
(2003) 04 CAL CK 0012
In the Calcutta High Court
Case No : S.A. No's. 270 and 271 of 1995

Smt. Kabita Roy Chowdhury and Another	APPELLANT
Vs	
Smt. Santi Devi Bajaj and Another	RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 27
Specific Relief Act, 1963 — Section 22, 6

Citation : (2003) 3 CALLT 485

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Tapan Dutta and P.K. Sinha, for the Appellant; HIRAK MITRA, Senior Advocate, S. Sen, S. Bhattacharyya, S.R. Sen and Puja Das Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mitra, J.—These two second appeals have been preferred challenging the judgment dated 30.6.1994 and decreed dated 7.7.1994 respectively passed by the learned Additional District Judge, 14th Court Allpore, Dist. 24 Parganas (South) in Title Appeal No. 87 of 1992 affirming the judgment and decree dated 31st January, 1992 passed by the learned Munsif, 3rd Court at Alipore in Title Suit No. 221 of 1981 and also the judgment and decree dated 13th June and 7th July, 1994 respectively passed by the learned Additional District Judge, 14th Court at Alipore in Title Appeal No. 88/92 and thereby affirming the judgment and decree dated 31st January, 1992 passed by the learned Munsif, 3rd Court at Alipore in Title Suit No. 252 of 1984.

2. Title Suit No. 221 of 1981 and Title Suit No. 252 of 1984 were taken up together for analogous hearing and the learned Munsif by a Single Judgment disposed of the two Title Suits. Accordingly, two appeals being 87/92 and 88/92 were preferred. The Appellate Court below also heard the two appeals

analogously since the two appeals arising out of two suits were heard analogously and the Appellate Court below by a single judgment disposed of the two appeals mentioned above.

3. Let us take the case of Title Suit No. 221 of 1981 first. In this suit of 1981 the case as has been made out by the plaintiff is, inter alia, as follows:

The suit land involves a brick-built structure in and over the land measuring an area of 3 kottachs and 5 chittacks and 39 square feet being the front portion of premises No. P-61, Dr. Sarat Banerjee Road, P.S.: Lake, Calcutta-29 which belongs to the plaintiff. The plaintiffs name entered in the relevant Register of Calcutta Municipal Corporation and the plaintiff is the sole owner of the said premises and he was in exclusive possession. Initially, in this suit Sri B.N. Roy Chowdhury was the plaintiff and after his death he was substituted by Smt. Kabita Roy Chowdhury. Smt. Santi Devi Bajaj and Sri Nathmal Bajaj were the defendants (Nathmal Bajaj being the constituted attorney of Sm. Santi Devi Bajaj). It is the case as made out by the plaintiff that in or about the month of August 1964 the defendant No. 1, that is, Smt. Santi Devi Bajaj approached the plaintiff for sale of the front portion of the said premises No. P-61 at an agreed consideration of Rs. 40,000/-. The plaintiff was in urgent need of money and he took a sum of Rs. 10,000/- from the defendant No. 1 and an agreement for sale was executed to that effect. The defendant No. 1 filed a suit, inter alia, for a decree for specific performance of contract for sale of the said premises being the suit premises herein. This suit was filed in the Original Side Jurisdiction of the High Court, Calcutta, being Suit No. 21 of 1965 filed on 5.1.1965. Santi Devi Bajaj obtained ex parte decree in the said suit on 14.1.1966. On 30.9.1966 a deed for sale was executed by he Registrar, High Court, Original Side, Calcutta on the basis of the decree passed in that case, that is, in Suit No. 21/65. The Defendant No. 1, however, did not get possession of the suit premises and this plaintiff continued to be in possession of the suit property. The Defendant No. 1 thereafter, filed another suit on 24.7.1968 in the Original Side Jurisdiction of this High Court at Calcutta for cancellation of the conveyance dated 30.9.1966 and for passing a decree for Rs. 24,090.28. The said suit was numbered as 1880 of 1968 in the High Court at Calcutta. Thereafter, subsequently, the Defendant No. 1 applied for withdrawal of the suit and it was withdrawn. Therefore, no occasion did arise for the plaintiff to deliver possession of the said property to the Defendant No. 1 and the suit property remained as before in full enjoyment and possession of the plaintiff himself. After lapse of about 16 years from the date of the purported agreement and 14 years after so-called conveyance the plaintiff claimed that right, title and interest has been vested in the plaintiff by virtue of adverse possession. The Defendant No. 2 accompanied by some associates made a sudden attempt to take forcible possession of the said premises but they failed to succeed. This plaintiff is of uninterrupted possession of the suit property for more than 12 years as 16 annas owner of the same. The plaintiff apprehended that the defendant will try to dispossess the plaintiff from the suit premises forcibly and as such he filed this Title suit No. 221/81 with the following prayers:

