DNYANESHWAR RANGANATH BHANDARE & ANR. A

v.

SADHU DADU SHETTIGAR (SHETTY) & ANR.

(Civil Appeal Nos. 8400-8401 of 2011)

SEPTEMBER 30, 2011 B

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Constitution of India, 1950:

Article 136 – Interference by Supreme Court – Suit for C
possession of premises by landlord alleging that the respondents were gratuitous licencees regarding one room and unauthorized encroachers in respect of the second room, decreed – Suit for permanent injunction by respondents that they were tenants – Trial court held that respondents D
continued in occupation as licencee and not as tenant – First appellate court holding that the appellants failed to prove that the respondents were gratuitous licensees or that they had encroached upon one room, decreed the suit for injunction by the first respondent – High Court upheld the order in E
second appeals – On appeal, held: Burden was on the respondents to establish that they were tenants and not licensees but the first appellate court wrongly placed the burden upon the appellants – None of the documents produced or relied upon by respondents evidenced tenancy F
or payment of rent – First appellate court failed to record any finding that respondents were tenants – Documents produced by the respondents which merely showed their possession were wrongly interpreted to hold that the appellants failed to prove that respondents were gratuitous tenants – High Court G
did not interfere on the ground that no question of law was involved – It failed to notice that the inferences and legal effect from proved facts is a question of law and the inferences drawn by the first appellate court were wholly unwarranted – Thus, the judgment of the first appellate court and the High

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A *Court are unsustainable and the findings of the trial court that respondents are gratuitous licencees was correct and justified -- Decree for possession of the suit portions granted by the trial court is restored.*

B *Article 136 – Jurisdiction under – Exercise of – Interference with findings of facts – When warranted – Stated.*

Appellant No. 1 and 2 are the sons of 'L'. It is the case of the appellants' that their mother was staying alone in the suit premises. In the year 1985, second respondent C **was engaged as a servant to look after 'L' and was allowed to reside in one of the room as a licensee without any rent. Next year 'L' died and second respondent was allowed to continue as a licencee for some time. However, she did not vacate the room and first** D **respondent with whom second respondent was having a live-in relationship, forcibly occupied the other room and claimed himself to be tenant of the two rooms. First respondent filed a suit for permanent injunction asserting himself to be the tenant of the suit premises whereas the** E **appellants filed suit for possession of the suit premises contenting that the respondents were gratuitous licencees regarding one room and unauthorized encroachers in respect of the second room. The trial court decreed both the suits holding that the appellants** F **are the owners and they have established that second respondent was their licencee. Aggrieved, respondent No. 1 and 2 filed an appeal against the decree for possession and respondent no. 1 filed an appeal against the dismissal of his suit for injunction. The first appellate** G **court holding that the appellants failed to prove that the respondents were gratuitous licensees or that they had encroached upon one room dismissed the suit for possession by appellants and decreed the suit for injunction by the first respondent. The appellants filed** H **second appeals. The High Court dismissed the same**

holding that the finding of fact by the lower appellate court that the respondents were not gratuitous licensees did not call for interference and no substantial question of law arose for consideration. Therefore, the appellants filed the instant appeals.

Allowing the appeal, the Court

HELD: 1.1 Normally this Court will not, in exercise of jurisdiction under Article 136 of the Constitution of India, interfere with finding of facts recorded by the first appellate court, which were not disturbed by the High Court in second appeal. But what should happen if the first appellate court reverses the findings of fact recorded by the trial court by placing the burden of proof wrongly on the plaintiffs and then holding that the plaintiffs did not discharge such burden; or if its decision is based on evidence which is irrelevant or inadmissible; or if its decision discards material and relevant evidence, or is based on surmises and conjectures; or if it bases its decision on wrong inferences drawn about the legal effect of the documents exhibited; and if grave injustice occurs in such a case on account of High Court missing the real substantial question of law arising in the appeal and erroneously proceeds on the basis that the matter does not involve any question of law and summarily dismisses the second appeal filed by the appellant? In this context the legal effect of proved facts and documents is a question of law. In such cases, if the circumstances so warranted, this court may interfere in an appeal by special leave under Article 136. [Para 9] [199-D-H]

Dhanna Mal vs. Rai Bahadur Lala Moti Sagar **AIR 1927 P.C. 102 and** *Gujarat Ginning & Manufacturing Co. Ltd. vs. Motilal Hirabhai Spinning & Manuacturing Co. Ltd.* **AIR 1936 PC 77 – relied on.**

