IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM & ARUNACHAL PRADESH)

SHILLONG BENCH

Second Appeal (SH) No. 1 of 2010.

Robert Zomawia Street,
S/o Ralte Thanzami, Principal,
St. John's School, Whitehall
Shillong-14, Meghalaya. : Appellant

versus

1. Union of India
represented by Secretary to
the Government of India
Ministry of Defence, New Delhi

2. DEO, Gauhati Circle,
PO-Silpukhuri, Guwahati-3

3. Station Commander,
Eastern Headquarter
Shillong. : Respondents

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the Appellant : Mr VK Jindal, Sr Adv
Mr S Dey, Adv

For the respondents :Mr. R Deb Nath, CGC

Date of hearing : 13.10.2011

Date of Judgment and Order : 16-12-2011

JUDGMENT AND ORDER

This second appeal is directed against the appellate judgment dated 3-8-2009 passed by the learned District Judge, Shillong in RFA No. 1(H) of 2010 affirming the judgment and decree dated 22-12-2009 of the learned Assistant District Judge, Shillong in TS No. 5(H) of 1993 dismissing the suit.

2. The case of the appellant, as pleaded in the plaint, is that he belongs to a Mizo community, which is a recognized Scheduled Tribes of Meghalaya and is the founder Principal of, and has been running, St. John's School Whitehall for quite sometime. The land comprising the site of Bungalow No. 18 lying a plot of land measuring 4.261 acres, morefully described in the schedule to the plaint and hereinafter referred to as "the suit land", situate within Shillong Military Cantonment area occupied by him had originally belonged to the late St. John Perry, who along with his wife were looked after by him at their old age days. So, out of natural love and affection for him, the late St. John Perry executed the Will dated 6-12-1980 bequeathing the suit land with the structures thereon upon him (the appellant) and after his death, he (the appellant) became the absolute owner thereof. The learned District Judge, Shillong probated the Will on 26-6-1987 in favour of the appellant on contest by the respondents: the probate so granted has never been taken to appeal by the respondent authorities. The appellant thereafter renovated the suit property by incurring a large sum of money. On the basis of the probate, the appellant approached the respondent No. 2 for mutation of the said land in his name in the GLR, but the said respondent supplied him a pro-forma declaration form in which he was asked to admit the proprietory right of the Government of India over the same with their right to resume the same. The appellant, however, refused to comply with the request of the respondents as the same amounted to duress and unnecessary pressure by the respondents so as to create their title over the suit property.

3. It is also the pleaded case of the appellant that soon after the death of the late St. John Perry, the Government of India in the Ministry

of Defence by the letter dated 12-121986, after allegedly obtaining the admission, intimated the appellant that they had decided to resume the suit property and thereby asked him to quit the same and deliver possession thereof to the respondent No. 2 within one month. They also started initiating eviction proceeding against him under the Public Premises Act, but as he had already obtained his title by virtue of the said probate, the proceeding was dropped subsequently. However, after sometime, the appellant was served with the notice dated 23-3-1993 by respondent 3 informing him about the constitution of a Committee of Officers to examine the quantum of compensation payable to him for the suit property and about the determination of the value of compensation, on re-examination by the said Committee, at `1,72,094/-. This, according to the appellant, had been done without giving him an opportunity of hearing. He was further informed therein that if the appellant did not respond within 19-4-1993, it would be assumed that he had no objection to the resumption of the suit property by them. It was contended by the appellant that the respondents had proceeded under the wrong assumption that the suit property was a grant under the GGO No. 179 dated 12-9-1836, more popularly known as "Old Grant". Having no alternative, the appellant instituted Title Suit No. 5(H) of 1993 before the learned Assistant District Judge, Shillong against the respondents for declaration that the said letter dated 23-3-1993 was illegal and without jurisdiction and not binding upon him for permanent injunction and for prohibiting the respondents from further proceeding against him in any manner, etc. The stance taken by the appellant therein was that the suit property was not under the Old Grant.

