
(2016) 08 SHI CK 0037

High Court of Himachal Pradesh

Case No: RSA No. 101 of 2009

Milkhi Ram

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: Aug. 8, 2016

Acts Referred:

- Specific Relief Act, 1963 - Section 34, Section 38

Citation: (2016) AIR(HP) 215 : (2017) 1 CivCC 752

Hon'ble Judges: Mr. Sandeep Sharma, J.

Bench: Single Bench

Advocate: Mr. Rajnish K. Lall, Advocate, for the Appellants; Mr. Rupinder Singh Thakur, Additional Advocate General, for the Respondent No. 1; Mr. Diwakar Dev Sharma, Advocate, for the Respondent Nos. 2 to 4

Final Decision: Dismissed

Judgement

Sandeep Sharma, J.(Oral) - Instant regular second appeal filed under Section 100 of CPC is directed against the judgment and decree dated 27.11.2008, passed by the learned Additional District Judge, Bilaspur, HP, in Civil Appeal No. 31/13 of 2006/2005, affirming the judgment and decree dated 28.6.2005, passed by learned Civil Judge, (Sr. Div.) Ghumarwin, District Bilaspur, H.P. in Case No. 41/1 of 2004/96, whereby suit of the appellant-plaintiff (hereinafter referred to as "the plaintiff") was dismissed and he was not held entitled for the relief of declaration and injunction.

2. Briefly stated facts as emerge from the record are that plaintiff filed suit for declaration to the effect that he is non-occupancy tenant with defendant No. 5-Janki Devi (stands deleted) on the basis of rent on the land measuring 14.4 bighas comprised in khasra No. 93 khewat/Khatoni No.9/9 situated in village Dharwara, Pargna Tiun, Tehsil Ghumarwin, District Bilaspur, H.P. (in short "the suit land") and revenue entries to the contrary are illegal. Plaintiff also sought declaration that the gift deed executed by Janki Devi in favour of defendant No. 2 and mutation attested

on the basis of same on 9.2.1995 by A.C. 2nd Grade Ghumarwin may also be declared illegal. In the aforesaid background, plaintiff sought relief of permanent prohibitory injunction and in alternate for possession.

3. Perusal of the plaint suggests that plaintiff claimed himself to be owner in possession of the suit land being non-occupancy tenant. He alleged that Janki Devi, who was his real "Mausi" and her husband was his Uncle "Tau". It is also averred in the plaint that after death of husband of Janki Devi, since there was nobody to look after her, she inducted father of plaintiff orally as non-occupancy tenant over the suit land on payment of 1/4th of the produce half yearly ending with crop session in October and May. It is also contended in the plaint that father of the plaintiff expired in year, 1990 and thereafter, plaintiff succeeded him on the basis of natural succession and since then, he is in possession of the suit land. Plaintiff also contended that defendants taking undue advantage of her old age, executed gift deed in favour of defendant No. 2 (The Secretary, H.P.B.S.E.) with the intention to raise construction over the part of the suit land. Plaintiff also objected the execution of gift deed, if any, before A.C., 2nd Grade, Ghumarwin on 28.11.1994 at the time of attestation of mutation on the basis of gift deed. Plaintiff also alleged that possession was not transferred to defendant No. 2 and defendant No. 5-Janki Devi did not execute any gift deed, which is result of fraud, mis-representation and undue influence. Plaintiff also averred in the plaint that defendant No. 2 has neither accepted the gift deed nor any person, on his behalf accepted the possession. Plaintiff also stated in the plaint that building of Primary School Dharwala is at a distance of 200/250 metres from the suit land and as such, question of acquiring suit land does not arise. Plaintiff in alternate prayed that if he is not held to be non-occupancy tenant, then he may be held entitled to be in possession over the suit land by way of tacking from the time of his father.

4. Defendants No. 1 to 4 by way of filing reply refuted the claim put forth on behalf of the plaintiff. Since Janki Devi failed to appear and contest the suit land, she was proceeded ex-parte, however, record reveals that subsequently, she died and her name was ordered to be deleted from the array of defendants on the application having been moved on behalf of the plaintiff. Defendants No. 1 to 4 while taking objection regarding maintainability, locus-standi, estoppel, valuation, jurisdiction, non-joinder and mis-joinder of necessary parties and cause of action refuted the case of the plaintiff on merit also in to. Defendants specifically denied that plaintiff is owner in possession over the suit land as non-occupancy tenant. Defendants set up a case that Janki Devi executed a gift deed in favour of defendant No. 2 gifting 4 bighas of land out of the suit land bearing khasra No. 93/1 and Education Department is in possession of the suit land as owner. Defendants also stated that Janki Devi was exclusive owner in possession of the suit land and at no point of time, after the death of her husband, father of the plaintiff was inducted as non-occupancy tenant. Defendants also denied that plaintiff succeeded to estate of Janki Devi and his father came in possession of the suit land rather, defendants

stated that Janki Devi voluntarily executed gift deed in favour of defendants.