"(a) For a declaration that the defendant has no right, title and interest in the suit property and their alleged right, has been barred by limitation and adverse possession;

(aa) For a further declaration that the purported conveyance dated 30.9.1966 are unenforceable non-est and ineffective on the basis of agreement for sale dated 5th August, 1964 and

(b) For a decree for permanent injunction restraining the defendants from setting up any claim for any supposed right, title or interest in the suit property and from disturbing or interfering with or attempt into disturbed or interfere with the plaintiffs possession of the suit premises/properties;

(c) For costs of the suit;

(d) For such other relief or reliefs to which the plaintiff is entitled to in law and equity."

4. The plaintiff in paragraph 19 of the plaint pleaded the date of cause of action for this suit as on 20.5.1981.

5. The defendants contested this suit by filing Written Statement. In the Written Statement the case as has been made out by the defendant is, inter alia, as follows:

6. The suit property is only 3 kottahs, 5 chittacks & 8 Sq. feet of premises No. P-61 Dr. Sarat Banerjee Road, Calcutta-29. The defendants denied that on and from 1st October, 1966 the plaintiffs ever possessed the suit property as alleged or any construction raised therein. Since 1966 the plaintiffs as alleged has no right, title or interest and possession in the suit property. These defendants are the owners and possessed of suit property as absolute title holder by exercising all sorts of right since 1.10.1966. Actually the plaintiffs had/have no possession over the suit property since the decree passed by the High Court in Suit No. 21/1965 for specific performance of the sale agreement dated 6th August, 1964 and/or the conveyance executed in consequence. The defendants denied possession of the suit property by the plaintiffs or realising rents by letting out some portion of the property to the monthly tenants or enjoying or possessing the same or any portion thereof. The Registrar of the High Court, Calcutta, executed conveyance in favour of the defendant on 30.9.1966 in terms of the decree as mentioned and on 1.10.1966 the defendant was put in vacant and peaceful possession of the suit property. Accordingly, she has been possessing the same, mutuating her name before the appropriate authority. The defendants denied that the defendant No. 1 approached the plaintiffs to purchase the said property or due to urgent need of money the plaintiffs took a sum of Rs. 10,000/- by way of loan from the defendants and executed an agreement for sale or the defendants failed and neglected to fulfill her part of the sale agreement and as such the defendants had to file the suit.

