
(2010) 03 PAT CK 0068

In the Patna High Court

Most. Kusum Bala Devi and Others

APPELLANT

Vs

Sita Ram Yadav and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0068

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned Counsel for the appellants and learned Counsel for some of the respondents.

2. This second appeal has been filed by plaintiffs respondents-appellants against the judgment and decree of the learned court of appeal below, by which the judgment and decree of the trial court was set aside and the suit and claim of the plaintiffs was rejected.

3. The matter arises out of Eviction Suit No. 01 of 1985, which was filed by the predecessor in interest of the appellants against the respondents with respect to the suit premises, namely, 3 kathas in plot No. 1407, khata No. 367 in village Bhojpur Kadim under Dumraon Police Station within the district of Bhojpur for the following reliefs:

(a) A decree of eviction of the defendants from Schedule-II properties of the plaint; for delivery of possession in favour of the plaintiffs and for arrears of rent detailed in Schedule- III of the plaint.

(b) A decree of future rent till dispossession of the defendants.

(c) Any other relief to which the plaintiffs are entitled to.

4. The plaintiffs had claimed the aforesaid reliefs on the basis of their claim that the entire plot No. 1407 (Schedule-II) appertaining to khata No. 367 measuring situated in village Bhojpour under Dumraon Police Station within the district Bhojpur originally belonged to Maharaja of Dumraon, who sold the same along with other properties in favour of M/s Dumraon Property Enterprises Private

Limited, Dumraon by a registered deed dated 15.10.1963 (Ext.4/A) and the plaintiffs were residing in the suit premises as tenants, which is apparent from the receipts (Ext. 2 series). They further claimed that their father Sheo Puj an Ram had purchased 40 decimals of land (Schedule 1) of plot No. 1407, appertaining to khata No. 367 of village Bhojpur, P.S. Dumraon, District Bhojpur from M/s Dumraon Property Enterprises Private Limited, Dumraon vide registered deed dated 15.07.1975 (Ext. 4) and came in exclusive possession as absolute owner thereof. It was also claimed that after death of their father, the plaintiffs came in possession of the said property and on the insistence of the defendants gave 3 Kotharis as mentioned above (Schedule-II) on rent of Rs. 40.00 per Kothari to the defendants on 01.02.1983 and, thereafter, the defendants started their business in the said premises and paid rent of the said premises in the months of February, March and April, 1983 but, thereafter, stopped payment of rent from May, 1983 on one pretext or the other and from May, 1983 till February, 1985 the arrears of rent came to Rs. 2,520.00 (Schedule-III). They also claimed that the plaintiffs' business of foodgrain started dwindling and they required the suit premises, which is situated at the crossing of a commercial area for starting other business for maintenance of their family and they requested the defendants to vacate the suit premises, but the defendants refused to do so even after Advocate's notice dated 19.02.1985 sent to the defendants by post. Hence, the aforesaid suit was filed by the plaintiffs for eviction of the defendants on the ground of default in payment of rent by the defendants and bona fide personal requirement of the plaintiffs.

5. The defendants contested the claim of the plaintiffs claiming that plot No. 1407 was a portion of C.S. Plot No. 2721 measuring 2.11 acres, which was gairmazarua aam Bhind Pokhar and hence the ex- landlord, namely, Maharaja of Dumraon had no right to transfer the same after January, 1946 as per the provisions of Section 4H of the Bihar Land Reforms Act nor any company named M/s Dumraon Property Enterprises Private Limited, Dumraon is in existence or had any right and title over the suit property. It was also claimed that after vesting of Zamindari, the said plot remained as gairmazarua aam land under the care and existence of Gram Suraksha-awam- and Vikas Samiti. The father of the defendants constructed a kutchha house over 3 decimals of land adjacent to west to the road and started running a shop, for which purpose they constructed three brick-rooms 15-20 years ago and are living in the same as well as running a tea shop in the front portion and had remained in possession for about 35 years and had acquired title over the same by adverse possession also. They further claimed that the plaintiffs did not acquire any right, title and possession from either the Maharaja of Dumraon or from M/s Dumraon Property Enterprises Private Limited, Dumraon nor had ever been in possession of the suit premises nor even there was any relationship of landlord and tenant between the parties as the defendants remained in possession of the suit premises in their own right and hence there was no question of any default in payment of rent by the defendants or any bona fide personal requirement of the plaintiffs.

