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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 168 OF 2012

Mr. Sudesh Jayram Raut,
Age 41 years Occ. Business,
Resident of Gavaliwada, Ratnagiri

....Appellant

Vs.

1. Mr. Prabhakar Vishnu Patil
Age 54 years, Occ. Repairing Garage
Resident of Zadagaon, Ratnagiri

2. Smt. Indubai Atmaram Devalekar
Deceased by her heirs as under:

2A. Smt. Mandakini Khatu
(Abated vide Reg. Judl II order
dt. 9/7/2015)

2B. Sou. Bharati Bhalchandra Dali
Age about 62 years, Occ. Household,
R/o Near Milk Center, Near Sati,
Varchi Ali, Kherdi, Tal. Chiplun,
District Ratnagiri

2C Sou. Vandana Madhukar Gangan
Age about 60 years, Occ. Household
r/o Nevare, Bajarpeth, Tal. Ratnagiri

3. Mr. Umesh Shrikant Shetye
Age about 44 years, Occ. Business
r/o Teli Ali. Ratnagiri.

4. Mr. Rajan Ramkrushna Shetye,

Age about 52 years, Occ. Business
r/o Shivaji Nagar, Ratnagiri

5. Mr. Rajan Prabhakar Salvi

Age about 43 years, Occ. Business
r/o 1274, Teli Ali, Ratnagiri

**6. Bhikubai Sitaram Devalekar
(Deleted)**

....Respondents

**WITH
CIVIL REVISION APPLICATION NO. 507 OF 2008**

Shri Prabhakar Vishnu Patil

Age 51 years, Occ. Business,
Residing at Zadgaon, Dist. Ratnagiri

....Applicant

Vs.

1. Sudesh Jayaram Raut

Occ. Business, Residing at
House No. 1166, Gawali Pada,
District Ragnagiri

2. Prakash Jayaram Raut

Age 49 years, Occupation Auto
Electricians, Residing at
Karvanchi Vadi, Ratnagiri

....Respondents

Mr. Malhar Bageshwar i/b Mr. Sanjiv Sawant for appellant in SA
168/2012 and for respondent in CRA 507 of 2008

Mr. Sagar Joshi for respondent in SA 168/2012 and for applicant in
CRA 507/2008

CORAM : GAURI GODSE J

RESERVED ON : 19th DECEMBER 2024

PRONOUNCED ON : 2nd MAY 2025

JUDGMENT:

BASIC FACTS:

1. The second appeal is preferred by the plaintiff to challenge the judgment and decree passed by the First Appellate Court, reversing the Trial Court's decree and dismissing the appellant's suit. The suit was filed regarding a land and a shop structure thereon, for specific performance and a declaration against defendant nos. 1 and 2 as original owners and against defendant no. 3, in whose favour the owners had executed a sale deed. Defendant No. 1 died pending the suit. Thereafter, defendant no. 2 executed a sale deed in favour of the plaintiff for the shop structure. The suit was then amended, and the plaintiff prayed for directing the defendant no. 3 to execute a sale deed in favour of the plaintiff for the land beneath the shop; however, the plaintiff continued with the prayer for a declaration that the sale deed in favour of defendant no. 3 is void to the extent of the land beneath the suit shop.

2. Defendant nos. 1 and 2 are the original owners, and defendant no. 3 is the purchaser from defendant nos. 1 and 2. The appellant

claims that he is entitled to specific performance of an agreement executed by defendant nos. 1 and 2. However, in view of the sale deed executed in favour of defendant no. 3, the decree for specific performance was passed by the trial Court against defendant no. 3, by declaring the sale deed in his favour as null and void. The trial Court's decree was challenged by the defendant no. 3 in the first appeal. The first appeal is allowed, and the suit is dismissed. Hence, the second appeal by the plaintiff.

3. The landed property and the structures were originally owned by two sisters, Bhikubai Devalekar and Indubai Devalekar (hereinafter referred to as the original owners). The original owners were joined to the suit as defendant nos. 1 and 2. Sudesh Raut, i.e., the plaintiff, was the tenant of one of the shops (the plaintiff is hereinafter referred to as 'Raut'). Defendant no. 3, Prabhakar Vishnu Patil, was the tenant in another structure (hereinafter referred to as 'Prabhakar'). Thus, the present dispute is between the two tenants of the original owners.

4. Based on a sale deed executed by the original owners in favour of Prabhakar, he filed a suit under the Rent Act for the eviction of Raut from the shop structure. Raut challenged Prabhakar's title to the shop

structure in the eviction suit. The eviction suit filed by Prabhakar was dismissed, and he was held entitled to recover arrears of rent. Prabhakar, therefore, filed an appeal challenging the rejection of his prayer for eviction. Raut filed a separate appeal challenging the decree for payment of arrears of rent. By a common judgment, Prabhakar's appeal was dismissed, and Raut's appeal was allowed, setting aside the decree for payment of arrears of rent. Hence, Prabhakar filed the Civil Revision Application No. 507 of 2008. The revision application is admitted and directed to be heard along with the second appeal. By way of an administrative order, the revision and the second appeal were directed to be listed before the Court, taking up the second appeals. Hence, the second appeal and the civil revision application are heard and decided by this common judgment.

5. The second appeal is admitted by order dated 6th December 2013, on the following substantial questions of law:

“A. Whether the Courts below can ignore the issue of ownership which has been decided in the proceedings bearing R.C.S.No.168 of 1997 and therefore the decision on the said issue in the Civil Appeal No.52 of

2009 will be hit by principle of Resjudicata as provided under Section 11 of C.P.C. 1908.

B. Whether the courts below, can discard the specific finding given in the Regular Civil Appeal No.88 of 2004 that, the Respondent No.1 has not established his title and status as a Owner/Landlord of the Appellant herein.

C. Whether the court below can ignore thereby not considering the findings given in proceedings in R.C.S. No.167 of 1997 and Civil Appeal No.88 of 2004 and further the findings given in R.C.S. No.322 of 2000 and Civil Appeal No.1 of 2006.”

SUBMISSIONS ON BEHALF OF PRABHAKAR:

6. The submissions made by the learned counsel for Prabhakar are summarised as under:

- a) The suit for eviction was filed on the grounds of default in paying rent and subletting. Out of the shop Galas constructed by the original owners, one shop was occupied by Raut as a tenant of the original owners. By a

registered sale deed dated 23rd October 1996, the original owners transferred the land and the structures, including Raut's shop, to Prabhakar. Originally, the land was jointly owned by the owners, i.e. Devalekar sisters. The shop occupied by Raut came into the share of one of the sisters, Bhikubai. However, in the revenue record, Indubai's name was also entered; hence, even she signed the sale deed in favour of Prabhakar.

