

(2014) 12 SHI CK 0024
High Court of Himachal Pradesh
Case No: RSA No. 179 of 2003

Sadhu Singh

APPELLANT

Vs

Tilak Raj Dhillon

RESPONDENT

Date of Decision: Dec. 31, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 35, 100
- Contract Act, 1872 - Section 23
- Evacuee Interest (Separation) Act, 1951 - Section 10
- Evidence Act, 1872 - Section 116, 34, 65, 92, 92(1)
- Transfer of Property Act, 1882 - Section 76(a)

Hon'ble Judges: Rajiv Sharma, J

Bench: Single Bench

Advocate: Bhupinder Gupta, Sr. Advocate and Neeraj Gupta, Advocate for the Appellant;
Ajay Kumar, Sr. Advocate and Dheeraj K. Vashista, Advocate for the Respondent

Judgement

Rajiv Sharma, J.

This regular second appeal is directed against the judgment and decree of the learned District Judge, Una, H.P. dated 31.01.2003, passed in Civil Appeal No. 22 of 2000.

2. Key facts, necessary for the adjudication of this regular second appeal are that the appellant-plaintiff (hereinafter referred to as the plaintiff) has filed suit for possession by way of redemption of the shops consisting of two rooms situated in Una town detailed in head-note of the plaint on payment of Rs. 4000/- principle mortgage money. According to the averments made in the plaint, Wattan Singh alias Hari Kishan Singh son of Hakam Singh, the father of the plaintiff, was owner in possession of shops A & B. The shops were situated in Kh. No. 1039/1 entered in jamabandi for the year 1976-77. The father of the plaintiff has mortgaged with possession the shops to defendant No. 1, vide registered mortgage deed dated

4.8.1981 for consideration of Rs. 4000/-. The mortgagor has not authorized the mortgagee to induct defendant No. 2 as tenant over the disputed shop-A vide rent deed dated 6.8.1981 Ext. P-2 and also inducted defendant No. 3 as tenant over shop-B vide rent deed dated 3.9.1982, Ext. P-3. The plaintiff succeeded to the estate of his father. He requested the defendants several times to deliver the possession of the shops in dispute to him through redemption.

3. Defendant No. 1 has filed written statement. Defendant No. 1 admitted that Wattan Singh, father of the plaintiff had mortgaged with possession, two shops to him for a consideration of Rs. 4000/- vide registered deed dated 4.8.1981 Ext. P-4. He also admitted to have rented out shop "A" to the defendant No. 2 on payment of Rs. 600/- per month vide rent deed dated 6.8.1981. Defendant No. 2 did not pay the rent to him so he had filed suit for recovery of rent. He also admitted to have inducted defendant No. 3 as tenant over shop "B" on monthly rent of Rs. 700/-. Defendant No. 3 has not paid the rent from March 1987, so he had filed civil suit for recovery of rent.

4. The suit was contested by defendants No. 2 & 3. According to defendant No. 2, he was tenant of shop on payment of monthly rent of Rs. 600/- under the plaintiff. The shop was taken on rent by defendant No. 2 from late Sh. Wattan Singh on monthly rent of Rs. 150/-. Thereafter, Wattan Singh constructed the pucca shop and it was let out to defendant No. 2 on monthly rent of Rs. 600/-. He has been paying the rent previously to Wattan Singh and after his death to the plaintiff Sadhu Singh. Similarly, defendant No. 3 stated that he had taken one shop from Wattan Singh on payment of rent of Rs. 700/-. He has been paying rent to Wattan Singh and after his death to the plaintiff Sadhu Singh. The plaintiff's father was not issuing receipts to them. The father of the plaintiff had obtained their signatures on documents purporting to be rent note in favour of Tilak Raj defendant No. 1 in the month of September/August, 1981. They have never paid any rent to defendant No. 1.

5. Replication was filed to the written statement filed by defendants No. 2 & 3. The trial Court framed the issues on 5.12.1990. The learned Sub Judge, Ist Class, Una dismissed the suit on 29.12.1999. The plaintiff, feeling aggrieved by the judgment and decree dated 29.12.1999, filed an appeal before the learned District Judge, Una. The learned District Judge, Una also dismissed the same on 31.1.2003. Hence, this regular second appeal.

6. The regular second appeal was admitted on 14.8.2003 on the following substantial question of law:

"1. Whether the judgment and decrees of the two Courts below are vitiated on account of misreading and misunderstanding of the pleadings, misconstruing and misapplication of correct proposition of law on the facts and in the circumstances of the case?"

