

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:
Hon'ble Justice Supratim Bhattacharya

**FMA 569 of 2022
With
CAN 4 of 2024**

**Goutam Dutt
Vs.
Namita Busfore &
Kumari Rumpa Busfore**

For the Appellant : Mr. Aniruddha Chatterjee
 Mr. Surya Prasad Chattopadhyay
 Mr. Debabrata Roy

For the Respondents: Mr. Biswaranjan Bhakat
 Mr. Probal Das
 Mr. Subrabrota Mukherjee

Judgement Delivered On: **29.10.2025**

Supratim Bhattacharya, J.:

1. The present miscellaneous appeal has been preferred being aggrieved by and dissatisfied with the order passed by the learned Additional District Judge, 2nd Court, Jhargram Paschim Medinipur on 18.01.2018 in Title Appeal No. 7 of 2015. Through the said order, the learned Additional District Judge has passed the following:

“Hence it is

Ordered

That instant Title Appeal being no. 07/2015 be and the same is allowed on contest but without costs. The impugned judgment and decree passed in Title Suit No.

46/2012 by the Ld. Civil Judge (Junior Division) Jhargram, Paschim Medinipur on 26/02/2015 is hereby set aside.

Let the suit be remanded before the Ld. Court below on open remand and the Ld. Court below will give opportunity to both the parties to amend their pleadings, if any, and to adduce further evidence if so prays by any party and to dispose of the suit without being influenced by the observations made in the body of the judgment as, expeditiously as possible.

Let the copy of this judgment be sent down along with the LCR to the Ld. Court below immediately for his information.”

2. Factual matrix of the case

Before the Trial Court

The plaintiff who is the appellant herein namely Sri Goutam Dutt instituted the suit for eviction of licensees against both the defendants who are the respondents herein namely Namita Busfore and Kumari Rumpa Busfore before the learned Civil Judge Junior Division Jhargram. The said suit has been numbered as Other Suit No. 46 of 2012.

Through the plaint the appellant who was the plaintiff before the Trial Court, has stated that the property once upon a time belonged to the Jhargram Electric Supply Company Ltd..

The plaintiff and his brother namely Kunal Dutt purchased the property from the Jhargram Electric Supply Company Ltd. through a registered deed of sale which was registered on 12.06.1962 in the office of the Sub-Registrar Jhargram, being No. 6010 for the year 1962.

The plaintiff along with his brother became joint owners of the entire property and thereafter they made amicable partition of the said property by virtue of a deed of partition registered on 18.11.1978, in the office of the Registrar of Assurance, Calcutta. By virtue of the said partition the property got assigned in favour of the plaintiff and his brother namely Kunal Dutt and thus they became absolute owners of their respective shares.

Thereafter the plaintiff constructed a bungalow on the land assigned to him by virtue of partition. It has further been stated that after construction of the said bungalow it was found that for convenience of possession more land was necessary as a result the elder brother of the plaintiff voluntarily out of natural love and affection transferred 600 sq. ft. of land from his share in favour of the plaintiff by virtue of a deed of gift dated 28.04.2000 which was registered in the office of the Additional Registrar of Assurance, Kolkata on 06.11.2000. The plaintiff had accepted the gift and the same has been acted upon. After execution of the said deed of gift both the plaintiff and his brother namely Kunal Dutt became entitled to 3600 sq. ft. of land each.

It was further been stated that the said bungalow which was constructed by the plaintiff used to remain vacant and locked for most part of the year. At that point of time one young man of the locality namely Shibram Busfore requested the plaintiff to allow him to sleep in the ante room and in lieu thereof he agreed to keep watch of the said bungalow, there was nothing to disagree on behalf of the plaintiff. It has further been stated that Shibram had his own house at Kadamkanan in Jhargram town where he used to live with his widowed mother and other members of his family. After the demise of his mother Shibram got the job of his mother as sweeper on compassionate ground in cooperative management training institute at Ghora Dhara in Jhargram. It has further been stated that thereafter Shibram got married and because of the said wedlock two children have born.

