

RAJASTHAN HIGH COURT

Shanti Devi

Vs

NandLal

Civil Second Appeal No. 260 of 2002

(A.C. Goyal, J.)

13.12.2004

JUDGEMENT

A.C. Goyal, J.

1. This is second appeal by the defendant against the judgment and decree dated 1-2-2002, whereby learned Additional District Judge No. 3, *Jaipur City, Jaipur* affirmed the judgment and decree of redemption passed by Additional Civil Judge (Junior Division) No. 1, *Jaipur City, Jaipur*, on 20-8-1997. The parties hereinafter shall be referred as arrayed in the plaint.

2. The plaintiff filed a suit on 22-5-1984 for redemption and possession of mortgaged property with the averments that House No. 4784 situated in Jaipur as described in para 1 of the plaint was mortgaged with the defendant vide registered mortgage-deed dated 16-11-1978 only for Rs. 16,999/-, for a period of seven years. The value of this property at that time was Rs. 60,000/- and the plaintiff never sold this property to the defendant. The cause of action arose to the plaintiff on 29-12-1983 when the defendant represented that she had become absolute owner of this property. The plaintiff was and is still ready to pay the mortgage money and thus the plaintiff is entitled to a decree of redemption of the mortgaged property with possession of the same and the defendant should be restrained not to make any alteration in the said property.

3. The defendant vide written statement submitted on 25-5-1985 pleaded that the registered mortgage-deed was executed in compliance of earlier agreement of conditional sale dated 19-4-1976 and it was agreed upon between the parties that the defendant would become absolute owner of this property after expiry of a period of

seven years. Since the plaintiff did not pay the said amount of Rs. 16,999/- within a prescribed period of seven years, the defendant became the absolute owner of the same and now the plaintiff has no right to redeem. It was also pleaded that it was not necessary for her to obtain any decree of foreclosure against the plaintiff as the property was not mortgaged but sold to her by conditional sale. It was also pleaded that the plaintiff applied and obtained permission of the competent authority of Urban Lands Department before execution of the registered document dated 16-11-1978. In the alternative it was pleaded that in case the transaction is treated to be mortgage, the defendant is entitled to receive from the plaintiff an additional amount of Rs. 6,000/- spent by her on improvement of the property and a sum of Rs. 3000/- towards additional loan advanced by her to the plaintiff.

4. Issues were framed. Evidence was recorded. Learned Additional Civil Judge (Junior Division) No. 1, *Jaipur City, Jaipur*, vide judgment dated 20-8-1997, decreed the suit for redemption with a direction that the plaintiff shall pay the mortgage-money along with additional amount of Rs. 9,000/- within one month. First appeal preferred by the defendant was dismissed vide impugned judgment and decree as stated here-in-above.

5. This Court framed following substantial questions of law on 17-5-2002 :-

"1. Whether the learned Courts below have misread, misinterpreted and overlooked the overwhelming documentary and oral evidence available on record which has rendered the impugned judgments and the findings of the Courts below illegal, perverse and unsustainable?

2. Whether the learned Courts below have committed grave illegality in considering oral circumstantial evidence in preference to clear and unassailable documentary evidence proving the admission of the plaintiff indicating his intention with regard to the nature of document dated 19-4-1976 (Ex. A/2)?

3. Whether the learned Courts below have in passing the impugned judgment and decree, ignored the principle of promissory estoppel?