4. The suit was contested by the respondents by filing their written statement. The case of the respondents is that the suit property was originally granted under terms of GGO 179 also known as "old grants" to Mr. G.H. Games in the year 1980 (*sic*) free or rent. The said Games thereafter transferred by a deed of conveyance the same to Mr. L.H. Musgrave, who then transferred to Mrs. Gwondolen Marle De La Nogner by a will and probate in the year 1939. The late John Perry acquired the suit property by the will dated 29-5-80 and probates dated 13-10-89 executed by the said G.M. De La Nonger. The late Perry migrated to Switzerland after transferring the suit property in the name of the appellant through a will and probate dated 26-5-87. He had also executed the admission deed on a stamp paper of Rs. 4.25 registered at Sl. No. 3046 dated 13-5-82 in the Office of the Sub-Registrar, Shillong admitting the right of the Government over the suit property as it was held on old grant issued under the GGO No. 179 dated 12-9-1836. His predecessors had also admitted the right of the Government over the suit property. The proprietary right in the suit property is held by the Government of India and the holder occupancy rights only vest in the guarantee. It is incorrect to say that the late John Perry had enjoyed absolute ownership rights in the suit property though he was in physical and undisputed possession of the structures erected thereon with the permission of the Cantt. Board, Shillong and the land appurtenant thereto. The appellant became the owner of the authorized structures only but not land in question by virtue of the will executed by John Perry and probate issued by the District Judge, Shillong in Misc. Case No. 19(H) of 1985. There is nothing on record to prove that he had spent a huge amount of money to renovate the suit property which could not otherwise be done without the prior permission of the

Cantt. Board, Shillong under the building bye laws. Since the land is held under the old grants on resumable terms, the rights of the Government in such land is required to be admitted by each occupoancy holder when transfer and mutation being done to secure public interest in the suit property as was always done in the past in the case of occupancy holders since its inception. Mutation is only for entering the name in the record to show the name of the possessor over a Government land.

5. The further case of the respondents is that as the Government had decided o resume the suit property as per the terms of the old grants for bona fide defence use, the resumption order and notice together with the cost of the structure were served upon the occupancy holder at his last known address. However, the resumption notice could not be served to the demise of the late St. John Perry. The appellant had inherited the occupancy rights of the suit property by will, it was decided to recover the same from the appellant through the PPE Act. As per the existing procedure for resumption, a Committee of Officers was formed to prepare valuation of the authorised structures owned by the appellant, and the appellant was informed the cost of the structure amounting to Rs. 1,72,094/- as evaluated by the said Committee and was asked his acceptance thereof. He was also asked to execute an admission deed before updating the Government record. According to the respondents, the suit property was settled with the British Government as early as in 1863 under the Bengal Army Regulation upon which the Cantonment had been established. No private land within the notified boundary of Shillong Cantonment exists thereon, which is sufficient evidence to prove that the land was originally settled

with the said G.H. James in the year 1980 who in the deed had admitted that the suit property belongs to the Government of India and was settled with the appellant under the terms of the "Old Grants". The respondents denied that the admission of the ownership of the Government over the suit property by the predecessors had been made under duress. The Cantonment land including the suit property was acquired y the British Government as early as in 1863 by an agreement with the Syiem of Mylliem. There is no cause of action for the suit. These are the sum and substance of the case of the respondents.

6 The learned Assistant District Judge framed as many as 14 issues for decision, examined the appellant and the respondent No. 2 as witnesses and got some documents exhibited to substantiate their respective cases. At the conclusion of the trial, the learned Assistant District Judge dismissed the suit by holding that the suit property was under the Old Grant. Aggrieved by this, the appellant preferred RFA No. 1(H) of 2010, by way of an appeal, before the learned District Judge, Shillong. After hearing the parties, the learned District Judge by the impugned judgment and order dismissed the appeal. Hence, this second appeal. While admitting the second appeal, this Court formulated the following questions of law, which are substantial in nature:

1. Whether the Old Grant dated 12-9-1836 which was not exhibited could be taken into account by the trial court for arriving at a finding?
2. Whether the Notice of Resumption of the suit land is contrary to the provisions of Section 10 of the Cantonment House Accommodation Act, 1923?
3. Whether the probate dated 26-6-1987 of the Will has finally attained finality and is binding upon the parties?