It has also been stated that the said Shibram used to live with his family in his office quarter during the day and used to sleep in the ante room during the night as caretaker/watchman. The said Shibram Busfore used to provide water to the plants in the compound occasionally. It has further been stated that the said Shibram was never formally appointed by the plaintiff nor was paid regular salary except the occasional tips and gifts. Shibram was also allowed to use electricity on the ground of security. He used to stay in the ante room of the bungalow as a licensee and no license fee was payable. It has further been stated that there were few incidents of theft and burglary so the said Shibram

sought for permission of the plaintiff to sleep in the northern room on the plea that it would facilitate him to keep better watch as such the plaintiff permitted him to sleep in the northern room. Gradually on several pretext the said Shibram brought his wife and children in the said northern room and adjacent ante room. Shibram expired during the month of October, 2005.

Thereafter Namita Busfore, the wife of Shibram was given the job of Shibram Busfore in the Co-operative Management Institute on temporary basis on the request of the plaintiff on compassionate ground. On several requests of the defendant No. 1 the plaintiff allowed her to stay in the northern room and in the ante room of the bungalow with her children as licensee on the condition that she would keep watch of the bungalow during the night.

Subsequently due to lapse of time there has been a change in the scenario and the wife of the plaintiff fell ill for whom huge recurring expenses has to be incurred as a result of which there has been acute financial problem. The plaintiff has shifted from his previous residence to the flat of his son namely Dr. Rahul Dutt. The plaintiff has abandoned the idea of visiting Jhargram at intervals and there is no scope for the same. To meet huge expenses of the treatment of his wife and to overcome the financial stringency the plaintiff is left with no other option but to sale the property at Jhargram, but no buyer is agreeable to purchase the property having the defendants occupying a portion of the

same. As such the plaintiff requested the defendants several times to vacate the two rooms that is the northern and the ante room but the defendants did not pay any heed to it. As such the plaintiff has filed the suit for eviction of licensee.

The defendants before the Trial Court entered appearance and filed their written statement and through the written statement they have denied the contentions of the plaintiff. In their written statement it has been mentioned that the State of West Bengal is a necessary party as such the State of West Bengal is to be included as a party. It has also been stated that the suit is barred by the Homestead Act. In the written statement it has specifically been stated that Sundari Busfore, the mother of Shibram Busfore came to Jhargram from Uttar Pradesh about 45 years ago and used to work as a sweeper and also used to perform other activities and she had no house of her own. She cleared some portion of the suit property and constructed a temporary house and thereafter she had applied before the settlement office for recording her name under the Homestead Acquisition Act but the settlement authority did not accept her prayer. It has also been stated that the temporary house got fully damaged due to passage of time and thereafter a house has been constructed by the defendant.

On the basis of the averments made in the pleadings the following issues were dealt with after being recast:

“1. Is the suit maintainable in its present form, law and prayer?

2. Is the suit barred by the principles of limitation?

3. Does the plaintiff in the instant suit have right, title, interest and possession in the suit property?

4. Do the defendants in the instant suit have adverse possession in the suit property?

5. Is the sole defendant in the instant suit a licensee under the sole plaintiff?

6. Is the plaintiff in the instant suit entitled to get decree as prayed for by him?

7. Is the plaintiff in the instant suit entitled to any other relief or remedy under law and equity?”

On behalf of the plaintiff the plaintiff himself that is Goutam Dutt has adduced evidence as PW1 and one Asim Kumar Sen has deposed as PW2.

The following documents have been exhibited on behalf of the plaintiff:

1. Deed of sale being No. 6010 for the year 1962.
2. An indenture dated 18.11.1978.
3. Deed of gift dated 28.04.2000.
4. Municipal tax receipts issued by the Jhargram Municipality.
5. One sheet of Assessment Register of the Jhargram Municipality for 2002-2003.

In complying with this decree the defendants are hereby further directed to remove all or any items belonging to them that may be in existence at the suit premises. The defendants are lastly directed not to put the suit property under lock and key or any padlock while executing the instant decree”

Before the First Appellate Court

Being aggrieved by and dissatisfied with the judgment passed by the learned Trial Judge the defendants preferred First Appeal before the Additional District Judge (2nd Court) Jhargram, being Title Appeal No. 7 of 2015.

