
(2016) 06 GAU CK 0029
In the Gauhati High Court
Case No : R.S.A. No. 160 and 61 of 2005

Sandhya Rani Choudhury

APPELLANT

Vs

On the death of Keshab Chandra Chakraborty

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Citation : (2016) AIRCC 2556 : (2016) 5 GauLJ 161 : (2016) 5 GauLR 196 : (2016) 2 RCRRent 395

Hon'ble Judges : N. Chaudhury, J.

Bench : Single Bench

Advocate : N. Dhar Advocate, for the Appellants in R.S.A. No. 160 of 2005; U. Dutta Advocate, for the Respondents in R.S.A. No. 160 of 2005; U. Dutta Advocate, for the Appellants in R.S.A. No. 61 of 2005; N. Dhar Advocate, for the Respondents in R.S.A. No. 61 of 200

Final Decision : Allowed

Judgement

N. Chaudhury, J. (Oral)—The concurrent findings of the learned courts below holding the present appellants liable to be evicted have been called in question in the present second appeal.

2. The predecessor of the respondents, as plaintiff, instituted title suit No. 35/1998 in the court of learned Civil Judge (Jr. Divn.) No. 2, Hailakandi stating that his father being owner in possession of a plot of land measuring 8K covered by dag No. 6 and 7 of Second R.S. Patta No. 4 and 5 of Mouza Gangpar-Dhumkar in the district of Hailakandi let out the same to the predecessor of the defendants Late Birendra Kumar Choudhury by executing a registered lease deed dated 10.01.1966 for a period of 10 years w.e.f. 1st of Baishakh, 1372 B.S. on an annual rent of Rs. 25/-. The tenant started residing over the said land by constructing temporary thatched house and did not obtain a new settlement of the land after expiry of 10 years. He died leaving behind the defendants as his legal heirs. During his life time, Birendra Kumar Choudhury did not pay much amount due to the landlord towards rent of the land. Upon death of original

owner the plaintiff issued notice dated 27.12.1997 A.D. by registered post terminating the tenancy and directing defendants to vacate the land described in schedule thereto within last month of the year 1404 B.S. but the defendants failed to do so. Accordingly, the suit was instituted for realisation of arrear rent to the tune of Rs. 93.75 and for eviction of the defendants by demolishing of the houses standing on the suit land.

3. On being summoned, the defendants No. 1 and 2 appeared and submitted written statement. It is the case of the defendants that the suit is not maintainable under the provision of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 (hereinafter referred to as 'the Act'), that he having constructed permanent structure on the suit land within the statutory period after taking lease on 10.01.1966 he has acquired the right of non-evictable tenant and is not liable to be evicted. The predecessor of the defendants incurred huge expenditure in filling of the land and making permanent construction. After expiry of the initial period of lease they made a prayer to the plaintiff for renewal thereof but the plaintiff did not execute any fresh document and so the defendants continued holding over the same on the earlier condition. In the year 1993, the earlier permanent structure was demolished and they constructed an RCC building on the suit land incurring expenditure to the tune of Rs. 1,90,200/-. They had earlier spent about Rs. 65,822/- towards construction of the old house over the suit land and a sum of Rs. 4,000/- was spent towards making of a low cost latrine in the year 1987. According to the defendants, the valuation of the house was not less than Rs. 3,50,000/- at the market rate and all developments were made on the suit land to the knowledge of the plaintiff and his family members.

4. On the basis of the aforesaid pleadings of the parties, the learned trial court framed as many as 4 issues which are quoted below:-

1. Whether the defendants constructed any permanent structure within 5 years of the initial lease?

2. Whether the defendants are liable to be evicted from the suit land?

3. Whether the defendants are entitled to get any compensation for improvement made over the suit land and if so, to what quantum?