7. In so far as the first question is concerned, the same need not detain us long. As the Old Grant dated 12-9-1836 happens to be a

document forming the record of the acts of the sovereign authority and same has come up before the courts in India including the Apex Court, which were referred to and analysed time and again in a number of decisions, the omission to exhibit the same before the trial court cannot render it inadmissible in evidence. Therefore, the first point for determination in this appeal is, whether the suit property is a grant under the Old Grant? Before answering this question, it will be important to understand the concept of "Old Grant". The term "Old Grant" is explained by the Apex Court recently in ***Chief Executive Officer v. Surendra Kumar Vakil, (1999) 3 SCC 555*** at paragraphs 9 and 10 of the judgment in the following manner:

> *"9. The narrow question is whether the land was held by S.N. Mukherjee on old grant basis or not. The land is in the cantonment area of Sagar. Grant of land in cantonment areas was, at all material times, governed by the general order of the Governor General-in-Council bearing No. 179 of the year 1836, known as Bengal Regulations of 1836. Under Regulation 6 of these Regulations, the conditions of occupancy of lands in cantonments are laid down. Thereunder, no ground will be granted except on the condition set out therein which are to be subscribed to by every grantee as well as by those to whom his grant may be subsequently transferred. The first condition relates to resumption of land:*
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> *(1) The Government retains the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorised to be erected.*
> *(2) The ground being in every case the property of the Government cannot be sold by the grantee. But houses or other property thereon situated may be transferred by one military or medical officer to another without restriction except in certain cases.*
> *(3) If the ground has been built upon, the buildings are not to be disposed of to any person of whatever description who does not belong to the army until the consent of the officer commanding the station shall have been previously obtained under his hand.*
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> *(10) The High Court in its impugned judgment has reproduced extracts from the book on Cantonment Laws by J.P. Mittal, 2nd Edn., at p. 3, which may well be reproduced here:*

*"Besides municipal administration, another subject that has always loomed large on the cantonment horizon, is the question of provision of necessary accommodation for military officers near the place of their duty. This led to the issue, from time to time, of certain rules, regulations and orders by the Government of Bengal, Madras and Bombay Presidencies between the year 1789 and 1899. The regulations were mostly of an identical nature. They had a two-fold object in view, that of ensuring sufficient accommodation for military officers; and that of regulation of the grant of land sites. Some of these regulations are published in this book. These rules, regulations and orders continue to e the law in force in India even after the reinforcement of the British Statutes (Application to India) Repeal Act, 1960 (**Raj Singh v. Union of India, Mohan Agarwal v. Union of India**).*

Under these regulations and orders, officers not provided with government quarters were allowed to erect houses in the cantonment. For this purpose ground was allotted to them with the condition that no right to property whatever in the ground was conferred on them and the ground continued to the property of the State, was resumable at the pleasure of the Government by giving one month's notice and paying the value of the structures as may have been authorised to be erected. The houses or other property built on such grounds were allowed to be transferred by one military officer to another without restrictions. To civilians these could be transferred only with the prior permission of the officer commanding the station.

With the lapse of time civilians were also encouraged to build bungalows on the government land in the cantonment on the same condition of resumption of the ground as given above and with a further condition that they may be required to rent or sell the same to any military officer. In case of disagreement about the rent or the sale price, the same was to

be fixed by a committee of arbitration. These tenures under which permission was given to occupy government land in the cantonments for construction of bungalows came to be known as "old grant". Such permission was given mostly on payment of no rent. This is how a large number of bungalows in the cantonments all over India came in the hands of civilians."