6. I have heard learned counsel for the parties. All the three questions are co-related, hence are taken up together. Ex. A.2 is the agreement dated 19-4- 1976. After execution of Ex. A.2, the plaintiff applied for permission of the competent authority as provided by Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short the 'Act 1976'). According to the provisions of Section 27 of the Act 1976, no person shall transfer by way of sale, mortgage, gift, lease any urban land with a

building without the previous permission in writing of the competent authority. Ex. 1 is the application dated 14-2-1977. This application was presented to the competent authority by the plaintiff for according necessary permission required under Section 27 of the Act 1976. Ex. 2, Ex. 2/1, Ex.2/2 are the applications in prescribed preformed under sub-section (2) of Section 27 of the Act. Ex. 3 is the affidavit of the plaintiff in support of the above application. Ex. 6 to Ex.9 are the applications submitted to the competent authority by the plaintiff on 15-7-1977 and Ex.10 is the affidavit in support of these applications. Ex. A.8, Ex. 11 along with affidavits, Ex. A.9 and Ex. A. 10 are also the applications submitted by the plaintiff for the said permission. Most of the applications are copies of the same. The competent authority vide order dated 12-8-1977 granted the required permission which has been marked as Ex. A6. Thereafter pursuant to Ex. A. 2 and the permission accorded by the competent authority, Ex. 4 was got executed and registered on 16-11-1978. Ex. 16 is the copy of the plaint filed by the present defendant against the present plaintiff and one ShankerLal on 29-12-1983 for permanent injunction and Ex. 15 is the copy of her statement recorded in that civil suit of 1983. It is significant to say here that the execution of the above referred documents is not in dispute.

7. Before advertng to the submissions, it would be proper to refer the provisions of Sections 58, 59 and 60 of the Transfer of Property Act, 1882 (in short the 'Act 1882').

"58. 'Mortgage', 'Mortgager', 'Mortgagee', 'Mortgaged Money' and 'Mortgage-Deed' - (a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called mortgager, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgaged-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Simple Mortgage- Where, without delivering possession of the mortgaged property, the mortgager binds himself personally to pay the mortgaged-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contracts, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgaged money, the transaction is called

a simple mortgage and the mortgage and simple mortgagee.

(c) Mortgage by conditional sale- Where, the mortgagor ostensibly sells the mortgaged property-

On condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

On condition that on such payment being made the sale shall become void, or

On condition that on such payment being made, the buyer shall transfer the property to the seller,

the transaction is called mortgage by conditional sale and the mortgagee a mortgagee by conditional sale :

[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

(d) Usufructuary mortgage.- Where the mortgagor delivers possession [or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property [or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage- money, or partly in lieu of interest [or] partly in payment of the mortgage- money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) English mortgage.- Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(f) Mortgage by deposit of title-deeds,- Where a person in any of the following towns, namely, the towns of Calcutta, Madras [and Bombay] and in any other town which the [State Government concerned] may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security

thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) Anomalous mortgage,- A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage].

59. Mortgage when to be by assurance.- Where the principle money secured is one hundred rupees or upwards, a mortgage [other than a mortgage by deposit of title deeds] can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by [a registered instrument] signed and attested as aforesaid or (except in the case of a simple mortgage) by delivery of the property.

60. Right of mortgagor to redeem.- At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee, (a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to delivery possession thereto to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished;

Provided that the right conferred by this section has not been extinguished by act of the parties or by [decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.- Nothing in this section shall entitle a person interest in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

8. I have perused the judgments of the two Courts below. The trial Court held that Ex. 4 is registered mortgage-deed with conditional sale and its nature is clear to prove that the property was mortgaged and not sold; that the value of the property at the relevant time was Rs. 60,000/- while it was mortgaged only for a sum of Rs. 16,999/- and this fact also supports the plaintiff's case that it was a case of mortgage and not of sale; that vide Ex. 4 it was for the plaintiff to pay the house tax for seven years- mortgage period and to get the house repaired as and when required; that the defendant herself raised a demand of Rs. 6,000/- spent in repair of this house and also advanced a sum of Rs. 3,000/- as loan on 30-5-1982 on interest against this very property and that the defendant herself admitted in her statement Ex. 15 recorded in the civil suit marked as Ex. 16 that this property was mortgaged with her by the plaintiff. On the basis of the above findings, it was held by the trial Court that the plaintiff mortgaged this property with the defendant by delivery of possession of the house. These findings were upheld in first appeal.

