(2018) 03 MP CK 0086

Madhya Pradesh High Court (Jabalpur Bench)

Case No: SA OF 1260 OF 2010

Rashid		APPELLANT
	Vs	
Gul Mohammad @ Gulloo Pahalwan		RESPONDENT

Date of Decision: March 20, 2018

Acts Referred:
Civil Procedure Code, 1908 â€" Section 96, 100, Order 3 Rule 1, 2#Madhya Pradesh Accommodation Control Act, 1961 â€" Section 12, 12(1)(f), 13(5)#Indian Evidence Act, 1872 â€" Section 116

Citation: (2018) 03 MP CK 0086

Hon'ble Judges: SUJOY PAUL, J

Bench: Single Bench

Advocate: Shobha Menon, Rahul Choubey, Ashok Lalwani

Final Decision: Dismissed

Judgement

This second appeal filed under Section 100 of the Civil Procedure Code, 1908 (in short `CPC') is directed against the judgment and decree dated

24.09.2010 passed in Regular Civil Appeal No.10-A/2010 whereby the lower appellate court has affirmed the judgment and decree passed in Civil Suit

No.127-A/09 decided on 30.11.2009.

2. The respondent/ plaintiff instituted a civil suit seeking eviction under section 12(1)(f) of M.P. Accommodation Control Act, 1961 (in short `Act of

1961'). The stand of the plaintiff was that Late Abdul Razak, father of present appellant was given the disputed premises on rent which was enhanced

upto Rs.700/- p.m. The plaintiff pleaded that he is owner of the suit premises which is required for his unemployed son Mohd. Zamal, who intends to

carry-out the business of sale of auto parts etc. The eviction was prayed for on the ground that the plaintiff had no other reasonable non-residential

accommodation in the city of Bhopal. The appellants filed the written statement before the court below. They categorically denied that the plaintiff is

the owner of the suit premises. Thereafter, the court below framed the issues, recorded evidence of parties and by judgment and decree dated

31.01.2006 allowed the aforesaid civil suit. Aggrieved, the appellants filed RCA under section 96 of the CPC before the court below. The said appeal

was dismissed on 24.12.2010.

3. Mrs. Shobha Menon, Senior Counsel assisted by ShriRahul Choubey, counsel for the appellants contended that for seeking a decree under section

12(1)(f) of the Act of 1961, the plaintiff was required to establish that he was the landlord as well as owner of the suit property. In view of the

categorical denial in the written statement about ownership of suit premises by the plaintiff, the court below has erred in passing the decree in favour

of the plaintiff. It is further urged that the plaintiff gave power of attorney to his son who, in turn, entered the witness box and deposed on behalf of

plaintiff. Learned Senior counsel argued that no doubt, plaintiff can give such power of attorney to his son but while making statement, the power of

attorney holder could have deposed only about such factual things which were within his knowledge. If any statement of fact was deposed which was

beyond his personal knowledge, such evidence is wholly impermissible and unreliable. It is submitted that admittedly, as per the case of the plaintiff,

the alleged partition on the strength of which plaintiff claimed title of the suit property, took place more than 35 years back whereas the age of the

deponent/ power of attorney holder was less than 35 years on the date of deposition. Thus, the factum of partition could not have been deposed by him

and such deposition is totally untrustworthy. Hence, factum of ownership is not proved. In support of said contention reliance is placed on Janaki Vs.

Indus Ind Bank-2005 (2) SCC 217 and Man Kaur (dead) by Lrs. Vs. Hartar Singh Sangha-2010(10) SCC 512.

4. The next contention of learned Senior Counsel is thatthe plaintiff could not establish the factum of ownership on the suit premises and, therefore,

decree under section 12(1)(f) of the Act could not have been passed. In support of this contention, reliance is placed on the case of Dayal Das Vs.

Rajendra Prasad Gautam-2012(2) MPLJ-460. To elaborate, it is contended that there was no element of admission on the part of the defendants on

the question of ownership of plaintiff on the suit property and, therefore, necessary ingredients of section 12(1)(f) of the Act were not satisfied. It is

submitted that section 116 of the Evidence Act is general provision whereas section 12 of the Act of 1961 is part of special enactment. Section 12 of

the Act has an overriding effect on any other law including Evidence Act. Thus, section 116 of Evidence Act cannot be pressed into service. In

support of this contention, reliance is placed on the case of Rajendra Kumar Mahawar Vs. Smt. Shakuntala Makhanlal Kesarwani-2000(1) MPLJ-44.

