

(1949) 09 PAT CK 0010
In the Patna High Court
Case No : A.F.A.D. No. 2144 of 1947

Sailajananda Pandey and Another

APPELLANT

Vs

Lakhichand Sao and Others

RESPONDENT

Date of Decision : 26-09-1949

Acts Referred:

Bengal Land Revenue Sales Act, 1859 — Section 37, 53
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31, 100, 101
Limitation Act, 1908 — Article 142, 144
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1951 Patna 502

Hon'ble Judges : Reuben, J; Narayan, J

Bench : Division Bench

Advocate : B. De and K.D. Chatterji, for the Appellant; L.K. Jha, R.S. Chatterjee and Medni Prasad Singh, for the Respondent

Judgement

Reuben, J.—This is an appeal by the pltfs. from a decision of the Addl. Dist. J. Purulia, confirming a decree of the Addl. Subordinate Judge, Dhanbad.

2. Pltf. 1 is the proprietor of village Muraidih in pargana Newagarh of the Dhanbad Sub-division. Pltf. 2 is his minor son. Pltf. 1 has executed in favour of his son a mokarari lease in respect of 25 bighas of coal bearing land in this village. The suit was brought to eject the defts. from five kathas out of this land, on the allegation that they have wrongfully taken possession of a coal quarry therein sunk by the pltf. 1. Defendant 2 is the son of deft. 1. They contested the suit, alleging that they are holding the suit land as a part of 46 bighas of coal-bearing land in this village, the surface & underground rights in which were settled with deft. 1 in 1910 by the then proprietors, Shyamlal Pande & others under an unregistered grant, & claiming to have acquired an indefeasible interest in the land by holding it adversely since then.

3. Pltf. 1 is the son of Shyamlal Pande, but does not derive his title by inheritance from him. According to the reotals in the plaint, this village was sold in execution

of a mtge. decree against the, proprietors Brijbehari Pande (uncle of pltf. I) & others, & was purchased by Mukteshwar Trigunait, Sarat Trigunait & Kalipada Trigunait, from whom pltf. 1 purchased the village by a registered sale deed dated the 2nd of Baisakh, 1338. The mauza was then sold in a revenue sale & was purchased by one Sachindranath Chakravarti Pltf. 1 brought a title suit to set aside the sale. In accordance with a compromise in the suit, Sachindranath Chakravarti sold the mauza to pltf. 1 by a registered sale deed dated 6-7-1940.

4. The hukumnama (Ex. A) under which the defts. claim is unregistered & purports to create a permanent heritable jagir. The Cts. below have accepted the stocy of the alleged settlement & hold that deft. 1 entered on the property in pursuance of it, but he did so as a trespasser, the hukumnama being unregistered. They hold that since then he has been continuously in possession of the whole area of 46 bighas. They have rejected the story of pltf. 1 having sunk a quarry in the suit land & having been forcibly dispossessed in 1944. Only three instances of the exercise of direct possession over the property have been found : (1) the sinking & working of a quarry to the north of the suit land for a period of over twenty years, (2) the sinking & working of a quarry to the east of the suit land in 1937 & (3) the sinking & working of a quarry on the suit land in 1943 The Cts. below consider that, the deft. I having entered under a grant from the proprietors, his act of possession over any portion of the property must be deemed to have given him constructive possession over the whole of the property covered by the grant. On these findings they hold that deft. 1 has been in possession of the suit property openly, peacefully & as of right for more than twenty years, that he has thereby acquired a tenancy right under pltf. 1 & cannot be ejected.

5. Mr. De, on behalf of the pltfs. has contended, firstly, that the Cts. below misdirected themselves on the point of adverse possession in holding that the defts. had constructive possession over the suit property previous to 1943, & secondly, that, even if it be held that the defts. were in adverse possession of this property, their possession cannot affect pltf. I, as he derives his title from a purohaser at a revenue sale.

6. On the other side, Mr. R. S. Chatterji, who appeared for the defts. 1 & 2, has contended that, u/s 53A, T. P. Act, his clients are entitled to resist ejectment.

7. Before taking up the question of adverse possession, I shall deal with the other two points which are readily disposed of neither of them having been raised in the Cts. below.

