

(2003) 08 JH CK 0054

In the Jharkhand High Court

Case No : AFAD No's. 144 and 145 of 1988 (R)

Chhabi Dushadh and Another

APPELLANT

Vs

Bhuneshwar Pandey and Srikant Pandey

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 34

Citation : AIR 2004 Jhar 92 : (2004) AIR Jhar HCR 885 : (2003) 4 JCR 156 :
(2003) 2 JLJR 814

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : N.K. Prasad, P.K. Prasad and Pratyush Kumar, for the Appellant;
Munjal Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—Both the appeals arise out of a common judgment and, therefore, they are being disposed of by this judgment.

2. These appeals at the instance of the defendants appellant are directed against the judgment and decree dated 27.7.1988 and 8.8.1988 respectively passed in Title Appeal No. 44 of 1976 and 45 of 1976 by Shri Bhikari Ram, 1st Additional District and Sessions Judge, Palamau whereby and whereunder both the appeals were allowed and the judgment and decree dated 18.9.1976 and 6.11.1976 passed in T.S. No. 79/41 of 1973/76 and 80/46 of 1973/76 by the 2nd Additional Sub Judge, Palamau at Dalton-ganj were reversed.

3. The plaintiff respondents had filed the aforementioned suits for declaration that the suit plots appertaining to Khata No. 14 situate in village Haradag Khurd, P.S. Nagar Utari, District Palamau fully detailed in the Schedule of the plaint of both the title suits is the occupancy raiyati land of the plaintiff respondents.

4. The case of the plaintiff respondents in both the title suits aforesaid is similar

in material particulars. The case of the plaintiff respondents, in brief, is that the land of Khata No. 14 of village Hardag Khurd P.S. Nagar Utari, District Palamanu stands recorded in the name of Jattu Mahto in the Survey Record of Rights (Ext. D/1) and Jattu Mahto was in possession thereof as owner in respect thereof and the said Jattu Mahto died five years after the survey leaving behind his only son Maharaj Mahto as his heir. It is alleged that the wife of Jattu Mahto had predeceased him. After the death of Jattu Mahto, Maharaj Mahto inherited the suit property and continued in peaceful possession thereof and the ex-landlord of village Harda Khurd filed Return under the provisions of BLR Act on the vesting of the estate showing the name of Maharaj Mahto as raiyat of Khata No. 14 and the said Maharaj Mahto died after the vesting of the estate leaving behind his only son Vishwanath Mahto as his heir who has inherited the suit property and came in possession. The said Vishwanath Mahto sold the entire land of Khata No. 14 to Khakhnu Mahto, Budhan Mahto, Jahri Mahto and Kailash Mahto by virtue of the sale deed (Ext. 1/B) dated 28.9.1957 and the aforesaid vendees came in possession thereof and continued in possession. The case of the plaintiff respondents further is that Khakhnu Mahto and others executed the sale deed (Ext. 1) dated 28.8.1968 in favour of plaintiff respondents Bhuneshwar Pandey, the plaintiff of Title Suit No. 79 of 1973 in respect of 6.76 acres of land of Khata No. 14 and on the same day Khakhnu Mahto and others also executed a sale deed (Ext. 1/A) in favour of Srikant Pandey, the plaintiff of Title Suit No. 80 of 1973 in respect of the land of 6.75 acres of Khata No. 14 aforesaid and both the plaintiff respondents came in possession over the suit land and continued in possession thereof peacefully without any interference and interruption. Both the plaintiff respondents, thereafter, applied for mutation of their names in respect of the lands purchased by them by virtue of the sale deeds aforesaid and Mutation Case No. 10 of 1968-69 was registered and the defendants appellant put an objection thereto which is to the effect that they stand entered in Register II of the Circle Officer, Nagar Utrai in respect of the suit land as a result of which the plaintiff respondents were not mutated and the petition for mutation was rejected. It is alleged that entry of the names of the defendant appellants in Register II in respect of the suit land is illegal, unwarranted and without any basis and the order of rejection of mutation does not at all affect the right, title and interest as well as possession of the plaintiff respondents over the suit land but a cloud has been cast over the title of the plaintiff respondents and, hence, these suits.

