned trial Judge and dismissed the appeal. In second appeal the High Court reversed the decisions of the courts below and allowed the appeal taking the view that a decree for eviction could be passed against the defendant on the basis of the title of the plaintiff and, accordingly, remanded the case to the first appellate court on the ground that it had not recorded any finding on the question of the title of the parties.

24. It was contended before this Court in *Rajendra Tiwary*[5] that as the trial court was exercising limited jurisdiction under the Rent Act, the question of title to the suit premises could not be decided inasmuch as that had to be done by a civil court in its ordinary jurisdiction and, therefore, the High Court erred in law in remanding the case to the first appellate court for deciding the question of title of the plaintiff and passing an equitable decree for eviction of the defendant.

25. The Court in *Rajendra Tiwary case*[5] posed a question whether on the facts and in the circumstances of the case the High Court was right in law holding that an equitable decree for eviction of the defendant could be passed under Order 7 Rule 7 of the Civil Procedure Code and remanding the case to

3 *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735
8 *Biswanath Agarwalla* v. *Sabitri Bera*, (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695
5 *Rajendra Tiwary* v. *Basudeo Prasad*, (2002) 1 SCC 90

the first appellate court for recording its finding on the question of title of the parties to the suit premises and for passing an equitable decree for eviction against the defendant if the plaintiffs were found to have title thereto. Answering the question the learned Judges proceeded to state thus: (SCC p. 94, para 7)

> "*7.* It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (*c*) and (*d*) of sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of 'landlord and tenant' should exist. The scope of the enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms 'landlord' and 'tenant' in clauses (*f*) and (*h*), respectively, of Section 2 of the Act."

26. In course of deliberation, the two-Judge Bench distinguished the authorities in *Firm Sriniwas Ram Kumar* v. *Mahabir Prasad*[9] and *Bhagwati Prasad*[3] by observing thus: (*Rajendra Tiwary case*[5], SCC p. 96, para 15)

> "*15.* These are cases where the courts which tried the suits were ordinary civil courts having jurisdiction to grant alternative relief and pass decree under Order 7 Rule 7. *A Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is permissible within the ambit of the Act, the position would be different.*" (emphasis supplied)

27. Thereafter, the learned Judges proceeded to express thus: (*Rajendra Tiwary case*[5], SCC p. 96, para 16)

> "*16.* In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. *In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable.* Further, as pointed out above, in such a case the provisions of Order 7 Rule 7 are not attracted."
>
> (emphasis supplied)

9 AIR 1951 SC 177

3 *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735

5 *Rajendra Tiwary* v. *Basudeo Prasad*, (2002) 1 SCC 90

28. At this juncture, we may fruitfully refer to the principles stated in *Ranbir Singh* v. *Asharfi Lal*[10]. In the said case the Court was dealing with the case instituted by the landlord under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had set aside the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. While adverting to the issue of title the Court in *Ranbir Singh*[10] ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

29. In the said case the learned Judges referred to the authority in *LIC* v. *India Automobiles & Co.*[11] wherein the Court had observed that: (*Ranbir Singh case*[10], SCC pp. 585-86, para 9)

> "*9.* ... in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case."

30. On a seemly analysis of the principle stated in the aforesaid authorities, it is quite vivid that there is a difference in exercise of jurisdiction when the civil court deals with a lis relating to eviction brought before it under the provisions of the Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. Needless to say, this Court has cautiously added that if alternative relief is permissible within the ambit of the Act, the position would be different. That apart, the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. We respectfully concur with the aforesaid view and we have no hesitation in holding that the dictum laid down in *Bhagwati Prasad*[3] and *Biswanath Agarwalla*[8] are distinguishable, for in the said cases

10 (1995) 6 SCC 580
11 (1990) 4 SCC 286
3 *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735
8 *Biswanath Agarwalla* v. *Sabitri Bera*, (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695

the suits were filed under the Transfer of Property Act where the equitable relief under Order 7 Rule 7 could be granted.

31. At this juncture, we are obliged to state that it would depend upon the scheme of the Act whether an alternative relief is permissible under the Act. In *Rajendra Tiwary case*[5] the learned Judges, taking into consideration the width of the definition of the "landlord" and "tenant" under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, had expressed the opinion. The dictionary clause under the Act, with which we are concerned herein, uses similar expression. Thus, a limited enquiry pertaining to the status of the parties i.e. relationship of landlord and tenant could have been undertaken. Once a finding was recorded that there was no relationship of landlord and tenant under the scheme of the Act, there was no necessity to enter into an enquiry with regard to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession. Similarly, the learned appellate Judge while upholding the finding of the learned trial Judge that there was no relationship of landlord and tenant between the parties, there was no warrant to reappreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Act. But, it has committed an illegality by affirming the judgment and decree passed by the learned trial Judge because by such affirmation the defendant becomes the owner of the premises by acquisition of title by prescription. When such an enquiry could not have been entered upon and no finding could have been recorded and, in fact, the High Court has correctly not dwelled upon it, the impugned judgment to that extent is vulnerable and accordingly we set aside the said affirmation.

32. Presently, we shall proceed to address ourselves, which is necessary, as to what directions we should issue and with what observations/clarifications. In *Rajendra Tiwary*[5], the two-Judge Bench had observed that the decision rendered by this Court did not preclude the plaintiff from filing the suit for enquiry of title and for recovery of possession of the suit premises against the defendant. In the said case a suit for specific performance of contract filed against the defendant was pending. The Court had directed that the suit to be filed by the plaintiff for which three months' time was granted should be heard together with the suit already instituted by the defendant. In the present case, the suit was instituted on the basis of purchase. A plea was advanced that the defendant had already perfected his title by prescription as he was in possession for 18 to 19 years. The trial court had accepted the plea and the appellate court had reversed it. The High Court had allowed the second appeal holding that when the relationship of landlord and tenant was not established, a decree for eviction could not be passed. We have already opined that the High Court could not have affirmed the judgment and decree passed by the trial court as it had already decided the issue of adverse possession in favour of the defendant, though it had neither jurisdiction to enquire into the title nor that of perfection of title by way of adverse

5 *Rajendra Tiwary* v. *Basudeo Prasad*, (2002) 1 SCC 90

possession as raised by the defendant. Under these circumstances we are disposed to think that the plaintiff is entitled under law to file a fresh suit for title and recovery of possession and such other reliefs as the law permits.

33. At this juncture, we think it apt to clarify the position, for if we leave at this when a fresh suit is filed the defendant would be in a position to advance a plea that the right of the plaintiff had been extinguished as he had not filed the suit for recovery of possession within the time allowed by law. It is evincible that the suit for eviction was instituted on 21-3-1978 and if the time is computed from that day the suit for which we have granted liberty would definitely be barred by limitation. Thus, grant of liberty by us would be absolutely futile. Hence, we think it imperative to state the legal position as to why we have granted liberty to the plaintiff. We may hasten to add that we have affirmed the judgment of the High Court only to the extent that as the relationship of landlord and tenant was not established the defendant was not liable for eviction under the Act. The issue of right, title and interest is definitely open. The appellant is required to establish the same in a fresh suit as required under law and the defendant is entitled to resist the same by putting forth all his stand and stance including the plea of adverse possession. The fulcrum of the matter is whether the institution of the instant suit for eviction under the Act would arrest running of time regard being had to the concept of adverse possession as well as the concept of limitation.

34. The conception of adverse possession fundamentally contemplates a hostile possession by which there is a denial of title of the true owner. By virtue of remaining in possession the possessor takes an adverse stance to the title of the true owner. In fact, he disputes the same. A mere possession or user or permissive possession does not remotely come near the spectrum of adverse possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession. It has been held in *Secy. of State for India in Council* v. *Debendra Lal Khan*[12] that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario.*

35. In *S.M. Karim* v. *Bibi Sakina*[13], it has been ruled that: (AIR p. 1256, para 5)

> "*5.* ... Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found."

36. In *Karnataka Board of Wakf* v. *Govt. of India*[14] it has been opined that: (SCC p. 785, para 11)

> "*11.* ... Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that

12 (1933-34) 61 IA 78 : (1934) 39 LW 257 : AIR 1934 PC 23
13 AIR 1964 SC 1254
14 (2004) 10 SCC 779

his possession is '*nec vi, nec clam, nec precario*', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."

Thereafter, the learned Judges observed thus: (*Karnataka Board of Wakf case*[14], SCC p. 785, para 11)

"*11.* ... Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (*a*) on what date he came into possession, (*b*) what was the nature of his possession, (*c*) whether the factum of possession was known to the other party, (*d*) how long his possession has continued, and (*e*) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

37. It is to be borne in mind that adverse possession, as a right, does not come in aid solely on the base that the owner loses his right to reclaim the property because of his wilful neglect but also on account of the possessor's constant positive intent to remain in possession. It has been held in *P.T. Munichikkanna Reddy* v. *Revamma*[15].

38. Regard being had to the aforesaid concept of adverse possession, it is necessary to understand the basic policy underlying the statutes of limitation. The Acts of Limitation fundamentally are principles relating to "repose" or of "peace". In *Halsbury's Laws of England*, 4th Edn., Vol. 28, Para 605 it has been stated thus:

"**605.** ***Policy of the Limitation Acts***.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely: (*1*) that long dormant claims have more of cruelty than justice in them, (*2*) that a defendant might have lost the evidence to disprove a stale claim, and (*3*) that persons with good causes of actions should pursue them with reasonable diligence."

These principles have been accepted by this Court keeping in view the statutory provisions of the Indian Limitation Act.

39. The fundamental policy behind limitation is that if a person does not pursue his remedy within the specified time-frame, the right to sue gets extinguished. In the present case the pivotal point is whether a good cause, because a litigant cannot deprive the benefit acquired by another in equity by his own inaction and negligence, as assumed by the plaintiff, has been lost forever as he has not been able to prove the relationship of landlord and tenant in a suit for eviction which includes delivery of possession.

40. Keeping in view the aforesaid principles it is required to be scrutinised whether the time spent in adjudication of the present suit and the appeal arrests the running of time for the purpose of adverse possession.

14 *Karnataka Board of Wakf* v. *Govt. of India*, (2004) 10 SCC 779
15 (2007) 6 SCC 59

41. In this regard, we may profitably refer to the decision in *Sultan Jehan Begum* v. *Gul Mohd.*[16] wherein following principles have been culled out: (AIR p. 74, para 12)

"(*1*) When a person entitled to possession does not bring a suit against the person in adverse possession within the time prescribed by law his right to possession is extinguished. From this it only follows that if the former brings a suit against the latter within the prescribed period of limitation his right will not be extinguished.

(*2*) If a decree for possession is passed in that suit in his favour he will be entitled to possession irrespective of the time spent in the suit and the execution and other proceedings.

(*3*) The very institution of the suit arrests the period of adverse possession of the defendant and when a decree for possession is passed against the defendant the plaintiff's right to be put in possession relates back to the date of the suit.

(*4*) Section 28 of the Limitation Act merely declares when the right of the person out of possession is extinguished. It is not correct to say that that section confers title on the person who has been in adverse possession for a certain period. There is no law which provides for 'conferral of title' as such on a person who has been in adverse possession for whatever length of time.

(*5*) When it is said that the person in adverse possession 'has perfected his title', it only means this. Since the person who had the right of possession but allowed his right to be extinguished by his inaction, he cannot obtain the possession from the person in adverse possession, and, as its necessary corollary the person who is in adverse possession will be entitled to hold his possession against the other not in possession, on the well-settled rule of law that possession of one person cannot be disturbed by any person except one who has a better title."

42. In *Sultan Khan* v. *State of M.P.*[17] a proceeding was initiated for eviction of the plaintiff under Section 248 of the M.P. Land Revenue Code, 1959. Facing eviction the plaintiff filed a suit for declaration of his right, title and interest on the bedrock of adverse possession. His claim was that he had been in uninterrupted possession for more than 30 years. Repelling the contention the learned Judge observed thus: (MPLJ p. 84, para 4)

"*4*. ... It must, therefore, be accepted that filing of the suit for recovery of possession, by itself, is sufficient to arrest the period of adverse possession and a decree for possession could be passed irrespective of the time taken in deciding the suit. If this principle is applied to the proceedings under Section 248 of the Code, it must be held that in case a person has not perfected his title by adverse possession before start of the proceedings, he cannot perfect his title during the

16 AIR 1973 MP 72
17 1991 MPLJ 81

pendency of the proceedings. Adverse possession of the person in possession must be deemed to have been arrested by initiation of these proceedings."