8. There is no substance in Mr. De's second point. u/s 37, Bengal Land Revenue Sales Act, 1859 (Act XI [11] of 1859), a purchaser of an entire estate in the permanently settled districts of Bengal, Bihar & Orissa, sold under the Act for the recovery of arrears due on account of the same acquires the estate free from all encumbrances which may have been imposed upon it after the time of settlement, & is entitled to avoid & annul all undertenures & forthwith to eject all

under-tenants. This right of the purchaser at a revenue sale is subject to an exception u/s 53, Bengal Land-Revenue Sales Act, which provides that, excepting sharers with whom the Collector has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-ptner. or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under the Act, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of the sale, & shall not acquire any rights in respect to under-tenants or raiyats which were not possessed by the previous proprietor at the time of the sale of the said estate. Here, according to the plaint itself, pltf. 1 was the previous proprietor by his purchase of the mouza from the Trigunaitis. Therefore, when he purchased the estate back from Sachindranath Chakravarti, he brought himself within the mischief of Section 53.

9. The objection u/s 53A fails because it raises questions of fact which should have been put in issue at the trial. The shield which this section provides is available only against "the transferor "or any person claiming under him." Also, it is not available against a transferee for consideration who has no notice of the contract or of parb performance thereof. Now, as I have indicated, there is said to be in the chain of title a revenue sale. At a revenue sale, the interest that passes is not the interest of the defaulting proprietor, but the interest of the Crown subject to the payment of Govt. assessment : AIR 1914 82 (Privy Council) , Bholanath Roy Vs. Bata Krishna Roy and Others, . Therefore, if the sale was in fact a revenue sale, it would have been open to the pltf. 1 to contend that he was not a person claiming under the "transferor". The question was a question of fact, & so also was the question of notice. Neither of these questions was put in issue.

10. The question of prescribing for title by means of constructive possession is a difficult question, & it is disappointing to see the summary manner in which it was dealt with by the learned Addl. Dist. J. Having found that the first act of direct possession by the defts. over the property in suit occurred in 1943, he observed that the question was whether in these circumstances the defts. could be said to have acquired a title in it by adverse possession, & went on:

"This position has been very lucidly discussed by the learned Subordinate Judge & I have no manner of hesitation in agreeing with him on the principle of law propounded by him. The case laws on the subject that were cited before me are only those which have been referred to by the learned Subordinate Judge in his judgment & it is not necessary for me to repeat the same. The main contention of the learned Advocate appearing on behalf of the applts. was that the cases relied on by the learned Subordinate Judge are authorities for the proposition that where the lessee takes possession under a valid title & works on different portions at different times of the land which is not capable of direct possession in any other way his possession of a part would be considered to be possession for the whole land which was demised by the owner to him but these decisions are

no authority for holding the same principles to be true in case of a trespasser in whose case the claim regarding adverse possession must be limited to the area actually worked on for the full period of twelve years in view of the observations made in AIR 1931 18 (Privy Council) . This decision has also been discussed by the learned Subordinate Judge in his judgment & I do not think that the view taken by the learned Subordinate Judge is displaced by the observations made by their Lordships in the P. C. decision. It is no doubt true that as a matter of general rule as observed by their Lordships in the above decision where claim for a title is invented merely on adverse possession it must be limited to the actual area actually possessed by the trespasser for the full period of twelve years but, in my opinion, there is a wide distinction which should be maintained between a rank trespasser without any basis for title & one who claims to hold it on the basis of some grant from the owners of the lands which is in-complete & therefore invalid under the law. In the case of latter he cannot be treated on the same footing as a man having no grant whatsoever to claim the lands. In the present case the defts. have not squatted on the lands out of their own accord & it is clear that they have come upon the lands with the consent & with the permission of the landlords who had actually demised the lands to him but for want of registration such demise has become invalid. That being the position the defts. have practically been brought on the land by the landlords themselves & as such even according to the -decision in the above case by their Lordships in the P. C. they must be held to have acquired title to the entire area."

