

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No. 338 of 2021
(Against the judgment and decree dated 06.03.2021 passed by Additional District Judge-IX, Muzaffarpur in Title Appeal No.57 of 2015 affirming the judgment and decree dated 03.09.2015 passed by Civil Judge (Senior Division)-VII, Muzaffarpur in Title Suit No.69 of 1983)

1. Muzaffarpur Club (through its Hon'ble Members represented by Sri. R.K. Sahu @ Lalan Babu @ Ramakant Prasad Sahu @ Ratna Kant Sahu, Appellant No. 3) at Sarai Saiyad Ali Muzaffarpur, Near Head Post Office, Muzaffarpur, P.S. Town, P.O. H.P.O., District- Muzaffarpur.
2. Sri Kumod Sahay son of Late Gopalji Sahay resident of Mohalla Motijhil, P.S. Town, P.O. H.P.O., District- Muzaffarpur.
3. Sri R.K. Sahu @ Lalan Babu @ Ramakant Prasad Sahu @ Ratna Kant Sahu, son of Late Krishna Mohan Prasad Sahu resident of Mohalla Sahu Pokhar, P.S. Town, District- Muzaffarpur.
4. Dr. C.P.N. Thakur son of Late Raghuraj Thakur resident of C/o Thakur Nurshing Home at Mohalla Nayatola, P.S. Kazimohammadpur, District Muzaffarpur.

... .. Defendants/Appellant/s

Versus

1. Smt. Usha Sinha wife of Late Birendra Kumar Singh resident of Village Rampurballi @ Repura, P.S. Saraiya, District Muzaffarpur, at present resident of Jaitpur House, Mohalla Maripur, P.S. Town, District- Muzaffarpur.
2. Sri Annunay son of Late Birendra Kumar Singh resident of Village Rampurballi @ Repura, P.S. Saraiya, District Muzaffarpur, at present resident of Jaitpur House, Mohalla Maripur, P.S. Town, District- Muzaffarpur.
3. Sri Annumeet son of Late Birendra Kumar Singh resident of Village Rampurballi @ Repura, P.S. Saraiya, District Muzaffarpur, at present resident of Jaitpur House, Mohalla Maripur, P.S. Town, District- Muzaffarpur.

..... plaintiff/respondents 1st set/ respondents 1st set

4. Sri Pradeep Maherotra son of Late Radhey Shyam Mehrotra resident of Mohalla Juran Chhapra Road No. 1, P.S. Barhmpura, District Muzaffarpur.

Expunged vide order dated 02.07.2024



- 5 Sri Baidyanath Prasad Verma son of Late Dr. S.C. Prasad, resident of Mohalla Professor Colony, Amgola, P.S. Town, District Muzaffarpur.

..... Defendants/respondents 2nd set/respondents 2nd set/respondents.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. K. N. Choubey, Sr. Advocate
Mr. Ambuj Nayan Chaubey, Advocate
Mr. Jitendra Kishore Verma, Advocate
For the Respondent/s : Mr. J.S. Arora, Sr. Advocate
Mr. Ravi Bhatia, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 05-05-2026

Heard Mr. Kamal Nayan Chaubey, learned Senior Counsel assisted by Mr. Jitendra Kishore Verma, learned counsel for the appellants and Mr. J.S. Arora, learned Senior Counsel assisted by Mr. Ravi Bhatia, learned counsel appearing for the respondents.

2. This second appeal has been filed by the defendants-appellants against the judgment and decree of affirmance dated 06.03.2021 passed by the learned Additional District Judge-IX, Muzaffarpur, in Title Appeal No. 57 of 2015 whereby the learned First Appellate Court has upheld the judgment and decree dated 03.09.2015 passed by the learned Civil Judge (Senior Division)-VII, Muzaffarpur, in Title Suit No. 69 of 1983. The suit was partly decreed, on contest, on the ground of default in payment of rent and personal necessity. However, the



claim for compensation in respect of damages accruing to the plaintiffs was refused.

3. In the present appeal, the following substantial question of law has been formulated for determination:

“(i) Whether the document in question (Ext. 10/A) Patta Theka Mokarrir Istemrari dated 17.07.1889 envisages transaction of permanent/ perpetual lease creating absolute right in favour of appellant not to be evicted from suit premises?

(ii) Whether the instant Title Suit No. 69 of 1983 for eviction is barred by Law of Limitation when admittedly appellant Club stopped the payment of rent since July, 1956 and put the hostile claim of the suit premises?

(iii) Whether the instant suit is barred by principle of res judicata in view of order dated 30.08.1958 (Ext. F) passed in House Control Case No. 02 of 1955 where it was held that there is no relationship of landlord and tenant between the parties?

(iv) Whether the first appellate court has erred in making third case that no forfeiture within the ambit of Section 111(g)2 of T.P. Act ever took place in year 1955-56 during proceeding of House Control Case?”

4. In order to gauge the matter in its proper perspective, it is necessary to briefly restate what the suit entails. The suit was



filed by the plaintiff-respondent 1st for evicting the defendants on the ground of default in payment of rent and also for a decree for realization of arrears of rent amounting to Rs. 1,800/- for the last three years at the rate of Rs. 50/- per month along with *pendente lite* and future interest at the Bank rate till realization. The plaintiffs have further sought a decree for compensation in respect of damage to the suit building caused by the defendants as well as costs of the suit.

5. The case of the plaintiffs is that they are the owners of the property described in Schedule I of the plaint. It is stated that the suit property was originally leased by their predecessor-in-interest, Chaudhary Mahant Raghunath Das, in favour of one Stuart, as Secretary of the Station Club, Muzaffarpur, for a period of ten years from 01.08.1885 to 01.08.1894 at a monthly rent of Rs. 25/- only. The said lease deed was executed on 13.08.1885. The further case of the plaintiffs is that on 17.07.1889 another lease in the nature of '*Mokarrari Istamrari*' was executed with respect to the Schedule I property. It is further pleaded in the plaint that although Sri A.N. Stuart described his designation as Secretary of the Station Club, Muzaffarpur, the said Club was not a legal entity and had no independent legal character apart from Sri A.N. Stuart. Thus, the



lease created on 17.07.1889 by Chaudhary Mahant Raghunath Das was in favour of Sri A.N. Stuart. It is further pleaded that Chaudhary Mahant Raghunath Das acknowledged the status of the lease in favour of A.N. Stuart, Secretary of the Station Club, Muzaffarpur, though the said Club had no juridical existence. The Station Club, Muzaffarpur, continued to function as a place of recreational activities for the benefit of the elite of the town of Muzaffarpur for a long period and was later closed down. However, the Station Club, Muzaffarpur, continued to occupy the suit property even after the death of Mahant Raghunath Das, with the permission of the predecessor-in-interest of the plaintiffs. It is further pleaded that the plaintiffs succeeded to the right, title and interest in respect of the property described in Schedule-I in due course after the demise of Chaudhary Mahant Raghunath Das and his successors-in-interest, who were above the plaintiffs in the line of succession.