A 1.2 Two suits were tried together. In both the suits (suit for possession filed by the appellants, and suit for permanent injunction filed by the first respondent), the trial court framed issues placing the burden on both the plaintiff and defendants. The appellants were required to B prove whether the suit portions were given to second respondent as a gratuitous licensee. The respondents were required to prove that they were in occupation from 1982 as tenants, initially by paying Rs.25/- per month as rent up to 1988 and thereafter at the rate of Rs.60/- per C month. These issues were proper as it was evident from the pleadings that respondents were in possession of suit rooms, and appellants claimed that the respondents were licencees and respondents claimed that they were tenants, but admitted that there was no document D evidencing tenancy/lease or payment of rent. The entire evidence was analysed in detail by the trial court, leading to the findings that the respondents were in occupation of the suit portions as gratuitous licensees and the respondents failed to prove that they were tenants E paying rent. In appeals filed by the respondents, the court wrongly shifted the entire burden of proof on the appellants and held that the appellants had failed to prove that respondents were gratuitous licensees and consequently dismissed the suit for possession filed by the appellants. Admittedly there was no lease deed or F tenancy agreement to evidence the tenancy; nor were there any receipts for payment of any rent. The first appellant had given evidence on oath that respondents were gratuitous licensees and they had never paid any rent or other charges and his evidence was corroborated G by a neighbour (PW2). In the circumstances, the burden was on the occupants (respondents) to establish that they were tenants and not licensees. But the first appellate court chose to wrongly place the burden upon the appellants. The first appellate court failed to record I any finding that the respondents were the tenants. The

documents produced by the respondents which merely showed their possession were wrongly interpreted to hold that the appellants failed to prove that respondents were gratuitous tenants. [Para 10] [200-B-H; 201-A]

1.3 'L' was an old lady. The second appellant who was staying with his aged mother in 1985, was obviously not able to look after her. In the beginning of 1986, he left for place 'V' in connection with his employment. 'L' was all alone from then till her death in November, 1986. The evidence of first appellant (PW1) is to the effect that the second respondent was appointed as a servant to look after his mother in the year 1985 and was permitted to stay in a portion of the premises free of rent, corroborated by the evidence of the neighbour (PW2) and the fact that there is absolutely no evidence of tenancy, that when his mother 'L' died, second respondent sought permission to continue living in a portion of the property till she got some alternative accommodation, and that the appellant agreeing for the same, particularly as that also solved the problem of someone looking after the property as care taker, becomes very probable. His evidence is not shaken in cross-examination. There is nothing to disbelieve the evidence of PW1 and PW2. [Para 12] [201-F-H; 202-A]

1.4 None of the owners was staying at place 'V' and according to appellants second respondent continued to stay in a portion of said Premises as a gratuitous licencee even after November 1986 and the first respondent was also living with her. Admittedly, there was no lease deed or tenancy agreement between the parties. No rent receipts are produced by the defendants. There was no document evidencing the tenancy or evidencing payment of any rent to the owners of the property, the trial court also placed the burden upon the defendants to prove that they were residing in the premises as tenants. The trial court believed the evidence

A of PW1 supported by the evidence of the neighbour (PW2), that 'L' was ailing and to look after her to look after the house, 'L' had engaged the second respondent as a maid servant and given her a place to stay free of cost as licencee and that the first respondent was also staying
B with her and neither of them had ever paid any rent to appellants or 'L'. [Para 14] [202-F-H; 203-A-B]

1.5 The trial court considered the documentary evidence: Assessment Register extracts; Tax paid receipts; Bank cash deposit challan counter foils;
C Electoral roll for 1991; Notices through counsel dated 9.10.1992 and 15.6.1993 with acknowledgments, produced by the respondents to establish that they were the tenants. The trial court held that the said documents established the claim of tenancy by the respondents and
D consequently, held that respondents failed to prove that they were in occupation of the premises from February 1982 as tenants on a rent of Rs.25 per month from 1982 and Rs.60 per month from 1988. The court however, held that there was no evidence to show that 'S' broke open
E the lock of 10' x 10' room and occupied it illegally. The court held that as the evidence showed that respondents were living as husband and wife and rejected the claim of the appellants that first respondent had forcibly occupied the premises, particularly as the appellants had
F not lodged any complaint in regard to such illegal occupation. The fact that the respondents were in possession of the B & C schedule properties was not in dispute and therefore, the evidence that was required was evidence to show tenancy and not possession. The
G trial court found that the tax receipts were issued in the name of the owners and the fact that first respondent had produced some tax receipts merely showed that the owner had sent the tax through respondents for payment as they were not staying at place 'V'. In regard to
H remittances to the Bank, he found that stray remittances

of Rs.300, Rs.60 and Rs.300 did not prove that they were paid towards the rent, or that the said payments were made with the knowledge and consent of the appellants. In regard to the other documents, the trial court held that all documents showed that the respondents were in possession but did not establish any tenancy. [Para 15] [203-C-H; 204-A-B]