The case referred to by the learned Judge is AIR 1931 18 (Privy Council) which he evidently regards as entirely supporting the pltfs." contention. It is true that their Lordships of the P. C. observed in that case that there is undoubted authority for the proposition that where a person without any colour of right wrongfully takes possession as a trespasser of the property of another, any title which he may acquire by adverse possession will be strictly limited to what he has actually so possessed, & that, in the case of a mine, there is no presumption in law that the possession of a part of a seam infers possession of the whole seam, much less of all the seams in the mineral field in which part of a seam has been worked. Had the learned Judge perused this decision more carefully, however, he would have found that their Lordships were not speaking of possession in the limited sense of direct working. In their words "possession is a question of fact & the extent of the possession may be an inference of fact." Their Lordships went on to consider several facts which, in their opinion, in the case before them entitled the defts. to the inference that they were in adverse possession of the whole area in suit. A perusal of this portion of the judgment would have indicated to the learned Judge a line of investigation directed to ascertain whether in the present case the area in suit formed one unit with the other areas worked by the defts.

11. It is not clear how the learned Judge arrived at what, in his opinion, is the position of person who enters upon property under a defective grant from the owners of the property. He does not state the reasoning by which he came at this

conclusion. Nor does he mention any authority, although a relevant quotation occurs in the judgment of the Subordinate Judge from the judgment of Lord Cranworth L. C. in *Davis v. Shephard*, (1866) 1 ChA 410 : 35 LJCh 581:

"When the owner of real property, whether surface land or minerals, binds himself by a written agreement to grant a lease, & suffers his intended lessee, without a lease, to take possession, he must be understood to allow the lessee to take possession of all which he has engaged to demise. In the case of demise of unworked minerals, there can hardly be said to be actual possession of any part of them except of what the intended lessee is actually working; but I think that when the lessor allows his intended lessee to take possession & the lessee does take possession & commences working accordingly, he must be considered as constructively in possession of all which the lessor has bound himself to demise."

12. The normal position as regards adverse possession by a trespasser is as stated in the case of AIR 1931 18 (Privy Council) . The law does not favour a trespasser & his adverse possession will be strictly limited to the area which is in his "possession." But we must be clear as to what is meant by "possession." The Cts. while not favouring a trespasser, must be fair to him & must treat him as in constructive possession where the nature of the property & the manner of holding it justify such an inference. In *Hafiz Mohammad Fateh Nasib Vs. Sir Swarup Chand Hukum Chand, Firm and Another*, , a Bench of the Calcutta H. C. stated the doctrine of constructive possession in the following words, which received the approval of the P. C. in AIR 1948 76 (Privy Council)

"The proper test to be applied in a case of this nature is whether the predecessors of the pltfs. for a period of twelve years or more exercised such dominion over the property in suit as to justify an inference of fact that they were in possession of the whole. It was not necessary that they should prove affirmatively that their predecessors had actually been in physical possession of every square inch of this land, but it should have been considered whether the acts of possession which had been proved would legitimately show that the predecessors of the pltfs. had enjoyed dominion over this property in the manner in which such dominion is normally exercised."

13. That a trespasser is entitled in a proper case to an inference of constructive possession has been conceded by Mr. De & by Mr. K. D. Chatterji. They would confine this, however, to the kind of possession dealt with in the case of AIR 1931 18 (Privy Council) that is to say, where the property in dispute can be regarded as forming a unit along with other property of which the trespasser is in direct & immediate possession. They challenge strenuously the correctness of the proposition laid down by the Addl. Dist. J. that, in the case of a defective grant, the lessee on entering gets possession to the full extent of the grant. Mr. K. D. Chatterji crystallises the argument as follows. There is one kind of constructive possession which is on a par with actual possession. For instance, while I am holding only one end of a stick, I am in actual possession of the whole of it. In this way, a trespasser may be regarded as in possession of a whole unit of

