1961

September 29.

UPPALAPATI VEERA VENKATA SATYANARAYANARAJU AND ANOTHER

v.

JOSYULA HANUMAYAMMA AND ANOTHER

(K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH and RAGHUBAR DAYAL, JJ.)

Attornment—By tenants in favour of persons claiming but having no title—How made—Payment of rent if necessary—Finding of fact—Interference by High Court in second appeal.

In the present suit for possession the courts found that none of the parties had a legal title to the property in the dispute and in determining which of the parties had possessory title to the said property the trial court found that on the death of the daughter of the original owner the so called reversioners got a Kodaha (Kabuliyat) executed in their favour by two tenants of the last possessor of the property and themselves executed a cowle in their favour but the said tenants did not pay any rent to the so-called reversioners. The trial court held that though there was a kadapa by which it might be said that the tenants who were there from before had attorned to the so-called reversioners it was a mere paper transaction as no rent was paid. On appeal the first appellate court relying on the Kadapa and cowle found that the so-called reversioners got peaceful possession of the property but did not enter into the question whether any rent was paid to them by the tenants. On second appeal the High Court held that the real question was whether the tenants really attorned to the reversioners and as the first appellate court did not consider whether there was real attornment by payment of rent sent back the case to the said court for a fresh finding on that question whereupon that court returned a finding in favour of the respondent on the question of possession. The contention of the appellant on appeal by special leave was that the High Court had no jurisdiction in second appeal to reverse a finding of fact arrived at by the first appellate court and as the High Court indirectly reversed that finding of fact by calling for a further finding on the question of possession the judgment of the High Court should be set aside.

Held (per K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.) that if the so-called reversioners had title in the sense that they were the next reversioners, then attorment by the Kadapa would have been sufficient but where a person in whose favour attornment had been made had no title, a mere paper attornment would not be sufficient unless there was a real attornment in the sense that the person who attorned also paid rent voluntarily or under a decree to the

person in whose favour the attornment was made. The first appellate court had merely considered the paper attornment and had not considered the evidence as to the payment of rent which was there and had been considered by the trial court. The High Court was, therefore, justified in calling for a finding on a question which was not considered by the lower appellate court.

Per Raghubar Dayal, J.—Once a tenant agreed to accept the person claiming title from the previous landlord, that amounted to attornment in favour of the new landlord and was no more dependent on the future conduct of the tenant by way of payment of rent or otherwise.

Krishna Prasad Lal Singha Deo v. *Baraboni Coal Concern*, (1937) L.R. 64 I. A. 311, referred to.

There was no good reason why the possession of tenants who had attorned to a person having no title be not considered to be his possession in determining whether he had preferential possessory title to that of another who too had no title.

The mere fact that certain evidence had not been closely scrutinised or in other words, not scrutinised in a manner in which the second appellate court desired it to be scrutinised, could not be a ground for interference with a finding of fact in second appeal.

In the present case the Kadapa the terms of which were different from those of the old one, was not a deed of attornment merely substituting the new landlord in place of the old but was a document accepting fresh tenancy but as the new lessors had no title to the property the lease executed by the created no right.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 459 of 1958.

Appeal by special leave from the judgment and decree dated June 29, 1955, of the former Andhra High Court in Second Appeal No. 730 of 1949.

A. V. Viswanatha Sastri and *T. V. R. Tatachari*, for the appellants.

K. Bhimasankaram and *G. Gopalakrishnan*, for the respondents.

1961. September 29. The judgment of Wanchoo, Das Gupta and Shah, JJ., was delivered by Wanchoo, J., Dayal J., delivered a separate judgment.

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Josyula Hanumayamma

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave from the judgment and decree of the Madras High Court. The appellants were defendants in a suit brought by the respondents for possession of certain properties which originally belonged to one Subbarayudu. The case of the respondents was that Subbarayudu executed a will dated September 15, 1885. Under that will the property passed on his death to his wife with life interest and after her death absolutely to his daughter Krishnavenamma who was in enjoyment thereof till her death in 1933. The daughter executed a will on March 24, 1933, in favaur of her step son Nagaraju who came into possession of the property on her death soon after. Nagaraju in his turn executed a will on August 16, 1933, by which he gave life interest to his wife who was the first plaintiff (now the first respondent before us) and thereafter the property was bequeathed absolutely to his daughters. The second respondent is the tenant of the first repondent. Nagaraju died soon after executing the will and the case of the first respondent was that she came into possession of the property on his death and was in enjoyment thereof till she was forcibly ejected in 1943 by the appellants who claimed to be the purchasers of the property from Seetaramayya and Ramakotayya who in their turn claimed to be the reversioners of Subbarayudu. Consequently, the suit out of which the present appeal has arisen was filed in June, 1944, for possession and mesne profits.