1.6 On the very same material (that is Assessment Register extracts, tax paid receipts, bank cash deposit challans, Electoral Roll and notices), the first appellate court came to the conclusion that the case of appellants (in the pleadings and evidence), that second respondent was inducted as a licencee was not believable. Though the first appellate court does not anywhere record a finding that the respondents had established that they were the tenants, but concluded that the appellants failed to give a proper explanation in regard to the documents produced by the respondents and therefore, their suit should be dismissed. [Para 16] [204-C-D]

1.7 None of the documents produced or relied upon by respondents evidenced tenancy or payment of rent. The documents no doubt established that respondents were in possession of a portion of the said premises, but that fact was never in dispute. It should be noted that though respondents submitted that they occupied the suit portions in 1982, they did not prove occupation of the suit portions from 1982. The first appellate court erroneously held that the appellants had failed to offer satisfactory explanation regarding the documents relied upon by the respondents and held that therefore, the suit should be dismissed. The first appellate court did not record any finding that these documents produced by respondents established a tenancy. In fact, there is no finding in the entire judgment that the respondents had proved that they were the tenants. The documents relied

A upon by respondents do not establish a tenancy. The trial court found that none of these documents established tenancy. The appellants had explained all documents relied upon by the respondents by demonstrating that they only prove occupation (which B was not disputed) but not tenancy. When there was nothing more to explain, the first appellate court held that appellants failed to explain those documents and consequently failed to establish that respondents were licencees. The first appellate court inferred from C documents which disclosed mere occupation of a portion of the house and documents which showed some payments which cannot be linked to rent, that appellants *failed to prove* that the occupation by respondents was as gratuitous licensees. It did not D however, infer from the documents that there is a tenancy. The entire reasoning is therefore, unsound. In spite of the said legal lacunae, the High Court did not interfere on the ground that no question of law was involved. It failed to notice that the inferences and legal effect from proved facts is a question of law and the inferences drawn by E the first appellate court were wholly unwarranted. The fact that was proved was possession of suit portions which was not in dispute, but not tenancy in regard to the suit portions, which was in dispute. In the absence of any documentary evidence showing the tenancy or F payment of rent, the evidence of PWs.1 and 2 is more trustworthy and probable than the uncorroborated interested evidence of DW1. (The evidence of DWs. 2 and 3 does not have any bearing on the issue of tenancy claimed by respondents). Therefore, the judgments of the G first appellate court and the High Court are unsustainable and the finding of the trial court that respondents are gratuitous licencees was correct and justified. The judgment of the High Court and the first appellate court is set aside and the decree for possession of the suit

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portions granted by the trial court is restored. [Para 27 & 28] [208-G-H; 209-A-H; 210-A-B]

Dhanna Mal vs. Rai Bahadur Lala Moti Sagar **AIR 1927 P.C. 102;** *Gujarat Ginning & Manufacturing Co. Ltd. vs. Motilal Hirabhai Spinning & Manuacturing Co. Ltd.* **AIR 1936 PC 77 – referred to.**

Case Law Reference:

AIR 1927 PC 102	**Referred to**	**Para 9**
AIR 1936 PC 77	**Referred to**	**Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8400-8401 of 2011.

From the Judgment and Order dated 07.10.2008 of the High Court of Bombay in SA No. 298 and 299 of 2008.

Prasanth P. and T. Harish Kumar for the Appellants.

Pravin Satale and Rajiv Shankar Dvivedi for the Respondents.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. Leave granted. Parties will be referred by their ranks in the first matter arising from the suit for possession in RCS No.278/1993.

2. The case of appellants is as under : The appellants are brothers and are the owners of premises No.289 (New No.424) Gandhi Chowk, Vita (described in schedule 'A' to the plaint and referred to as the 'said property'). Two rooms in the said property, one measuring 10' 6" x 22' and the other measuring 10' x 10' (described the schedules B and C to the plaint and together referred to as the "suit portions") are the subject matter of the dispute. The said property originally belonged to Ranganath Bhandare, who was living in the said property with