7. Mr. Bhupinder Gupta, learned Sr. Advocate, on the basis of the substantial questions of law framed, has vehemently argued that both the Courts below have not correctly appreciated the oral as well as documentary evidence on record. According to him, both the courts below have misapplied the provisions of Section 23 of the Indian contract Act. According to him, defendants No. 2 & 3 were totally stranger to the mortgage. The rent note was executed by defendants No. 2 & 3 with defendant No. 1 on 6.8.1981 and 3.9.1982, respectively and the same were not against the public policy. He also contended that the courts below have overlooked the provisions of Section 116 of the Indian Evidence Act. He lastly contended that the defendants No. 2 & 3 were inducted tenants by the mortgagee. On the other hand, Mr. Ajay Kumar, Advocate, has supported the judgments and decrees passed by both the Courts below.

8. I have heard the learned Senior Advocates for the parties and gone through the records of the case carefully.

9. The plaintiff has appeared as PW-8. According to him, his father was in possession of the disputed shops. He mortgaged it with possession with defendant No. 1 vide mortgage deed Ext. P-4 on the condition that the mortgagee would not induct tenant over those shops. But despite that the mortgagee inducted defendants No. 2 & 3 as tenants over the disputed shops. The plaintiff also proved Jamabandi for the year 1976-77 as Ext. P-6. PW-1 Surjit Singh, Draftsman has proved site plan Ext. P-1. PW-2 Maggar Ram was a witness to rent note dated 6.8.1981. He proved the rent note Ext. P-2. PW-3 Kalia Ram was also an attesting witness to rent note Ext. P-2. PW-4 Vijay Puri testified that his father Naranjan Dass was a Document Writer. He was acquainted with the handwriting of his father. He proved the rent note dated 3.9.1982 as Ext. P-3, which was in the handwriting of his father. He deposed that this rent note was entered in the Register maintained by his father at Sr. No. 520 dated 3.9.1982. He also proved mortgage deed dated 4.8.1981 scribed by Ganpat Ram, Document Writer. PW-5 Joginder Singh was a witness to rent note Ext. P-3, vide which Tilak Raj mortgagee let out one disputed shop to defendant No. 3 on payment of rent of Rs. 700/- per month. PW-6 Kishan Chand identified the signatures of attesting witness Mansha Ram, Nambardar on mortgage deed Ext. P-4. He was acquainted with the handwriting of Mansha Ram. PW-7 Jagdish Ram testified that his father Durga Dass was a draftsman who has died. He proved site plan Ext. P-5 which was prepared by his father Durga Dass. PW-9 Pardeep Kumar brought the summoned record from Canara Bank, Una. He has proved copy of cheque as Ext. PW-9/A which was issued by defendant No. 2. PW-10 Vijay Puri, Stamp Vendor testified that as per entry at Sr. No. 1730 dated 31.8.1982, he had sold a stamp paper of Rs. 120/- to Manohar Lal son of Dharam Chand. He proved the entry at the back of the stamp paper as Ext. PW-10/A. He also proved entry in his register as Ext. PW-10/B. PW-12 Shanti Lal, Stamp Vendor deposed that he had sold a stamp paper of Rs. 105/- on 6.8.1981 to Bal Krishan son of Ram Prakash for execution of rent deed. He proved his entry on the back of the stamp as Ext. PW-12/A and Ext.