7. The defendants specifically made out the case in the manner as follows:

The plaintiffs being the owner possessed in entirety the premises No. P-61, Dr. Sarat Banerjee Road, Calcutta-29. By a letter dated 5th August, 1964 the plaintiff wrote to the defendant in response to her willingness to purchase the front portion of the said premises. By the said letter the plaintiff declared that the defendant was at liberty to construct and erect pucca boundary wall on the boundary of the border side of the premises proposed to be purchased by the defendant. In view of the aforesaid on or about 6th August, 1964 an agreement was entered into on the date of the execution the defendants paid to the plaintiffs a sum of Rs. 25001/- as earnest money and total consideration was agreed at Rs. 40,000/-. The plaintiff duly acknowledged in writing the payment of said earnest money. Thereafter, on the request of the plaintiff the defendants paid to the plaintiff further sum of Rs. 8000/- as further part payment of the purchase consideration of the said premises. The plaintiff duly received and accepted the same and granted receipt for the said amount. Thereafter the plaintiff having failed to complete the conveyance, on or about 5th January, 1965, the defendant filed a suit being Suit No. 21/65 before the High Court at Calcutta for specific performance of the said agreement dated 6th August, 1964. The said suit was decreed on contest on 14.1.1966. Thereafter, defendant on 20th September deposited Rs. 3791.58 being the balance remaining of the purchased consideration with the Registrar, O.S., Calcutta who accordingly executed conveyance in favour of the defendant on 30th September, 1966. On or about 1st October, 1966 the defendant was placed in-vacant and peaceful possession of the said premises except for a portion being a garage in occupation of a person named Mishrilal Dhobi who continued to occupy the same claiming to be the tenant of the defendant at Rs. 50/- per month. On 10.11.1966 the said conveyance was duly registered with the Register of assurance. On the application of the defendant No. 1 for mutation of her name in Corporation Records. The Corporation of Calcutta by a letter dated 15.3.1967 duly mutated the name of the defendant No. 1 as owner of the suit premises. On the application of the defendant for sanction of the plan for construction of a building at the suit premises, the Corporation of Calcutta by its letter dated 28.4.1967 sanctioned the plan for construction of the premises. After taking possession of the suit premises, the defendants started demolition of some existing old structure and after sanction of the plan by the Calcutta Municipal Corporation new constructions was made of the ground floor up to the roof level by the defendants. The defendants in their written statement also stated that in Suit No. 1880 of 1968 in the affidavit-in-reply as well as in the written statement by the plaintiffs filed in the aforesaid suit admitted possession of the suit property of the defendants. In the written statement the defendants quoted the statements of the plaintiff in the said Suit No. 1880/1968 as made in paragraph 4. The defendants also quoted some portion of the written statement dated 4.12.1968 filed in Suit No. 1880/68 by the plaintiff the said portion of paragraph 14C of the said written statement of the plaintiff is as follows:

Deprived this defendant (Bhupendra Narayan Roy Chowdhury) of enjoyment and

income of the property by taking and continuing in possession of the property". In this manner the defendant tried to show the possession of the defendants in the suit property.

8. Thereafter when the demolition work of old structure was going on, the defendant was served with a letter dated 27.1.1967 written by Sri Janaranjan Halder, learned advocate, on behalf of one Bakul Acharya Chowdhury (father-in-law of the plaintiff) that the suit property had been charged in favour of the said client by virtue of a consent decree dated 24.12.1958. Said Bakul Acharya Chowdhury filed a suit in the month of " February, 1967 against the plaintiff being Suit No. 37/1967 in the Court of 3rd Munsif at Alipur and also filed one petition in the said Title Suit and obtained certain ex parte orders. On enquiry the defendants came to learn that said Bakul Roy Chowdhury obtained injunction on the ground that the entire premises including the remaining back portion of P-61, Dr. Sarat Banerjee Road, was charged in. his favour by virtue of a consent decree dated 24.12.1958 passed by the Hon"ble Court in Suit No. 1967/1958. The defendant further came to learn that Central Calcutta Bank Ltd. (in liquidation) also obtained a decree against the plaintiff and others for Rs. 7 lacs (seven lacs) and all the properties of the plaintiff were attached and charged by virtue of the said order of the Hon"ble Calcutta High Court dated 23.7.1964 passed in Matter No. 379/49.

9. Accordingly, the plaintiff made an application for withdrawal of the balance purchased consideration of Rs. 3791.58 deposited by the "defendants " and lying with the Registrar, Original Side. Under such circumstances the defendants had to stop further construction and he had to file the Suit No. 1880/1968 on July 27, 1968 before the Hon"ble High Court at Calcutta against the plaintiff for cancellation of the conveyance. The defendant also made an application for restraining the plaintiff from withdrawing the sum of Rs. 3791.58. Subsequently by order dated 16th July, 1971 passed in Suit No. 1959/67 (Central Calcutta Bank Ltd. In Liquidation v. Bhupendra Narayan Roy Chowdhury and Ors.) the consent decree dated 24.12.1958 passed in the said Suit No. 1967/1958 was set aside and charge created on the properties of the plaintiff including No. P-61, Dr. Sarat Banerjee Road, Calcutta was adjudged void. By further order dated 9th September, 1980 passed by the Hon"ble Division Bench the plaintiff was directed to make payment of Rs. 1,40,000/- in full and final settlement of the dues of Central Calcutta Bank (In liquidation). The said sum was duly paid and hence the property became free from all encumbrances. It has further been stated in the written statement that the defendant being in continuous and uninterrupted possession throughout, filed an application for withdrawal of Suit No. 1880/1968. The plaintiff did not file any objection, appeared but did not oppose to an order being passed allowing withdrawal of the said Suit No. 1880/1968 upon an undertaking not to file a suit on the same cause of action. No appeal was preferred from the said order and the time for doing so had long expired. The defendants in written statement categorically state that after getting the possession of the suit property on and from 1st October, 1966, the defendants

