

SUPREME COURT OF INDIA

Yabdyarlaros.Dajiba Shrawane (Dead)

Vs.

Ma & Niolrasl. Harakchand Shah (Dead)

C.A.No.1798 of 1991

(S.Rajendra Babu and D.P.Mohapatra JJ.)

02.08.2002

JUDGMENT

D.P.Mohapatra, J.

1. This appeal filed by the plaintiffs is directed against the judgment of the Bombay High Court, in Second Appeal No.164/1968 in which the High Court allowed the appeal, No.123-A, filed by the defendants, set aside the decree passed by the lower appellate court and restored the decree passed by the trial court.

2. The appellants filed the suit as representatives of Akhil Digambari Jain community of village Shirpur, Talaq Washim, District Akola. The defendants who are respondents herein were impleaded as representatives of Swetambari Jain community of the area. The plaintiffs prayed for the following main reliefs in the suit :

"(a) Order passed by the Court of S.D.M. on 17.12. 1927 and that passed by the Court of the Addl. Judl. Commissioner on 6.8.1928 against the plaintiffs be set aside.

(b) It be declared that the whole of the Digambari Jain community is entitled to have full possession, Wahiwat and enjoyment of rights, over the field S.No.197 as described hereinabove and the defendants be directed to put the plaintiffs in possession of the said field in the condition in which it may be. Similarly, it be declared that the whole of the Digambari Jain community is entitled to have joint rights in field S.No.198/1 as detailed and described hereinabove and the defendants be directed to put the plaintiffs in joint possession of it also in the condition in which it may be.

(c) The reliefs regarding rights as stated by the plaintiffs in plaint paras nos. 5(b) to (i) and shown in the map dated 2.10.37 be granted to them if necessary and in the alternative."

3. The case of the plaintiffs sans unnecessary details may be stated thus : There are two fields under Survey No.197 and 198/1 situate at mouza Shirpur Tq. Washim, District Akola,

measuring 2 acres 5 gunthas and 1 acre 22 gunthas, respectively. The two fields adjoin each other. In Survey No.197 there is a very old Hemadpanthi temple of Shri Antariksha Parshwanath known as Pawli temple. This temple and its precincts spread over 20 gunthas of land were being preserved as an ancient monument by the Archeological Department of Government of India during the period 1925 to 1964. In this field near the temple there is a garden having fruit bearing and flowering trees.

4. The shrine in the said temple is worshipped by both Digambari and Swetambari sects of Jains. Originally the management of the temple of Shri Antariksha Parshwanath temple was in the hands of Maratha and Kunbi servants of the Jain community. These servants were known as Paulkars. In course of time the Paulkars, began to assert their rights to management of Shri Antariksha Parshwanath temple and this led to disputes between the members of the Jain community on the one hand and the Paulkars on the other. In the proceedings initiated under section 145 Criminal Procedure Code the S.D.M. Washim by order dated 7.9.1903 held that the Jain Community was in exclusive possession of the property of Shri Antariksha Parshwanath Maharaj Sansthan and accordingly the receiver was directed to hand over possession of the property of Shri Antariksha Parshwanath Maharaj Sansthan to Panchas of the Jain community.

5. Near about the year 1908 dispute started between the two Sects of Jain community, the Digambaris and the Shawetambaris and each sect started to claim that Shri Antariksha Parshwanath Maharaj temple was a temple of their sect, the idol was an idol of their sect. Each sect claimed exclusive management of the temple and worship of the deity according to the tenets of its own Sect. Eventually, the Swetambaris instituted Civil Suit No. 4 of 1910 in the Court of the Additional District Judge, Akola to establish their right, title and management of Shri Antariksha Parshwanath temple against the Digambaris. The suit was filed by certain members of Swetambari sects in their representative capacity as representing the Swetambari community and similarly the defendants of the suit were sued as representing the Digambari community. The suit was partly decreed by the trial court. Against the decree the Swetambaris preferred appeal First Appeal No.39-B of 1918 in the Court of Judicial Commissioner, Nagpur. The Digambaris filed cross objection in that appeal. The Judicial Commissioner, Nagpur, confirmed the right of exclusive management and worship of Shri Antariksha Parshwanath temple, Shirpur in favour of the Swetambaris and dismissed the cross objection of the Digambari sect. The relevant portion of the decree passed by the Judicial Commissioner, runs as follows:

"We declare that the Swetambaris are entitled to the exclusive management of the temple and the image of Shri Antariksha Parshwanath Maharaj at Kasbe Shirpur, with Katisutra, Kardora and Lape, and that they have the right to worship that image with Chakshu, Tika and Mugut and to put ornaments over the same in accordance with their custom. That the Digambaris have a right of worshipping the image in accordance with the arrangement made in 1905 without Chakshu, Tika and Mugut or ornaments, but are not to remove or interfere with the Kachota, Katisutra and Lape; we also declare that the Digambari Sect are permanently restrained from obstructing the Swetambari Sect in getting the image restored to its original form adorned with

the Kachota, Katisutra and plastering the same now and hereafter. In supersession of the lower Court's decree, a decree as above will now be passed. The cross objections are dismissed. As regards costs, we think it proper that each party should bear its cost."

6. Against the said decree the Digambaris preferred appeal before the Privy Council being No.69/1927. The Privy Council dismissed the appeal and confirmed the decree passed by the Judicial Commissioner's Court vide its judgment dated 9.7.1929.

7. In the meanwhile, near about the year 1927 disputes started between the Digambaris and Swetambaris over possession of the two fields, Survey No.197 and Survey No.198/1. of Shirpur village. These disputes between the two sects led to a proceedings under section 145 of the Criminal Procedure Code before the S.D.M. Washim, registered as Misc. Cr. Case No.15 of 1927. By his order dated 17.12.1927 the S.D.M. held that the Swetambaris were in exclusive possession of these two fields. Feeling aggrieved by the said order the Digambaris filed Criminal Revision Application No.1 of 1928 in the Court of the Sessions Judge, Akola. The Additional Sessions Judge, Akola made a reference to the Court of Judicial Commissioner, Nagpur. The Additional Judicial Commissioner, Nagpur on 6.8.1928 rejected the reference and confirmed the order of the S.D.M, Washim upholding the possession of Swetambaris over the two fields. The Digambaris thereafter instituted the present suit against the Swetambaris for setting aside the order of the S.D.M. Washim. The suit was filed by the Digambaris on 6.8.1931 in the Court of the Sub-Judge II Washim. It was registered as Civil Suit no.300/1931. On the objection raised on behalf of the defendants (Swetambaris) that the suit was under valued the trial court considered the preliminary issue relating to valuation of the suit and held that the suit was under- valued and requisite court fee of Rs.5,500/- was to be paid. After the plaintiffs paid the requisite court fee and amended the plaint by correcting the valuation the Court of the Subordinate Judge, Class II, Washim passed an order that it had no jurisdiction to try the suit and the plaint was returned to the plaintiffs for presentation to the proper Court. On the same day 13.4.1933 the plaint was presented to the Court of the Sub-Judge Class I Washim, and was registered in that Court as Civil Suit No.23 of 1933. Subsequently, it came to be re-registered as transferred Civil Suit No.123-A of 1958.

8. The claim of the plaintiffs in the suit may briefly be stated as follows:

"The hemadpanthi temple of Antriksha Parshwanath i.e. the "Pawli temple" situated in Survey No.197 belongs to and is under the management (Wahiwat) of the Digambari Jain Community. Survey No.197 (containing the temple and the garden) exclusively belongs to the Digambari Community and has all along been in the exclusive possession of the Digambari Community. Survey No.198/1 has been used to accommodate the Digambari Jain pilgrims coming to the Pawli temple. The Digambari Jain pilgrims have been using this field to fix their tents, and to hold meetings, religious functions (Dinners, Bhajans etc.). Since 1913- 14, the Swetambaris have also been using Survey No.198/1 as co- religionists. That filed was accordingly recorded in the name of both the Jain communities. Later on, taking advantage of the confidence reposed by the Digambari Jain Community, the

Swetambaris, with the intention of defrauding Digambari Jain Community and without its knowledge, got the present entry made in the name of Swetambaris alone in the Jamabandi patrak. The Digambari plaintiffs came to know of this in the year 1927. According to the plaintiffs, the Digambari plaintiffs and the Swetambari community are jointly entitled to possession and enjoyment of Survey No.198/1.