5. The case of the defendants appellant, inter alia, is that Jattu Mahto had died issueless and he had no son, namely, Maharaj Mahto. It is alleged that there was one Maharaj Mahto son of Jado Mahto in village Haradag and the name of the said Maharaj Mahto was recorded in the Survey Record of Rights and there was no other person named Maharaj Mahto and Maharaj Mahto son of Jado Mahto had abandoned his land in village Haradag and settled at Madgarhi Bhandaria. The case of the defendants appellant further is that Maharaj Mahto and his son Vishwanath Mahto had no right, title and interest in respect of the suit land and

they were never in possession in respect thereof and they had no right to transfer the suit land in favour of Khakhanu Mahto and others. It is also alleged that the name of Maharaj Mahto does not appear in the return filed by the ex-landlord and any return disclosing his name therein is a fraudulent document. The further case of the defendants appellant is that the land of Khata No. 14 came in possession of Bhaiya Saheb", the landlord of Nagar Utari, after the death of Jattu Mahto who remained in possession thereof and, thereafter, he settled the entire land of Khata No. 14 with the defendants appellant about 40 years ago and since then the defendants appellant are coming in possession thereon to the knowledge of the plaintiff respondents and his father and the defendants appellant had paid the rent of Khata No. 14 to the ex-landlord and, thereafter, to the State of Bihar and they get the rent receipts in respect thereof. It is also alleged that defendants appellant has constructed a house on the portion of the suit land which fell down and there is only now a hut in which they keep their cattle. The further case of defendants appellant is that Khakhanu Mahto and others had filed a case before the Circle Officer, Nagar Utari for their mutation in respect of the suit land and the defendants appellant filed their objection petition in the said mutation proceeding and the mutation case filed by Khakhanu Mahto and others were dismissed and thereafter, Khakhanu Mahto executed the sale deeds in favour of the plaintiffs respondent and, thereafter, the plaintiffs respondent have also filed mutation case which was also rejected by the Circle Officer on enquiry finding the defendants appellant in possession over the suit land. Lastly it has been contended that there had been a Certificate Case in respect of some of the plots of Khata No. 14 against the defendants appellant which also establishes the fact that the defendants appellant have right, title and interest and possession over the suit land. It has also been alleged that the plaintiff respondents or their vendors were never in possession of the suit land.

6. In view of the pleadings of the parties, the trial Court framed the following issues for adjudication in the case :--

(i) Whether the plaintiff of both the title suits i.e., T.S. No. 79 of 1973 and 80 of 1973 have a valid case of action in both the suits?

(ii) Whether both the above mentioned suits are maintainable in their present form?

(iii) Whether the plaintiff of T.S. No. 79 of 1973 has a subsisting title to the suit lands of the said suit, described within the schedule of the plaint of Suit No. 79 of 1973, and it can be declared that he was the occupancy raiyat of the suit lands of the said suit?

(iv) Whether the plaintiff of T.S. No. 80 of 1973 has a subsisting title to the suit lands of the said suit, described within the schedule of the plaint of T.S. 80 of 1973, and it can be declared that the plaintiff of T.S. 80 of 1973 is the occupancy raiyat of the suit lands of the said suit?

(v) Whether both the suits are barred by the principles of limitation and adverse

possession?

(vi) To what relief or reliefs, if any, the plaintiff of both the suits are entitled?

7. The learned trial Court while deciding the issue Nos. 3 and 4 aforesaid had held that Jattu Mahto died issueless and he had no son, named, Maharaj Mahto and Vishwanath Mahto is not the son's son of Jattu Mahto. It has also been held that the plaintiff respondent or their vendor Khakhanu Mahto and others did not acquire any right title or interest in the suit land and they were never in possession over the same and the defendants appellant have perfected their right, title and interest regarding the suit land by adverse possession and in view of the findings above the learned trial Court dismissed both the suits.