8. Having understood the concept of "Old Grant", let me now proceed to deal with the first question. At this stage, the important findings of the first appellate court may also be noticed. The appellate court, while agreeing with the finding of the trial court, held that the suit land is covered by Old Grant, which can be resumed by the Government. In reaching this conclusion, it relied on the Will at Ext. 1/1 executed by the late John Perry, the predecessor-in-interest of the appellant and the deed at Ext. B/1 executed by the same John Perry. By the Will at Ext. 1/1, the said John Perry bequeathed the suit property "known as Cricket view, situated at 18 Cantonment, Shillong measuring more or less 4½ acres, together with all the buildings, structures and appurtenances thereon covered by the Old Grant dated 12th September 1836....." The appellate Court also relied on the Deed at Ext. B/1 wherein he had conceded that permission to occupy the suit land in a Military Cantonment conferred no proprietory right and the same continued to be the property of the Government and resumable at the pleasure of the Government, but in all practicable cases one month's notice of resumption would be given and the value of all authorized building erected thereon, would be paid and that the ground being the property of the Government could not be sold by him: the

building might be sold by him with the permission of the competent authority.

9. According to the appellate court, the regulations contained in GGO regarding grant of lands situate at Cantonment area are statutory in character, which is the "existing law" referred to in Article 31(5)(a) of the Constitution, and as the regulation clearly conferred upon the Government the power to resume the suit land, the appellant has been deprived of his property 'by authority of law'. Alternatively, the appellate court held that even if it is assumed that the regulations contained in GGO are not statutory but only executive in character also, the grant of land was a legal transaction between two parties and was not a transfer and is governed by the Government Grants Act, 1895. When the suit land was given to the appellant under Regulation 6, no right to or interest therein was given to him: only physical possession was given to him. He was, held the appellate court, only a licensee without any right to or interest in the suit land: possession without right is mere occupation without legal protection against the true owner. As the suit land is under 'Old Grant', it is resumable by the Government subject to one month's notice and compensation for structures and fixtures. As the suit land belongs to the Government, the late John Perry, the predecessor-in-interest of the appellant and who was a mere occupier, he could not give an absolute proprietory right the beneficiary of the Will. He might have been given the structures but not the land: probate cannot decide title. He, therefore, held that the Will cannot supersede the nature of the grant envisaged under the Old Grant. These are the summary of the findings of the appellate court, which concurred with the views taken by the trial court.

10. Assailing the aforesaid findings of the courts below, Mr. V.K. Jindal, the learned senior counsel for the appellant, unfolds his submissions by contenting that the appellant court has erroneously affirmed the judgment of the trial court by holding that the suit land is under the "Old Grant" land without any independent finding of its own: once the appellant has denied that the suit land is under old grant, the burden of proof is upon the respondents to show that the suit land is an old grant with the right of resumption, but the respondents have miserably failed to prove that the suit land is an old grant. According to the learned senior counsel, the General Land Register (GLR) exhibited as A/1 is an incomplete document inasmuch as the same did not reflect the names of the original grantees: the respondents have intentionally withheld the entire copy of the extract of the GLR relating to the suit land as they had never granted the same to the original grantee with the right of resumption. He, therefore, submits that under such circumstances, the Court below ought to have drawn adverse inference against the respondent authorities. It is also the contention of the learned senior counsel that from the extract GLR exhibit A/1, in which the suit land has been classified as B(3) land, it becomes obvious that such land is a land held by a private person like the appellant subject only to conditions under which the Central Government reserves or have reserved to themselves the proprietary rights in the soil thereby negating the claim of the respondents that they have the right of resumption thereto. The learned senior counsel further submits that both the courts below have wrongly assumed that all lands lying within he limits of Cantonment area were necessarily government property to which the Governor-General-in-Council Order of 1836 (GGO) applied

whereby the Government has the power of resumption of those lands: the courts below have completely overlooked the provisions of para 7 of GGO which recognizes the existence of the property of a person not belonging to Army and which may be acquired by the respondent authorities either on payment of price or rent at the option of the owner. The learned senior counsel maintains that the resumption order is contrary to the provisions of Section 7 and 10 of the Cantonment (House Accommodation) Act, 1923 and is, therefore, unsustainable in law.