4. To what relief(s) the parties are entitled to get?

5. In course of trial, plaintiff examined 3 witnesses and exhibited some documents. The defendants also examined as many as 3 witnesses and they also exhibited certain documents. One court witness was also examined to ascertain the current market price of the RCC construction standing on the suit land. After hearing the learned counsel for the parties, the learned trial court decided issue No. 1 holding that defendant constructed house on the suit land with bamboo post, wooden baton and wooden doors and windows. Relying on Ext. 5, the valuation list of the Hailakandi Municipal Board which was exhibited by the

plaintiff through an employee of the Municipality, the learned trial court was of the view that the house was made of bamboo post and not wooden post and so it could not be a permanent structure within the meaning of Section 3(d) of the Act. Holding so, the issue No. 1 was decided against the tenant and in favour of the plaintiff. Accordingly, issue No. 2 was also decided in the affirmative and against the tenant holding that the defendants are liable to be evicted from the suit land. Coming to issue No. 3, the learned trial court held that the defendants are entitled to a sum of Rs. 2,04,000/- as the cost of improvement made on the suit land. The suit was accordingly decreed for eviction of the defendants and for payment of Rs. 2,04,000/- by the plaintiff to the defendants towards the cost of the improvement made on the suit land. This judgment and decree passed on 17.11.2003 was called in question by the defendants in title appeal No. 3/2004. The plaintiff also preferred another appeal being title appeal No. 4/2004 in the same court challenging the decree in so far as it relates to the payment of Rs. 2,04,000/- by the plaintiff to the defendants towards the cost of the improvement made on the suit land. Both the appeals were heard together and the learned first appellate court after hearing both sides passed his impugned judgment and decree dated 08.10.2004. The learned first appellate court framed the following 2 (two) points for determination in the appeal for the purpose of adjudicating the same:-

(1) Whether defendants acquired the status of non evictable tenant's and not liable for eviction?

(2) Whether the quantum of compensation is unjust and improper?

6. While deciding the point No. 1, the learned first appellate court considered the definition of permanent structure occurring in Section 11(d) of the Act and held that house constructed by the defendants prior to 1993 was made with bamboo post and not of wooden post. This finding was arrived at on the basis of recital of Ext. 5 although the witnesses of the defendants categorically stated that the suit house was made of wooden post, wooden doors and windows and wooden batons. The learned first appellate court relying on Ext. 5 held that the structure constructed by the defendants was not a permanent structure and so the point No. 1 for determination was decided in favour of the respondent/plaintiff and against the appellants/defendants.

7. Coming to point No. 2 for determination in regard to quantum of compensation, the learned first appellate court was of the view that trial court has not committed any error in decreeing compensation for the defendant against construction made by him over the suit land by way of improvement and so an eviction decree passed against the defendant had to be accompanied by simultaneous payment of cost of improvement by the landlord. Both the appeals, therefore, were dismissed by the first appellate judgment and decree dated 08.10.2004. Aggrieved, the plaintiff preferred R.S.A. No. 61/2005 challenging the findings in title appeal No. 4/2004 and the defendants preferred R.S.A. No. 160/2005 against the decree of eviction upheld in title appeal No. 3/2004. The

first appellate court judgment dated 08.10.2004 is the subject matter of two second appeals being R.S.A. No. 61/2005 as well as R.S.A. No. 160/2005.

8. This court while admitting R.S.A. No. 61/2005 on 20.07.2005, framed the following sole substantial question of law:-

"Whether the learned Courts below were justified in granting compensation to the defendants under Section 6 of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 on all the constructions executed by him without considering as to whether such constructions are reasonable improvement for the beneficial enjoyment of the land for the purpose for which it was let out?"

Similarly, on 19.08.2005 when R.S.A. No. 160/2005 was admitted, this court framed the following sole substantial question of law:-

"Whether the appellants/defendants are not entitled to protection from eviction under Section 5 read with Section 3(d) of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955, in view of the findings of the learned Court below that on perusal of Exhibit-5 it appears that the batons (frames), doors and windows of the house constructed are of wooden structure?"

9. Since both the substantial questions of law and both the second appeals are inter-related arising from common judgment and decree and the same title suit and the same set of evidence and both the appeals are argued by the same set of learned counsel, both the appeals are taken up together for disposal.

10. I have heard Mr. N. Dhar, learned counsel for the appellant in R.S.A. No. 160/2005 wherein Mr. U Dutta argued on behalf of the respondents. On the other hand, Mr. U. Dutta vehemently argued in R.S.A. No. 61/2005 on behalf of the appellants and Mr. N. Dhar argued on behalf of the respondents. The plaint, the written statement, the evidence adduced by the parties, both oral and documentary, have been taken into consideration by me and accordingly, this common judgment is being passed.

