

(2011) 03 KAR CK 0114

In the Karnataka High Court

Case No : Regular First Appeal No. 389 of 2010

Smt. Mahanth Kumari

APPELLANT

Vs

S. Vijaya Kumar

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Evidence Act, 1872 — Section 145, 58
Karnataka Rent Act, 1999 — Section 27

Citation : (2011) 3 KCCR 344 SN : (2011) 3 KCCR 340

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : P.D. Surana, for the Appellant; Y.R. Sadashiva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—This appeal is directed against the judgment and decree, dated 7.12.2009 passed by the Court of the VIII Addl. City Civil Judge (CCH.15), Bangalore in O.S. No. 15077/2003.

2. The facts of the case in brief are that one Sri K.R. Nagappa Reddy was the owner of the suit schedule "A" property. A portion of "A" schedule property consisting of 2 shops and 4 houses were leased to the Appellants. The leased portions constitute suit schedule "B" property. In a family partition, the suit schedule "A" property was given to Sri Nagappa Reddy's sons, Sriyuts Dhanpal Reddy and Marayana Reddy. The said Narayana Reddy and Dhanpal Reddy filed H.R.C. No. 109/2001 seeking the eviction of the Appellants from the suit schedule "B" property.

3. Meanwhile, Sriyuts Narayana Reddy and Dhanpal Reddy sold the suit schedule "A" property to the Respondent by a registered sale deed, dated 17.4.2002. As the said Narayana Reddy and Dhanpal Reddy did not have any surviving interest in the suit schedule property, they withdrew H.R.C. No. 109/2001. The

Respondent filed O.S. No. 15077/2003 seeking the recovery of vacant possession of the suit schedule "B" property, damages, mesne profits, etc. The Appellants filed elaborate written statement denying that the Respondent is the owner or lessor of the properties in question. They disputed the genuineness of the partition deed and the sale deed. Based on the rival pleadings, the Trial Court framed the following issues:

1. Whether the Plaintiff proves that he is the absolute owner of the suit schedule property?
2. Whether the Plaintiff proves that he has terminated the tenancy of the Defendant?
3. Whether the Plaintiff is entitled for the damages from the Defendants with effect from 01.08.2002? If so, at what rate?

4. What order or Decree?

4. The Respondent got himself examined as PW-1 marking the documents at Ex.P.1 to P.14. The Appellant No. 2 was examined as DW-1 marking 7 documents in Exhibit "D" series. Based on the pleadings, oral and documentary evidence placed on its record, the Trial Court answered the issues in favour of the Respondent and decreed the suit.

5. Aggrieved by the aforesaid judgment and decree, this appeal is preferred.

6. Sri P.D. Surana, the learned Counsel for the Appellants submits that the question of partitioning the self-acquired property of Sri Nagappa Reddy would not arise at all. Partition cannot confer any title on the so-called so-vendors of the Respondent. In this regard, he brought to my notice, this Court's decision in the case of Aralappa & Etc. v. Jagannath and Ors. reported in AIR 2007 Kar. 91, wherein it is held that the partition does not amount to transfer and by partition nobody acquires the title to property for the first time. The partition deed only recognises an existing right, which each party to the deed has in the joint property and no right springs from the deed of partition. Sri Surana pointedly brings to my notice what the second Appellant has stated in his affidavit by way of chief-examination. He has stated that the suit schedule property was not a partition able estate at all. On this point, there is no cross-examination of the Appellants.

7. Sri Surana submits that just because the Appellants have not replied to the termination notice, it does not deprive them of anything and particularly the protection which they enjoy under the Karnataka Rent Act, 1999. The admission, unless clear and positive, cannot be relied upon, so contends Sri Surana. He submits that the previous statement made by the Appellants that the suit schedule "B" property exceeds 14 sq. mts. is only for the purpose of that case. He submits that the Appellants have not been cross-examined on what they had stated in their statement of objections in response to the H.R.C petition. As the Appellants are not called upon to confirm or contradict it, no reliance can be

placed on the said statement of objections. In this regard, the learned Counsel read out the provisions contained in Section 145 of the Indian Evidence Act, 1872. The said provision is extracted herein below:

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

8. Sri Surana submits that there cannot be any estoppels against the operation of the statute. Notwithstanding what a party may or may not have stated, the statutory protection given to him cannot be denied to him. If the Karnataka Rent Act, 1999 is applicable for the premises in question, then the protection guaranteed to the Appellants there under cannot be taken away.