5. Plaintiff by way of replication to the written statement while denying the case of the defendants reiterated averments contained in the plaint. He also stated that Janki Devi was Paradanaseen and illiterate lady. Learned trial Court on the basis of evidence adduced on record dismissed the suit of plaintiff and declined the relief of declaration and injunction, as was prayed for. Learned trial Court further held that plaintiff is not non-occupancy tenant over the suit land.

6. Being aggrieved and dis-satisfied with the aforesaid judgment and decree passed by the learned trial Court dated 28th June, 2005, the plaintiff approached the court of learned Additional District Judge, Ghumarwin, District HP, by way of appeal under Section 96 of CPC, which was also dismissed vide judgment and decree dated 27.11.2008. Hence, this second appeal before this Court.

7. This Court while admitting the instant appeal on 5.7.2010, framed following substantial question of law:-

"1. Whether the Courts below have committed error while appreciating the oral as well as documentary evidence on record?"

8. Mr. Rajnish K. Lall, counsel appearing on behalf of the appellant-plaintiff vehemently argued that judgments passed by both the courts below are perverse and based on mis-reading of oral as well as documentary evidence and as such, same deserves to be quashed and set-aside. Mr. Lall argued that both the courts below have fallen in grave error in not appreciating that plaintiff was in possession of property from the time of his father and succeeded to the tenancy rights and acquired property rights in the land. Mr. Lall vehemently contended that bare perusal of the evidence adduced on record by the plaintiff suggests that courts below have drawn wrong inference from the facts placed on record and relied upon inadmissible evidence led on record by the defendants. It is also contended on behalf of the plaintiff that once it was specifically alleged in the plaint that alleged gift was result of fraud and misrepresentation and undue influence, onus was upon the defendants to prove that defendant No. 5- Janki Devi had validly executed gift deed in their favour. During arguments having been made on behalf of the plaintiff, Mr. Lall, made this Court to travel through the statements given by plaintiff witnesses to demonstrate that plaintiff's father was inducted as non-occupancy tenant by late Janki Devi. He also stated that alleged gift of 4 bighas of land was never proved on record, and learned courts below failed to acknowledge affidavit Ext. PW4/A duly executed by defendant No. 5, wherein she categorically stated that she had only gifted land to the extent of four biswas. While concluding his arguments, Mr. Lall forcefully contended that it stands established on record that Gift Ext. DA was illegal, null and void and could not be acted upon and as such, judgments passed by both the courts below deserve to be quashed and set-aside. Apart from above, Mr. Lall also stated that both the courts below miserably failed to

take note of the fact that there could not be valid gift without delivery of possession and as such, possession having not been proved/delivered and the gift if any, could not be accepted and he prayed for setting aside of judgments passed by the courts below.

9. On the other hand, Mr. Rupinder Singh Thakur, Additional Advocate General, representing respondents No. 1 and Mr. Diwakar Dev Sharma, Advocate, for respondents No.2 to 4, strenuously argued that judgments passed by both the courts below are based upon correct appreciation of evidence adduced on record by the parties to lis and calls for no interference, whatsoever, of this Court. Mr. Thakur vehemently argued that both the courts below have returned concurrent findings on facts as well as law and as such, this Court has very limited scope of re-appreciating of evidence. Mr. Thakur vehemently contended that it stands duly proved on record that defendant No. 5 Janki Devi had executed 4 bighas land to the defendants and as such, plaintiff cannot be allowed to take undue advantage of affidavit Ext. PW4/A allegedly executed by Janki Devi because none of the plaintiff witnesses has specifically stated that aforesaid affidavit was executed by her in their presence. During arguments, Mr. Thakur, made this Court to travel through the statements of plaintiff witnesses as well as defendants witnesses to demonstrate that none of the plaintiff witnesses has been able to prove that plaintiff was inducted as non-occupancy tenant by Janki Devi after the death of her husband. He also invited attention of this Court to the document Ext. PW4/A to demonstrate that defendant No. 5-Janki Devi had executed gift deed in favour of defendants, where she herself admitted the factum of gifting suit land in favour of defendants. In the aforesaid background, respondents prayed for dismissal of the present appeal being devoid of any merit.