43. We have referred to the aforesaid pronouncements since they have been approved by this Court in *Babu Khan* v. *Nazim Khan*[18] wherein after referring to the aforesaid two decisions and the decision in *Ragho Prasad* v. *Pratap Narain Agarwal*[19], the two-Judge Bench ruled thus: (*Babu Khan case*[18], SCC p. 384, para 12)

> "*12.* ... The legal position that emerges out of the decisions extracted above is that once a suit for recovery of possession against the defendant who is in adverse possession is filed, the period of limitation for perfecting title by adverse possession comes to a grinding halt. We are in respectable agreement with the said statement of law. In the present case, as soon as the predecessor-in-interest of the applicant filed an application under Section 91 of the Act for restoration of possession of the land against the defendant in adverse possession, the defendant's adverse possession ceased to continue thereafter in view of the legal position that such adverse possession does not continue to run after filing of the suit. We are, therefore, of the view that the suit brought by the plaintiffs for recovery of possession of the land was not barred by limitation."

44. Coming to the case at hand the appellant had filed the suit for eviction. The relief sought in the plaint was for delivery of possession. It was not a forum that lacked inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the plaintiff to act and to take back the possession. Under these circumstances, after the institution of the suit, the time for acquiring title by adverse possession has been arrested or remained in a state of suspension till the entire proceedings arising out of suit are terminated. Be it ingeminated that if by the date of present suit the defendant had already perfected title by adverse possession that would stand on a different footing.

45. In view of the aforesaid analysis, we permit the appellant-plaintiff to institute a suit as stated in para 32 within a period of two months from today.

46. Resultantly, the appeal is allowed leaving the parties to bear their respective costs.

END OF THE VOLUME

18 (2001) 5 SCC 375 : AIR 2001 SC 1740
19 1969 All LJ 975

Parliament to legislate in respect of any matter not enumerated in List II or List III, that is, in the State and Concurrent Lists. The learned Attorney-General submitted that the payments empowered under the said Section 8-A were covered by the words "salaries and allowances" under Entry 73 and that, in any event, they were covered by the residuary Entry 97 of List I. He also submitted that Article 106 was an enabling provision and could not be read as imposing a bar upon the receipt of pensions by Members of Parliament.

7. The issue before us is squarely one of competence, namely, the competence of Parliament to enact the said Section 8-A. We need not go into Entry 73 of List I for we are in no doubt that such competence is conferred upon Parliament by the residuary Entry 97 of List I, and there is no provision in Article 106 or elsewhere that bars the payment of pension to Members of Parliament.

8. In our view, therefore, the writ petitions are devoid of merit and must be dismissed.

9. No order as to costs.

(2002) 1 Supreme Court Cases 90

(BEFORE SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.)

RAJENDRA TIWARY .. Appellant;

Versus

BASUDEO PRASAD AND ANOTHER .. Respondents.

Civil Appeal No. 3406 of 1998†, decided on November 9, 2001

A. **Rent Control and Eviction — Landlord and tenant relationship — Held, the existence of, is the very foundation of an eviction petition under a Rent Control statute — Therefore where such relationship is found not to be established, any further enquiry into the title of the parties is beyond the scope of a court exercising jurisdiction under such a statute — Further held, provisions of Or. 7 R. 7 CPC, providing for granting of lesser reliefs, than originally prayed for, on basis of facts as established, are not attracted to such a situation — Where sitting-tenant, defendant-appellant, claimed to have executed an agreement to purchase the disputed premises from the original owner, held on facts, High Court, in second appeal erred in holding that an equitable decree of eviction could be granted against him on the basis of the title of respondents, who had purchased the premises under registered sale deeds — Thus High Court erred in remanding the matter to the first appellate court because it had not recorded a finding on the question of title — Civil Procedure Code, 1908, Or. 7 R. 7**

B. **Rent Control and Eviction — Jurisdiction — Court of Rent Controller — Held, has limited jurisdiction to try suits specified in the Rent statute concerned — Therefore it cannot pass a decree for eviction on any ground other than the ones specified in the statute concerned**

The respondents claimed title to the suit property on the basis of three sale deeds executed in 1981 by the original owner, *K*. They filed a suit for eviction of

† From the Judgment and Order dated 9-9-1997 of the Patna High Court in SA No. 304 of 1990

the appellant on various grounds, including default in payment of rent and bona fide requirement under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The appellant-defendant denied taking the premises on rent from the respondents, claiming instead that he had rented them from *K* about thirty-three years earlier; he also contended that he had executed an agreement for purchase of the suit premises from *K*, on 14-9-1980; that since that date he had been in possession as owner. He filed a suit for specific performance of the agreement in 1983; the suit remained pending at the time of the present appeal before the Supreme Court.

The trial court dismissed the respondents suit for eviction, finding that there was no relationship of landlord and tenant between the parties; it found however that the respondents had the title to the premises and that their requirement was bona fide. The trial court's judgment was affirmed in appeal. The High Court, however, allowed the respondents second appeal, holding that an equitable decree of eviction could be passed against the defendant-appellant on the basis of the title of the plaintiff-respondents; the High Court remanded the case to the first appellate court as it had not recorded any finding on the question of title.

Before the Supreme Court it was contended by the appellant-defendant that a Rent Controller exercised limited jurisdiction, as defined by statute and could not go into the question of title; only a civil court exercising ordinary civil jurisdiction could settle disputes regarding title; that Order 7 Rule 7 CPC would not be applicable to a rent control case.

Allowing the appeal, the Supreme Court

Held :

While dealing with the suit of the plaintiff-respondents for eviction of the defendant from the suit premises under clauses (*c*) and (*d*) of sub-section (1) of Section 11 of the Bihar Rent Act, 1982 the courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The *sine qua non* for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts was limited to the question whether the grounds for eviction of the defendant had been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in clauses (*f*) and (*h*), respectively, of Section 2 of the Act. (Para 7)

Inasmuch as both the trial court as well as the first appellate court found that the relationship of "landlord and tenant" did not exist between the plaintiffs and the defendant, further enquiry into the title of the parties, having regard to the nature of the suit and jurisdiction of the court, was unwarranted. (Para 8)

Where the relief prayed for in the suit is a larger relief and if no case is made out for granting the same but the facts, as established, justify granting of a smaller relief Order 7 Rule 7 permits granting of such a relief to the parties. However, under the said provisions a relief larger than the one claimed by the plaintiff in the suit cannot be granted. (Para 14)

A Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is permissible within the ambit of the Act, the position would be different. (Para 15)

Firm Sriniwas Ram Kumar v. *Mahabir Prasad*, AIR 1951 SC 177; *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735, *distinguished*

In this case the reason for denial of the relief to the plaintiff-respondents by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, in such a case the provisions of Order 7 Rule 7 are not attracted. (Para 16)

However, it is made clear that this judgment does not preclude the plaintiffs from filing a suit for declaration of title and for recovery of the possession of the suit premises against the defendant. (Para 17)

A-M/24720/JL, Corr-61/C

Advocates who appeared in this case :
Akhilesh Kr. Pandey and Ashok Pandey, Advocates, for the Appellant;
Ms Asha Jain Madan, Mukesh Jain and Sushil Kr. Pathak, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. AIR 1966 SC 735, *Bhagwati Prasad* v. *Chandramaul* 95*c-d*
2. AIR 1951 SC 177, *Firm Sriniwas Ram Kumar* v. *Mahabir Prasad* 94*g-h*

The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J.— This appeal, by special leave, is from the judgment and order of the High Court of Judicature at Patna in Second Appeal No. 304 of 1990 passed on 9-9-1997.

2. The parties are referred to as they are arrayed in the trial court. The respondent-plaintiffs filed Title Suit No. 167 of 1982 (12 of 1985) for eviction of the appellant-defendant from Holding No. 1600 (new) (Old Holding No. 95) in Ward No. 1 having an area of 7 1/2 dhurs, Muhalla Waya Bazar, PS Siwan town PS No. 231, Siwan, Bihar (for short "the suit premises") on three grounds: (*1*) default of the defendant in payment of rent from 14-8-1981 under clause (*d*) of sub-section (1) of Section 11; (*2*) reasonable personal requirement in good faith for the sons of the plaintiffs under clause (*c*) of sub-section (1) of Section 11; and (*3*) damage to the suit premises under clause (*b*) of sub-section (1) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (for short "the Act"). The plaintiffs averred that they purchased the suit premises under three registered sale deeds of 17-3-1981, 9-4-1981 and 14-4-1981 from one Kedar Nath Sinha and immediately thereafter let them out to the defendant on monthly rent of Rs 300; the defendant did not pay the rent from the date of the commencement of the tenancy. The plaintiffs have six sons; three of them are major. The plaintiffs wanted to set up their children in business as they are unemployed; they, therefore, require the suit premises in good faith. The defendant contested the suit denying that he took the suit premises on rent from the plaintiffs. He stated that he had taken the suit premises on rent from the said Kedar Nath Sinha about 33 years back. He, however, alleged that he

entered into an agreement for purchase of the suit premises and a *mahadnama* (agreement for sale) was executed by the said Kedar Nath Sinha in his favour on 14-9-1980 and from that date he has been in possession as owner of the suit premises. The defendant also filed Title Suit No. 232 of 1983 in the Court of Sub-Judge, Siwan praying the court to grant specific performance of the said *mahadnama* dated 14-9-1980. The said suit is pending. He denied that the ground of personal requirement of the plaintiffs was either reasonable or bona fide.

3. On 30-4-1985 the trial court after appreciating the evidence on record dismissed the suit for eviction holding that there was no relationship of "landlord and tenant" between the plaintiffs and the defendant; it found that the plaintiffs had title to the suit premises; however, finding was recorded on the question of reasonable personal requirement in favour of the plaintiffs. Against the judgment of the trial court, the plaintiffs filed Title Appeal No. 96 of 1985 in the Court of Vth Additional District Judge, Siwan. On 26-5-1990 the appellate court affirmed the judgment of the trial court and dismissed the appeal. The plaintiffs then agitated their claim in Second Appeal No. 304 of 1990 before the High Court of Judicature at Patna. On 9-9-1997 the High Court allowed the appeal taking the view that an equitable decree of eviction could be passed against the defendant on the basis of the title of the plaintiffs and remanded the case to the first appellate court on the ground that it did not record any finding on the question of title of the parties. That judgment of the High Court is brought under challenge in this appeal by the defendant.

4. Mr P.S. Misra, the learned Senior Counsel appearing for defendant contended that provisions of Order VII Rule 7 of the Code of Civil Procedure would not be attracted to the suit as the court was exercising limited jurisdiction under the Act. Mr Misra argued that in a suit for eviction under the Act the question of title to the suit premises could not be decided and that had to be done by a civil court in its ordinary jurisdiction and, therefore, the High Court erred in law in remanding the case to the first appellate court for deciding the question of title of the plaintiffs and passing an equitable decree for eviction of the defendant.

5. Ms Asha Jain Madan, the learned counsel for the plaintiffs argued that admittedly the suit premises belonged to the said Kedar Nath Sinha and the plaintiffs purchased the same under three registered sale deeds from him; they had, therefore, prima facie title and as admittedly the said Kedar Nath Sinha had let out the same to the defendant, an equitable decree for his eviction ought to have been passed by the courts below. Inasmuch as the trial court on the basis of the sale deeds and statement of the vendor of the plaintiffs recorded the finding that the plaintiffs were the owner but the first appellate court did not go into that question, the High Court was right in directing the first appellate court to record a finding as to the title to the suit premises. Once the plaintiffs established their title to the suit premises, argued Ms Madan, even if the defendant was held not to be the tenant, an equitable decree could always be passed against the defendant for eviction from the suit premises.