The suit field Survey No.197 and a joint half share in Survey No.198/1 belong to the Pawli temple. The Digambari plaintiffs as owners, worshippers and Wahiwatdars of this Sansthan as formed by the temple and idol situated in Survey No.197, and known as Pawli Temple Sansthan, are claiming the suit fields from the defendants. This Sansthan, as formed by the Deity and the temple in this suit and situated in Survey No.197 has absolutely no concern in respect of ownership and management with the Sansthan or the Deity of the same name in the town of Shirpur. The litigation fought out previously in respect of the other Sansthan in the town has no relation whatsoever with this Sansthan or the Deity which is quite an independent one. This Sansthan is outside the town and is known as Pawli temple. These two fields Survey No.197 and 198/1 belong to this Pawli temple and not to the other Sansthan. This Sansthan exclusively belongs to Digambari Sect, while the other sect of the Swetambaris is allowed to worship there as co- religionists. The management of this Sansthan known as Pawli Temple and its property were not the subject- matter of the previous litigation in Civil Suit No.4 of 1910 of the Court of the Additional District Judge, Akola, which was in respect o the other Sansthan in the town.

In the alternative, even if this Pawli temple and its property are held to be belonging to the Sansthan in the town of Shirpur, still the plaintiffs' right to claim the reliefs in the present suit remains unaffected by the decision in the previous suits, because the previous decrees related only to the right of management of the temple and the idol situated in the town. The plaintiffs, as worshippers and devotees of the Deity in the town of Shirpur, have a right to claim possession of the field Survey No.197 and joint possession of the field Survey No.198/1. They accordingly in the alternative claim them as worshippers of the deity Shri Antariksha Parshwanath Maharaj.

Further, in the alternative, the plaintiffs submit that if the plaintiffs are not held entitled to claim possession of Survey No.197 and joint possession of Survey No.198/1, they claim a declaration of their right of Wahiwat (easement) in respect of these fields as worshippers of the Deity, which right has continued from ancient times. Thus, even if the Digambaris establish their exclusive right of management in the capacity of managers of the suit fields, the plaintiffs are entitled to enjoy the aforesaid fields unobstructedly, even if it is held that the fields belonged to the Deity and the temple in the town, the plaintiffs being worshippers of the deity. These rights are (i) The right to use the two pathways to the Pawli temple. (ii) The right to take Dindis to the Pawli temple at the time of Jalyatra on Miti Kartik Shuddha 14 and 15 every year. (iii) Right of pathway to the well and to take water of the well. (iv) Right to use the water of the well for watering the garden in Survey No.197. (v) Right to use the way AB on all sides i.e. B.H.B.D.E.D. as shown in the Commissioner's map as an

easement of necessity. (vi) The right to use Survey No.198/1 for camping of Digambari pilgrims, and for parking of unyoked bullock- carts, for performing Puja, Pratistha by pilgrims and holding of discussions, meetings, and gatherings by pilgrims. (vii) The right to use Kotha and rooms in Survey No.197. (viii) The right to take fruits and flowers from the trees in the garden in Survey No.197. In the relief clause in the plaint, the Digambari plaintiffs prayed for the following reliefs :- (i) Setting aside of the order of the Sub-Divisional Magistrate, Washim dated 17-12-1927. (ii) Declaration that the whole of the Digambari Jain community is entitled to full possession, Wahiwat and enjoyment of rights over Survey No.197 and actual possession of the said field. (iii) Declaration of the Right of the Digambari Jain community to have joint possession, Wahiwat and enjoyment of rights in Survey No.198/1 and actual joint possession of that field. (iv) Relief regarding rights as stated in paragraphs 5(b) to (i) of the plaint."

9. The Swetambari-defendants denied the contentions raised by the Digambari-plaintiffs. According to them the Pawli temple had no idol in it, the pedestal was without an idol. The moveable and small idol was placed there about 30/35 years ago by somebody as the pedestal was empty. The Pawli temple does not belong to Digambari sect. It was a Swetambari temple owned and managed by Swetambaris. In civil suit No.4 of 1910 the Swetambaris had been declared to be the exclusive managers of the said temple and idol of Shri Antariksha Parshwanath Maharaj Sansthan with only a limited right of worship given to the Digambaris. According to the defendants previously there was no idol of Shri Antariksha Parshwanath nor was there any temple in survey no.197. The Digambari near about the year 1927 surreptitiously put a stone slab on the Pawli temple falsely describing it as "Digambari Mandir". The defendants Swetambaris claimed that a portion of the suit Survey No.197 was acquired by the Swetambari Jains on 2.8.1976 from one Shankar Sadashiv Pande under a Rajinama and Kabuliyat, for their use as exclusive owners and Managers of Shri Antariksha Parshwanath Maharaj Sansthan, and they had later on sunk the well in the field. It was the further case of the defendants that during the last more than 70 years the defendant Swetambaris had been in exclusive possession of the field survey No.197. According to them the suit property was purchased by the Swetambari on 20.12.1900 from the original owner by a registered sale deed in the name of Deoba Raoji and Ananda Mehpati of Shirpur, as managers on behalf of Swetambaris, and the Swetambaris had all along been in possession of the said field.