6. On the basis of the aforesaid pleadings of the parties, the learned trial court at the instance of the parties to the suit framed the following issues for deciding the suit:

- (i) Have the plaintiffs got valid cause of action for the suit ?
- (ii) Is the suit as framed maintainable ?
- (iii) Is the suit hit by principle of estoppels, waiver and acquiescence ?
- (iv) Is the suit barred by law of limitation ?
- (v) Is the suit bad for defect of parties ?
- (vi) Is the suit hit by Section 34 of the Specific Relief Act ?
- (vii) Is the court fee paid sufficient ?
- (viii) Whether the defendants are tenants of the plaintiffs ?
- (ix) Are the plaintiffs entitled to a decree for eviction and realisation of arrears of rent as claimed ?
- (x) To what other relief or reliefs, if any, are the plaintiffs entitled to ?

7. On the aforesaid issues evidence were led and arguments were made on behalf both the parties and after considering the same the learned Munsif-I, Buxar decreed the suit on contest and directed the defendants to give vacant possession of the suit premises to the plaintiffs within three months and to pay the arrears of rent and rent pendente lite as well as future rent at the rate of Rs. 120.00 per month vide his judgment and decree dated 02.08.1986 after arriving at the following findings:

- (i) The suit land was recorded as gairmazarua aam land in the old survey khatian, but the nature of the suit land has changed as it is now no more fit for public use.
- (ii) In the recent survey the suit plot is recorded in the name of ex- landlord, which has never been challenged and hence remained the land of Dumraon Maharaj after vesting, whose possession was also recorded in the old survey khatian. (iii) The suit plot measures only 40 decimals, which is a portion of a gairmazarua aam old survey plot and the claim of construction over the same by Dumraon Maharaj is also established from the materials on record.
- (iv) From the evidence on record, specially the deposition of the Mukhiya of the village, it is quite apparent that the suit land was not used by the people of the village nor any customary right of the village was effected nor any fair etc. was held over the suit premises.
- (v) In case of applicability of Section 4(H) of the Bihar Land Reforms Act (hereinafter referred to as "the Act" for the sake of brevity), the Collector under the Act is empowered to take steps for cancellation with respect to Kachahri land

if the settlement is illegal buy no such step had ever been taken either by the Collector or by the State of Bihar, rather rent receipts were being granted to the ex-landlord.

(vi) Under Section 5 of the Act, the homestead land in possession of the landlord is deemed to have vested in him and in the said circumstances rent was fixed in the name of Maharaja Dumraon (ex-landlord) and receipts were granted to him, and even to the vendee of the ex-landlord and, thereafter, to the transferee of the said vendee, but the same was never challenged by any body.

(vii) Gram Vikas-awam-Suraksha Samiti is neither a statutory body nor it has any right to settle or alienate any land, even of the Government, to any body nor even there is any chit of paper to show any such settlement by the Samiti in favour of the defendants.

(viii) The defendants have failed to establish any construction of room made by them over the suit land by any reliable and consistence evidence. No chit of paper has been produced by the defendants to show that the suit land belonged to them except papers regarding electric connection but those documents were also created after the institution of the suit. Moreover electric connection cannot be a proof of title as even tenants can get electric connection.

(ix) Plaintiffs have produced reliable evidence to prove their title and possession over the suit premises.

(x) The suit land and rooms are part and parcel of the purchased land of the plaintiffs and they are owners of the same. The defendants are tenants of the plaintiffs and are defaulters in payment of rent for more than two months, hence they are liable to be evicted from the suit premises and for realisation of arrears of rent.

(xi) The incidental finding regarding title is given as the defendants had raised question of title and hence the suit will be governed by the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 and sufficient court fee has been paid by the plaintiffs for the same.

(xii) In view of the nature of the case, neither the suit has been filed in the representative capacity nor the suit is hit by Section 34 of the Specific Relief Act. There is no defect in the frame of the suit and the same is maintainable. The plaintiffs are entitled for the reliefs claimed by them.

8. Against the aforesaid judgment and decree of the trial court, the defendants filed Title Appeal No. 60 of 1986 and after considering the respective claims of the parties, the learned court of appeal below did not frame any specific issue for deciding the suit and in paragraph No. 5 of the judgment it held that there was only one point of consideration in the appeal:

whether the impugned judgment and decree is fit to be confirmed.