11. As has been pointed out above, predecessor of the plaintiff was Kunja Behari Chakroborty and he being owner in possession of the suit land inducted Birendra Kumar Choudhury as tenant to the suit land measuring 8K. This tenancy was created by execution of a registered lease deed dated 10.01.1966. The document was executed by the plaintiff being the constituted attorney of his father Kunja Behari Chakroborty who was the original owner in possession of the suit land. It was the case of the plaintiff that although land was let out to the predecessor of the defendants by execution of registered lease deed dated 10.01.1966, the tenant did not make any pucca structure on the suit land and continued residing thereon by making a temporary shed. Under such circumstances, he did not acquire the status of non-evictable tenant. The original owner during his life time discovered that some other land was also taken into possession by the tenant for planting betel nut trees and so he had asked the defendant No. 2 to remove the betel nut trees immediately, for the vacant and reserved plot of land who on turn

assured the landlord that the same would be kept vacant. But till 17.12.1997 i.e. the date when notice was issued to the defendants for vacating the suit land, the betel nut trees were not removed. According to the plaintiff, the defendants are liable to be evicted from the suit land along with a decree for realisation of arrear rent to the tune of Rs. 93.75. According to the plaintiff, a notice for terminating the lease was issued under registered post on 19.12.1997 and the defendants had acknowledged receipt thereof.

12. The defendants by filing written statement raised the plea, inter alia, that they having made construction of pucca structure within the statutory period having wooden pillars, batons, doors and windows and having planted trees on the suit land for their residential purpose, there were not liable to be evicted. The defendants also stated that apart from filling up the land, they made expenditure of Rs. 1,90,000/- towards construction of RCC building in 1993. A low cost latrine in the year 1987 at an expenditure of Rs. 4,000/- and thus present valuation of the house over the suit holding would not be less than Rs. 3,50,000/-. With these material facts, the defendants prayed that suit of the plaintiff be dismissed in entirety. To prove the respective case, plaintiff examined 3 witnesses. During pendency of the suit, plaintiff Keshab Chandra Chakraborty died and his legal heirs were impleaded. His son Kalyanmoy Chakraborty was examined as PW 1 and he proved issuance of notice for termination of lease by his father. He claimed that the suit land was owned by his predecessor who let out to the defendants and defendants did not make permanent structure within the statutory period. Construction of subsequent RCC building in the year 1993 being contrary to the consent of the landlord is also illegal and so he prayed that suit of the plaintiff be decreed. He proved the registered lease deed as Ext. A whereby suit land was let out to the defendants. Ext. B is a Farag of the land. PW 2 Aurobinda Roy was examined by the plaintiff. He is a Junior Engineer of Hailakandi Municipal Board and proved Ext. 2, the application filed by the defendants for construction of RCC building on 27.09.1993. By Ext. 4 permission was granted to the defendants for construction. He did not lead any evidence with respect to the earlier structure prepared by the original tenant after taking lease of the land in the year 1966. PW 3 is Mrinal Kanti Paul who is a Head Assistant of Hailakandi Municipal Board. He brought the records of Ward No. 6, Holding No. 45 of 1976-77 and therefrom he exhibited Ext. 5, the valuation list. The valuation list prepared by the Hailakandi Municipal Board vide Ext. 5 shows that the house was made of bamboo post. This exhibit was brought on record only to show that the structure constructed by Birendra Kumar Choudhury was standing on bamboo post and not on wooden post as claimed by the defendants in the written statement. This was done with a view to proving that the house constructed by the original tenant within the statutory period after taking lease of the land in the urban area was not a permanent structure within the meaning of Section 3(d) of the Act. At the time of cross examination, this witness stated that valuation list (Ext. 5) was prepared by a clerk of the Municipal Board. The person who prepared this list has not given any signature in Ext. 5. It bears the

signature of the Chairman of the Municipal Board. Ext. 5 is prepared on the basis of field verification by Overseer or assessor. There must have been some field verification on the basis of which Ext. 5 was prepared but he did not bring the record with him. There is no signature of Overseer or assessor on Ext. 5.