9. Learned counsel for the defendant contended that the two Courts below did not consider the documentary evidence; that the two Courts below misread and misinterpreted the various documents and gave preference to the oral evidence over overwhelming documentary evidence and a perusal of the various documents clearly shows that the plaintiff admitted that he sold this property to the defendant with a condition that in case the plaintiff fails to make the payment of the consideration mentioned in Ex. A. 2 and Ex. 4 within a period of seven years, the defendant would become the absolute owner of the disputed house. He placed reliance upon a number of judgments. In *State of Rajasthan v. Mangu*, ¹this Court in a criminal case under Prevention of Food Adulteration Act held that oral evidence in absence of documentary evidence cannot be believed. In *S. Saktivel v. M. Venugopal Pillai*² it was held that terms of registered document can not be modified, altered or substituted by oral contract or disposition and oral evidence has to be excluded. It was also held that where parties had agreed before trial Court that the disputed document was a settlement deed and not a Will and Court proceeded on that basis, the defendant

appellant could not plead before the appellate Court that the document was a Will on account of estoppel. Similar view on the point of promissory estoppel was taken in *M/s. Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*³ *M/s. Hindustan Lever Ltd. Bombay v. M. R. T. P. C.*,⁴ and *Food Corpn. of India v. Mahipalk and Sons*⁵ In view of these judgments, the submission made by Mr. Surana is legally justified that to prove the terms of the document oral evidence can not be taken into consideration. The fact that the two Courts below considered the oral testimony for proving the contents of the documents or the fact that the Courts below overlooked the documentary evidence and based their decision on oral testimony has to be considered hereinafter.

10. It was next contended by Mr. Surana that it was a case of outright sale and not of mortgage and this fact is well proved by various documents. Reliance is placed upon *ChunchunJha v. EbadatAli*⁶ wherein it was held that the question whether a given transaction is a mortgage by conditional sale or a sale out right with a condition of repurchase is a vexed one and must be decided on its own facts. In such cases the intention of the parties is the determining factor. Similar view was taken in *TamboliRamanlalMotilal v. GhanchiChimanlalKeshavlal*,⁷ *Satyadeo v. Ramasarup*⁸ And *Swaroop Chand v. Kanhaiyalal*⁹

11. It was also argued by Mr. Surana that the admission is the best evidence and the plaintiff in various documents admitted this fact that this property was sold to the defendant and the admission of the plaintiff about mortgage is clear as recorded in the order sheet dated 12-8-1977 by the competent authority which is marked Ex. A. 6. Reliance is placed upon *Narayan v. Gopal*¹⁰ wherein it was held that an admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Similar view was taken in *Pooranmal v. Ganga Sagar*¹¹ *Tamboli R. Motilal v. Ghanchi C. Keshavlal*¹² wherein it was also held that nomenclature of the document would not be decisive factor. It was also argued that the plaintiff could have taken back the possession of the property by making the payment within a period of seven years from 19-4- 1976 the date when Ex. A. 2 was executed and thus right of redemption suit extinguished after expiry of seven years in accordance with Section 60 of the Act 1882. Reliance has been placed upon *NandLal v. Ramesh Chand*¹⁴ wherein it has been held that right of redemption is available to the mortgagor unless it has been extinguished by the parties. Arguing the scope to exercise the powers by High Court in second appeals, Mr. Surana contended that the High Court may set-aside even the

concurrent findings if the same are based upon no evidence or where the findings are perverse. Reliance is placed upon *State of Rajasthan v. Harphool Singh* ¹⁴ wherein Hon'ble the SC held that erroneous and perverse findings may be set aside in second appeal. Similar view was taken by Hon'ble the SC in *Rajappa Hanamantha Ranoji v. Mahadev Channabasappa* ¹⁵ It was also argued that statement of the defendant in an earlier suit filed by her cannot operate as *res judicata* and reliance is placed upon *Askaran v. Madan Lal* ¹⁶