9. On the aforesaid issue, both the parties were heard and the learned court of

appeal below allowed the appeal, set aside the judgment and decree of the trial court and rejected the claim and suit of the plaintiffs on contest vide its judgment and decree dated 08.12.1995 after arriving at the following findings:

(a) It cannot be said that no title was created to plaintiffs- respondents by virtue of sale-deed (Ext. 4).

(b) The power u/s 4(H) of the Bihar Land Reforms Act, 1950 has been vested with the Collector of the district and not to any other person or public in general and hence no objection can be raised by the defendants specially when the State of Bihar had already acknowledged the transfer by the ex-landlord, which is evident from the rent receipts.

(c) Section 4 of the said Act as well as 1985 B.L.J. 435 (FB) case. Admittedly on the date of final publication of revisional survey khatian, the Maharaja had no concern with the suit land and hence the R.S. khatian (Ext.5) in the name of the Maharaja is of no help to plaintiffs-respondents as it did not support their possession. The documents produced by the plaintiffs have nothing to do with the physical possession of the plaintiffs over the suit premises and the orders of the Assistant Consolidation Officer (Exts. 7 series) simply show that the name of the father of the plaintiffs was entered on the basis of sale-deed (Ext.4) and that of the plaintiffs on the basis of previous order after the death of their father.

(d) Admittedly no Kiraynama existed between the plaintiffs and the defendants and there is no evidence on record to show that there is any relationship of land lord and tenant between the parties.

(e) There is no evidence with regard to the title of the defendants acquired from the rightful owner by transfer.

(f) From the evidence, it is clear that the defendants had produced evidence on the point of their possession since more than several 12 years, which is reliable.

(g) Chaukidari receipts and electric bills are of no help to the defendants. they have failed to establish the relationship of land lord and tenant between the parties.

(i) Defendants have proved that they have been coming in possession of the suit premises since several 12 years and hence they have already acquired title by adverse possession.

10. Against the aforesaid judgment and decree of the learned court of appeal below, the plaintiffs filed the instant second appeal, which was admitted vide order dated 08.09.1997 after formulating the following substantial question of law:

(i) Whether the appellate court, while reversing the judgment of the trial court, has taken note of the reasonings given by the trial court specially the reasonings about the documents, which have been relied upon by the appellate court, which were not considered by the trial court on the ground that those documents were

created during the pendency of the suit?

11. At the time of hearing of the second appeal, learned Counsel for the appellants had also raised the following questions claiming them to be substantial questions of law:

(ii) Whether without there being an issue framed in the suit relating to adverse possession the learned court of appeal below could allow the appeal and set aside the judgment and decree of the trial court on the ground that the defendants have acquired title by adverse possession ?"

(iii) "Whether in the absence of any cogent evidence of adverse possession or any such evidence constituting adverse possession against the plaintiffs, the appeal could have been allowed by the learned lower appellate court ?"

(iv) "Whether in view of the admitted position that the claim of permissive possession is confined to Bhojpur Gram Surakshaewam-Vikas Samiti only there could be any claim of adverse possession against the plaintiffs-appellants ?" landlord and tenant as has been found out by the trial court could be set aside by the learned court of appeal below without considering the relevant evidence on record ?

12. On the basis of the aforesaid questions raised on behalf of the appellants (plaintiffs), their learned Counsel challenged the judgment and decree of the court of appeal below. He further stated that the defendants, while denying the claim of the plaintiffs, had stated that during old survey proceeding the suit land was recorded as gairmazarua aam bhind pokhar, hence no one had any authority to transfer the same, but in the same breath the defendants had claimed that the suit premises was given to them by Gram Suraksha-ewam- Vikas Samiti 15-20 years back, whereafter, they constructed rooms for residence and business therein. It was also stated that neither there was any evidence adduced by the parties or issues framed by the courts below regarding Gram Suraksha-ewam-Vikas Samiti or regarding adverse possession of the defendants, but inspite of that the lower appellate court gave specific findings with respect thereto. It was also averred by learned Counsel for the appellants that most of the findings of the trial court were affirmed by the court of appeal below, but only in one paragraph i.e. paragraph No. 19, the lower appellate court decided the entire matter against the plaintiffs holding that neither the plaintiffs proved their possession over the suit premises till 01 .02.1983, on which date it was let out to defendants- appellants nor did they prove relationship of landlord and tenant between the plaintiffs and the defendants, whereas, on the other hand, the defendants proved transfer in their favour by Gram Suraksha-ewam-Vikas Samiti and their possession since more than 12 years, as a result of which they acquired title by adverse possession.

