PATNA HIGH COURT

Ramnarain Pasi

Vs

Sukhi Tiwary

Civil Revn. No. 735 of 1955

(Raj Kishore Prasad, J.)

16.01.1956

ORDER

Raj Kishore Prasad, J.

1. This application, under Section 25, Provincial Small Cause Courts Act, is by the defendant, directed against the judgment dated 17-6-55 of Mr. Krishna Deva Prasad, Small Cause Court Judge at Sasaram, decreeing the plaintiff's suit.

2. The defendant executed a usufructuary mortgage in plaintiff's favor, mortgaging his house to him; and by a keravanama, executed on the same date, the defendant took back the mortgaged house on rent at Rs. 6/- per month from the plaintiff. The defendant did not pay the house rent from 16-2-52 to 15-2-55, and, therefore, the present suit was brought by the plaintiff on 16-2-55 for recovery of the arrears of rent for the above period.

3. The defendant contested the suit. His defense was that the agreement between the parties was not for execution of a usufructuary mortgage deed, but for execution of a simple mortgage deed and the defendant trusting the plaintiff gave his signature to the documents, which were never read over to him, but some time later on, when the plaintiff demanded rent from him, it was disclosed that the plaintiff had got ijara and kerayanama deeds executed by the defendant. The defendant then raised a hue and cry and thereafter, at the intervention of some people, it was settled that the defendant should execute a simple mortgage, in lieu of the rehan and the kerayanama. The defendant accordingly executed a simple mortgage on 10-10-52 in favour of the plaintiff. The rehan and kerayanama deeds were to be returned by the plaintiff when the final payment was to be made. The defendant further contended that there was no relationship of landlord and tenant between the parties, and therefore, the present suit was not maintainable. He also pleaded that the plaintiff could not realise rent at Rs. 6 per month, because the kerayanama was executed merely as a device for realisation of interest, and the plaintiff cannot realise interest at a rate higher than that permissible under the Bihar Money-lenders Act.

4. The learned Small Cause Court Judge accepted the plaintiff's case that the ijara and the kerayanama were both genuine, and were executed by the defendant. He further found that as

both the parties had not executed the lease in respect of the house, as required by Section 107, Transfer of Property Act, it was not a valid contract; but as the defendant remained in occupation of the house, he was bound to pay compensation for use and occupation of the house at the rate specified in the kerayanama. He accordingly decreed the plaintiff's suit.

5. Mr. Jagdish Pandey, appearing for the petitioner, has made the following submissions; (1) that the ijara and the kerayanama were one, and part of the same transaction, and, therefore, no relationship of landlord and tenant was created by the kerayanama; (2) that the ijara term having expired, the plaintiff's remedy to recover the house rent, which really represented the interest on the mortgage money, was under Section 68, Transfer of Property Act, and not by a suit for rent; (3) that the kerayanama assuming it to be a lease, was invalid, as found by the Court below also, as it was hit by the provisions of Section 107, Transfer of Property Act, and as such the present suit on its basis was not maintainable; (4) that the simple mortgage executed by the defendant in favour of the plaintiff extinguished the ijara and the kerayanama executed by him earlier in favour of the plaintiff, and no suit could be brought on the basis of the kerayanama; (5) that the plaintiff was not entitled to recover compensation even for use and occupation as there was no contract for the same; and (6) that, in any view of the matter the plaintiff was not entitled to a decree at more than 9 per cent. per annum.

6. As regards the first contention that the ijara and the kerayanama are parts of the same transaction, it is necessary to know the principles, which should guide a Court in such a case.

7. There is no single crucial test to determine as to whether two apparently separate transactions are or are not parts of a single transaction. No rough and ready method has so far been laid down, nor can any such method be found to determine this question. No hard and fast rule can, therefore, be laid down for determining this question. The safest rule to follow is that each case must be judged on its own facts as disclosed in the transaction between the parties, evidenced by one or more than one document. But one test may generally be applied to enable the Court to say that the two documents form part of one and the same transaction, where it appears on a reasonable construction of the documents that the properties were given in security not only for the principal amount secured under a usufructuary mortgage bond but also for the interest accruing thereupon. In other words, where the Court finds that though the documents have taken the shape firstly, of a mere usufructuary mortgage bond, the mortgagee purporting to take possession of the mortgaged properties, but in reality the second document whereby possession is purported to be given back to the mortgagor is merely a device to ensure regular payment of the interest, which also is secured on the same mortgaged properties, it may generally be said that they are parts of the same transaction. Such a transaction may be evidenced by more than one document which may have been executed on different dates with varying period of their operation, and possibly, even in the name of different parties, benami for the real mortgagor and mortgagee. The Court has to look upon the transaction as a whole after tearing off the veil attempted to be thrown round the real intent of the parties vide