10. The trial court found that the Pawli temple is not known as Shri Antariksha Parshwanath and it did not belong to the plaintiff Digambari community. On the contrary the Pawli temple and its Sansthan were the property of the town temple of Shri Antariksha Parshwanath Maharaj. The final decision in Civil Suit No.4 of 1910 did not operate as res judicata on the point of title, ownership and possession of the present suit property, but that decision operated as res judicata only as regards the right to manage the suit property. The Court further found that both, survey No. 197 and Survey No.198/1 did not belong to the Pawli temple or its Sansthan but had been acquired by the manager of the temple in the town. The field Survey No.197 had not been in the exclusive possession of the plaintiff Digambaris. The plaintiffs had only been using the well in Survey No.197 and the pathways to the Pawli

temple. The Digambaris were not entitled to exclusive possession of Survey No.197 nor to joint possession of Survey No.198/1. The suit is not barred by limitation and the trial court had jurisdiction to try the suit. On these findings the trial court dismissed the Digambari plaintiffs' claim for declaration of title for setting aside the Sub-Divisional Magistrate's order, and for exclusive possession of Survey No.197 and joint possession of Survey No.198. But the trial court granted a limited decree in Digambari plaintiffs' favour in following terms:-

"The plaintiffs as worshippers of the idol of the Shri Antariksha Parshwanath Maharaj Sansthan have the following rights:

(i) Using the ways A.B.H., A.B.C.D., D1 and the way in the southern portion of Survey No.198/1 from East to West turning to the North and at the western end near the temple and proceeding to the temple for entry at ML as shown in the map No.8 in the Commissioner's papers.

(ii) Enjoying water of the well "W" for purposes of drinking, bathing washing clothes and pots and watering cattle by working Mota on it.

(iii) Temporary parking of carts and tethering of bullocks of the pilgrims during the periodical, annual Yatra day on portions of Survey No.197 and 198/1 happening to be vacant and not under cultivation."

11. Aggrieved by this decree the Digambari plaintiffs filed Civil Appeal No.96 of 1965 in the District Court, Akola. Against the partial decree passed by the trial court in favour of the Digambari plaintiffs, the Swetambari defendants filed cross objections. The lower Appellate Court agreed with the trial court that the suit was not barred by limitation, and that the suit was not affected by the provisions of Section 32 of the Madhya Pradesh Public Trusts Act, 1950 and that the suit was also not barred by the orders passed by the Charity Commissioner. However, disagreeing with the trial Court, the lower Appellate Court found that Survey No.197 belonged exclusively to the plaintiff Digambari Sect and that Survey No.198/1 belonged to the Digambaris and Swetambaris jointly. The lower Appellate Court, therefore, allowed the appeal of Digambari plaintiffs and dismissed the cross objections of Swetambari defendants by passing a decree in following terms:

"The appeal is allowed. The decree of the trial court is set aside and in its place, the following decree is substituted:-

(1) The order passed by the Sub- Divisional Magistrate on 17.12.1927 and Judicial Commissioner, Nagpur on 6.8.1928, are set aside. It is hereby declared- (2) That the plaintiffs who are the representatives of the Jain community are exclusive owners of Survey No.197 of Shirpur. They shall be put in possession of that property. It is also declared that Survey No.198/1 jointly belongs to the Digambari community as well as Swetambari community. The plaintiffs shall be put in joint possession of the same. The remaining claim is dismissed as it does not survive. Respondents no.1 to 3 shall

bear the costs of the appellants throughout. The respondent no.4 to bear his own costs. The cross objection of the respondents no.1 to 3 is dismissed."

