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**(1997) 11 P&H CK 0076**

**In the Punjab And Haryana At Chandigarh**

**Case No : Letters Patent Appeal No. 682 of 1985**

Digvijay

APPELLANT

Vs

Kundan Lal

RESPONDENT

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**Date of Decision :** 28-11-1997

**Acts Referred:**

**Citation :** (1998) 3 RCR(Civil) 302

**Hon'ble Judges :** Dr.Sarojnei Saksena, J and G.S.Singhvi, J

**Advocate :** Mr. M.L. Sarin, Sr. Advocate assisted by Mr. S.K. Hiraji, Advocate.,  
Advocates for appearing Parties

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## **Judgement**

Dr. Sarojnei Saksena, J.

1. Being aggrieved by the judgment of the learned Single Judge dated 11.1.1985, the appellantdefendant has filed this Letters Patent Appeal.

2. A brief resume of the facts is that Kundan Lal, maternal grandfather of the defendantappellant by the dint of his hard labour became a wealthy person and was owning various immovable properties as well. He established Kundan Industrial and Technical Institute and Kundan Vidya Mandir to impart education to the masses of India and to make them efficient and skilled workers and also with a view to reduce unemployment and raise the general standard of living. During his lifetime he executed a Will dated 7.11.1949 Ex.P/2 wherein he gave the details of all the assets owned by him. In this will he bequeathed his specified assets to his four daughters, their children and to his son on certain conditions. About the rest of the properties owned by him he established a Public Charitable Trust to be known as Kundan Lal Charitable Trust. Item No. 6 of the properties was the one which was partially used by Kundan Vidya Mandir (where a school was being run) and the remaining portion was demised to various persons to run shops etc. According to this Will Ex.P/2, Kundan Vidya Mandir was to form a part of the Charitable Trust as it was not allocated to any of the heirs. This will Ex.P.2 was followed by the execution of a regular trust deed Ex.P.1 which was executed by late Shri Kundan Lal on 1.4.1950. Kundan Lal executed

his last Will on 10.9.1957. After this death there was a litigation between the heirs of Kundan Lal with regard to inheritance on the basis of the aforesaid two Wills and Kundan Lal Trust was also impleaded as a defendant therein. The suit was decreed on 19.1.1972. A copy of the judgment is Ex.DW8/1.

3. Kundan Lal Trust and the Managing Committee of Kundan Vidya Mandir filed a suit on 11.4.1970 for declaration to the effect that the building in which Kundan Vidya Mandir (school) is being run forms part of the Trust property and the defendantappellant Digvijay, Kundan Lal's daughter's son, is wrongly claiming that this property had vested in him under the second Will and the judgment Ex.DW 8/1. The plaintiffs also sought recovery of Rs. 2740/ which according to them was wrongly recovered from them by the defendant as rent in the rent petition. The plaintiffs also averred that to avoid eviction they deposited the rent claimed by the defendants in that rent petition along with the interest and costs under protest. The plaintiffs pleaded that from a mere reading of the Trust Deed Ex.P/1 it is evident that Kundan Vidya Mandir was included in the trust property and therefore it ceased to be owned by Kundan Lal subsequent to the execution of the Trust deed; thus, the question of inheritance with regard to this property did not arise. But, defendant Digvijay contested the suit and pleaded that the property in which Kundan Vidya Mandir was being run was demised in his favour under the second Will and therefore he was its owner. He also pleaded that he is a bona fide purchaser and that the property mentioned at "H" in the plaint the vacant land and the building i.e. the portion behind the shops on the G.T. Road and Cinema Road was sold to him by Shri Kundan Lal vide registered sale deed dated 24.3.1958 for a sum of Rs. 20,000/. Its municipal number is B VII 1082/1, while the property number of the remaining shops is B VII 1059. The defendant also raised various preliminary objections. According to him as he is a bonafide purchaser without notice and with consent he is protected under Section 41 of the Transfer of Property Act. Shri Kundan Lal was the real owner of this property or otherwise he was the ostensible owner thereof and he sold this property to him for consideration. Since the date of purchase the suit property is in his possession. Kundan Vidya Mandir is regularly paying the rent of Rs. 50/ per month to the defendant. Even in the account books of the plaintiff payment of rent to the defendant is recorded; therefore, the plaintiff can challenge the title of the defendant only after surrendering possession. So long the plaintiff is in possession of the property as tenant, the plaintiff is estopped from challenging the title of the defendant under Section 115 of the Evidence Act. The other pleas raised in the written statement are not relevant for the decision of this Letters Patent Appeal.