were all along possessing the same by exercising their full right, title and interest. According to the defendants, a Darwan was appointed by the defendants to supervise construction work. He was living in the Darwan's quarter constructed in the said premises by the defendants and the defendants were in effective and exclusive possession of the said premises including the structures standing thereon with full knowledge of the plaintiff. Big Sign Board containing the inscription "Site for building of Smt. Bajaj of 19, Ballygunge Circular Road, Calcutta" was affixed to the southern wall of the said premises facing the road. However, the whole case of the defendants (respondents herein) is that from the year 1966 they were the right, title holders and were the possessor in respect of the property and finally the plaintiff on 20.5.1981 at about 10.30 p.m. along with his son and other anti-social elements forcibly broke open the door of the Darwan's room and driven him out with his belongings, pulled down the Sign Board in the name of the defendants and thrown out the same on the road. Within a very short-time in furtherance of the said wrongful and mala fide act the plaintiff pulled down the partition wall built by the defendants separating the said premises from the rest of the premises No. P-61, Dr. Sarat Banerjee Road and thereafter the plaintiff to cover his misdeeds filed the instant suit.

10. These defendants thereafter had no option but to file Title Suit No. 252/84 for recovery of possession of the said premises from the plaintiff on 20.5.1981.

On these two sets of pleadings the learned trial Judge in T.S. No. 221 / 81 framed the following issues:

- (1) Is the suit maintainable in its present form?
- (2) Is the plaintiff entitled to get a decree as prayed for?
- (3) Has the right of defendant been defeated by prescription on adverse possession?
- (4) To what other relief or reliefs to his the plaintiff is entitled?

In T.S. No. 252/84 the following issues were framed upon pleadings of both parties:

- (1) Is the suit maintainable in its present form?
- (2) Has the plaintiff right, title or interest in respect of the suit property?
- (3) Is the plaintiff entitled to get a decree as prayed for?
- (4) Has the defendant acquired right, title and interest in respect of the suit premises by adverse possession?
- (5) To what other relief or reliefs the plaintiff is entitled?

11. The aforesaid are the pleadings of the parties and the issues for determination as has been framed by the trial Court.

12. On the above pleadings and issues the learned trial Judge by a single judgment disposed of two suits. T.S. 221 of 1981 was dismissed and T.S. No. 252 of 1984 allowed. Then, two appeals being T.S. No. 87 of 1992 and 88 of 1992 and both these two appeals were dismissed by learned Appellate Court below. Hence two second appeals.

13. Now in view of the provisions of Section 100 of the CPC this Court is to see first as to whether there is any substantial question of law or not. If any substantial question of law is found then what is that/those substantial questions of law. Now on consideration of the submission in this regard and on a consideration of the records it appears that the following questions can be termed as substantial question of law to be decided in these two second appeals "Heard analogously".

(1) Whether the Appellate Court below acted illegally by accepting weaker evidence when better evidence was available but not produced by the defendants in Title Suit No. 221/1981;

(2) Whether the suit of Santi Devi Bajaj that is, 252/84 comes under the mischief of Section 27 of the Limitation Act and it falls under Article 64 of the Limitation Act;

(3) Whether the conveyance executed in favour of Bajaj, the defendant in T.S. No. 221/81 during attachment is valid one or not;

(4) Whether the provisions of Section 6 and Section 22 of this Specific Act are attracted and the defendants in T.S. No. 221/81 suffer mischief of the said provisions;

(5) Whether the Judgment of Appellate Court below is based on surmise and conjectures and is perverse.