A his wife Laxmibai (mother of the appellants), two sons (appellants 1 and 2) and a daughter. After the death of Ranganath Bhandare, the daughter got married in 1984 and started living separately. Appellant No.2 got married in 1985 and shifted to Sangli in connection with his employment in the
B beginning of 1986. Appellant No.1 was away at Pune in connection with his employment. Thus appellants' mother Laxmibai who was aged and suffering from several complaints was staying alone in the said property from the middle of 1986. The second respondent (Chhaya) was engaged in or about the
C year 1985 as a servant to look after Laxmibai and was allowed to reside in one room as a licencee without any rent. In November 1986, Laxmibai died. The second respondent requested the appellant for some time to vacate the room stating that she would leave as soon as she got some
D alternative accommodation. As second respondent had looked after their mother and their property, the appellants agreed for her continuing as licencee for some time. She did not however vacate. Taking advantage of the fact that the owners were not around, she and the first respondent (Sadhu) with whom she had a 'living-in-relationship', broke open the door of another
E room (10' x 10') and occupied it. Further, first respondent started asserting that he is the tenant of the suit portions (two rooms) and filed RCS 114/1993 on the file of the Civil Judge, Junior Division, Vita, against the first appellant, seeking a permanent injunction. In these circumstances, the appellants
F filed RCS No.278/1993 for possession of the suit portions, contending that respondents were gratuitous licencees regarding one room and unauthorized encroachers in respect of second room. They also sought damages/mesne profits for wrongful occupation.

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3. The suit was resisted by the respondents on the ground that the first respondent (second defendant) was the husband of second respondent (first defendant); that they were in occupation of the suit premises as tenants on a monthly rent
H of '25 from February 1982; that the rent was increased to '60/

- per month from 1988; that the appellants illegally disconnected the electricity supply to the suit portions on 25.8.1991 and tried to forcibly evict the respondents; that the first respondent had therefore lodged a complaint under section 24(4) of the Bombay Rents Hotel, and Lodging House Rates Control Act, 1947 ('Rent Act' for short) and filed an application for fixation of standard rent under section 11 of the Rent Act. They also alleged that the appellants prevented them from carrying out repairs to the premises which was in a dilapidated condition and were threatening to evict them from the premises. Therefore, the first respondent filed a suit for permanent injunction in RCS No.114/1993 to restrain the first appellant from dispossessing him from the premises without due process of law.

4. The suit for permanent injunction (RCS No.114/1993) filed by first respondent was resisted by the first appellant. The averments in the plaint and written statement in the suit for injunction were the same as the averments in the written statement and plaint respectively in the suit for possession filed by appellants.

5. Both suits were tried together. The trial court decreed both the suits by a common judgment dated 17.7.2002. The trial court held that the appellants are the owners and they have established that second respondent (first defendant) was their licencee. The trial court after exhaustive consideration of the evidence held that the respondents had failed to prove that they were residing in the suit premises as tenants from February, 1982 on a monthly rent of Rs. 25 or that they were paying the rent at the rate of Rs. 60/- per month from the year 1988. The trial court also held that the second respondent was in possession of the two rooms as a licencee with the permission of Lakshmibai and had continued in occupation as gratuitous licencee and was not a tenant; and that the first respondent had not trespassed or forcibly occupied the second room but was residing in the suit portions with the licensee (second

A respondent) as her husband. As the respondents were licensees and the licence had been revoked, the trial court held that the appellants were entitled to possession of the suit portions. Consequently, RCS No.278/1993 for possession filed by the appellants was decreed and the respondents were B directed to deliver vacant possession of the suit portions within sixty days. The trail court also directed a separate enquiry regarding damages and mesne profits. As the claim for tenancy was rejected, but as respondents were in occupation of two rooms, the trial court decreed RCS No.114/1993 filed by first C respondent in part, and directed that the appellants shall not evict the first respondent otherwise than in accordance with law. As the trial court has granted a decree for possession simultaneously, the decree in RCS No.114/1993 was academic.

D 6. Feeling aggrieved respondents 1 and 2 filed Regular Civil Appeal No.180/2002 against the decree for possession. Respondent No.1 filed a Regular Civil Appeal No.198/2002 against the dismissal of his suit for injunction. The first appellate court (District Court, Sangli) allowed both appeals by its E common judgment dated 13.12.2007. The first appellate court formulated the following five questions for consideration : (i) Whether defendants in RCS No.278/93 are in unauthorized and illegal possession by making an encroachment in suit property? (ii) Whether the suit property-B & C portions was given to F Chhaya as a gratuitous licensee in since 1986? (iii) Whether the possession of schedules B & C properties by Sadhu is referable to any legal right? (iv) Whether the possession of Sadhu was illegally obstructed by the owners? (v) What relief?

G 7. The first appellate court answered the first two points in the negative and the third and fourth in the affirmative. The first appellate court held that appellants failed to prove that the respondents were gratuitous licensees or that they had encroached upon one room. Consequently, it dismissed the suit for possession by appellants and decreed the suit for H injunction by the first respondent. It did not address itself or

decide whether respondents were tenants. It held that they had paid some amounts and appellants had failed to explain the said payments.