13. Per contra, the defendants examined 3 witnesses. Defendant Bikash Ranjan Choudhury claimed in his examination-in-chief that the original house constructed by Birendra Kumar Choudhury within the statutory period was made of wooden pillars, wooden baton and wooden doors and windows. It was 8" x 22" and was facing East and stretched from North to South. It had a Verandah of 3 cubic in front and it had C.I. sheet roofing. Towards the west, there was a pond and it still exists. He proved Exts. A to I to show that the land was leased with his father and he used to make payment of rents to the owner and that he used to pay municipal taxes to the authority. During cross examination, a specific question was put to him about the structure made by the original tenant. He stated in no uncertain terms that the house was made of wooden posts and it had C.I. sheet roofing. Subsequently, he stated that it was made both of bamboo as well as wooden post. DW 2 is Makhan Chandra Deb, who is the resident of the plot adjacent to the northern boundary of the suit land. He stated specifically that Birendra Kumar Choudhury had constructed house within 4/5 months of taking lease of the land by making use of wooden post and wooden baton and he saw it with his own eyes. In course of cross examination also he could not be shaken and he maintained that the original house was made of wooden post and C.I. sheet roofing. In the year 1993 only the present RCC building has been constructed on the land. Thus, the examination-in-chief and cross examination of DW 2 who is a boundary witness go to show that there were wooden posts in the concerned structure. DW 3 is yet another witness from the locality. He was 51 years of age at the time of deposition and he said that the old house was Assam Type one made with wooden posts, wooden baton, doors and windows and he saw Birendra Kumar Choudhury living therein with his family. In course of cross examination, the same witness maintained his stand and said that the structure with wooden posts and wooden baton was made when he was 15/16 years of age. Considering his approximate age as revealed from his deposition, it appears that such construction was on and around the year 1966 and thus the evidence of DW 1, DW 2 and DW 3 are more or less coincident on the point that the house was constructed by Birendra Kumar Choudhury on around 1966 and it was made of wooden posts, wooden baton and wooden doors and windows. The CW 1 being an Engineer of the P.W.D (Building Division) deposed after having local inspection and opined that the RCC construction made by the defendants over the suit land in the year 1993 was of Rs. 2,84,596/-.

14. From the evidence discussed above it is to be seen as to whether on the basis of the evidence adduced by the plaintiff to show that the original house was made of bamboo posts based on Ext. 5 is perverse. The facts in issue in the present case are whether the house made by Birendra Kumar Choudhury on the suit land was a permanent structure having wooden frame. Section 3(d) of the

Act which defines permanent structure is quoted below for ready reference:-

"3(d). 'Permanent structure' means a structure made of cement-concrete, stone, brick, iron, aluminium, asbestos or wood or any combination of these materials:

Provided that a building with bamboo or Ikea walls and thatched roof shall also be regarded as a permanent structure, if its frame is constructed of any of the materials mentioned above."

15. The aforesaid section only goes to show that any house made of a frame made of any of the materials mentioned in the section or combination of them would be a permanent structure. Frame has nowhere been defined. By taking usual meaning of the word, it would be the main structure on which a house is constructed. Obviously, the pillars, the batons/beams and the roof constitute the skeletal part of a house and so frame must mean the posts, the batons, the roof and so on. It is admitted position that the house was made of wooden baton, wooden doors and wooden windows. Relying on Ext. 5 plaintiff wanted to establish that the house was made of bamboo post. The case of the plaintiff was based on the proposition that if the house is made of bamboo posts then it cannot be said that its frame was made of wood merely because wooden frames, doors and windows were issued. To ascertain as to whether the house was made of bamboo, I have perused the evidence adduced by the parties. While the defendants being saddled with the burden to prove that the house was a permanent structure took recourse to oral evidence for the purpose of proof that house was made of bamboo posts. Whether the house stood on bamboo post or wooden post could be seen by persons in the locality who were residing there at the relevant time which means within the period of 5 years from the date of lease. Lease was entered into on 10.01.1966. DW 3, as pointed out above, stated that around the year 1966 the construction was made by Birendra Kumar Choudhury and he saw the posts were made of wood. So is the evidence of DW 2 who is resident of the adjacent northern plot of the suit land. Both these witnesses claimed to have seen the house with wooden posts. Even during cross examination their credibility could not be shaken. Plaintiff himself claimed that they lived in the house constructed by their father immediately after taking the land on lease in the year 1966 and the house stood on wooden posts. The batons, the doors and windows of the house were also made of wood. Even during cross examination, the fact that there was no wooden post, could not be established by the plaintiff. But the plaintiff took recourse to documentary evidence by calling for municipal records to show that Birendra Kumar Choudhury got the house assessed as a Katcha structure. I have perused the Ext. 5 and noticed the evidence of PW 3 who proved Ext. 5. It is to be seen whether PW 3 could prove by adducing Ext. 5 that suit house was constructed by bamboo post.