6. The further case of the plaintiffs is that the lease stood terminated either on the death of Sri A.N. Stuart or on the Station Club, Muzaffarpur, ceasing to exist, on account of the fact that no one succeeded Sri A.N. Stuart. However, the Club continued in possession with the permission of the plaintiffs' predecessor-in-interest. At no time, however, the issue as to the



relationship between the plaintiffs and the defendants concluded, except to the extent that succeeding one after the other predecessors-in-interest of the plaintiffs permitted those constituting Muzaffarpur Club to hold their activities upon the properties described in Schedule I, subject to payment of rent of Rs. 50/- per month and the Club paid the rent and sometimes adjusted it towards the bill of the Club payable by the plaintiffs' family, which created relationship of landlord and tenant, but subsequently even defaulted in making payment for several months and years prior to the institution of the suit.

7. The further case of the plaintiffs is that the Station Club, Muzaffarpur, not being a juristic person, could not hold any property or exercise any legal right of its own and, therefore, could not claim the status of a lessee. It is further pleaded that on cessation of the Station Club, Muzaffarpur, even assuming that any right had accrued in its favour under the lease deed dated 17.07.1889, the property described in Schedule I reverted to the rightful owner claiming through Chaudhary Mahant Raghunath Das, the plaintiffs being the present owners of the said property. The plaintiffs assert that the defendants, in the absence of any legal status of the Muzaffarpur Club, are merely in permissive possession as tenants on payment of rent



and are liable to be evicted on the grounds pleaded. It is further stated that the defendants have defaulted in payment of rent at the rate of Rs. 50/- per month for several months and years. However, for the purposes of the suit, the plaintiffs have confined their claim to arrears of rent for three years, amounting to Rs. 1,800/-.

8. On summons, defendant nos. 2 and 3 have filed a joint written statement and separate written statements were also filed by defendant nos. 6 and 7. Additional written statements were also filed by the defendants and the entire case of the defendants is being described together as all the defendants have resisted the claim of the plaintiffs for the benefit of the Station Club, Muzaffarpur on its behalf and by all its members. The defendants have denied the existence of landlord-tenant relationship between the plaintiffs and the defendants under the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (for short 'the B.B.C. Act') and that of lessor-lessee under the Transfer of Property Act, 1882 (for short 'the T.P Act'), having regard to the nature of the document whereunder the possession was and is being held and subsequent proceeding as well as conduct of the parties. Besides the ornamental objection, the defendants also raised objection that the suit is not properly



framed as all members of the Club have not been made party to the suit and that the deed of '*Patta Thika Mokarrari Istamrari*' dated 17.7.1889 (Ext. 10/A) is being wrongly interpreted by the plaintiffs. Further case of the defendants is that the suit is hit by the Bihar Land Reforms Act 1950 (for short 'the B.L.R. Act 1950) and State of Bihar is also a necessary party as intermediary interest over the suit property stood vested in the State of Bihar since 01.01.1956 and the Club being in possession has become a rightful owner and is neither a tenant nor a lessee of the plaintiffs. It is further pleaded that through *Thika Mokarrari Istamrari* deed (Ext. 10/A) Chaudhary Mahant Ragnathh Das, on accepting *nazrana* created absolute and heritable right from generation to generation (*naslan baad naslan and batnan baad batnan*) over the suit property in favour of Station Club, Muzaffarpur, which later came to be known as the Muzaffarpur Club. It is further pleaded that the original building standing at the time of execution of the deed got destroyed due to the earthquake which occurred in 1934 and thereafter, with full knowledge of ancestors of plaintiffs, the Club virtually developed and enhanced the value of the premises with its own huge investments from time to time which included construction of new building and staff quarters,



swimming pool, repairs and renovations, planting and maintaining various kinds of trees, etc., using the same without any objection from the plaintiffs or their ancestors. Although the plaintiffs or their ancestors had no right to determine the *Mokarri Istamrari* deed dated 17.7.1889 and there was no relationship of landlord and tenant between the plaintiffs and members of Muzaffarpur Club, but the grand father of plaintiff no. 1 filed House Control Case No. 2 of 1955 before the Controller of Buildings, Muzaffarpur, under the B.B.C. Act against the members of the Muzaffarpur Club and sought relief for their eviction from the suit property on the ground of default in payment of rent and personal necessity and this case was resisted by the Muzaffarpur Club denying the landlord-tenant relationship between the parties and claiming absolute and heritable right to the property on the basis of '*Patta Thika Mokarrari Istamrari*' dated 17.7.1889 (Ext. 10/A) and after hearing the parties, the case was rejected on the ground that by virtue of the deed of '*Mokarrari Istamrari*', Muzaffarpur Club had acquired absolute, heritable, and transferable rights over the suit premises against which no appeal or revision was preferred by Raghava Prasad Narain Sinha or his legal heirs or the predecessors-in-interest of the plaintiffs. Accordingly, the case



was dismissed by holding that no relationship of landlord and tenant existed between the parties within the purview of the B.B.C. Act and, thus, the case was rejected having no jurisdiction. The said order was passed on 30.8.1958 and the present suit having been filed in the year 1983 is barred by law of limitation as it has been filed much beyond the statutory period of limitation of 12 years from the date of order dated 30.8.1958 passed in House Control Case No. 2 of 1955 (Ext. F). The defendants have further denied the averments made in the plaint that Station Club, Muzaffarpur, operated for some time and was later closed down. The defendants have pleaded that the same Club is continuing in operation and only the name of the Club has been changed to Muzaffarpur Club, which has been within the full knowledge of the plaintiffs, who have always recognized that Muzaffarpur Club is Station Club Muzaffarpur and that is why Raghava Prasad Narain Sinha had filed House Control Case No. 2 of 1955 against Muzaffarpur Club on the basis of the same *Mokarrari Istamrari* deed, claiming relationship of landlord and tenant. Defendant no. 7 also pleaded in his written statement that plaintiffs are very influential person. Plaintiff no. 1 has been Member of Legislative Assembly from different parties for several terms



and wife of plaintiff no. 1, Smt. Usha Sinha, was also a Member of Parliament as well as a Member of councils of Ministers and his brother-in-law Mr. N. R. Singh was also M.L.A. for several terms and was also a Cabinet Minister. He has further stated that on account of their political influence and by bringing the survey authority in their collusion, the plaintiff no. 1 got recorded his grandmother's name in the RS *Khatiyani* in respect of the suit land, although RS *khatiyani* legally should have been opened in the name of Muzaffarpur Club who are the rightful owners, but wrongly and illegally the name of Muzaffarpur Club was recorded in the remarks column only because of undue influence exerted by the plaintiffs and their family members. It is the specific case of the defendant no.7 that the deed of *Mokarrari Istamrari* was executed in favour of the members of Club through the Secretary and the proprietary interest of the ex-landlord vested in the State, and as such, after vesting, no one is claiming through Mahant Raghunath Das or as *Mahant* of the said *Math*, of which Raghunath Das was *Mahant* or claiming through the ex-landlord can have any interest in the suit property. He has further stated that after vesting of *Zamindari* interest under the B.L.R. Act, *Mokarridar* right created through *Mokarrari Istamrari* deed becomes the