11. On the other hand, Mr. R. Debnath, the learned CGC, appearing for the respondent authorities, supports the impugned judgments and submits that there is no infirmity therein calling for the interference of this Court. He also submits that Ext. 1/1 and Ext. B/1 are self-evident and do not need any interpretation and leave no room for doubt that the admission therein of the predecessor-in-interests is binding upon the appellant, who stepped into their shoes and cannot claim a higher right than them. According to the CGC, as the respondents have successfully rebutted the assertion of the appellant that he is the owner of the suit land, the owner has now shifted to him to prove that the suit land is not under the old grant. Having miserably failed to do so, submits the learned CGC, the impugned judgment does not warrant any interference by this Court.

12. The law is well settled that the scope of interference by this Court in a second appeal under Section 100 of the Code of Civil Procedure, 1908 is extremely limited. The principles governing the exercise of the second appellate power are aptly summarised by Mulla's *Code of Civil*

Procedure, 1908, 17th Edn, at pp. 1173-74 in the first volume thereof, in the following manner:

> *(a) An inference of fact from the recitals and contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*
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> *(b) The high court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedent, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*
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> (c) *The general rule is that the high court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the recognised receptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inference from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision not based on evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence taken as a whole, is not reasonably capable of supporting the finding."*

13. Though a number of contentions have been raised by the learned counsel appearing for the rival parties, after carefully considering the materials on record, I am of the view that the appeal can be disposed of on a narrow compass. There is no dispute at the bar that as per the extract of the GLR exhibited as A/1, the suit land is classified as B(3) land. Rule 6 of the Cantonment Land Administration Rules, 1937 refers to Class "B" land, which is as under:

6. Class "B" Land.—Class "B" Land shall be divided by the Central Government, or such other authority as they may be empowered in his behalf, into the following sub-classes, namely:-

(i) Class "B"(1) Land, which is actually occupied or used by the War Department in the administration of Ecclesiastical affairs, including European cemeteries, or by any Department of the Central Government other than the War or the Defence Department or by a Railway Administration;

(ii) Class "B" (2) Land, which is actually occupied and used by, or is under the control of, any Department of a State Government;

(iii) Class "B"(3) Land, which is held by any private person under the provisions of these rules, or which is held or may be presumed to be held under the provisions of the Cantonment Code of 1899 or 1912, or under any executive orders previously in force, subject to conditions under which he Central Government reserve, or have reserved, to themselves the proprietary rights in the soil; and

(iv) Class "B" (4) Land, which is not included in any other class.

14. A close look at Rule 6(iii) of the aforesaid Rules unmistakably envisaged the existence of a private land, which is classified as Class "B" (3) Land. It is the case of the appellant that the fact that the suit land occupied by him is classified as "B" (3) Land has clinchingly established that the suit land belongs to him, and is not an old grant with the right of resumption by the respondent authorities. In my opinion, this submission has force. Moreover, clause 7 of the GGO also conceives of a property not belonging to the Army and which may be acquired by the respondent authorities either on payment of price or on rent at the option of the owner. The concept of payment of a price or rent necessarily implies that the Army is not the owner of such land: if it were the owner thereof, why should it pay the price or rent in respect of such land. At any rate, the appellant by virtue of the suit land being classified as "B" (3) Land has made out a strong prima facie case that