- b) In November 1999, Bhikubai died. On 20th March 2001, Indubai executed a sale deed in favour of Raut regarding his shop. Based on the sale deed regarding the entire land and the structures, Prabhakar filed a suit for eviction and recovery of arrears of rent from Raut. The rent suit was partly decreed accepting Prabhakar's title; however, the appeal court held that Raut is the owner of the suit shop. Based on the sale deed in favour of Raut, the rent court held that Prabhakar had no title to the suit shop of Raut and thus, the rent suit for eviction and recovery of arrears of rent filed by Prabhakar was dismissed.

- c) Raut had instituted a suit for specific performance against the original owners and Prabhakar. The trial court partly decreed the rent suit on 8th July 2004. Thereafter, on 31st December 2008, the suit for specific performance and declaration filed by Raut was decreed. The rent appeals were decided on 25th April 2008. Thereafter, on 2nd September 2011, the appeal preferred by Prabhakar against the decree for declaration and specific performance in the suit of Raut was allowed.
- d) The document of title in favour of Prabhakar is prior in time and rightly accepted by the Rent court, would, therefore, preclude the Civil Court from recording any contrary findings in the suit filed by Raut. Thus, the findings recorded by the rent court based on the evidence on record would, therefore, be binding in the subsequent suit.
- e) Thus, in the revision application, Prabhakar claims eviction of Raut on the ground that he is the owner of the land and the suit shop of Raut and seeks eviction on the

ground that Raut has sublet the suit property and is in arrears of rent.

f) The findings recorded on Prabhakar's ownership in the rent suit were binding on the Civil Court deciding the suit for declaration and specific performance filed by Raut. Therefore, if Prabhakar succeeds in proving in the revision application that the findings recorded in the rent appeals are illegal and perverse regarding Prabhakar's title, Raut would not be entitled to seek a decree of declaration and specific performance.

g) The original owners in the written statement supported Prabhakar's title. Initially, Raut prayed for the specific performance of his shop and the land beneath it in view of the agreement executed by Bhikubai. Subsequently, by way of amendment, Raut prayed for a declaration and cancellation of the sale deed in favour of Prabhakar to the extent of the land beneath his shop. Raut objected to the sale deed in favour of Prabhakar; thus, both the Courts erred in granting specific performance in favour of Raut, directing Prabhakar to execute the sale deed. Therefore, if

Raut challenged Prabhakar's title, he would not be entitled to seek any specific performance from Prabhakar.

h) The sale deed in favour of Prabhakar is prior in time.

Hence, the original owners had no right, title or interest to execute any agreement or sale deed in favour of Raut.

The sale deed in favour of Prabhakar is dated 23rd October 1996. Though Raut claims title to the suit shop based on the document dated 20th March 2001, the said document is executed only by Indubai. The suit shop occupied by Raut was allotted to the share of Bhikubai. Therefore, the agreement/sale deed executed by Indubai would not confer any title on Raut. Even if it is held that Indubai had any right in the suit shop, she had also signed the sale deed in favour of Prabhakar. Hence, Indubai had no right to execute any document in favour of Raut. Thus, the document relied upon by Raut, executed by Indubai, would not confer any title to Raut.

i) The document dated 20th March 2001, signed by Indubai, though, was relied upon as the document of title by Raut; he filed the suit for specific performance of the contract

from the original owners as well as Prabhakar. Thus, Raut admitted Prabhakar's title and sought specific performance. However, at the same time, he sought the declaration and cancellation of the sale deed in favour of Prabhakar. Hence, there was no question of granting specific performance to Raut.

j) The suit for specific performance was decreed on 31st December 2008. However, the rent suit filed by Prabhakar in 1997 was decreed on 8th July 2004, which is much prior to the date of filing of the suit by Raut. Thus, the findings recorded in the rent suit would operate as *res judicata* in Raut's suit. Hence, the Civil Court could not have recorded contrary findings in the subsequent suit filed by Raut. He therefore submits that the questions of law framed in the second appeal must be answered in favour of Prabhakar.

k) With reference to the identification of the property, learned counsel for Prabhakar relied upon the description in the sale deed executed in favour of Prabhakar as well as

Raut and contended that the shop occupied by Raut was the subject matter of the sale deed in favour of Prabhakar. Hence, based on a subsequent document, Raut was not entitled to challenge Prabhakar's title. Admittedly, defendant no. 2 in the rent suit was occupying Raut's rented shop. Thus, Prabhakar was entitled to a decree on the ground of subletting.

l) Once Prabhakar's title is accepted based on the registered sale deed, he is also entitled to seek recovery of arrears of rent from Raut. Admittedly, Raut did not pay the rent, and he challenged Prabhakar's title and thus objected to the decree on the grounds of denying the title. He, thus, submitted that Prabhakar would be entitled to a decree of eviction on the grounds of subletting and default.

m) To support his submissions, learned counsel for Prabhakar relied upon the admissions given by Raut that his rented shop was occupied by defendant no. 2. Thus, there was a clear ground of subletting; thus, the

eviction suit is erroneously dismissed on the ground of disbelieving Prabhakar's title.

n) To support his submissions on the findings in the rent suit being binding upon the Civil Court in the suit filed by Raut, learned counsel for Prabhakar relied upon the decision of the Hon'ble Apex Court in the case of ***Mohd. Nooman and Others Vs. Mohd. Javed Alam and Ors***¹ and the decision of this court in the case of ***Narayan Sadashiv Bhalerao and anr Vs. Navnitdas Narayandas Bhaskar and ors***². He submitted that the Hon'ble Apex Court held that the findings recorded in the eviction suit would operate as *res judicata* in the subsequent suit filed for declaration of title and recovery of possession. He submitted that in the present case, the legal principles settled by the Apex Court are applicable in favour of Prabhakar.