14. On the above substantial questions of law the learned counsel for the appellant submits that the plaintiff of T.S. No. 221/81 produced five witnesses in his support and these live witnesses including Misri Lal Dhobi adduced evidence and confirmed the possession of the plaintiffs in respect of the suit land. On the contrary the defendants produced Nathmal Bajaj (defendant No. 2) as DW 1 who is the only defence witness. The learned counsel of the appellant further submits that though the defendants Bajaj stated that the Darwan, office personnel, relations etc. have seen their possession, said Bajaj did not produce them as evidence. Now the learned counsel for the appellant submits that in such situation the defendants in T.S. No. 221/81 had in their hand so many witnesses and those were into produced, the obvious conclusion terms that had those witnesses been produced they could have gone again against the defendants. The learned counsel for the appellant submits that this fact draws adverse inference against the defendants u/s 114-J, of the Evidence Act.

15. Now under second score the learned counsel for the appellant submits that the suit filed by Bajaj T.S. No. 252/84 is not maintainable since it comes under

the mischief of Section 27 of Limitation Act and it squarely falls under Article 64 of the said Act. The learned counsel for the appellant submits that the suit has not been filed within 12 years and it is not known wherefrom the learned Court below and how the learned Court below came to the conclusion that Bajaj, that is, the defendants in T.S. No. 221/81 have been dispossessed forcibly by Roy Chowdhury on 20.5.1981. The learned counsel for the appellant further submits that in fact, the defendants Bajaj were never given possession and this suit comes under the mischief of Article 64 of the Limitation Act.

16. On the third point the learned counsel for the appellant submits that admittedly when the conveyance was executed the suit property was under attachment and in that view of the matter such a conveyance cannot be valid conveyance though it was executed under Court's decree.

17. On the next point of law the learned counsel for the appellant submits that the suit filed by Bajaj being No. 252/84 is not maintainable in view of the provisions of Section 6 of the Specific Relief Act, 1963 and the defendants Bajaj are also affected by the provisions of Section 22 of the said Act and as such they are not entitled to relief for possession as prayed for by them. In the last score of submission the learned counsel for the appellant submits that the judgment of the Appellate Court below is based on surmise and conjectures inasmuch as once the learned Court observes that the presumption regarding possession goes against Bajaj but ultimately holds possession of the suit property in favour of Bajaj and dispossessed from the suit land in May 1991. The learned counsel for the appellant also submits that it has also been admitted in the judgment by the learned Appellate Court below that the plaintiff Roy Chowdhury produced five witnesses whereas Bajaj, the defendants in T.S. No. 221/81 inspite of having so many witnesses in their hands did not produce those witnesses, but ultimately the learned Appellate Court below turns in favour of the defendants Bajaj. This finding of the learned Appellate Court below is based on surmise and conjectures and can be said to be in contradiction with the existing records and this finding of the judgment of the learned Appellate Court below can be very well said to be perverse.

18. In support of his contentions the learned counsel for the appellant submits that it is not an uniform proposition that as and when there will be concurrent finding of fact by the Courts below the second Appellate Court must have to dismiss the second appeal. The learned counsel relied on the decision reported in Deena Nath Vs. Pooran Lal, where it has been observed by the Hon''ble Apex Court, that if in recording a finding the Court does not bear in mind the statutory mandate, such finding would not be a mere finding of fact; such erroneous finding illegally arrived at would be vitiate of the entire judgment and such findings can be set aside in second appeal, even if concurrently made by the lower Courts.

19. The learned counsel for the respondents on the other hand submits that admittedly the defendants in T.S. No. 221/81 produced one oral evidence of