he is the owner of the suit land. Under Section 110 of the Evidence Act, 1872, it is provided that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. In ***Andhra Pradesh State v. Gowra Subbaraya Setty, 1967-Andhra WR-2-433***, the main contention of the State Government was that Section 110 of the Evidence Act does not apply to the Government and consequently no presumption can be made. It was held therein that the section embodies the well-recognised principle that possession is prima facie proof of ownership. A person in possession is entitled to remain in possession until another person can disclose a better title. Therefore, under Section 110 of the Evidence Act, once the plaintiff proves that he has been in possession of the suit property, the burden of proving that the plaintiff is not the owner is on the 1st defendant who affirms that the plaintiff is not the owner. The section does not make distinction between the Government and a private citizen. Section 110 is, therefore, equally applicable where a Government claims to be the owner or challenges the ownership of the plaintiff who is in possession of the property. The instant case is not only a case where the appellant and his predecessors-in-interest have been in possession of the suit land for the last over one hundred years but is also a case where the appellant has succeeded in showing that the suit land is a "B" (3) Land vide Ext. A/1.

15. Once the appellant has been able to create a high degree of probability that he is the owner of the suit land, the onus of proving that he is not the owner of the suit land has now shifted to the respondent authorities. The foundation of the case of the respondent

authorities is the admissions made by the predecessors-in-interest of the appellant at the time of filing applications for mutation of the suit land in their names that the Government was the owner thereof. This apart, no other documentary evidence could be produced by them to show that the suit land is an old grant with the right of resumption. If the suit land had been allotted under the Old Grant as contended by them, the letter of allotment or any document evidencing the grant of the suit land in favour of the predecessors-in-interest of the appellant must have been available with the respondent authorities as they are the repository of such documents. This is all the more important when they have admittedly classified the suit land as "B" (3) Land in the GLR maintained by them. As already indicated, this onus has not been discharged by them. In so far as the admissions are concerned, they are found at Ext. B/1, Exhibit C and Exhibit D. Exhibit B/1 is the admission made by the late St. John Perry to the effect that the suit land continued to be the property of the Government and could be resumed by them at their pleasure by giving him one month's notice. Ext. C is another admission made by Miss G.M. Mearle on 20-4-1939 making practically similar declaration. Similar is the effect of the declaration dated 2-4-1932 made by Lawrence Hugh Musgrove, husband of Miss G.M. Mearle.

16. The question as to whether this kind of admission/declaration can confer ownership upon the person/authority in whose favour the same is made, has come up for consideration in a second appeal before the Allahabad High Court in ***Purushotam Dass Tandon v. Union of India***. The judgment was delivered on 27-11-1981, which was upheld by the Apex Court reported in ***1986 (Supp) SCC 720,*** and was

reproduced in that report. That was also a case where the Union of India took the stance that the property in question was held by the predecessor of the appellant under the old grant terms under GGO No. 179 of 1836. Invoking condition No. 6(1) of the said GGO, the site of the building was resumed by the Union of India, by serving a resumption notice and the compensation of the material of the house standing over the site was adjudged at ` 3,500/- which was to be paid to the appellant. The case of the appellant was that he was the full owner and landlord of the property in suit and that the Union of India had no right whatsoever in the suit property. The writ petition against the resumption order filed by him was dismissed on the undertaking given by the Union of India that the appellant would not be evicted by force or without recourse to law. The appellant traced his ownership of the suit property on the basis of court auction in execution of a decree and asserted that since then, he had been in possession of the suit property without payment of rent whatsoever to the Union of India and had perfected his title by adverse possession. An alternative plea was made that there was no valid resumption of the lease.

17. The Additional Civil Judge before whom the suit was filed decreed the suit in favour of the appellant, but, on an appeal, the Second Additional District Judge reversed the decree and held that the Union of India, and not the appellant, was entitled to get the rent from the Allahabad Polytechnic. As the decision therein has been upheld by the Apex Court in ***Union of India v. Purushotam Dass Tandon, 1986 (Supp) SCC 720*** and has a direct bearing on this case, the observations of the Allahabad High Court are reproduced in extenso hereunder:

