
(2015) 03 RAJ CK 0007

In the Rajasthan High Court

Case No : Cross Objections in Civil First Appeal No. 82/1980

Hazari Lal and Others

APPELLANT

Vs

Shyam Lal and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 4, 151
Evidence Act, 1872 — Section 90
Limitation Act, 1963 — Section 5

Citation : (2015) 03 RAJ CK 0007

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Rekha Borana, for the Appellant; Himanshu Maheshwari, Advocates for the Respondent

Judgement

Dr. Vineet Kothari, J.—The cross objections filed by defendant No. 4, Karim Bux s/o Fateh Mohd. in the year 1980 are being decided now after 35 years by this Court, even though the first appeal No. 82/80 (Hazari Lal s/o Sanwar Mal and anr. vs. Shyam Lal s/o Kanakmal Toshniwal and Ors.), in which such cross objections were filed, itself came to be dismissed as not pressed by the appellant Hazari Lal s/o Sanwarmal on 18/1/2010.

2. The case has a long chequered litigation history and the introductory facts in a nutshell are like this.

3. The present civil suit No. 13/77 (10/71) was filed on 5/7/1971 by plaintiff - Sanwar Mal s/o Tansukh Ram, who was substituted by his legal representatives; Hazari Lal, Mohan Lal and Smt. Gulabi wd/o Sanwar Mal in the suit itself, against the defendants Shyam Lal s/o Kanakmal Toshniwal, Chhogalal s/o Dhoola Daroga, Chouthmal s/o Fathuram and Karim Bux s/o Fateh Mohd. for declaration and perpetual injunction in respect of the suit property, which is a plot of land measuring 76" x 76" situated at Gadri Kheda, now known as Gandhi Nagar, Bhilwara. The suit was dismissed on 14/8/1980 by the learned trial court of Addl.

District Judge, Bhilwara (Judge P.O. Shri Gopal Lal Gupta, RHJS, who was later on was elevated and retired as Hon"ble Judge of this Court, as his Lordships then was) deciding almost all the issues against the plaintiffs Hazari Lal s/o Sanwar Mal. The plaintiff claimed in the suit that he was in possession of the said suit plot of land for a period of more than 12 years and, therefore, on the basis of adverse possession, he be declared owner of the same as he was carrying on the business of selling "stone pattis" on the said suit plot in the name and style of M/s. Sanwarmal Tansukh Ram. The plaintiff further alleged in the suit that defendant No. 1 Shyam Lal s/o Kanakmal Toshniwal was not the owner of the said suit plot nor the defendant No. 4 Karim Bux s/o Fateh Mohd. was the owner and, therefore, they be injuncted not to interfere with the peaceful possession of the plaintiff. The learned trial court framed 07 issues including the issue No. 6 regarding the ownership claimed by defendant No. 4 Karim Bux s/o Fateh Mohd.

4. The finding on issue No. 6 against defendant No. 4 - Karim Bux by the learned trial court are quoted below for ready reference:--

5. From the aforesaid quoted portion of the findings against the defendant No. 4, Karim Bux s/o Fateh Mohd., it transpires that the said defendant No. 4, Karim Bux, who is now represented by his legal representatives, was a practicing Advocate in Bhilwara and represented the defendant Chouthmal s/o Fathuram, who was the real nephew of plaintiff Sanwar Mal s/o Tansukh Ram and was also claimed to be working as "Munim" (Accountant) of the firm of the plaintiff, M/s. Sanwarmal Tansukh Ram and on the basis of adverse statement of said Chouthmal s/o Fathuram, the trial court found that Karim Bux had claimed ownership of the said plot of land without any basis and exerting undue influence he had got the rent note and rent receipts executed by the said Chouthmal in his favour as he was representing the said Chouthmal in the eviction suit No. 136/67 filed by the defendant No. 1 Shyam Lal s/o Kanakmal Toshniwal against Chhoga s/o Dhoola Daroga and Chouthmal s/o Fathuram and they had entered into a deal for representing Chouthmal before the Court in that eviction suit filed by Shyam Lal without any remuneration if the said Chouthmal supports his case in the present suit.