9. For buttressing his submission, he cites the Apex Court judgment in the case of Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, , wherein it is held that if an admission made by a party in a document has to be used against him, he has to be given an opportunity to tender his explanation and clear up the point of ambiguity or dispute. Para 17 of the said decision read out by Sri Surana, is as follows:

17. If admission is proved and if it is thereafter to be used against the party who was made it the question comes within the provisions of Section 145 of the Evidence Act. The provisions in the Indian Evidence Act that "admission is not conclusive proof are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, "it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule" (see Bal Gangadhar Tilak v. Shrinivas Pandit). The Judicial Committee in that case said, "it has to be observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed". The general principle is that before any person is to be faced with any statement he should be given an opportunity to see that statement and to answer the same. The specific statutory provision is contained in Section 145 of the Indian Evidence Act that "A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him." Therefore, a mere

proof of admission, after the persons whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him.

10. The learned Counsel has also relied on the Gauhati High Court decision in the case of Md. Badaruddin Ahmed Vs. State of Assam, . The last portion of paragraph 15 read out by him is as follows:

15...However, in the case in hand, there is nothing on the record to show that the previous statement of the witness was placed before him and that the witness was given the chance for explanation. Again, his previous statement was not marked and exhibited. Therefore, his previous statement before the police cannot be used. Hence, his evidence that when he turned back he saw accused Badaruddin lowering the gun from the chest is to be taken as his correct version.

11. The learned Counsel has also sought to draw support from the decision of the Apex Court in the case of Kanu Ambu Vish Vs. The State of Maharashtra, , wherein it is held that if a witness is not confronted with his previous statement and is not given an opportunity to explain that part of the statement, which is not put to him, does not constitute substantive evidence. Based on the contentions raised in the statement of objections in the earlier proceedings H.R.C No. 109/2001, the Trial Court ought not to have decreed the suit. The admission can always be clarified and/or withdrawn. Unless the Civil Court delivers a finding on the averments in the pleading, the averments can have no conclusive value. Neatly he brings to my notice what the Appellant No. 2 has stated in the course of his cross-examination that there are no separate tenancy agreements.

12. The learned Counsel submits that the question pertaining to the jurisdiction of a Court has to be determined by the Court, as the jurisdiction cannot be conferred by the parties. He relies on the decision of the Punjab and Haryana High Court in the case of Hans Raj Bansal v. Hardev Singh reported in AIR 1984 P and H 229. He read out para-8, which is extracted herein below:

8. The first plea of the learned Counsel for the Respondent is obviously devoid of any merit. As has been observed by their Lordships of the Supreme Court in Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, , the doctrine of "approbate and reprobate" is only a species of estoppels, it applies only to the conduct of parties. As in the case of estoppels, it cannot operate against the provisions of a statute. In the instant case even if the Appellant is tied down or bound by the admission he made in his reply to the rent application to the effect that he was not a tenant under the Respondent, still he cannot be deprived of the protection of the Act or disentitled to plead that the provisions of the Act protect his possession. The lower Court committed a patent error of law in this regard in holding that "the Defendant is also estopped from pleading that he can only be ejected under the provisions of Section 13 of the East Punjab Urban Rent Restriction Act". Thus I repel this contention.

13. He submits that the Trial Court has not given any weight age to what the Respondent (PW-1) said in the course of cross-examination. He read out the

following responses elicited from the Respondent in his cross-examination:

I do not know whether the 1st shop and the 2nd shop were taken on lease separately. The tenant for both the shops and the house was one and the same person. I do not know what was the rent was paid by the Gowthamchand for the 1st shop and the 2nd shop.... The house and the rooms in the ground floor were leased together. The witness again says that the two rooms were leased separately and the house in the 1st floor...I do not know as on that day the property shown in Ex.P-1 was worth more than Rs. 12,00,000/-. It is true that anybody would have purchased the said property for Rs. 12,00,000/- at that time. It is not true to suggest that I had no money to purchase the property under Ex.P-1. I do not know that to evict the Defendants from the suit property, Ex. P. 1 is created by Dhanpal Reddy and Narayana Reddy.