8. Aggrieved by the judgment and decree of the trial Court the plaintiffs respondent preferred Title Appeal No. 44 of 1976 and 45 of 1976. The lower appellate Court on reappraisal and re-appreciation of the evidence, oral and documentary, on the record reversed the judgment and decree of the trial Court and allowed the appeal as per the judgment dated 3.10.1978 and decreed the suit. The defendants appellant preferred S.A. No. 215 of 1978 and S.A. No. 216 of 1978 before this Court and while admitting both the appeals this Court formulated the substantial question of law which runs thus :--

"Whether the lower appellate Court erred in holding that Maharaj Mahto was the son of Jattu Mahto."

Both the appeals were remanded to the learned Court below after setting aside the impugned judgment dated 3.10.1978 for a fresh decision after hearing the parties with the observation directing the learned appellate Court below for recording a finding on the basis of evidence other than Exts. 4 and 5 and the recitals in the sale deeds executed by Khakhnu Mahto. Thereafter, this Court vide order dated 16.3.1988 modified its order dated 16.8.1985 which runs thus :--

".....On a perusal of the judgment of the 2nd Additional District Judge, Palamau, who is in seisin of the appeals in the Court below it appears that the originals of Exts. 4 and 5 were called for by the trial Court and they were proved by the witnesses. That being the position, the observation made in the judgment by this Court on 16th August, 1985 with regard to those two exhibits shall be ignored by the lower appellate Court and the Court below shall take into consideration those two exhibits."

9. The learned Court below on remand and keeping in view of the observation of this Court referred to above again allowed the appeal as per the impugned judgment dated 27.7.1988 and decreed the suit. The appellate Court below came to the finding of the fact in the impugned judgment aforesaid that Maharaj Mahto is the son of Jattu Mahto, the recorded tenant in the Survey Record of Rights in respect of Khata No. 14 of village Haradag and the case of the defendants appellants that the ex-landlord resumed the possession of the suit land and has settled the same with the defendants appellant was found not proved in absence

of legal evidence in respect thereof. It was also held in the impugned judgment that the rent receipts Exts. 3/C and 3/D and 6 and 6/A standing in the name of Mahara Mahto are genuine and Maharaj Mahto had right title and interest in the suit land and he was in possession thereof and, thereafter, his vendees had right title and interest in the suit land and possession over the same.

10. Again aggrieved by the impugned judgment and decree passed on remand the defendants appellant preferred this appeal before this Court.

11. This Court while admitting the appeal for hearing formulated substantial question which runs thus :--

"Whether the learned Court of appeal below misdirected itself in passing the judgment on considering of the Exhibits 4 and 5, although this Court in its judgment passed in S.A. No. 215 of 1978 (R) and 216 of 1978 (R) directed hearing of the appeal afresh without taking into consideration the aforementioned exhibits."

It is pertinent to mention here that this Court while formulating the substantial question of law appears to have overlooked its order dated 16.3.1988 passed in S.A. No. 215 of 1978 (R) with S.A. No. 215 (R) of 1978 (R) whereby the observation made in the judgment dated 16.8.1985 by this Court with regard to Exts. 4 and 5 was ordered to be ignored by the lower appellate Court and the Court below was directed to take into consideration these two exhibits.

12. In course of hearing of these appeals another undejnoted substantial question of law was also formulated.

"Whether the suit of the plaintiff for declaration of his title simplicitor is maintainable in the absence of confirmation of possession or in the alternative recovery of possession."