SUBMISSIONS ON BEHALF OF RAUT:

6. The submissions made by learned counsel for Raut are summarised as under:

¹ (2010) 9 Supreme Court Cases 560

² [1991(1) Mh.L.J. 407]

- a) If Raut successfully gets the decree of cancellation of the sale deed in favour of Prabhakar, the findings recorded by the Rent Court on Prabhakar's title will have to be set aside. If Prabhakar has no right, title or interest, he would not be entitled to seek a decree of eviction. Thus, the issue of Raut's possession of the tenanted shop based on his original tenancy and the subsequent document executed in his favour would be a material aspect in deciding the judgment in the eviction suit filed by Prabhakar.
- b) Bhikubai, i.e. one of the original owners, had filed a written statement in Raut's suit. Prabhakar would not be entitled to seek eviction on the ground that Raut is Prabhakar's tenant. Prabhakar initially denied the payment of ₹50,000 by Raut to Bhikubai; however, the receipt bears the signature of Prabhakar as attesting witness. Bhikubai admitted to signing blank papers for the execution of the documents in 1996. Bhikubai expired before she could be examined. Hence, the contentions raised by Bhikubai against Raut cannot be taken into

consideration.

c) Learned counsel for Raut relied upon similar litigation between Prabhakar and one other tenant, i.e. Neelam Bhosale. He submitted that the suit filed by Neelam Bhosale for similar relief of specific performance was decreed. However, Prabhakar's appeal was allowed, and the decree was set aside. He further submits that the findings recorded in the rent suit would not operate as *res judicata* in the substantive civil suit filed by Raut based on the independent document executed in his favour. The consideration recorded by the Civil Court in the suit filed by Neelam Bhosale would also be relevant to decide the present proceedings.

d) So far as the claim of Prabhakar based on default is concerned, the sale deed relied upon by Prabhakar nowhere indicates that there were arrears from the tenants from 1996. In the sale deed executed between Bhikubai and Prabhakar, there was no mention of any pending rent from the defendant. The shops occupied by

the tenants were situated on a larger plot of land, and thus, the larger plot of land purchased by Prabhakar, admeasuring 955 square feet, does not include Raut's tenanted shop. Raut, at the same time, had paid ₹50,000 towards the security deposit as a tenant for his shop. The construction of the shops and the improvement allegedly made by Prabhakar would not change the theory of the original construction of the shops. Prabhakar admitted in his cross-examination that no documentary evidence was produced on record that he had constructed the shops on the larger land.

- e) Therefore, the suit property described in the suit filed by Prabhakar would include only the larger land. Thus, the original owner executing the agreement/sale deed in favour of Raut cannot be denied. Though Prabhakar purchased the larger area, his document does not include the suit shop occupied by Raut. Thus, the sale deed executed by Indubai in favour of Raut in respect of the suit shop occupied by Raut would not be affected due to the sale deed in favour of Prabhakar in respect of the

larger land, which does not include the shop occupied by Raut.

- f) The adjudication of the title in a rent suit and ownership of the land in a civil suit would have a different scope. When the landlord relies upon the derivative title and the same is challenged in the civil suit, it is to be proved and established in the form required under the civil suit. So far as the adjudication of title in a rent suit is concerned, it would therefore not affect the adjudication in a civil suit. To support his submissions, learned counsel for Raut relied upon the decision of the Hon'ble Apex Court in the case of *Vinay Eknath Lad Vs. Chiu Mao Chen*³ and the decision of the Hon'ble Apex Court in the case of *Swadesh Ranjan Sinha Vs. Haradeb Banerjee*⁴ and the decision of the Hon'ble Apex Court in the case of *Sulochana Amma Vs. Narayanan Nair*⁵. Hence, the findings recorded in the rent suit would not operate as *res judicata* in the civil suit filed by Raut.

³ (2019) 20 Supreme Court Cases 182

⁴ (1991) 4 Supreme Court Cases 572

⁵ (1994) 2 Supreme Court Cases 14

g) The intention of Indubai to transfer the tenanted shop to Raut is clear from the contents of the document and the supporting evidence led by Raut. To support his submissions regarding the real intention of the parties, learned counsel for Raut relied upon the decision in the case of *Shree Gujarati Harijan Co-operative Housing Society Ltd. Vs. Additional Collector, Bombay Suburban District and anr*⁶.

h) Raut was entitled to seek specific performance based on a document executed prior in time and thus, was entitled to challenge the document in favour of the subsequent purchaser, i.e. Prabhakar. A purchaser in a prior agreement is entitled to claim a decree of specific performance against a subsequent purchaser without seeking any declaration or cancellation of the document in favour of the subsequent purchaser. To support his submissions, learned counsel for Raut relied upon the decision of the Hon'ble Apex Court in the case of *Maharaj Singh and others Vs. Karan Singh (Dead) through Legal*

⁶ 1991 SCC OnLine Bom 86

***Representatives and others*⁷.**

- i) According to the learned counsel for Raut, the decision in Prabhakar's Rent Appeal would be limited to Prabhakar's right to seek eviction. Thus, the Civil Court in the substantive suit filed by Raut had jurisdiction to decide the title. Thus, Raut would be entitled to a decree of declaration challenging Prabhakar's title and would be entitled to a decree for specific performance against Indubai, the original owner, and Prabhakar, being a subsequent purchaser, would thus be liable to execute the sale deed in favour of Raut in respect of the land beneath his shop. Thus, Raut would be entitled to a decree of specific performance in respect of the land beneath the shop.
- j) Therefore, the questions of law framed in the second appeal be answered in favour of Raut. Prabhakar failed to establish his title regarding Raut's shop. Pending Raut's suit, Bhikubai died, and Indubai executed a sale deed in favour of Raut in respect of the shop. Thus, Raut would

⁷ (2024) 8 Supreme Court Cases 83

be entitled to a decree for specific performance regarding the land beneath his shop.

CONSIDERATION OF THE FACTS AND SUBMISSIONS:

7. I have perused the record of the second appeal and the civil revision application. The relevant dates and events are reproduced below for a better understanding of the controversy;

- a) Admittedly, Bhikubai and Indubai were the original owners of the property in dispute. Prabhakar and Raut were the tenants of the original owners with respect to the respective shops occupied by them.
- b) 1st October 1994: A receipt signed by Bhikubai acknowledges receipt of Rs. 50000/- as a deposit from Raut towards the shop gala given on rent to Raut.
- c) 23rd October 1996: The original owners transferred the land and the structures in favour of Prabhakar.
- d) 3rd May 1997: Prabhakar filed a suit for eviction and recovery of arrears of rent against Raut.

- e) **27th February 1998**: Raut instituted a suit for specific performance and declaration against the original owners and Prabhakar.
- f) **November 1999**: Bhikubai died.
- g) **20th March 2001**: Indubai executed a sale deed in favour of Raut for his shop.
- h) **8th July 2004**: The rent suit was partly decreed, accepting Prabhakar's title. Prayer for eviction was rejected; however, Prabhakar was held entitled to receive arrears of rent.
- i) **25th April 2008**: The appeal court in the rent suit held that Raut is the owner of the suit property. Based on the sale deed in favour of Raut, the rent court held that Prabhakar had no title to the rented shop of Raut and thus, the rent suit for eviction and recovery of arrears of rent filed by Prabhakar was dismissed.
- j) **31st December 2008**: The suit for specific performance and declaration filed by Raut was decreed.

k) **2nd September 2011**: The appeal preferred by Prabhakar against the decree for declaration and specific performance in the suit of Raut was allowed and Raut's suit is dismissed.