The suit was resisted by the appellants, and their case was that they had purchased the property from the reversioners of Subbarayudu in 1942. It was further contended on their behalf that on the death of Krishnavenamma the reversioners came into possession of the property through the tenants who had been in possession from before under a lease granted to them by Krishnavenamma. These tenants remained in possession till the sale deed in favour of the appellants and attorned to the

appellants thereafter. Later the two tenants surrendered possession to the appellants who thus came into actual possession of the property in suit. The appellants also contended that the so-called will executed by Subbarayudu was a forgery and the first respondent had no title to the property.

On these pleadings, the main point that arose for decision was whether the first respondent had title to the property and was in possession of it till she was dispossessed in 1943. Further the title set up by the appellants was also gone into and their claim as to possession came up for consideration. The trial court found that the will said to have been executed by Subbarayudu was not proved. In consequence of this finding, it came to the conclusion that the title of the first respondent which depended upon the proof of this will was not a legal title. Further it found that it was not established that Seetaramayya and Ramakotayya were the next reversioners to the estate of Subbarayudu. The result of these findings was that no title was found in either party. These findings have been upheld by the Subordinate Judge and also by the High Court in second appeal and therefore it must now be accepted that both the parties have no title to the property in suit.

The main contest therefore centred round possessory title which was also asserted by both the parties in the trial court. On this question the trial court found that after the death of Krishnavenamma, the name of the first respondent was entered in the revenue papers in her place but the property was actually in possession of the two tenants by virtue of the lease executed in their favour by Krishnavenamma in 1929 for six years. Therefore, there was a kind of race between respondent No. 1 and Seetaramayya and Ramakotayya who set themselves up as reversioners to obtain the favour of these two tenants, and the so-called reversioners managed to obtain in June, 1933, a kadapa from the two tenants for five years

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Josyula Hanumayamma

Hidayatullah J.

ending with May, 1938. They also executed a *cowle* in favour of the tenants and both these documents were registered in July, 1933. But the finding of the trial court was that there was no payment of rents in the years 1933 and 1934 and that the real fight for the land started towards the end of 1935 or the beginning of 1936 and although documents were taken from the tenants by the so-called reversioners no actual payment of rent was made to them. It also held that in this game of winning the favour of the tenants the real gainers were the tenants who paid no rent to either the first respondent or the so-called reversioners. The trial court further held that it was in 1936 that the first respondent managed to dispossess the tenants forcibly through her tenant Moka Subbarao who seems to have been a person of some influence in the village. Thereafter the first respondent remained in possession through her tenant till she was dispossessed in November, 1943, forcibly by the present appellants after they had purchased the lands from the so-called reversioners. In effect, therefore, the finding of the trial court was that neither party was in possession of the property up to 1936 and it was only in 1936 that the first respondent came into possession through Moka Subbarao by dispossessing the tenants who were holding the land from the time of Krishnavenamma and had paid no rent to anybody after her death. In consequence the trial court held that as the possession of the first respondent was earlier she was entitled to succeed at least on the ground of possessory title. Incidentally it also held that although the title of the first respondent was defective for the reason that Krishnavenamma did not have absolute right in the property it was not void but was only voidable at the instance of the nearest reversioner or some one else having better title, which the appellants or their predecessors-in-interest did not have. In the result the suit was decreed with mesne profits.

This was followed by an appeal to the Subordinate Judge by the present appellants. We have already said that the Subordinate Judge upheld the findings of the trial court on the title of the parties and came to the conclusion that the title of neither party was proved. He also rejected the view of the trial court that the first respondent at any rate had some title though defective it might be. He then addressed himself to the question of possessory title and considered whether the finding of the trial court that the first respondent was in possession earlier than the appellants and was therefore entitled to recover possession on the basis of her possessory title, was correct. He came to the conclusion that the so-called reversioners had got possession of the property peacefully immediately after the reversion opened in 1933 and therefore the appellants were entitled to maintain their possession as they derived their title from the so-called reversioners who had earlier possession than the first respondent. In coming to this conclusion the Subordinate Judge relied on the Kadapa executed by the tenants in favour of the so-called reversioners in June, 1933, and the *cowle* executed by the so-called reversioners in favour of the tenants. But the Subordinate Judge did not consider the further question which was considered by the trial court, namely, whether after the execution of the Kadapa and the *cowle* the so-called reversioners ever collected rents from the tenants who were there from the time of Krishnavenamma between 1933 and 1936. This question had been specifically considered by the trial court and it had come to the conclusion that though the kadapa and the *cowle* had been executed they were mere paper transactions and the so-called reversioners had never collected rents during this period and the tenants had never paid the rent to anybody during this period. The Subordinate Judge, however, allowed the appeal and dismissed the