10. I have heard learned counsel for the parties and gone through the record.

11. Now this court solely with a view to answer the substantial question of law, as reproduced above, would be critically analysing the evidence led on record by the respective parties to ascertain whether judgments passed by the courts below are perverse or not. In the present case, plaintiff claimed that his father was inducted as non-occupancy tenant by Janki Devi after death of her husband and gift deed executed by Janki Devi in favour of defendant No. 2 is illegal, void and is a result of fraud and undue influence and revenue entries based upon the same are also incorrect, whereas defendants claimed that Janki Devi executed gift deed in favour of defendants as a result of which, they have become owner of the suit land as per gift deed Ext. DX.

12. Plaintiff with a view to prove its case examined as many as six witnesses and himself appeared as PW3 and stated that his father was inducted as non-occupancy tenant over the suit land by defendant No. 5 and since then, were paying 1/4th of the crop as rent. It has also come in the statement that after death of Janki Devi, he has become owner of the suit land. Plaintiff further stated that Janki Devi told him that

she had only gifted about four biswas of land and gift deed of four bighas was wrongly prepared. Plaintiff also stated that Janki Devi had executed affidavit Mark-X (Ext. PW4/A) in this regard. Plaintiff specifically stated that defendants are not in possession of the suit land as the school is about 200 to 250 meters away from the suit land. However, in his cross-examination, he denied that Janki Devi during her life time had executed a gift deed of four bighas of land in favour of the Education department on 15.6.1994 and possession was delivered. He also denied that suit land is adjoining to the land of school. In his cross-examination, he also denied that he had not produced any receipt of the rent. It has also come in his statement that Janki Devi was his real aunt (Tai) and he succeeded to her estate on the basis of will. He also denied the suggestion put to him that he is not in possession of the suit land.

13. PW-1 Mangat Ram also endorsed the case of PW3 regarding tenancy and payment of rent to Janki Devi. However, in his cross-examination, he was unable to tell khasra numbers of the suit land. He also could not tell whether the suit land was gifted by Janki Devi to the Education Department of the State. He also could not tell as to how much rent and on which date, it was paid.

14. PW-2 Sarwan Singh also stated that plaintiff was non-occupancy tenant of Janki Devi and he was paying 1/4th rent and his father was also a tenant. He also in his cross-examination was unable to disclose whether the suit land is adjoining to Dharbara School or whether Janki Devi had gifted the land to the school on 15.6.1995.

15. PW-4 Budhi Singh Chandel, Advocate, stated that he scribed the affidavit Ext. PW-4/A, however, perusal of aforesaid document suggests that there is nothing on record suggestive of the fact that the aforesaid document was scribed by him. In his cross-examination, he also admitted that he had not scribed this document.

16. PW5 Inder Dev Sharma, Advocate Notary Public, who allegedly attested this affidavit, was unable to state in his cross-examination that who brought Janki Devi to him. Though PW6 Hari Ram Ex. Pradhan stated that he identified Janki Devi before PW5 Inder Dev Sharma, but interestingly PW5 never stated that PW6 identified Janki Devi.

17. Conjoint reading of aforesaid plaintiff witnesses though suggests that plaintiff made an attempt to prove that his father was inducted as non-occupancy tenant over the suit land on the payment of rent, but interestingly, none of the plaintiff witnesses could state something qua the khasra numbers of the suit land. Similarly, none of the plaintiff witnesses stated that suit land was gifted by Janki Devi to Education Department of State. PW3 Milkhi Ram himself stated that Janki Devi had told him that she had only gifted about four biswas of land to the defendants and gift deed of four bighas was wrongly prepared, meaning thereby, plaintiff himself admitted the execution of gift deed. However, by producing affidavit Mark-X (Ext.