Learned Senior counsel, during the course of her arguments, attacked the findings of learned lower appellate court whereby the court below opined

that even if the plaintiff has not filed any partition deed or Will, it will have no adverse impact on his case because in that event, the plaintiff shall be

treated to be a co-owner of the property. The co-owner is entitled to institute a suit as per settled legal position. Criticizing this finding, it is urged that it

was nobody's case and the court below has travelled beyond the record while giving such finding. In other words, the appellate court has carved-out a

new case pertaining to co-ownership of the disputed property by plaintiff which per se was never pleaded by the respondent.

5. Per contra, learned counsel for the respondent supported the judgments passed by the courts below. He submits that the plaintiff did not set-up a

new case of coownership, indeed, it was an alternative way of argument which was advanced and accepted by the lower appellate court. By taking

this court to the statement of appellant No.1, it is argued that appellants are bound by section 116 of the Evidence Act and it cannot be said that

plaintiff was not the landlord and owner of the suit property. In addition, learned counsel for the respondent has taken pains to submit that respondent

is entitled to get the benefit of mesne profit in the present case. The relief relating to mesne profit was claimed in the plaint. The trial court erred in not

granting the said benefit. For the purpose of grant of mesne profit reliance is placed on the case of Gopalkrishna Pillai Vs. Meenakshi AvalAIR 1967

SC-155 wherein the Apex Court held that it is discretion of the court to direct inquiry for deciding the aspect of mesne profit. He also placed reliance

on the case of Fateh Chand Vs. Balkishan Dass-AIR 1963 SC 1405 to contend that the mesne profit must include the element of interest and

compensation. Reference is made to AIR 1977 SC 2270 (Shyam Charan Vs. Sheoji Bhai and another) where the question was whether mesne profit

can be awarded for the period between termination of contractual tenancy and passing of eviction decree.

6. The claim of appellants for grant of mesne profit is based on AIR 1979 Patna-11 (Dwarka Rai and others Vs. Babu Lakshmi Narain Singh and

others), AIR 1985 Bombay-202 (Smt. Purificacao Fernandes and another Vs. Dr. Hugo Vicente de Perpetuo Socorro Andrade Menezes and others)

and judgment of this court reported in 2000(1) MPLJ-547 (Rajendra Kumar Mahawar Vs. Smt. Shakuntala Makhanlal Kesarwani). For the purpose

of determining rate of mesne profit, reliance is placed on the case of Shyamacharan Raghubar Prasad Tiwari Vs. Sheojee Bhai Jairam Chattri and

another AIR 1971 MP-120.(2012)6 SCC 460 (Padmawati Vs. Harijan Sewak Sangh and others) is heavily relied upon to contend that even if no

appeal is preferred by the present appellants against the judgment and decree passed by the trial court, in this second appeal also preferred by the

appellants/ defendants, this court can grant mesne profit. It is streneously contended that in view of judgment of the Supreme Court in the case of

Ramarameshwari Devi and others Vs. Nirmala Devi and others-2011(4) MPLJ-281, the defendant who has put the plaintiff into difficulty, compelled

him to fight a long drawn battle in the corridors of the court must be compensated. Several adjournments were taken by the defendants before the

court below. The cost/ mesne profit must be awarded which should be a deterrent for such unscrupulous litigants.

7. Faced with this, in rejoinder submission, learnedcounsel for the present appellants contended that appellants/defendants preferred the first appeal.

The plaintiff did not prefer any appeal against the portion of the judgment of the trial court whereby mesne profit was not granted to him. He did not

raise any objection or argument before the lower appellate court in relation to his claim about grant of mesne profit. In this second appellate stage and

in appeal preferred by the present appellants, the plaintiff's claim is not tenable. Reliance is placed on 1989 MPLJ-178 (Abdul Karim and others Vs.

Hafij Mohammad and others) and (2003) 9 SCC 606 (Banarsi and others Vs. Ram Phal). It is contended that the decree or order for eviction of the

tenant must mean final decree or final order of eviction. For the same purpose, reliance is placed on 1980 JLJ-300 (Bhimandas Vs. Nagibai and

another). As per section 13(5) of the Act of 1961, mesne profit can be directed to be given only when conditions mentioned in section 13(5) of the Act

are satisfied. In the present case, the appellants have paid the rent continuously. The rent was paid during entire trial and appellate proceedings. The

plaintiff, at no point of time, informed the court about any non-payment of monthly rent by the appellants, hence question of grant of mesne profit does

not arise in this appeal.