6. The defendant No. 1 - Shyam Lal, who claims his right over the said suit plot, is son of Kanakmal Toshniwal, in whose favour the original owner through the Patta issued in Samvat Year 1987 or the year 1930 had mortgaged the said plot of land and having never repaid the said amount for redeeming the mortgage, the mortgagee Kanakmal retained the said property and whose son Shyam Lal, who had let out the said suit plot earlier to one Ram Sukh and then later on to Chhoga s/o Dhoola Daroga filed the eviction suit No. 135/67 against Chhoga s/o Dhoola Daroga and sub-tenant Chouthmal s/o Fathuram, the nephew of the plaintiff Sanwar Mal in the present suit No. 13/77 (10/71). The said Shyam Lal filed the eviction suit against the tenant Chhoga and sub tenant Chouthmal on the basis of rent note dated 25/9/1956 for having given the said plot of land to the tenant Chhoga at the monthly rent of Rs. 5/-, in which the defendant tenant

Chhoga remained ex-parte but defendant No. 2 Chouthmal contested the suit through his Advocate Karim Bux and denied the title of Shyam Lal as the owner of the suit land but the learned trial court decreed the said eviction suit No. 136/67 on the ground of subletting by Chhoga in favour of Chouthmal and also on the ground of default in payment of rent. In that suit the present cross objector Karim Bux, a practicing Advocate, sought his own impleadment as a party in the said suit but that application having been rejected, he appeared as a witness before the learned trial court to support the case of sub-tenant Chouthmal and the findings of learned trial court against said Karim Bux in that eviction suit were also read before this Court, the said judgment and decree of eviction dated 3/10/1968 was also placed on record in the present suit also and which became final since appeal against that filed by Chouthmal was also dismissed and these findings are found to be quite damning and damaging for the present case of the cross objector Karim Bux here. The same are also quoted below for ready reference:--

"From the order dated 3/10/1968 in Eviction Suit No. 136/67 - (Shyamlal vs. Chhoga and Chouthmal):--

7. From the above findings of the learned trial court in the eviction suit filed by the defendant Shyam Lal s/o Kanakmal Toshniwal against Chogga and Chauthmal, it is clear that the present cross objector Karim Bux was found to be guilty of professional misconduct in those proceedings, hardly has a reliable claim of ownership over the said suit property and, therefore, the cross objections filed by him in the present first appeal, ex-facie, do not inspire any confidence. Secondly, as far as the dismissal of the first appeal itself is concerned, if the legal representatives of original plaintiff Sanwarmal, namely; Hazari Lal and others have themselves sought to withdraw the present first appeal as having handed over the possession of the suit property to the defendant No. 1 - Shyam Lal and on their application filed in this appeal, namely; I.A. No. 16631/2009 filed on 4/12/2009, jointly signed by the learned counsels for Hazari Lal, Mr. Dalpat Raj Bhandari and learned counsel appearing for Shyam Lal, Mr. Himanshu Maheshwari, along with the affidavit of Hazari Lal s/o Sanwarmal duly attested by Notary Public, Chirawa, a coordinate bench of this Court dismissed the first appeal on 18/1/2010, of course leaving the present cross objections to be decided on their own merits and, therefore, lengthy arguments on these cross objections were also heard by this Court again. The averments made in the said I.A. No. 16631/2009 filed on 4/12/2009 read as under:

"APPLICATION UNDER SECTION 151 CPC

The humble appellant above named most respectfully submits as under:--

Since the possession of the property in question has been handed over the respondent No. 1 Shyamlal and for the reasons mentioned in the enclosed affidavit, the appellant does not want to contest this appeal and in view of this

the appeal may be dismissed as not pressed. Since, there does not exist any dispute between the appellant and the respondent Shyamlal. Hence, if the cross objections filed by the respondent Shyamlal are allowed then the appellant does not have any objection.

It is, therefore, most respectfully prayed that this appeal may kindly be dismissed as not pressed and cross-objections filed by the respondent Shyamlal may kindly be allowed.

"

8. The order passed by the coordinate bench of this Court on 18/1/2010 dismissing the first appeal is also quoted below for ready reference:--

"18.1.2010

HON"BLE MR. JUSTICE H.R. PANWAR

Mr. D.R. Bhandari, for the appellants.

Mr. Himanshu Maheshwari, for the respondent No. 1-Shyamlal.

Ms. Rekha Borana, for the respondent No. 4/1/to 4/6.

By an application being IA No. 16631/2009 filed by counsel for the appellant No. 1-Hazari Lal as also counsel for the respondent No. 1-Shyamlal, it is submitted that appellant does not want to press the instant appeal and, therefore, appeal filed by the appellant-Hazari Lal may be dismissed as not pressed and cross-objection filed by Shyamlal may be allowed.