8. The second appeals filed by the appellants challenging the judgment and decree of the first appellate court were dismissed by the High Court by a short common order dated 7.10.2008 holding that the finding of fact by the lower appellate court that the respondents were not gratuitous licensees did not call for interference and no substantial question of law arose for consideration. The said common judgment is under challenge in these appeals by special leave.

9. Normally this Court will not, in exercise of jurisdiction under Article 136 of the Constitution of India, interfere with finding of facts recorded by the first appellate court, which were not disturbed by the High Court in second appeal. But what should happen if the first appellate court reverses the findings of fact recorded by the trial court by placing the burden of proof wrongly on the plaintiffs and then holding that the plaintiffs did not discharge such burden; or if its decision is based on evidence which is irrelevant or inadmissible; or if its decision discards material and relevant evidence, or is based on surmises and conjectures; or if it bases its decision on wrong inferences drapwn about the legal effect of the documents exhibited; and if grave injustice occurs in such a case on account of High Court missing the real substantial question of law arising in the appeal and erroneously proceeds on the basis that the matter does not involve any question of law and summarily dismisses the second appeal filed by the appellant? In this context we may remember that the legal effect of proved facts and documents is a question of law. (See *Dhanna Mal vs. Rai Bahadur Lala Moti Sagar* [AIR 1927 P.C. 102] and *Gujarat Ginning & Manufacturing Co. Ltd. vs. Motilal Hirabhai Spinning & Manuacturing Co. Ltd.* [AIR 1936 PC 77]. In such cases, if the circumstances so warranted, this court may interfere in an appeal by special leave under Article 136. Let

A us therefore consider whether circumstances in this case warrant such interference.

10. Two suits were tried together. In both the suits (suit for possession filed by the appellants, and suit for permanent injunction filed by the first respondent), the trial court framed
B issues placing the burden on both the plaintiff and defendants. The appellants were required to prove whether the suit portions were given to second respondent as a gratuitous licensee. The respondents were required to prove that they were in occupation from 1982 as tenants, initially by paying ' 25/- per
C month as rent up to 1988 and thereafter at the rate of ' 60/- per month. These issues were proper as it was evident from the pleadings that respondents were in possession of suit rooms, and appellants claimed that the respondents were licencees and respondents claimed that they were tenants, but admitted
D that there was no document evidencing tenancy/lease or payment of rent. The entire evidence was analysed in detail by the trial court, leading to the findings that the respondents were in occupation of the suit portions as gratuitous licensees and the respondents failed to prove that they were tenants paying
E rent. In appeals filed by the respondents, the court wrongly shifted the entire burden of proof on the appellants and held that the appellants had failed to prove that respondents were gratuitous licensees and consequently dismissed the suit for possession filed by the appellants. As noticed above, admittedly
F there was no lease deed or tenancy agreement to evidence the tenancy; nor were there any receipts for payment of any rent. The first appellant had given evidence on oath that respondents were gratuitous licensees and they had never paid any rent or other charges and his evidence was corroborated by a
G neighbour (PW2). In the circumstances, the burden was on the occupants (respondents) to establish that they were tenants and not licensees. But the first appellate court chose to wrongly place the burden upon the appellants. The first appellate court failed to record any finding that the respondents were the tenants. The
H documents produced by the respondents which merely showed

their possession were wrongly interpreted to hold that the appellants failed to prove that respondents were gratuitous tenants.

11. The undisputed facts noted by the first appellate court are : The appellants are the owners of the Premises No.289 (Schedule A property), Gandhi Chowk, Vita. The suit property earlier belonged to Ranganath Bhandare (father of appellants) who died in the year 1979. Dnyaneshwar (the first appellant) was employed in Pune and was away from Vita for several years. Lata, the sister of appellants got married and left the premises in the year 1984. Mukund, the second appellant got married in 1985 and left Vita and shifted to Sangli in the first half of 1986. Appellants' mother Laxmibai who was staying alone, died in November, 1986. Property bearing No.289 consists of a ground floor and first floor. Two rooms described in Schedules B & C to the plaint were in the possession of the second respondent Chhaya and the first respondent Sadhu. There was no lease deed or tenancy agreement evidencing tenancy, nor were any receipts to show payment of any rent. It is in this background, that the evidence was required to be examined.