Umeshwar Pd. Singh v. Dwarika Pd[1]*.,*

8. Bearing these general observations in mind, the nature of the present transaction has to be gathered from the two deeds mentioned above. In order, therefore, to decide, whether the two deeds, executed on the same day, are parts of the same transaction, it is necessary to know the

material terms of the two documents. I have got the two documents translated, and their official transactions are on the record.

9. The rehan bond contains the following material terms :

> "I, the executant.....borrowed Rs. 300/- from the claimant of this bond.....In order to pay interest on the said loan. I let out in rehan with possession for a term of three years, beginning from the date of execution of this bond upto 15-2-1955, the entire 16 annas brick and mud built tiled house .....and left the same in possession and occupation of the same. When I shall pay the entire rehan money on 15-2-1955, I shall get the rehan property redeemed. If perchance, the rehan money be not paid by the above fixed date, then this bond with all its stipulation shall remain intact and in force. After the expiry of the term, whenever I, the executant, shall pay the entire rehan money aforesaid, the claimant will accept the same without any objection. After the expiry of the term the said claimant is competent either to let the said rehan bond remain intact and in force, or realise the said rehan money together with costs in Court any claim, the said claimant gets dispossessed from the rehan property, then the said claimant will realise the entire rehan money aforesaid with interest thereon at 1 p.c. per month, by attachment and sale of the rehan property and also from the person and other moveable and immovable, nami and benami properties of me, the executant. In security for the rehan money, damages and costs in Court, and interest and dispossession, I mortgage and hypothecate the rehan property. Repair and retiling of the house will rest with me, the executant. I, therefore, executed this rehan bond with possession for a term of three years, so that it may be of use, when required."

On the same day, that is, on 16-2-52, the defendant executed the Kerayanama, Ex. 1, in favour of the plaintiff. The terms of this kerayanama are as hereunder :

> "I, the executant, let out in rehan with possession for a term of three years, 16 annas brick and mud built tiled house.....under a registered rehan bond dated this date, in favour of the claimant aforesaid. But for my residence, I took the house on rent for a term of three years beginning from the date of execution of this document upto 15-2-1955, on a monthly rent of Rs. 6/-, annual rent whereof comes to Rs. 72. I shall continue to pay rent to the claimant month by month against receipt without any objection whatsoever. In case of keeping the same in arrear, the said claimant will be competent to realise the monthly rent with legal interest thereon and costs in Court etc. from the person and moveable and immovable property of me, the executant. Repair and retiling etc. of the house will rest with me the executant. I therefore, executed this kerayanama so that it may be of use, when required."

[1] AIR 1944 Patna 5 : ILR 22 Pat 320

Reading the two documents it appears that no doubt two apparently separate transactions were entered into, although on one and the same date, but both were really parts of a single transaction. On a close examination of the terms of the two deeds, as set forth above, there can be

no reasonable doubt that the mortgagee never intended to take a mere usufructuary mortgage bond in the sense that he would take possession of the property and appropriate the rent and profit thereof in lieu of interest on the principal sum secured. On the other hand, it is equally clear that the mortgagee stipulated that he would be entitled to receive from the mortgagor for a period of three years, for which the ijara was executed, a fixed sum of Rs. 72 per year from the mortgagor as rent of the house. In the ijara bond it is clearly stated : "In order to pay interest on the said loan, I let out in rehan with possession for a term of three years" the entire house. In the Kerayanama, there is a mention of this rehan bond, and the mortgagor agrees to pay for a term of three years annual rent of Rs. 72. There is, therefore, no doubt that the two deeds are parts of the same transaction.