12. Per contra, Mr. Agarwal, learned counsel for the plaintiff contended that both the Courts having taken into consideration the oral as well as the documentary evidence arrived at concurrent finding that the property in question was mortgaged with conditional sale and it was not a case out right sale and the plaintiff had a right of redemption within a period of 30 years as provided by Article 61 of the Limitation Act and even otherwise the suit was filed within a period of seven years from the date of registered mortgage deed and all the documents relied upon by both the parties clearly show that this property was mortgaged with conditional sale for a period of seven years. Reliance is placed upon *Shri Shivdev Singh v. Sh. Sucha Singh*, ¹⁷ wherein it was held that the right of redemption is statutory and legal right which cannot be extinguished by any agreement. While taking similar view in *Akbar Hussain v. Shah Ahsanul Haq*, ¹⁸ it was held that a mortgagee by conditional sale is not entitled to become the owner of the property, without a suit for foreclosure, and it is always open to a mortgagor pay up and avoid foreclosure at any time before there is a final decree for foreclosure. In *Pomal Kanji Govindji v. Vrajlal Karsandas Purohit*, ¹⁹ it was held that right of redemption cannot be taken away by the contract and a clog on the equity of redemption is unjust and unequitable. Similar view was taken in *Gangadhar v. Shankar Lal*, ²⁰ also. On the question of nature of the document as to whether it is a mortgage deed or sale deed. Mr. Agarwal has placed reliance upon *Chunchun Jha v. Edabat Ali*, ²¹ and *Bhaskar v. Shrinarayan Rambila*, ²²

13. Now the submissions of Mr. Surana with regard to the documentary evidence are taken up. Ex.A. 2 is an agreement dated 19-4-1976. According to Mr. Surana, this property was earlier mortgaged for a sum of Rs. 9,999/- with one Gyarsi Lal on 22-7-1973 and as per contents at page 3 of this document, it was agreed upon to pay interest at the rate specified in this document but there is no such clause to pay any interest here and it shows that the transaction between the parties was that of sale and not mortgage with conditional sale. On a careful consideration of the entire contents of Ex. A.2, the above submission seems to be devoid of merit. Mere in absence of any term

to pay interest, no such conclusion can be drawn that this property was sold to the defendant. It is significant to say here that the possession of this property was handed over to the defendant and in that case absence of the term of interest seems to be justified. At page 3 of this document, it is mentioned that the plaintiff is in need of money for his domestic affairs and to re-pay the loan of Gyarsilal, hence the plaintiff thought it proper to mortgage this property with conditional sale for some period and that period was determined to be seven years. As per condition No.1 at page 4 of this document, the defendant has been addressed as mortgagee as well as the creditor. The similar terms have been used in other paras of this document. According to condition No.5 it was also agreed upon that in case the competent authority declines the required permission, the plaintiff would repay the advance amount of Rs. 15,000/- to the defendant without any interest at earliest and in case the plaintiff fails to do so the creditor i.e. the defendant would have a right to recover this amount with interest @ of Re.1/- p.m. through Court. According to condition No. 6, it was also agreed upon that the plaintiff would get back the possession of the property within seven years after making the payment of this amount paid by the defendant to the plaintiff. Mr. Surana putting stress upon the words "Swatwadhikar" in Ex. A. 2 at page 3 contended that the plaintiff transferred the title of this property to the defendant but this submission also has no force as no such conclusion can be drawn as it has been repeated in this document that this is a mortgage with conditional sale for a period of seven years only.