14. With reference to the above cross-examination, Sri Surana submits that it was also the understanding of the Respondent that the lease in question is not of composite nature. As the Respondent was not even aware of the sale consideration, he would submit that the sale in favour of the Respondent has to be held as sham and nominal. He submits that when a specific question is put to the Respondent as to whether the sale deed is created to evict the Appellants from the suit property, he pleads his ignorance.

15. To contend that the tenant can challenge the validity of the sale deed said to have been executed in favour of the first Respondent, he relied on para-3 of the Supreme Court's decision in the case of Devi Dass Vs. Mohan Lal, . The relevant paragraph is extracted herein below;

3. The appellate authority rejected the tenant's case on the view that tenant could not challenge the validity of the sale deed executed in favour of Mohan Lal because the tenant was not a party to it We do not think this was a correct view to take. An allegation had been made that in reality there was no sale and the sale deed was a paper transaction. The Court had to record a finding on this point. The appellate authority however did not permit counsel for the tenant to refer to evidence adduced on this aspect of the matter. The High Court also did not advert to it. We, therefore, allow this appeal, set aside the decree for eviction and remit the case to the trial court to record a finding on the question whether the sale of the building to Respondent Mohan Lal was a bona fide transaction upon the evidence on record. The trial court will allow the parties to adduce further evidence on the point if the court considers it necessary. We do not disturb the other findings recorded in the suit. After recording the finding, the trial court will dispose of the suit in accordance with law, and expeditiously, if possible within six months. There will be no order as to costs.

16. Sri Surana submits that all along it has been the case of the Respondent that though the premises were let out only for the residential purpose, they are being used for the commercial purpose unauthorisedly. In this regard, he brings to my notice paragraph 4 of the quit notice (Ex.P.4).

...The premise was leased by my client's vendor for residential purposes only. Without the written consent nor permission of my client's vendor you are running the business in the ground floor portion. You have misused the premises and you are using the premises for which it has been leased out by my client's vendor....

17. He submits that in conformity with the quit notice are the averments in the petition in H.R.C.109/2001 (Ex.P.11) filed by the Respondent- Plaintiff. He read out para-9 of the said petition which is reproduced herein below:

9. The Petitioners further submit that the Respondents have breached the terms and conditions of the agreement of lease and further submits that the Respondents have taken the schedule premises only for residential purposes. But the Respondents without the knowledge and written consent of the Petitioners nor with the written consent of the father of the Petitioners, who has entered into lease agreements with the Respondents, have converted the verandah's of the ground floor of the schedule premises from residential to non-residential business/commercial purposes, this clearly shows the breach of the contract and the misuse of the residential building let-out to them.

18. With reference to these averments, Sri Surana submits that the use of the premises being both residential and nonresidential and the monthly rent being Rs. 1,500/-, the suit is not maintainable in view of Section 27 of the Karnataka Rent Act, 1999. None of the grounds enumerated in the said Section for the granting the decree for the recovery of possession is present in the instant case.

19. Sri Surana relied on the Division Bench decision of this Court in the case of Smt. Lakshamma and Others Vs. B.P. Thirumala Setty and Others, , to advance the contention that the Court has to apply the test of dominant intention of the parties while determining the character of the lease by asking itself as to what was the dominant intention of the parties in executing the document, if there is a written document.

20. Making a subtle distinction between the composite and integrated tenancy, he relied on paragraph No. 6 and 9 of the Apex Court judgment in the case of Nilesh Nandkumar Shah Vs. Sikandar Aziz Patel,