10. In the rehan bond there is no mention about the rate of interest, but the annual rental of Rs. 72 payable by the mortgagor, which represented the interest, would be equivalent to interest on Rs. 300, the ijara money, at the rate of 24 per cent. per annum. In *Panaganti Ramarayanimgar v. Maharaja of Venkatagiri*[2], a deed of mortgage with possession and a counterpart lease, by which the mortgagor took a lease from the mortgagee of the mortgaged properties, was executed on the same day. and Lord Sinha, who delivered the judgment of the Privy council observed that

> "the two deeds.....should be read together as they form parts of one transaction, the lease being in the nature of machinery for the purpose of realising the interest due on the mortgage."

In *Muhammad Yakub v. Hamid Ali*[3], there was no provision for the payment of interest at all, but their Lordships held that: "it is apparent from the terms in the mortgage deed that the appellants were to enjoy and possess the land in lieu of interest". They further on held on a construction of the ijara deed and the kabuliyat that "upon a perusal of the mortgage deed and the kabuliyat it is clear that the two documents formed part of the mortgage transaction". In my opinion, therefore, the ijara bond and the kerayanama formed parts of one and the same transaction.

11. In view of the above finding that the mortgage and the kerayanama formed parts of one transaction, and, the intention of the parties being that the mortgagee would not get possession of the mortgaged property, but would only get interest on the amount advanced by him in the shape of rent so long as the lease continued, the amount payable under the kerayanama, therefore, is interest on the mortgage money, and not rent for use and occupation of the mortgaged property. The mortgagor, that is, defendant petitioner, cannot, therefore, be described as tenant, and as such no relationship of landlord and tenant is created thereby. In similar circumstances it was held by this Court in *Baijnath Prasad v. Jang Bahadur Singh*[4], that such a mortgagor cannot be described as tenant even within the meaning of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, and, therefore, an application

[2] AIR 1927 PC 32 : 54 Ind App 68
[3] AIR 1927 Cal 884 : ILR 55 Cal 104
[4] 1955 BLJR 55

for eviction of such a mortgagor under Section 11 of the Act was not at all maintainable, and the House Controller has ho jurisdiction to direct the mortgagor to vacate the house.

12. Their Lordships of the Supreme Court in *Mahabir Gope v. Harbans Narain Singh*[5], had to consider a very similar case. His Lordship Chandrasekhara Aiyar, J., who delivered the judgment of the Court, observed as follows :

> "It was held by the Privy Council in *Bengal Indigo Co. v. Raghubar Das*[6], that 'a zuripeshgi lease is not a mere contract for the cultivation of the land at a rent, but is a security to the tenant for the money advanced'. They observed, speaking of the leases before them, that 'the leases in question were not mere contracts for the cultivation of the land let; but that they were also intended to constitute, and did constitute, a real and valid security to the tenant for the principal sums which he had advanced, and interest thereon.

The tenants' possession under them was, in part at least not that of cultivators only, but that of creditors operating repayment of the debt due to them by means of their security'. These words apply to the ijara deed before us; its dominant intention was to provide a security for the loan advanced and not to bring into existence any relationship of landlord and tenant."

13. In the present case also the above observations of his Lordship Chandrasekhara Aiyar, J., apply equally. The dominant intention of the ijara deed was to provide a security for the loan advanced, and not to bring into existence any relationship of landlord and tenant. In this view of the matter I hold that no relationship of landlord and tenant was created by the kerayanama between the mortgagee and the mortgagor.

14. For the second contention that as the ijara term has expired, the remedy of the mortgagee to recover the amount in suit was under Section 68, Transfer of Property Act, and not by the present suit for rent, a reliance has been placed on *Bishun Prasad Ram v. Anup Narain Singh*[7], In this case the usufructuary mortgage was for a term of five years. The mortgagor was in possession of the property, as a lessee on monthly rental. Rents having fallen in default, the mortgagee sued the mortgagor for possession, or for recovery of rent in lieu of interest. By the time the suit was brought, the term of the mortgage had expired. In those circumstances, Ray, J., held that there was no relationship of landlord and tenant between the parties after the expiry of the term of the mortgage; and consequently the remedy of the mortgagee was under Section 68, T. P. Act, for the recovery of the mortgage money, and not by way of a suit for possession, or for recovery of rent in lieu of interest. As was pointed out by his Lordship Mullick, J., in *Udai Chand v. Jang Bahadur Singh*[8], in construing whether the relationship of mortgagor and mortgagee had been allowed to merge in the relationship of landlord and tenant, it has to be considered whether a prudent mortgagor, or a prudent mortgagee would think it proper to do so in the circumstances of a particular case. It is ordinarily to be considered that the creation of the lease in favor of mortgagor is