13. Learned Counsel for the appellants (plaintiffs) also averred that adverse possession means holding possession under a claim of title in consistent to the title of other side. But here the claim of title of the defendants is from Gram

Suraksha-ewam- Vikas Samiti, which clearly can have no right, title or interest in the suit property . He further stated that the plaintiffs' title being denied by the defendants, adverse possession cannot be claimed by them, nor their claim of adverse possession can be upheld in absence of any claim or finding with regard to the date of dispossession and possession becoming adverse. It was also claimed that long possession can never legally be deemed to be adverse possession and furthermore neither any pleading nor any evidence having been adduced on the question of adverse possession nor any such issue having been framed by the courts below, the finding of the court of appeal below with respect thereto was perverse.

14. Lastly learned Counsel for the appellants (plaintiffs) stated that the court of appeal below while reversing the judgment and decree of the trial court with respect to the question of relationship of landlord and tenant between the parties as well as the question of adverse possession completely ignored Ext. 5, Ext.7 series, Ext. 2 series and Ext. 4 (recital of sale-deed in 1975 in favour of the plaintiffs) as well as P.Ws. 2, 3, 4, 5, 6 and 14, which were exclusively on the point of plaintiffs' possession and relationship of landlord and tenant between the parties, on the basis of which the learned trial court had decreed the suit. It was averred that in any view of the matter since both the learned courts below had found the plaintiffs' title over the suit premises, the provision of Order VII Rule 7 of the CPC should have been made applicable by the court of appeal below.

15. On the other hand, learned Counsel for the respondents (defendants) vehemently opposed the contention of learned Counsel for the appellants and stated that the court of appeal below had considered all the pleadings and evidence of the parties. It was also stated that the findings of both the courts below regarding title of the plaintiffs are wrong and illegal as the suit land was a gairmazarua aam bhind pokhar as shown in the cadestral survey khatian (Ext. E). Hence, in effect, learned Counsel for the respondents challenges a part of the impugned judgment and decree of the court of appeal below without filing any appeal against the same and without filing any cross objection/appeal in the instant second appeal.

16. It is also claimed by learned Counsel for the respondents (defendants) that the revisional survey khatian (Ext. 5) was published u/s 103A of the Bihar Tenancy Act, 1985 and no final publication u/s 103 B of the Act was made, hence it had no presumption of correctness and furthermore the said Ext. 5 has been rightly rejected by the court of appeal below on another ground that since the Maharaja of Dumraon had already sold the land to M/s Dumraon Property Enterprises Private Limited, Dumraon vide sale-deed dated 10.10.1963 (Ext. 4A), the entry in the said khatian prepared thereafter was wrong. He further averred that the ex-intermediary, namely, the Maharaja of Dumraon did not make any transfer till the vesting of the Zamindari in the State of Bihar under the Bihar Land Reforms Act, 1950, but he transferred the land in question to M/s Dumraon Property Enterprises Private Limited, Dumraon on 10.10.1963 when the land had

already vested in the State of Bihar in the year 1956, hence the said transfer cannot be said to be legal and valid and the court of appeal below rightly rejected the rent receipts (Ext. 2 series) of the plaintiffs. It was also averred that the orders of the consolidation authorities (Ext. 7 series) were not legal and proper as they had no jurisdiction to decide the issues as per Section 10(3) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and hence the lower appellate court was quite justified in ignoring the same. It was also averred that the court of appeal below has considered all the relevant evidence on record and ignored only the formal and irrelevant evidence.

17. Learned Counsel for the respondents also argued that the main issue in such matters is the relationship of landlord and tenant between the parties and the said main issue has been decided by the lower appellate court by considering the relevant pleadings and evidence of the parties in detail and in accordance with law and hence the said finding being finding of fact of the final court of fact, this Court cannot interfere with it under the provision of Section 100 of the Code of Civil Procedure.

18. After considering the arguments of both the parties and after perusing the materials on record, including the judgments and decree of the courts below, this Court finds that both the parties do not dispute the fact that the suit land originally belonged to the Maharaja of Dumraon.