Nathmal Bajaj but that evidence supported by the documentary evidence submitted on behalf of the defendants Bajaj in that suit are sufficient enough to prove the case of the defendants' possession. Admittedly, on behalf of the defendants' documents of Calcutta Municipal Corporation were submitted and admittedly those documents came in support of the case made out by the defendants Bajaj, Ext. 1 to 1-C are the consolidated rate Bills of the Calcutta Municipal Corporation and these Bills were paid even during the pendency of T.S. 221/81 and these Bills stand in the names of Bhupendra Nath Roy Chowdhury and Sm. Santi Devi Bajaj jointly. No objection regarding these Bills were raised by Roy Chowdhury and these were admitted. Ext. 2, Inspection Book of the Calcutta Municipal Corporation reveals that it was prepared on 18.5.1981 and in the 4th Column of this Inspection Book where the owners name have been recorded, there recording has been made "Bhupendra Narayan Roy Chowdhury and Others" that is, in joint names. Roy Chowdhury did not raise any objection or did not make any attempt to set aside this recording of Calcutta Municipal Corporation in the Inspection Book. It is also admitted that on the basis of decree passed in T.S. No. 21/65 on 30.9.1966 conveyance was executed in favour of Santi Devi Bajaj. Thereafter learned counsel for the respondents submit that some portion of the structure has been demolished by Santi Devi Bajaj on the basis of her purchase of the suit plot through Court and this demolition was admitted through Ext. K which is a letter written by the learned advocate for and on behalf of Mr. Roy Chowdhury. The learned counsel further submits then again from the receipt showing deposition of sanction fees with the Calcutta Municipal Corporation on 13.4.1967 which is also an Exhibit supported with the plan sanctioned on 28.4.1967 in favour of Santi Devi Bajaj clearly prove that on 30.9.1966 the conveyance was executed in favour of Santi Devi Bajaj, and on and from 1.10.1966 Santi Devi Bajaj came into possession. That apart the learned counsel further submits that in T.S. No. 252/84 when Santi Devi Bajaj averred in the plaint the date of her dispossession as 20.5.1981, the defendant in that suit that is Mr. Roy Chowdhury could not rebut the said statement by adducing cogent evidence. From all these facts according to the learned counsel for the respondents it proves that Bajaj were in possession from 1.10.1966 to 20.5.1981 when they were forcibly dispossessed by Roy Chowdhury with his associates. In that view of the matter, according to the learned counsel for the respondent this suit of Santi Devi Bajaj does not come under the mischief of Section 27 of the Limitation Act and the learned counsel further submits that the Appellate Court below rightly rejected the contention of the learned counsel of Mr. Roy Chowdhury that it squarely falls under Article 64 of the Limitation Act.

20. On the third point the learned counsel for the respondent submits that the conveyance was executed by the Court against valid consideration on the basis of decree passed by the Court and when the attachment ultimately was adjudged void that means void ab initio and this conveyance cannot be said to be a defective or illegal conveyance and that apart when this conveyance was acted upon by the Bajaj, Mr. Roy Chowdhury as submitted earlier did not raise-any

objection before Calcutta Municipal Corporation.

21. On the fourth score of submission the learned counsel for the respondents submits that in any manner in view of the facts admitted as stated above it cannot be said that the suit filed by Bajaj is hit by the provisions of Section 6 or Section 22 of this Specific Relief Act, 1963. On this score the learned counsel for the respondents further submits that this point was never raised before the trial Court or before the Appellate Court below and no issue was framed in this regard and the plaintiff in T.S. No. 221/81 or who are the defendants in T.S. No. 252/84 cannot raise this contention in second appeal.

22. On the last score of submission the learned counsel for the respondents submits that both the Courts below properly appreciated the entire evidence on record and the Appellate Court below also discussed in detail the conclusive part of the evidence and/or the Exhibits and the judgment and decree under appeal were never based on surmise and conjecture and never it can be said to be perverse.

23. After hearing the learned counsel for the parties, on consideration of the evidence on record and on consideration of the averments made in the Plaints and Written Statements of both the suits it appears that admittedly conveyance was executed and the suit property was sold to Bajaj against valid consideration. Admittedly, Bajaj took possession on the basis of this purchase and Bajaj started construction on demolition of certain portion (front portion was purchased) and on sanctioned plan and when Bajaj raised the construction upto the roof level of the ground floor suddenly Mr. Roy Chowdhury took forcible possession. Mr. Roy Chowdhury all along said or averred that he is the title holder of the suit property and he has been in possession and suddenly in the suit, that is, in T.S. 221/84 Roy Chowdhury cannot take a stand of adverse possession. If he claims to be the title holder how can the question of adverse possession arise by a title holder. It is also a fact that both the Courts on appreciation of evidence came to concurrent finding regarding title of Bajaj and possession from 1966 to 1981 and as such reliance may be placed on the decision cited by the learned counsel for the respondents and reported in *Dudh Nath Pandey (Dead) by Lrs Vs. Suresh Chandra Bhattasali (Dead) by Lrs*, . In this judgment the Hon'ble Apex Court observed as follows;