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Josyula Hanumayamma

Wanchoo J.

suit on the view taken by him that the so-called reversioners had come into possession of the property after the death of Krishnavenamma and were forcibly ejected in 1936 by Moka Subbarao as the tenant of the first respondent.

This was followed by a second appeal by the respondents. The High Court took the view that the finding of the Subordinate Judge that the so-called reversioners were in possession from 1933 to 1936, could not be accepted. According to the High Court, the main question was whether the tenants who were there from before really attorned to the reversioners. The High Court then went into some of the evidence and held that various matters which should have received the attention of the Subordinate Judge in coming to a conclusion on this important point of fact were not considered by him; therefore it was not prepared to accept the finding of the Subordinate Judge in second appeal and required the Subordinate Judge to submit a fresh finding on this question. When the matter went back to the Subordinate Judge he examined the entire evidence and came to the conclusion that the so-called reversioners in order to create evidence of possession had taken the kadapa from the tenants after winning them over to their side, perhaps by a promise not to collect rent from them. He also came to the conclusion that the so-called reversioners were not in possession of the property after the death of Krishnavenamma from 1933 to 1936 and that it appeared that during that period neither party was in possession and only the tenants who were there from the time of Krishnavenamma continued to be in possession but without paying rent to anybody. He further held that in the circumstances the possession of the tenants could only be treated as that of the rightful owner which neither party was in this case. Finally he came to the conclusion that it was for the first time in 1936 that Moka Subbarao took possession of the

land as the tenant of the first respondent and the appellants got possession for the first time in 1943. Therefore he held that as the first respondent's possession was earlier it must be restored. This finding was accepted by the High Court with the result that the second appeal was allowed and the order of the trial court restored. The appellants have come to this Court by special leave.

The main contention urged before us on behalf of the appellants is that the High Court had no jurisdiction in second appeal to reverse the finding of fact arrived at by the first appeal court as to possession, and inasmuch as the High Court indirectly reversed that finding by calling for a further finding on the question of possession, the judgment of the High Court should be set aside as without jurisdiction. On the other hand it has been urged on behalf of the respondents that though the first order of the High Court calling for a finding looks as if it was interfering with a finding of fact as to possession, a close examination of the circumstances and the findings of the trial court and the first appellate court will show that in fact there was no finding by the first appellate court on the crucial question which arose in the suit resting on possessory title and therefore the High Court was justified in calling for a finding in the matter. It is urged that where the case is based on possessory title only, a party must establish effective possession before it can succeed on its possessory title. On the question of effective possession the trial court had found that though there was a kadapa by which, it may be said, the tenants who were there from before had attorned to the so-called reversioners, that was a mere paper transaction and the tenants never paid rents to the so-called reversioners; as such the reversioners never had effective possession between 1933 and 1936. According to the respondents, this finding of the trial court should have been specifically considered by the Subordinate

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Joyula Hanumayamma

Wanchoo J.

Judge; but all that the Subordinate Judge did was to rely on the kadapa and hold on the basis of that document that the so-called reversioners had come into possession peacefully. It is said that whatever may be said about the value of attornment made in favour of the true owner the position is different where attornment is in favour of a person who is not the true owner. In such a case before the person in whose favour an attornment has been made can establish that his possession was effective it must also be shown that he was paid rent by the tenants who attorned to him. Therefore, it is urged that as there was no finding by the Suboridnate Judge on this crucial question the High Court was justified in sending the case back to the Subordinate Judge for a finding in this regard. As such, it is urged that this is not a case where the High Court had reversed a finding of fact by the first appellate court which it is admitted it has no jurisdiction to do; but it is a case where there was no finding on the crucial question of fact by the Subordinate Judge and the High Court therefore had jurisdiction to call for a finding in this regard.