PW4/A), plaintiff made an attempt to suggest that only four biswas of land was gifted by Janki Devi in favour of defendants but none of plaintiff witness was able to prove proper execution of Ext. PW4/A. PW-4 who allegedly scribed the execution, nowhere stated that he scribed the document, moreover as has been observed above, there is no mention of this witness being scribe of this document. In his cross-examination, he himself admitted that he had not signed this document. Therefore, courts below have rightly ignored the statement of this witness. Similarly, PW5 who allegedly attested the document was unable to state that who brought Janki Devi to him? Though PW6 Hari Ram stated that he had identified Janki Devi before PW5 but as has been observed that PW5 never stated that PW-6 identified Janki Devi. After perusing the aforesaid plaintiff's evidence adduced on record, this Court is of the view that plaintiff has not been successful in proving that affidavit Mark-X (Ext. PW4/A), was executed by late Smt. Janki Devi, rather careful perusal of the statement made by plaintiff witnesses and Ex. PW4/A compels this Court to draw the conclusion that Janki Devi had executed gift deed Ext. DX in favour of defendants.

18. Apart from above, this Court was unable to lay its hand to any documentary evidence in the shape of jamabandi led on record by plaintiff to prove that after the alleged induction of his father as non-occupancy tenant, he was recorded as same in revenue records, whereas defendants, by way of leading cogent and convincing evidence in the shape of revenue records, have been successful in proving that after alleged gift deed Ext. DX by Janki Devi, they are in possession of the suit land pursuant to the gift deed Ext. DA executed by Janki Devi in favour of defendants.

19. DW-1 Deepa Ram by way of affidavit in his examination-in-chief i.e. Ext. DW-1/A categorically stated that at the relevant time, he was working as Assistant in B.P.E.C. Office Ghumarwin and had taken possession of the suit land comprising khasra No. 93/1 measuring 4-00 bighas on behalf of defendant No.2. He also stated that gift deed was registered. In his cross-examination, he stated that he was called by Tehsildar Ghumarwin for accepting the gift deed on behalf of the department. He stated that DW-6-Jeet Ram Thakur, Advocate had identified Janki Devi.

20. DW2 Prakash Chand, Registration Clerk in Tehsil Officer, also stated in his cross-examination in the form of Affidavit i.e. Ext. DW-2/A that gift deed was registered. In his cross-examination, he also stated that gift deed after registration was returned and copy was retained.

21. DW3 Nathu Ram, also stated in his examination-in-chief in the form of affidavit Ext. DW-3/A that Janki Devi was owner of the suit land and it was in possession of Government Primary School Dharwara, where the students used to sit and play in the ground, which was donated by Janki Devi on 15.6.1994 to the school. In his cross-examination, he stated that he was Patwari at that relevant time and he had prepared the Tatima. He denied the suggestion put to him that plaintiff was in possession of the land of Janki Devi and at the instance of opponents of the plaintiff,

he issued wrong Tatima.

22. DW4 Anmol Singh, filed affidavit Ext. DW-4/A testifying that Janki Devi had donated 4-00 bighas of land in favour of Secretary Education as per registered deed and now the khasra number of the suit land has changed to khasra No. 274/93. In his cross-examination, he admitted that gift deed was not prepared in his presence and he was deposing on the basis of record.

23. DW5 Amar Singh by way of affidavit Ext. DW-5/A stated that possession of the suit land was delivered to the school. It has also come in the statement that plaintiff was not non-occupancy tenant and donor was in exclusive owner in possession over the suit land. In his statement, he stated that plaintiff used to look after the land of the Janki Devi. He denied that he got the gift deed executed on the assurance from the Panchayat that in case of gift, he will be elected as a public representative. He also stated that except the land in possession of the school, the plaintiff is in possession of the land of Janki Devi.

24. DW6 Shri J.R. Thakur, Advocate, also stated by way of affidavit Ext. DW-6/A that Janki Devi executed gift deed and he had identified the donor, and I.D. Sharma, Advocate was witness to the gift deed. In his cross examination, he denied the suggestion that he did not know Janki Devi and nor she executed any gift deed. He denied that he had signed the gift deed at the instance of Jagdish son of Gobind.

25. DW-7 Inder Devi Sharma, Advocate, also stated by way of affidavit Ext. DW-7/A that he was witness to the gift deed executed by Janki Devi, which was voluntary without undue influence, threat, or pressure. In his cross examination, he denied that Janki Devi had not executed the gift deed in his presence nor any person accepted the same.

26. DW8 Kamla Kalia, Head Teacher Government Primary School, also stated by way of filing affidavit Ext. DW- 8/A that suit land comprising khasra No. 93/1 measuring 4-00 bighas was not in non-occupancy tenancy of the plaintiff and it was donated by Janki Devi, which was accepted by DW1 Deepa Ram on behalf of Donee Secretary Education.