19. However, the dispute arises regarding the facts subsequent to vesting of the Zamindari in the State of Bihar under the Bihar Land Reforms Act, 1950 as the claim of the plaintiffs (appellants) was that although the said suit land was recorded in the cadestral survey khatian (Ext. E) as gairmazarua aam bhind pokhar, but the nature of the land subsequently changed to home-stead and remained in khas possession of the said ex- landlord, who remained in possession thereof even after vesting of the Zamindari in the year 1956 under the Bihar Land Reforms Act, 1950, whereafter his name was duly recorded and receipts were issued to him and even the revisional survey khatian was prepared in his name and hence transfers made by him in favour of his transferee were legal and proper, on the basis of which the plaintiffs came in exclusive possession of the suit premises as absolute owner thereof and inducted the defendants as tenants in the said premises on 01.02.1983.

20. On the other hand, the claim of the respondents (defendants) is that the land throughout remained gairmazarua aam bhind pokhar for the benefit of the public in general and hence it vested under the Bihar Land Reforms Act, 1950 in the State of Bihar and after vesting of the Zamindari, its nature remained as public land and hence the ex-landlord had no authority to transfer the same. It was further claimed that the said land was looked after by Gram Suraksha-ewam-Vikas Samiti and the said Samiti in presence of the general public gave the said land to the defendants (no dates given), whereafter the defendants constructed rooms on the said land for residence and business and since then they are living there in their own right.

21. With respect to the question of reliance upon the entries in the cadestral survey khatian, the law is settled by the Apex Court in case of Ambika Prasad Thakur and Ors. v. Ram Ekbal Rai reported in AIR 1966 Sc 605, followed by this Court in case of Bibi Tahzibunissa v. Dr. Syeed Azizur Rahman 1979 B.B.C.J. 584 (paragraph No. 7) holding that there would be presumption of correctness in the C.S. khatian, but its essence is reasonable proximity as due to passage of time, the presumption of continuity and correctness weakens. In the instant case, C.S. khatian was published in the year 1910 and the revisional survey khatian was published in the year 1970 and in the meantime there was vesting of the Zamindari, orders of the consolidation authorities (Ext. 7 series) and receipts (Ext. 2 series) etc., which clearly showed that the nature of the land had changed. Furthermore, the Court has to take into note the changes, which had happened due to common course of natural events as well as human conduct in relation to the facts of a particular case as has been duly provided u/s 114 of the Evidence Act.

22. The trial court, after considering the pleadings and evidence of the parties in detail, came to the specific conclusion that although the suit land was recorded in the cadestral survey khatian (Ext. E) as gairmazarua aam bhind pokhar, but the nature of the land subsequently changed and it no more remained fit for public use and hence it became khas land of the ex-intermediary Maharaja of Dumraon and did not vest in the State of Bihar under the Bihar Land Reforms Act, 1950 and subsequently it was recorded in the name of Maharaja of Dumraon, which was never challenged by any one and he remained in possession of the entire plot, on a part of which measuring 40 decimals, he made constructions, which was fully established from the materials on record including the deposition of Mukhia of the village. The learned trial court also considered the evidence on record including the deposition of Mukhia of the village and came to the specific conclusion that the suit land was not used by the people of the village nor any customary right was exercised on it by the public nor any fair was held thereon and it remained exclusively the property of the Maharaja of Dumraon.

23. These findings with regard to the title of Maharaja of Dumraon have been affirmed by the learned court of appeal below and the said concurrent findings have not been challenged by the respondents by way of filing any appeal against the said judgment or even by way of filing any counter objection/appeal in this second appeal. Furthermore, it was fully proved from the evidence on record as found by both the learned courts below that originally the nature of the suit land was gairmazarua aam bhind pokhar but subsequently its nature changed and it came in the khas possession of ex-intermediary, namely, Maharaja of Dumraon as his homestead. Hence, at the time of vesting of the Zamindari under the Bihar Land Reforms Act, 1950, the said homestead of inter-mediary was to be retained by him as tenant u/s 5 of the said Act and in those circumstances, the rent was rightly fixed in the name of Maharaja of Dumraon and receipts were granted to him by the State of Bihar.