The First Appellate Court after considering the submission of the learned counsels representing the appellants/defendants and respondent/plaintiff and on perusal of the evidence on record has passed the impugned order, thereby setting aside the judgment passed by the Trial Court, which has been mentioned above.

3. Against the impugned order the present First Miscellaneous Appeal has been preferred.
4. The learned senior counsel namely Aniruddha Chatterjee being assisted by Mr. Surya Prasad Chattopadhyay and Mr. Debabrata Roy on behalf of the appellant has submitted that

i) The entire suit property was purchased by the appellant plaintiff and his brother Kunal Dutt.

ii) He has further submitted that amicable partition of the property between the brothers took place through a partition deed dated

18.11.1978 and the appellant plaintiff constructed one small bungalow on the land assigned to him by virtue of the deed of partition. Thereafter the said Kunal Dutt transferred 600 sq. ft of land to the plaintiff through a deed of gift and after execution of the said deed of gift the appellant plaintiff became the absolute owner in respect of the entire property mentioned in the schedule D of the plaint.

iii) He has further submitted that the bungalow constructed by the appellant plaintiff remained vacant and under lock and key during the most part of the year. He has further submitted that the husband of the respondents/defendants namely Shibram Busfore requested the appellant plaintiff to allow him to sleep in the ante room and in lieu thereof the said Shibram agreed to keep vigilance of the said house as the caretaker or watchman.

iv) He has further submitted that the said Shibram Busfore had his own house in Kadamkanan in Jhargram. He has further submitted that the said Shibram expired on October 2005 and on several requests made by the defendant respondent No.1 the appellant plaintiff allowed her to stay in the northern room and ante room of the bungalow with her children on condition that she would watch the bungalow during the night. He has further submitted that due to urgent need of money to meet the financial crisis the appellant plaintiff decided to sale the bungalow as such the appellant/plaintiff requested the respondents/defendants to quit and vacate the suit property but the respondents did not pay heed

to such requests, thus finding no other alternative the appellant plaintiff has instituted the suit praying for recovery of possession by evicting the respondents defendants from the suit property.

v) He has further submitted that the appellant plaintiff has proved several documents which have been marked exhibits and has further submitted that those documents are the original sale deed, deed of partition, deed of gift, Municipal tax receipts, entry in the assessment register of the Jhargram Municipality, Deed of Sale dated 10.11.1986 and has also produced a certified copy of the order passed by the Hon'ble High Court in CPAN 1776 /99 arising out of WP No. 24463 (W) of 1998.

vi) He has further submitted that the respondents/defendants entered appearance and filed written statement denying all the material allegations contained in the plaint. He has further submitted that the respondents/defendants have made out a case that her mother-in-law settled in the suit property and built a shanty and has further pleaded that the land is vested to the Government.

vii) He has further submitted that the witness who has deposed on behalf of the defendants that is defendant No.1 has produced one document that is a letter dated 12.02.2015 issued by the BL & LRO Jhargram.

viii) He has further submitted that during the cross-examination the defendant No.1 admitted that her husband was inducted by the plaintiff

in the suit property as a caretaker and license has been revoked by the plaintiff on 11.03.2012.

ix) He has further submitted that the learned trial Court decreed the suit in favour of the plaintiff which is justified. He has submitted that the learned First Appellate court while passing the judgment forgot the entire finding of the learned Trial court and has thus remanded back the suit on the ground that the suit is vested to the State of West Bengal and the State of West Bengal is a necessary party for proper adjudication which is erroneous finding.

x) He has further submitted that the learned First Appellate Court has erroneously not looked into the exhibit no. 7 produced by the plaintiff which is an order passed by the Hon'ble High Court showing that the vesting case No. 5/Mid of 1998 was set aside and or quashed by the order dated 22.12.1998 passed by the Hon'ble High Court at Calcutta.

xi) He has further submitted that through the exhibit no.7 it appears that the vesting case No.5/Mid/1998 was set aside and/or quashed by the Hon'ble High Court which the learned First Appellate Court erroneously held that no document has been produced by the plaintiff to show that the vesting has been set aside.