12. Aggrieved by this decision of the lower Appellate Court the Swetambaris defendants preferred the second appeal.

13. In Para 12 of the judgment the High Court formulated the contentions raised by the counsel for the appellant as follows: "Shri Palshikar, the learned counsel for the appellant defendants, contended that this finding of fact arrived at by the lower Appellate Court was not binding on this Court in this second appeal because the lower Appellate Court

(a) had failed to consider certain relevant and admissible evidence on record of the case, (b) had based its finding partly on consideration of certain inadmissible evidence,

(c) had mis-construed some of the material documents governing the question of title to the suit properties, and

(d) had based its findings on inferences which could never be drawn from the documents, and on surmises and conjectures.

This contention of the appellants has first to be closely examined."

14. The High Court noted the gist of the claims of the plaintiffs Digambaris that the two suit fields belonged either to the Pawli temple which itself was a separate Digambari Sansthan as distinguished from the Shri Antariksha Parshwanath temple and Sansthan in the town of Shirpur or that the two suit fields belonged to the Digambari Community, Survey No.197 exclusively and Survey No.198/1 jointly along with the Swetambaris.

15. The Court took note of the contentions raised on behalf of the defendant Swetambaris that the Pawli temple and the two fields were the exclusive properties of the town temple of Shri Antariksha Parshwanath and were in their exclusive possession. The High Court noted the admission made by the witness Haribhau Rangnath Tikait PW 5 who claimed to be a Digambari jain. His statement in cross examination was to the effect that "Pawli temple is part of the temple in the town and part of the estate of that temple. The gardens are known by the name of Pawli Bagicha".

16. Proceeding further the High Court considered in detail the documentary evidence relied upon by the lower appellate court in support of the finding that the Pawli temple and two suit fields were the properties of Swetambaris defendants. The High Court in its detailed discussions in paragraphs 13 of the judgment has brought out clearly and succinctly how the lower appellate court relied upon evidence inadmissible in law, in view of the provisions of section 57 of the Indian Evidence Act; and brought out certain fallacies in the reasons given by the lower appellate court.

17. The High Court further observed that the recital about the inscription with date and the recital about this being the original temple from which tradition claims that the image was transferred to the modern principal temple in the village, clearly tend to support the appellants Swetambari, that the Pawli temple being a part of the property of Antariksha Parshwanath Maharaj Sansthan by establishing a definite co-relation between the two temples.

18. The High Court held that the question of title to a temple or field property could hardly be said to be a question of public history nor would a report of the Archeological Survey be an appropriate book of reference for deciding such a controversy. The Court placed reliance on the case of *Farzand Ali and another Vs. Zafar Ali*¹, in which it was observed:

"We are inclined to think that the use of the historical works to establish title to the property cannot be justified on the strength of Section 57 of the Indian Evidence Act. The question of title between the trustee of a mosque, though an old and historical institution, and a private person, cannot, in our opinion, be deemed to be a "matter of public history" within the meaning of the said Section."

Reference was also made to the case of *Mahant Shri Srinivas Ramanydas vs. Suraj Narayan Das and another*² where it was observed : "These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and practice followed by the Math and its head. The Gazetteers can be consulted on matters of public history."

19. The High Court found that the lower Appellate Court had erroneously accepted the evidence Exh. P47 that the Pawli temple belong to Digambaris, that it had also erred in accepting those recitals in the extracts as 'evidence' to serve as the basis of the findings.

20. In para 33 of the judgment the High Court referring to several decisions of this Court held that the finding of fact reached by the lower Appellate Court that the field Survey No.197 exclusively belongs to the Digambaris community and that field Survey No.198/1 jointly belongs to the Digambaris and the Swetambaris is not binding on the Court in the second appeal. Some of the decisions referred to are *Deo Chand and others vs. Shiva Ram and others*³; *Ramappa vs. Bojappa*⁴; *Dhirajlal Girdharilal Vs. Commissioner of Income Tax*⁵; *Sonawati and others vs. Shriram and another*⁶; *Radha Nath Seal (dead) by his Lrs. Vs. Haripada Jana*⁷; *Sir Chunilal V. Mehta and Sons Limited vs. Century Spinning and Manufacturing Co. Ltd.*⁸; *Bhusawal Borosh Municipality vs. Amalqamated Electricity Co. Ltd. Bhusawal and another*⁹; *Nedunuri Kameswaramma Vs.Sampati Subba Rao*¹⁰ etc. etc..

21. Discussing the evidence on record in para 35 of the judgment the High Court held that survey no. 198/1 which was purchased subsequently did not belong exclusively to the Digambaris as claimed by them. On the other hand it showed that the purchase was made from the funds of Shri Antariksha Parshwanath Sansthan. In para 40 of the judgment the High Court has discussed the entries relating to the suit fields made in the revenue records

and has discussed the reasons for holding that the entries do not support the case of the exclusive claim made by the Digambaris Jain to the property in the field.