4. On the basis of the pleadings of the parties, 17 issues were framed by the trial Court. After recording the parties' evidence, the trial Court dismissed the plaintiff's, suit as Issue Nos. 4, 11 and 12 were decided against the plaintiffs and Issue Nos. 6 and 7 were decided against the defendant.

5. Being aggrieved by the judgment and decree passed by the trial Court on

27.11.1975, the plaintiffs preferred Regular First Appeal No. 467 of 1976 in this Court. After hearing the rival contentions of the parties, the learned Single Judge allowed the appeal vide the judgment impugned, decreed the plaintiffs' suit and set aside the judgment and decree passed by the trial Court. The learned Single Judge also granted decree for the recovery of Rs. 2740/ in plaintiffs' favour declaring that it is owner of the building in which Kundan Vidya Mandir School is being run. Hence, this appeal.

6. The appellant's learned counsel vehemently argued that the appellant is son of Prem Lata daughter of late Shri Kundan Lal. Kundan Lal had four daughters and one son. Kundan Lal was not happy with the conduct of his son; therefore, by the Will Ex.P/2 he gave most of his properties to his daughters only excluding his son. In this Will, he expressed his desire to create a trust. This Will Ex.P/2 was superseded by another Will executed by Kundan Lal subsequently on 10.9.1957. The plaintiffs have claimed that this Trust was created by this Will Ex.P/2. this contention is devoid of any substance because this Will was subsequently revoked by Kundan Lal as he executed a second Will on 10.9.1957.

7. Mr. M.L. Sarin, Senior Counsel, vehemently argued that Kundan Lal executed a Trust Deed on 1.4.1950 which was registered on 10.4.1950. Trust. But thereafter, vide Registered Sale deed dated 24.3.1958, Kundan Lal sold this property to defendantappellant Digvijay for consideration. The building of Kundan Vidya Mandir was demised at a monthly rent of Rs. 50/. This rent was regularly paid by Kundan Vidya Mandir to the defendant which was also reflected in the account books of Kundan Vidya Mandir. Copies of the account books were produced in the earlier suit which resulted in judgment Ex.DW 8/1. He also strongly stressed that Kundan Lal died on 4.3.1966. During his life time, in his Wealthtax and Income Tax returns, he has shown that recovery of Rs. 50/ p.m. as rent from the said property. This consistent conduct of late Shri Kundan Lal also indicates that he never treated the suit property as Trust property but throughout his life he treated the said property as his personal property till the date of sale and after he sold the said property to the defendant, the defendant realised its rent.

8. Shri M.L. Sarin, Senior Counsel pointed out that earlier the defendant appellant filed two rent petitions against Kundan Vidya Mandir for realising rental arrears. In the first rent petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, the defendant claimed the plaintiffs' eviction from the suit premises on the ground of nonpayment of rent. In the rent petition, the respondents deposited Rs. 2350/ as rental arrears as claimed by the petitionerdefendant. Since the rent was deposited by the tenant, the defendant got his ejectment petition dismissed as is evident from Ex.D/7. In the second rent petition bearing No. 32 of 4.10.1969, rental arrears from 1.6.1969 to 31.12.1969 totalling Rs. 350/ along with Rs. 5/ as interest and Rs. 35/ as costs fixed by the Court were deposited by the tenant Kundan Vidya Mandir on the first date of hearing and respondents' counsel in that rent petition admitted the relationship of landlord and tenant between Digvijay, petitioner, and respondents