permanent *raiya*s of the land and the name of the Muzaffarpur Club was mutated in the Municipal records and the members of the Club have been paying taxes and getting rent receipt as owner of the Muzaffarpur Club. It is further case of the defendants that in one part of the plaint, the plaintiffs have alleged the defendants are strangers and there is no relationship of landlord and tenant and in the other part the plaintiffs have alleged the defendants have stopped paying rent denying title since 1955. Defendants have been denying the plaintiffs' title and asserting their own right, title and interest over the suit premises and are in possession of the suit premises for last several 12 years openly and continuously asserting and exercising right of absolute owner over the suit premises. Lastly, the defendants have pleaded that they have not paid any rent to the plaintiffs nor does any question of same arise in any view of the matter either legally or factually. Hence, no question arises of any so-called default in payment of rent for several years. Therefore, the Eviction Suit is not maintainable as there is a title dispute with respect to the property. There is no relationship of landlord and tenant between the parties so as to maintain an Eviction Suit against the defendants. The defendants, therefore, prayed for dismissal of the suit.



9. On the basis of the pleadings, the learned Trial Court had framed 10 issues which are as follows:-

- “1. Whether the suit as framed is legally maintainable?*
- 2. Whether the plaintiff has got right to sue for cause of action?*
- 3. Whether the suit is barred by law of limitation, adverse possession, principle of estoppel, waiver and acquiescence?*
- 4. Whether the suit is bad on account of non joinder of necessary parties?*
- 5. Whether the suit property is properly valued and the court fee paid is sufficient ?*
- 6. Whether the defendants acquired absolute right by deed of patta Thika Mokarri Istamrari dated 17.7.1889?*
- 7. Whether the Station Club was subsequently started to be called and known as Muzaffarpur Club ?*
- 8. Whether the defendants are lessee of the suit premises as alleged by the plaintiff?*
- 9. Whether there is relation of landlord and tenant or lessor and lessee between the plaintiff and the defendants?*
- 10. Whether the plaintiffs are entitled for a decree for eviction, arrears of rent and compensation for damages to the building against the defendants ?”*

10. The learned Trial Court, after considering the



pleadings and evidence adduced by the parties as well as the materials on record, held that on perusal of Ext. F (order of the House Controller passed in House Control Case No. 2 of 1955), it transpires that the previous eviction case was rejected as it was outside the jurisdiction of the House Controller, and, therefore, the House Controller's order (Ext. F) is *non est* in law, as after the amendment of 1955, a decree of eviction can only be passed by a Civil Court and since the order (Ext. F) is *non est* in law, it cannot be taken into consideration and further held that the suit has been filed within the statutory period of limitation on the ground that forfeiture, on account of hostile title being claimed by the lessee, takes effect only on service of notice in writing under Section 111(g) of the T. P. Act by the lessor to the lessee; and finally concluded that since such notice dated 25.02.1983 (Ext. 3) was given to the Club, the suit is within the prescribed period of limitation. The learned Trial Court has further observed that on perusal of Ext. 1/Z-13 to Ext. 1/Z-15, it is evident that the plaintiffs' Club membership dues were adjusted against the rent dues; hence, it can reasonably be presumed that at least up to March 1973 the Club rent was duly paid. P.W. 4, Usha Sinha, has also deposed in paragraph 24 that her husband, her father-in-law Krishna Kumar Singh, her



husband's grandfather and both brothers were members of the Club and that the dues were adjusted against the rent.

11. While dealing with the objections of defendants with regard to the said Exhibits that those are forged and fabricated, learned Trial Court held that the defendants did not file any petition for obtaining expert opinion as to the genuineness of the Exhibits and, therefore, on the principle that one who alleges a fact must prove it, the defendants failed to prove that the letters are forged and fabricated and, therefore, it can be easily presumed that rent was paid at least up to March, 1973 which brings the suit within the period of limitation and the Trial Court concluded that landlord-tenant relationship existed even after 1956. The learned Trial Court with reference to Section 2(h) of the B.B.C. Act, which defines a 'tenant' to include a person continuing in possession even after termination of tenancy in his favour, observed that the suit is not barred by limitation, as the defendants are admittedly continuing in possession and, therefore, the tenancy in their favour has not been determined till date. Further, the learned Trial Court, while dealing with the nature of the *Patta Thika Mokarrari Istamrari deed* (Ext. 10/A) and having regard to Section 105 of the T.P. Act, observed that as per the said deed a lease was created in favour of A.N. Stuart,



Secretary of the Club or his successors in office. The Trial Court further held that the defendants are merely monthly tenants in terms of the lease, inasmuch as even a permanent lease does not transfer ownership, but only confers a right to enjoy the property. The learned Trial Court also observed that under Ext. 10/A, a premium of Rs. 600/- was paid and a monthly rent of Rs. 50/- was fixed which indicates the essential features of a lease. Accordingly, the learned Trial Court treated Ext. 10/A as a lease within the meaning of Section 105 of the T.P. Act and refused to consider it as a permanent settlement or any other kind of transfer deed.

12. So far as the *locus standi* of the plaintiffs is concerned, the learned Trial Court, while dealing with the defendants' objection that only the *chela* (disciple) of the *Mahant* could succeed to his rights over the suit property, the same being alleged *Math* property, observed that the *Mahant*, in his capacity as *chela* of the previous Mahant Raja Ram Das, had transferred the suit property to the Club in the capacity of *Asthaldhari* and not in his personal capacity. The learned Trial Court, placing reliance upon Tagore Law Lectures on Hindu Law (5th edition page 337), held that since the *Mahant* belonged to the *Vairagee* sect, which is governed by the



ordinary rules of succession, the plaintiffs, being the legal heirs of the *Mahant*, are entitled to institute the present suit as his successors.