6. There may be several purposes for which the tenancy premises may be let out. Broadly speaking the premises are let out either for the purpose of residence or for a non-residential or commercial purpose. A legislation may classify the purpose of letting into several categories by adopting some other criterion just as the Bombay Act does (See, Sub-section (1) of Section 6). In case of tenancy of type (a), for a composite or mixed purpose, the premises are let out for defined purpose, more than one, leaving the option open to the tenant to use the entire tenancy premises as one unit for either or both purposes. The tenancy premises are not divided or demarcated separately into two so as to specify which part of the tenancy premises will be used for what purpose. In other words, in case of tenancy for composite purpose, the two diverse purposes for

user of the premises are so blended or mixed up that they cannot be separated by dissecting the tenancy premises into compartments. But, in case of tenancy of type (b) which is a single tenancy for dual purposes the contract of tenancy is no doubt an integrated one but the premises are demarcated or divided by reference to the purpose for which they will be separately used. The cases at hand are illustrations of the latter type, type (b), of an integrated contract of tenancy for dual purposes, where different portions are earmarked for different types of user. The contract of tenancy is one but it clearly sets out that out of the two rooms let out under one tenancy agreement, the tenant shall use the room in the front for non-residential purpose and the room in the back side for the purpose of residence. The entire tenancy premises cannot be used inter changing the users nor can the entire premises be subjected to simultaneous user as residence and commerce - both with out defining which part of the premises shall be used for what purpose. Thereafter, the purpose of letting, in the case at hand, falls under type (b) and is not composite or mixed. The legal implication is that in case of tenancy for composite or mixed purpose i.e. type (a) the need may arise for determining the dominant purpose of letting. However, the theory of dominant purpose or principles of predominant purpose of letting is irrelevant in the case of tenancies of type (b) when it is known, as previously agreed, that a particular portion of the premises shall be used for one purpose while another portion shall be used for another purpose."

9. In the case at hand, inasmuch as the rear room of the tenancy premises, having its purpose of user as residence, enjoys the protection of Bombay Act, the tenant shall not be liable to be evicted from any part of the tenancy premises, as part of the premises is protected by the Bombay Act and the contract of tenancy is one single and indivisible. We are, therefore, of the opinion that when the premises are let out under one integrated contract of tenancy i.e. type (b) referred to above, and the purpose of letting in respect of one part of the premises is one of the users referred to in Sub-section (1) of Section 6 of Bombay Act while the other part of tenancy premises is permitted to be used for purpose other than the one stated in Section 6(1), the entire tenancy premises would enjoy protection of Bombay Act. Eviction of tenant can be had only by making out a case for eviction under Bombay Act. However, if a ground for eviction under Bombay Act from even a part of the premises is made out, eviction can be ordered from the whole unless the statute or the contract contains a special provision empowering the Court to split up the tenancy.

21. Per contra, Sri Y.R. Sadashiva Reddy, the learned Counsel for the Respondent submits that the Appellant No. 2 has admitted that the schedule "B" property is a single tenement. In this regard, he brings to my notice, the pleadings in the statement of objections filed by the Appellant in H.R.C. No. 109/2001. The relevant portions read out as follows:

...The tenements leased to the second Respondent consisted of 4 houses and 1 double shop. This shop has 2 doors. The 4 houses are a tenement behind the

schedule shop and 3 one room tenements in the first floor. The 3 one room in the first floor are inter connected with doors and all the 3 tenements can be used together as a single tenement also. In view of these circumstances, for the purpose of meeting the residential and commercial need of the Respondents, the second Respondent became a tenant of all these 4 houses and 1 shop. The measurement of the shop exceeds 14 sq. meters. Hence, the petition is not maintainable in law....

22. He brings to my notice the adornment letter, dated 28.5.2002 issued by the Respondent's vendors to the Appellants informing that the property in question is sold by them to the Respondent. By the said notice, they have called upon the Appellants to pay the monthly rents to the Respondent. He submits that the Appellants have not issued any reply disputing the sale or denying the claim of the Respondent to receive the rent.

23. Sri Reddy submits that the Appellants filed the suit seeking the relief of declaration that they are the tenants in respect of 6 individual units. The Appellants did not prosecute the suit, which therefore ended up being dismissed for non-prosecution. Thereafter the Appellants filed Misc. case seeking the restoration of the suit. The Misc. case was also dismissed for default. This being the position, the Appellants are not entitled to claim that the tenements are separate.