Ms. Rekha Borana, learned counsel appearing for the respondent No. 4 submits that she has filed cross-objection on behalf of the respondent No. 4. The position of the cross-objection of respondent No. 4 is as good as cross-appeal and therefore, it will survive even if the appeal is dismissed as not pressed.

The matter comes up before this Court on 11.1.2010. Learned counsel for the respondent No. 4 stated that Shyam Lal has expired. Despite the fact that Shyamlal infact expired on 26.9.2009, learned counsel for the respondent Shyamlal and the nephew of Shyamlal who was present before this Court, stated that Shyamlal is alive.

Today, Mr. Himanshu Maheshwari, learned counsel for the respondent No. 1-Shyamlal submits that Shyamlal expired on 26.9.2009. Since the respondent No. 1-Shyamlal has already expired and his legal representatives are not taken on record, therefore, cross-objection filed by Shyamlal stands dismissed as having abated.

The instant first appeal is dismissed as not pressed. The cross-objection filed by respondent No. 4 only survives. Application being I.A. No. 16631/2009 stands, accordingly, disposed of."

9. Later on, on an application filed on behalf of respondent-defendant No. 4- Karim Bux through learned counsel Ms. Rekha Borana, another coordinate bench also noticed the fact that since after the death of defendant No. 1 Shyam Lal on 26/9/2009, the legal representatives of defendant No. 4 - Karim Bux, who expired on 16/2/1983, also claimed substitution of one Islamia School Charitable Trust, as the legal representatives of Karim Bux have donated the said plot in favour of Islamia School Charitable Trust, the another coordinate bench issued notices on the said application vide order dated 11/1/2011, which is also quoted below for ready reference:--

"11/1/2011

HON"BLE MR. JUSTICE SANGEET LODHA

None present for the appellant.

Ms. Rekha Borana for the respondent

It is to be noticed that the first appeal No. 82/80 preferred by Hazarilal and Anr. was dismissed by this Court vide order dated 18.1.2010 as not pressed. That apart, the cross-objection filed on behalf of respondent No. 1. Shyamlal was also dismissed as abated. However, the cross objection filed on behalf of respondent No. 4 Karimbux survives for consideration of this Court.

The matter comes upon on two applications preferred on behalf of cross-objector respondent No. 4, one under Order 22 rule 4 r/w Section 151 CPC to bring the LRs of respondent No. 1 Shyamlal on record who has expired on 26.9.09 and another for substitution of Islamia School Charitable Trust, Gandhi Nagar, Bhilwara as cross-objector respondent No. 4.

Let the notice of both the applications be issued to the LRs of Shyamlal as mentioned in para No. 1 of the application preferred under Order 22 Rule 4 r/w 151 CPC so also to the surviving appellant Hazarilal against whom the relief is claimed, returnable on 10.2.2011. Notices may be filed in two sets. One set may be sent by registered post and another may be given dasti to learned counsel for service."

10. The order dated 5/5/2011, whereby, the legal representatives of Shyam Lal were taken on record is also quoted below for ready reference:--

"Date of order : 5/5/2011

HON"BLE DR. JUSTICE VINEET KOTHARI

Mr. Dalpat Raj Bhandari, for the appellant.

Ms. Rekha Borana, for the respondent.

For the reasons given in application under Order 22 Rule 4 CPC, the same is allowed.

The L.Rs. of respondent No. 1 Shri Shyam Lal who is said to have expired on 26.9.2009 are taken on record. The amended cause title, if already not filed, be filed within a period of two weeks.

The cross objections of respondent No. 4 Karim in appeal shall be considered at the time of hearing since the first appeal No. 82/1980 has already been dismissed as also the cross objection of respondent No. 1 Shyam Lal has also been dismissed as abated."

11. On 18/3/2013, learned counsel for the cross objector, Ms. Rekha Borana was directed to produce the original gift deed executed in favour of the aforesaid Islamia School Charitable Trust. The order dated 18/3/2013 is also quoted below for ready reference:--

"18.03.2013

HON"BLE MR. JUSTICE P.K. LOHRA

Ms. Rekha Borana, for the cross objector.

Mr. Himanshu Maheshwari for the non-cross objector.

List this matter on 8th April, 2013.

Meanwhile, the learned counsel for cross objector, Ms. Rekha Borana, may produce original gift deed which was executed by Karimbux in favour of trust for perusal of this Court."