xii) He has further submitted that the learned First Appellate Court has ignored the fact that the plaintiff has established his case of eviction of the caretaker from the suit premises and the defendant had admitted the

induction of her husband in the suit property as caretaker and further admitted revocation of the license by the plaintiff.

xiii) He has further submitted that the respondents have failed to establish their case and have failed to produce any oral or documentary evidence over the claim of the suit property.

xiv) He has further submitted that the caretaker /watchman cannot acquire any right , title or interest over the suit property in respect of his long possession, he is under an obligation to hand over the possession forthwith on demand.

xv) He has further submitted that the plaintiff has produced several documents including sale deed, partition deed, deed of gift, tax receipts and also proving that the name of the plaintiff is recorded in the assessment register of the Jhargram Municipality.

xvi) He has further submitted that the First Appellate Court has committed gross error by going into the question of title of the plaintiff where the plaintiff has established his title.

xvii) The learned counsel further submitted that through the order dated 29.03.2000 the Hon'ble High Court has stated the following:

“Admittedly the order has been passed on 22nd December 1998, so the order of status quo has been violated. It is settled law that any order passed or any action taken in breach of the prohibitory order of the court the same is non est and nullity. As such the

aforesaid order dated 22nd December, 1998 directing to vest the land stands set aside and quashed. Any step having been taken by the aforesaid order is null and void and the same stands cancelled.”

He has further submitted that from the exhibit 7 it is apparent that the vesting was set aside and was quashed by the order dated 22nd December, 1998. Thus the question of vesting has been set aside by the Hon’ble High Court.

The learned counsel has further relied upon the cross-examination held on 09.04.2014 of DW1 namely Namita Busfore and has relied upon the statement “.... it is a fact that my husband was inducted into the suit premises as a caretaker then I got married.

On 11.03.2012 I was asked by Goutam Dutt to quit and vacate the suit premises”

He has further submitted that the respondent/ defendant herself has admitted the fact that her husband was inducted into the suit premises as a caretaker and has also admitted that she was asked by Goutam Dutt to quit and vacate the suit premises.

The learned senior counsel has further submitted that the First Appellate Court has been pleased to remand back the suit on open remand on the ground that the plaintiff has not produced any document to show that no vesting was made or that even if any vesting was made that was set aside on its own notion or by the order of any superior authority.

The learned First Appellate Court has come to the conclusion that the suit property was vested to the Government of West Bengal hence they are the necessary party for proper adjudication of the suit. In this context the learned counsel has relied upon exhibit 7 produced by the plaintiff which is an order passed by the Hon'ble High Court whereby vesting was set aside and/or quashed he has further submitted that the First Appellate Court erroneously not gone into the exhibit 7 and has thus reached the incorrect conclusion.

The learned senior counsel has relied upon the following judgments which are as follows:

- i) (2012) 6 SCC 430
- ii) AIR 1953 Allahabad 406
- iii) AIR 1959 Bombay 533
- iv) AIR 1980 Gujarat 41

Banking upon the aforesaid submission the learned senior counsel prays for setting aside the order passed by the First Appellate Court.

5. The learned counsel Mr. Biswaranjan Bhakat along with Mr. Probal Das and Mr. Subrabrota Mukherjee representing the respondents has submitted that

i) The property in question was declared vested on 22nd December 1998. He has further submitted that the appellant plaintiff was not a party to the writ petition being No. WP 24463(W) of 1998. He has further

submitted that the certified photocopy of the order dated 29.03.2000 passed in CR 3435 (W) of 2000 arises out of WP No. 24463 (W) of 1998.

ii) He has further submitted that the appellant cannot derive any relief from the said order.

iii) The ld. Counsel has relied upon a judgment of the Hon'ble Apex Court reported in (2009) 12 SCC 231.

iv) He has further submitted that it is a case of non-joinder of necessary party and through paragraphs No. 4 and 16 of the written statement the respondents/defendants have categorically stated that the suit land is vested land.

v) He has further submitted that the appellant has not produced the record of rights in respect of the suit property.