8. Thus, the rent suit was partly decreed by the trial court during the pendency of Raut's suit for specific performance and declaration. In the meantime, similar litigation between Prabhakar and Neelam Bhosale was decided. Neelam Bhosale also raised similar contentions to those of Raut. The appeals arising out of the rent suit against Neelam Bhosale were decided on 22nd September 2005. Hence, findings in those judgments were referred to and relied upon by the appellate court in the appeals arising out of the rent suit against Raut. The appeals in Raut's rent suit were decided on 25th April 2008. Thereafter, Raut's suit for specific performance and declaration was decreed on 31st December 2008, and Prabhakar's appeal challenging the decree in Raut's favour was allowed on 2nd September 2011. Thus, the rival claims are interlinked and decided in two separate proceedings.

9. In the rent suit, Raut admits Prabhakar's title to the land;

however, he objects to Prabhakar's sale deed only to the extent of his shop. In a subsequent suit, initially, Raut prayed for the specific performance of his shop and the land beneath it in view of the agreement executed by Bhikubai. Raut also prayed for a declaration that the sale deed in favour of Prabhakar be declared null and void to the extent of the land beneath Raut's shop. Pending Raut's suit, Bhikubai died. Thereafter, Indubai executed a sale deed in favour of Raut for his shop. Hence, Raut amended the suit and prayed for a direction that Prabhakar should execute a sale deed in favour of Raut for the land beneath his shop. At the same time, Raut continued with his prayer for a declaration challenging Prabhakar's sale deed to the extent of the land beneath his shop.

10. Thus, Raut has objected to Prabhakar's sale deed to the extent of his shop, firstly on the ground that Bhikubai agreed to sell the shop to him and secondly on the ground that Indubai executed a sale deed for the shop in his favour. Therefore, in the Civil Revision Application filed by Prabhakar, the controversy is about the title to the shop and whether Prabhakar is entitled to a decree for eviction of Raut. In view of the amended prayers in Raut's suit, the controversy to be decided in the second appeal is whether Raut is entitled to a sale deed from

Prabhakar for the land beneath his shop and whether a decree can be passed declaring that Prabhakar's sale deed is null and void to the extent of the land beneath Raut's shop.

11. In view of the sale deed executed by Indubai in favour of Raut for the shop, Raut has substituted his prayer in his suit against the original owners and Prabhakar for specific performance of the shop, with a prayer against Prabhakar for the land beneath his shop. Thus, now in the civil revision application, the ground available to Raut to deny Prabhakar's title to the shop is the sale deed executed by Indubai. It is not disputed that the portion of the land where Raut's shop is situated was allotted to Bhikubai's share. Indubai executed the sale deed in favour of Raut on the ground that, after Bhikubai's death, the title to the property devolved upon Indubai and thus she was entitled to execute the sale deed. Thus, if it is held that Prabhakar's sale deed included Raut's shop, there would not be any subsisting right, title or interest with Bhikubai and Indubai.

12. Raut's initial claim for specific performance of the contract for his shop is based on a Receipt executed by Bhikubai. Raut has not claimed any privity of contract with Indubai. Bhikubai and Indubai

executed the sale deed in favour of Prabhakar; therefore, there was no subsisting right, title, or interest with Indubai when she executed the sale deed in favour of Raut. Therefore, Raut would not derive any title through Indubai unless it is held that Prabhakar's sale deed did not include Raut's shop.

13. In view of the amended prayers in Raut's suit, the issue in the second appeal pertains only to Raut's claim to the land beneath the shop. Raut has not prayed for any declaration of ownership of the shop. Hence, the issue of title to the shop arises only in the civil revision application. Thus, in the civil revision application, if the trial court's findings in favour of Prabhakar on the title to the shop are confirmed, Prabhakar's prayer for eviction of Raut will have to be examined.

14. Considering the complexity of the rival claims in the two different proceedings, the findings recorded by both courts in both proceedings need to be minutely examined. To better understand the controversy, all the findings in both proceedings are summarised below.

15. The trial court in the rent suit held as under:

- a) After the execution of the sale deed in favour of Prabhakar, Bhikubai issued a letter at Exhibits 54 and 57 disclosing that Prabhakar had purchased the land, including Raut's tenanted shop, and that the rent amount was to be paid to Prabhakar.
- b) The deposit receipt dated 1st October 1994, at Exhibit 65, discloses that Bhikubai accepted Rs. 50000/- as a deposit from Raut and the shop gala was given on rent to Raut.
- c) Raut's contention that Rs. 50000/- was paid towards the purchase of his shop gala and the balance of Rs. 20000/- was to be paid at the time of execution of the sale deed in his favour was disbelieved. Since the Devlekar sisters had already executed the sale deed in favour of Prabhakar, Indubai had no right, title, or interest that could be transferred to Raut by the sale dated 20th March 2001 executed by Indubai.
- d) The schedule to the sale deed in favour of Prabhakar was interpreted to mean that the entire land

along with the fixtures was transferred to Prabhakar. Thus, even Raut's gala was purchased by Prabhakar.

e) The assessment extract disclosed the name of Prabhakar as the owner and that Raut occupied it. The trial court relied upon Raut's admission that he was a tenant in respect of the shop gala.

f) The shop gala was given to Raut for running a vegetable shop; however, the oral evidence and the documents at Exhibits 84, 85, and 86 indicated that defendant no. 2 in the rent suit was running an electric wiring business. For want of sufficient evidence, the allegation of sub-letting and the ground of bonafide requirement were disbelieved.

g) After the demand notice, Raut had deposited the amount; hence, the ground of default was not accepted. However, Prabhakar was held as the landlord and Raut a tenant. Thus, Prabhakar was held entitled to recover arrears of rent, and thus he was permitted to withdraw the rent amount deposited by Raut in the rent suit.

h) Prabhakar's prayer challenging the sale deed executed by Indubai in favour of Raut was held beyond the rent court's jurisdiction.