[5] 1952 SCR 775
[6] ILR 24 Cal 272 : 23 Ind App 158
[7] AIR 1949 Pat 166
[8] 2 Pat LJ 353

by way of fulfillment of the terms of the mortgage and failure to fulfil the conditions of such a lease would always amount to failure on the part of the mortgagor to discharge the statutory obligation of maintaining the mortgages in undisturbed possession of the property mortgaged. Such failure, therefore, will give rise to such statutory remedies as are available to the mortgagee as such. His Lordship Ray, J., therefore, said that it would, at any rate, be absurd to conceive that the relationship of landlord and tenant would subsist even after the expiry of the term of the mortgage.

15. In the present case no doubt the term originally fixed has expired, but the document itself provides that :

> "If perchance, the rehan money be not paid by the above fixed date, (i.e. 15-2-1955), then this bond with all its stipulations shall remain in tact and in force";

It further provides that :

> "After the expiry of the term the said claimant is competent either to let the said rehan bond remain in tact and in force, or realise the said rehan money together with costs in Court by seeking relief in Court".

Therefore, under the document itself the ijaradar was to continue in possession until the satisfaction of the mortgage money on the same terms and conditions, and the ijara bond was to remain in force as before. There is no evidence in the case, nor there is any finding of the Court below, nor any evidence has been pointed out to me, to show that the ijara has come to an end, or that the ijara has been redeemed by the defendant, or that the mortgagee does not want "to let the said rehan bond remain in tact". In such circumstances, the ijara must be deemed to be in force. There is, therefore, no question of the mortgage expiring. In the case decided by Ray, J., his Lordship dismissed the plaintiff's suit, because his Lordship observed that in terms of the deed of mortgage the plaintiff was not entitled to recover possession, even after the expiry of his term, or that he was entitled to recover interest on the sum advanced.
On this ground the judgment of his Lordship was subsequently set aside by Meredith, J., on an application for review: see Civil Review No. 9 of 1948, decided on 25-4-49, because it was found that there were terms to the above effect in the mortgage deed itself. His Lordship Meredith, J., observed:

> "In short, there was no question of the mortgage expiring. There was a provision that it would continue in force until the money was paid. Clearly, as long as the mortgage continued in force and the defendants remained in possession as the mortgagee's tenants, the mortgagee was entitled to sue for his rent, and the Courts below, a fresh contract not having been proved, were right in treating the defendants as tenants holding over."

In these circumstances his Lordship upheld the plaintiff's decree for arrears of rent. In *Nanekeshwar Pd. v. Nand Gopal Ram*[1], also a decree for arrears of rent had been obtained. In my opinion, therefore, when the ijara is in force, and when it was in force also during the period for which the rent is claimed according to the terms of the kerayanama, and when it was in force also when the present suit was brought, the plaintiff's remedy is not confined only to his remedy under Section 68, Transfer of Property Act, but he is also entitled to sue for his arrears of rent. \

16. In each of the just mentioned three cases, the decree obtained for arrears of rent was put into execution, and in the execution the mortgaged property, i.e., the equity of redemption was sought to be sold for the satisfaction of the decree for money obtained against the mortgagor. It was held that Order 34 Rule 14, Civil Procedure Code was a bar to the mortgagee proceeding against the equity of redemption in execution of a money decree against the mortgagor.