13. Assailing the impugned judgment it has been submitted by the learned counsel for the defendants appellant that the appellate Court below has committed a manifest error in coming to the finding of the fact that Jattu Mahto had a son Maharaj Mahto who had a son Vishwanath Mahto and he has wrongly and improperly considered Exts. 4 and 5 inspite of the direction of this Court to ignore them in arriving at a finding of the issue involved in the suit as to whether Jattu Mahto died issueless or not. It has further been contended that the finding of fact of the learned appellate Court below stands vitiated due to the consideration of inadmissible and irrelevant evidence i.e., Exts. 4 and 5 and an erroneous approach regarding the matter in controversy has been adopted by the Court and this Court is not precluded from interfering in the exercise of its jurisdiction in this Second Appeal. In support of his contention reliance has been placed upon the ratio of the case of Neelakantan and Others Vs. Mallika Begum, in which it has been observed by the Apex Court which runs hereunder :--

".....It is well settled that the High Courts while considering the matter in exercise of its jurisdiction in Second Appeal or Civil Revision would not reverse

the finding of fact as recorded by the Courts below. But it is not an absolute proposition. In a case where the finding is recorded without any legal evidence on the record, or on misreading of evidence or suffers from any legal infirmity, Which materially prejudices the case of one of the parties or the finding is perverse, it would be open for the High Court to set aside such a finding and to take a different view."

It has also been submitted that the finding of the learned appellate Court below based on Ext. 4 and 5 is bad in law as he has misread the evidence and there was equally misapplication of law and viewed thus the said finding regarding Maharaj Mahto being the son of Jattu Mahto arrived at by the learned appellate Court below cannot be sustained. It has also been submitted that the plaintiffs respondent were definitely not in possession of the suit property of Khata No. 14 and they have filed the suit only for declaration that the suit land is the occupancy raiyati land of the plaintiffs respondent and they have not sought any further relief regarding confirmation of possession or recovery of possession and in this view of the matter the suit of the plaintiffs respondent is not at all maintainable u/s 34 of the Specific Relief Act. Lastly it has been contended that the appellate Court below while reversing the judgment of the trial Court has not given any strong, cogent and convincing reasons and under the law it is bound to give reasons as to why the findings of the trial Court below were not found favour with and also the basis or the foundation or reasoning on which the conclusion of appellate Court is grounded and where the judgment of the appellate Court below does not give any reason nor discusses the evidence and the law applicable to the facts of the case then in that case the impugned judgment of the appellate Court below is definitely improper and requires to be set aside.

14. Refuting the contention aforesaid the learned counsel for the plaintiffs respondent has submitted that in this case the appellate Court below on proper appreciation and re-appraisal of the evidence as well as the directions contained in the order dated 16.8.1985 read with 16.3.1988 passed in S.A. No. 215 of 1978 and S.A. No. 216 of 1978 came to the finding that Jattu Mahto had a son Maharaj Mahto. It has also been submitted that the observation contained in the order dated 16.8.1985 was modified as per order dated 16.3.1988 whereby the observation in respect of Exis. 4 and 5 were ordered to be ignored by the lower appellate Courts and it was directed to take into consideration these two documents and the learned appellate Court below had re-appraised the evidence on the record taking into consideration Exts. 4 and 5 being validly and legally admitted in evidence and again came to the finding of fact that Maharaj Mahto is the son of Jattu Mahto, the recorded tenant in the Survey Record of Rights in respect of Khata No. 14 and viewed thus there is no substantial question of law at all involved in this case. Relying upon the ratio of the case of Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, , it has been submitted that the right of appeal u/s 100 of the CPC is neither a natural nor an inherent right attached to the litigation. Being a substantial statutory right it has to be recorded