property of which he actually holds only a part. But, apart from this, the notion of constructive possession is inconsistent with adverse possession. This is a consequence of the principle that possession follows title; for, if the trespasser is not in actual possession of any part of the property, that part must be taken to be in the possession of the owner. The fallacy in this reasoning lies in regarding the constructive possession of the owner as automatically accompanying his title. In fact, it depends on his mental attitude, or supposed mental attitude. When property is not in the actual possession of anyone, & there is nothing to prevent the owner of the property from exercising his dominion over it, & he has not done anything to show that he has abandoned the property, the Ct. will presume on his part the intention of possessing the whole of that property, & will regard the absence of others from the property as due to his excluding them from it in pursuance of this intention. This constitutes his constructive possession & we say, "possession follows title." It is this mental element which explains the normal position as regards adverse possession by a trespasser ; in the case of a trespasser coming upon property without any claim of right, there can be no presumption that he intends to hold anything more than he actually holds & on the other side, there is the constructive possession of the owner requiring to be displaced by something positive done by the trespasser. The positive element is supplied where there is something in the manner in which the trespasser holds the property to indicate an intention to hold more than the property in his direct possession. If that additional portion is not in the direct possession of anybody to that extent the constructive (possession ?) of the owner may be regarded as overborne & the possession of the trespasser may be taken to extend over this portion also. For this to happen, the constructive possession of the trespasser must have in it sufficient of the nature of real possession to overbear the constructive possession of the owner. This happens in the case of partial possession of the nature described by Mr. K. D. Chatterji, that is where the portion actually held forms part of what must be regarded as one unit of property. To my mind, entry under a defective grant constitutes another class of such cases. The grant itself has the effect of making the property granted into one unit, for when the grantee enters into the property in pursuance of the grant he must be taken to intend to take possession of the whole of the property & the grantor in allowing him to enter into possession must be taken to intend to allow him to take possession to this extent. It is, therefore, that the grantor's constructive possession is overborne. This latter element, the mental attitude of the owner, is important & constitutes the difference between the case of a grantee from the owner & that of a grantee from a person who does not own the property in question. In both cases the grantee enters with the intention of possessing the whole property, but in the latter case, the owner's intention to give him possession to this extent cannot be presumed & the adverse possession only operates to the extent of the actual possession of the grantee ; of course, it may extend further, if the elements necessary for the first class of cases are present. In one class of cases, the owner's constructive possession is overborne by his presumed consent, in the other by his failure to assert his possession,

though to his knowledge the trespasser is treating the property as forming one unit with "property which is in the trespasser's actual possession.

14. I find support for my analysis in the following extract from *Narayan Singh Vs. Nawab Saiyid Dildar Ali Khan and Another*,

"Now possession, in the sense in which that term is used in jurisprudence, must be accompanied by an intention to possess, an *animus possidendi*. Now it cannot be said of a wrong-doer that there is any intention to possess that of which he has not a definite physical control. But of that of which he has a definite physical control, he is clearly in possession, provided the *animus possidendi* is established. I think this is at the bottom of the rule which lays down that a wrong doer cannot have recourse to the doctrine of constructive possession. But let us go a step further. Supposing a person without title acquires possession of part of the land & then proceeds to mark out the area of the entire land which he intends to possess. Clearly he has shown an intention to possess the entire area & he will be deemed to be in possession of the entire area though he has definite physical control only over a portion. I think that it is more correct to say that, in the absence of title, the law will raise from definite physical control of part of land a presumption of possession of that, neither more nor less, which the possessor has shown a clear & unambiguous intention to possess.

But here the defts. were in no sense wrong-doers. They were in by a document which purported to convey whatever title the vendor had in the villages conveyed. There was no dispute as to the boundaries of the village & the position is the same as if the defts. had marked out the entire area conveyed to them. It may be that the conveyance did not confer any title on them ; but they were not aware of any defect in their title & there was clearly an intention to possess the entire area conveyed to them in the right of the vendor. In my opinion, the defts. were just as much in possession of the jungles & the minerals as of the tenanted portions of the villages."

15. I have already cited above the words of Lord Cranworth L. C. in *Davis v. Shepherd* 1866 1 ChA 410 : 35 LJ Ch 581 Mr. K. D. Chatterji has contended that that was not a case of adverse possession but merely a contest between persons let into possession of adjoining underground rights. To my mind, the nature of the case makes no difference, because we are concerned with the principle. In that case, although the pltf. & the deft. were let into possession, no lease was executed, & the question was as to the extent of their possession.

16. Another relevant decision is *Low Moor Co. v. Stanley Coal Co. Ltd.* (1876) 33 LT 436 in appeal (1876) 34 LT 186 In this case Holroyd came into possession under a defective deed purporting to transfer the minerals to him. He worked the two upper seams of coal & transferred the underlying seams to the pltf. who sunk a deep bore in the property for the purpose of testing. It was held that by his working Holroyd took possession of the whole of the seams covered by the deed in his favour & that the pltf. subsequently acquired possession over all the

seams underlying the first two seams. Amphlett, B. expressly referred to the case of *Davis v. Shepherd*, (1866 1 Ch A 410 : 35 LJCh 581:

"The owner has bound himself, upon this construction of the deed to give an estate to Holroyd of all these several seams of coal ; and, therefore, when Holroyd entered into possession of one or more of these seams, he appears to me to have had constructive possession of the whole of them."