"This plea was however negated by the High Court as it has never been taken when the case was remanded to the first Appellate Court by judgment dated 8th February, 1961. Besides the question requires investigation into certain facts which was not possible in the second appeal. The High Court however reversed the findings of the first Appellate Court on the question of Limitation relying on the so called admission of the defendant in the written statement and the evidence of, the witnesses produced on behalf of the defendant. Virtually the High Court made a fresh appraisal of the evidence and has come to a different finding contrary to the finding recorded by the first Appellate Court which the High Court could not do in the exercise of power u/s 100 of the CPC. Even on

merits, if the High Court had to rely upon the alleged admission in the written statement, the admission must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other. The High Court, in our opinion, has erred in making a fresh appraisal of the evidence to come to a different conclusion. Even otherwise, the plaintiff has to stand on his own strength."

"According to the own admission of the plaintiff a part of plot No. 1448 had been taken by the plaintiff from the defendant in respect of which the defendant filed a suit for eviction and got a decree against the plaintiff and obtained possession in execution of that decree. Obviously, therefore, a part of plot No. 1448, which was in occupation of the plaintiff at one time, belonged to the defendant. It was for the plaintiff to prove that the other part of plot No. 1448 was settled with him by Dhalbhum Raj as alleged by him. The defendant was not obliged to prove his title and the plaintiff sought to base his title on the settlement in 1949 from Dhalbhum Raj but the possession over the disputed plot was from much before 1949. In order to overcome this anomaly the plaintiff had to take up a stand that he was permitted by the Dhalbhum Raj Estate to take possession since 1946 although the actual settlement took place in 1949. The case of the plaintiff at the face of it looks absurd and we have our own constraints on the finding of the High Court on the question of the plaintiffs title. But as that finding on the question of plaintiffs title has become final it is no use dealing with this point any further and we have to confine ourselves only on the question whether the suit was barred by time. But the finding on the question of limitation recorded by the first Appellate Court on appraisal of evidence after taking into consideration the entire circumstances in the case was a finding of fact which could not have been set aside by the High Court in exercise of power u/s 100 of the Code of Civil Procedure."

In another decision reported in Ramanuja Naidu Vs. V. Kanniah Naidu and others, on which also the learned counsel for the respondents placed reliance, the observation of the Hon^{ble} Apex Court is as follows:

"We are of the view, that in interfering with the concurrent findings of facts of the lower Courts, the learned single Judge of the High Court acted in excess of the jurisdiction vested in him u/s 100 of Code of Civil Procedure. The learned Judge totally erred in his approach to the entire question, and in reappraising and reappreciating the entire evidence, and in considering the probabilities of the case, to hold that the judgments of the Courts below are "Perverse" and that the plaintiff is entitled to the declaration of the title to suit property and recovery of possession. It is evident that the Courts below found, on the basis of oral and documentary evidence, that Exbt. B-2 sale deed obtained by the first defendant on 5.5.1967 is genuine and valid, and that first defendant discharged the mortgage, Ex. B-1 on 10.5.1967, took possession of the suit property and thereafter cultivated the same. The Courts below were of opinion that Ex. A-1 cannot be accepted in view of the contradictions in the evidence of PW 1 and PW 2 regarding the payment of consideration, and none of the attestors to Ex. A-1