24. Sri Reddy submits that the Appellants have not even cared to reply to the notice at Ex.P.4 determining the lease. He brings to my notice, the rent receipts at Ex.D.1 to D.4. These receipts do not disclose the splitting up of the tenancies or tenements. It is mentioned in the receipts that for 2 shops and 4 houses, Rs. 1,500/- rent is paid. He further brings to my notice that the rent receipts at Ex.D.1 and 2 show that the rents were being paid to the vendors of the Respondent and the rent receipts at Ex.D.3 and 4 show that the rents were being paid to the father of the Respondent's vendors, who was the erstwhile owner of the property in question. He submits that the Appellant-tenants have no right to question the validity of the partition amongst the Respondent's vendors and their father.

25. He submits that the admission made by the Appellant in Ex. P. 12 (statement of objections filed by the Appellant in the eviction petition) is not in dispute at all. He sought to draw support from the decision of the Rajasthan High Court in the case of Gopi Kishan Vs. Bajrang Lal and Another, . It is observed therein that it is settled principle of law that a fact admitted need not be proved as contemplated u/s 58 of the Indian Evidence Act.

26. He also submits that ordinarily a Court has to try the lis between the parties at which they are in variance and not on those points which they have admitted. In support of his submissions, he relied on the Rajasthan High Court decision in the case of Mahaveer Uchchya Prathmik Vidyalaya, Sardar Shahar Vs. Babu Lal, , wherein it is held that the facts admitted need not be proved. The admission in

the present case of the tenant in his written statement is a substantive piece of evidence.

27. The last submission of Sri Reddy is that even the meagre rent of Rs. 1,500/- for 2 shops and 4 houses is not being paid by the Appellants. He further submits that even during the pendency of the suit in the Trial Court for 8 years, no rents were being paid to the Respondent or were being deposited with the Trial Court.

28. In the course of rejoinder, Sri Surana submits that the amounts towards the rental arrears are deposited with this Court in the appeal proceedings. He submits that as the Appellants disputed that the Respondent is the owner, the rental amounts were not being paid. On specifically questioning as to why the rental amounts were not being deposited with the Trial Court, he submits that there is no mandatory requirement for depositing the amounts with the Trial Court.

29. On hearing the marathon arguments addressed at the bar, the following questions fall for my consideration:

- i) Whether the Trial Court has the jurisdiction to entertain the Respondent's suit for ejectment?
- ii) Whether the Appellants have any statutory protection under the Karnataka Rent Act, 1999?
- iii) Whether the Respondent is the lawful owner of the suit schedule "A" property?
- iv) Whether there exists the jural relationship between the parties in respect of suit schedule "B" property?
- v) Whether there is any justification for the Appellants not paying the arrears of rent?
- vi) What order or relief?

30. In Re-Question Nos. i) and ii): To answer these questions, it is necessary to refer to the provisions contained in Sections 2(3)(g) of the Karnataka Rent Act, 1999. They read as follows:

2(3). Nothing contained in this Act shall apply,-

(g) to any premises used for non-residential purpose but excluding premises having a plinth area of not exceeding fourteen square meters used for commercial purpose.

31. Thus, if the plinth area of the premises for the commercial purpose exceeds 14 sq.mts., the Rent Act has no application. Keeping this statutory position in view, the factual matrix has to be deciphered.

32. The Appellants took a clear stand that the measurement of the shop exceeds 14 sq.mts. They have also stated that 4 houses and 2 shops can be used

together as a single tenement. Making these averments, the Appellants raised objections to the maintainability of the petition in HRC No. 109/01. It is on these admissions, made by the Appellants in their statement of objections (Ex.P12) in HRC No. 109/01, that the Trial Court has formed the view that the ejectment suit is maintainable.

33. If the maintainability of the suit is examined on the basis of what the Appellants themselves have stated in the HRC proceedings, it has to be first seen as to whether the admissions made in some other proceedings can be relied upon in the subsequent proceedings. It is the case of the Appellants that the previous statements made by the Appellants cannot be used in a subsequent case and that too without giving them an opportunity of explaining or clarifying the admissions stated to be have been made by them in the earlier proceedings. There cannot be any dispute with this proposition. The Hon"ble Apex Court in the case of Sita Ram (supra) has emphasized a general solitary and intelligible rule that if an admission is to be used against a person, he must be confronted, in the course of cross-examination, with the previous admissions. Emphasizing the requirement u/s 145 of the Evidence Act, 1872, the Apex Court in the case of Kanu (supra) has expressed the considered view that unless a witness is confronted with his previous statement and given an opportunity to explain it (previous statement), it does not constitute substantive evidence. Applying the ratio laid down, the question that is to be considered in this case is whether the Appellants were confronted with their statement of objections in H.R.C. No. 109/01 and given an opportunity to explain their stand taken therein.