12. Laxmibai was an old lady. The second appellant who was staying with his aged mother in 1985, was obviously not able to look after her. In the beginning of 1986, he left Vita in connection with his employment. Laxmibai was all alone from then till her death in November, 1986. Seen in this background, the evidence of first appellant (PW1) that the second respondent was appointed as a servant to look after his mother in the year 1985 and was permitted to stay in a portion of the premises free of rent, corroborated by the evidence of the neighbour (PW2) and the fact that there is absolutely no evidence of tenancy, that when his mother Laxmibai died, second respondent sought permission to continue living in a portion of the property till she got some alternative accommodation, and that the appellant agreeing for the same,

A particularly as that also solved the problem of someone looking after the property as care taker, becomes very probable. His evidence is not shaken in cross-examination. There is nothing to disbelieve the evidence of PW1 and PW2.

B 13. According to the appellants, the first respondent was not legally married to second respondent and was a live-in-partner. According to the respondents they were a married couple. Whether they were a married couple or whether they were merely living together, is not very relevant for the decision in this case, as the fact that both were living in the schedule C portion was not disputed. Further one of the witnesses of respondents — G.S.Thakale (DW3) gave evidence that second respondent and first respondent were his tenants in the year 1980 and that they got married some time in the year 1981 and that thereafter they shifted to the premises of appellants, D demonstrates that at some point of time, second respondent and first respondent were living together without marriage. DW3 also admitted that he did not have any personal knowledge about the solemnization of marriage of second respondent with first respondent. However all the courts proceeded on the basis E that they were married in the absence of any evidence to rebut the claim of Respondents 1 and 2 that they were a married couple.

14. None of the owners was staying at Vita and according F to appellants second respondent continued to stay in a portion of Premises No.289 as a gratuitous licencee even after November 1986 and the first respondent was also living with her. Admittedly, there was no lease deed or tenancy agreement between the parties. No rent receipts are produced by the G defendants. No document was produced by respondents which showed that they were tenants of the suit portions (B & C schedule properties) or that they were paying any rent to the owners of the property. As it was an admitted position that there was no document evidencing the tenancy or evidencing payment of any rent, the trial court also placed the burden upon H

the defendants to prove that they were residing in the premises as tenants. The trial court believed the evidence of PW1 supported by the evidence of the neighbour (S.B.Bhandare) (PW2), that Laxmibai was ailing and to look after her and to look after the house, Laxmibai had engaged the second respondent as a maid servant and given her a place to stay free of cost as licencee and that the first respondent was also staying with her and neither of them had ever paid any rent to appellants or Laxmibai.

15. The trial court considered the following documentary evidence produced by the respondents to establish that they were the tenants : (a) Assessment Register extracts (Ex. 61 and Ex. 62); (b) Tax paid receipts (Ex. 63, Exs. 67 to 72); (c) Bank cash deposit challan counter foils (Ex. 64 to Ex. 66); (d) Electoral roll for 1991 (Ex. 74); (e) Notices through counsel dated 9.10.1992 and 15.6.1993 (Ex. 75 & Ex.77) with acknowledgments (Ex. 76 & Ex.78). The trial court held that none of the above documents established the claim of tenancy by the respondents and consequently, held that respondents failed to prove that they were in occupation of the premises from February 1982 as tenants on a rent of Rs. 25 per month from 1982 and Rs. 60 per month from 1988. The court however held that there was no evidence to show that Sadhu broke open the lock of 10' x 10' room and occupied it illegally. The court held that as the evidence showed that respondents were living as husband and wife and rejected the claim of the appellants that first respondent had forcibly occupied the premises, particularly as the appellants had not lodged any complaint in regard to such illegal occupation. The fact that the respondents were in possession of the B & C schedule properties was not in dispute and therefore the evidence that was required was evidence to show tenancy and not possession. The trial court found that the tax receipts were issued in the name of the owners and the fact that first respondent had produced some tax receipts merely showed that the owner had sent the tax through respondents for payment as they were not staying in Vita. In regard to

A remittances to the Bank, he found that stray remittances of Rs. 300, Rs. 60 and Rs. 300 did not prove that they were paid towards the rent, or that the said payments were made with the knowledge and consent of the appellants. In regard to the other documents, the trial court held that all documents showed that
B the respondents were in possession but did not establish any tenancy.

16. On the very same material (that is Assessment Register extracts, tax paid receipts, bank cash deposit challans, Electoral Roll and notices), the first appellate court
C came to the conclusion that the case of appellants (in the pleadings and evidence), that second respondent was inducted as a licencee was not believable. Though the first appellate court does not anywhere record a finding that the respondents had established that they were the tenants, but concluded that
D the appellants failed to give a proper explanation in regard to the documents produced by the respondents and therefore their suit should be dismissed. We may examine each of the conclusions purportedly recorded by the first appellate court with reference to documents.