in accordance with law in force at the relevant time and the conditions mentioned u/s 100 of the CPC must be strictly fulfilled before a Second Appeal is maintained and no Court has the power to add to or enlarge those grounds and the Second Appeal cannot be decided on merely equitable grounds. It has also been submitted that the substantial question of law has to be distinguished from a substantial question of fact and the issue regarding Maharaj Mahto being the son of Jattu Mahto, the recorded tenant of Khata No. 14 is substantially a question of fact. Elucidating further it has been submitted that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial Court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in Second Appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in Second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence. It has also been submitted that the appellate Court below has properly scrutinized and considered the evidence on the record and has exercised its discretion in the judicial manner and it cannot be termed to be an error either of law or of procedure requiring any interference in the Second Appeal. It has also been submitted that this Court in Second Appeal can not interfere with the judgment of the first appellate Court merely on the ground that the first appellate Court failed to advert to the reasons scribed by the trial Court and the first appellate Court can consider the evidence adduced by the parties and give its own reasons for accepting or rejecting the evidence of one party or the other party. In support of his contention reliance has been placed on the ratio of the case of Arumugham (Dead) By Lrs. and Others Vs. Sundarambal and Another, . It has further been submitted that there is no application of Section 34 of the Specific Relief Act in this case as the plaintiff respondents were in possession of the suit land and the grant of rent receipt in pursuance of the order of the Circle Officer passed in the year 1970 in a mutation proceeding which is not a judicial proceeding, does not decide title and is no evidence of exclusion from property and for that reliance upon the ratio of the case of (Thakur) Nirmal Singh and Ors. v. Thakur Lal Rudra Pratap Narain Singh and Ors. AIR 1926 PC 100, was placed. It has also been contended that there was no issue framed by the trial Court in respect of Section 34 of S.R. Act and this aspect of the matter was also not raised before the lower appellate Court below and for the first time in this Second Appeal this question has been raised which cannot be entertained. It has also been submitted that the plea of the maintainability of the suit u/s 34 of the Specific Relief Act is to be taken with

promptitude. Relying upon the case of the ratio of Bhup Narayan Singh Vs. Hira Lal, it has been observed that if the plaintiff is not in possession at the date of the suit it was not open for him to sue for mere declaration of title without also seeking the further relief of the recovery of possession which he has definitely omitted to pray and pay for. The position may, however, possibly have been different if it had been found in accordance with law that the plaintiff was in actual possession of the disputed land as well. Viewed thus the impugned judgment cannot be said to be unsustainable.

15. It is an admitted case of the parties to the suit that the land of Khata No. 14 stands recorded in the Survey Record of Rights in the name of Jattu Mahto. There is also no dispute in respect of the fact that Jattu Mahto had died five years after the survey operation which did take place in the year 1917-18 which was finally published in the year 1920. According to the case of the plaintiff respondents Jattu Mahto had a son Maharaj Mahto who as per the evidence on the record was alive till 1952. There is no dispute in respect of the fact that Vishwanath Mahto is the son of Maharaj Mahto aforesaid. The case of the defendants appellant that Jattu Mahto had died issueless and there was one Maharaj Mahto recorded tenant of Khata No. 33 of village Haradag and said Maharaj Mahto is the son of Jado Mahto and as per case of defendants appellant said Maharaj Mahto son of Jado Mahto had left village Haradag about 50 years ago and settled somewhere else which means that Maharaj Mahto son of Jado Mahto had left village Haradag in the year 1925. Therefore, the entry of the name of Maharaj Mahto son of Jado Mahto in Khata No. 33 of the Survey Record of Rights clearly indicates that Maharaj Mahto son of Jado Mahto is a distinct identity. The finding of the learned appellate Court below regarding the fact that Maharaj Mahto is the son of the recorded tenant Jattu Mahto of Khata No. 14 stands corroborated by the return Ext: 5 and the Raiyatbari Register Ext. 4 coupled with the existence of written receipts 3/B and 3/D as well as Ext. 6 and 6/A. The original of Ext. 5 and Ext. 6 were brought on the record in course of evidence and admitted into evidence in which the name of Maharaj Mahto son of Jattu Mahto stands recorded therein in respect of the land of Kahta No. 14. Had he not been the son of Jattu Mahto there was no reason of his name appearing in Ext. 4 and Ext. 5 referred to above as well as grant of the rent receipts by the ex-landlors. The Hon''ble Court vide order dated 16.3.1988 passed in Second Appeal No. 215 of 1978 and 216 of 1978 had modified the direction contained in the judgment dated 16.8.1985 passed in both the Second Appeals and directed the learned Court below that the observation made in the judgment dated 16.8.1985 with regard to those two exhibits i.e., Exts 4 and 5 shall be ignored by the lower appellate Court below and the Court below shall take into consideration those two exhibits. The learned appellate Court considering the evidence oral and documentary on the record as well as Exts. 4 and 5 aforesaid and re-appraisal of the evidence in proper perspective has rightly held that Jattu Mahto did not die issueless and he has a son Maharaj Mahto. The entry in the Survey Record of Rights in respect of Khata No. 14 in favour of Jattu Mahto has the effect to show