34. The Appellant No. 2 (DW1) was indeed confronted with the statement of objections (Ex.P12) in the course of his cross-examination. He admits that it is a certified copy of the statement of objections filed by the Appellants. But he has not availed of the opportunity to explain or clarify what he has stated in para 7 of the statement of objections regarding the averments that the measurement of the shop exceeds 14 sq.mts. and that 4 houses and 2 shop units can be used together as a single tenement also. Therefore, the Appellants are not justified in complaining that the requirements of Section 145 of the Evidence Act are not complied with.

35. It is also helpful to refer to the provisions contained in Order XII Rule 6 of Code of Civil Procedure, which reads as follows:

Order XII

Rule 6. Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under Sub-rule (1), a decree shall be

drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

36. The object of this rule is to enable a party to obtain the speedy judgment. The ambit of this rule is wide enough. The words for otherwise clearly indicate that it is open to the Court to base its judgment on the statements made by a party not only in the pleadings but also dehors the pleadings. Admission is the best form of evidence, unless it is shown to be incorrect or explained away.

37. It is useful to refer to this Court's decision in the case of Gowdara Shivalingappa v. K. Gajendrappa reported in 2010 (2) KU 380, wherein this Court upheld the decreeing of the suit for the recovery of the possession of the leased property on the basis of the admission made earlier by the tenant before the Rent Court that the suit premises used for commercial purpose had plinth area exceeding 14 sq.mts. and that the Rent Court had no jurisdiction to entertain the eviction petition. Such an admission made by the tenant binds him; he cannot be permitted to resile there from by raising the issue of maintainability of the suit, subsequently filed by the landlord for the recovery of possession after withdrawing the eviction petition from the Rent Court. Para 6 of the said judgment is extracted herein below:

6. In the above facts and circumstances, the question whether the suit premises measured more than 14 square meters, could not have been made an issue in view of the admission by the Respondent in the objection statement, which is a formal document filed before a Court of law and the tenor of Order 12, Rule 6 of the Code of Civil Procedure, 1908, which indicates that, where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, makes such order or give such judgment as it may think fit, having regard to such admissions, would apply insofar as the admission that the suit property measured more than 14 square meters and therefore, the First Appellate Court was not justified in opening up an avenue which was closed to the Respondent and hence the First Appellate Court was not justified in doing so. Further, the observation of the First Appellate Court that leave ought to have been obtained in the eviction petition while withdrawing the same, in order to file a fresh suit, was also not tenable. The same was not a civil suit in which the Appellant was obliged to seek such permission. There was no bar in withdrawing the said eviction petition, since the Appellant apparently realised that since the property was admittedly more than 14 square meters, the provisions of the Act did not apply and the eviction proceedings were a futile exercise. Hence, the findings of the First Appellate Court that the property measured more than 14 square meters, on the footing that the Appellant had not established the same is incorrect. Therefore, the substantial questions of law framed are answered in favour of the Appellant.

38. It is trite position in law that the admissions made in the documents are on

the higher footing compared to the evidentiary admissions. In this regard, it is helpful to refer to the Apex Court's judgment in the case of Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, . The relevant portion of the said judgment is extracted herein below:

26...Admissions, if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible u/s 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

39. As held by the Rajasthan High Court in the cases of Gopi Kishan and Mahaveer Uchchya (supra) the admitted facts need not be proved; the Court has to try the lis between the parties at which they are in variance.

40. Thus the legal and factual matrix of the case is such that the interconnected question Nos. i) and ii) cannot but be answered against the Appellants.