6. On the above contentions the question that arises for consideration is: whether on the facts and the circumstances of the case the High Court is right in law in holding that an equitable decree for eviction of the defendant can be passed under Order VII Rule 7 CPC and remanding the case to the first appellate court for recording its finding on the question of title of the parties to the suit premises and for passing an equitable decree of eviction against the defendant if the plaintiffs were found to have title thereto.

7. It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (*c*) and (*d*) of sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The *sine qua non* for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in clauses (*f*) and (*h*), respectively, of Section 2 of the Act.

8. Inasmuch as both the trial court as well as the first appellate court found that the relationship of "landlord and tenant" did not exist between the plaintiffs and the defendant, further enquiry into the title of the parties, having regard to the nature of the suit and jurisdiction the court, was unwarranted.

9. As the High Court remanded the case to the first appellate court to decide the question of title of the parties and grant a decree under Order VII Rule 7, it will be necessary to quote the said provision here:

> "7. *Relief to be specifically stated.*—Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

10. A plain reading of Order VII Rule 7 makes it clear that it is primarily concerned with drafting of relief in a plaint. It is in three parts — the first part directs that the relief claimed by the plaintiff simply or in the alternative shall be stated specifically. It incorporates in the second part the well-settled principle that it shall not be necessary to ask for general or other relief which may always be given as the court may think just on the facts of the case to the same extent as if it has been asked for. The third part says that in regard to any relief claimed by the defendant in his written statement, the same rule shall apply.

11. In *Firm Sriniwas Ram Kumar* v. *Mahabir Prasad*[1] it is laid down by this Court: (AIR pp. 179-80, para 9)

> "Ordinarily, the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings & which the other side

1 AIR 1951 SC 177

was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter & no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit."

12. In that case the plaintiff filed the suit for specific performance of the contract for sale. He alleged that he paid part of the consideration under the contract to the defendant. The defendant denied the execution of the contract. However, he pleaded that he took money from the plaintiff as a loan. The plaintiff failed to prove the contract for sale though the plaintiff did not claim alternative relief for recovery of the amount paid under the contract. The Court passed a decree for recovery of the amount alleged to have been taken by the defendant as a loan under Order VII Rule 7.

13. In *Bhagwati Prasad* v. *Chandramaul*[2] the plaintiff laid the suit for ejectment of the defendant on the ground that he let out the building to the defendant on rent in different portions on completion of construction of each portion. The defendant pleaded that he constructed the house on the land which belonged to the plaintiff. The agreement between them was that he would remain in possession of the house until the amount spent by him in construction of the house would be repaid by the plaintiff. The agreement of tenancy pleaded by the plaintiff and the case set up by the defendant were disbelieved by the trial court; nonetheless the trial court held that there existed the relationship of landlord and tenant, fixed a reasonable rent and decreed the suit for ejectment of the defendant and also for recovery of the rent at the rate fixed by it. The High Court set aside the decree of the trial court with regard to the agreement of tenancy but confirmed the decree for ejectment of the defendant. On appeal to this Court on a certificate granted by the High Court, Gajendragadkar, C.J. speaking for a four-Judge Bench observed: (AIR p. 738, para 10)

"The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of

2 AIR 1966 SC 735

them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the court cannot do injustice to another."

14. Where the relief prayed for in the suit is a larger relief and if no case is made out for granting the same but the facts, as established, justify granting of a smaller relief Order VII Rule 7 permits granting of such a relief to the parties. However, under the said provisions a relief larger than the one claimed by the plaintiff in the suit cannot be granted.

15. These are cases where the courts which tried the suits were ordinary civil courts having jurisdiction to grant alternative relief and pass decree under Order VII Rule 7. A Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is permissible within the ambit of the Act, the position would be different.

16. In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order VII Rule 7 are not attracted. For these reasons the aforementioned cases are of no assistance to the plaintiff. In this view of the matter we cannot but hold that the High Court erred in remanding the case to the first appellate court for determination of the title of the parties to the suit premises and for granting the decree under Order VII Rule 7.

17. However, we make it clear that this judgment does not preclude the plaintiffs from filing a suit for declaration of title and for recovery of the possession of the suit premises against the defendant. If such a suit is filed within three months from today we direct that the same shall be tried along with suit filed by the defendant, Title Suit No. 232 of 1983, in the Court of Sub-Judge, Siwan (Ext. 11) for specific performance of the contract against the said Kedar Nath Sinha and the plaintiffs.

18. In the result the judgment of the High Court under challenge is set aside. The suit of the plaintiffs (respondents) is dismissed. The appeal of the defendant (appellant) is allowed accordingly but in the circumstances of the case without costs.

———

(1966) 2 SCR 286 : AIR 1966 SC 735

In the Supreme Court of India

(BEFORE P.B. GAJENDRAGADKAR, C.J. AND K.N. WANCHOO, M. HIDAYATULLAH AND V. RAMASWAMI, JJ.)

BHAGWATI PRASAD ... Appellant;

Versus

CHANDRAMAUL ... Respondent.

And

CHANDRAMAUL ... Appellant;

Versus

BHAGWATI PRASAD ... Respondent.

Civil Appeals Nos. 964 and 965 of 1964*, decided on October 19, 1965

Advocates who appeared in this case :

M.C. Setalvad, Senior Advocate (J.P. Goyal, Advocate, with him), for the Appellant (In CA No. 964 of 1964) and the Respondent (In CA No. 965 of 1964);

A. Ranganadham Chetty, Senior Advocate (E.C. Agrawala and P.C. Agrawala, Advocates, with him), for the Respondent (In CA No. 964 of 1964) and the Appellant (In CA No. 965 of 1964).

The Judgment of the Court was delivered by

P.B. GAJENDRAGADKAR, C.J.— These two cross appeals arise from a suit filed by Chandramaul (hereinafter called "the plaintiff") against Bhagwati Prasad (hereinafter called the defendant) in the Court of the Second Civil Judge, Kanpur. The plaintiff alleged that he was the owner of House No. 59/8, Nachghar, Birhana Road, Kanpur and that he had let out the said house to the defendant as his tenant. According to the plaint, the plaintiff and the defendant were friends and enjoyed mutual confidence. As the house was being constructed, the defendant wanted some premises for residence, and so, when the ground floor was constructed he was let in as a tenant by the plaintiff on a monthly rent of Rs 150 in 1947. In 1948, the first floor was completed and the defendant took that portion as well as a tenant on an additional rent of Rs 150 p.m. By 1950, another floor had been added and the defendant was given the said floor as well on a further additional rent of Rs 150 p.m. Thus, the defendant was in possession of the house as a tenant of the plaintiff on the condition that he was to pay Rs 450 p.m. as rent. The defendant continued to pay this rent and was not in arrears in that behalf as on 31st March, 1954. Thereafter, he failed to pay the rent, and so, the plaintiff terminated his tenancy and brought the present suit on 30th November, 1955 claiming ejectment against the defendant and a decree for Rs 8550 as arrears of rent from 1st April, 1954 to the end of October, 1955. Future mesne profits were also claimed.

2. The defendant admitted that the land over which the house stood belonged to the plaintiff. He, however, pleaded that the house had been constructed by the defendant at his own cost and that too at the request of the plaintiff, because the plaintiff had no funds to construct the building on his own. Having constructed the house at his own cost, the defendant went into possession of the house on condition that the defendant would continue to occupy the house until the amount spent by him on the construction was repaid to him by the plaintiff. According to the defendant, he had spent Rs 32,704-1-0 on the construction of the house. Basing himself on this agreement, the defendant resisted the claim made by the plaintiff for ejectment as

well as for rent.

3. On these pleadings, the learned trial Judge framed seven issues. He disbelieved the defendant's version in regard to the construction of the house and found that the agreement set up by him in that behalf on the basis that he spent the money on the construction of the house himself, had not been established. He also disbelieved the plaintiff's case about the agreement as to rent on which the plaintiff relied. According to the trial Judge, the defendant had admitted the ownership of the plaintiff, and having regard to the pleadings and the evidence adduced by the parties, he came to the conclusion that the relationship of landlord and tenant had been proved. Having made this specific basic finding, the learned trial Judge held that the suit was competent and came to the conclusion that the plaintiff was entitled to a decree for ejectment as well as for rent.

4. In regard to the amount of rent, however, the learned trial Judge did not accept the plaintiff's version and considered the question on the merits. He held that Rs 300 p.m. would be a reasonable rent for the premises in question. That is how he passed a decree for Rs 5700 in favour of the plaintiff as arrears of rent from 1st April, 1954 up to 31st October, 1955. The decree further directed the defendant to pay damages by way of use and occupation at the rate of Rs 300 p.m. till the date of ejectment.

5. Against this decree the defendant preferred an appeal before the Allahabad High Court. The High Court has agreed with the trial court in disbelieving the defendant's version about the construction of the house and about the terms and conditions on which he had been let into possession. The High Court was also not satisfied with the plaintiff's version about the tenancy between him and the defendant. Having regard to the fact that the defendant had virtually admitted the title of the plaintiff, the High Court held that the defendant must be deemed to have been in possession of the house as a licensee; and treating the plaintiff's claim for ejectment on the basis that the defendant was proved to be a licensee of the premises, the High Court has confirmed the decree for ejectment passed by the trial court.

6. It has, however, set aside the said decree insofar as it directed the defendant to pay past rent at the rate of Rs 300 p.m. The decision was the result of the fact that the High Court was not satisfied that the plaintiff had established any of the terms of the tenancy. In that connection, the High Court has referred to the fact that even if the plaintiff's case about the tenancy had been proved, such a tenancy would have been invalid because of the relevant statutory provisions then prevailing in the area. In December, 1946, the State Government of U.P. had issued an Ordinance controlling the letting of residential and non-residential accommodation. This Ordinance was later enacted as the U.P. (Temporary) Control of Rent and Eviction Act (3) of 1947. The material provisions of this Act as well as the previous Ordinance require that no premises could be let out by the landlord without the permission of the District Magistrate or other appropriate authorities mentioned in that behalf. Thus, the tenancy not having been proved, the High Court came to the conclusion that it would be inappropriate to allow any rent to the plaintiff at all. That is how while confirming the decree for ejectment passed by the trial court, the High Court rejected the plaintiffs case for rent or for mesne profits. It appears that his claim for future mesne profits was also not upheld.

7. Against this decree Civil Appeals Nos. 964 and 965 of 1964 have been filed in this Court by the plaintiff and the defendant respectively with a certificate granted to them by the High Court in that behalf. The defendant objects to the decree for ejectment, whereas the plaintiff objects to the rejection of his claim for the past rent and future mesne profits.

8. Mr Setalvad for the defendant contends that in confirming the trial court's decree for ejectment, the High Court has made a new case for the plaintiff, and that,

according to him, is not permissible in law. The plaintiff came to the Court with a clear and specific case of tenancy between him and the defendant and that case has been rejected by the High Court. As soon as the plaintiff's case of tenancy was rejected, his claim for ejectment should also have been negatived. In support of this argument Mr Setalvad has referred us to the decision of this Court in *Trojan & Co. Ltd.* v. *Rm. N.N. Nagappa Chettiar*[1]. In that case, this Court has observed that it is well-settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It is necessary to remember that these observations were made in regard to a claim made by the plaintiff for a certain sum of money on the ground that the defendant had sold certain shares belonging to him without his instructions, but he had failed to prove that the sale had not been authorised by him. The question which the Court had to consider in the case of *Trojan & Co.* was that in view of the plaintiff's failure to prove his case that the impugned sale was unauthorised, was it open to him to make a claim for the same amount on the ground of failure of consideration? And this Court held that such a claim which was new and inconsistent with the original case could not be upheld.

9. There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. The same principle was laid down by this Court in *Sheodhar Rai* v. *Suraj Prasad Singh*[2]. In that case, it was held that where the defendant in his written statement sets up a title to the disputed lands as the nearest reversioner, the Court cannot, on his failure to prove the said case, permit him to make out a new case which is not only not made in the written statement, but which is wholly inconsistent with the title set up by the defendant in the written statement. The new plea on which the defendant sought to rely in that case was that he was holding the suit property under a shikmi settlement from the nearest reversioner. It would be noticed that this new plea was in fact not made in the written statement, had not been included in any issue and, therefore, no evidence was or could have been led about it. In such a case clearly a party cannot be permitted to justify its claim on a ground which is entirely new and which is inconsistent with the ground made by it in its pleadings.