14. According to Mr. Surana all the applications along with affidavits submitted by the plaintiff before the competent authority for required permission clearly show that this property was not mortgaged rather it was sold. I have carefully gone through all these documents. In first para of Ex. 1, application the plaintiff stated that "I want to transfer a portion of my constructed building (disputed house). The word "transfer" according to Mr. Surana means transfer of title but this submission can not be accepted at all. According to Section 58 of Act 1882, the word "mortgage" has been defined as transfer of an interest in specific immovable property for the purpose of securing the payment of money. Therefore, the word "transfer" in Ex. 1 does not show any intention of the plaintiff to transfer the title of the disputed property. In the last para of this application it is mentioned that the "transfer of building" will be for seven years on account of conditional sale to Smt. Shanti Devi. Although the word "mortgage" is not mentioned in Ex. 1 but the term "transfer" is with reference to conditional sale for a period of seven years. Similar terminology has been used in all the remaining applications and the affidavits submitted before the competent authority for permission under Section 27 of the Act, 1976. Thus, on the basis of the these documents, no such

conclusion can be drawn that the transaction in question was that of sale and not of mortgage with conditional sale. As stated hereinabove, Ex. A. 6 is the order-sheet recorded by the competent authority on 12-8-1977. Vide this order the competent authority granted permission to sell this property. Mr. Surana has put much stress upon the word 'Vikray' mentioned in this order by the competent authority and according to him, it amounts to admission of the plaintiff that the transaction was one of sale and not of mortgage. Mr. Agarwal contended and rightly so that this is the order of the competent authority and this does not amount to admission on the part of the plaintiff and further even the presence of the plaintiff is not recorded in the said order dated 12-8-1977. No doubt, it was rightly argued by Mr. Surana that admission of a party is the best evidence but the order Ex. A. 6 is not based upon the admission of the plaintiff.

15. Now comes the basic document which is Ex. 4. Pursuant to the agreement Ex. A. 2 and having obtained the permission of the competent authority, Ex. 4 the registered deed was executed on 16-11-1978. Now the crucial point for consideration is whether this is a transaction of mortgage with conditional sale or an outright sale? One should be guided by the terms of the document and for the purposes of interpreting the nature of a document the Court has to see the real intention of the parties. It is correct to say that mere nomenclature of the document is hardly decisive to determine the true nature of the document and thus much importance cannot be adjudged to the nomenclature of the document. Though Ex. 4 is termed as 'mortgage' with 'conditional sale' but the Court has to see the real intention of the parties. It is from this angle that this Court has to analyse document Ex. 4. According to this document the plaintiff was in need of money as he wanted to repay the loan taken from earlier mortgagee Gyarsi Lal. It is also mentioned in this document that the plaintiff wants to mortgage this house with conditional sale for a period of seven years for a sum of Rs. 16,999/-. At various places, the defendant has been shown as creditor and the nature of this document has been shown as mortgage with conditional sale. The defendant has further been termed as mortgage at various places in this document and the plaintiff himself has been termed as mortgagor. It is also specifically mentioned in this document that the mortgagor by making the payment of the mortgage money and of other expenses within the specific period would get this property redeemed from the mortgagee. It is also mentioned in this document that the mortgagee would have a right to obtain a decree of foreclosure. It was also agreed upon that from the period of mortgage, the plaintiff would pay the house tax as well as he would get this house repaired whenever required to do so. This property has been specified as mortgaged property at page 6 of this document. At page 9 also it is specifically mentioned that a sum of Rs. 15,000/- as