41. In Re-Question Nos. iii) and iv): The plea taken in the Appellants' written statement is that Sri Nagappa Reddy is the absolute owner of the property in question. Sri Nagappa Reddy and his sons did not constitute the joint family. The property in question is the self-acquired property of the said Nagappa Reddy. Nagappa Reddy's sons (Dhanpal Reddy and Narayana Reddy), realizing that they would not be able to evict the Appellants, created the paper sale transaction in favour of the Respondent.

42. It is beneficial to refer to the Apex Court's decision in the case of Kale and Others Vs. Deputy Director of Consolidation and Others, wherein the considered view taken is that if one of the parties to the settlement has no title, but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld.

43. In the case of Aralappa (supra) this Court has held that partition is no transfer because no conveyance is involved and every party in partition has antecedent title. The facts of the said case and the facts of the case on hand are entirely different. In the said reported case, the Defendants had obtained a decree in O.S. No. 224/78 before filing of O.S. No. 10260/80 and O.S. No. 10261/80 by the Plaintiff. On the other hand, in the instant case, the Appellants filed a suit for declaration. The said suit was dismissed for non-prosecution.

They also filed miscellaneous case seeking the restoration of the suit, but it is also dismissed for default.

44. The Appellants cannot raise the challenge to the partition deed with any rate

of success. On the ground that the Respondent did not know the value of the suit schedule "A" property, the title of the Respondent to the suit schedule "A" property cannot be denied.

45. That the suit schedule "A" property was being owned by Sri Dhanpal Reddy and Narayana Reddy and that they were the lessors of suit schedule "B" property are unimpeachable, because the Appellants were paying the rent to the said Dhanpal Reddy and Narayana Reddy, as is evident from the rent receipts, dated 10.5.2000 and 10.7.2000 marked at Ex.D1 and Ex.D2 respectively.

46. Having accepted the Respondent's vendors (Dhanpal Reddy and Narayan Reddy) as their lessors, the Appellants cannot contend that the said Dhanpal and Narayan Reddy could not have got the suit schedule property by way of a partition deed.

47. Once the payment of the rent by the tenant to the landlord is evidenced, the jural relationship between the parties cannot be denied, as held by this Court in the case of Kamadhenu Cables and Another Vs. Mahanthara Mutt Trust, . The relevant paragraph of the said judgment is extracted herein below:

4. The Defendants have admitted that they are the tenants of the suit schedule premises. They have even admitted payment of rents to the Plaintiff. When the jural relationship is admitted, the tenant cannot dispute the right or ownership of the landlord is the legal position settled by the Apex Court and this Court in catena of cases. If the ownership or jural relationship of landlord and tenant is disputed by the tenants, there was no occasion for them to pay the rents to the Plaintiffs in respect of the suit schedule premises. Having admitted the important aspects of the case namely the jural relationship between the parties when the Plaintiff has invoked its statutory right u/s 111 of the Transfer of Property Act for determination of tenancy rights of the Defendants in respect of the suit schedule premises, it does lie in the mouth of the Defendants to plead contrary in these Appeals and pray for setting aside the impugned judgment and Decree. Therefore, the above legal contention urged in these Appeals by the learned Sr. Counsel are wholly untenable, hence the same cannot be accepted by this Court.

48. This Court in the case of Sree Comutech, Bangalore v. K.B. Krishna reported in 2010 (6) KU 306 has held that the question of title to the property in an eviction case can be gone into only incidentally to decide the validity of lease.

49. The Apex Court in the case of Sri Ram Pasricha Vs. Jagannath and Others, held that the tenant in an eviction suit is stopped from questioning the title of the landlord u/s 116 of the Evidence Act. This Court in the case of People Charity Fund and Another Vs. Bajaj Electrical Limited, has held that the protective umbrella given to the tenant under the Transfer of Property Act, 1882 or under any other law can no longer come to his aid, if he denies the title of the landlord.

50. The Hon'ble Supreme Court, while considering the permissibility of staying the eviction proceedings initiated during the pendency of a title suit filed in

respect of the same premises and between the same parties, in the case of Radha Devi v. Deep Narayan Mandal and Ors. reported in (2003) 11 SCC 759 has taken the considered view that the determination of title is not necessary in an eviction suit, because the requirements to be proved by the landlord to succeed in a eviction suit are the existence of a contract of tenancy between him and the tenant and the ground on which the eviction is sought.