10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.

11. Therefore, in dealing with Mr Setalvad's argument, our enquiry should not be so

much about the form of the pleadings as their substance; we must find out whether the ground of licence on which the plaintiff's claim for ejectment has been confirmed by the High Court was in substance the subject-matter of the trial or not; did the defendant know that alternatively, the plaintiff would rely upon the plea of licence and has evidence been given about the said plea by both the parties or not? If the answers to these questions are in favour of the plaintiff, then the technical objection that the plaint did not specifically make out a case for licence, would not avail the defendant.

12. Turning then to the pleadings and evidence in this case, there can be little doubt that the defendant knew what he was specifically pleading. He had admitted the title of the plaintiff in regard to the plot and set up a case as to the manner in which he spent his own money in constructing the house. The plaintiff led evidence about the tenancy set up by him and the defendant led evidence about the agreement on which he relied. Both the pleas are clear and specific and the common basis of both the pleas was that the plaintiff was the owner and the defendant was in possession by his permission. In such a case the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession of it by the owner's licence. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's agreement also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and licence of the plaintiff. Once this conclusion was reached, the question as to whether any relief can be granted to the plaintiff or not was a mere matter of law, and in deciding this point in favour of the plaintiff, it cannot be said that any prejudice has been caused to the defendant.

13. When Mr Setalvad was pressing his point about the prejudice to the defendant and the impropriety of the course adopted by the High Court in confirming the decree for ejectment on the ground of licence, we asked him whether he could suggest to us any other possible plea which the defendant could have taken if a licence was expressly pleaded by the plaintiff in the alternative. The only answer which Mr Setalvad made was that in the absence of definite instructions, it would not be possible for him to suggest any such plea. In our opinion, having regard to the pleas taken by the defendant in his written statement in clear and unambiguous language, only two issues could arise between the parties: is the defendant the tenant of the plaintiff, or is he holding the property as the licensee subject to the terms specified by the written statement? In effect, the written statement pleaded licence, subject to the condition that the licensee was to remain in possession until the amount spent by him was returned by the plaintiff. This latter plea has been rejected, while the admission about the permissive character of the defendant's possession remains. That is how the High Court has looked at the matter and we are unable to see any error of law in the approach adopted by the High Court in dealing with it.

14. In support of its conclusion that in a case like the present a decree for ejectment can be passed in favour of the plaintiff, though the specific case of tenancy set up by him is not proved, the High Court has relied upon two of its earlier Full Bench decisions. In *Abdul Ghani* v. *Musammat Babni*[3] the Allahabad High Court took the view that in a case where the plaintiff asks for the ejectment of the defendant on the ground that the defendant is a tenant of the premises, a decree for ejectment can be passed even though tenancy is not proved, provided it is established that the possession of the defendant is that of a licensee. It is true that in that case, before giving effect to the finding that the defendant was a licensee, the High Court remanded the case, because it appeared to the High Court that that part of the case had not been clearly decided. But once the finding was returned that the defendant was in possession as a licensee, the High Court did not feel any difficulty in confirming

the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. To the same effect is the decision of the Allahabad High Court in the case of *Balmakund* v. *Dalu*[1].

15. It is hardly necessary to emphasise that in a matter of this kind, it is undesirable and inexpedient to lay down any general rule. The importance of the pleadings cannot, of course, be ignored, because it is the pleadings that lead to the framing of issues and a trial in every civil case has inevitably to be confined to the issues framed in the suit. The whole object of framing the issues would be defeated if parties are allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues. But cases may occur in which though a particular plea is not specifically included in the issues, parties might know that in substance, the said plea is being tried and might lead evidence about it. It is only in such a case where the Court is satisfied that the ground on which reliance is placed by one or the other of the parties, was in substance, at issue between them and that both of them have had opportunity to lead evidence about it at the trial that the formal requirement of pleadings can be relaxed. In the present case, having regard to all the facts, we are unable to hold that the High Court erred in confirming the decree for ejectment passed by the trial court on the ground that the defendant was in possession of the suit premises as a licensee. In this case, the High Court was obviously impressed by the thought that once the defendant was shown to be in possession of the suit premises as a licensee, it would be futile to require the plaintiff to file another suit against the defendant for ejectment on that basis. We are not prepared to hold that in adopting this approach in the circumstances of this case, the High Court can be said to have gone wrong in law.

16. The result is, the appeal preferred by the defendant fails and is dismissed.

17. That takes us to the appeal preferred by the plaintiff. This appeal is confined to the plaintiff's case for past rent and future mesne profits. As we have already indicated, the judgment of the High Court seems to suggest that the High Court set aside the trial court's decree for Rs 5700 as well as for the payment of future mesne profits. It is true that the judgment is somewhat ambiguous on this point, but the decree drawn is clear and it shows that the plaintiff's claim both for past rent and future mesne profits has been rejected by the High Court. The application for leave to appeal to this Court presented by the plaintiff in the High Court has expressly challenged the decree passed by the High Court both in regard to the past rent and the future mesne profits. In fact, the valuation of the appeal has been placed at over Rs 20,000 on that basis. So, there can be no doubt that the plaintiff's appeal is directed against the refusal of the High Court to grant past rent as well as future mesne profits.

18. In regard to the plaintiff's claim for past rent, we see no reason to interfere with the decree passed by the High Court. But we do not see how the High Court's decree in relation to future mesne profits can be sustained. Once it is held that the plaintiff is entitled to eject the defendant, it follows that from the date of the decree granting the relief of ejectment to the plaintiff, the defendant who remains in possession of the property despite the decree, must pay mesne profits or damages for use and occupation of the said property until it is delivered to the plaintiff. A decree for ejectment in such a case must be accompanied by a direction for payment of the future mesne profits or damages. Then as to the rate at which future mesne profits can be awarded to the plaintiff, we see no reason to differ from the view taken by the trial court that the reasonable amount in the present case would be Rs 300 per month.

19. In the result, the plaintiff's appeal is partly allowed and a decree is passed in his favour directing the defendant to pay to the plaintiff future mesne profits @ Rs 300 p.m. from the date of the trial court's decree i.e. 16th October, 1958, until the date of

delivery of possession of the property in suit to the plaintiff. In the circumstances of this case, we direct that parties should bear own costs in both the appeals.

———

* Appeals from the Judgments and Decrees dated 14th December, 1962 of the Allahabad High Court in First Appeal No. 564 of 1958

[1] (1953) SCR 789

[2] AIR (1954) SC 758

[3] 25 All 256

[4] 25 All 498

(2009) 15 Supreme Court Cases 693

(BEFORE S.B. SINHA AND DEEPAK VERMA, JJ.)

BISWANATH AGARWALLA .. Appellant;

Versus

SABITRI BERA AND OTHERS .. Respondents.

Civil Appeals No. 5085 of 2009† with No. 5086 of 2009‡,
decided on August 4, 2009

A. **Civil Procedure Code, 1908 — Or. 14 Rr. 1 & 5, Or. 6 R. 2 and Or. 7 R. 7 — Whether a decree on ground that defendant is a trespasser can be passed in a simple suit for eviction in absence of framing of any issue thereon — Issue whether defendant was a trespasser not framed — Held, when a defendant is a trespasser and is sued as such, plaintiff must file a suit having regard to the cause of action thereof — It was not a case where by non-framing of such an issue, defendant was not prejudiced — Had such an issue been framed he could have produced evidence to establish that he had the requisite *animus possidendi*, particularly in view of the fact that it was held by the courts below that he was not put in possession by the predecessor-in-interest of the plaintiffs in terms of an agreement for sale or otherwise — It was also possible for him to take plea of title by adverse possession since he was in possession of the suit premises for more than twelve years prior to institution of the suit — Hence, issue regarding thereto was also required to be framed — Impugned judgment of High Court affirming judgment of first appellate court granting decree of eviction against appellant-defendant, finding him to be a trespasser, held, unsustainable — Property Law — Trespasser — Eviction of — Pleading and particulars necessary — Specific Relief Act, 1963 — Ss. 5 & 6 — Practice and Procedure — Issues — Non-framing of issues — Effect**

(Paras 1, 8, 25 and 26)

The appellant-defendant was said to have entered into possession of suit premises in the year 1970 pursuant to or in furtherance of sale agreement entered into on or about 18-3-1970 by and between him and one *A*, father of *S*. The respondent-plaintiffs purchased suit premises from *S* on 21-7-1980 by three registered sale deeds. Respondent 1 filed a title suit in the Court of Munsif, inter alia, praying for eviction of appellant from suit premises and mesne profits claiming themselves to be owners and landlords thereof. He, prior to institution of suit had also served a notice upon the appellant in terms of Section 106, TP Act, 1882 asking him to hand over vacant and peaceful possession alleging that he had been a tenant under *S* on a monthly rent of Rs 45. The appellant, however, denied the relationship.

The trial court found that (*i*) respondent-plaintiffs had proved that they had purchased the suit property from admitted owner *A*; while the appellant-defendant had failed to prove his independent title; and (*ii*) respondent having failed to establish relationship of landlord and tenant, was not entitled to decree of eviction.

† Arising out of SLP (C) No. 10194 of 2007. From the Judgment and Order dated 17-8-2006 of the High Court of Calcutta in COA No. 253 of 2006 in RVW No. 2671 of 2004 in Second Appeal No. 675 of 1996

‡ Arising out of SLP (C) No. 15058 of 2007

The first appellate court despite finding that relationship of landlord and tenant had not been established held that respondent-plaintiffs were entitled to decree of possession on basis of their general title. The second appellate court held the defendant to be a trespasser and as such, upheld the decree of eviction as passed against him.

Review application filed thereagainst was dismissed. Hence, the instant appeals. Allowing the appeals, the Supreme Court held as above.

Dharam Singh v. *Karnail Singh*, (2008) 9 SCC 759; *Koppisetty Venkat Ratnam* v. *Pamarti Venkayamma*, (2009) 4 SCC 244; *Bhagwati Prasad* v. *Chandramaul*, AIR 1966 SC 735 : (1966) 2 SCR 286, *considered*

Abdul Qawi v. *Sabira Bibi*, AIR 1984 NOC 78 (All); *Shri Ram* v. *Kasturi Devi*, AIR 1984 All 66, *referred to*

Abdul Ghani v. *Babni*, ILR (1903) 25 All 256; *Balmakund* v. *Dalu*, ILR (1903) 25 All 498, *cited*

B. **Transfer of Property Act, 1882 — S. 106 — Notice — Service of — Implications — Held, simple tenancy can be terminated by service of notice under S. 106 — Further held, once a valid notice is served, the tenant becomes a trespasser — However, situation in almost all the States is quite different as they have enacted premises tenancy Acts/rent control legislation governing the conditions of tenancy in respect of house premises — State of West Bengal also has enacted W.B. Premises Tenancy Act, 1956 in terms whereof the tenant upon termination of tenancy does not become a trespasser but becomes a statutory tenant (loosely called) — Rent Control and Eviction — Termination of tenancy — Effect (Paras 23 and 24)**

Hajee Golam Hossain Ostagar v. *Sheik Abu Bakkar*, AIR 1936 Cal 351, *referred to*

C. **Rent Control and Eviction — Landlord-tenant relationship — Where such relationship not proved and landlord proves his general title, held, he may obtain a decree on basis thereof (Paras 17 and 18)**

Radha Devi v. *Ajay Kumar Sinha*, (1998) 2 BLJR 1061; *Deepak Kumar Verma* v. *Ram Swarup Singh*, (1992) 1 BLJR 102, *approved*

Champa Lal Sharma v. *Sunita Maitra*, (1990) 1 BLJR 268, *considered*

D. **Civil Procedure Code, 1908 — Or. 6 R. 7 and Or. 8 Rr. 2 and 6-A — Pleadings — Inconsistent pleas — Held, defendant may raise inconsistent pleas provided they are not mutually exclusive — Practice and Procedure — Written statement — Inconsistent pleas — Permissibility (Para 19)**