12. Despite grant of several opportunities to Ms. Rekha Borana to produce the aforesaid document (gift deed) on 6/5/2013, 4/7/2013, 26/7/2013 and 14/8/2013, she could not produce the said gift deed and ultimately did not press the said application and, therefore, on 19/9/2013 the said I.A. No. 5246/2010 filed under Order 22 Rule 10 CPC filed by Ms. Rekha Borana was rejected. The order dated 19/9/2013 is also quoted below for ready reference:--

13. The legal representative of defendant No. 1 - Shyam Lal also filed I.A. No. 885/2014 on 13/2/2014 for setting aside the abatement of cross objections filed by Shyam Lal, which was also rejected by another coordinate bench of this Court on 3/3/2014, which order is also quoted below for ready reference:--

"Date of Order : 03.03.2014

HON"BLE MR. JUSTICE ARUN BHANSALI

Ms. Rekha Borana, for the cross-objector - R. No. 4.

Mr. Himanshu Maheshwari, for the cross-objector - R. No. 1.

Heard learned counsel for the parties on application filed by the legal representative of respondent No. 1 Shyamlal seeking setting aside of abatement

of cross-objection filed by the said respondent No. 1 Shyamlal alongwith an application for condonation of delay under Section 5 of the Limitation Act.

Though, no reply to the said application has been filed by the learned counsel appearing for legal representatives of respondent No. 4, it is submitted that in the cross-objection filed by respondent No. 4, the said applicant was impleaded as party by way of an application under Order XXII, Rule 4 CPC, which was filed on 12.04.2010 and, whereafter the said application was decided by this Court on 05.05.2011. Therefore, it cannot be said that the said applicant was not aware of the requirement of getting impleaded in place of deceased Shyamlal. The application having been filed after inordinate and unexplained delay, the delay cannot be condoned.

It is submitted by learned counsel for the applicant that the applicant Smt. Ramkanya Devi is aged about 80 years and was not aware of the requirement to get impleaded in the cross-objection filed by the said Shyamlal. It is further submitted that in any case the said cross-objections were essentially targeted against the appellants Hazarilal and Anr. and the appeal having been withdrawn by the said Hazarilal and Anr., even otherwise the cross-objection filed by the respondent No. 1 Shyamlal have lost significance.

Having considered the submissions made by learned counsel for the parties. It is apparent that the applicant was aware of the pendency of the present proceedings and had appeared through counsel in the proceedings, wherein, an application was filed by respondent No. 4 in the cross-objection for impleading her as legal representative of deceased respondent No. 1 Shyamlal.

Once an appearance was put in the appeal, it necessarily means that she was aware of pendency of the cross-objection and having been represented by counsel, she cannot claim that she was not aware of the requirement to file application seeking impleadment in the cross-objection filed by respondent No. 1 Shyamlal, her husband.

In that view of the matter and the fact that even otherwise the cross-objection filed by the respondent No. 1 Shyamlal have lost significance, no case for condonation of delay is made out.

Consequently, the application seeking condonation of delay is dismissed and the application filed by the applicant seeking setting aside of abatement of cross-objection filed by respondent No. 1 Shyamlal is also dismissed.

List the cross-objection filed by respondent No. 4 on 11.03.2014."

14. In the aforesaid perspective, the cross objections filed by Karim Bux were considered by this Court after hearing the learned counsels at length.

15. The sum and substance of the arguments raised by the learned counsel Ms. Rekha Borana appearing for the cross objector Karim Bux now represented by his legal representatives, Mr. Shabbir Mohd. and Ors., who were taken on record

vide order dated 17/5/1984 of Registrar, are that Karim Bux s/o Fateh Mohd. was the owner of the said plot of land and he purchased the same from Lalu Chamar in Samvat Year 1987 or in the year 1930 for a sum of Rs. 52/- for which Ex/1-D, an unregistered sale deed has been produced on record and the original Patta Ex. 2 in torn condition with site plan as given to him by Lalu Chamar, has also been produced by him. However, the said plot was again sold by Lalu Chamar dishonestly to Abdul Gafoor, who further sold it to Ibrahim and Ibrahim further sold it to Hameeda and coming to know of these subsequent sales, the cross objector Karim Bux got the said sale deed Ex. D/1 from Hameeda and has produced the same before the Court. Ms. Rekha Borana, learned counsel appearing for cross objector submitted that Karim Bux had given on rent the said plot of land on 16/1/1964 to the firm M/s. Sanwar Mal Tansukh Ram at the rate of Rs. 20/- per month and Sanwar Mal was put in possession by Karim Bux. She has also relied on Ex. 2-D, a demand notice for Tax issued by the Divisional Commissioner on 20/3/1968 to the cross objector Karim Bux.