Managing Committee Kundan Vidya Mandir and Kundan Lal Trust. He pointed out that this statement was made by respondents' counsel Shri S.P. Anand on 12.12.1969. Since the rent was deposited by the tenant, the rent petition was not prosecuted further. Thus Shri M.L. Sarin, Senior Counsel submitted that thereby the tenant through his counsel has admitted the relationship of landlord and tenant. Now, the plaintiffs cannot plead otherwise at this stage and claim that they are the owners of the suit property. Without surrendering possession of the same, the plaintiffs are not entitled to plead as mentioned above.

9. The appellant's learned counsel also argued that the suit is based on the basis of the Trust Deed Ex.P/1, the first Will Ex.P/2 has only referred thereto, the plaintiffs are not claiming ownership in the said property. Further, this Will was revoked by Kundan Lal himself as he executed a fresh Will on 10.9.1957. In the earlier suit filed by Prem Lata and Dev Lata for partition where Kundan Lal Trust was also defendant these Wills were under consideration and the trial Court decided the suit vide judgement Ex.DW 8/1 and held that the earlier Will Ex.P/2 was revoked by Kundan Lal by executing a subsequent Will; therefore, even on this count, the plaintiffs cannot now claim their title in the suit property on the basis of Kundan Lal's first Will. During arguments, the appellant's learned counsel referred to the site plan of the Trust property and to various documents Ex.D/5, Ex.D 8/1, Ex.D 8/2, Ex.D3/1, Ex.D3/B, Ex.D3/C, Ex.D4/B, Ex.DW 6/1 to 6/9. He also pointed out that in the earlier suit, the plaintiffs filed an application that defendant be ordered to produce the account books showing the payment of rent to ownerlandlord Digvijay. The defendants filed certain documents alongwith their application dated 28.7.1971. The learned Counsel referred to all these documents and submitted that from these documents, it is evident that Kundan Lal always treated the suit property as his personal property and Kundan Vidya Mandir always paid rent initially to Kundan Lal and after the sale deed to the defendantappellant. He also referred to the statement of Ram Lal Dhawan PW who has proved the handwriting of Kundan Lal on various documents who has also stated that Kundan Vidya Mandir has two branches which are run in two different buildings which are very old and were constructed by Kundan Lal in his lifetime.

10. On the basis of this statement, the learned counsel argued that it is of common knowledge that various educational institutions are run in rented premises. If the Trust is created with regard to any educational institution, it does not necessarily mean that the building wherein the Institution is being run also becomes the Trust property. No doubt, in this case, Kundan Lal was the owner of the building wherein Kundan Vidya Mandir Educational Institution is being run but from the conduct of Kundan Lal execution of sale deed by him in defendantappellant's favour, before that acceptance of rent at the rate of Rs. 50/ p.m. from Kundan Vidya Mandir in his own name, his statements before the Wealth Tax and Income Tax authorities that the said building is on rent at the rate of Rs. 50/ and the assessment orders thereof are relevant to arrive at the conclusion that Kundan Vidya Mandir was never made a part of the Trust by

Kundan Lal.

11. The learned counsel also pointed out that during his lifetime Kundan Lal filed no suit to say that the building wherein Kundan Vidya Mandir is being run is also the Trust property. During his lifetime, the plaintiff never filed any suit claiming ownership in the suit building. The plaintiffs have also not challenged the sale deed executed by Kundan Lal in defendant appellant's favour alienating the suit property to him. On this account, he strongly stressed that the suit is barred by limitation under Article 65 of the Limitation Act as this suit was filed in March, 1970, much beyond the period of limitation.