Gautam Sarup v. *Leela Jetly*, (2008) 7 SCC 85, *relied on*

Bhagwati Prasad v. *Chandramaul*, AIR 1966 SC 735 : (1966) 2 SCR 286, *considered*

E. **Court Fees Act, 1870 — Ss. 7(v) & (xi)(cc) and S. 4 — Court fees — Computation of — Held, for obtaining decree of recovery of possession, court fees are required to be paid according to subject-matter of suit — In the instant case, it was not clear what amount of court fee was paid — Presumably, court fee was paid for one year's rent calculated on basis of twelve months rent at rate of Rs 45 per month (Para 14)**

F. **Constitution of India — Art. 142 — Property dispute — Complete justice — In a simple suit for eviction, High Court by impugned judgment, in second appeal, affirming decree of eviction passed against appellant-defendant finding him to be a trespasser, though no issue pertaining thereto had been framed — Held, considering the facts and circumstances of the case, and the fact that suit had been filed in the year 1990 by the**

respondent-plaintiffs, directions issued in exercise of jurisdiction under Art. 142 with a view to do complete justice (Para 29)

P-M/43315/S

Advocates who appeared in this case :

V. Prabhakar, Ashok K. Sadhu Khan and Ms Revathy Raghavan, Advocates, for the Appellant;

R.K. Gupta, S.K. Gupta, Arun Yadav and Shekhar Kumar, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2009) 4 SCC 244, *Koppisetty Venkat Ratnam* v. *Pamarti Venkayamma* 704*b-c*
2. (2008) 9 SCC 759, *Dharam Singh* v. *Karnail Singh* 703*f-g*
3. (2008) 7 SCC 85, *Gautam Sarup* v. *Leela Jetly* 700*g-h*
4. (1998) 2 BLJR 1061, *Radha Devi* v. *Ajay Kumar Sinha* 700*b*
5. (1992) 1 BLJR 102, *Deepak Kumar Verma* v. *Ram Swarup Singh* 700*g*
6. (1990) 1 BLJR 268, *Champa Lal Sharma* v. *Sunita Maitra* 700*c-d*
7. AIR 1984 NOC 78 (All), *Abdul Qawi* v. *Sabira Bibi* 697*a*
8. AIR 1984 All 66, *Shri Ram* v. *Kasturi Devi* 697*a*, 702*c*
9. AIR 1966 SC 735 : (1966) 2 SCR 286, *Bhagwati Prasad* v. *Chandramaul* 701*b-c*, 702*b-c*, 702*g*
10. AIR 1936 Cal 351, *Hajee Golam Hossain Ostagar* v. *Sheik Abu Bakkar* 702*g-h*
11. ILR (1903) 25 All 498, *Balmakund* v. *Dalu* 702*b*, 702*g*
12. ILR (1903) 25 All 256, *Abdul Ghani* v. *Babni* 701*g*, 702*g*

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted. Whether a civil court can pass a decree on the ground that the defendant is a trespasser in a simple suit for eviction is the question involved in this appeal. It arises out of a judgment and order dated 17-8-2006 passed by a learned Single Judge of the Calcutta High Court in COA No. 253 of 2006 in RVW No. 2671 of 1996.

2. The suit premises is a shop situate in a small town commonly known as Raghunathpur in the district of Purulia. The appellant herein is said to have entered into possession of the suit premises in the year 1970. Originally, he claimed to have come into possession of the said premises pursuant to or in furtherance of an agreement for sale entered into on or about 18-3-1970 by and between him and S.K. Abdul Wahid Molla, the father of Safiqur Rahaman.

3. The respondents purchased the suit premises from Safiqur Rahaman on 21-7-1980 by three registered deeds of sale. Indisputably, Respondent 1 filed a suit being Title Suit No. 88 of 1990 in the Court of Munsif, Raghunathpur, District Purulia (West Bengal) inter alia praying for eviction of the appellant from the suit premises and mesne profit claiming themselves to be the owners and landlords thereof. He prior to institution of the suit also served a notice upon the appellant in terms of Section 106 of the Transfer of Property Act, 1882 asking him to handover peaceful and vacant possession alleging that he had been a tenant therein on a monthly rental of Rs 45 under his vendor Safiqur Rahaman. The appellant denied and disputed that he had

ever been a tenant of Safiqur Rahaman at any point of time. The relationship between them was, thus, denied and disputed.

4. The learned trial Judge having regard to the rival pleadings of the parties framed the following issues:

"(*1*) Have the plaintiffs any cause of action to bring this suit?

(*2*) Is the suit maintainable in its present form?

(*3*) Is the suit barred by law of limitation?

(*4*) Is the suit barred by provisions of the Specific Relief Act?

(*5*) Is the suit barred by the principle of waiver, estoppel and acquiescence?

(*6*) Have the plaintiffs landlord and tenant relationship with the defendant?

(*7*) Have the plaintiffs served valid notice under Section 106 of the Transfer of Property Act?

(*8*) Have the plaintiffs right, title and interest in the suit property?

(*9*) Are the plaintiffs entitled to get the decree as prayed for?

(*10*) To what other reliefs, if any, are the plaintiffs entitled?

5. The learned trial Judge opined:

(*i*) The plaintiffs have proved to be the owner of the suit property having purchased the same from the admitted owner S.K. Abdul Wahid Molla.

(*ii*) The defendant has failed to prove his independent title over the suit property.

(*iii*) The plaintiffs have failed to prove the relationship of landlord and tenant in between the plaintiffs and the defendant.

(*iv*) The plaintiffs having failed to prove the tenancy are not entitled to a decree.

6. Respondent 1 preferred an appeal thereagainst marked as Title Appeal No. 20 of 1993. By a judgment and order dated 31-5-1995, the learned appellate court held that although the plaintiffs have failed to prove the relationship of landlord and tenant by and between them and the defendant or that the defendant had been let into the tenanted premises on leave and licence basis, the respondent-plaintiffs are entitled to a decree for possession on the basis of their general title.

7. The learned first appellate court also rejected the appellant's contention that he has acquired title by adverse possession. It was held:

"It is needless to mention that the learned Munsif of the court below in the body of the judgment, at the time of discussion (p. 20 begins) Issues 6 and 8 on being satisfied by the plaintiffs chain of documents of their title over the suit premises and in such a position, the plaintiffs were entitled to get the decree for recovery of possession as the owner of the

suit premises and in this regard decision in *Abdul Qawi* v. *Sabira Bibi*[1] referred by the learned lawyer of the appellants and other decision in *Shri Ram* v. *Kasturi Devi*[2] completely on the flat point of the suit in favour of the plaintiffs and where it has been clearly stated that in a suit for eviction by the plaintiffs against the defendant under the relevant provision of the Transfer of Property Act where title of the plaintiffs over the suit property being proved and the relationship of landlord and tenant not proved, in spite of the same, the plaintiffs on proving the landlords title are entitled to get recovery of possession of the suit premises from the defendant as the owner thereof and what in fact, happened in the given facts and circumstances, out of which this appeal arose.

* * *

For the discussion made above and on the existing materials on the case record and when the plaintiffs proved their title and ownership over the suit premises by virtue of Ext. 4 series and on the other hand the defendant as per their written statement failed and neglected to discharge his onus of proving his right or permanency in the suit premises as tenant or otherwise, the plaintiffs suit must succeed and the findings of the learned Munsif in deciding Issues 6 and 8 particularly the contents of Issue 6 are not at all satisfactory and cannot be sustained in law in the given facts and circumstances of the case and as such the irresistible conclusion from the above discussion is that the judgment and decree so passed by the learned Munsif is not tenable in law and the plaintiffs are entitled to get the decree for eviction against the defendants. As a result, the appeal succeeds in part on contest."

8. By reason of the impugned judgment, the High Court dismissed the second appeal preferred by the appellant, opining:

"I am sorry to say that such submission on the part of the appellant cannot be accepted. A person can be in possessory right in various ways i.e. licensee/tenant/permissible possession holder/adverse possession holder/trespasser. But, the onus heavily lies with the tenant to prove in what capacity he is occupying the premises as the landlord is not in a position to claim any recovery of the possession as against him since there is no landlord and tenant relationship.

In the instant case, the scheduled land under the deed of gift and so-called agreement for sale are different. So far as the execution of the deed of gift is concerned, it has been sufficiently proved. So far as payment of rent is concerned, that has been stated in the cross-examination. The only failure is about the non-disclosure of the rent receipt. But, simply such statement will not develop the case of adverse possessory right of the tenant, which he has claimed now before the second appellate court. Therefore, when he is not claiming to be a tenant at best, he can claim to be a licensee of the premises in question

1 AIR 1984 NOC 78 (All)
2 AIR 1984 All 66

whereunder the title of the landlord has already been proved by virtue of the document. Therefore, such licensee is estopped from questioning the title of the landlord as per Section 116 of the Evidence Act, 1872.

Tenancy is not proved, therefore, he is not a tenant. He is not claiming to be the licensee although he could have, therefore, I cannot compel him to be licensee. The remaining, if any, is permissive occupation, which is as good as licence. However, it is well settled that the permissible occupation cannot be regarded as adverse possessory right. Adverse possession is not proved. Therefore, the remaining capacity, if any, is trespasser. It is far to say that a trespasser can challenge the title of the landlord. Under such situation the presumption, which has been drawn by the lower appellate court is an appropriate presumption on that score."

A review application filed thereagainst by the appellant has also been dismissed by the High Court. Both the aforementioned orders are in question before us.

9. Mr V. Prabhakar, learned counsel appearing on behalf of the appellant would contend:

(*i*) No substantial questions of law having been formulated by the High Court, a jurisdictional error has been committed by it in passing the impugned judgment.

(*ii*) The relationship of landlord and tenant and/or the licensor and licensee having not been proved, the High Court as also the first appellate court committed a serious error in passing the impugned judgment on the premise that the appellant was a trespasser.

10. Mr R.K. Gupta, learned counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment, contending:

(*i*) Even in a suit for eviction, the plaintiffs would be entitled to obtain a decree for possession relying on or on the basis of their title.

(*ii*) In a suit for eviction, it is for the defendant to show that he has a right to remain on the tenanted premises either as a permanent tenant or otherwise.

11. The plaintiffs served a notice on the defendant under Section 106 of the Transfer of Property Act. Such notice evidently was served on the premise that the appellant-defendant was their tenant. He denied and disputed the same.

12. The plaintiff in his plaint disclosed the cause of action for the suit having arisen on and from 1-10-1990 from which date the monthly tenancy had ceased to exist. The plaintiffs prayed for grant of mesne profits at the rate of Rs 3 for each day for wrongful occupation of the premise as after the termination of tenancy the defendant was to be treated as a trespasser. Para 10 of the plaint reads as under:

"*10.* That for the purpose of jurisdiction and court fee the value of this suit for prayer (A) is laid at Rs (sic). For eviction a tentative court fee of Rs 100 is paid for future mesne profits to a decree."

How much court fee was paid and on what basis has not been disclosed.

13. The reliefs prayed for by the plaintiffs are:

"(*a*) A decree for eviction of the defendant from the schedule premises, be passed against the defendants.

(*b*) A decree for mesne profits in case eviction is allowed, at the rate of Rs 3 per day from (sic) be passed against the defendants as scheduled in Schedules II and III below and for future mesne profits uptil delivery of possession of suit property at the rate the court is pleased to order for which tentative court fee is paid at present."

14. It is not clear what amount of court fee was paid. Presumably, the court fee was paid on one year's rent that is calculated on the basis of twelve months' rent at the rate of Rs 45 in terms of Section 7(*xi*)(*cc*) of the Court Fees Act, 1870. Section 4 of the Court Fees Act, 1870 reads as under:

"4. *Fees on documents filed, etc. in High Courts in their extraordinary jurisdiction.*—No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction.—or in the exercise of its jurisdiction as regards appeals from the judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one or more Judges of the said Court, or of a Division Court;

or in the exercise of its jurisdiction as regards appeals from the courts subject to its superintendence;

as courts of reference and revision.—or in the exercise of its jurisdiction as a court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document."