13. So far as the question of landlord-tenant relationship is concerned, the learned Trial Court has held that on perusal of Exts. 6 and 6/b, in both the *Khatiyans* the names of Mahasundari Kuer and Mahant Raghunath Das respectively have been recorded in the column '*Assami*' (*Raiyat*). Moreover, in Exts. 2/i to 2/v, the names of the ancestors of the plaintiffs have also been recorded in the column '*Assami*'. In Exts. 2/z-4 and 2/z-5 as well, the names of the plaintiffs' ancestors have been recorded in the column '*Assami*'. It has further been observed that the persons who had purchased proprietary interest vide Exts. 8 to 8/d have been shown in the column "*Malik*" in all the '*Maliki*' receipts. Exts. 11, 11/a and 11/b also establish the conversion of old survey numbers into new numbers and the same corroborate the schedule given in the plaint. Thus, it stands clearly established that the plaintiffs' ancestors were *raiya*ts and not *Maliks* (proprietors). The learned Trial Court further held that although in 1956 the proprietary interest vested in the State of Bihar, the *Raiyati* interest never vested in the State; and even thereafter, the



Raiyats continued to retain title over the land in which they had *Raiyati* interest. The trial Court has further observed that even if the contention of the defendants is presumed to be correct, namely that after the collapse of the building in 1934 they constructed a new building even in such circumstances the relationship of lessor and lessee would exist; and, in any event, after the coming into force of the B.B.C. Act in 1947, the relationship of landlord and tenant stood established between the parties. Further, from Exts. 1 series, it is evident that rent was paid to the plaintiffs' ancestors as well as to the plaintiffs, either through cheque or by way of adjustment against dues of Club membership. In view of the aforesaid discussion, it is clear that there was/is a relationship of landlord and tenant between the plaintiffs and the defendants. Accordingly, the learned Trial Court held that the plaintiffs are entitled to a decree for eviction and for arrears of rent, as after 1973 the defendants did not pay any rent to the plaintiffs and from 1974 onwards the defendants began denying the title of the plaintiffs, as is evident from Ext. 7/H. The Trial Court further observed that Ext. F cannot be taken into consideration being *non est* in law.

14. So far as compensation for damages is concerned, the learned Trial Court held that the damages alleged to have been



caused to the building on account of negligence or fault of the plaintiffs could not be proved. The Trial Court further observed that any damage caused due to natural calamities (earthquake) was duly repaired, as is evident from the income and expenditure account of the Muzaffarpur Club for the year 1934 (Ext. C) and that such repairs were carried out in accordance with the terms of the *Patta Thika Mokarrari Istamrari* deed. Accordingly, the learned Trial Court held that the plaintiffs are entitled only to a decree for eviction and arrears of rent, but not to any compensation in respect of the damages alleged to have been caused to the building and suit was partly decreed on contest without cost.

15. Being aggrieved by the judgment and decree dated 03.09.2015 passed by the learned Trial Court in Title Suit No. 69 of 1983, the defendants- appellants preferred Title Appeal before the District Judge, Muzaffarpur.

16. After hearing both the parties, the learned First Appellate Court framed the following points for consideration and determination in the aforesaid appeal:-

“(1) Whether the relationship of landlord and tenant exists between the respondent Ist party/plaintiff and appellant/defendant/Club;



(2) Whether there happened/occurred any forfeiture of the lease in question whereby the appellant Club incurred liability of being evicted, and, if yes, then when the same happened/occurred, and as to whether the suit filed by respondent Ist party/plaintiff is barred under the law of limitation for the reason of being filed after several 12 years of the said forfeiture;

(3) Whether the respondent Ist party/plaintiff in the given case, was entitled to a decree of eviction and other relief as claimed against the appellant/defendant Club?

4) Whether the impugned judgment and decree passed by the learned court below for eviction of the appellant/Club from the suit premises is liable to be set aside or not?"

17. The learned First Appellate Court, after considering the evidence adduced by the parties, the materials on record and the submissions advanced on the issue of the relationship of landlord/ lessor and tenant/lessee between the plaintiff/respondents 1st party and the appellant/defendant, Muzaffarpur Club, observed that the possession of the appellant Club over the suit premises is admittedly based on the lease deed (Ext. 10/A). The learned First Appellate Court further observed that Station Club, Muzaffarpur was initially inducted as a tenant with effect from 01.08.1885 at a monthly rent of Rs.



25/- payable to the lessor, Mahant Raghunath Das or his legal heirs. The said lease deed (Ext. 10), which was for a period of ten years, was subsequently renewed by way of a *Patta Theka Mokarrari Istemrari*, being a permanent lease deed, executed by Mahant Raghunath Das through a registered deed dated 17.07.1889 (Ext. 10/A) at a monthly rent of Rs. 50/- on payment of a premium amount (*nazrana*) of Rs. 600/-. The learned First Appellate Court also noted that, subsequently, the name of Station Club, Muzaffarpur was changed to Muzaffarpur Club and it is admitted by the plaintiffs that the said Club continued to carry on its activities in the suit premises even thereafter. The learned First Appellate Court further held that the source of possession of the appellant Club over the suit premises originates from the aforesaid lease deeds (Exts. 10 and 10/A), through its predecessor-in-interest, namely Station Club, Muzaffarpur. The Court further observed that it is a settled position of law that a lease does not confer absolute right or title upon the lessee, but merely transfers a limited interest in the property, such as the right of possession and enjoyment. The learned First Appellate Court further observed that although the lease deed (Ext. 10/A) has been described as a *Theka Patta Mokarrari Istemrari*, which generally connotes a permanent or



perpetual lease, but its true nature must be gathered from the terms of the document and the intention with which it was created.

18. It has further been observed that the recitals of the lease deed provide the best evidence to determine what was transferred thereby and thereunder in favour of the lessee. The learned First Appellate Court, while dealing with the English translated version of the lease deed (Ext. 10/A), came to the conclusion that on a perusal of the recitals of the lease deed, so far as the purpose of its creation is concerned, it was agreed between the parties to the lease (lessor and lessee) that if the Station Club is closed at any time, or if Club activities are discontinued or if the houses are no longer required by the Club, or if the Club is shifted to another place, then in such an event the aforesaid houses mentioned in the document shall revert back to the Jaitpur Estate and no payment shall be made by the Jaitpur Estate in that regard. It is crystal clear from this portion of the lease deed that the suit property was leased in favour of the Station Club through its then Secretary merely for the purpose of carrying out Club activities. It was intended that so long as the Club activities continue, the leased premises shall remain in possession of the Club. Therefore, it was not the



intention of the said lease deed to confer an absolute transfer of the suit property in favour of the Club, its members or its Secretary nor to permit its use for any other purpose (including personal purposes) not disclosed in the lease deed.

19. The lease deed has to be construed in the sense and meaning in which it was created by the lessor in favour of the lessee Club and to infer the intention of the lessor the lease deed and the recitals therein are the best evidence. From the relevant portion of the recitals, it is very clear that it was anticipated by both the lessor and the lessee that if, in future, the Club activities are stopped or if the Club is shifted to another place, the suit premises shall revert back to the Jaitpur Estate. This clearly shows that the suit property was not permanently granted to the Club; rather, it was given only for the purpose of carrying on Club activities and there was no intention on the part of the lessor to transfer any absolute title, right or interest in the suit property in favour of the appellant Club. The claim of the appellant Club that the lease deed was a permanent lease and, therefore, that it acquired absolute rights is untenable in the eye of law. The learned First Appellate Court further held that from the recital of the lease deed (Ext. 10/A), the rent, as agreed under the lease deed, was payable to the lessor, namely Mahant



Raghunath Das or his legal heirs. The rent was fixed at Rs. 50/- per month. With regard to the term '*Theka Patta Mokarrari Istemrari*' is concerned, this alone is not sufficient to treat the lease deed as an *Istemrari* (permanent) lease, particularly, when the rent was fixed only for the period of the continuation of Club activities in the suit premises and there was no stipulation or provision in the lease deed regarding any enhancement and/or reduction of the rent so fixed. With regard to the word '*Mokarrir*,' the learned First Appellate Court has explained that it means reconfirmation. This expression can be understood in the sense that during the existence of the previous lease deed (Ext. 10), the present lease deed (Ext. 10/A) was executed thus reconfirming the lease of the suit premises for Club activities.