12. Lastly, relying on *Srikissen Khanna and others v. Tarachand Ghanshyamdas*, A.I.R. 1940 Calcutta 228 the appellant's learned counsel argued that since Kundan Lal had executed the sale deed in defendant appellant's favour and Kundan Lal was the Chairman of the Trust Committee, his knowledge has to be treated as knowledge of all the Trustees. He also pointed out that from the Trust Deed Ex.P/1 it is evident that three leading Advocates of Jalandhar, Shimla and Ludhiana were appointed as Trustees by Shri Kundan Lal. If Kundan Lal really wanted to include the said property also in the Trust property, he could have specifically mentioned so but from the contents of the Trust Deed, it is evident that nowhere it is mentioned that the building where Kundan Vidya Mandir (school) is being run is also made the Trust property. Hence, according to him, the learned Single Judge has fallen into an error in decreeing the plaintiff's suit. He also submitted that the learned Single Judge has not properly interpreted the covenants of the Trust Deed.

13. Shri Hira Lal Sibal, plaintiff respondents' Senior Counsel submitted that by executing Will Ex.P.2 on 7.11.1949, Kundan Lal wanted to establish this Trust though earlier its name was Kundan Lal Charitable Trust. By this Will certain properties were given by Kundan Lal to his four daughters as well as to defendant appellant and for the remaining properties owned by Kundan Lal he established Kundan Lal Charitable Trust. The suit property fell within his remaining properties.

14. The learned counsel strongly canvassed that no writing is necessary to create an endowment except where the same is created by a Will and if it is created by a Will, under the law, it is required to be in writing and attested by at least two witnesses. Kundan Lal established this Public Charitable Trust by executing the Will Ex.P/2 which was duly attested by two witnesses. The Senior Counsel submitted that even though by the judgment Ex.DW 8/1 it is held that this Will was revoked by Kundan Lal as he executed a Will subsequently but still as the Trust was created by this Will it cannot be said that the Will Ex.P/2 cannot be looked into for any purpose. In the judgment Ex.PW8/1, it is not held that the Will Ex.P/2 is not proved as is required to be proved under Section 63 of the Evidence Act. In this Will, Kundan Lal has specifically mentioned Kundan Vidya Mandir.

15. Adverting to the interpretation of Trust Deed Ex.P/1, he pointed out that on the first page he has mentioned certain properties and has described them as Trust properties. These properties include buildings known as Kundan Wood Factory, Button and Comb Factories, Kundan Engineering Works, Kundan Industrial and Technical Institute, including his residential house and private gardens on the whole portion of Khasra No. 903. The boundaries of these properties are also mentioned therein. It is also specifically mentioned that this Trust property together with all buildings, trees, rights and easements appertaining thereto have become the Trust property absolutely free from encumbrances. On the second page, under the title "Now this instrument of Trust Witnesseth as follows", it is mentioned as follows in clause (d) :

"(d) The "Trust Properties" mean and include

(i) The properties described above as the "Trust Property".

(ii) Kundan Vidya Mandir.

(iii) Kundan Lal Industrial and Technical Institute.

(iv) .....

Below (iv) it is mentioned that in pursuance of the said desire and in consideration of the premises the said "Founder" Shri Kundan Lal both hereby declare and assure unto the said Trustees All and Singular the Trust Properties described above : TOGETHER WITH all buildings, trees, rights and easements, appertaining thereto, and all the rights, titles and interests of the Founder of the Trust in the said "Trust Property". TO HOLD THE same unto the said "Trustees" for ever upon Trust....."

The respondents" learned Counsel while interpreting the aforementioned clause of the Trust Deed submitted that from the above recitals in the Trust Deed, it is evident that Kundan Vidya Mandir together with its building is made the Trust property. Hence, the learned Single Judge has rightly interpreted this clause of the Trust Deed to arrive at the conclusion that the suit building is also part of the Trust property.

16. The respondents" learned counsel further argued that after execution of the Trust Deed on 1.4.1950 registered on 10.4.1950, late Shri Kundan Lal had no right or title left in the said property. Therefore, even if he subsequently alienated the suit building to defendantappellant Digvijay, the sale deed could not/does not confer any right, title or interest in the said property to defendantappellant.