We are of opinion that though on a first reading of the High Court judgment calling for a finding it does look as if the High Court was reversing the finding of fact as to possession when it called for a further finding on the question, a closer examination of its judgment calling for a finding along with the findings by the Munsif and the Subordinate Judge on the crucial question involved in this case shows that it held that there was no finding by the Subordinate Judge on that crucial question, though the trial court had given a finding in favour of the first respondent in that respect. As both parties were relying on possessory title, it was necessary that they should prove effective possession over the property in order to succeed on the basis of possessory title. By effective possession we mean either actual possession or

possession through a tenant who must have paid rent voluntarily or under a decree to the person claiming possessory title. The kadapa by the previously existing tenants in favour of the so-called reversioners has all along been treated as an attornment by all the three courts and we therefore accept it as such. If the so-called reversioners had title in the sense that they were the next reversioners, then attornment by the kadapa would have been sufficient to establish their possession over the property; but where the person in whose favour the attornment had been made has no title, a mere paper attornment would not be enough to establish as against third parties the possession of the person in whose favour attornment has been made and it will still have to be shown that the possession was effective in the sense that the person who attorned also paid rent voluntarily or under a decree to the person in whose favour he made the attornment. The fact that the tenants who had executed the kadapa may be estopped from challenging the title of the so-called reversioners, if a suit was brought against them makes no difference to the position stated above. The finding of the Munsif was that no rent had been paid to anyone by the tenants; further no suit had been brought by the so-called reversioners to recover the rent before the first respondent got into possession. The kadapa therefore remained a mere paper transaction and attornment through it would not be sufficient to put the so-called reversioners in effective possession and confer possessory title on them which could be taken advantage of by the appellants to show earlier possessory title as against the undoubted possessory title of the first respondent from 1936.

It seems to us that, that is what the High Court meant when it said that the crucial question in this case was "whether the tenants really attorned to the reversioners". We emphasise the word "really" which shows that the High Court was not satisfied with mere paper attornment which was all

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Jotyula Hanumayamma

Wanchoo J.

that was found by the Subordinate Judge and rightly required in a case based on possessory title only that the attornment should be a real attornment, *i. e.*, one in which the person attorning should also have paid rent either voluntarily or under a decree to the person in whose favour the attornment was made. The Subordinate Judge, however, had merely considered the paper attornment and had not considered the evidence as to payment of rent, which was there and which had been considered by the trial court. The trial court had come to the conclusion after considering the evidence relating to payment of rent that in fact there was no payment though the attornment was made through the kadapa. The trial court therefore held that from 1933 to 1936, only the tenants were in possession but they never paid rent to anybody and thus neither party was in possession through them. This aspect of the finding of the trial court was completely overlooked by the Subordinate Judge who decided the question of possession merely on the paper attornment (namely, the kadapa). What the High Court seems to have meant when it said that the real question was not properly considered by the Subordinate Judge therefore was that he was merely satisfied with paper attornment in a case based on possessory title which was not enough in law and had not given any finding as to whether the attornment was a reality in the sense that the rent was paid and would thus result in effective possession of the so-called reversioners through the tenants. It seems to us therefore that though the form in which the High Court expressed itself when it called for a finding was not happy, what the High Court really did was to hold that there was no finding by the Subordinate Judge on the question of effective possession of the so-called reversioners after a consideration of the evidence relating to payment of rent etc.; it therefore called for a finding on the question of effective possession after

consideration of the entire evidence. This in our opinion the High Court was justified in doing because the trial court had considered the entire evidence and had come to the conclusion that the so-called reversioners had no effective possession and the attornment through the kadapa was a mere paper transaction. In these circumstances it cannot be said that the High Court had no jurisdiction to call for a finding.

It is not disputed that if the High Court had jurisdiction to call for a finding the final order of the High Court allowing the appeal based on the finding which was submitted was not open to question.

We therefore dismiss the appeal but in the circumstances pass no order as to costs of this Court.

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—I agree that the appeal be dismissed, but for different reasons.

If Narasimhulu and Ramudu *alias* Mark, who were in possession of the land in suit under the lease, Ex. P-6, dated May 6, 1929, for six years from Josyula Krishnavenamma, had attorned to Ramakotiah and Seetharamiah by executing the Kadapa (Kabuliat) Ex. D-4, on March 16, 1933, I do not think that any further payment of rent was necessary to make the attornment effective and am of opinion that in that case the view of the learned Subordinate Judge to the effect that the predecessors-in-interest of the defendants-appellants were in possession through their tenants over the land in suit, was correct. The High Court did not decide by its first order remitting the point No. 2, *viz.*, 'whether the plaintiffs got into possession of the suit properties earlier than the defendants and their predecessor-in-title and whether they are entitled to recover possession of the suit properties on the strength of their possessory title' for a fresh finding that the attornment by the execution of the deed of Kadapa was not good attornment without the executants paying rent to Ramakotiah and Seetharamiah. The learned Judge simply said :

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Josyula Hanumayamma

Raghubar Dayal J.