"Reliance is placed by the Union of India on the admission of Purushotam Dass Tandon that the land is held in old grant terms vide G.G.O. No. 179 of 1836. We have accordingly to see this document and consider whether this would amount to proof of the title of the Union of India as far as the property in suit is concerned. Sri Purushotam Das Tandon was examined in this case and he asserted in his deposition that he was the owner of House No. 29. Towards the end of his cross-examination he was asked a question regarding this paper and he stated that for partitioning he property he has applied to the Military Estate Officer and has given an application, copy of which is paper No. 67-C. The appellant was not asked as to how he claims himself to be the owner when he mentioned in the standard draft that the property was held under the old grant terms vide G.G.O. No. 179 of 1836. Learned counsel for the respondent cited ***Ajodhya Prasad Bhargava v. Bhawani Shankar Bhargava*** *and urged that in view of the Full Bench decision when a document containing admission of the opponent is admitted by the opponent's counsel the same can be used against him without following the procedure of Section 145, India Evidence Act. Learned counsel for the appellant has referred to the Supreme Court decision in* ***Sita Ram Patil v. Ramchandra Nago Patil*** *where the law was laid down in the following terms:*

....admission is relevant and it has to be proved before it becomes evidence.

The provisions in the 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'....Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him.

While it is true that in the instant case, Ex. 8 had been filed before the statement of the appellant was recorded, nevertheless apart from asking whether paper No. 67-C was a copy of the application made by him to which he replied in the affirmative, no other question was put to him to clarify the situation. Even in the Full Bench case of ***Ayodhya Prasad v. Bhawani Shankar*** *which dispensed with the question of putting the admission to the opponent in cross-examination, the Full Bench laid down the law in the following terms at page 19:*

Our answers to the questions referred to us are as follows:

Question No. 1. Where in a civil suit a party produces documents containing admissions by his opponent, which

documents are admitted by the opponent's counsel, and the opponent enters the witness box, it is not obligatory on the party who produces those documents to draw in cross-examination the attention of the opponent to the said admissions before he can be permitted to use them for the purpose of contradicting the opponent provided that the admissions are clear and unambiguous but where the statements relied on as admissions are ambiguous or vague it is obligatory on the party who relies on them to draw in cross-examination the attention of the opponent to the said statements before he can be permitted to use them for the purposes of contradicting the evidence on oath of the opponent.

From the observations made above it is clear that the admission before they can be relied upon must be unambiguous and must not be vague and if there is any ambiguity or vagueness then it obligatory to the party relying on them to put to the witness the statement before it can be used. Now in the instant case, as I have said above, the appellant was all along asserting hat he was the full owner of the property and even in the application paper No. 67-C it was reiterated by him that he was the owner, and that there was no lease and no rent was ever paid. In para 8 permission was sought for transfer as the bungalow lay in Cantonment area. With these clear assertions of ownership and seeking merely permission of the Cantonment Board, the averment in the standard draft that the house was held under the old grant terms vide G.G.O. No. 179 of 1836 is clearly in the teeth of the assertions of full ownership in paper No. 67-C/1. If the appellant had been called upon to explain how he came to sign paper No. 67-C/2 and make that averment about the old grant he would have been in a position to explain about it. As had been stated elsewhere this property was purchased in 1848 and by October 10, 1970, the date of paper No. 67-C, a period of 122 years had elapsed. For this intervening period of 122 years the Union of India has not been able to file any paper containing any admission of the predecessors of the appellant who had been dealing with this property as owners for more than 122 years. This admission cannot be substituted for a proof of title. The so-called admission is ambiguous, as I have said above, and consequently is of no value. In ***Ambika Prasad Thakur v. Ram Ekbai Rai****, the law was laid down in the following terms at page 612 while discussing the admission of the Maharaja:*

'The Maharaja was interested in the success of the suit, and it was necessary for him in his own interest to make this admission. The admission was made under somewhat suspicious circumstances at the end of the trial of the case when the arguments had begun. Though this petition was filed, the written statement of the Maharaja was never formally amended. In the circumstances, this admission has weak evidentiary value. In this suit, the plaintiffs do not claim tenancy right either by express grant or adverse possession. Title cannot pass by mere admission.'