16. The appellate court in the rent suit held that:

a) The dispute raised by Raut over Prabhakar's title is relevant only to the extent of Prabhakar's claim that he is the landlord and Raut is his tenant.

b) The contents of the sale deed in favour of Prabhakar reveal that, after the transfer of one shop to Rajan Salvi, the remaining open area with Devlekar sisters was 88.82 square meters, and since 1973, Prabhakar runs a garage erected over the said area. The third paragraph on page 3 of the sale deed mentions that Prabhakar is in possession of the said area, and Bhikubai consented to transfer that land to Prabhakar for Rs. 70000/-. The schedule to the sale deed describes the property as Survey No. 350A Hissa No. 22 admeasuring 4.3 Are out of which land has been acquired for 80 feet

road, land has been transferred to Rajan Salvi under sale deed 2nd November 1995, and land given to Rajan Shetye and Umesh Shetye by sale deed 2nd April 1996 and thus the remaining land is transferred to Prabhakar. Though Raut came in possession of his shop before the sale deed in favour of Prabhakar, there is no mention of Raut's shop in the sale deed.

c) If the parties intended to include Raut's shop in the transfer effected by the sale deed in favour of Prabhakar, the description of Raut's shop would have been included in the description.

d) The crucial question is whether Raut's shop is amongst the six sheds standing over the land transferred to Prabhakar, and whether it can be presumed under the second paragraph of Section 8 of the Transfer of Property Act that it was so transferred, it being attached to the earth.

e) The oral evidence of Prabhakar reveals that out of six sheds, Bhikubai transferred one shed to Rajan Shetye

and one shed to Neelam Bhosale. In a similar rent suit filed by Prabhakar against Neelam Bhosale, she had taken a similar defence to that of Raut. Neelam Bhosale also claimed that Bhikubai had agreed to transfer the tenanted shop for a consideration of Rs. 70000/-. Neelam Bhosale had also instituted a suit for specific performance against Bhikubai and Prabhakar. In the rent suit against Neelam Bhosale, a similar judgment was passed as in Raut's suit; hence, two rent appeals were filed. By common judgment dated 22nd September 2005, both appeals were decided, and Prabhakar's rent suit against Neelam Bhosale came to be dismissed. Hence, Prabhakar challenged the dismissal of his suit in the High Court, and it was pending. According to Prabhakar, out of the total six sheds, three were sold and three were in his possession. Thus, if each shed were valued at Rs. 70000/-, then in Prabhakar's sale deed, the price of the property sold to him would have been more than Rs. 70000/-.

f) Prabhakar's sale deed was for Rs. 70000/- for the

property described as 955 square feet of land and a garage standing thereon; thus, it can be inferred that Raut's shop was not included, and the sale deed was restricted only to the open land and the garage.

g) By the letter at Exhibit 54, Bhikubai had asked Raut to pay the rent of his shop to Prabhakar. The receipt signed by Bhikubai acknowledging receipt of Rs. 50000/- from Raut was signed by Prabhakar as an attesting witness; however, in Prabhakar's sale deed, there is no reference to the adjustment of Rs. 50000/- paid by Raut to Bhikubai. Though Prabhakar claimed that Raut's tenancy was attorned to him, there is no reference to the adjustment of Rs. 50000/- towards rent. Prabhakar claimed arrears of rent from September 1996, which is one month earlier than his sale deed; thus, these circumstances support Raut's contention of the sale transaction between him and Bhikubai.

h) Prabhakar relied upon Bhikubai's written statement in Raut's suit, where she supported Prabhakar's

contention that Raut's shop was sold to Prabhakar. However, Bhikubai died after filing the written statement; hence, Raut could not confront her. Indubai, who succeeded as her sole heir, executed a sale deed dated 21st March 2001 in Raut's favour by accepting the balance consideration of Rs. 20000/-. Thus, till the sale deed in favour of Raut is set aside or there is a declaration granted that it will not be binding upon Prabhakar, Raut will continue to be the owner of his shop.

i) Prabhakar contended that he had been occupying the garage as Bhikubai's tenant since 1973, and they decided to construct six shops, and Raut was inducted by Bhikubai in 1994 by executing the rent note. However, these contentions regarding the joint venture were not mentioned in the suit notice. The permission for construction was dated 9th March 1995. Thus, there could not be a rent note in 1994. Thus, these facts support Raut's contention that there was an agreement for sale in his favour and not a rent agreement.

j) The trial court erroneously held that Raut's shop was included in the description of the property in Prabhakar's sale deed, as the schedule mentioned land along with fixtures. However, Raut's shop was not specifically described in the schedule to the sale deed; hence, the findings by the trial court that Prabhakar was the owner and landlord of Raut's shop were not sustainable. Hence, Prabhakar was not entitled to claim arrears of rent.

k) The allegation that Raut was inducted for running a vegetable shop was not proved. Raut's evidence showed that he was running an electric wiring shop. There was no material to show that Raut had sublet the shop to the defendant no. 2. Hence, the ground of subletting was not proved.

l) In view of the findings that there was no landlord-tenant relationship between Prabhakar and Raut, the grounds for eviction would not survive.

17. In Raut's suit for declaration and specific performance, the

trial court held as under:

a) The contents of Prabhakar's sale deed showed that out of 4.3 Are of Survey No. 350A Hissa No. 22, land has been acquired for road, some part is transferred to Rajan Salvi, Rajan Shetye and Umesh Shetye. The sale deed further records that after excluding the area already transferred and acquired, the remaining area with Devlekar was 88.82 square meters. But there is no reference to the shop possessed by Raut.

b) The rent receipt dated 1st October 1994 acknowledges receipt of a deposit of Rs. 50000/- from Raut towards the shop given on rent. In the normal course, the description of the property sold to Prabhakar would have included the shop possessed by Raut as a tenant.

c) By applying the principles under the second paragraph of Section 8 of the Transfer of Property Act, if the real intention of the parties was to transfer the area of Raut, then it would have been included in the sale deed of

Prabhakar.

d) The evidence on record shows that there were six sheds over the land. Bhikubai transferred one shed to Rajan Shetye. There was a transaction between the Devlekar sisters and Neelam Bhosale regarding one shop out of six. A copy of the judgment in Neelam Bhosale's suit showed similar facts and litigation between Prabhakar and Neelam Bhosale. The Judgments in the rent suit against her were also similar. The transactions with Prabhakar, Raut and Neelam Bhosale show that the valuation of each shop was Rs. 70000/-. Thus, if the sale deed of Prabhakar included all the shops, the valuation would not have been only Rs. 70000/-.

e) The property under transfer in Prabhakar's sale deed was 955 square feet of land, and the garage standing thereon possessed by Prabhakar. In the context of the sale price in the subsequent sale in favour of Prabhakar, it can be safely inferred that Prabhakar's sale deed does not include Raut's shop.

f) In the rent suit, Prabhakar produced a letter of attornment of Raut's shop. However, the receipt acknowledging receipt of Rs. 50000/- by Bhikubai from Raut is signed by Prabhakar as a witness. Thus, it can be inferred that Prabhakar was aware of the transaction between Raut and Bhikubai. However, there is no reference to the adjustment of Rs. 50000/- in Prabhakar's sale deed. Prabhakar also failed to prove the allegation of subletting. Thus, it can be inferred that there is no landlord-tenant relationship between Prabhakar and Raut.

g) Prabhakar's theory that the schedule of the property to his sale deed describes property as land and the fixtures standing thereon; therefore, Raut's shop is also included, is unbelievable.

h) Bhikubai signed the receipt acknowledging receipt of Rs. 50000/-. After Bhikubai's death, the property devolved upon Indubai, who executed the sale deed in favour of Raut by accepting the balance consideration of Rs. 20000/-. Therefore, Raut is entitled to specific

performance of the agreement executed by Bhikubai in his favour. However, the sale deed is executed in favour of Prabhakar for the entire property. Therefore, the sale deed of Prabhakar has to be treated as null and void regarding the land beneath Raut's shop, and Prabhakar would be liable to execute a sale deed in favour of Raut.

i) Therefore, Raut's suit decreed by declaring that Prabhakar's sale deed is null and void regarding the land beneath Raut's shop and Prabhakar was directed to execute a sale deed in favour of Raut regarding the land beneath the shop.