E

Re : Tax paid Receipts (Exs. 63, 67 to 72)

17. Ex. 63, 67 to 72 are the tax receipts issued by the Vita Municipality produced by first respondent which showed that the taxes for the period 1989-90 upto 1992-1993 were paid in the
F name of the registered owner Ranganath Bhandare. The first appellate court held that the appellant has not explained these receipts. But if the respondents were licencees in the premises, looking after Laxmibai and the premises, there is nothing strange in the appellants who were not living at Vita, to send
G the tax amount through respondents, for payment to the Municipal authorities. It is possible that first respondent was planning from 1988-89 onwards to create some kind of evidence to claim tenancy and had therefore retained the tax receipts. What is significant is that these receipts do not show
H that the amounts paid as taxes were paid by the first respondent

were from his personal funds. Further the case of the first respondent is that he was a tenant from 1982 to 1988 paying '25/- p.m. and thereafter '60/- per month. It is not the case of the respondents that in addition to rent, they were required to pay the municipal taxes and that they were therefore paying the municipal taxes. If payment of taxes was part of the consideration for the tenancy, there is no explanation by respondents as to why they did not pay the taxes for earlier years.

Re : Assessment Register Extracts (Exs.61 and 62)

18. The respondents relied upon the assessment register extracts (Exs. 61 and 62) pertaining to the years 1988-89 to 1991-92 in regard to property No.289. Appellants have relied upon assessment Register extract (Ex. 4) and CTS extracts (Exs. 5 to 8). These documents show that premises No.289 originally stood in the name of Ranganath Bhandare as owner and thereafter the property was mutated in the names of his legal representatives, namely, the appellants, their mother and sister. They also showed that initially Bhanudas Keshav Waghmode was a tenant in the said property. Ex. 62 pertaining to the years 1988-89 to 1991-92 showed that apart from Bhanudas Keshav Waghmode, first respondent was also an occupant of a portion of the premises.

19. The fact that Bhanudas Keshav Waghmode was a tenant of another portion of premises No.289 is not in dispute. The fact that second respondent and first respondent were also living in premises No.289, has never been in dispute. The issue is whether they were in occupation as tenants or as licensees. The assessment register extract would not help the respondents to establish that they were tenants of a portion of the premises. It will at best help them to show that they were occupying a portion of premises No.289. The fact that the name of first respondent was introduced as an occupant only during the year 1988-1989 belies his case that he was in occupation of the suit portions as a tenant from 1982. It only shows that in the absence

of the owners, first respondent had managed to get his name inserted in the municipal records as an occupant.

Re : Remittances to owner's account (Exs. 64, 65 and 66)

20. Exs. 64 to 66 produced by first respondent show that he had deposited Rs. 300, Rs. 60 and Rs. '360/- on 19.8.1988, 20.11.1991 and 14.3.1989 to the account of first appellant with Bank of Karad. The case of the respondents was that when Laxmibai inducted them as tenants of the suit portions on a monthly rent of '25/-; that they used to pay rent to Laxmibai; that after her death, they used to pay rent to the first appellant; that in 1988, the first appellant compelled them to increase the rent to 'Rs. 60/-; that as both the appellants were living outside Vita, the first respondent used to deposit rent in the bank account of the first appellant with Bank of Karad. The first appellate court held the fact that the amounts were deposited to first appellant's account showed that the appellants had given the account number to first respondent and inferred that the said amounts might have been deposited towards rent.

21. Appellants have given satisfactory explanation. They submitted that the bank account was a non-functional and non-operated account at Vita and as no notice of deposit was given, they were unaware of the deposits. They submitted that Bank of Karad went into liquidation and they therefore did not even have any record of these payments. They argued that as the second respondent was looking after Laxmibai and as respondents were also looking after the premises, the respondents would have come to know about the bank account of the first appellant and that first respondent, being aware that one day or the other, the owners will take action to evict them, had deposited the said amounts to create some kind of evidence. It should also be noted that the respondents did not send any communication informing the appellants about the deposits to the first appellant. Nor did the challans showed that the deposits were being made towards rent. These factors when coupled with the following three circumstances show that

the deposits were not bonafide: (i) There were no rent receipts from either Laxmibai or from the appellants; (ii) the respondents did not choose to send the rents by postal money orders; and (iii) there is no explanation as to non-deposit of the alleged rents for the earlier period. These receipts cannot be relied upon to support the uncorroborated oral testimony of DW-1 (Sadhu) that the same were deposited towards rent.