This ruling, therefore, clearly lays down that title cannot pass by mere admission. The property was purchased by the predecessors of the appellant in 1848 and right from 1848 up to

1970 there is no admission of the appellant or his predecessors of the title of the Union of India or its predecessors and the appellant and his predecessors have been enjoying this property without any let or hindrance by the Union of India and consequently by lapse of time for more than 100 years have acquired title even if it is assumed hat title was with the Government at any time. The admission in paper No. 67-C is vague and ambiguous. No explanation was sought from the appellant regarding this admission which does not and cannot be taken to pass title which can only pass by a deed of transfer duly registered."

18. No two cases can be so similar on facts. Moreover, the appellant in the instant case appears to be in a better position than the appellant in ***Purusshottam Dass Tandon case*** *(supra)*. In the first place, the suit land occupied by him in the instant case is admittedly classified as "B" (3) Land, which, as noticed above, is recognised to be a private land, but the management whereof is entrusted to the Cantonment Board under Rule 9(5) of the Cantonment Land Administration Rules, 1937. It is by virtue of this provision, the General Land Register has been maintained by the Cantonment Board: mutation has to be applied for in order to change the recorded ownership of even "B" (3) Land, which the appellant did. Once the appellant has claimed ownership of the suit land which is admittedly a private land, the admission by him or his predecessors-in-interest about the title of the respondent authorities to the suit land merely for the purpose of mutation cannot have the effect of converting it into title of the respondent authorities.

19. In ***Ambika v. Ram Ekbal, AIR 1966 SC 605***, the Apex Court held that title to land cannot pass by admission when the statute requires a deed. In my opinion, the law relating to Cantonment area cannot obviate the requirement of registering a deed of conveyance. No other evidence is produced by the respondent authorities to prove that the suit land is under the old grant term with the right of resumption at

their pleasure. There can be no presumption of ownership in favour of the respondent authorities. The appellant has created a high degree of probability that he is the owner of the suit land and the onus to prove that he is not the owner has now shifted to the respondent authorities. Apart from relying on such admissions, they have not been able to show any entry in the GLR or any other document/order to indicate that the suit land is under the old grant with the right of resumption. Having miserably failed to discharge such onus, I am constrained to hold that the appellant is able to prove his title to the suit land. The courts below have put the onus of proving title to the suit land wrongly upon the appellant, which has raised substantial question of law. The concurrent findings of the courts below are consequently perverse, cannot be sustained in law and are liable to be interfered with in this second appeal.

20. Since the suit land is found to be a private land under the ownership of the appellant, the Notice of Resumption in respect of the suit land is contrary to the provisions of Section 10 of the Cantonment (House Accommodation) Act, 1923. As for the remaining substantial question of law raised by the appellant as to whether the probate dated 26-6-1987 of the Will has attained finality, this need not detain us long inasmuch as Section 387 of the India Succession Act, 1925 clearly provides that any decision in respect of the right granted in succession proceedings, which are summary in nature, does not preclude the parties to litigate in a regular suit: merely because issues are raised and/or evidence was led, it does not mean that the findings given thereunder are final and operate as *res judicata*.- see ***Joginder Pal v. Indian Red Cross Society & ors, (2000) 8 SCC 143***. Therefore, the

contention of Mr. V.K. Jindal on this count is noted only to be summarily rejected.

21. For the reasons stated in the foregoing, this second appeal is allowed. The impugned judgments and decrees of the Courts below are hereby set aside. Title Suit No. 5(H) of 1993 is decreed accordingly. Resultantly, it is hereby declared that the memo No. 546/31/Q/18 dated 23-9-93 is illegal. Let a perpetual injunction issue restraining the respondents, their agents, employees, servants, etc. from proceeding with the resumption proceedings against the appellant in respect of the suit land or otherwise from interfering with the possession and title of the appellant over the suit land. A decree shall be prepared accordingly. The respondents shall pay the costs throughout. Transmit the L.C. record forthwith.

JUDGE

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