"Apart from the question whether the principle of law adopted by the learned Judge is well-founded or not, on which I express no opinion at present, it seems to me that the finding of the learned Judge that the first defendant had prior possession from 1933 to 1936 cannot be accepted in second appeal."

The finding about the prior possession, of the learned Subordinate Judge was not accepted by the High Court because it considered that the Subordinate Judge had not closely scrutinized the evidence in the case on the very crucial question in issue between the parties. This crucial question was formulated as 'whether the tenants really attorned to the reversioners and the reversioners recognized the possession of the tenants as theirs.' What was meant by the High Court from this question, is not clear to me. If the execution of the deed, Ex. D-4, amounted to the attornment by the tenants in favour of Seetharamiah and Ramakotiah, who claimed to be the heirs of Krishnavenamma, and the execution of the cowle, Ex. D-5, by those two persons in favour of the tenants, to the recognition of the tenants as their tenants, no further question of scrutiny of any other evidence on record could have arisen. The other evidence on record about which the High Court expressed its opinion, and that too not in a final form, as a fresh finding was being called on the basis of that evidence, mainly consisted of the evidence in favour of the defendants. Non-consideration of that evidence could have been a grievance to the defendants, but not to the plaintiffs-appellants before the High Court. Expression of opinion in that form on such evidence was detrimental to the interest of the defendant in a fresh consideration of that evidence by the Subordinate Judge, who, naturally, in his fresh finding, followed a practically similar line of criticism against that evidence. The mere fact that certain evidence had not been closely scrutinized or, in other words, not scrutinized in a manner in which the second

appellate Court desires it to be scrutinized, cannot be a ground for interference with the finding of fact in the second appeal. If the High Court considered, as is being now urged for the respondent, that without proof of the tenants actually paying rent to Seetharamiah and Ramakotiah, who laid claim as heirs but have been proved to be not heirs of Krishnavenamma, there was no valid attornment, the order for a fresh fiinding about attornment could be justified on the ground that the Subordinate Judge had not referred to the evidence having a bearing on the question of the payment of rent by the tenants and its receipt by the new landlords Seetharamiah and Ramakotiah. I however find it difficult to put such a construction on the High Court's order when it did not decide upon the principle of law adopted by the first appellate Court.

"Attornment, in its strict sense, is an agreement of the tenant to a grant of the reversion made by the landlord to another, or, as it has been defined, 'the act of the tenants putting one person in the place of another as his landlord"—see paragraph 732, Foa's General Law of Landlord and Tenant. This means that in the first instance attornment is made in favour of the person who has derived his title or supposed title from the original landlord. It implies a continuity of the tenancy created by the original landlord in favour of the tenant. It is in these circumstances that the existing tenant, for the rest of the period of his tenancy, agrees to acknowledge the new landlord as his landlord. Such an agreement of the tenant amounts to attornment and by such an attornment the tenant by his act substitutes the new landlord in place of the previous one. Such attornment is complete the moment the tenant agrees to acknowledge the new landlord to be his landlord. Any future payment or non-payment of rent does not affect the relationship created by the attornment. The new landlord will have his remedies with respect to the rents falling in arrears.

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Josyula Hanumayamma

Raghubar Dayal J.

Again, it is stated in paragraph 745 at page 475 :

> "With regard to the title of person from whom the possession was not obtained, but who has been recognised as landlord by the tenant, such recognition may be by express agreement, by attornment, or other formal acknowledgment (as by paying a nominal sum of money), by payment of rent, or of a nominal sum as rent, or by submission to a distress."

The attornment is here described as one mode of recognising a person as one's landlord, just as payment of rent is another mode for the purpose. Expression to similar effect is to be found in paragraphs 746, and also 747 where it is further noted :

> "But the tenant is not allowed to impeach the title of a person to whom he has paid rent, or whose title he has otherwise recognised, without showing a better title in some other person. Thus he cannot, after attorning to a person who derives his title under a will, contend merely that upon a true construction of the will he had no title; nor can he, after paying him rent, dispute his title merely on the ground that the devise to him was void, owing to the incapacity of the testator."