24. In the said circumstances, the said Maharaja of Dumraon had full right to transfer the suit land to any person and hence the registered deed of transfer dated 10.10.1963 (Ext.4A) by which he sold the suit property to M/s Dumraon Property Enterprises Private Limited, Dumraon, was quite legal and proper and the title was duly conferred to the said transferee. So far objection raised with respect to Section 4(h) of the Bihar Land Reforms Act, 1950 is concerned, the said provision is with respect to the cutchery or office of the ex-landlord for the collection of rent, but here the matter is different and in any view of the matter, there is no pleading and evidence at all that the Collector had ever taken any step in that regard clearly because the land in question did not come under the purview of the said provision, rather being the homestead of the intermediary it was retained by him, his name was duly recorded, rent was fixed in his name and receipts were granted to him and after the said sale to his transferee, namely, M/s Dumraon Property Enterprises Private Limited, Dumraon. The court of appeal below has misdirected itself by assuming that the revisional survey khatian (Ext.5) is of no help to plaintiffs-respondents as it is in the name of Maharaja of Dumraon failing to appreciate that even if the publication of khatian was after the transfer, it would inure to the benefit of the transferee of the recorded person, namely Maharaja of Dumraon and not to the benefit of the defendants.

25. From the facts and circumstances of the case, it is quite apparent that the plaintiffs are the only successors-in-interest of Maharaja of Dumraon on the basis of two registered documents, namely, Exts.4 and 4/A and none else claimed from the Maharaja of Dumraon, hence the recording of the name of Maharaja of Dumraon in the revisional survey khatian can be considered only in favour of the plaintiffs and no one else. The defendants, who do not claim from Maharaja of Dumraon, cannot legally be given any benefit thereof as they had also never challenged the entries made in the revisional survey although they were final publication u/s 103-B of the Bihar Tenancy Act, 1885 and it carried with it presumption of correctness.

26. The lower appellate court has also wrongly discarded the showed that the registers of land were prepared and published in the names of the plaintiffs by the authorities having jurisdiction u/s 10(3) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 after making necessary enquiries including verification of possession, which was also supported by their registered sale-deed dated 10.10.1963 (Ext. 4A) and registered sale-deeds dated 15.07.1975 (Ext. .4 series) and no objection having ever raised against it, it had attained finality and carried with it presumption of correctness, according to the provisions of the said Act.

27. On the other hand, the respondents (defendants) had claimed on the basis of settlement in their favour by Gram Suraksha-ewam Vikas Samiti although neither the Samiti is a statutory body nor it had any right, title or interest with such land nor it had any right to alienate even a public land to anybody. Hence, on the

basis of such alleged settlement, no right or interest can be legally conferred upon the defendants. Furthermore, the defendants failed to produce even a chit of paper to show that any such settlement was made by the Samiti in their favour. This clearly shows the frivolity and falsity of the basis of their claim. The defendants even failed to establish by any valid and reliable material that any room was constructed by them over the suit land. They could only produce some paper regarding electric connection in the suit premises but those papers were also of the period after the institution of the suit. In any view of the matter, such electric connection cannot be a proof of title as even tenants can get electric connection in their tenanted premises. In the said circumstances, even the learned court of appeal below held that Choukidari receipts and electric bills were of no help to the defendants as there is no evidence at all with regard to the title of the defendants acquired from any rightful owner by any transfer. The aforesaid concurrent findings of the learned courts below have also not been challenged by the respondents.

28. So far questions Nos. (i) and (v) raised by the appellants are concerned, they are with respect to the finding of the trial court regarding relationship of landlord and tenant, which was reversed by the learned court of appeal below. In this regard, it is claimed that the court of appeal below had relied upon the documents, which were created during the pendency of the suit and on that ground they were rejected by the trial court and that there was failure on the part of the lower appellate court in considering the relevant evidence on record, on the basis of which the trial court had arrived at the specific finding with respect to the relationship of landlord and tenant between the parties.

29. Both the courts below have concurrently found that the plaintiffs had valid title over the suit land and that the defendants had no title over the same. However, the learned trial court had found that the defendants were in possession of the suit premises as tenants of the plaintiffs due to the relationship of landlord and tenant between them, whereas, the learned lower appellate court has reversed the said finding and held that there was no relationship of landlord and tenant between the parties as the defendants had acquired adverse possession over the suit land.