10. Defendant Tilak Raj has appeared as D.W.-1. He deposed that the shops were mortgaged to him vide mortgage deed Ext. P-4. He has rented out one mortgaged shop to defendant No. 2 vide rent note Ext. P-2 and also had let out one mortgaged shop to defendant No. 3 vide rent note Ext. P-3. D.W.-2 Chaman Lal deposed that he had taken one shop on rent from the plaintiff in the year 1985. He left that shop after about two months. D.W.-3 Bal Krishan, Executive Officer, M.C. Una has proved the certified copy of assessment as Ext. D.W.-3/A. D.W.-4 Kishan Singh deposed that he had taken one shop on rent from Wattan Singh on payment of monthly rent of Rs. 600/-. D.W.-5 Manjit Singh deposed that he was running a shop at Una which was owned by plaintiff Sadhu Singh. The said shop was mortgaged with Nirmal Singh but he was paying rent of that shop to plaintiff Sadhu Singh @ Rs. 900/- per month. D.W.-6 Mohinder Pal deposed that the plaintiff had mortgaged one shop with him for Rs. 1000/-, but he was paying rent of that shop to him @ Rs. 300/- per month. D.W.-7 Rakesh Kumar deposed that on 12.4.1979, Bal Krishan had taken loan of Rs. 2000/- from the bank. He stated that the loan had been repaid by the loanee and the records have been destroyed. D.W.-8 Jodha Singh deposed that previously there were two "khokhas" at the site of shops in dispute and defendant No. 2 was running Cigarette shop in one "khokha" and Gurdial Singh was running a vegetable shop in another "khokha". He further stated that Gurdial Singh left the "khokha" and defendant No. 3 Manohar Lal took that "khokha" on rent from the plaintiff in the year 1981-82. D.W.-10 Gurdial Singh deposed that he was running a vegetable shop in a "khokha" which he had taken on rent from the father of the plaintiff in 1979-80. D.W.-11 Sohan Lal has proved the certified copy of mortgage deed dated 4.8.1981 as Ext. D.W.-11/A and other mortgage deeds. D.W.-12 R.S. Chauhan, has proved mortgage deeds dated 27.12.1977 as Ext. D.W.-12/A and D.W.-12/B. Roop Lal D.W.-13 has proved GPF statement of the plaintiff as Ext. D.W.-13/A. D.W.-14 Rakesh Kumar has proved copy of inquiry report Ext. D.W.-14/A and also assessment order dated 31.3.1979 Ext. D.W.-14/B. Defendant No. 2 has appeared as D.W.-15. According to him, he has taken the "khokha" (one shop) on 5.1.1979 on payment of rent of Rs. 150/- per month from Wattan Singh. He was running Cigarette-Pan Shop in place of "khokha" in the year 1981 and rent of his shop was increased to Rs. 600/- per month. He has paid rent to Wattan Singh @ Rs. 600/- per month and after his death to the plaintiff. The plaintiff and his father never issued any receipt of rent to him. In the year 1981, his signatures were obtained by the plaintiff on the pretext that those were required for income tax purpose. The contents of the documents on which his signatures were obtained was never read over and explained to him. He has never taken shop on rent from Tilak Raj and he was not aware that the shop was mortgaged with defendant No. 1-Tilak Raj. Defendant No. 3 has appeared as D.W.-16. According to him, he has taken shop in dispute from the plaintiff in the year 1982 on payment of rent of Rs. 700/- per month. The rent receipts were never issued to him by plaintiff Sadhu Singh.

11. What emerges from the facts enumerated hereinabove is that Wattan Singh mortgaged the shops with defendant No. 1 on 4.8.1981 vide Ext. P-4, deed. He has directed the mortgagee not to induct the tenants. Defendants No. 2 & 3 were inducted as tenants vide rent deed dated 6.8.1981 and 3.9.1982. It has come on record that the mortgage deed was executed in accordance with law. The plaintiff has duly proved the mortgage deed and the rent notes, Ext. P-2 and Ext. P-3. The plea raised by defendants No. 2 & 3 that their signatures were obtained fraudulently cannot be believed. The rent has never been paid to Wattan Singh. Defendant No. 1 was constrained to file suit for recovery of rent against defendants No. 2 & 3. The learned Courts below have come to the wrong conclusion that Ext. P-2, P-3 and P-4 were contrary to provisions of Section 23 of the Indian Contract Act, 1872. The courts below have come to the wrong conclusion that Ext. P-2, P-3 and P-4 were sham transactions to defeat the provisions of H.P. Urban Rent Control Act, 1987. Defendants No. 2 & 3 were totally strangers to mortgage deed dated 4.8.1981. There is no bar under the law that the mortgagor could not mortgage the property with his relatives. The relationship of tenant with the mortgagee would come to an end after redemption. Merely that the mortgage money was Rs. 4000/- would not make Ext. P-4 deed illegal. The Courts below have also not correctly appreciated Section 116 of the Indian Evidence Act, 1872. The tenant could not deny the relationship with defendant No. 1. The defendants No. 2 & 3 have voluntarily signed the documents Ext. P-2 and P-3 dated 6.8.1981 and 3.9.1982, respectively.