the continuity of his possession over the land of Khata No. 14 and, thereafter, his descendants and the presumption in respect thereof is not neutralized by payment of rent by someone in respect thereof. It is equally pertinent to mention here that there is no legal evidence at all on the record to show that descendants of Jattu Mahto had abandoned the land in question which was resumed by the then landlord and, thereafter, it was settled with the defendants appellant. The order of mutation in favour of the defendants appellants and payment of the rent receipts in pursuance thereof do not extinguish the right title and interest of Maharaj Mahto, the son of Jattu Mahto, the recorded tenant of Khata No. 14. It is the settled principle of law that the mutation proceeding is not a judicial proceeding and it does not decide title and is equally of no evidence of exclusion from property. In the case of (Thakur) Nirmal Singh (supra) it has been observed that :--

"It is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in Immovable property are determined. They are nothing of the kind, as has been pointed out time innumerable by the judicial committee. They are much more in the nature of fiscal enquiries instituted in the interest of the State for the purpose of ascertaining much of the several claims for the occupancy of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid."

It has further been observed that orders in mutation proceedings are not the evidence that the successful applicant was in possession as sole legal owner in a proprietary sense to the exclusion of all claims of rightful title holder in respect thereof. Therefore, the order of mutation in favour of defendants appellant in pursuance of which rent receipt has been granted to them in respect of the suit land cannot be taken as document of their title and possession in respect thereof. The learned appellate Court below has rightly considered Exts. 4 and 5 in coming to the finding of the fact that Maharaj Mahto is the son of Jattu Mahto recorded tenant of Kahta No. 14 and he had right title and interest as well as possession over the suit land and the learned appellate Court below cannot be said to have misdirected himself in passing the impugned judgment considering Exts. 4 and 5 as this Court vide order dated 16.3.1988 referred to above had directed the learned appellate Court to consider Exts. 4 and 5 modifying its earlier direction contained in the judgment dated 16.8.1985. Thus the substantial question framed vide order dated 23.10.1990 cannot be viewed as a substantial question of law rather in pith and substance the substantial question as formulated, is pure and simple a question of fact which can never be entertained by exercising the jurisdiction u/s 100 of the CPC.

16. The plaintiffs respondent has filed a simple suit for declaration that the suit property is the occupancy ratyati land of the plaintiffs respondent and no consequential relief has been sought in this case by them. The trial Court has not accorded any finding regarding the application of Section 34 of the Specific Relief

Act in the judgment as the matter in respect thereof was not pressed there. It appears that applicability of Section 34 of the Specific Relief Act has also not been pressed before the appellate Court below and there is no finding recorded in respect thereof in the impugned judgment. Question of applicability was raised for the first time in the appeal before this Court. Section 34 of the Specific Relief Act runs thus :--

"Section 34. Discretion of Court as to declaration of status or right.--Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person, denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief;

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of the title, omits to do so."