In *Krisna Proshad Lal Singha Deo* v. *Baraboni Coal Concern* (1) the Privy Council said at page 318, when considering the scope of s. 116 of the Indian Evidence Act :

> "Whether during the currency of a term the tenant by attornment to A who claims to have the reversion, or the landlord by acceptance of rent from B who claims to be entitled to the term, is estopped from disputing the claim which he has once admitted, are important questions, but they are instances of cases which are outside s. 116 altogether."

(1) (1937) L. R. 64 I. A. 311.

And again, at page 319 :

> "In the ordinary case of a lease intended as a present demise—which is the case before the Board on this appeal—the section applies against the lessee, any assignee of the term and any sub-lessee or licencee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease, and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, *e.g.*, by attornment, acceptance of rent etc. In this sense it is true enough that the principle only applies to the title of the landlord who 'let the tenant in' as distinct from any other person claiming to be reversioner."

These observations make it clear that simply by attornment the tenant is estopped from questioning the derivative title of the claimant's successor just as the acceptance of rent will create an estoppel against the landlord from denying the person, who paid the rent, to be his tenant. These observations do not indicate that any actual payment of rent by the tenant who has attorned is necessary to make the attornment effective. If it was otherwise, the new landlord in whose favour the tenant has attorned, will not be able to take successfully any action against that person till that person had made the first payment of rent.

I am therefore of opinion that once the tenant has agreed to accept the person claiming title from the previous landlord, that amounts to effective attornment in favour of the landlord and is no more dependent on the future conduct of the tenant by way of payment of rent or otherwise.

1961

Uppalapati Veera Venkata Satyanarayanaraju v. Josyula Hanumayamma

Raghubar Dayal J.

A person can establish his possessory title by establishing that he had been in actual possession of the land in suit or had been in possession through tenants. So long as the persons in actual possession are deemed to be his tenants on account of their conduct in recognising that person as their landlord and are estopped to question his title, I see no good reason why their possession be not taken to be the possession on behalf of that person, irrespective of the fact whether that person had legal title or not. If he had legal title, no question of relying on possessory title would ever arise. It is only in the case of his failure to establish his legal title that he has to fall back upon possessory title. I see no good reason why the possession of tenants who had attorned to a person having no title be not considered to be his possession in determining whether he had preferential possessory title to that of another, who too has no title and secured possession of the land subsequent to the attornment.

In this view of the matter, I am of opinion that the High Court was wrong in asking for a fresh finding on the question of possession when it had not decided that the tenants had not, in law, attorned to Seetharamiah and Ramakotiah, on the basis of the two documents Kadapa Ex. D-4 and Cowle Ex. D-5, and when according to the first appellate court, the effect of those documents was that the tenants had attorned to them.

I am, however, of opinion, though the point was not raised, that the Kadapa Ex. D-4 is not an agreement by tenants simply accepting the claimants to be the new landlords as, by this document, they do not just substitute the new landlords in the place of the old. They really took a new lease from those two persons. The terms of the new lease were different from those of the lease of Krishnavenamma. The unexpired period of the tenancy was two years. Under the Kadapa, the new tenancy was to continue for five years from June, 1933. The lease does not cover just the land which they held under

their previous tenancy, but included some other land as well. The amount of rent they were to pay also differed. It was much reduced. Such a document is not a deed of attornment but is a document accepting fresh tenancy. Seetharamiah and Ramakotiah could not in law lease the land in suit to those tenants as they had no title in themselves, they being not heirs of Krishnavenamma. Any lease executed by them created no right. These lessors were not in actual possession of the land at any time. They could not have, therefore, conveyed possession to their tenants. As the new lessees got no title under the lease, their continued possession over the land in suit could not be possession under the lease on behalf of the new lessors, especially when their possession can be traced to the valid tenancy under the deed, Ex. P-6, in favour of Krishnavenamma and will be deemed to be on behalf of legal heir. Seetharamiah and Ramakotiah, therefore, cannot be held to be in possession of the land in suit through their tenants between June, 1933, and some time in 1936, when those tenants were dispossessed by Moka Subba Rao on behalf of plaintiff No. 1. It follows that the predecessors-in-interest of the defendants have been rightly held to be not in possession of the land in suit prior to plaintiff No. 1, who too, had no title, getting possession of the land in suit and that the order under appeal is correct.

Appeal dismissed.