51. The Respondent purchased the suit schedule "A" property by a registered sale deed, dated 17.4.2002 (Ex.P1) executed by Sri Dhanpal Reddy and Narayana Reddy. The document effecting the change of khatha in favour of the Respondent pursuant to the said sale deed is at Ex.P2, The said Dhanpal Reddy and Narayana Reddy sent the notice, dated 28.5.2002 (Ex.P3) to the Appellants informing the Appellants of the said sale and of the consequent allotment of their tenancy to the Respondent. The notice further calls upon the Appellants to pay the rent to the Respondent. Thereafter, the Respondent caused the issuance of the quit notice, dated 6.7.2002 (Ex.P4) to the Appellants. The receipt of these notices by the Appellants is not in dispute. They have not issued any reply denying the contents of the said notices. In the course of his cross-examination, DW1 (the Appellant No. 2) has admitted that he has not replied to these two notices.

52. Thus, considering the evidence placed on the record and the gamut of the judicial pronouncements to which elaborate references are made hereinabove, I have no hesitation in holding that the Appellants cannot deny the title of the Respondent or of his vendors to the suit schedule "A" property. On the slender and specious grounds, the Appellants cannot become the upsettors or overthrowers of the title of the Respondent's vendors to the suit schedule "A" property. In view of the rent receipts at Ex.D1 and D2, the status of the Appellants as the lessees under the Respondent's vendors (Narayan Reddy and Dhanpal Reddy) cannot be disputed at all. The Respondent has stepped into the shoes of his vendors. As a successive owner and lessor of the property, he would have the same right which his vendors had.

Therefore the question Nos. iii) and iv) are answered in the affirmative.

53. In-Re Question No. v): The justification offered by the Appellants' side for not paying the rental arrears does not commend itself to me. That there is no mandatory requirement for depositing the amounts with the Trial Court is totally unacceptable. It is not only a moral, but also a legal obligation of the tenant to keep paying the rent till he vacates the tenanted premises.

54. The Allahabad High Court in the case of Shree Ram Goyal and Anr. v. Jitendra Kumar Gupta reported in AIR 2010 (NOC) 743 (All.) has upheld the decree for the eviction of the tenant on the ground of the tenant defaulting in the payment of rent on the date of issuance of the notice.

55. If the Appellants contention that they did not know as to who are the lessors of the suit schedule "B" property is taken to be true on its face value, then also

the minimum that is expected of them is to keep depositing the amounts towards the rental arrears with the Trial Court during the pendency of the suit. I am unable to buy the argument for not paying the arrears of rent.

56. Based on the representation of the Respondent's side, this Court, by its order, dated 30.3.2010, directed the Appellants to deposit the arrears of rent at the rate of Rs. 1,500/- per month from the date of the suit till March 2010. It is only thereafter that the Appellants deposited the sum of Rs. 1,42,000/- with this Court.

57. In Re-Question No. vi): I do not find any mis-appreciation of evidence or infirmity in the judgment and decree passed by the Trial Court. I therefore uphold the same and dismiss this appeal.

58. Appreciating that the Appellants have been using the suit schedule "B" premises for residential purpose as well as for commercial purpose for over 20 years, this Court finds it necessary to grant some time to the Appellants to locate an alternative place to which they can shift their business and residence. In my considered view, the Appellants can be given 1 year's time to vacate the suit schedule XB" property and hand over its vacant possession to the Respondent.

59. In the result, this appeal is dismissed but by granting one year's time to the Appellants to vacate the suit schedule "B" property and with the following directions:

i) The Appellants shall clear the arrears of rent/occupation charges from April 2010 - which have fallen due subsequent to the date of the depositing of Rs. 1,42,000/- with this Court. The payment of these amounts is subject to the outcome of the separate enquiry ordered by the Trial Court for the determination of the mesne profits.

ii) The Appellants shall keep clearing the future rents, as and when they fall due, till they vacate the suit schedule "B" premises.

iii) The office is directed to release the sum of Rs. 1,42,000/- deposited by the Appellants towards the rental arrears with this Court, to the Respondent.

60. No order as to costs.