For obtaining a decree for recovery of possession, court fees are required to be paid in terms of Section 7(*v*) of the Court Fees Act, 1870 i.e. according to the value of the subject-matter of the suit.

15. We will have to proceed on the basis that whereas the plaintiff proved his title, the defendant could not. The learned trial Judge has held that the defendant could not prove the agreement of sale. The High Court formulated the following points in the form of questions which are as under:

"*6.* Have the plaintiffs landlord and tenant relationship with the defendant?

7. Have the plaintiffs served valid notice under Section 106 of the Transfer of Property Act?"

16. Was, in the aforementioned situation, a suit for recovery of possession maintainable is the question.

17. The landlord in a given case although may not be able to prove the relationship of landlord and tenant, but in the event he proves his general title, may obtain a decree on the basis thereof. But in a case of this nature, a defendant was entitled to raise a contention that he had acquired an indefeasible title by adverse possession. In *Radha Devi* v. *Ajay Kumar Sinha*[3] the Patna High Court accepted that a landlord is entitled to obtain a decree of eviction on the basis of his general title, though he could not prove the relationship of landlord and tenant. It was opined: (BLJR p. 1064, para 9)

> "*9.* ... In other words, where there is relationship of landlord and tenant, order of eviction be passed on the existence of any one of the grounds mentioned in Section 11 of the said Act. It is, therefore, clear that proof of relationship of landlord and tenant gives right to a landlord to get an order of eviction under the provisions of the aforesaid Act."

18. In *Champa Lal Sharma* v. *Sunita Maitra*[4] it was held: (BLJR pp. 273-74, paras 21-22 and 30)

> "*21.* ... It is also well settled that once such a relationship is admitted or established, a tenant would be estopped and precluded from challenging the title of the landlord and if he does so, under the general law, makes himself liable for eviction on that ground alone.
>
> *22.* It, therefore, logically follows that a finding of existence of relationship of landlord and tenant is a sine qua non for passing a decree for eviction against a tenant except in a case, as mentioned hereinbefore, the plaintiff on payment of ad valorem court fee may obtain a decree for eviction on the basis of his general title.
>
> * * *
>
> *30.* It is, therefore, evident that the court has to ultimately decide the question as to whether the plaintiff in case his title is in dispute, would be entitled to withdraw the rent so deposited by the tenant or not. It, therefore, makes the position, in my opinion, absolutely clear that before the said question is decided finally so as to enable the court to come to a decision whether the plaintiff landlord is entitled to a decree for eviction or not must come to the finding that there exists a relationship of landlord and tenant by and between the plaintiff and the defendant, if such an issue is raised. In absence of any such finding the court will have no jurisdiction to pass a decree of evidence as against the defendant in such a suit."

(See also *Deepak Kumar Verma* v. *Ram Swarup Singh*[5].)

19. A defendant as is well known may raise inconsistent pleas so long as they are not mutually destructive. In *Gautam Sarup* v. *Leela Jetly*[6] this Court held: (SCC p. 94, para 28)

3 (1998) 2 BLJR 1061
4 (1990) 1 BLJR 268
5 (1992) 1 BLJR 102
6 (2008) 7 SCC 85

"*28.* What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."

20. An issue as to whether the defendant was a trespasser or not, thus, was required to be framed.

21. Mr Gupta, however, would rely upon a decision of this Court in *Bhagwati Prasad* v. *Chandramaul*[7]. Gajendragadkar, C.J. therein was dealing with the rules of pleadings. It was opined that although the rules of pleadings should be adhered to; when parties go to the trial knowing fully well the points they are required to meet, the Court may not insist on the strict application thereof, stating: (AIR p. 739, paras 13-14)

"*13.* When Mr Setalvad was pressing his point about the prejudice to the defendant and the impropriety of the course adopted by the High Court in confirming the decree for ejectment on the ground of licence, *we asked him whether he could suggest to us any other possible plea which the defendant could have taken if a licence was expressly pleaded by the plaintiff in the alternative.* (emphasis supplied) The only answer which Mr Setalvad made was that in the absence of definite instructions, it would not be possible for him to suggest any such plea. In our opinion, having regard to the pleas taken by the defendant in his written statement in clear and unambiguous language, only two issues could arise between the parties: is the defendant the tenant of the plaintiff, or is he holding the property as the licensee subject to the terms specified by the written statement? In effect, the written statement pleaded licence, subject to the condition that the licensee was to remain in possession until the amount spent by him was returned by the plaintiff. This latter plea has been rejected, while the admission about the permissive character of the defendant's possession remains. That is how the High Court has looked at the matter and we are unable to see any error of law in the approach adopted by the High Court in dealing with it.

14. In support of its conclusion that in a case like the present a decree for ejectment can be passed in favour of the plaintiff, though the specific case of tenancy set up by him is not proved, the High Court has relied upon two of its earlier Full Bench decisions. In *Abdul Ghani* v. *Babni*[8] the Allahabad High Court took the view that in a case where the plaintiff asks for the ejectment of the defendant on the ground that the defendant is a tenant of the premises, a decree for ejectment can be passed even though tenancy is not proved, provided it is established that the possession of the defendant is that of a licensee. It is true that in that

7 AIR 1966 SC 735 : (1966) 2 SCR 286
8 ILR (1903) 25 All 256

case, before giving effect to the finding that the defendant was a licensee, the High Court remanded the case, because it appeared to the High Court that that part of the case had not been clearly decided. But once the finding was returned that the defendant was in possession as a licensee, the High Court did not feel any difficulty in confirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. To the same effect is the decision of the Allahabad High Court in *Balmakund* v. *Dalu*[9]."

22. The decision in *Bhagwati Prasad case*[7] itself is an authority for the proposition that it was necessary to bring on record some evidence that the defendant was a licensee and he could not have raised any other alternative plea. It was followed by a learned Single Judge of the Allahabad High Court in *Shri Ram* v. *Kasturi Devi*[2] stating: (AIR p. 72, para 15)

"*15.* Lastly, it was argued for the appellants that there is no relationship of landlord and tenant as between Smt Kastoori Devi on the one hand and Shri Ram or Satya Pal, on the other. The trial court was of the view that no such relationship has been made out. This finding was, however, reversed by the lower appellate court and not without cogent basis. Shri Ram admits that one Desh Rai was the tenant in this part of the house who vacated. Shri Ram thereafter came in the said portion of the house. In cross-examination, he admitted also that it was agreed between him and Smt Kastoori Devi what would be treated as the rent for the said portion. Further the case of the appellants is that on 20-1-1970, Shri Ram got this portion allotted in his name. All these are pointers in the direction that there was relationship of landlord and tenant and not that Shri Ram has been residing in that portion of the house as licensee of Smt Kastoori Devi. *This apart the suit for eviction brought by Smt Kastoori Devi against them does not fail even if it is assumed that there was no relationship of landlord or of tenant or that Shri Ram was in the position of a mere licensee. The licence has been determined by registered notice given by Smt Kastoori Devi already. In the plaint, Smt Kastoori Devi referred expressly to her title to the house by virtue of the will executed in her favour by the husband.* The law is settled that even if Shri Ram was the licensee, Smt Kastoori Devi can, on the basis of title claim eviction even though she has set up the case that there was the relationship of the landlord and tenant and assumed that the same is not established, vide *Bhagwati Prasad* v. *Chandramaul*[7], *Abdul Ghani* v. *Babni*[8], *Balmakund* v. *Dalu*[9]." (emphasis supplied)

23. Mr Gupta would further rely upon a decision of the Calcutta High Court in *Hajee Golam Hossain Ostagar* v. *Sheik Abu Bakkar*[10] to contend that the defendant in a suit for ejectment was bound to show that he had a right to remain on a land permanently wherefor the onus would be on him. That case related to an agricultural tenancy.

9 ILR (1903) 25 All 498
10 AIR 1936 Cal 351

24. A simple tenancy can be terminated by service of notice under Section 106 of the Transfer of Property Act. Once a valid notice is served, the tenant becomes trespasser. The situation, however, has undergone a sea change after almost all the States have enacted the premises tenancy Acts governing the conditions of tenancy in respect of house premises. The State of West Bengal has also enacted the West Bengal Premises Tenancy Act, 1956. In terms of the 1956 Act, the tenant upon termination of tenancy does not become a trespasser. He becomes a statutory tenant (loosely called).

25. When, however, a defendant is a trespasser and is sued as such, the situation would be totally different. The plaintiff must file a suit having regard to the cause of action thereof. The court, in a given case, (*sic can*) mould the relief having regard to the provisions of Order 7 Rule 7 of the Code of Civil Procedure, but the said provision cannot be applied in a situation of this nature.

26. We, therefore, are of the opinion that it is not a case where by non-framing of an issue as to whether the appellant-defendant was a trespasser or not, he was not prejudiced. Had such an issue been framed he could have brought on record evidence to establish that he had the requisite *animus possidendi*, particularly in view of the fact that it has been held by the courts below that he was not put in possession by the predecessor-in-interest of the plaintiffs in terms of an agreement for sale or otherwise. If he has not been able to prove the agreement, he could have taken the other plea i.e. he has acquired indefeasible title by adverse possession. He is said to have been in possession of the suit premises for more than twelve years prior to the institution of the suit.

27. The question as to whether the defendant acquired title by adverse possession was a plausible plea. He, in fact, raised the same before the appellate court. Submission before the first appellate court by the defendant that he had acquired title by adverse possession was merely argumentative in nature as neither there was a pleading nor there was an issue. The learned trial court had no occasion to go into the said question. We, therefore, are of the opinion that in a case of this nature an issue was required to be framed.

28. Furthermore, the High Court while determining the issues involved in the second appeal should have formulated questions of law. In *Dharam Singh* v. *Karnail Singh*[11] this Court held: (SCC pp. 761-62, paras 6, 9 and 15)

> "*6.* In response, learned counsel for the respondents submitted that on considering the memorandum of appeal and the grounds indicated therein, the High Court had allowed the second appeal and, therefore, there was nothing wrong. It is stated that after considering the materials on record, the High Court had recorded its findings that the suit deserves to be dismissed.
>
> * * *

11 (2008) 9 SCC 759

9. A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated. That being so, the judgment cannot be maintained.

* * *

15. Under the circumstances, the impugned judgment is set aside, we remit the matter to the High Court so far as it relates to Second Appeal No. 285 of 2000 for disposal in accordance with law. The appeal is disposed of on the aforesaid terms with no order as to costs."

(See also *Koppisetty Venkat Ratnam* v. *Pamarti Venkayamma*[12].)

29. However, we are of the opinion that keeping in view the peculiar facts and circumstances of this case and as the plaintiffs have filed the suit as far back as in the year 1990, the interests of justice should be subserved if we in exercise of our jurisdiction under Article 142 of the Constitution of India issue the following directions with a view to do complete justice to the parties.

(i) The plaintiffs may file an application for grant of leave to amend their plaint so as to enable them to pray for a decree for eviction of the defendant on the ground that he is a trespasser.

(ii) For the aforementioned purpose, he shall pay the requisite court fee in terms of the provisions of the Court Fees Act, 1870.

(iii) Such an application for grant of leave to amend the plaint as also the requisite amount of court fees should be tendered within four weeks from date.

(iv) The appellant-defendant would, in such an event, be entitled to file his additional written statement.

(v) The learned trial Judge shall frame an appropriate issue and the parties would be entitled to adduce any other or further evidence on such issue.

(vi) All the evidences brought on record by the parties shall, however, be considered by the court for the purposes of disposal of the suit.

(vii) The learned trial Judge is directed to dispose of the suit as expeditiously as possible and preferably within three months from the date of filing of the application by the plaintiffs in terms of the aforementioned Direction *(i)*.