20. The learned First Appellate Court further observed that it is not in dispute that Mahant Raghunath Das, the lessor of the lease deed, was not a *raiyyat* of the suit property. Rather, it has been admitted by the appellant Club during the survey proceeding before the Survey Authority and is also evident from Ext. 7/H wherein, the appellant Club itself set up a case that Mahant Raghunath Das was the landlord of the disputed *tauzi*, and as such, was having *raiyyati* right, title and interest over the same. The appellant Club, however, raised a contention that the



suit property was possessed by Mahant Raghunath Das as *Math* property in his capacity as *Mahant* and that the plaintiff-respondent first party and their predecessor-in-interest were not disciples of the *Mahant*; therefore, they had no right to maintain the instant Eviction Suit in respect of *Math* property. Ext. 7/D is the documentary evidence of the Survey proceeding between Muzaffarpur Club and Smt. Dulhin Mahasundari Kuer in Appeal Case No. 914 of 1977. On perusal of this Exhibit and since its contents are not disputed by either side, it is evident that the said Mahasundari Kuer, in her appeal, had pleaded that Mahant Raghunath Das had gifted the suit property to his wife, Smt. Ramanand Kuer and thereafter it was transferred to his son, Raghava Prasad Narain Sinha. Diwan Bahadur Badri Narain Singh was the elder brother of the said Raghava Prasad Narain Sinha and the said Mahasundari Kuer was the widow of Badri Narain Singh. It further appears that the Muzaffarpur Club had continued to make payment of rent pursuant to the lease deed to the respondent and in the said appeal case, Smt. Dulhin Mahasundari Kuer was the respondent. Ext. 7/D, therefore, stands proved by way of documentary evidence and, more importantly, being an undisputed document, clearly establishes that the present plaintiff-respondent first party belongs to the



family of Mahant Raghunath Das.

21. The question that arose for consideration was whether the property so leased thereunder was *Math* property or the individual/personal property of the lessor and further whether the lessor executed the lease deed of the suit premises in his capacity as the *Mahant* of the *Math* or treated the suit premises as his individual/personal property. The recital of Ext. 10/A speaks that the property was described as ‘khas property’ and ‘owned property’ of the lessor, i.e., it was his individual or personal property. The reversion clause in the lease deed (Ext. 10/A) further makes it clear that in the event the Club is closed or shifted to another place, the leased property would revert back to the Jaitpur Estate. If there had been any intention that the property belonged to the *Math*, such a stipulation providing for reversion to the Jaitpur Estate would not have been incorporated. The Learned First Appellate Court further observed that merely because a person subsequently becomes the *Mahant* of a *Math*, it does not divest him of his title in respect of property already standing in his own name prior to his holding the office of *Mahant*. This contention was accepted by the learned First Appellate Court. The learned First Appellate Court on considering the evidence and materials on record, held



that the plaintiffs and their predecessor-in-interest derived right, title and interest in the suit property through Mahant Raghunath Das, being his biological/legal heirs who was admittedly the owner of the suit property in his individual capacity. The learned First Appellate court observed that the suit property was his *khas*/individual/personal property and not *Math* property. In this view of the matter, the plaintiff/respondent first party and their predecessor-in-interest were entitled to institute as well as maintain the instant suit against the defendants/appellant Club. Accordingly, on a proper interpretation of the recitals of the lease deed, coupled with the aforesaid factual and legal position and the evidence on record, it stands proved that the property was not that of the *Math* rather it belonged to Mahant Raghunath Das in his individual capacity as his personal property.

22.The plaintiffs, who claim to be the legal heirs/successors-in-interest, are admittedly proved to be related to Mahant Raghunath Das, the lessor of the lease deed (Ext. 10/A), under which the appellant Club is in possession of the suit premises. Thus, the plaintiffs are the legal heirs of Mahant Raghunath Das. The learned First Appellate Court considered the defence of the appellant Club that it had been paying



municipal taxes and other taxes. In support of this contention, Ext. A series, Ext. B (the proceedings book of the Club), Ext. C (the books of account of the Club), and Exts. D to D/19 (the audit reports of the Muzaffarpur Club) were brought on record. By these Exhibits, it was sought to establish that the Club had been paying municipal and other taxes to the municipality and the Government and had been obtaining revenue/tax receipts in its own name. It has further been observed that in the municipal records, the name of the appellant Club stood recorded in respect of the suit premises and on that basis it had acquired absolute rights over the same. This contention was answered by the learned First Appellate Court by holding that the lease deed (Ext. 10/A) itself contains a clear stipulation. As per the agreed terms between the lessor and the lessee, the municipal taxes and other similar taxes were to be paid by the Club, and the landlord/lessor was not liable for the same. Thus, from this recital of the lease deed, it is clear that mere payment of municipal taxes does not confer any absolute right in the lease property. The parties remain bound by the stipulations of the lease deed till the same is in existence.

23. Moreover, a mutation entry in the revenue records neither creates nor extinguishes title in respect of the property to



which such entry relates nor does it carry any presumptive value regarding title. On the basis of this finding, the learned First Appellate Court came to the conclusion that between the appellant-Club and the plaintiff/respondent first party, there exists a relationship of landlord/lessor and lessee/tenant in respect of the suit premises. So far as the default in payment of rent is concerned, it is the admitted case of the appellant-Club that no rent was paid after June 1954. Despite being in possession of the leasehold premises (i.e., the suit premises), the defendants-appellants failed to pay rent and by virtue of such conduct, the appellant-Club forfeited the conditions of the lease deed thus incurring liability for eviction from the suit premises. In such circumstances, the lessor as well as its successors-in-interest, i.e., the plaintiff/respondent first party, are entitled to institute and maintain a suit for ejectment of the lessee/tenant. Since the appellant-Club continues in possession of the suit premises and the default in payment of rent treated as a continuing breach, no limitation can be imposed on the right to claim eviction on that ground. However, so far as recovery of arrears of rent is concerned, there is a limitation of three years. In the present case, the plaintiffs have restricted their claim for arrears to three years only; hence, that part of the relief is not



barred by the law of limitation. The learned First Appellate Court further held that Ext. 7H is the document from which the fact of forfeiture, in terms of Section 111(g)(2) of the T.P. Act, stands proved, resulting in the determination of the lease in-question and rendering the appellant-Club liable to be ejected from the suit premises. Although the date of filing of the petition by the Muzaffarpur Club is not mentioned in the order sheet (Ext. 7/H), even if the date is taken as 31.03.1975, the present suit on the ground of forfeiture, cannot be said to be barred either under Articles 66 or 67 of the Limitation Act. Even in that situation Section 27 of the Limitation Act has no application so as to favour the appellant-Club or to defeat the claim of the plaintiff/ respondent first party. It is also an admitted position that no payment of rent was made after June 1956 and this fact stands corroborated by Ext. F (order in House Control Case No. 2 of 1955). The appellant-Club has, thus, incurred liability for eviction due to admitted default in payment of rent under the lease deed (Ext. 10/A). Furthermore, if the Club is in possession and claims such possession on the strength of the said lease deed (Ext. 10/A) then, on account of non-payment of rent, it is liable to be ejected from the suit premises. Accordingly, the learned First Appellate Court held that the impugned judgment



and decree do not warrant interference and are liable to be confirmed. Consequently, the appeal filed by the defendants/appellants was dismissed, which is now under challenge in the present Second Appeal.