17. So far as the payment of rent is concerned, the learned counsel submitted that when Digvijay filed rent petitions against the plaintiffs, they tendered rent to save eviction but rent was always tendered under protest. He pointed out that on 21.6.1996 and 12.12.1996, rent amounting to Rs. 2350/ and 390/ was tendered by the plaintiffs under protest. In the rent petition bearing No. 6 of 1969, these

respondents filed their reply to the rent petition wherein it is specifically pleaded that they are denying the title of the petitioner landlord and are not admitting that they are tenants therein of the petitioner landlord. It is further averred therein that the respondents are depositing the rent under protest. Therefore, their counsel Shri S.P. Anand had no authority on behalf of these appellantplaintiffs to make such a statement that the relationship of landlord and tenant is admitted. If the counsel has made any such statement which is contrary to the averments made in the reply submitted by the respondents (in that rent petition, the plaintiff respondents in this appeal), it does not bind on the plaintiffrespondents. Further, even from the replication submitted by the defendantappellant Digvijay in reply to their written statement it is obvious that the petitioner wanted to confirm whether rent is tendered under protest or unconditionally. Hence, now this statement of Shri S.P. Anand, Advocate cannot be taken recourse to by the appellantdefendant to hold that the plaintiffrespondents admitted defendant to be the owner/landlord of the suit premises. To substantiate this contention, he has referred to Ex.PX 1 to PX 3. He also submitted that these respondents filed their reply on 22.7.1969 through their counsel Ram Krishan Khosla. In this reply, the respondents have clearly pleaded that the rent was paid under protest. Referring to Ex.PX/3, Shri H.L. Sibal, Senior Counsel, made a scathing criticism wherein the respondents prayed that statement of the Secretary of the respondents be recorded to ascertain whether the tender of rent was made by the respondents conditionally or unconditionally and if it was made conditionally then he be allowed to withdraw his statement giving up his ground of ejectment for nonpayment of rent. The learned counsel submitted that from these documents, it is evident that petitionerdefendant knew from the very beginning that these respondentsplaintiffs are not admitting him to be their landlord and have tendered the rent under protest. Therefore, the appellantdefendant cannot now be allowed to contend that vide Ex.P/10, through the statement of their counsel Shri S.P. Anand, these respondents have admitted the defendant to be their landlord.

18. The learned counsel also argued that if the suit building would have been really demised by Kundan Lal on rent at the rate of Rs. 50/ p.m., he would have got executed a rent note. He admitted that it is not necessary that rent note should have been executed but since Shri Kundan Lal was very meticulous/methodical in all his actions while dealing with the property, he would have positively got executed the rent note. No rent receipt is filed by the defendantappellant to prove that Kundan Vidya Mandir paid rent to the defendantappellant. So far as the copies of the accounts book submitted in the suit and proved by the statement of DW 7 Hari Krishan are concerned, no doubt this witness stated that the cash book entries are in the hand of Kundan Lal but these entries are not binding on the respondent/plaintiffs as they are hit by Section 21 of the Evidence Act. In this connection, he also again referred to the Trust Deed and submitted that after executing this Deed in April, 1950, Kundan

Lal had no subsisting title in the suit property to execute any document showing that he is exclusive owner of the said property. If after the execution of the Trust Deed in April, 1950 he maintains cash book showing entries of the payment of rent on behalf of Kundan Vidya Mandir and even if he has shown in his Wealth Tax/Income Tax returns that he is getting Rs. 50/ as rent per month from Kundan Vidya Mandir, these documents are irrelevant and do not bind the plaintiffrespondents. They are nothing but admission in favour of Kundan Lal himself.

19. Kundan Vidya Mandir was a part of the Trust property as is evident from the Trust Deed Ex.P.1. It is not described as an institution in the Trust Deed. Kundan Vidya Mandir is a School. It is the soul and the building is its body. Kundan Vidya Mandir is described as Trust property in the Trust Deed.