8. No other point is pressed by learned counsel for theparties.

9. I have bestowed my anxious consideration on the rivalcontentions and perused the record. This court while admitting the appeal framed following

substantial questions of law :-

2. 1. Whether the word acts employed in Order III, Rule 1 and 2 of Civil Procedure Code does not include deposing in place and instead of the

principal ?

2. Whether the plaintiff was required to primafacie establish the factum of ownership in so far as the suit premises was concerned and could it be said

that the ingredients of section 12(1)(f) of M.P. Accommodation Control Act, 1961 have been complied ?

3. Whether the appellate court, has acted,beyond its jurisdiction, in carving out a new case, pertaining to co-ownership of disputed premises, which per

se, was never pleaded by respondent ?

10. As to question No.1 and 2 :

The Supreme court in AIR 2005 SC 439 (Janki Vashideo Bhojwani and another Vs. Indusind Bank Ltd and others) has drawn the curtains on the

question upto what extent a power of attorney holder can depose in place and instead of principal. It was held as under :Ãƒ Â¢â‚¬Å“ Order III, Rules 1 and

2 CPC, empowers the holder of power of attorney to ""act"" on behalf of the principal. In our view the word ""acts"" employed in Order III, Rules 1 and 2

CPC, confines only in respect of ""acts"" done by the power of attorney holder in exercise of power granted by the instrument. The term ""acts"" would

not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some ""acts"" in pursuance to

power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and

not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in

respect of which the principal is entitled to be crossexamined.Ãƒ Â¢â‚¬Ã‚â€‹

(Emphasis supplied)

The ratio decidendi of aforesaid case was followed in (2010) 10 SCC-512 (Man Kaur (dead) by Lrs. Vs. Hartar Singh Sangha). This court also

followed this principle in 2005(2) MPLJ-230 (Bashir Vs. Smt. Hussain Bano.

11. In the light of aforesaid principles laid down by the Supreme Court, there is no doubt that the power of attorney holder can depose for the principal

in respect of such ÃƒÂ¢â‚¬Å“actsÃƒÂ¢â‚¬Ã, which were done by him or which were within his personal knowledge. The ancillary issue is whether this

principle gives any benefit to the present appellants in the present case. The argument relating to the extent of deposition by power of attorney holder

is raised to contend that the plaintiff is claiming ownership on the basis of a partition which had taken place during the period when the deponent/

power of attorney holder was not even born. Thus, by no stretch of imagination, the deponent could have any personal knowledge about any such oral

or written partition or execution of any Will. Thus, factum of ownership, is not proved. The aforesaid argument, on the first blush, appears to be

attractive. However, on a deeper scrutiny, I find no substance in the said contention. No doubt, in section 12(1)(f), the Legislature has used the words

landlord and owner both. This court in Dayal Das (supra) considered the said aspect and opined that the intention of Legislature is clear while using

both the words aforesaid that the plaintiff has to establish that he is landlord and owner both. In the present case, although the factum of ownership

was denied in the written statement by appellant No.1 but during cross-examination, he categorically admitted that plaintiff is the owner. Interestingly,

during the course of arguments, reliance was placed by the appellants on (1922) 24 Bombay Law Report-576 (Mussammat Sasiman Chowdhurain Vs.

Shib Narayan Chowdhury. The learned Judge opined that the Urdu word which he has translated of a landlord is Malikiyat. The word malik' was also

considered by holding that Malik is one who holds mulk or land. It was treated to be in relation to the terms of the deed. In my opinion, the word

MalikÃƒÂ¢â‚¬Ã, is an Urdu word which is being used commonly. The dictionary meaning of word ÃƒÂ¢â‚¬Å“MalikÃƒÂ¢â‚¬Ã, is ÃƒÂ¢â‚¬Å“ownerÃƒÂ¢â‚¬Ã, (See : Legal

Glossary published by Law and Justice Ministry, Rajbhasha division, 1988). In common parlance also, the word ÃƒÂ¢â‚¬Å“MalikÃƒÂ¢â‚¬Ã, is used in relation to

ÃƒÂ¢â‚¬Å“ownerÃƒÂ¢â‚¬Ã,â€‹. Thus, I am unable to hold that the judgment of Shib Narayan (supra) is of any assistance to the appellants.