mortgaged money has already been received by the plaintiff from the defendant and the remaining amount has been received by the plaintiff on the date of execution of this document. Thus the intention of the parties is quite clear that the plaintiff mortgaged this property with conditional sale for a period of seven years and the defendant advanced a sum of Rs. 16,999/- to the plaintiff and the plaintiff got a right to redeem this property by making the payment of this mortgaged money within a period of seven years as agreed upon. The submission of Mr. Surana that this period of seven years is to be counted from 19-4-1976, the date of the execution of Ex. A.2 cannot be accepted at all in view of the provisions of Section 59 of the Act 1882, which provides that where the principal money secured is one hundred rupees or upwards, a mortgage (other than a mortgage by deposit of title deeds) can be effected only by a registered instrument. The registered mortgage deed is dated 16-11-1978 hence the period of seven years has to be counted from this date. Even otherwise according to Section 60 of the Act 1882, the right of redemption is a statutory and legal right which cannot be extinguished by any agreement made at the time of mortgage. The defendant has failed to prove that the right of redemption has come to an end. He never applied for decree for foreclosure. Even otherwise, Article 61 of the Limitation Act provides a period of 30 years for redemption or for possession of immovable property mortgaged when the right to redeem or recover possession accrues to the mortgagor. Therefore, right to redeem this property was never extinguished in the instant case. The submissions made by Mr. Surana that the Courts below did not consider the documentary evidence, that the Courts below misread, misinterpreted and over looked the overwhelming documentary evidence; that the Courts below considered the oral and circumstantial evidence in preference to clear and unassailable documentary evidence proving the admission of the plaintiff cannot be accepted as both the Courts below have taken into consideration not only the oral testimony but also the entire documentary evidence available on the record.

At the cost of repetition, it is observed that there was no admission of the plaintiff vide Ex. A. 6 order-sheet or else where that he had sold this house to the defendant. The two Courts below also rightly relied upon other evidence available on the record that the mortgage money was only Rs. 16,999/-, while the value of this property at the time of the mortgage was about Rs. 60,000/-. According to the statement of the plaintiff, the value of this house was Rs. 60,000/- at that time. He was not cross-examined on this point at all. D.W. 2 Pooran Mal in cross-examination admitted that the price of this house may be Rs. 60,000/- at the relevant time. According to Mr. Surana, in various applications submitted by the plaintiff before the competent authority, this

house has been shown as 100 years old and thus the value of this property cannot be Rs. 60,000/-. But this submission has got no force in view of the uncontroverted statement of the plaintiff and the statement of D.W. 2 Pooran Mal. The other important piece of evidence is in the form of the admissions made in various paras of plaint Ex. 16 and Ex. 15 statement of the defendant herself wherein she admitted that the plaintiff mortgaged this property with her. It was pleaded in plaint Ex. 16 that since the mortgagor i.e. NandLal did not pay the amount within seven years, Smt. Shanti Devi has become the owner of this house and the defendant no. 2 ShankerLal is her tenant in some portion of this house and both the defendants in collusion want to transfer this property, hence prayer for permanent injunction was made. Ex. 15 is her statement which was recorded on 19-10-1987 in that suit. In this statement, she specifically admitted more than once that this house was mortgaged with her by ShriNandlal. The question of *res judicata* is not involved in this case. Further, submission made by ShriSurana that subsequent conduct of the defendant vide Ex. 16 and Ex. 15 containing admissions is not relevant has also no force because it is not a case of subsequent conduct. Rather, these are clear admissions in the plaint Ex. 16 and statement Ex. 15 and are binding upon her. Thus, in view of the entire discussion made hereinabove, all the three questions are decided against the defendant appellant.

16. Consequently, this appeal is hereby dismissed with costs.

Appeal dismissed.

Cases Referred.

1. 1979 WLN (UC) 389
2. (2000) 7 SCC 104
3. (1979) 2 SCC 409: (AIR 1979 SC 621)
4. AIR 1977 SC 1285
5. 1985 Raj LR 628
6. AIR 1954 SC 345
7. AIR 1992 SC 1236
8. AIR 1964 Patna 193
9. 1988 (1) Raj LR 278
10. AIR 1960 SC 100
11. 1988 (1) Raj LR 506
12. 1993 (Supp) 1 SCC 295: (AIR 1992 SC 1236)
13. 2000 (1) Raj LW 223

14. 2000 (2) UJ (SC) 931
15. (2000) 6 SCC 120: (AIR 2000 SC 2108)
16. AIR 1995 Raj 130
17. 2000 WLC (SC) 357: (AIR 2000 SC 1935)
18. AIR 1932 All 155
19. AIR 1989 SC 436
20. AIR 1958 SC 770
21. AIR 1954 SC 345
22. AIR 1960 SC 301