12. Their lordships of the Hon'ble Supreme Court in the case of [The All India Film Corporation Ltd., and Others Vs. Sri Raja Gyan Nath and Others,](#) have held that the termination of mortgagee interest terminated the relationship of landlord and tenant and it could not, in the circumstances, be said to run with the land. Their lordships have further held that there being no landlord and no tenant, the provisions of the Rent Restriction Act, could not apply any further. It has been held as follows:

"11. The respondents attempted to argue that the Rent Restriction Act defines landlord and tenant with reference to the payment of rent. A landlord means a person entitled to receive rent and a tenant means any person by whom or on whose account rent is payable. These definitions apply if the tenancy, either real or statutory, could be said to survive after the termination of the mortgage. The scheme of s. 10 of the Evacuee Interest (Separation) Act, 1951 is that in the case of a mortgagor or a mortgagee, (a) the Competent Officer may pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the property, or (b) the Competent Officer may sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof, or (c) the Competent Officer may partition the property between the mortgagor and the mortgagee proportionate to their shares, or (d) adopt a combination of any of these measures. It is obvious that method (c) was followed. The property was sold and the mortgage was satisfied. This led to the extinction of the mortgagees' interest

and the purchaser acquired full title to the property. The termination of the mortgagee interest terminated the relationship of landlord and tenant and it could not, in the circumstances, be said to run with the land. There being no landlord and no tenant, the provisions of the Rent Restriction Act could not apply any further. Nor could it be said that when the mortgagor cancelled the rent note and authorised the mortgagee to find any other tenant, the intention was to allow expressly a tenancy beyond the term of the mortgage. In this view of the matter the decision of the High Court and the court below cannot be said to be erroneous."

13. Their lordships of the Hon^{ble} Supreme Court in the case of [Sachmal Parasram Vs. Ratnabai and Others,](#), have held that tenancy created by mortgagee in possession does not survive the termination of the mortgagee's interest. The termination of the mortgagee's interest terminates the relationship of landlord and tenant. There being no landlord and tenant, the tenant cannot claim the protection of Rent Control Legislation (in this case M.P. Accommodation Control Act, 1961). It has been held as under:

"[4] The points raised by Mr. Naunit Lal are concluded by the decision of this Court in [The All India Film Corporation Ltd., and Others Vs. Sri Raja Gyan Nath and Others,](#) which decision was unfortunately not brought to our notice during the course of the hearing. In this case the facts were similar. A mortgagee in possession had let out the premises, which was a cinema house, and the lessee had further sublet the same, to sub-lessees. On redemption the purchaser of the interest of the mortgagor filed a suit for possession of the property from the head lessee and the sub-lessees. The sublessees claimed the benefit of East Punjab Urban Rent Restriction Act, 1949 (3 of 1949). In this High Court three points were raised. One of the points urged was whether the defendants were protected by the East Punjab Urban Restriction Act. This Court first considered the question; Did the tenancy create by the mortgagee in possession survive the termination of the mortgagee interest so as to be binding on the purchaser? This Court concluded:

"The relationship of Lessor and Lessee cannot subsist beyond the mortgagee's interest unless the relationship is agreed to by the mortgagor or a fresh relationship is recreated. This the mortgagor or the person succeeding to the mortgagor's interest may elect to do. But if he does not, the lessee cannot claim any rights beyond the term of his original lessor's interest. These propositions are well-understood and find support in two rulings of this Court in [Mahabir Gope and Others Vs. Harbans Narain Singh and Others,](#) and [Asa Ram and Another Vs. Mst. Ram Kali and Another,](#)."

[7] This Court then examined the question whether the tenants could take advantage of the provisions of the East Punjab Urban Rent Restriction Act, 1949. The Court answered the question in the following words:

"The respondents attempted to argue that the Rent Restriction Act defines landlord and tenant with reference to the payment of rent. A landlord means a person entitled to receive rent and a tenant means any person by whom or on whose account rent is payable. These definitions apply if the tenancy, either real or statutory, could be said to survive after the termination of the mortgage..... The termination of the mortgagee interest terminated the relationship of landlord and tenant and it could not, in the circumstances, be said to run with the land. There being no landlord and no tenant, the provisions of the Rent Restriction Act would not apply any further."