20. Refuting the arguments with regard to the point of limitation Shri Hira Lal Sibal, Senior Counsel strongly stressed that the plaintiffs had no knowledge of the execution of the sale deed. Since by the Trust Deed Ex.P.1, Kundan Vidya Mandir with its building was made a part of the Kundan Lal Trust, the plaintiffs were not required to seek any relief against the said sale deed alleged to have been executed by Shri Kundan Lal in favour of the defendant appellant Digvijay. Even in the earlier suit as is evident from the judgment Ex.PW 8/1, these defendants clearly pleaded that they are not claiming properties given to Trust. The Court has also held accordingly. When for the first time, the defendantappellant filed rent petition in 1969 against the plaintiffs they came to know that defendantappellant is claiming ownership in the suit property on the basis of the sale deed alleged to have been executed in his favour by Kundan Lal on 7.11.1969 and immediately thereafter on 30.3.1970 they filed a suit seeking declaration that they are owners of the suit property. Thus, their suit is within limitation under Article 58 of the Limitation Act. Hence, he submitted that the learned Single Judge has rightly decreed the plaintiff's suit.

21. After hearing the forceful submissions advanced by both the Senior Counsel, we are of the view that the learned Single Judge has rightly decreed the plaintiff's suit. The first document that Shri Kundan Lal executed with regard to the suit property is his Will Ex.P.2. A plain perusal of this Will indicates that Kundan Vidya Mandir along with its building was made a part of Kundan Lal Charitable Trust. Specific properties mentioned therein were bequeathed to all the daughters of Shri Kundan Lal. Specific property was also bequeathed to Digvijay his grandson and with regard to the remaining properties owned by Shri Kundan Lal an endowment known as Kundan Lal Charitable Trust was created. Kundan Vidya Mandir along with its building was made property of this Trust.

22. No doubt this Will was to come into force after the death of Kundan Lal but before that he superseded this Will and executed another Will on 10.9.1957. This Will Ex.P/2 was proved in the earlier suit as is evident from the judgment Ex.DW 8/1. Under Section 68 of the Evidence Act, this Will was required to be proved by examining the Scribe and attesting witnesses. This will was duly proved in that

case. The execution of the Will Ex.P/2 is no more relevant for the decision of this Letters Patent Appeal as the case hinges on the interpretation of the terms incorporated in the Trust Deed Ex.P.1.

23. As quoted above, from the first page of the Trust Deed, it is evident that the founder has described the Trust Properties therein which includes Kundan Wood Factory; Button and Comb Factories, Kundan Engineering Works, Kundan Industrial and Technical Institute including his residential house and private gardens on the whole portion of Khasra No. 903. But on page two, under the sub heading "Now this instrument of Trust witnesseth as follows", in Para 1 Col. (d), it is clearly mentioned :

"(d) The "Trust Properties" mean and include

(i) The properties described above as the "Trust Property."

(ii) Kundan Vidya Mandir.

(iii) Kundan Lal Industrial and Technical Institute.

(iv) All other lands, buildings, properties both moveable and immoveable, cash, joint stock company shares etc., that may hereinafter be conveyed or otherwise assigned to the Trustees in perpetuity or declared to be the "Trust Property" of Shri Kundan Lal Trust."

Below that there is another subheading "and it is hereby declared that", its subclauses 2 and 3 reads as under :

"2. The school known as Kundan Vidya Mandir together with its branches which may be opened hereinafter shall continue to be used by the "Trustees" for the purpose of imparting education to Hindus on most modern lines, to befit them as citizens of a great nation. Education to be imparted through the medium of Hindi.

3. The Institute known as Kundan Lal Industrial and Technical Institute shall continue to be used by the Trustees for the purposes of giving technical, industrial, engineering or scientific education to Hindus."