16. PW 3 described himself to be an employee of Hailakandi Municipal Board. He brought the original records of Ward No. 6 to show that the valuation list refers

to the suit holding. Suit holding is numbered as 45/45. The recital made therein, inter alia, shows that house was made of bamboo posts. This is the trump card of the plaintiff to propose that the suit house was not a permanent structure.

17. In course of cross examination, the same witness stated that Ext. 5 was prepared by a clerk of the Office and not by him. The person who prepared valuation list and made the entries of Ext. 5 did not give his signature on the Ext. 5. Ext. 5 bears signature of the Chairman of the Municipality only. Entries in Ext. 5 as to description of the house, was on the basis of field inspection report by overseer/assessor. Their signatures also do not exist on Ext. 5. Now the question arises whether merely by exhibiting valuation list, the PW 3 has established that house was made of bamboo post. Ext. 5 has been proved in original. This shows that it is the document of the Municipal Board. PW 3 could prove that it is the document of the Municipal Board but he did not prove the contents of the document. It is established law that mere proof of a document would not amount to proof of its contents. The contents of Ext. 5 were known to the concerned overseer/assessor. He might have seen the house. He could have alone come to the witness box to depose that he had seen the house and that it stood on bamboo post. Had he come to the witness box in that event, his oral evidence would have been valid under section 60 of the Evidence Act. So far as PW 3 is concerned, such averments are mere hearsay evidence. The contents made in Ext. 5 would not be elevated to the status of primary evidence unless and until the person who made the entry or on whose testimony the entry has been made was examined.

18. In the case of *Birad Mal Singhvi v. Anand Purohit* reported in 1988 (Supp.) SCC 604, the Hon"ble Supreme Court had the occasion to consider as to whether a scholar register proved as Ext. 8 in the election case amounted to proof of date of birth of the party. The Hon"ble Supreme Court held that mere production of the document in record would not amount to proof of contents thereof. If entry regarding date of birth in the scholar's register is made on the information given by the parents or someone having special knowledge of the fact, the same would have probative value. The testimony of Anantram Sharma and Kailash Chandra Taparia in that case were merely proof of the documents but the contents of those documents were not proved. Paragraph 14 of this judgment is quoted below for ready reference:-

"14. We would now consider the evidence produced by the respondent on the question of age of Hukmi Chand and Suraj Prakash Joshi. The respondent examined Anantram Sharma PW 3 and Kailash Chandra Taparia PW 5. Anantram Sharma PW 3 has been the Principal of New Government High Secondary School, Jodhpur since 1984. On the basis of the scholar's register he stated before the High Court that Hukmi Chand joined school on June 24, 1972 in Ninth class and his date of birth as mentioned in scholar's register was June 13, 1956. He made this statement on the basis of the entries contained in the scholar's register Ex. 8. He admitted that entries in the scholar's register are made on the basis of