14. In the case of [Om Prakash Garg Vs. Ganga Sahai and Others,](#), their lordships of the Supreme Court have held that after the redemption of mortgage, tenant is not entitled to protection of Rent Act. It has been held as under:

"[1] After hearing learned counsel for the appellant, we are satisfied that the order passed by the High Court does not call for any interference. The appellant who claims to be a tenant of the mortgagee Narain Prasad resisted the application made by the respondent-decree-holder Ganga Sahai under Order XXI, R. 35 of the Code of Civil Procedure, 1908 pleading inter alia that being a tenant of the mortgagee he was entitled to the protection of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. That objection of his was not sustained by the Executing Court and it accordingly issued a warrant of possession in favour of the decree-holder. The appellant went up in appeal against the order of the executing Court. The Additional District Judge differed from the executing Court and held that the appellant being a tenant inducted into possession by the mortgagee was entitled to the protection of the Act and therefore could not be evicted in execution of the final decree for redemption, and further held that the respondent was only entitled to symbolical possession. Aggrieved, the respondent preferred an appeal to the High Court. By the order under appeal, a learned single Judge following the decision of this Court in [Sachmalal Parasram Vs. Ratnabai and Others,](#) held that the lease was not an act of prudent management on the part of the mortgagee Narain Prasad within the meaning of S. 76(a) of the Transfer of Property Act, 1882 and therefore the alleged lease could not subsist after the extinction of the mortgage by the passing of the final decree for redemption and thus the appellant could not take advantage of the Act as there was no subsisting lease in his favour. After hearing the learned counsel, we are not persuaded to take a different view than the one reached by the High Court."

15. Their lordships in the case of [Ishwar Dass Jain \(Dead\) Thr. Lrs. Vs. Sohan Lal \(Dead\) By Lrs.,](#), have dealt in detail Sections 34, 65 and 92 of the Indian Evidence Act. It has been held as follows:

".....The facts of the case of Ishwar Dass Jain were that the plaintiff had mortgaged the entire shop and his 5/6th share therein and gave possession of the whole shop to the defendant for Rs. 1,000/-. He filed a suit for redemption and

recovery of possession from the defendant. The mortgage deed stated that on redemption possession had to be delivered back to the mortgagor. On 1.2.1981 the plaintiff demanded production of the deed and possession on redemption. The defendant did not comply. The defence put up by the defendant was that there was no relationship of mortgagor and mortgagee between the parties, but that the relationship was as landlord and tenant. It was also alleged by the defendant that plaintiff was a man of substance and very rich and there was indeed no occasion to mortgage the same for a petty sum. Their Lordships have framed the following points for consideration:

- (1) Whether the High Court can interfere under Section 100, CPC (as mentioned in 1976) with the findings of fact arrived at by the lower appellate Court if vital evidence which could have led to a different conclusion was omitted or if inadmissible evidence was relied upon which if omitted, could have led to a different conclusion?
- (2) Whether on the facts of the case, the mortgage was proved by the plaintiff by production of a certified copy of the deed?
- (3) Whether Section 92(1) of the Evidence Act could be a bar for proving a document to be a sham document?
- (4) Whether the Exs. D2 to D5 were only extracts from account books and could not be treated as account books for purposes of Section 34 of the Evidence Act and were not admissible?
- (5) Whether the lower Courts had omitted vital evidence from consideration?
- (6) Whether the mortgagee who got possession of the entire property under the deed of mortgage could be permitted to deny the title of the mortgagor either wholly or partly?
- (7) What relief?

[12] Their Lordships of the Hon^{ble} Supreme Court have held as under:

The point here is whether oral evidence is admissible under Section 92(1) of the Evidence Act to prove that a document though executed was a sham document and whether that would amount to varying or contradicting the terms of the document. The plea of the defendant in the written statement was that mortgage deed though true was a sham document not intended to be acted upon and that it was executed only as a collateral security. It was pleaded that the plaintiff demanded that a mortgage deed be executed by defendant as "collateral security in order to guarantee that the shop will be vacated by the defendant whenever demanded by the plaintiff" and that this was done to circumvent the rent control law. It was said that the alleged transaction of mortgage was a sham transaction, executed only with aforesaid object. The consideration of Rs. 1,000/- "was only in the nature of a

collateral security or "pagri"." The plaintiff was and is a rich man and there was no occasion for him to mortgage his property. It was further pleaded:

The plaintiff thus demanded Rs. 1,000/- from the defendant by way of security and asked the defendant to thumbmark some writing to arm the plaintiff with a right to get the shop vacated according to his sweet will. The defendant who was in dire necessity of the shop, had to agree on the said condition put forward by the plaintiff."

But the question is whether on the facts of this case, the reason given by the defendant in his evidence for treating the mortgage as a sham document, can be accepted.