were examined. Laying stress on Ex. A-4, suit notice, sent by the plaintiff to the first defendant and other circumstances, the Courts also found that there is collusion between the plaintiff and the second defendant and so, Ex. A-1 purported to have been executed by the second defendant in favour of the plaintiff is not valid in law. These concurrent findings of facts of the Courts below, were based on oral and documentary evidence. The learned single Judge on reappreciating the evidence took the view that it was "not probable" that the document Ex. B-1 "would have" been executed on 5.6.1967 in view of the delay in the registration of the document. In second appeal, the learned single Judge of the High Court totally erred in making such an approach. Besides, the learned single Judge totally ignored the concurrent findings of the Courts below that the first defendant discharged the mortgage, Exbt B-1 on 10.5.1967, took possession of the property and cultivated the same and the said finding was based on the oral evidence of DW-3 the mortgagee and independent witnesses, DW 4 and DW 5 scribe, besides the defendant, DW 6. There was no evidence contra. The concurrent findings of the Courts below that Ex. B-2, sale deed in favour of the first defendant is earlier in point of time and was genuine and valid is a finding of fact. Such a finding was not open to any challenge in second appeal. The learned single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal u/s 100 of the CPC in the way he did. No question of law arose for consideration before the learned single Judge. The sole question that arose for consideration was, whether Ex. B-2, sale deed, in favour of the first defendant dated 5.5.1967, which is admittedly earlier in point of time to Ex. A-1 dated 5.6.1967, in favour of the plaintiff is genuine and valid. Both the trial Court as well as the Appellate Court, rightly, in our opinion, started with the normal and reasonable presumption that Ex. B-2 dated 5.5.1967, was made on that day which is earlier to Ex. A-1 dated 5.6.1967 and, that there was no evidence to off set or rebut the said presumption, to hold that Ex. B-2 was not executed on 5.5.19.67 as pleaded by the plaintiff. On the other hand, according to the Courts below, the evidence available in the case reinforced the aforesaid presumption and positively pointed out that Ext. B-2 was, in fact, executed, long before Ext. A-1. The High Court ignored such crucial aspects and surmised that it was "not probable" that Ex. B-2 dated 5.5.1967 would have been executed on that day in view of "the delay" in registration. "The approach so made and the resultant conclusion, are totally unjustified and unsustainable in law."

24. In the decision reported in Smt. Satya Gupta Alias Madhu Gupta Vs. Brijesh Kumar, . The following is the observation of the Hon"ble Apex Court:

"At the outset, we would like to point out that the findings on facts by the lower Appellate Court as a final Court of facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after reappreciating the evidence and without finding that the conclusions reached by the lower Appellate Court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High

Court, it is well settled, while exercising jurisdiction u/s 100 Code of Civil Procedure, cannot reverse the findings of the lower Appellate Court on facts merely on the ground that on the facts found by the lower Appellate Court another view was possible."

25. In another decision reported in 1999(3) SCC page 2213 (Knodiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors.,). The Hon"ble Apex Court observed in the manner as follows:

"It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact, being the first Appellate Court. It is true that the lower Appellate Court should not ordinarily reject witnesses accepted by the trial Court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground or interference in second appeal when it is found that the Appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower Appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first Appellate Court unless it is found that the conclusions drawn by the lower Appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

26. In another decision reported in State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs., . The Hon"ble Apex Court observed that unless there are glaring inconsistency and contradictions in the evidence and the issues are serious, High Court is not to interfere with concurrent findings of fact. In the decision reported in 2000(3) SCC 244 (Nadar Kesavan Nadar v. Narayan Nadar Kunjan Nadar), the Hon"ble Apex Court observed that even if the concurrent finding of fact was wrong, high Court erred in disturbing the same when it had found the same was not perverse nor was based on no evidence. Same was the view adopted by the Hon"ble Apex Court in the decision reported in Pakeerappa Rai Vs. Seethamma (Dead) by LR's and Others, .

27. In so far as the perversity is concerned, this Court does not find any perversity in the judgments and decrees under appeals and in this regard reference may be made to the decision reported in M.G. Hegde and Others Vs. Vasudev D. Hegde, where Hon"ble Apex Court observed that in second appeal jurisdiction is limited. Words "prima facie perverse and error apparent on the face of the record" are not a "Mantra" and cannot be employed to permit High Court to do in second appeal what the law enjoins not to do.

28. In view of the discussions made above and in consideration of the submissions made by the learned counsel for the respective parties and also keeping an eye with the decisions of the Hon"ble Apex Court referred to above

this Court does not find any merit in these two appeals and those are, therefore, dismissed. The judgments and decrees under appeals passed by the Appellate Court below are hereby affirmed.

Decrees may be drawn up accordingly.

Costs of these two appeals are assessed to the tune of Rs. 300 GMs. each which are to be paid by the appellant to the respondents.

Let the LCR be sent down to the Courts below forthwith.