24. Mr. Kamal Nayan Chaubey, learned senior counsel appearing for the defendants-appellants, while making submission on the first substantial question of law framed by this Court, submitted that the *Patta Thika Mokarrari Istamrari* dated 17.07.1889 (Ext. 10/A) creates a permanent settlement in favour of the Club. According to him, the said document cannot be construed as a lease within the meaning of Section 105 of the T.P. Act nor does it create a tenancy governed by the BBC Act. It is further submitted that having regard to the nature and character of the aforesaid document (Ext. 10/A) the present suit is not maintainable in law, as the relationship between the parties does not fall within the ambit of either the T.P. Act or the B.B.C. Act. Learned senior counsel further submitted that it was the duty of the plaintiffs to establish that such a relationship existed so as to attract the applicability of the aforesaid statutes; however, they have failed to discharge that burden.

25. Learned senior counsel further submitted that it is a settled proposition of law that the legal effect and construction



of the terms of a document, which forms the foundation of the rights of the parties, is a question of law. It is further submitted that where the construction of a document involves the application of legal principles, the same also gives rise to a question of law. He next submitted that the expression “substantial question of law” has been interpreted by the Hon’ble Apex Court on several occasions and in support of this proposition, reliance has been placed on the decisions in the case of *Boodireddy Chandraiah & Ors. v. Arigela Laxmi & Anr.*, reported in *(2007) 8 SCC 155 : AIR 2008 SC 380*, and *Kashmir Singh v. Harnam Singh & Anr.*, reported in *AIR 2008 SC 1749*. On the strength of the aforesaid principles, learned senior counsel argued that the main issue in the present case relates to the legal effect, true nature, and proper construction of Ext. 10/A. According to him, the question as to whether the said document can be regarded as a lease within the meaning of the T.P. Act or a tenancy under the B.B.C. Act or is in the nature of a permanent settlement or some other kind of transaction, is essentially a substantial question of law requiring determination by this Court. It is further submitted that the true character of Ext. 10/A must be ascertained not merely from its title, such as *Thika Patta Mokarrari Istamrari*, but from entire consideration



of its contents, as well as the background and surrounding circumstances in which the document came to be executed.

26. Learned senior counsel further submitted that the transaction known as '*Thika Patta Mokarrari Istamrari*' refers to a form of permanent land tenure with a fixed rent, having its roots in the land revenue system prevailing during the late Mughal period and the early British period. It is further submitted that the expression is derived from Persian words, namely "mokarrar" meaning fixed or settled and "*istamrari*" meaning permanent or perpetual which indicates that the arrangement was intended to be of a permanent nature with fixed terms. It is further submitted that this type of land settlement was a key feature of the Permanent Settlement (also known as *Istamrari Bandobast*), introduced in Bengal, Bihar and Orissa by Lord Cornwallis in 1793 through the Bengal Decennial Settlement Regulation also known as Bengal Regulation 8 of 1793. Such transactions were prevalent in the State of Bihar during the existence of the *zamindari* system. Learned senior counsel further submitted that Ext. 10/A can even be construed as a grant of permanent tenure under Section 10 of the Bihar Tenancy Act, 1885 (for short, the 'B.T. Act'), whereunder the holder of a permanent tenure cannot be ejected



by the landlord except on the ground of breach of conditions of the contract. It is, thus, submitted that Ext. 10/A is not a transaction that can be categorized as a lease as envisaged under the T.P. Act or the B.B.C. Act. According to him, there is no landlord-tenant or lessor-lessee relationship between the parties under these laws.

27. Learned senior counsel submitted that the *Patta Thika Mokarrari Istamrari* deed (Ext. 10/A), executed by Chaudhary Mahant Raghunath Das upon acceptance of *nazrana*, created absolute and heritable rights over the suit property, to be enjoyed from generation to generation (*naslan baad naslan* and *batnan baad batnan*). It is further submitted that so far as the expressions *thika*, *patta*, and *mokarrari* are concerned, there is no dispute between the parties. Both the Courts below have, in fact, accepted that by virtue of Ext. 10/A, possessory rights over the suit property were granted to the Club for the purpose of running the Club on payment of a fixed rent which was not subject to enhancement or reduction. Learned senior counsel submitted that the real controversy is with regard to the term “*istamrari*”, which has been completely overlooked by both the Courts below. According to him, although the term clearly indicates that the arrangement was permanent, the Courts below



erroneously proceeded to hold that the deed (Ext. 10/A) creates a lease/tenancy and that a landlord-tenant relationship exists between the parties within the meaning of the T.P. Act and the B.B.C. Act. It is further submitted that such a conclusion is based merely on the use of terms like “rent” and the reversion clause in favour of the Jaitpur Estate, without due appreciation of the true nature and legal effect of the transaction as a whole. However, the *Thika Patta Mokarrari Istamrari* deed in-question (Ext. 10/A) conferred permanent, perpetual and heritable right to the Club over the suit property. Reliance has been placed in the case of ***Charan Mahton & Ors. vs. Kumar Kamakhya Narayan Singh*** reported in ***AIR 1925 Patna 357***.

28. Learned senior counsel submitted that the deed of *Thika Patta Mokarrari Istamrari* (Ext. 10/A) cannot be treated as a tenancy or lease either under the BBC Act or under the TP Act. According to him, the deed is a special type of transaction creating a permanent settlement, originating from the colonial revenue system of the Mughal period. It is submitted that the grounds for termination or determination of such a transaction are specifically provided in the deed (Ext. 10/A) itself, and therefore, the rights and liabilities of the parties must be governed strictly by its terms. In that view of the matter, having



regard to its true nature, a suit for eviction of the transferee /Club is not maintainable either under the T.P. Act or under the B.B.C. Act. Learned senior counsel further submitted that the entire burden of proof was on the plaintiffs to establish that Ext. 10/A strictly falls within the ambit of Section 105 of the T.P. Act so as to be treated as lease thereunder or that it creates a tenancy within the meaning of the B.B.C. Act, particularly in the light of the nature of the present suit and the pleadings on record. However, according to him, the plaintiffs have failed to bring their case within the scope of either of the aforesaid provisions of law.