18. The first appellate court in Prabhakar's appeal against the decree in Raut's suit held as under:

a) Raut initially filed the suit for specific performance of his tenanted shop and the land beneath it. Pending the suit, Indubai executed a sale deed in favour of Raut for the shop. Hence, Raut amended the suit and prayed only for relief against Prabhakar for the land beneath the shop.

b) The sale deed in favour of Prabhakar covers the entire property, excluding the property alienated to Rajan Salvi, Rajan Shetye, and Umesh Shetye. The sale deed also mentions that Prabhakar has kept sub-tenants. The description includes land and fixtures thereon, and Raut's shop is not excluded. Thus, it cannot be said that Prabhakar's sale deed does not include the land beneath Raut's shop.

c) The receipt acknowledging receipt of Rs. 50000/- from Raut is towards a deposit for the shop given on rent to Raut. There is no dispute that Raut's source of possession in his shop is as a tenant. Raut admitted in evidence that he was paying Rs. 1000/- towards monthly rent, and he spent Rs. 20000/- for interior decoration of the shop and obtained electricity connection.

d) The rent receipt does not acknowledge payment of the earnest amount. The receipt acknowledges receipt of the deposit towards the shop given on rent. There is no evidence that an agreement for sale was executed in

favour of Raut. Even if it was assumed that an agreement for sale was executed in favour of Raut, the title stood transferred to Prabhakar by a valid sale deed. Hence, at the most, Raut could claim specific performance, but the sale in favour of Prabhakar cannot be said to be null and void.

19. In the rent suit, Prabhakar claims that he is the owner of the entire land bearing Survey No. 350A, Hissa No. 22, admeasuring 995 square feet and the six shops thereon. He contended that Raut was a tenant of one of the shops and sought eviction on the grounds that Raut had sublet the suit property and was in arrears of rent. In the rent suit, Raut claimed that out of Survey No. 350A, Hissa No. 22, numbered as CTS No. 2058, owned by the Devlekar sisters, some area was acquired for the road. He contended that the Develekar sisters wanted to develop their land and obtained construction permission dated 9th March 1995; however, they did not have sufficient funds. Hence, according to Raut, the Devlekar sisters agreed to sell the suit property, i.e., the shop, to him for Rs. 70000/- and accepted Rs. 50000/- from Raut on 1st October

1994. He contended that after construction was completed, the balance amount of Rs. 20000/- was to be paid and the shop gala was to be transferred to him by executing a sale deed. However, he also contended that he was paying a monthly rent of Rs. 1000/- to Bhikubai till October 1996.

20. Thus, considering the rival claims on the title of the suit property, i.e. the shop, the trial court in the rent suit framed issue nos. 1, 8 and 9 as under:

“1. Whether defendant is a tenant of the plaintiff ?

8. Whether plaintiff proves that sale deed dated 20/3/2001 in favour of defendant no. 1 executed by Indubai Atmaram Devalekar, registered on 21/3/2001 illegal?”

9. Whether plaintiff is entitled for declaration as prayed ?”

21. The issue no. 1 was answered in the affirmative, and issue nos. 8 and 9 were held to be redundant. Both parties led evidence on their respective claim of title. Prabhakar led evidence to support his claim that he was the owner of the entire land and all the structures, including Raut's shop, in view of the sale deed dated 23rd October 1996 in his favour. Raut led

evidence to support his claim that by the Receipt dated 1st October 1994, Bhikubai accepted Rs. 50000/- as part consideration towards the agreement to sell the shop to Raut. Raut also claimed that only the land beneath his shop was the subject matter of the sale deed in favour of Prabhakar. While deciding issue no. 1, the trial court exhaustively discussed the evidence and held that Prabhakar purchased Survey No. 350A, Hissa No. 22, along with the shop galas, and Raut was a tenant of Bhikubai and then became Prabhakar's tenant. It was further held that the Devlekar sisters had already sold the suit property, i.e. the shop, to Prabhakar; hence, at the time of executing the sale deed in favour of Raut, Indubai had no title as an owner.

22. While deciding issue nos. 8 and 9, the trial court in the rent suit held that the relief claimed by Prabhakar to challenge the subsequent sale deed executed by Indubai in favour of Raut would not fall within the rent court's jurisdiction, and Prabhakar would have to file a civil suit for that relief.

23. Thus, in the eviction suit, Raut objected to Prabhakar's title to the suit property, i.e. the shop structure, on the ground

that Bhikubai had executed an agreement for sale in his favour and his tenanted shop was not the subject matter of the sale deed in Prabhakar's favour. However, in the suit filed by Raut, he prayed for getting the sale deed executed from the original owners and Prabhakar for the shop and also prayed for cancellation of Prabhakar's sale deed to the extent of the land beneath Raut's shop. After Indubai executed the sale deed in favour of Raut for the shop, he amended the first prayer and prayed that Prabhakar should be directed to execute a sale deed in his favour for the land beneath the shop.

24. In view of the pleadings in the civil suit, the trial framed issues on whether Raut proved the agreement for sale in his favour in terms of the Receipt dated 1st October 1994, whether Raut was ready and willing to perform the part of the contract and whether he was entitled to specific performance. Though Raut had not challenged Prabhakar's sale deed and his prayer was only to the extent of the land beneath his shop, the trial court framed issues on whether Prabhakar got the sale deed executed illegally. The trial court also framed issues on

Prabhakar's contentions regarding the agreed rent between Raut and Bhikubai and regarding Raut's contentions regarding obtaining Bhikubai's signature on blank paper.

25. The trial Court decreed his suit despite Raut's mutually inconsistent prayers. The trial court in Raut's suit erred in granting specific performance in favour of Raut, directing Prabhakar to execute the sale deed regarding land beneath Raut's shop, after declaring that Prabhakar's sale deed regarding land beneath Raut's shop was null and void. If Raut challenged the title in favour of Prabhakar, he would not be entitled to seek any specific performance from Prabhakar. Therefore, the first appellate court in Prabhakar's appeal against the decree in Raut's suit rightly set aside the trial court's decree.