vi) The learned counsel has further submitted that learned Trial Court has been erroneous in decreeing the suit by opining that the defendants respondents have not been able to prove that they have acquired adverse possession and the learned Trial Court has failed to take into consideration the contents of exhibit A.

vii) The learned counsel has relied upon a judgment reported in (2007) 4 SCC 92 and has submitted that any finding without framing issue has no value.

viii) He has further submitted that no issue was framed in respect of non-joinder of party.

ix) The learned counsel has further relied upon a judgment (2016) 10 SCC 315 and has further relied upon the judgment reported in (2012) 5 SCC 370.

x) The learned counsel has also relied upon two more judgments one being reported in AIR 1981 SC 1998 and the other reported in AIR 1987 SC 117.

- 6.** From the contention of the learned counsels representing the appellant and the respondents it transpires that the moot point for consideration is as to whether the order passed by the First Appellate Court thereby remanding the suit to the learned Trial Court on open remand, giving opportunity to both the parties to amend their pleadings if any and to adduce further evidence if so prayed by the parties and thereafter to dispose of the suit as expeditiously as possible is in accordance with law or not.
- 7.** First of all this Court delves into the written statement filed by the defendants before the trial court. In the said written statement it has been specifically stated that the said suit is bad for defect of parties as because State of West Bengal has the right over the suit property so the State of West Bengal is required to be made a party.
- 8.** In the written statement it has also been stated that the mother in law namely Sundary Busfore of the present respondent No.1 had applied for recording her name before the settlement officer in respect of the suit

property which was not allowed on the ground that the said property is khas land belonging to the State.

- 9.** In these regards initially issues were framed on 18.12.2012 by the learned trial court which are as follows:

“ISSUES

6. Is the suit bad for defect of parties?

7. Is the suit barred under the Homestead Act? ”

On perusal of the judgment passed by the trial court it transpires that the issues framed earlier were ultimately recast and the twelve issues framed by the trial court on 18.12.2012 were later on recast into seven issues. The aforementioned two issues do not appear in the list of issues which have been framed on recast.

- 10.** It is fact that the defendant witness during her cross-examination has deposed the following:

“It is a fact that my husband was inducted into the suit premises as a caretaker. Then I got married.

On 11.03.2012 I was asked by Goutam Dutt to quit and vacate the suit premises”

During her cross-examination dated 12.11.2013 she has also deposed the following:

“I got married to Shibram Busfore about 20 years ago.”

So from the aforementioned deposition of the defendant witness it transpires that she got married to Shibram Busfore on or about the year 1993.

- 11.** From the exhibit 7 which is a certified photocopy of an order dated 29.03.2020 passed in CR. 3435 (W) /2000 under the heading in the matter of (a) the following has been mentioned :

“An order was passed on 18 December 1998 by me directing to maintain status quo in all respects for a period of one week after the X-mas vacation. Thereafter this order was directed to continue until further orders of this court. The order as on today still subsists so far as contempt is concerned. According to the petitioner my order dated 18th December 1998 was communicate on 21st December 1998 by hand delivery. An affidavit to that effect being filed. Subsequently by registered post the aforesaid communication by letter was made with A/D. It appears that on 22nd December 1998 the letter dated 21st December 1998 by registered post was received. The impugned order has been passed on 22nd December 1998. Dr. Saharoy appearing for the alleged contemnor submits that the alleged contemnor was not aware of the order passed by him until 24th December 1998. By that time the order was passed. Therefore there is a controversy as to the knowledge of passing of my order. The aforesaid submission of Dr. Saharoy, however, is disputed by Mr. Panda, learned advocate appearing for the petitioner. Further it has to be gone into on affidavit-in-opposition.

Let the affidavit-in-opposition be filed within 3 weeks from date and reply thereto, if any be filed within 2 weeks thereafter.

Let this matter be listed for hearing six weeks hence.

Admittedly the impugned order has been passed on 22nd December 1998, so the order of status quo has been violated.