29. Learned senior counsel further submitted that in so far as the B.B.C. Act is concerned, the plaintiffs have no case under the aforesaid Act in view of the bar of *res judicata*. Reliance has been placed on Ext. F wherein, it has been conclusively held that no landlord-tenant relationship exists between the parties on the basis of Ext. 10/A. It is further submitted that the present suit based on Ext. 10/A and asserting tenancy under the said Act, is barred by *res judicata*. There is no dispute that Ext. F arose out of inter-party litigation and, therefore, the findings recorded therein are binding on the parties. Learned senior counsel further submitted that, in such circumstances, the



present suit, instituted under the B.B.C. Act for eviction of the Club from the suit premises, is not only barred by *res judicata*, but is also barred by law of limitation.

30. Learned senior counsel further submitted that Ext. 10/A, being the original registered *Thika Patta Mokarrari Istamrari* deed dated 17.07.1889, executed by Chaudhary Mahant Raghunath Das in favour of A. N. Stuart, Secretary, Station Club, Muzaffarpur, clearly states that the said grant was made on a *naslan baad naslan* (generation after generation) and *batnan baad batnan* basis for the purpose of running the Club. It is further argued that the incorporation of the terms *naslan baad naslan* and *batnan baad batnan* in the deed shows the intention of the parties to confer rights of a permanent, perpetual, and heritable nature upon the Club. In view thereof, the plaintiffs are estopped from taking any plea to the contrary. Learned senior counsel submitted that the recitals of the deed clearly established that the intention of the parties to Ext. 10/A was to create a permanent, perpetual, and heritable right in the nature of a *Thika Patta Mokarrari Istamrari* over the suit property, amounting to a permanent settlement, as opposed to and in contradistinction with a lease under the T.P. Act.

31. Learned senior counsel further submitted that other



provisions of the deed also clearly indicate the permanent nature of the grant. In particular, the deed provides for reversion of the property to the Jaitpur Estate in the event of the Club being closed down or shifted elsewhere. It is emphatically submitted that the said provision does not contemplate reversion of the property to the executor of the deed, but specifically to the Jaitpur Estate. Learned senior counsel pointed out that the executor, Mahant Raghunath Das, has been described in the deed as '*maalik asthaldhari*', belonging to the '*Bairagee sect*' and as a '*chela*' of his '*guru*', the erstwhile *Mahant*, namely Mahant Raja Ram Das. Significantly, instead of referring to his natural parentage, the deed mentions the name of his guru, which emphasizing the religious and institutional character of his position. It is further submitted that such description clearly establishes that Mahant Raghunath Das was holding the property in his capacity as a *Mahant*, having succeeded to the *Mahantship* from his guru and that he was conveying the *Math* property to the Club in that representative capacity. Learned senior counsel, thus, argued that the property originally belonged to the Jaitpur Estate, which had dedicated it to a deity leading to the creation of the *Math*, of which the executor, Mahant Raghunath Das was the *Mahant* at the time of execution



of Ext. 10/A. Consequently, any ownership or interest in the suit property, upon the death of the executor *Mahant*, would devolve upon his duly appointed *chela* in accordance with the established customs governing the institution.

32. Learned senior counsel further submitted that prior to the execution of Ext. 10/A, the *Mahant* had executed an earlier deed dated 13.08.1885 (Ext.10) in favour of A. N. Stuart, whereby possessory rights over the suit property were granted to the Club for a limited period of ten years, i.e., from 01.08.1885 to 01.08.1894, on payment of rent of Rs. 25/- per month. The said deed (Ext. 10) was in the nature of a *thika* deed granted in favour of the Club. It is further argued that during the subsistence of the said deed (Ext. 10), Ext. 10/A came to be executed, whereby the *Mahant*, with a view to enhance the income from the property, granted permanent and perpetual rights to the Club on a fixed (*mokarrari*) rent of Rs. 50/- per month. This represented a substantial increase in income being nearly double of the earlier earnings and also ensured a stable and permanent source of income for the *Math* under all circumstances. Learned senior counsel further submitted that at the time of vesting, the ex-landlord/proprietor had retained the suit property and saved it from vesting by filing returns in



accordance with law, particularly when they were admittedly not in *khas* possession. In such circumstances, the suit property was no longer available to the plaintiffs and, therefore, they have no *locus* to maintain the present suit. On the basis of the aforesaid submissions, learned senior counsel submitted that the findings recorded by both the Courts below, holding that Ext. 10/A is a tenancy/lease under the B.B.C. Act or a lease within the meaning of Section 105 of the T.P. Act are perverse, erroneous, misconceived, and unsustainable in law.

33. Learned senior counsel, while making submissions on the second substantial question of law relating to limitation, submitted that the present suit is clearly barred by limitation and that both the Courts below have erred in adopting an erroneous approach in determining the said issue. It is further submitted that as per the plaintiffs' own case, the appellant-Club had admittedly stopped payment of rent since July, 1956 and had also set up a hostile title over the suit property during the pendency of House Control Case No. 2 of 1955. The said proceeding was, ultimately, dismissed on 30.08.1958 (Ext. F) on the ground that no landlord-tenant relationship existed between the parties. Learned senior counsel pointed out that it is evident from the pleadings in the plaint as well as from the observations



of the learned Lower Appellate Court that the total amount of arrears of rent is Rs. 16,100/- calculated at the rate of Rs. 50/- per month for 322 months, i.e., from July 1956 till the filing of the present suit in May 1983. This clearly amounts to an admission on the part of the plaintiffs that rent had not been paid since July 1956, thus furnishing a cause of action as early as 1955-1958, which is binding upon them. It is further contended that despite accrual of the cause of action for eviction and recovery of rent, particularly in view of the assertion of hostile title by the Club and dismissal of the eviction proceeding in 1958, no suit was instituted until 1983. Consequently, the suit is clearly barred by limitation. Reliance has been placed on the decision in the case of *Nagindas Ramdas vs. Dalpatram Ichharam @ Brijram & Ors.* reported in *AIR 1974 SC 471* to submit that admissions in pleadings are binding on the party making them and can form the foundation of rights. Learned senior counsel further argued that although certain pleadings indicating accrual of cause of action in 1955-1958 appear to have been deleted with a *mala fide* intention to overcome the bar of limitation, the calculation of arrears of rent (Rs. 16,100/- at Rs. 50/- per month) remains as an unamended admission and clearly relates back to the period of July, 1956. It is further



submitted that the earlier Eviction proceeding filed by Raghava Prasad Narain Sinha against the Club culminated in the dismissal of House Control Case No. 2 of 1955 by order dated 30.08.1958 (Ext. F), wherein, upon consideration of Ext. 10/A, the House Controller held that no landlord-tenant relationship existed between the parties under the B.B.C. Act, particularly in view of the hostile title set up by the Club. In view of the aforesaid facts and circumstances, learned senior counsel submitted that the present suit is clearly barred by limitation.