26. The findings recorded by the first appellate court in Raut's suit, summarised in the above-mentioned paragraphs, indicate that they are based on the appreciation of the pleadings and evidence in Raut's suit. It is held that the description in

Prabhakar's sale deed includes land and fixtures thereon, and Raut's shop is not excluded. Thus, it is held that it cannot be said that Prabhakar's sale deed does not include the land beneath Raut's shop. For want of evidence, Raut's theory of executing an agreement for sale in his favour is rightly disbelieved. A perusal of the Receipt dated 1st October 1994 shows that it is only an acknowledgement of receipt of Rs. 50000/- as a deposit towards the shop given to Raut on rent. The appeal court further rightly held that even if it was assumed that an agreement for sale was executed in favour of Raut, the title stood transferred to Prabhakar by a valid sale deed; hence, at the most, Raut could claim specific performance, but the sale in favour of Prabhakar cannot be said to be null and void.

27. The suit for specific performance was decreed on 31st December 2008. However, the rent suit filed by Prabhakar in 1997 was decreed by the Trial Court on 8th July 2004, which is much prior to the date of filing of the suit by Raut. So far as the findings are concerned, the dispute on title was first examined by the trial court in the rent suit. The trial court held that the title

of the property, including Raut's shop, was transferred to Prabhakar by the sale deed in favour of Prabhakar. The appeal court reversed this finding in rent suits. However, in the meantime, Bhikubai died, and Indubai executed a sale deed in favour of Raut for the shop. Raut's argument is that the land beneath his shop was transferred to Prabhakar, but the shop was not the subject matter of the sale deed in favour of Prabhakar. Thus, Raut admits Prabhakar's title to the Survey No. 350A, Hissa No. 22, and the structures thereon, save and except his shop structure. Therefore, though the facts and the arguments on behalf of both parties appear to be complex, the controversy is regarding Raut's claim of ownership of his shop and whether Prabhakar is entitled to seek possession of Raut's shop.

28. The arguments regarding the applicability of the principles of res judicata are to be decided with reference to the scope of prayers in the suits and the above findings of fact. Learned counsel for Prabhakar relied upon the decision of the Hon'ble Apex Court in the case of *Mohd. Nooman* and the decision of this court in the case of *Narayan Sadashiv Bhalerao*, to support

his submissions that the findings in the rent suit would operate as res judicata in the suit filed by Raut.

29. The Hon'ble Apex Court in the decision of ***Mohd. Nooman*** held that the binding effect of the findings on title recorded in an eviction suit on a subsequent suit for declaration of title and possession between the same parties would depend upon the manner in which the parties raised the question of title and how it is dealt with by the court. It is further held that ordinarily, in a suit for eviction, even if the court goes into the question of title, it examines the issue in an ancillary manner; and in such cases the findings recorded in the eviction suit would be binding in the subsequent suit filed for declaration of title and recovery of possession. The Hon'ble Apex Court thus held that there are exceptions to the general rule. In the facts of the case before the Hon'ble Apex Court, it was held that the issue of title was expressly raised by the parties in the earlier eviction suit, and the eviction court expressly decided it; hence, the findings in the earlier suit would operate as res judicata in the subsequent suit. This court in the case of ***Narayan Bhalerao*** held that a finding recorded in a previous rent suit would operate as res judicata,

though the issue of title was outside the jurisdiction of the small causes court.

30. Learned counsel for Raut relied upon the decision of this court in the case of *Sulochana Amma* to support his submissions that the findings recorded in the rent appeals would operate as res judicata in the civil suit in view of Explanation VIII to section 11 of the Code of Civil Procedure. In view of the different facts of the present case and the mutually inconsistent prayers in Raut's suit, the legal principles settled in the said decision would not be of any assistance to Raut's arguments.

31. Though the rival claims of the parties in both proceedings are concerning part of the same property, the scope of prayers and the issues involved were different. In the rent suit, the dispute was about the shop, and in the civil suit, wider issues were involved regarding Prabhakar's title to the entire land and the structures and Raut's claim of specific performance and declaration. Hence, in the present case, the manner in which the issue of title is differently raised in both the suits, it had to be dealt with differently in both the suits. Hence, the bar of

principles of res judicata would not apply.

32. In the present case, the trial court in the eviction suit dealt with the Raut's contention and disbelieved that Rs. 50000/- was paid towards the purchase of his shop gala and the balance of Rs. 20000/- was to be paid at the time of execution of the sale deed in his favour. It was also held that since the Devlekar sisters had already executed the sale deed in favour of Prabhakar, Indubai had no right, title, or interest that could be transferred to Raut by the sale dated 20th March 2001 executed by Indubai. The rival contentions on the description of the property were dealt with reference to the claim of shop, and the schedule to the sale deed in favour of Prabhakar was interpreted to mean that the land along with the fixtures, was transferred to Prabhakar and, thus even Raut's shop gala was purchased by Prabhakar.

33. The appeal court reversed this finding, recorded by the trial court in the rent suit. The appeal court held that Raut's shop was not specifically described in the schedule to the sale deed in favour of Prabhakar. The appeal court relied upon the trial court and appeal court's judgments in a similar rent suit

filed by Prabhakar against Neelam Bhosale and erroneously drew inferences on the sale price in Prabhakar's sale deed to mean that if the entire land, including all the structures, were to be transferred to Prabhakar, the consideration amount would have been higher. The findings recorded by the appeal court in the rent appeals accepting Raut's claim of ownership would not be sustainable in as much as his suit for specific performance of the agreement was pending. The appeal court erred in holding that till the sale deed dated 21st March 2001 executed by Indubai in Raut's favour by accepting the balance consideration of Rs. 20000/- is set aside or there is a declaration granted that it will not be binding upon Prabhakar, and Raut will continue to be the owner of his shop. The appeal court in the rent suit lost sight of the fact that, in view of the sale deed in favour of Prabhakar, Indubai had no subsisting right, title or interest in the land or the structures; therefore, Raut would not derive any right, title or interest through Indubai.

34. The appeal court in the rent suits and the trial court in Raut's suit misappreciated the principles contemplated under Section 8 of the Transfer of Property Act. There is no dispute

that Raut's shop is amongst the six sheds standing over the land transferred to Prabhakar. The description in the sale deed includes all the details of the original area and the part of the land acquired and sold. The description in the schedule refers to the land along with the fixtures. Except for the rent receipt, Raut has not produced any material to support his contention that the shop was agreed to be sold to him. Raut does not challenge the sale deed in favour of Prabhakar. However, his objection to Prabhakar's sale deed is only to the extent of his shop. Admittedly, the shop in dispute was given to Raut on rent.