Re : Electoral Roll (Ex. 74) :

22. The Electoral Roll (Ex. 74) showed the respondents as husband and wife and they were staying in the premises No.289 in the year 1991. The appellate court held that Ex. 74 showed the respondents as the residents of premises No.289 in the year 1991 and if the second respondent was a mere licensee and if there was no marriage solemnized between her and the first respondent, the name of first respondent would not have been recorded as husband in Ex. 74. From this the first appellate court inferred that the second respondent was not a mere licensee and appellants had failed to prove that the first respondent was not the husband of the second respondent.

23. The Electoral Roll will not show whether a person is occupying a premises as a tenant or as a licencee. It may at best show that the person was residing in the premises. The fact that both respondents were residing in the premises had never been disputed. If they represented that they were husband and wife, the electoral roll will reflect the same. The inference drawn by the first appellate court from the electoral roll, that second respondent was not a mere licencee, is totally illogical and unsustainable.

Re : Notices (Exs. 75 to 78)

24. The first appellate court found that notices dated 9.10.1992 and 15.6.1993 issued by the respondents were not replied by the appellants and draws an inference therefrom that the averments therein should be true. But by then the litigations

were already pending. The petition for fixation of fair rent had been filed on 3.1.1992 (Application No.1/1992). A criminal case under section 24(4) of Rent Act had also been filed (Crl. Case No.6/1992). Thereafter, in 1993, suits were filed by the second defendant in RCS No.114/1993 and by the appellants in RCS No.278/1993. In view of the pending litigation, non issue of the replies to the notices cannot be treated as an admission of the averments in the notices.

Re : Application for fixation of standard rent

25. The first respondent filed a petition for fixation of standard rent in the year 1992 wherein he had claimed to be the tenant. The first appellate court held that as this was not controverted, the allegations therein should be true. The fact that the first respondent filed an application for determination of the standard rent is not disputed. But it is also not in dispute that the appellants filed a counter in the said proceedings wherein they clearly stated that the first respondent had no connection with the property and the premises was not given to him on rent or on any other understanding and that the first respondent was falsely claiming tenancy with the help of second respondent. It may be mentioned that the said petition for fixation of standard rent was not pursued by the first respondent and ultimately it was dismissed for non-prosecution on the ground that the first respondent had failed to prosecute the matter from 1998. Therefore, filing of the application for fixation of standard rent does not assist the respondents in proving tenancy.

Conclusion

27. It is thus seen that none of the documents produced or relied upon by respondents evidenced tenancy or payment of rent. The documents no doubt established that respondents were in possession of a portion of the premises No.289, but that fact was never in dispute. It should be noted that though

respondents submitted that they occupied the suit portions in 1982, they did not prove occupation of the suit portions from 1982. The first appellate court erroneously held that the appellants had failed to offer satisfactory explanation regarding the documents relied upon by the respondents and held that therefore the suit should be dismissed. The first appellate court has not recorded any finding that these documents produced by respondents established a tenancy. In fact as noticed above, there is no finding in the entire judgment that the respondents had proved that they were the tenants. The documents relied upon by respondents do not establish a tenancy. The trial court found that none of these documents established tenancy. The appellants had explained all documents relied upon by the respondents by demonstrating that they only prove occupation (which was not disputed) but not tenancy. When there was nothing more to explain, the first appellate court held that appellants failed to explain those documents and consequently failed to establish that respondents were licencees. The first appellate court inferred from documents which disclosed mere occupation of a portion of the house and documents which showed some payments which cannot be linked to rent, that appellants *failed to prove* that the occupation by respondents was as gratuitous licensees. It did not however infer from the documents that there is a tenancy. The entire reasoning is therefore unsound. In spite of this legal lacunae, the High Court did not interfere on the ground that no question of law was involved. It failed to notice that the inferences and legal effect from proved facts is a question of law and the inferences drawn by the first appellate court were wholly unwarranted. The fact that was proved was possession of suit portions which was not in dispute, but not tenancy in regard to the suit portions, which was in dispute. In the absence of any documentary evidence showing the tenancy or payment of rent, the evidence of PWs.1 and 2 is more trustworthy and probable than the uncorroborated interested evidence of DW1. (The evidence of DWs. 2 and 3 does not have any bearing on the issue of tenancy claimed by respondents). We therefore find that the judgments of the first

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A appellate court and the High Court are unsustainable and the finding of the trial court that respondents are gratuitous licencees was correct and justified.

28. Therefore, we allow this appeal, set aside the judgment
B of the High Court and the first appellate court and restore the decree for possession of the suit portions granted by the trial court. Parties to bear their respective costs.

N.J. Appeal allowed.