entries contained in the admission form. He could not produce the admission form in original or its copy. He stated that Hukmi Chand was admitted in Ninth class on the basis of transfer certificate issued by the Government Middle School, Palasani from where he had passed eight standard. He proved the signature of Satya Narain Mathur, the then Principal who had issued the copy of the scholar's register Ex. 8. Satya Narain Mathur was admittedly alive but he was not examined to show as to on what basis he had mentioned the date of birth of Hukmi Chand in Ex. 8. The evidence of Anantram Sharma merely proved that Ex. 8 was a copy of entries in scholar's register. His testimony does not show as to on what basis the entry relating to date of birth of Hukmi Chand was made in the scholar's register. Kailash Chandra Taparia PW 5 was Deputy Director (Examination) Board of Secondary Education, Rajasthan, he produced the counterfoil of Secondary Education Certificate of Hukmi Chand Bhandari, a copy of which has been filed as Ex. 9. He also proved the tabulation record of the Secondary School Examination 1974, a copy of which has been filed as Ex. 10. In both these documents Hukmi Chand's date of birth was recorded as June 13, 1956. Kailash Chandra Taparia further proved Ex. 11 which is the copy of the tabulation record of Secondary School Examination of 1977 relating to Suraj Prakash Joshi. In that document the date of birth of Suraj Prakash Joshi was recorded as March 11, 1959. Kailash Chandra Taparia stated that date of birth as mentioned in the counterfoil of the certificates and in the tabulation form Ex.12 was recorded on the basis of the date of birth mentioned by the candidate in the examination form. But the examination form or its copy was not produced before the court. In substance the statement of the aforesaid two witnesses merely prove that in the scholar's register as well as in the secondary school examination records the date of birth of a certain Hukmi Chand was mentioned as June 13, 1956 and in the tabulation record of secondary school examination a certain Suraj Prakash Joshi's date of birth was mentioned as March 11, 1959. No evidence was produced by the respondent to prove that the aforesaid documents related to Hukmi Chand and Suraj Prakash Joshi who had filed nomination papers. Neither the admission form nor the examination form on the basis of which the aforesaid entries relating to the date of birth of Hukmi Chand and Suraj Prakash Joshi were recorded was produced before the High Court. No doubt, Exs. 8, 9, 10, 11 and 12 are relevant and admissible but these documents have no evidentiary value for purpose of proof of date of birth of Hukmi Chand and Suraj Prakash Joshi as the vital piece of evidence is missing, because no evidence was placed before the court to show on whose information the date of birth of Hukmi Chand and the date of birth of Suraj Prakash Joshi were recorded in the aforesaid document. As already stated neither of the parents of the two candidates nor any other person having special knowledge about their date of birth was examined by the respondent to prove the date of birth as mentioned in the aforesaid documents. Parents or near relations having special knowledge are the best persons to depose about the date of birth of a person. If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have

probative value. The testimony of Anantram Sharma and Kailash Chandra Taparia merely prove the documents but the contents of those documents were not proved. The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. Merely because the documents Exs. 8, 9, 10, 11 and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents have no probative value and the dates of birth as mentioned therein could not be accepted."

19. In the case of *Alamelu and Anr. v. State* represented by Inspector of Police reported in (2011) 2 SCC 385, the Hon"ble Supreme Court dealt with the same question. The aforesaid judgment of Birad Mal Singhvi (supra) was quoted by the Hon"ble Supreme Court along with the judgment of the Hon"ble Supreme Court in the case of *Narbada Devi Gupta v. Birendra Kumar Jaiswal* and anr reported in (2003) 8 SCC 745 and held that burden of proof was not discharged in that case as mere proof of a document does not amount to proof of content of the document. In paragraph 43 of *Alamelu* (supra), the view taken by the Hon"ble Supreme Court in the case of *Narbada Devi Gupta* (supra) has been quoted. Paragraph 43 is quoted below:-

"43. The same proposition of law is reiterated by this Court in *Narbada Devi Gupta v. Birendra Kumar Jaiswal* reported in (2003) 8 SCC 745 where this Court observed as follows:

"16. The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the `evidence of those persons who can vouchsafe for the truth of the facts in

issue".

20. Even in the present case, the plaintiff's proved merely the document Ext. 5 and did not prove its contents. So, the learned courts below committed error in holding that the house was made of bamboo posts. On the other hand, defendants by examining 3 witnesses including 2 independent witnesses have led oral evidence to show that the suit house stood on wooden post and in that view of the matter, the finding of the learned courts below are bound to be held as perverse. Having so found, the concurrent findings of learned courts below are liable to be set aside and the same are accordingly set aside. The sole substantial question of law in R.S.A. No. 160/2005 having been decided in favour of the tenants/appellants, this second appeal stands allowed. The suit stands dismissed. No order as to costs.

21. Once R.S.A. No. 160/2005 is allowed, the decree passed by the learned courts below directing the plaintiff to make payment of Rs. 2,04,000/-, therefore, cannot stand. This money decree was passed only as quid pro quo as the cost of improvement made by them over the suit land and when the decree of eviction has been set aside, plaintiff's are not liable to make any payment to the defendants and consequently in view of the judgment passed in R.S.A. No. 160/2005, R.S.A. No. 61/2005 stands allowed and the concurrent findings and the decree passed by the learned courts below in regard to payment of Rs. 2,04,000/- to the defendants stands set aside. No order as to costs.