In the Ct. of Appeal, the Lord Chancellor observed :

"It is true that in cases where a man has entered upon & taken possession of one seam of coal & by lapse of time has acquired some title to it the law will not assume that his possession extends to all the other seams of coal lying under the particular one; but in the case we have before us it was beyond all doubt intended that Holroyd should have possession & take possession of all the seams." And Mellish, C. J. observed :

"I quite agree that Holroyd obtained possession of the mines, & it is equally clear that he gave possession to the pltfs."

This distinction in favour of a trespasser claiming under a grant is recognised also in the case relied upon by Mr. De & Mr. K. D. Chatterji, *Glyn v. Howell*, (1909) 1 ChD 666 : 78 LJCh 391), in which Eve, J. summed up the law on the subject in the following words :

"The line of authorities which Mr. Upjohn has relied upon, commencing, I think, with *Earl of Dartmouth v. Spittle*, (1871) 24 LT(NS) 67 & coming down to the case of *Thompson v. Hickman*, (1907) 1 Ch 550 : 76 LJCh 254 seemed to me to establish that where title is founded on an adverse possession the title will be limited to that area of which actual possession has been enjoyed & that as a general rule constructive possession of a wider area will only be inferred from actual possession of the limited area, if the inference of such wider possession is necessary in order to give effect to contractual obligations or to preserve the good faith & honesty of a bargain." And "Mr. Upjohn is right when he says the decisions have proceeded upon two lines, the one being those cases where the possession of the part has been treated as possession of the whole, because the Ct. has found, either by contract or according to conscience, that possession of the whole is what the person possessed on the part was intended to have, & the other being those cases in which the Ct. finding; no just reason for inferring, in favour of a person relying solely on possession of a part, a constructive possession of the whole, has refused to make such inference."

17. The important element in possession is *animus possidendi*. Where all that trespasser intends is to remove & appropriate the minerals, he may merely get a right to the mineral removed *Ashton v. Stock*, (1877) 6 ChD 719 : 25 W. B. 862 *Thompson v. Hickman*, (1907) 1 ChD 550 : 76 LJCh 254 *Earl of Dartmouth v. Spittle*, (1871) 24 LT (NS) 67; see also *Lodna Colliery Co. Ltd. v. Bipin Behari*, 1 PLT 84 : (AIR 1920 Pat 383), *Pramatha Nath v. A.J. Meik*, 1 PLT 360 : A. I. R.

1920 Pat. 542), Gopi Ram Bhottica Vs. Jagarnath Singh and Others, , Ranchi Zamindari Co. Ltd. Vs. Pratab Udainath Sahi Deo and Another, . Where there is the necessary animus-possidendi, the adverse possession will extend to the limit of possession. This possession, may be confined to the area actually held; vide, in addition to the authorities cited above, AIR 1931 162 (Privy Council) , Shashi Bhusan Banerji Vs. Ramjas Agarwala, . The limit of possession may be increased by the manner of working showing that a larger area is intended to be appropriated than is in actual immediate possession; vide Narayan Singh Vs. Nawab Saiyid Dildar Ali Khan and Another, , Gopi Ram Bhottica Vs. Jagarnath Singh and Others, Ashton v. Stock, (1877) 6 ChD 719: 25 WB 862, Glyn v. Howell, (1909) 1 ChD 666 : 78 LJch 391 and AIR 1931 18 (Privy Council) . Extension may also arise, as I have indicated, by the consent of the owner when, in pursuance of a defective grant, he lets another into possession of his property.