30. Although the plaintiffs' claim of tenancy was not supported by any kiraynama, but it was specifically claimed by the plaintiffs that they inducted the defendants as tenants in the suit premises (3 kotharis) on 01.02.1983 at the rent of Rs. 120.00 per month and the defendants paid rent for February, March and April, 1983, but thereafter they stopped payment of rent. The said claim of the original plaintiff, who deposed as P.W.14, was also fully supported by P.Ws. 2,3 and 4 as well as Ext. 3 and Ext. 8 series, namely, the lawyer's notice and the receipts. These evidence were fully considered by the learned trial court, which found them to be genuine, correct and legal and on the said pleadings and evidence, it came to a specific finding that there was relationship of landlord and tenant between the parties. On the other hand, lower appellate court reversed

the aforesaid finding of the trial court without properly appreciating the said evidence, which were consistent in supporting the plaintiffs' claim of relationship of landlord and tenant between the parties. Some deviation here and there in the said evidence was clearly due to the reasons of different level of understandings but such deviation cannot justify discarding the clear and consistence evidence on the point of relationship of landlord and tenant between the parties. The deviation merely on the point of subsequent demand of rent cannot legally make their clear statement that the plaintiffs put the defendants in possession of the suit premises as tenants to be false. These evidence clearly established that there was relationship of landlord and tenant between the parties.

31. Furthermore, the defendants had failed to establish that they were in possession of the suit premises in their own right before the tenancy i.e. 01.02.1983. The defendants also failed to give in their pleading the date, on which, according to them, had come in possession of the suit premises nor their evidence either oral or documentary disclosed any such date. Hence, the trial court was quite justified in disbelieving the claim of the defendants, which was absolutely without any basis and evidence and rightly held that there was relationship of landlord and tenant between the parties. This aspect of the matter was absolutely overlooked by the lower appellate court.

32. So far issue Nos. (ii), (iii) and (iv) are concerned, they are with respect to the finding of the court of appeal below in connection with adverse possession of the defendants over the suit premises. It may be noted in this regard that from the pleadings of the parties it is quite apparent that no ingredient of adverse possession was present in the pleadings of the parties and hence no issue of adverse possession was framed either in the trial court or in the lower appellate court. Furthermore, the defendants neither gave any date of dispossession of the title holder nor gave any date on which their possession became adverse and furthermore the plaintiffs' title having been denied by the defendants, the necessary ingredient of adverse possession was absolutely absent and the defendants could not legally be allowed to raise such plea.

33. The concept of adverse possession is based on the presumption that the title holder has abandoned his property in favour of the person who is in possession on the acquiescence of the title holder to the hostile claim of the person claiming adverse possession. The purpose is not to punish the negligent owner but to protect the interest of the possessor who has maintained and developed the property on the basis of some claim for a long period of time as prescribed in law. Thus, for the purpose of proving adverse possession, the person claiming it must disclaim his earlier right and title over the property in question and plead and prove his independent, hostile and adverse possession to the knowledge of the owner or his successor and also that the owner has acquiesced to his illegal possession for twelve years or more continuously. Reference in this regard may be made to two decisions of the Apex Court in case of *Karnataka Board of Wakf Vs. Government of India and Others*, and in case of *P.T. Munichikkanna Reddy*

and Others Vs. Revamma and Others, .

34. However, in paragraph No. 11 of the written statement, the defendants had claimed that they had been given permission to occupy the suit premises and use it and hence the defendants themselves claiming permissive possession of the suit premises cannot legally raise the plea of adverse possession and that too at this stage when no such pleading was made nor any evidence was produced, showing any hostile and independent possession of the defendants or showing acquiescence of the plaintiffs through out the period of twelve years. Mere long possession of the defendants can never be legally presumed to be adverse possession, hence the presumption of court of appeal below was absolutely illegal and frivolous ignoring not only the aforesaid facts, but also the documentary evidence, namely, Ext. 2 series, Ext. 4 series, Exts. 5 and 7 series. Lower appellate court, without there being any such issue and without there being any cogent evidence showing any ingredient of adverse possession, which was not even pleaded, committed a grave error in law by allowing such frivolous claim of the defendants.

35. In the aforesaid facts and circumstances, it is found that the questions of law raised by the appellants are substantiated by the pleadings and evidence as well as by the settled principles of law as mentioned above and the court of appeal below has committed serious error of law in allowing the title appeal and in setting aside the judgment and decree of the trial court. On the other hand, it is also found that the judgment and decree of the trial court is well founded on the basis of pleadings and evidence as well as the settled principles of law as mentioned above.

36. In the said circumstances, this second appeal is allowed, the judgment and decree of the lower appellate court is set aside, judgment and decree of the trial court is affirmed and the claim and suit of the plaintiffs, who are appellants in this Court, are decreed to the extent it was decreed by the trial court. However, in the facts and circumstances of this case, there will be no order as to any further cost.