30. The appeals are allowed with the aforementioned directions. No costs.

---

12 (2009) 4 SCC 244

must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

10. We allow the appeal, set aside the judgment of the High Court and restore that of the appellate court. No costs.

11. The appellants are paying Rs 80 per month as rent since 1980. It would be fair and just to increase the rent reasonably. After hearing learned counsel we direct the appellants to pay Rs 600 as rent with effect from 1-9-1995.

(1995) 6 Supreme Court Cases 580

(BEFORE KULDIP SINGH AND FAIZAN UDDIN, JJ.)

DR RANBIR SINGH .. Appellant;

Versus

ASHARFI LAL .. Respondent.

Civil Appeal No. 7151 of 1993†, decided on September 21, 1995

A. **Rent Control and Eviction — Eviction suit — Maintainability — Landlord-tenant relationship essential — Question of title to the property not germane and may be examined incidentally but cannot be decided finally in the eviction suit**

B. **Rent Control and Eviction — Denial of plaintiff's title to the suit premises by defendant — Defendant-respondent obtaining the premises on rent from widow of late Maharaja of Dholpur — Widow's daughter's son adopted by the widow as son — Govt. of India recognizing succession of the adopted son as Ruler of Dholpur w.e.f. 22-10-1954 and the widow as his mother and legal guardian, he then being a minor — Suit premises purchased by plaintiff-appellant from the new ruler on his attaining majority — Fact brought to the notice of defendant who attorning the tenancy and agreeing to pay rent at a revised rate — But after paying rent for two months, defendant defaulting — In reply to the notice served by plaintiff, defendant not denying the factum of adoption but denying plaintiff's title and the contract of tenancy — However, evidence showing that defendant had admitted himself to be tenant of plaintiff — In the circumstances, held, privity of contract existed between plaintiff and defendant — Adopted son of the late Maharaja inherited private properties of the Maharaja also and so he had a right to transfer the suit premises to plaintiff — Denial of title of plaintiff served a ground for eviction of defendant — Findings of fact in this regard, recorded by trial court and first appellate court, wrongly interfered with by High Court in second appeal — Rajasthan Premises (Control of Rent and Eviction) Act, 1950, S. 3(iii), (vii) — Evidence Act, 1872, Ss. 116 and 115**

C. **Rent Control and Eviction — Comparative hardship — Findings of trial court and first appellate court on appreciation of evidence — Being findings of fact, not open to interference by High Court in second appeal — Civil Procedure Code, 1908, S. 100**

† From the Judgment and Order dated 27-5-1992 of the Rajasthan High Court in S B.C.S.A No 90 of 1990

D. **Civil Procedure Code, 1908 — S. 100 — Second appeal — Scope of High Court's power of interference with findings of fact — Interference should be based on formulation of substantial question of law — Otherwise interference on ground of erroneous appreciation of evidence by courts below not sustainable**

Held .

The question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case. (Para 9)

LIC v *India Automobiles & Co.*, (1990) 4 SCC 286, *relied on*

In the present case it has been sufficiently established that the plaintiff is the landlord within the meaning of clause (*iii*) of Section 3 of the Act and the defendant is a tenant within the meaning of clause (*vii*) of Section 3. (Para 11)

Moreover, the adopted son of the late Maharaja inherited the private properties of the late Maharaja besides being his successor to the gaddi. In these facts and circumstances even if it is accepted that Hindu Law and Hindu Women's Right to Property Act, 1937 were applicable to Dholpur, inheritance of the private properties of late Maharaja in any case, devolved upon the adopted son. He therefore had a right to make a transfer of the suit property to the appellant. (Para 12)

Kunwar Shri Vir Rajendra Singh v. *Union of India*, (1969) 3 SCC 150 : AIR 1970 SC 1946, *referred to*

Admittedly, the defendant denied the title of the plaintiff in respect of the suit premises, which in the facts and circumstances furnished a ground for eviction of the respondent, as such denial of title by the respondent was not bona fide. The trial court and the first appellate court on a close analysis of the evidence also recorded a definite finding that the plaintiff's requirement of the suit premises was genuine and bona fide but the High Court set aside the same on unreasonable grounds. (Para 13)

The High Court in second appeal formulated no substantial question of law, as contemplated under Section 100(4) CPC. There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, based upon an appreciation of the relevant evidence. Therefore, the High Court was not justified in reappreciating the evidence and substituting its own conclusions for the well-reasoned findings recorded by the courts of fact. (Para 14)

V Ramachandra Ayyar v. *Ramalingam Chettiar*, AIR 1963 SC 302 . 1963 All LJ 67 · (1963) 1 Andh LT 86; *Bhagwan Dass* v *Jiley Kaur*, 1991 Supp (2) SCC 300 : AIR 1991 SC 266, *relied on*

As regards the question of comparative hardship the trial court and the first appellate court both on appreciation of evidence had taken a consistent view that the hardship to the plaintiff would be greater than the hardship to the tenant as the

need of the landlord was greater than that of the tenant. This also being a finding of fact was not open to challenge in the second appeal before the High Court and the High Court should not have interfered with the said finding also. There is no such evidence or any material produced by the defendant to show that he will not be in a position to get alternative accommodation in the town of Dholpur for his residence. The two courts below on a careful comparison and assessment of the relative advantages and disadvantages of the landlord and the tenant recorded a clear finding that the hardship of the plaintiff would be greater and the said finding should have been accepted by the High Court. (Para 15)

Bega Begum v. *Abdul Ahad Khan*, (1979) 1 SCC 273 : AIR 1979 SC 272, *distinguished*

Appeal allowed R-M/14979/C

Advocates who appeared in this case :

Subhag Mal Jain, Senior Advocate (Vipin Gogia, A.P. Dhamija and S.K. Jain, Advocates, with him) for the Appellant;

V.B. Joshi, F.C. Saxena and N S. Bisht. Advocates, for the Respondent.

The Judgment of the Court was delivered by

FAIZAN UDDIN, J.— The material facts leading to this appeal are that Maharaja Rana Udaibhan Singhji of the erstwhile State of Dholpur died in the year 1954 leaving behind him his widow Smt Malvender Kaur and daughter Smt Urmila Devi. Late Maharaja Udaibhan Singh had no natural male child and according to the appellant the late Maharaja Udaibhan had great attachment with Shri Hemant Singh, the son of his only daughter and during his lifetime had expressed his wish to adopt Shri Hemant Singh as a son to him and had advised his widow accordingly giving her the authority to adopt Shri Hemant Singh as his son. Consequently, Shri Hemant Singh (s/o Smt Urmila Devi, daughter of late Maharaja Rana Udaibhan Singh) was adopted by Smt Malvender Kaur according to the wishes of her late husband vide Deed of Adoption dated 5-11-1954. Further case of the appellant is that a high-power committee was constituted to examine the contentions of various claimants for succession to the gaddi of Dholpur. The said committee consisting of the then Chief Justice of Rajasthan High Court, Maharaja of Bharatpur and Maharaja of Doongarpur recommended the name of Shri Hemant Singh as a ruler of the erstwhile State of Dholpur. The Government of India accepted the recommendation of the said committee and by letter dated 13/14-12-1956 recognised Shri Hemant Singh the adopted son of late Maharaja Udaibhan Singh as successor to the gaddi of Dholpur with effect from 22-10-1954. The Government of India by another letter dated 13-12-1956 addressed to Smt Malvender Kaur stating that she has been appointed as the new ruler's adoptive mother to be the natural and legal guardian of Shri Hemant Singh who was then minor with instructions to take care of his interest in every way.

2. The property in dispute in the present appeal was given on rent to the respondent by Smt Malvender Kaur on a monthly rent of Rs 4 which was inherited by Shri Hemant Singh being the adopted son of late Maharaja Udaibhan Singh. The appellant purchased certain property including the property in dispute in this appeal from Shri Hemant Singh by a registered sale deed dated 10-10-1972. On such sale being made the rent note executed

by the respondent in favour of Smt Malvender Kaur was handed over to the appellant by the landlord Shri Hemant Singh. According to the appellant after he purchased the suit property he immediately intimated the same to the respondent who on demand of enhancement of rent, agreed to pay rent at the rate of Rs 40 per month of the suit premises. The respondent had paid rent to him for the months of November and December 1972 but did not pay any rent thereafter. The appellant, therefore, served a notice dated 6-1-1976 to the respondent terminating the tenancy and demanded vacant possession of the suit premises, specifically mentioning that Hemant Singh was the adopted son of late Maharaja Udaibhan Singh of Dholpur. The respondent in his reply dated 30-1-1976 did not dispute the factum of adoption of Shri Hemant Singh but denied the title of the appellant as also any privity of contract of tenancy with him.

3. The appellant filed suit for eviction against the respondent on the grounds of denial of title, bona fide necessity of the premises in suit, default in payment of rent and material alterations. The respondent contested the suit by filing the written statement denying all the grounds of eviction alleged by the appellant. The respondent took the stand that he was the tenant of Smt Malvender Kaur and that Shri Hemant Singh was not the legally constituted successor to late Maharaja Udaibhan Singh and as Shri Hemant Singh was the son of the daughter of Maharaja Udaibhan Singh, he inherited no interest in the property. The respondent took the stand that on the death of Shri Udaibhan Singh, his widow Smt Malvender Kaur became successor. He also denied attornment of tenancy by oral notice or that he agreed to pay rent at Rs 40 per month to the appellant.

4. The trial court decreed the appellant's suit on the ground of denial of title and bona fide need by recording findings that Shri Hemant Singh was the legal representative and successor of late Udaibhan Singh and that the plaintiff-appellant had purchased the suit property from Shri Hemant Singh. In appeal preferred by the defendant-respondent, the first appellate court remanded the case to the trial court for recording findings on the question of greater hardship. The trial court after recording the evidence of the parties held that greater hardship will be caused to the plaintiff-appellant in case the decree for eviction was not passed. Thereafter the first appellate court dismissed the appeal preferred by defendant-respondent affirming the judgment and decree on the ground of denial of title and bona fide need of the appellant. The respondent went up in second appeal before the High Court of Rajasthan, Jaipur Bench. The High Court by the impugned judgment dated 27-5-1992 allowed the appeal of the respondent, set aside the judgment and decree passed by the trial court and the first appellate court and dismissed the suit of the plaintiff-appellant by holding that Hindu Law and the Hindu Women's Right to Property Act of 1937 were applicable to the erstwhile State of Dholpur and as the family of late Udaibhan Singh admittedly was governed by Mitakshara rule and, therefore, Shri Hemant Singh being daughter's son was not entitled to succeed to late Udaibhan Singh since his widow Smt Malvender Kaur (since deceased) and daughter

Smt Urmila Devi were alive. On these findings the High Court held that Smt Malvender Kaur became the sole owner of the private properties of late Maharaja Udaibhan Singh and Shri Hemant Singh did not become the owner of the properties and, therefore, he acquired no title over the properties so as to entitle him to transfer the suit property in favour of the plaintiff-appellant herein. The High Court further held that the recognition of rulership by the President would not amount to recognition of any right to private property of the ruler but such recognition only entitles the ruler to the enjoyment of the privy purse contemplated under Article 291 of the Constitution and the personal rights, privileges and dignities of the ruler of an Indian State. The High Court held that the decision in the case of *Kunwar Shri Vir Rajendra Singh* v. *Union of India*[1] is of no help to the appellant on the proposition that Shri Hemant Singh became successor to late Udaibhan Singh in respect of his private properties also. In view of these findings the High Court took the view that the question of denial of title of the plaintiff-appellant did not arise and, therefore, set aside the findings of the two courts below on the question of denial of title. The High Court also set aside the findings of the two courts below with regard to the bona fide necessity of the plaintiff-appellant in respect of the suit premises by holding that sufficient accommodation is available with the plaintiff-appellant and he had failed to establish that his alleged need is genuine or bona fide. On these findings the High Court set aside the judgment and decree of the two courts below and dismissed the suit of the plaintiff-appellant against which this appeal has been directed.

5. At this stage it may be noted that IA No. 3 of 1995 has been filed on behalf of the appellant in this Court under Order 47 Rule 27 of Civil Procedure Code read with Rules 1 and 6 of the Supreme Court Rules along with the certified true copy of the Deed of Adoption dated 5-11-1954. The application is allowed after consideration and the deed of adoption is taken on record.