17. Where a usufructuary mortgagee who is to appropriate the rent of the property in lieu of

interest on the mortgage loan subsequently lets out the property to the mortgagor under a 'kerayanama' executed by the mortgagor the claim for rent by the mortgagee against the mortgagor is a claim arising under the mortgage, and hence the mortgagee cannot execute the decree for rent obtained against the mortgagor by sale of the equity of redemption. Order 34, R. 14 is for the protection of the mortgagor. The sale in execution of a decree on a mortgage passes the interests of both the mortgagee and the mortgagor, while the sale in execution of a money decree conveys only the interest of the mortgagors, namely, the equity of redemption. The object of Order 34 Rule 14 is to prevent the mortgagee from bringing to sale the equity of redemption in execution of a money decree which he may obtain in respect of a claim arising under the mortgage. No doubt Order 34 Rule 14 has been enacted for the benefit of mortgagors, the apparent intention of the Legislature being that the mortgagors should not be prejudiced in their right of redemption otherwise than under a suit for sale under the mortgage so that the Court may adjudicate upon all the rights and liabilities of the parties 'inter se'. But that does not mean that a mortgagor should be entitled to pray in aid the provisions of Order 34 Rule 14 in all cases in which the mortgagee has entered into some sort of arrangement with his mortgagor with respect to the properties mortgaged. The mortgagor can secure the benefit of Order 34 Rule 14 only in those cases in which it can be reasonably inferred that the decree for payment of money has been passed in satisfaction of "a claim arising under the mortgage", in other words, only in those cases in which the Court is satisfied that the transaction in question was a part and parcel of the mortgage transaction itself. Such a case can arise not only where the decree for payment of money arises out of the mortgage deed itself, but also where there are more than one separate deeds which are so intimately connected with each other as could reasonably be said to form part of the same transaction, vide AIR 1943 Patna 282 : LLR 22 Pat 207; AIR 1944 Patna 5 : ILR 22 Pat 320 and AIR 1927 Calcutta 884 : ILR 55 Cal 104.

18. In the present case, therefore, the mortgage bond and the 'kerayanama' being part of the same transaction the mortgagee in execution of his decree for money obtained in respect of the so-called rent of the house against the mortgagor would not be entitled to execute the decree for arrears of rent by sale of the decree for redemption, as such a case would be governed by Order 34 Rule 14, Civil Procedure Code

19. As regards the third contention, it is a fact that the alleged kerayanama was executed by the defendant only, and as such it was not in conformity with the provisions of Section 107, Transfer of Property Act, para 3 of which provides that where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee. This amendment was introduced in 1929, and, therefore, it is invalid. In *Hari Pd. Agarwalla v. Abdul Haq*[2], it was held by a Division Bench of this Court as follows :

> "A Court of law can only recognize or give effect to a title which is made perfect in law and if any of the legal formalities is wanting to make a title good in law that title is an imperfect title and the Court will not help a person who has an imperfect title in law. A transferee who is not clothed with title in the manner recognized by law, cannot be said to be a person having a valid title in law and therefore, Courts of law cannot recognize such a title.

If the transferee though not clothed with a perfect legal title has been put in possession or

continued in possession, the Court on grounds of equity alone can refuse to enforce the rights of the transferor except so far as those rights are expressly mentioned in the contract in writing and the equitable right in favour of the transferee has been embodied in Section 53A. In that view of the matter the provisions of Section 53A cannot be brought to the aid of the plaintiffs." Section 53A, Transfer of Property Act, has no application to a case where the document upon which a party relies is not a contract of transfer by the lessor but is a kabuliyat executed by the lessee (vide *Ram Abatar Mahto v. Shante Bala Dasi*[3],). In *Dau Dayal v. Brij Mohan*[4], it was held that where a Kabuliyat exhibits a contract between the parties to pay a certain amount every month in lieu of the occupation of the house and is executed by one of the parties only it is not a lease, but is a license. In *Birendra Nath Roy v. Sm. Sukumari Bakshi*[5], Sen, J., sitting singly held that a deed of 'Bharapatra' by which the executant states that he is a tenant under a certain person at a particular rent for a period of three years, is not a lease and is not therefore covered by para 3 of Section 107 so as to be excluded from evidence. Moreover, where the lessor relies on such document not as a lease, taut as an admission by the defendant, there is nothing in the law of evidence which makes it inadmissible as an admission. The document is binding on the lessee unless he can show good reasons for avoiding the effect of his admission. A similar view has also been taken by Rowland, J., in *Hadu Maharana v. Ramdulal Ghosh*[6],

20. A review of these authorities, however, shows that the 'Kerayanama' in question, assuming it to be a lease, was invalid, as it was hit by Section 107, Transfer of Property Act, and therefore, the present suit on the basis of the lease was not maintainable, as the lease could not form legally a basis for such a suit.