18. I find it difficult to apply the above principles to the present case as all the necessary facts have not been investigated. It appears to have been assumed that the settlement, made by the hukumnama (Ex. A) had the approval of all the proprietors. From the written statement itself, we get it that hukumnama was granted by only two of them, Shyamlal & Brijbehari. It is alleged further that the grant was "confirmed by the other Pandes". The reference is apparently to the letters, Exs. B series, but there is nothing in either of the judgments of the Cts. below as to whether these letters establish the confirmation of the grant by the remaining proprietors. Two of these letters are written by a receiver who seems to have been in possession of the estate of the Pandes. There is no investigation as to the duration & extent of his possession, the authority to which he owned that possession, how far that authority empowered him to act on behalf of the estate of the Pandes, & as to what is the legal effect of the acts attributed to him. In these circumstances it seems to me to be necessary to remand the appeal for rehearing in the light of the principles laid down above.

19. There is a further point. I am not certain that the point of adverse possession arises at all. Deft. 1 claims to have entered in pursuance of a settlement made by some of the proprietors & approved by the other proprietors, & to have remained in possession thereafter. It is a point for investigation as to whether at any time there came into being a relationship of lessor & lessee between the Pandes & deft. 1 which would prevent the possession of def. 1 from becoming adverse to the Pandes: Nainapillai v. Ramanathan, 51 I. A. 83 : (A. I. R. 1924 PC 65).

20. The question of the position of a person entering into & holding immovable property under a lease void for want of registration is far from easy & I do not wish to enter into a discussion of it without a finding of the Cts. below on the relevant questions of fact. Mr. R. S. Chatterji has urged that the point should not be allowed to be raised at all, that it was not taken by the pltf's. at any earlier stage & will change the nature of their case. I do not think that there is any substance in this contention. The point arises out of the defence case & is

independent of the case of the pltfs. The pltfs. ask for the ejectment of the defts. on the finding that they are trespassers. The defts. resist on the plea that deft. 1 is a tenant. Having taken this position, the onus is on them to establish their right to remain on the property. It is true that they base their plea upon adverse possession, but it is for the Ct. to decide the legal effect of the facts alleged & proved by them. The pleadings of parties are confined by law to pleadings of fact. Therefore, the plea that on the facts alleged deft. 1 prescribed for the right of a permanent tenant does not preclude the Ct. from considering whether, on the facts proved, a tenancy came into being at an earlier stage & prevented the acquisition of prescriptive rights.

21. On the above grounds, I would set aside the decree of the Addl. Dist. J. & remand the appeal for rehearing in the light of the above observations. The costs of this Ct. will follow the results of the case.

22. I cannot part with this case without expressing our thanks to the learned counsel engaged, particularly Messrs. K. D. Chatterji, R. S. Chatterji, & Medini Prasad Singh, who have laboured ungrudgingly to help us in Sealing with the several questions of law which arose for consideration.

Narayan, J.

23. I agree. Ever since this case opened, I was of the opinion that it could not be decided by us in this second appeal unless some necessary facts were investigated. It is regrettable that the final Ct. of fact did not apply itself properly to this case. As pointed out by my learned brother even the case of AIR 1931 18 (Privy Council) was not carefully read by the lower appellate Ct. It has been repeatedly pointed out that the Legislature has entrusted a very important duty to the first appellate Ct. It is for that Ct. to decide finally all questions of fact on which the disposal of the suit might depend, & as pointed out by Rowland, J. in Bhagwan Singh Vs. Ujagir Singh and Others, the lower appellate Ct. has "to the best of his power, to weigh & balance the evidence, facts & considerations, appearing on both sides". It must appear from the judgment of the lower appellate Ct. that it has made an honest endeavour to make a proper appraisal of the merits of the cases put forward by the parties, & it should never appear to the litigant public or to the superior Ct. that it has agreed with the trial Ct. simply because it was not inclined to take much trouble over the case. Every litigant is entitled to have a decision from two Cts. on questions of law & fact, & if the lower appellate Ct. does not examine the facts & the evidence for itself & does not even mention the points which the case raises, it will be certainly failing in its duty. This case is on the whole a difficult case, & it could not so easily be decided in the manner it has been decided. Of course, the learned Addl. D. J. was so much satisfied with the judgment of the trial Ct. that it did not even like to refer to the rulings cited before it & gave a compliment to the learned Subordinate Judge that the points had been very "lucidly discussed" by him. My learned brother in his exhaustive judgment has pointed out how many different considerations arise & how many different principles have to be

considered in this case. For applying the principles properly there must be further investigation of some necessary facts, & when we find that some other facts have to be investigated we have to send back the case though because of the remand the parties would be put to further harassment.