It is settled law that any order passed or any action taken in breach, of the prohibitory order of the court the same is non est and nullity. As such the aforesaid order dated 22nd December 1998 directing to vest the land, Stand set aside and quashed. Any step having been taken by the aforesaid order is null and void and the same stands cancelled.”

From the aforementioned set out it transpires that an application for contempt under the Contempt Of Court Act 1971 was prayed for not complying with the solemn order dated 18.12.1998 whereby the Hon'ble Judge was pleased to grant an interim order of injunction of maintaining status quo in all respects as on that day. From the aforementioned exhibit it transpires that it was an interim order and not a final order. On the other hand from the exhibit 'A' adduced on behalf of the defendants that is a letter dated 12.02.2015 issued by the Block Land and Land Reforms Officer, Jhargram Paschim Midnapore it transpires that the schedule land as alleged has been vested to the State of West Bengal vide case No.05/Mid of 1998.

From the aforementioned two exhibits that is exhibit '7' and exhibit 'A' it is also clear that the Act of the State took place vide case No. 05/Mid of 1998.

From the aforementioned two documents it is not finally clear as to whether the said property that is the suit property is vested in favour of the State or not.

To reach the appropriate conclusion adjudication on the basis of evidence is required, which can only be attained in the presence of the State and the version of the State is very much essential in this regard.

12. It is fact that the alleged issue of vesting of the land in favour of the State if at all arose during the year 1998 that is during the period when the suit property had/has been in possession of the respondents/defendants.

13. The judgment cited by the appellant published in (2012) 6 SCC 430 passed by the Hon'ble Apex court in the case between A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, does not come in aid to the appellant as because in the said case the property was admittedly owned by the respondent society, mentioned in Paragraph 18. So there was no controversy as regards to ownership therein.

In Paragraph 22 of the self same judgment paragraph 66 of the judgment passed in Maria Margarida Sequeria Fernandez Vs Erasmo Jack de Sequeria has been laid down which is as follows :

“22. ...66. A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.”

In Paragraph 24 of the said judgment it has been also stated that:

*“24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in *Dalip Singh v. State of U.P.* [(2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324] observed that: (SCC p. 116, para 1)*

“1. ... Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system.”

The judgment reported in AIR 1953 Allahabad 406 deals with the issue of Uttar Pradesh Jamindari Abolition and Land Reforms Act. In the said judgment there is no question as regards to whom the suit buildings belonged. The buildings admittedly belonged to the appellants so there was no controversy as regards to ownership.

The judgment reported in AIR 1980 Gujarat 41 which has been cited on behalf of the appellant deals with the issue as to whether the licence in question was lawfully terminated or not which is not the issue in the present case. So this case also does not help the appellant.

- 14.** This Court is also of the same view as of the Ld. First Appellate Court that the ownership as regards to the suit property is required to be adjudicated which can only be decided after having evidence of all the parties who have stake in the suit property.
- 15.** So this Court does not find any irregularity in the judgment passed by the First Appellate Court.
- 16.** In this regard this Court relies upon Paragraphs 5 to 9 of the judgment passed in the case between *Raghvendra Singh and others Vs. Marhu and another* reported in 1970 SccOnline MP 21 which states as follows:

“5. The learned counsel for the plaintiffs, however, relied upon the lower appeal Court's conclusion that the defendants had paid rent of the plot to Smt. Jaidevi on August 9, 1948 as evidenced by the counterfoil Ex. P-17 and were, therefore, estopped from denying her title by force of the provisions of Section 116 of the Evidence Act. Having carefully considered the arguments, we are of the view that Section 116 ibid does not help the plaintiffs to sustain their claim. Referring to that section, the Judicial Committee observed in Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Ltd., AIR 1937 PC 251 at pp. 254-255, as follows:—