21. The fourth contention that the execution of the simple mortgage by the defendant in favor of the plaintiff extinguished the earlier two documents, namely, the ijara and the 'kerayanama', cannot be accepted. There is no mention of either the ijara or 'kerayanama' in the subsequent simple mortgage bond, executed by the defendant in favor of the plaintiff on 10-10-52.

On reading the mortgage bond itself it is quite clear that it was an independent transaction, and it had nothing to do with either the ijara or the 'kerayanama', and, therefore, it cannot be held that the simple mortgage bond extinguished either the ijara or the 'kerayanama'. I, therefore, agree with the learned Small Cause Court Judge on this question.

22. As regards the fifth contention, whether the plaintiff was entitled to a decree for use and occupation when there was no contract for the same, I find that the learned Small Cause Court Judge has held that

> "although the kerayanama, Ex. 1 did not operate to create a lease it can be looked into as evidence of an agreement between the parties to lease the house and since the defendant who executed a kerayanama has remained in occupation of the premises, he must pay for use and occupation at the rate specified in the kerayanama".

On this finding he has allowed the plaintiff a decree for arrears of house rent for use and occupation of the same. This view is supported by the decision of Rowland, J., in the above mentioned case 213 Ind Cas 394 . His Lordship held that if the tenant is however put in possession he can take the benefit of Section 53A, Transfer of Property Act, which bars the

transferor from enforcing against him any right in respect of immovable property other than a right expressly provided by the terms of the contract. The tenant in order to obtain the benefit must perform his part of the contract, i.e., he must pay the rent for the period for which he was in possession and has enjoyed the property. This view is also supported by the decision of Meredith, J., in Civil Review No. 9 of 1948(I) above mentioned. Therefore, the plaintiff is entitled to recover compensation for use and occupation from the defendant for the period he was in possession and has enjoyed the property.

23. The next question in this connection would be at what rate the compensation should be allowed, whether at the rate of Rs. 72 per year as mentioned in the kerayanama, or at a lower rate, and if so, on what basis. This is the last contention of the petitioner.

24. In the present case I find, as I have stated earlier, that the rent of Rs. 6 per month, which is equivalent to Rs. 72 per year represented interest on the mortgage money at the fate of Rs. 24 per cent. per annum. Under the Bihar Money-lenders Act a secured creditor is not entitled to interest at more than 9 per cent. per annum. It is, therefore, clear that the contract between the mortgagor and the mortgagee, by which the mortgagee stipulated to realize 24 per cent of interest from the mortgagor on the house under the veil of house rent is clearly illegal, and is hit by the Money-lenders Act.

25. The test in such as a case is, could the plaintiff have recovered Rs. 72 per annum as interest, if he had brought a suit under Section 68, T. P. Act for his mortgage money? In case of dispossession, the mortgagee is entitled to recover the mortgage money with interest at only 12 per cent. per annum. The Bihar Money-lenders Act allows interest on secured debt only at 9 per cent. per annum. There is, therefore, no doubt that the plaintiff in his suit under Section 68, T. P. Act, would have been allowed interest only at 9 per cent per annum. It would, therefore, be inequitable and illegal to allow the plaintiff to recover interest in the guise of rent, at more than 9 per cent. per annum.

26. I would, therefore, disallow the claim of the landlord in excess of 9 per cent. per annum or Rs. 27 per annum. As the defendant has been in occupation of the house, although under an invalid lease, or under no lease at all, still ends of justice require that he must pay compensation to the plaintiff for the use and occupation of the house by the defendant for the period he has been in possession of it, and the rate at which such compensation for use and occupation of the house can be allowed, should be not more than Rs. 27 per annum, which would represent the interest at 9 per cent. per annum on the sum advanced by the plaintiff to the defendant.

27. For the reasons given above, the application succeeds in part, and the decree of the Court below is modified only to this extent that the compensation would be Rs. 27 per annum, instead of Rs. 6 per month, or Rs. 72 per year. In other respects, the decree of the Court below is affirmed.

28. In the result, the application succeeds in part, and the decree of the Court below is modified as indicated above. There will be no order for costs.
Application allowed in part.

Cases Referred.

[1] AIR 1943 Pat 282, AIR 1944 Pat 5 and AIR 1927 Cal 884
[2] AIR 1951 Pat 160
[3] AIR 1954 Cal 207
[4] AIR 1952 All 344
[5] AIR 1952 Cal 352
[6]213 Ind Cas 394