12. The courts below have considered the statement of appellant No.1 who unequivocally admitted that he treats the plaintiff as owner of the suit

shop. In view of this candid and specific admission of appellant No.1, it can be safely concluded that he admitted that plaintiff is the owner of the

property. This is not in dispute that the factum of landlord was already established by the plaintiff. No attack was made by the appellants on that

aspect. In the case reported in (2002) 3 SCC-375 (Sheela and others Vs. Firm Prahlad Rai Prem Prakash), the Apex Court opined as under :-

11. Ãƒ Â¢â‚¬Å“10. While seeking an ejectment on the ground of bona fide requirement under clause (f) abovesaid the landlord is required to allege and

prove not only that he is a 'landlord' but also that he is the 'owner' of the premises. The definition of 'landlord' and 'tenant' as given in clauses (b) and

(i) of Section 2 of the Act make it clear that under the Act the concept of landlordship is different from that of ownership. A person may be a

'landlord' though not an 'owner' of the premises.The factor determinative of landlordship is the factum of his receiving or his entitlement to receive the

rent of any accommodation. Such receiving or right to receive the rent may be on the own account of the landlord or on account of or for the benefit

of any other person. A trustee, a guardian and a receiver are also included in the definition of landlord. Such landlord would be entitled to seek an

eviction of the tenant on one or more of such grounds falling within the ambit of Section 12(1) of the Act which do not require the landlord to be an

owner also so as to be entitled to successfully maintain a claim for eviction. Clause (f) contemplates a claim for eviction being maintained by an

ownerlandlord and not a landlord merely. Though of course, we may hasten to add, that the concept of ownership in a landlord-tenant litigation

governed by Rent Control Law has to be distinguished from the one in a title suit. Ownership is a relative term the import whereof depends on the

context in which it is used. In Rent Control Legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished from

for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold

good as proof of ownership in a landlord tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title

suit. In M.M. Quasim Vs. Manoharlal Sharma __ (1981) 3 SCC 36, it was held that an 'owner-landlord' who can seek eviction on the ground of his

personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser

than his own. In Dilbagrai Punjabi Vs. Sharad Chandra (1988) Supp SCC 710, this Court held that it was essential to sustain a claim of eviction under

Section 12(1)(f) of the Act to establish that the plaintiff was the owner of the premises. However, the Court upheld the ownership of the landlord

having been proved on the basis of an admission of the ownership of the plaintiff made by the defendant in reply to notice given before the institution

of the suit and the recital of the name of the plaintiff as the owner of the property contained in the receipts issued by the landlord to the tenant over a

period of time. Thus, the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or

proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person

setting up a contending title while disputing the title of the plaintiff. Nevertheless pleading and proving ownership, in the sense as it carries in Rent

Control Law, is one of the ingredients of the ground under Section 12(1)(f) of the Act.

(Emphasis supplied)

13. This court in its recent judgment passed inF.A.No.92/2009 (Prakash Pahuja Vs. Devendra Kumar Jain decided on 15/02/2018 opined that Ãƒ Â¢â‚¬Å“

A bare perusal of principle laid down in this judgment makes it clear that in a suit for eviction, the plaintiff is not required to prove his title on the basis

of same principles which are applicable in the suit for declaration of title. The Apex Court considered the aspect of ownership in this judgment and

opined that in landlord tenant litigation, the landlord can be said to be owner if he is entitled in his own legal right to evict the tenant and then to retain,

control, hold and use the premises for himself. To determine these aspects, the Court has to examine the facts and circumstances of each case and no

straight jacket formula can be laid down. Thus, the core issue is whether the Court below was justified in answering the Issue No.1 in favour of the

plaintiff. No doubt, the Court below erroneously opined that Ex.P/1 & P/2 shows that these documents are related with partition. These documents

also became reason to hold that the plaintiff is the landlord. A plain reading of Ex.P/1 & P/2 shows that these documents were executed way back on

21.02.1958 & 10.06.1959. Thus, these documents, by no stretch of imagination, can be said to be related with partition of the suit property. To this

extent, I find substance in the argument of learned counsel for the appellant. These documents cannot be basis to decide Issue No.1 in favour of the

plaintiff. However, a minute reading of para 6 of the impugned judgment shows that the Court below has taken into account the statement of present

appellant wherein it was categorically admitted by him that rent has been continuously paid to the plaintiff. It was specifically admitted that plaintiff

has been recognized by the defendant as his landlord. In view of this candid admission of present appellant during cross-examination, the Court below

opined that after having admitted the relationship and factum of payment of rent to the plaintiff, the appellant is ""estopped"" under Section 116 of the

Evidence Act. The deposition of the appellant shows that his admission regarding payment of rent to the plaintiff is clear and unequivocal. The

appellant clearly stated that he treats Shri Devendra Kumar Jain as the landlord. He paid rent to plaintiff since beginning. He did not pay rent to

anybody else. He received receipts of rent from plaintiff and he is still treating the plaintiff as the landlord.