16. Ms. Rekha Borana, learned counsel also argued that the original mortgage deed produced by Shyam Lal was never proved by him and only on the basis of presumption drawn in his favour under Section 90 of the Evidence Act, as the question for drawing such presumption in the present case came to be decided by the Division Bench of this court upon reference made by learned Single Judge vide order dated 14/11/2006. The relevant extract of the said order dated 14/11/2006 of Division Bench is also quoted below for ready reference:--

"IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR : J U D G M E N T : D.B. CIVIL FIRST APPEAL No. 82/1980

Hazarilal and Anr. VS. Sh. Shyam Lal and Ors.

DATE OF JUDGMENT : 14th NOVEMBER, 2006

: P R E S E N T : HON"BLE THE CHIEF JUSTICE SHRI S.N. JHA HON"BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri D.R. Bhandari, for the appellants.

Shri Himanshu Maheshwari and Ms. Rekha Borana for the respondents.

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In the result, the reference is answered in the negative and it is held that presumption under Section 90 of the Evidence Act can be claimed and drawn at any stage including the appellate stage; belated claim of presumption will not by itself confer any right on the other party to claim opportunity to lead evidence in rebuttal. Such opportunity shall ordinarily be refused at the stage of final arguments save in exceptional cases for cogent and sufficient reasons recorded in writing.

The reference having been thus answered. The appeal may now be listed before the learned Single Judge as per roster for decision on merit.

17. Ms. Rekha Borana, learned counsel for the cross objector - Karim Bux, therefore, submitted that merely because the presumption was allowed to be drawn in respect of mortgage deed of Lalu Chamar in favour of Kanakmal, father of Shyamlal, it could not be believed to be conferring any ownership right upon Shyam Lal-defendant No. 1, who had failed to prove the contents of the said mortgage deed and in the eviction suit No. 136/67 filed by him, he never produced the said document before the learned trial court even though his title over the suit property was challenged by the sub-tenant - Chouthmal. Learned counsel Ms. Rekha Borana, therefore, submitted that the statement given by Chouthmal that Shyam Lal was put in possession by Karim Bux and he being the "Munim" (Accountant) of the firm had executed the rent note in favour of Karim Bux was liable to be accepted and the rejection of his claim by the learned trial court was not justified. She, however, admitted that no suit for possession or declaration was ever filed by Karim Bux for the said suit property.

18. Countering these submissions vehemently, Mr. Himanshu Maheshwari, learned counsel appearing for the defendant No. 1 Shyam Lal, now represented by his widow Smt. Ram Kanya Devi, without any other issue or son or daughter, submitted that the cross objector Karim Bux, now represented by his legal representatives Mr. Shabbir Mohd and Ors., is estopped from claiming any relief in the present cross objections, as the first appeal of Hazari Lal, in which cross objections have been filed by Karim Bux, which are not separately registered, itself has been dismissed as not pressed by the appellant Hazari Lal s/o Sanwarmal, the plaintiff in the first instance. He also submitted that in the absence of any declaration suit filed by Karim Bux, he could not claim any title or ownership of the suit property, whereas, defendant No. 1 Shyam Lal had produced the original mortgage deed from his possession and drawing the presumption under Section 90 of the Evidence Act in favour of Shyam Lal by the Division Bench as mortgagee of the said property since Lalu Chamar never redeemed the said mortgage created in favour of his father Kanakmal, the defendant No. 1 Shyam Lal was the true owner entitled to the possession of the said plot of land and Hazari Lal having handed over the possession of the said plot of land to him before his death on 26/9/2009, the first appeal was dismissed as not pressed on 18/1/2010 and, therefore, the present cross objections filed by Karim Bux also deserve to be dismissed.

19. Mr. Himanshu Maheshwari also submitted that the stand taken by Karim Bux in the application that the land in question was donated by him in favour of Islamia School Charitable Trust through a gift deed, which was never produced before this Court despite several opportunities granted, the said application was not pressed by the same counsel Ms. Rekha Borana and, therefore, contrary argument cannot be raised by her on behalf of the legal representatives of Karim Bux after he has expired on 16/2/1983 and his legal representatives were taken on record on 17/5/1984 and at this stage they cannot take the benefit of any semblance of right over suit land as against the defendant Shyam Lal. He, therefore, prayed for the dismissal of the cross objections with costs.