A plain interpretation of the aforementioned covenants of the Trust Deed clearly indicates the mind of the founder. He included Kundan Vidya Mandir together with its building in the category of Trust properties. Thus it is obvious that after executing this Trust Deed on 1.4.1950, Kundan Lal had no subsisting right, title or interest in the said property i.e. building wherein Kundan Vidya Mandir is being run. So far as other branches of Kundan Vidya Mandir are concerned, from the statement of PW/2 Ram Lal Dhawan, it is evident that another branch is being run in premises of Kundan Wood Factory. Therefore, it cannot be said that these two premises were taken on rent by Kundan Vidya Mandir to run the classes. In the Trust deed Ex.P.1 Kundan Vidya Mandir is mentioned; it is not named as an Institution like other Institutions mentioned therein. Since Kundan Vidya Mandir is specifically mentioned at page 2 and below that it is mentioned that Kundan Vidya Mandir with the building was made the Trust property.

24. In view of the above facts, reference to all other documents on which the appellant's learned counsel has placed reliance is not relevant. If after executing the Trust Deed, Kundan Lal maintained account books showing that he is receiving Rs. 50/ p.m. as rent from Kundan Vidya Mandir or in his Wealth Tax/ Income Tax Returns he has shown that he is receiving Rs. 50/ as rent from Kundan Vidya Mandir, these were all admissions in his own favour and they are not relevant in view of the provisions of Section 21 of the Evidence Act. These admissions made by Shri Kundan Lal in his documents do not bind the plaintiffrespondents.

25. Admittedly, no rent note was executed by Kundan Vidya Mandir either in favour of Kundan Lal or in favour of defendantappellant Digvijay. No rent receipt was filed by the defendantappellant to prove that Kundan Vidya Mandir ever paid any rent to Kundan Lal during his lifetime or to the defendant appellant after the execution of the sale deed.

26. So far as the fact of deposit of rent by the plaintiffrespondents during the pendency of the rent petitions is concerned, from the written statement filed by the plaintiffs in first rent petition, it is obvious that the rent was deposited under protest. In their reply, they have specifically denied the title of defendantappellant. Their clear stand was that he is not their landlord and they are not occupying the premises as tenants of defendant Digvijay. Both the rent petitions were not prosecuted further by the defendantappellant. After the rent was tendered by the respondents, the defendantappellant got those rent petitions dismissed. If really he wanted to prove that he is owner/landlord of the plaintiffs in the suit property, he would have prosecuted those rent petitions and would have got the matter adjudicated through the Court of law but he failed to adopt that course of conduct.

27. The plaintiffrespondents' learned counsel rightly submitted that the statement of Shri S.P. Anand, Advocate dated 12.12.1969 cannot be made binding on the plaintiffrespondents. On this very date these plaintiffrespondents filed their reply to the rent petition reiterating their stand that Digvijay, petitioner, is not their landlord and they are tendering the rent under protest. Despite this clear averment made in the reply, if Shri S.P. Anand, Advocate has made the statement before the Rent Controller that the relationship of landlord and tenant is admitted is against the instructions of the plaintiffrespondents and on this count this statement of Shri S.P. Anand, Advocate is not binding on the plaintiffrespondents.

28. So far as the execution of the sale deed in defendantappellant's favour is concerned, there is no material on record to show that plaintiffs ever had knowledge of this sale deed till the defendantappellant filed the rent petition against them. After the execution of the Trust Deed Ex.P.1, if Kundan Lal has executed a sale deed of the suit property in favour of defendantappellant it is non est in the eyes of law as it does not confer any title in the said property on defendantappellant Digvijay and on this count, the plea raised under Section 41

of the Transfer of Property Act is not available to the defendantappellant.

29. As we have held above that for the first time when rent petition was filed by the defendantappellant against the plaintiffs in 1969, they came to know that the defendantappellant is claiming ownership in the suit property. Immediately, in March, 1970 they filed the suit seeking aforesaid declaration. Hence under Article 58 of the Limitation Act, 1872 the suit is within limitation. The learned Single Judge has rightly held so.

30. Thus, on the above facts, in our considered view, the learned Single Judge has not fallen into any error much less a legal one in allowing the appeal and decreeing the plaintiffs' suit for declaration and recovery of the amount of Rs. 2740/.

Accordingly, this appeal being meritless is dismissed with costs.