In para 59 of the judgment the High Court held :

"It would thus seem that there is no documentary evidence at all to show that the Pawli temple was a separate Sansthan going under the name Antariksha Parshwanath Maharaj, as distinguished and separate from the Sirpur town Antariksha Parshwanath temple and Sansthan, or that any such Pawli temple sansthan, going under the name of Antariksha Parshwanath, owned the suit fields as its property."

The High Court noted the evidence of Nathusa son of Pasusa, a Digambari Jain examined on Commission, who made the statement - "There is no other Mandir or Sansthan known as Antariksha Parashwanath except the one at Sirpur."

22. In para 62 of the Judgment the High Court dealt with the alternative contention raised on behalf of the Digambaris that in the event of their failure to put forth any document of title to support their claim of title to the two suit fields the presumption of lost grant may be invoked in their favour. In this connection the High Court noted the following observations of the Supreme Court in the case of *B. Satyanarayana and others vs. Konduru Venkatapayya and others*¹¹:

"There is no doubt on the authorities that a presumption of an origin in some lawful title may, in certain circumstances, be made to support possessory rights long and quietly enjoyed, where no actual proof of title is forth-coming, but it is equally well established that that presumption cannot be made where there is sufficient evidence and convincing proof of the nature of grant and the persons to whom it was made."

23. The High Court also quoted the following observation of the Supreme Court in the case of *Manohar Das vs. Charu Chandra*¹²:

"It was a presumption made for securing ancient and continued possession which could not otherwise be reasonably accounted for. But it was not a "presumptio Juris et de jure" and the Courts were not bound to raise it if the facts in evidence went against it."

24. Referring to the oral evidence adduced by the parties in para 63 of the Judgment the High Court held that the oral evidence on either side is more or less of little value except insofar as the witnesses on each side may have yielded in cross examination critical concessions in favour of their rivals.

25. The High Court summed up its finding in para 64 of the judgment in the following words:

"Disagreeing with the lower Appellate Court, I hold that the Digambaris plaintiffs have failed to prove that the two suit fields belong to the Pawli temple or that the Pawli temple itself belongs to the Digambari Community or that the two suit fields

belong to the Digambari Community. That finding clearly entails dismissal of the main claim of declaration and possession laid by the Digambari plaintiffs, except in respect of decree for their rights of user as passed by the trial Court."

26. In para 66 of the judgment the High Court considered the contention that the present suit is barred by the principle of *res judicata*, in view of the judgment in Civil Suit No.4/1910, and answered the point in the negative holding that that suit related to right of worship and exclusive possession or management of the main town temple of Shri Antariksha Parshwanath at Sirpur. The issue of title to the present two suit fields was not directly and substantively involved in that suit. Therefore, the High Court held that the decree in Civil Suit No.4/1910 as ultimately confirmed by the decision of the Privy Council Appeal No.69/1927 would not operate as *res judicata* for the purpose of the present suit.

27. On the discussions in the judgment the High Court set aside the decree passed by the lower Appellate Court and ordered the decree of the trial court to be restored.

28. From the discussions in the judgment it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position is well settled that when the judgment of the final Court of fact is based on mis-interpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by Courts. A finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal. Since the parties have been in litigating terms for several decades the records are voluminous. The High Court as it appears from the judgment has discussed the documentary evidence threadbare in the light of law relating to their admissibility and relevance.

29. On perusal of the judgment of the High Court and on consideration of the matter we do not find that the judgment suffers from any serious illegality or infirmity which calls for interference in this appeal filed by special leave. Accordingly, the appeal fails and is dismissed with costs.

¹(*XLVI Indian Cases 119*)

⁴(*AIR 1963 SC 1633*)

⁷(*AIR 1971 SC 1049*)

¹⁰(*AIR 1963 SC 884*)

²(*AIR 1967 Supreme Court 256*)

⁵(*AIR 1955 SC 271*)

⁸(*AIR 1962 SC 1314*)

¹¹(*AIR 1953 SC 195*)

³(*1969*) 3 *SCC* 307

⁶(*AIR 1968 SC 466*)

⁹(*AIR 1962 SC 1952*)

¹²(*AIR 1955 SC 228*)