She also stated that possession of the gifted land is with the school. In her cross examination, she admitted that possession of the suit land was not delivered in her presence but volunteered that the possession is with them. She also placed on record gift deed. Apart from above, defendants also led on record document Ext. DA and Ext. DC copies of jamabandies for the year 1997-98 and 2002-2003 of the suit land i.e. gifted land in favour of the Education department Ext. DB is the copy of jamabandi for the year 1992-93 i.e. suit land. Ext. DE, Ext. DF, Ext. DG, Ex. T.DJ and Ext. DX are the receipts regarding the sale of grass from the land of the school and deposit of the amount in the Treasury.

27. Close scrutiny of the entire evidence led on record by defendants leaves no doubt that Janki Devi had gifted suit land vide gift deed Ext. DX in favour of defendants and at no point of time, plaintiff was inducted as non-occupancy tenant over the suit land. All the defendant witnesses have been very very candid, specific and straightforward while stating that Janki Devi had executed Gift Deed Ext. DX in favour of defendants. DWs No. 2 to 7 have categorically stated that DW5 executed gift deed in favour of defendants on 15.6.1994, whereas DWs No. 6 and 7 categorically stated that Janki Devi had executed gift deed and they had identified donor, whereas Shri I.D. Sharma, Advocate was witness to the gift deed. DW7 categorically stated that he was witness to the gift deed as executed by Janki Devi and it was voluntary without undue influence, threat or pressure. Similarly, defendants have also led on record evidence in the shape of DW Nos. 2 and 3, who have categorically stated that Janki Devi was owner of the suit land and she had donated the same on 15.6.1994 to the school. Both the aforesaid defendants witnesses have categorically denied in their cross examination that plaintiff was in possession over the land of Janki Devi, rather, DW8 categorically stated that land was donated by Janki Devi, which was accepted by DW2 on behalf of Secretary Education and possession of the gifted land is with the school.

28. After perusing the aforesaid statements having been made by aforesaid DWs, it is ample clear that defendants are in possession of the suit land after execution of gift deed Ext. DX. Besides aforesaid oral evidence, defendants have also placed on record documentary evidence, as have been referred above, suggestive of the fact that pursuant to the gift deed, they were recorded as owner in possession of the suit land. It also stands proved on record that defendants have been selling the grass from the land of the school and deposit the amount in the Treasury, which clearly suggests that defendants are in possession of the suit land.

29. Interestingly, in the present case, PW1 while deposing before the Court stated that he had succeeded to the estate of Janki Devi on the basis of her will but no will whatsoever, was produced by him in support of the aforesaid contention. Though, he claimed his right on the basis of non-occupancy tenancy but as has been observed above, no records, whatsoever, have been led on record to substantiate his aforesaid plea.

30. This Court while hearing the case had an occasion to peruse the documents made available on record. Perusal of gift deed clearly suggests that Janki Devi had executed it in favour of defendants, wherein she gifted four bighas of land comprising khasra No. 93/1. Perusal of Gift Deed further suggests that witnesses (DW Nos. 6 and 7) Jeet Rama Thakur and Inder Dev Sharma, Advocates, have appended their signatures along with Janki Devi. They have categorically stated in their depositions before court below that Janki Devi had signed gift deed in their presence and they had also appended their signatures on the gift deed, whereas plaintiff by placing on record affidavit Ext. PW4-A attempted to demonstrate that

only four biswas of land was gifted by Janki Devi. Interestingly, this affidavit was executed by Janki Devi on 3.2.1996, which was duly attested by Public Notary, Sub Divisional Ghumarwin District Bilaspur H.P. i.e. after filing of the present suit i.e. on 27.1.1996. But admittedly, in the present case, Janki Devi never chose to file any reply. It also remains unexplained at this stage that what prevented Janki Devi herself w.e.f. 15.6.1994 i.e. from the date of execution of gift deed till 3.2.1996 to challenge the gift deed, which was allegedly executed in favour of education department. Moreover, perusal of para-3 of affidavit Ext. PW4/A suggests that gift deed was executed by Janki Devi on 15.6.1994, where she was forced to execute the gift deed of four biswas of land. If contents of para-3 of affidavit are taken to be correct, it falsify the statement given by PW1, where he stated that Janki Devi had told him that she had only gifted about four biswas of land and contents of para-3 of affidavit allegedly executed by Janki Devi itself falsify the case of the plaintiff, wherein he himself admitted that four biswas of land was donated by Janki Devi. Janki Devi in her affidavit stated that on 15.6.1996, her grandson forced her to execute gift deed of second papers and she was forced to execute the gift deed of land, meaning thereby, Janki Devi was not even interested/inclined to give even four biswas of land. This Court is of the view that bare production of this document affidavit Ext. PW4/A itself has demolished the case of the plaintiff, where he himself stated that Janki Devi had executed gift deed of four biswa land in favour of defendants, whereas perusal of affidavit (supra) suggests something else.