In a suit under this Section the plaintiffs first must be a person entitled to any legal character or to any right as to any property and secondly the defendant must be a person denying or interested to deny the plaintiffs title to such character or right and thirdly the declaration sued for must be declaration that the plaintiffs are entitled to a legal character or to a right to property and fourthly where the plaintiff is able to seek further relief than a mere declaration of title, he must seek such relief. If any of the first three conditions is not fulfilled the suit should be dismissed. If those three conditions are fulfilled but fourth is not the Court shall not make the declaration sued for. The proviso to Section 34 aforesaid is Imperative and makes it obligatory on every Court not to make any declaration in cases where the plaintiff being able to seek further relief omits to do so but objection to the maintainability of the suit on the ground that he does not seek consequential relief must be taken with promptitude. Here in this case the question of application of Section 34 of the said Act has been raised for the first time in the Second Appeal. It is the settled law that if the plaintiff is out of possession of the suit land and only seeks to have his title declared, his suit for mere declaration will not lie without the consequential relief of recovery of possession. Thus a plaintiff out of possession suing for a declaration of title to land ought to pray for possession if the defendant is in possession but he is not obliged to do so if the defendant is not in possession or the plaintiff is in lawful possession of the suit land. The plaintiff in possession of the property, when seeks a declaration of his title, the suit without a prayer for possession is maintainable, here in this case, the survey entry in respect of the suit land is in favour of Jattu Mahto, the father of Maharaj Mahto and the learned appellate Court below has held that Maharaj Mahto aforesaid was in possession of the suit land till he was alive and, thereafter, the possession of his vendees. In view of the finding regarding possession over the suit land of the plaintiffs respondent read with the ratio of the case of Bhup Narayan Singh (supra) relied upon by the learned counsel for the plaintiffs respondent their suit cannot be held barred u/s 34 of the Specific Relief Act as consequential relief for possession is not at all

necessary in the facts and circumstances of this case. It is also relevant to mention here that the suit of the plaintiff respondents is equally maintainable before the civil Court in view of the ratio of the case of Raja Shiva Prasad and Others Vs. Bhuban Mahto and Others, , read with the ratio of the case of Gobinda Bauri and Others Vs. Kristo Sardar, . The plaintiffs respondent have acquired perfect right, title and interest in the suit properties and they are in possession over the same and, therefore, Section 34 of the Specific Relief Act is not at all attracted in this case. Therefore, in the facts and circumstances of this case and the evidence on the record including Exts. 4 and 5 referred to above it can never be said that the finding regarding Maharaj Mahto being the son of Jattu Mahto, the recorded tenant of Khata No. 14, held by the learned appellate Court below is without any legal evidence on the record or on misreading of the evidence or it suffers from any legal infirmity which has materially prejudiced the case of the defendants appellant. It can also not be said that the finding recorded by the lower appellate Court below is perverse. Therefore, it is not open for this Court to set aside such a finding and to take a different view in the matter. Therefore the ratio of the case of Neelkantan and others, (supra) is of no help to the defendants appellant in this case. In the case of Kondiba Dagadu Kadam, (supra) Apex Court has observed that.-

"....where the appellate Court below has rejected the witnesses accepted by the trial Court, the same is no ground for interference in the Second Appeal when it is found that the appellate Court has given satisfactory reasons for doing so and" in a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in Second Appeal and adopting any other approach is not permissible as this Court cannot substitute its opinion for the opinion of the First Appellate Court unless the conclusion drawn by the lower appellate Court is erroneous and based upon inadmissible evidence or arrived at without evidence."

I, therefore, see substance in the contention put forward on behalf of the plaintiff respondents.

17. The appellate Court while reversing the finding of the trial Court and holding Maharaj Mahto as the son of Jattu Mahto, the recorded tenant of Khata No. 14 having his right title and interest in the suit property and possession thereof does not suffer from any infirmity as it has properly weighed the evidence on the record and has also assigned satisfactory reasons for doing so and there is no illegality in the finding of fact arrived at by the learned Appellate Court below. There is thus no substance also in the contention put forward on behalf of the defendants appellant.

18. Viewed thus, there is no merit in these appeals which fail and the impugned judgment of the learned Court below is hereby affirmed and the appeals are hereby dismissed but without costs.