14. In view of the common string of principle available inaforesaid cases, I have no scintilla of doubt that the power of attorney holder can depose to a

limited extent and in relation to his personal knowledge but this aspect is of no help to the appellants because the courts below have rightly decided the

factum of ownership. The said finding of fact is based on the candid statement/deposition of Rashid. In view of aforesaid statement of appellant No.1,

the appellants are estopped under section 116 of the Evidence Act and they cannot question that plaintiff is not landlord and owner. I find support in

my view from the case reported in 1996 (8) SCC 632 [Padmini Chandrasekharan vs. R. Rajagopal Reddy]. The Apex Court held that in the face of

conduct of the appellant and her husband in paying the rent to one Shri Reddy, this amounts to attorn said Shri Reddy as owner of the demised

property. In 2000 (1) SCC 451 C[. Chandramohan vs. Sengottaiyan], the Apex Court held that the respondents started paying the rent to the appellant.

The High Court has also referred to the evidence of the appellant in which he admitted that the respondents did not deny that he was the landlord

when depositing the rent in the Court and that they were paying rent to him. The subsequent denial was held to be not bonafide. This Court in 2006 (1)

MPLJ 123 [Mahila Samiti vs. Hola Ram Sindhi] held that the factum of payment of rent to the plaintiff was admitted by the other side. The tenant

once having admitted the tenancy is estopped from challenging the title of the landlord by virtue of Section 116 of the Evidence Act. The doctrine of

tenant's estoppel was considered and it was poignantly held that the said doctrine got statutory recognition in Section 116 of the Indian Evidence Act,

1872. The judgment of Zehra Bai vs. Jagmohan & others reported in 2000 (2) MPWN 142 was considered whereby after paying the rent to plaintiff

by tenant it was held that it does not lie in the mouth of defendant to dispute the ownership of the landlord. In 2008 (2) MPLJ 365 [Karan Lal

Kesharwani vs. Sardar House] it was again held that after having paid the rent to the plaintiff for long time, the principle of ""estoppel'' will come into

play. Interestingly, in this case also during crossexamination, the tenant has admitted that he is paying rent to the appellant and therefore Section 116

of the Evidence Act is rightly pressed into service. In a recent judgment reported in 2017 (5) SCC 451 [Om Prakash vs. Mishri Lal], the Supreme

Court opined that the original defendant having accepted Smt Chameli Devi as his landlady and thereafter continued to pay rent to her son Bhola Nath,

the father of the appellants, in terms of definition of ""landlord"", the respondents are estopped under Section 116 of the Evidence Act. It was further

held that a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord as is enshrined in

Section 116 of the said Act. The inspiration is taken from the earlier judgments reported in 1999 (7) SCC 474 [S. Thangappan vs. P. Padmavathy] and

2006 (5) SCC 532 Bhogad[i Kannababu vs. Vuggina Pydamma. Since factum of landlord and ownership was established before the court below,

essential ingredients flowing from Section 12(1)(f) of the Act of 1961 were satisfied. Hence, the argument of appellant regarding overriding effect of

Section 12(1)(f) of said Act over the Evidence Act and contention that special Act of 1961 will prevail over Evidence Act pales into insignificance.

The substantial question No.1 and 2 are decided accordingly.

15. As to substantial Question No.3 :

As analyzed above, it is clear that the plaintiff has established his ownership on the said disputed premises and, therefore, the substantial question of

law No.3 also pales into insignificance. Even otherwise, I find substance in the argument of learned counsel for the respondent that the argument

advanced before the lower appellate court about co-ownership, was an alternative argument based on the pleadings of the parties.

16. This court will be failing in its duty if it won't consider theargument advanced by learned counsel for the respondent regarding grant of mesne

profit. As noticed, the principles, formula and methodology to determine and grant mesne profit was considered in great detail by the Supreme Court

and various High Courts. Learned counsel for the respondent has relied upon those judgments which were referred hereinabove. Before dealing with

the question of determination of mesne profit, the basic question is whether in this Second Appeal, any such benefit can be claimed by the respondent.