The reason given by the defendant appears to us rather curious. One can understand a debtor incurring a debt and executing a deed as collateral security. There is no such situation here. Further, if it is a deed of collateral security by defendant, then the defendant would have had to execute a deed in favour of the plaintiff and not vice-versa. Here the plaintiff-owner has mortgaged his shop to the defendant, as security. The plea and evidence of collateral security offered by the defendant appears to us not to fit into a situation where the plaintiff has executed the mortgage. Obviously, if the plaintiff wanted to secure something by way of an additional security from the defendant, the normal course would have been to ask the defendant to give such a security and to for the plaintiff to execute a mortgage. Thus the reason mentioned and evidence given by the defendant as to why a sham document was executed falls to the ground.

Now under Section 34 of the Evidence Act, entries in "account books" regularly kept in the course of business are admissible though they by themselves cannot create any liability. Section 34 reads as follows:

Section 34. Entries in books of account when relevant.-Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

It will be noticed that sanctity is attached in the law of evidence to books of account if the books are indeed "account books i.e. in original and if they show, on their face, that they are kept in the "regular course of business". Such sanctity, in our opinion, cannot attach to private extracts of alleged account books where the original accounts are not filed into Court. This is because, from the extracts, it cannot be discovered whether accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts are in the form of a book with continuous page numbering. Hence, if the original books have not been produced, it is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business.

The judgments of all the three Courts therefore are set aside. The suit is decreed for redemption as follows. The appellants are entitled to redeem the usufructuary mortgage and get possession of the suit shop from the defendant, if the appellants deposit in the trial Court, within three months from today, the sum of Rs. 1,000/-. There is no need to deposit any interest inasmuch as according to the deed, the defendant was to be in possession and interest was to be set-off against the occupation of the shop. We direct that on such deposit of Rs. 1,000/-, the defendant will produce the mortgage deed into Court for cancellation. In case he does not produce the deed, within the said period, it will be deemed that the mortgage is cancelled. On such deposit of Rs. 1,000/- as aforesaid, the defendant shall restore possession to the appellants. On such restoration of possession, defendant shall be entitled to withdraw the sum of Rs. 1,000/-. In case the defendant does not surrender possession as aforesaid, it will be open to the appellants to seek possession by way of execution."

16. The ratio of Ishwar Dass Jain's case (supra) was relied upon by this Court in [Shri Shiv Charan Verma Vs. Shri Shiv Parshad,](#), titled as Shri Shiv Charan Verma vrs. Shri Shiv Parshad.

17. In the case of [Joginder Singh and another Vs. Smt. Jogindero and others,](#), their lordships of the Hon"ble Supreme Court have held that tenant cannot deny the title of land lord. It has been held as follows:

"6. Late Surain Singh and Respondent Bur Singh did not seriously dispute that they were not tenants under Smt. Soman in respect of the land in dispute and adduced no evidence in that behalf. On the contrary Khasra Girdawari Ext. P.6 clearly indicated that the deceased Surain Singh (who is represented by his legal representatives in this appeal) and Bur Singh were tenants under Smt. Soman with regard to the land in suit. This being the position the tenants could not be permitted to deny or dispute the title of the owner. This is a settled view that having regard to the provisions of Section 116 of the Evidence Act no tenant of immovable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny the title of the owner of such property. In this connection it would be relevant to make a reference to the decision of this Court in [Atyam Veerraju and Others Vs. Pechetti Venkanna and Others,](#) wherein this Court, with reference to the decision of Privy Council took the view as under:--

"A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord".

18. In the case of [Janta Travels Pvt. Ltd. Vs. Raj Kumar Seth,](#), the learned Single Judge has held that it is not open to the tenant to dispute the title of the landlord in a case where a lease deed is duly executed and proved on the record. It would not be open to the tenant to advance pleas contrary to the spirit of the agreement.

19. In the case of Thakar Singh vrs. Sh. Mula Singh, reported in 2014 (2) RCR (Rent) 371, their lordships of the Hon"ble Supreme Court have held that after redemption tenants of mortgagee do not become tenants of mortgagor even though mortgagor received rent from the tenants.

20. The substantial question of law is answered accordingly. The Regular Second Appeal is allowed. The judgments and decrees passed by both the Courts below are set aside. The suit is decreed for redemption. The plaintiff is held entitled to redeem the mortgage and get possession of the suit shops from defendants No. 2 & 3 if the plaintiff deposits a sum of Rs. 1500/-, in the trial Court, within three months from today. Thereafter, on such deposit of Rs. 1500/-, the defendant No. 1 will produce the mortgage deed before the Court for cancellation. Immediately on such deposit, as stated hereinabove, the defendants No. 2 & 3 shall hand over the vacant possession of the shops to the plaintiff.