6. Learned counsel for the plaintiff-appellant vehemently urged that the proof of title is not germane in a suit for eviction between the landlord and tenant but it is the relationship which has to be proved coupled with grounds of eviction provided under the law and, therefore, it is not necessary to make elaborate pleadings with regard to the title in a suit for eviction. He submitted that so far as the question of relationship of landlord and tenant between the appellant and respondent is concerned it has been sufficiently proved by the plaintiff-appellant as held by the trial court and affirmed by the first appellate court and the High Court was, therefore, not justified in going into the question of ownership of the suit property as if it was a suit for establishment of title. The appellant has produced a certified copy of the deed of adoption dated 5-11-1954 which has been taken on record and on that basis submitted that having regard to the evidence on record, oral and documentary, it has been sufficiently established that Shri Hemant Singh was not only recognised as ruler of the erstwhile State of Dholpur but he also

1 (1969) 3 SCC 150 AIR 1970 SC 1946

became the successor and owner of private properties of late Maharaja Udaibhan Singh and as such the High Court committed a serious error in taking a contrary view. He submitted that the sale of the suit property made by Shri Hemant Singh in favour of the plaintiff-appellant was, therefore, legal and valid by all means and the denial of title of the plaintiff-appellant by the respondent constituted a ground for his eviction under the law. He further submitted that the High Court committed a serious error in reappreciating the evidence and upsetting the well-reasoned judgments and concurrent findings of fact recorded by the two courts with regard to the bona fide necessity of the suit accommodation by the plaintiff-appellant which was not permissible by virtue of the mandate contained in the provisions of Section 100 of the Code of Civil Procedure.

7. As against this learned counsel appearing for the defendant-respondent submitted that the plaintiff-appellant did not plead as to how Shri Hemant Singh became the owner of the suit property belonging to late Maharaja Udaibhan Singh and there was no proof that he was adopted as a son to Shri Udaibhan Singh and that by mere recognition of Shri Hemant Singh by the President of India as successor to late Udaibhan Singh, it does not make him successor to personal properties of the late Maharaja. He submitted that in fact the respondent had obtained the suit premises on rent from late Smt Malvender Kaur, the widow of late Maharaja Udaibhan Singh and there was no privity of any contract between Shri Hemant Singh and the respondent. He also contended that since the view taken by the trial court and the first appellate court is contrary to the weight of the evidence on record and perverse, and therefore, the High Court was fully justified in reappreciating the evidence and recording its own findings.

8. After giving our anxious and serious consideration to the aforementioned rival contentions we find considerable force and substance in the submissions made by learned counsel for the plaintiff-appellant.

9. It may be pointed out that it is well-settled law that the question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In *LIC* v. *India Automobiles & Co.*[2] (SCC pp. 300-02, para 21) this Court had an occasion to deal with similar controversy. In the said decision this Court observed that in a suit for eviction between the

2 (1990) 4 SCC 286

landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case.

10. Here it may be pointed out that Rajasthan Premises (Control of Rent and Eviction) Act, 1950 was also extended and made applicable to Dholpur at the relevant time when the present suit was instituted in the year 1977. Clause (*iii*) of Section 3 of the said Act defines 'landlord' to mean any person who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver for any other person or who would so receive or be entitled to receive the rent, if the premises were let to a tenant. Clause (*vii*) of Section 3 further defines 'tenant' as the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be, payable, for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act. Having regard to the aforementioned facts and circumstances and the provisions of law it has to be seen whether the plaintiff has been successful in establishing that he is the landlord of the suit premises and the defendant is a tenant thereof.

11. It cannot be disputed that the plaintiff had brought the suit for eviction of the defendant-respondent on the basis of tenancy. The plaintiff clearly pleaded that he purchased the suit premises from Shri Hemant Singhji, ex-ruler of Dholpur and successor of late Maharaja Udaibhan Singhji on 10-10-1972, which fact was brought to the notice of the defendant who attorned the tenancy and agreed to pay the rent at the rate of Rs 40 per month (vide paras 2 and 3 of the plaint). The defendant paid the rent for the months of November and December 1972 but defaulted thereafter. The plaintiff, therefore, served a notice dated 6-1-1976 on the defendant terminating his tenancy. In the notice it was specifically mentioned that Shri Hemant Singh was adopted as a son of late Maharaja Udaibhan Singh. The defendant gave a reply dated 30-1-1976 to the aforementioned notice of the plaintiff but did not dispute the factum of adoption of Shri Hemant Singh though he denied the title of the plaintiff-appellant and contract of tenancy. These facts and pleadings are reiterated by the plaintiff in his evidence also as PW 1. It may be noted that the defendant admits that he obtained the suit premises from late Smt Malvender Kaur, the widow of late Maharaja Udaibhan Singh. The evidence of Ramesh Chand, PW 2 reveals that the defendant is the tenant of the plaintiff and that the respondent agreed to pay

rent to the plaintiff at the rate of Rs 40 per month. There is no rebuttal of this evidence except the statement of the defendant himself which according to us is not trustworthy as compared to the plaintiff's evidence supported by PW 2, from which it is established that the defendant had accepted himself to be a tenant of the plaintiff on a monthly rent of Rs 40 and thus there was a privity of contract of tenancy between the plaintiff and the defendant after due attornment. Thus, it has been sufficiently established that the plaintiff is the landlord within the meaning of clause (*iii*) of Section 3 of the Act and the defendant is tenant within the meaning of clause (*vii*) of Section 3.

12. Apart from the facts stated above it may also be noted that the Government of India by its letter dated 13/14-12-1956 addressed to Shri Hemant Singh communicated that the President has been pleased to recognise his succession to the gaddi of Dholpur with effect from 22-10-1954 and that the same was being published in the Gazette of India for general information. By another letter on 13-12-1956 by the Government of India addressed to late Maharani Malvender Kaur stated that the President has been pleased to recognise Maharaj Kumar Hemant Singh as the ruler of Dholpur in succession to his late Highness Maharaja Udaibhan Singh and said Maharani as the new ruler's adoptive mother will be his natural and legal guardian to take care of the minor ruler's interest in every way as Shri Hemant Singh, was then a minor. It was on the basis of these orders of the President of India that Shri Hemant Singh was recognised as successor to the late Maharaja Udaibhan Singh. It is true that his recognition as the ruler to succeed to the gaddi of Dholpur was not associated with any act of recognition of right to private properties as held by this Court in *Rajendra Singh* v. *Union of India*[1] in which Shri Hemant Singh was arrayed as Respondent 2, being the adopted son of late ruler of Dholpur. But in the present case, as said earlier, the plaintiff has filed certified true copy of the deed of adoption dated 5-11-1954 which prima facie goes to show that Shri Hemant Singh was adopted as son of late Maharaja Udaibhan Singh. Not only this, but the appellant in his notice served on the respondent terminating his tenancy specifically stated that Hemant Singh was the adopted son of late Maharaja Udaibhan Singh of Dholpur, which fact was not refuted by the respondent in his reply thereto. That being so prima facie the appellant inherited the private properties of the late Maharaja besides being his successor to the gaddi. In these facts and circumstances even if it is accepted that Hindu Law and Hindu Women's Right to Property Act, 1937 were applicable to Dholpur, inheritance of the private properties of late Maharaja in any case, devolved upon Shri Hemant Singh. Shri Hemant Singh therefore had a right to make a transfer of the suit property to the appellant.

13. Admittedly, the defendant denied the title of the plaintiff in respect of the suit premises, which in the facts and circumstances discussed above, furnished a ground for eviction of the respondent, as such denial of title by the respondent was not bona fide. The trial court and the first appellate court on a close analysis of the evidence also recorded a definite finding that the

plaintiff's requirement of the suit premises was genuine and bona fide but the High Court set aside the same on unreasonable grounds.

14. Sub-section (1) of Section 100 of the Code of Civil Procedure contemplates that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 further provides that when the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. But it may be pointed out that the High Court formulated no such question of law on basis of which it proposed to interfere with the findings of facts. It has been the consistent view of this Court that there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, based upon an appreciation of the relevant evidence. There is a plethora of case-law in support of this view. To quote a few, references may be made to the decision in *V. Ramachandra Ayyar* v. *Ramalingam Chettiar*[3] wherein this Court took the view that even if the appreciation of evidence made by the lower appellate court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in the procedure and the High Court cannot interfere with the conclusions of fact recorded by the lower appellate court. This view has been reiterated by this Court in *Bhagwan Dass* v. *Jiley Kaur*[4]. This being the position, the High Court was not justified in reappreciating the evidence and substituting its own conclusions for the well-reasoned findings recorded by the courts of fact.

15. As regards the question of comparative hardship the trial court and the first appellate court both on appreciation of evidence have taken a consistent view that the hardship to the plaintiff would be greater than the hardship to the tenant as the need of the landlord is greater than that of the tenant. This also being a finding of fact was not open to challenge in the second appeal before the High Court and the High Court should not have interfered with the said finding also on the principles stated above. In *Bega Begum* v. *Abdul Ahad Khan*[5] this Court observed that the tenant has to prove that he will not be able to get any accommodation anywhere in the city or town concerned, before it could be legitimately contended that he had a greater hardship as compared to that of the landlord. In the present case there is no such evidence or any material produced by the defendant to show that he will not be in a position to get alternative accommodation in the town of Dholpur for his residence. The two courts below on a careful comparison and assessment of the relative advantages and disadvantages of the landlord and the tenant recorded a clear finding that the hardship of the plaintiff would be greater and the said finding should have been accepted by the High Court.

3 AIR 1963 SC 302 . 1963 All LJ 67 : (1963) 1 Andh LT 86

4 1991 Supp (2) SCC 300 · AIR 1991 SC 266

5 (1979) 1 SCC 273 . AIR 1979 SC 272

16. For the reasons stated above the appeal succeeds and is hereby allowed. The impugned judgment and order of the High Court is set aside and the judgment and decree of the trial court is restored. We, however, make no order as to costs.

(1995) 6 Supreme Court Cases 589

(BEFORE J.S. VERMA AND K. VENKATASWAMI, JJ.)

UNION OF INDIA AND OTHERS .. Appellants;

Versus

TARA CHAND SHARMA AND OTHERS .. Respondents.

Civil Appeals Nos. 9572-75 of 1995†, decided on October 19, 1995

A **Service Law — Reversion — Confirmed Assistant Compilors-LCDs temporarily promoted on a regular basis in short-term temporary posts of computers sanctioned for a fixed period, further continuance depending on receipt of further sanction — Reversion of the said promotees to the original posts consequent to abolition of the posts of Computers on expiry of the sanctioned period, held, unobjectionable — That they had satisfactorily completed the probation period in the promotional post, held, inconsequential — Abolition of posts — Temporary promotees (Para 9)**

B. **Service Law — Reversion — Reversion of temporary promotees on abolition of post — Satisfactory completion of probation whether a bar**

Appeals allowed H-M/15119/CLA

Advocates who appeared in this case .

A N Jayaram, Additional Solicitor General (Hemant Sharma and P. Parameswaran, Advocates, with him) for the Appellants;

B.D. Sharma, Advocate, for the Respondents

The Judgment of the Court was delivered by

K. VENKATASWAMI, J.— Delay condoned.

2. Leave granted.

3. Heard counsel for both sides. The short question that calls for our consideration is whether Respondents 1-6 (hereinafter referred to as 'respondents') who were promoted temporarily in the posts created for a specific period can claim the right of continuance in said posts even after expiry of the said period. Brief facts are the following:

Respondents 1-6 who were the petitioners before the Central Administrative Tribunal were recruited as Assistant Compilors-LDCs during 1980 and were later confirmed in the same posts by Order dated 26-5-1989. During 1991 Census operations, 21 posts had been created on a short-term temporary basis after taking into consideration the increased quantum of work. The said posts have been sanctioned for fixed period and their continuation depended on the receipt of further sanction. Factually the

† From the Judgment and Order dated 24-1-1994 of the Central Administrative Tribunal, Jaipur Bench in Jaipur in O As Nos. 13, 14, 26 and 17 of 1994