If this question is answered in affirmative, then only the question of determining the quantum of mesne profit would arise. This court in Abdul Karim

and others Vs. Hafij Mohammad and others-1989 MPLJ-178 opined as under :-

Ãƒ Â¢â‚¬Å“9. Against this dismissal of claim in the suit, the plaintiffs ought to have preferred an appeal or cross-objections, which having not been done,

that finding of the dismissal of the claim has become final. Not only this, no prayer was made by the plaintiffs before the lower appellate court for

passing a decree in accordance with the provisions of O.22,R.12 Civil Procedure Code and for a direction or for making an enquiry as to rent or

mesne profits from the institution of the suit until the delivery of possession to the decree holder. Thirdly, even no prayer was made for exercising the

power under O.41 R-33, Civil Procedure Code. Even if the prayer was made, which I do not find in the judgment of the lower appellate court, in that

case too the appellate court could not have granted the relief of future mesne profits could not have been granted by exercising the powers under

O.41 R-33, Civil Procedure Code. The powers under O.41,R-33 Civil Procedure Code can be used only in exceptional cases, enabling the court to

pass a decree as ought to have been passed or as the nature of the case required even in favour of a party who has not appealed but the powers are

restricted to cases, where as a result of interference in favour of the appellant, further interference is rendered necessary in order to adjust the rights

of the party according to justice, equity and good conscience.Ãƒ Â¢â‚¬Ã‚â€‹

(Emphasis supplied)

17. The Supreme court in Banarshi and others Vs. Ramphal-(2003) 9 SCC-606 poignantly held that :

17. Ãƒ Â¢â‚¬Å“13. We are, therefore, of the opinion that in the absence of cross appeal preferred or cross objection taken by the plaintiff-respondent the

First Appellate Court did not have jurisdiction to modify the decree in the manner in which it has done. Within the scope of appeals preferred by the

appellants the First Appellate Court could have either allowed the appeals and dismissed the suit filed by the respondent in its entirety or could have

deleted the latter part of the decree which granted the decree for specific performance conditional upon failure of the defendant to deposit the money

in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals. What the First Appellate Court has done is not

only to set aside the decree to the extent to which it was in favour of the appellants but also granted an absolute and out and out decree for specific

performance of agreement to sell which is to the prejudice of the appellants and to the advantage of the respondent who has neither filed an appeal

nor taken any cross objection.Ãƒ Â¢â‚¬Ã‚â€‹

17. 18. In the light of these judgments, I am unable to hold that the respondents can claim benefit of mesne profit in the second appeal preferred by the

appellants/ defendants. Moreso, when appellants did not file any cross-appeal/objection against the judgment and decree, to the extent mesne profit

was not granted. He did not file any cross-objection before the lower appellate court. The judgment of lower appellate court does not reflect that even

any oral argument/claim about mesne profit was advanced by the present respondent. So far judgment of Padmawati (supra) is concerned on which

heavy reliance is placed, it is clear that the question whether at second appellate stage, for the first time, the respondent can orally raise the claim of

mesne profit was not considered and decided. Thus, the said judgment is not an authority on this aspect.

19. This is trite law that the judgment of Supreme court should not be read as euclid's theorem or like a statute. {See: Ashwani Kumar Singh Vs.

U.P.Public Service Commission and others-(2003) 11 SCC-584, Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and others-(2003) 2 SCC-111,

Indian Performing Rights Society Ltd. Vs. Sanjay Dalia and another-(2015)10 SCC-161, Vishal N.Kalsaria Vs. Bank of India and others-(2016) 3

SCC-762}. A judgment is a binding precedent on the principle which has been finally decided and not on something which is logically flowing

therefrom. {See : State of Orissa Vs. Sudhansu Sekhar Misra and others-AIR 1968 SC-647, Regional Manager Vs. Pawan Kumar Dubey-AIR 1976

SC-1766, Archana Kumar and another Vs. Purendu Prakash Mukherjee and another-2000(2) MPLJ (FB)-491}, Commissioner of Customs (Port),

Chennai Vs. Toyota Kirloskar Motor (P) Ltd.-(2007) 5 SCC-371}.

20. Thus, this court is unable to hold that in the light ofjudgment of Padmawati (supra), mesne profit can be granted to the respondent in the present

proceedings.

21. In view of foregoing analysis, I find no legal error inthe impugned judgments. Resultantly, the second appeal is dismissed. No cost.