20. I have heard the learned counsels at length and perused the record of the case. No judgments were cited at the bar by either side.

21. This Court is of the considered opinion that the cross objections filed by Karim Bux deserve to be dismissed. The very foundation of the suit filed by Sanwarmal on the basis of his adverse possession over the suit plot was a very weak case set up by him and the court below in the impugned judgment has rightly found that the said plaintiff Sanwarmal failed to prove his title and adverse and hostile possession over the suit land for a period of more than 12 years and at the most he was only doing the business of selling the "stone pattis" there for 6-7 years. Even the said possession appears to be the possession of Chouthmal, who remained deliberately ex-parte in the present suit but as the trial court below found clearly that he was actively pursuing the present litigation as the really interested person on behalf of Hazari Lal and Sanwar Mal and at his instance only various witnesses were produced before the learned trial court. The said Chouthmal, as a sub-tenant, had already lost in the eviction suit No. 136/67 filed by Shyam Lal decided on 3/10/1968 and thereafter, the present suit by his own Uncle Sanwar Mal was got filed by him in the year 1971. The cross objector Karim Bux interjected in both the suits and while in the eviction suit, he was found guilty of professional misconduct as having made interpolations and manipulations in the evidence produced before the learned trial court, as would appear from the findings quoted above, on the basis of alleged unregistered sale deed executed by Lalu Chamar in his favour, which was also not rightly believed by the trial court in the present suit and by taking a different stand at different point of time by him clearly shows that the said cross objector Karim Bux being actively involved in the litigation as Advocate of Chouthmal, misused his position as an Advocate and created evidence as per his own choice at different points of time and taking different stands in the matter, he somehow wanted to grab the said plot of land in question, so much so even before this Court an application was filed under Order 22 Rule 10 CPC for the said plot of land having been gifted away by him to one Islamia School Charitable Trust, which gift deed was never produced by him or his legal representatives.

22. Thus, the entire defence claim or objections based on flimsy evidence produced by Chouthmal and his Uncle Sanwarmal and by the cross objector Karim Bux appears to have an unholy nexus to grab the said plot of land as against the fairly clean, reasonable and plausible evidence of mortgage of the said plot of land by the original owner Lala Chamar in favour of Kanakmal, father of defendant No. 1 Shyam Lal, who in the absence of redemption of the mortgage, validly claimed continued possession and ownership of the said plot of land and even sought eviction of the tenant Chhoga s/o Dhoola Daroga and sub-tenant Chouthmal. Legal representatives of original plaintiff Sanwarmal having already not pressed the first appeal No. 82/80 and admitted before this Court that the possession has been handed over to Shyam Lal, actually, nothing survived in the cross objections filed by Karim Bux, which has no legs to stand but even upon such flimsy evidence as claimed by him, on reappraisal thereof

also, this Court does not find any ground to take a different view than the one taken by the learned trial court in the impugned judgment dated 14/8/1980. This Court has seen the original mortgage deed, which appears to be a genuine document and otherwise in order and bears the thumb impression of Lalu Chamar and has also seen the half torn Patta produced by Karim Bux, which prima facie renders his version of half of them eaten away by moth (?kasari") an unbelievable story and learned trial court has rightly not believed the same.

23. On the other hand, for the frivolous litigation, interjection, misleading and manipulating the documents produced by Karim Bux or got produced by him through Chouthmal like Rent Note with his name filled by ink, one time prepared several rent receipts etc., costs should be borne by the legal representatives of Karim Bux and Chouthmal. The cross objections bearing no separate registered number in the First Appeal No. 82/80 - Hazarilal and Anr. vs. Shyamlal and Ors. are accordingly dismissed with costs of Rs. 10,000/- each to be paid by legal representatives of Karim Bux and Chouthmal. Since the possession of the suit plot is already said to have been handed over to the defendant No. 1 Shyam Lal, no separate order is required to be passed in that regard. However, if the Executing Court finds that the possession is with any other person, other than the legal representatives of deceased Shyam Lal, then the possession may be handed over to his widow Ram Kanya Devi, who is the legal representatives of Shyam Lal, who expired on 26.9.2009 and she was taken on record vide order dated 5/5/2011. Decree be made accordingly.