31. Plaintiff with a view to prove that Janki Devi had not gifted four bighas of land but had given four biswas vide gift deed Ext. DX, produced PWs 4 to 6 and placed reliance upon the affidavit Ext. PW4/A. Though this Court, after perusing statements given by these aforesaid plaintiff witnesses, is not satisfied/convinced that affidavit Ext. PW4/A was executed by Janki Devi in the presence of aforesaid witnesses, but other wise also, plaintiff has miserably failed to prove the proper execution, if any, of affidavit, which was allegedly executed by defendant No. 5 (Janki Devi) after filing of the suit. At this stage, as has been observed earlier also, It also remained unexplained that what prevented Janki Devi herself w.e.f. 15.6.1994 i.e. from the date of execution of gift deed till 3.2.1996 to challenge the gift deed, which was allegedly executed in favour of education department. This Court cannot loose sight of the fact that Janki Devi never chose to reply to written statement, hence, courts below have rightly concluded that no reliance whatsoever, can be placed upon the document Ext. PW-4/A, which plaintiff has not been able to prove in accordance with law.

32. At this stage, Mr. Lall stated that both the courts below have fallen in grave error by not placing reliance on Ext. PW4/A and in this regard, placed reliance on judgment rendered by the Hon"ble Apex Court in **C. Cheriathan v. P. Narayanan Embranthiri and Ors. 2009 SCC 482 (S.C.)**. The relevant para No. 9 reads as under:-

9. A document, as is well known, must be read in its entirety. When character of a document is in question, although the heading thereof would not be conclusive, it plays a significant role. Intention of the parties must be gathered from the document itself but therefor circumstances attending thereto would also be relevant; particularly when the relationship between the parties is in question. For the said purpose, it is essential that all parts of the deed should be read in their entirety.(See **P.S. Ramakrishna Reddy v. M.K. Bhagyalakshmi & Anr. (2007)(2) Apex Court judgments 231 (S.C.): 2007 (2) Civil Court Causes 304 (S.C.) : (2007) 10 SCC 231**).

33. This Court after perusing the judgment supra, is of the view that facts of the case are not applicable in the present case. No doubt, document must be read in its entirety to gather the intention of parties. In the present case, as has been discussed in detail, the plaintiff has not been able to prove that Ext. PW4/A was executed by defendant No. 5- Janki Devi. Otherwise also, bare reading of para-3 of affidavit Ext. PW-4/A demolishes the case of plaintiff, who himself admitted that she had gifted four biswa of land.

34. This Court sees no irregularity and infirmity, if any, in the judgments passes by the courts below, rather, same are based upon correct appreciation of the evidence available on record. This Court is fully satisfied that both the courts below have very meticulously dealt with each and every aspect of the matter and there is no scope of interference, whatsoever, in the present matter. Since both the Courts below have returned concurrent findings, which otherwise appear to be based upon proper appreciation of evidence. This Court has very limited jurisdiction/scope to interfere in the matter. In this regard, it would be apt to reproduce the relevant contents of judgment rendered by Hon"ble Apex Court in **Laxmidevamma and Others v. Ranganath and Others, (2015)4 SCC 264**, herein below:-

"16. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that plaintiffs have established their right in "A" schedule property. In the light of concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for re-appreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff has earmarked the "A" schedule property for road and that she could not have full fledged right and on that premise proceeded to hold that declaration to plaintiffs" right cannot be granted.

In exercise of jurisdiction under Section 100 C.P.C., concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained."

35. Consequently in view of the detailed discussion made herein above, this Court sees no illegality and infirmity in the judgments and decrees passed by courts below, which otherwise appears to be based upon the correct appreciation of evidence available on record. Substantial question of law is answered accordingly and appeal is dismissed.