“The section does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between landlord and tenant. It deals with one cardinal and simple estoppel and states it first as applicable between landlord and tenant and then as between licensor and licensee, a distinction which corresponds to that between the parties to an action for

rent and the parties to an action for use and occupation. Whether during the currency of a term the tenant by attornment to A who claims to have the reversion, or the landlord by acceptance of rent from B who claims to be entitled to the term is estopped from disputing the claim which he has once admitted are important questions, but they are instances of cases which are outside Section 116 altogether; and it may well be that as in English law the estoppel in such cases proceeds upon somewhat different grounds and is not wholly identical in character and in completeness with the case covered by the section. The section postulates that there is a tenancy still continuing, that it had its beginning at a given date from a given landlord. It provides that neither a tenant nor anyone claiming through a tenant shall be heard to deny that particular landlord had at that date a title to the property. In the ordinary case of a lease intended as a present demise—which is the case before the Board on this appeal — the section applies against the lessee, any assignee of the term and any sub-lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e.g., by attornment, acceptance of rent, etc. In this sense it is true enough that the principle only applies to the title of the landlord who ‘let the tenant in’ as distinct from any other person claiming to be reversioner. Nor does the principle apply to prevent a tenant from pleading that the title of the original lessor has since come to an end.”

6. Here there is no question of denying the title of Ghanshyam Singh on the date when he created the lease, namely, July 10, 1947. But in view of the transfer made by him in favour of his wife Smt. Jaidevi, his capacity to make that transfer could be questioned by the lessee and Section 116 would not prevent him from taking up that position. So, Spencer Bower stated in his treatise on *Estoppel by Representation*:

“Where a tenant, by such acts and conduct as have been already indicated, has conclusively acknowledged his landlord's title, he is estopped from afterwards disputing, as against such landlord, the subsistence and validity of an estate in him sufficient to warrant the demise. But this is the limit of his disability; he is not further or otherwise estopped, because it is only a denial so limited which can result in that necessary contradiction or inconsistency between the original and the new position which, as has been already explained, is a condition of any valid estoppel by representation. Thus a tenant can dispute any estate, title, or interest alleged by the landlord to be vested in him, if, in so doing, he does not expressly or impliedly deny that the landlord has an estate, title, or interest of some kind which is adequate to justify the grant of the lease.”

7. In *Halsbury's Laws of England*, Vol. 15 paragraph 459, the law is thus stated:

“In the case of assignee of the lessor, though he is to all intents and purposes in the same situation as the lessor and takes the benefit of, and is bound by, a lease by estoppel, the lessee is not estopped from showing that the lessor had no such title as he could pass to the assignee, or that the person claiming to be the assignee is not in fact the true assignee.”

8. *In this case, in the view we are taking we are relieved of the obligation of dealing with that aspect of the question and what we have to consider is the case of estoppel resulting from the fact found by the first appeal Court that the defendants had on August 19, 1948 paid rent to Smt. Jaidevi and had thereby attorned to her. It should be stated here that it was not found by that Court that any rent was paid to her on any other occasion. When a sitting tenant attorns to the transferees by paying rent to them, there does arise an estoppel, though it might proceed upon a different ground. So, in AIR 1937 PC 251 (supra), the Judicial Committee observed:*

“Whether during the currency of a term the tenant by attornment to A who claims to have the reversion, or the landlord by acceptance of rent from B who claims to be entitled to the term is stopped from disputing the claim which he has once admitted are important questions, but they are instances of cases which are outside S. 116 altogether; and it may well be that as in English law the estoppel in such cases proceeds upon somewhat different grounds and is not wholly identical in character and in completeness with the case covered by the section.”

9. *But even if we assume that the principle of Section 116 of the Act is applicable to such a case also, the attornment in this case was made on August 9, 1948 and it was thereafter that the abadi sites vested in the State by virtue of the provisions of the Abolition Act which came into force on March 31, 1951. As pointed out by the Judicial Committee in AIR 1937 PC 251 (supra), the principle of Section 116 does not apply to prevent a tenant from pleading that the title of the original lessor has since come to an end. In this view, therefore, the conclusion*

reached by the learned Single Judge must be affirmed. The appeal fails and is dismissed. Costs through shall follow that event. Hearing fee Rs. 100/-."

17. On the basis of the aforementioned discussion this Court is of the view that the judgment passed by the First Appellate Court does not require interference.
18. As such the appeal being No. **FMA 569 of 2022** is **dismissed** and **CAN 4 of 2024** is **disposed of**.
19. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.
20. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)