35. Raut's claim of ownership of the shop is based, firstly, on the agreement to sell allegedly executed by Bhikubai and, secondly, on the sale deed executed by Indubai. The rent receipt clearly records that Rs. 50000/- was paid to Bhikubai as a deposit for the shop given on rent. Raut's claim that the amount was paid towards the earnest amount is disbelieved by the trial court in the rent suit and by the appeal court in Raut's suit for declaration and specific performance.

36. There is no dispute that Raut's shop is one of the six

shops constructed on the land sold to Prabhakar. The transfer of the entire land to Prabhakar is not disputed by Raut. The description of the property in the schedule to Prabhakar's sale deed provides particulars of the land along with the fixtures therein. Thus, once Raut's claims for ownership of the shop are disbelieved, there is no other reason or any valid ground to hold that there was any other intention of the original owners to transfer the land and the structures to Prabhakar by excluding Raut's shop. Thus, the presumption under Section 8 of the Transfer of Property Act would apply to Prabhakar's contentions. Thus, I am satisfied that by the sale deed in favour of Prabhakar, the land and all the structures, including Raut's shop, were transferred to Prabhakar.

37. Thus, for the aforesaid reasons, I confirm the findings on the title of the shop recorded by the trial court in Prabhakar's rent suit and the findings recorded by the appeal court in the civil suit filed by Raut. I have already recorded reasons to hold that the sale deed executed by Indubai would not confer any title to Raut.

CONCLUSIONS IN SECOND APPEAL:

38. A perusal of the record indicates that RCS 168 of 1997 is the rent suit filed by Prabhakar against Neelam Bhosale, and Civil Appeal No. 52 of 2009 is Prabhakar's appeal against the trial court's decree in Raut's civil suit. The principles of res judicata apply when the issue is substantially decided amongst the same parties in the earlier suit. Hence, the first question of law framed in the second appeal would not arise in the facts of the present case and thus would not require any discussion.

39. The Regular Civil Appeal No.88 of 2004 is filed by Prabhakar against the trial court's decree in the rent suit filed against Raut. In view of the amended prayers in the Raut's civil suit, the issue involved was restricted to Raut's claim on the land beneath Raut's shop. The findings recorded in the rent appeals are regarding the landlord-tenant relationship between Prabhakar and Raut regarding the shop. Hence, the finding given in the Regular Civil Appeal No.88 of 2004 that Prabhakar has not established his title and status as the Owner/Landlord of Raut would not be relevant to decide the controversy in Raut's civil suit regarding the land beneath the shop. Considering the mutually inconsistent prayers made in the civil

suit, the issues therein must be examined and decided independently. Thus, the second question of law is answered accordingly.

40. The R.C.S. No.167 of 1997 is the rent suit filed by Prabhakar against Raut for the shop, Civil Appeal No.88 is the rent appeal filed by Prabhakar against Raut, R.C.S. No.322 of 2000 is filed by Neelam Bhosale against Prabhakar and Civil Appeal No.1 of 2006 is filed by Prabhakar against Neelam Bhosale. For deciding the controversy in Raut's civil suit regarding the land below his shop, the findings in the rent proceedings between Prabhakar and Raut regarding the shop are discussed in detail. The findings recorded by the appeal court are summarised and recorded in the paragraphs above. Hence, no interference is warranted in the impugned judgment on the third question of law framed in the second appeal.

41. Learned counsel for Raut relied upon the decision of this court in the case of *Shree Gujarati Harijan CHS*, to support his submission on the interpretation of Prabhakar's sale deed to mean that it excluded Raut's shop. In the said decision, this

court held that a departure from the literal interpretation can be made if there is any ambiguity. In view of the different facts of the present case as discussed above, the said decision is of no assistance to the arguments made on behalf of Raut.

42. The legal principles settled in the decision of the Hon'ble Apex Court in the case of ***Maharaj Singh*** are relied upon by the learned counsel for Raut to support his submissions that Raut was entitled to claim specific performance of the contract against Prabhakar, as his contract was prior to the sale deed in favour of Prabhakar. Raut's prayer for specific performance against Prabhakar for the land beneath his shop is not refused on the ground that he has not challenged Prabhakar's sale deed. Hence, the decision in the case of ***Maharaj Singh*** is of no assistance to Raut's claim.

43. Therefore, for the reasons recorded above, all the questions of law are accordingly answered in favour of Prabhakar, i.e. respondent no. 1. The impugned judgment and decree would not require any interference in this second appeal.

CONCLUSIONS IN CIVIL REVISION APPLICATION:

44. The learned counsel for Raut relied upon the decision of the Hon'ble Apex Court in the case of ***Swadesh Sinha***. The Hon'ble Apex Court held that in a suit for eviction of a tenant by the landlord, all that the plaintiff needs to prove is that he has a better title than the defendant, and he has no burden to prove that he has the best of all possible titles.

45. The Hon'ble Apex Court, in the decision of ***Vinay Lad***, held that the right of a tenant to challenge the derivative title of the landlord is subject to one caveat that the tenant has not attorned to the assignee. The Apex Court held that in a landlord-tenant suit, the landlord is not required to prove his title as required to be proved in a title suit, and thus the onus is not on him to establish a perfect title.

46. In the present case, Prabhakar has succeeded in proving that, by the sale deed in his favour, he became the owner of the entire land and the structures thereon, including Raut's shop. The findings recorded by the appeal court in the rent appeals

are not sustainable in law. The trial court in the rent suit has rightly held that Prabhakar proved title to the shop and that Bhikubai had attorned Raut's tenancy to Prabhakar. Admittedly, Raut was a tenant of his shop and was paying monthly rent. The letter of attornment is correctly relied upon by the appeal court to hold that Raut became the tenant of Prabhakar. However, Prabhakar failed to prove that defendant no. 2 in the rent suit was occupying the shop to the exclusion of Raut. Both courts held that Raut was in possession of the shop. Raut deposited the rent amount in the court. The grounds of subletting and arrears were not proved for eviction. Hence, the civil revision application deserves to be partly allowed by confirming the trial court's decree.

47. For the reasons recorded above, the Second Appeal No. 168 of 2012 is dismissed with no order as to costs.

48. The Civil Revision Application No. 507 of 2008 is partly allowed with no order as to costs, by passing the following order:

- a) The judgment and decree dated 25th April 2008 passed by the District Judge-1, Ratnagiri in Regular Civil Appeal No. 88 of 2004 and Regular Civil Appeal No. 83 of 2004 is quashed and set aside.
- b) Regular Civil Appeal No. 83 of 2004 is dismissed.
- c) Regular Civil Appeal No. 88 of 2004 is partly allowed and the Judgment and Decree dated 8th July 2004 passed by the 2nd Joint Civil Judge JD, Ratnagiri in Regular Civil Suit No. 167 of 1997 is confirmed.

[GAURI GODSE, J.]