34. Learned senior counsel submitted that the learned Trial Court has erred in holding that House Control Case No. 2 of 1955 was rejected vide Ext. F on the ground of lack of jurisdiction of the House Controller and in treating the said order as *non est* in law in order to save the suit from limitation. It is further submitted that the learned Trial Court has wrongly held that the suit was filed within the statutory period of limitation on the premises that forfeiture on the ground of hostile title claimed by the lessee takes effect only after service of a notice in writing under Section 111(g) of the T.P Act. Relying on the notice dated 25.02.1983 (Ext. 3) issued under Section 106 of the Act, the Trial Court erroneously concluded that the suit was within limitation. Learned senior counsel



further submitted that the Trial Court committed an error itself in relying upon Ext. 1/Z-13 to Ext. 1/Z-15, being letters purportedly written by the ancestors of the plaintiffs to the Club to presume that rent had been adjusted against outstanding membership fees and, therefore, must have been paid at least up to March, 1973. It is further argued that despite the specific case of the defendants that the said letters were forged and fabricated, the Trial Court wrongly held that in the absence of any application for expert opinion by the defendants, the plea of forgery was not proved. According to learned senior counsel, such reasoning is erroneous, as the burden to prove the genuineness of the documents is squarely on the plaintiffs, and not on the defendants. The Trial Court, by shifting the burden and drawing presumptions in favour of the plaintiffs, has committed a serious error of law in concluding that rent was paid up to March, 1973 and, on that basis, bringing the suit within the period of limitation.

35. Learned senior counsel, appearing on behalf of the appellants, vehemently submits that the learned First Appellate Court has, surprisingly, made out an entirely new and a third case which was not even pleaded by the plaintiffs by relying upon Ext. 7/h to hold that the title of the plaintiffs was first



denied by the Club in 1973-74 in the *Tanaza* case and that the lease was determined under Section 111(g)(2) of the T.P. Act through Ext. 3 (notice of determination dated 25.02.1983 under Section 106 of the T.P. Act) and on that basis held that the suit is not barred under Section 27 and Articles 66 or 67 of the Limitation Act. Further submission is that the present suit is barred by limitation due to the operation of Section 27 and failure to fulfill the requirement of Article 66 of the Limitation Act, 1963. It is further submitted that Article 67 of the Limitation Act has no application to the facts of the present case.

36. Learned senior counsel for the appellants further submits that Exts. 1/z-13 to 1/z-15 are unregistered/plain documents, the genuineness whereof has been categorically denied by the defendants, who have specifically asserted that the said letters are forged and fabricated. It is submitted that although the learned courts below noticed such denial, they nonetheless erred in law in placing the burden on the defendants to prove the forged character of those documents by examining an expert. It is next submitted that the settled position of law is that once genuineness of a plain document being relied upon by one party is questioned by the other party, the party who is



relying upon such document must satisfy the Court of its genuineness by positive proof by examining an expert and the party denying its genuineness cannot be saddled with the burden of presenting negative proof or proving the negative, i.e., proof that the document in-question is not genuine. In support of the aforesaid submission, reliance has been placed on the decision of Hon'ble Apex Court in the case of *Thiruvengadam Pillai v. Navaneethammal* reported in *(2008) 4 SCC 530: AIR 2008 SC 1541*. This principle has been relied upon and reiterated by the Hon'ble Apex Court in the case of *Joseph John Peter Sandy v. Veronica Thomas Rajkumar & Anr.*, reported in *(2013) 3 SCC 801: AIR 2013 SC 2028*. Thus, the learned courts below have wrongly shifted the onus of proving the genuineness of the documents. It is submitted that the plaintiffs have failed to prove that rent was being paid up to the year 1973.

37. Learned senior counsel for the appellants submitted that the learned Lower Appellate Court had also held that as per the original plaint, rent was not paid after June 1956, but later on the term 'June 1956' was replaced by 'several months and years', while the original pleading that a total amount of Rs. 16,100/- is outstanding as rent was not removed. It is further submitted that the finding of the learned Lower Appellate Court



that title of plaintiffs was first denied by the Club in 1973-74 in the *Tanaza* case is a third case made out by the learned Lower Appellate Court which was never pleaded by the plaintiffs. Further reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of ***Union of India v. Ibrahim Uddin & Anr.***, reported in ***(2012) 8 SCC 148***, wherein, at paragraph 85.6, it has been held as follows:-

“85.6. The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the court, it is just to be ignored..... ”

38. It is next submitted that the period of limitation for filing the present suit, as framed, commenced on 30.08.1958 when the order (Ext. F) rejecting House Control Case No. 2 of 1955 was passed. However, since no steps were taken thereafter for a continuous period of 12 years, not only the remedy but also the right of the plaintiffs, if any, in respect of the suit property as claimed in the present suit stood extinguished on expiry of 12 years from 30.08.1958. Consequently, by operation of Section 27 of the Limitation Act, the plaintiffs have no right, title or interest in the suit property.



39. So far as the bar of *res judicata* is concerned, it is submitted by learned senior counsel for the appellants that from a perusal of Ext. F, it is evident that Controller of Buildings has not held that the Eviction application filed by Raghava Prasad Narain Sinha was outside his jurisdiction due to territorial, pecuniary or some other bar which rendered the Controller of Buildings *coram non judice*, but has rejected the claim of eviction on merits, holding that the '*mokarrari istamrari*' deed makes it clear that there is no landlord-tenant relationship between the parties which makes Eviction proceeding non-maintainable under the B.B.C. Act. The said order of Ext. F was passed on merits of the matter going to the root question of existence of landlord-tenant relationship between the parties. The conclusion of learned Trial Court that Ext. F cannot be seen is unsustainable and Ext. F clearly operates as *res judicata* to bar the filing of the present suit under B.B.C. Act. In view of the fact that Ext. F was, admittedly, not assailed before the Commissioner under Section 18 of B.B.C. Act, 1947 and, thus, in view of the decision of the Hon'ble Supreme Court in the case of ***Rai Brij Raj Krishna & Anr. v. S.K. Shaw & Brothers***, reported in ***AIR 1951 SC 115 (paras 13 and 14)***, Ext. F has attained finality under Section 18(3) and cannot be questioned



in any Civil Court on the issues decided and thus, Ext. F also operates as *res judicata* in view of statutory bar as also in view of principles of Section 11 of the Code of Civil Procedure, 1908. The aforesaid view, on the question of finality of Ext. F and the applicability of the principle of *res judicata* was further quoted with approval in paragraph 10 of the Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***V. Dhanapal Chettiar v. Yesodai Ammal*** reported in ***(1979) 4 SCC 214***.

40. Learned senior counsel for the appellants further submitted that admittedly at the time of filing of House Control Case no. 2 of 1955, the B.B.C. Act, 1947 was in force. Before order of Ext. F was passed on 30.08.1958, the B.B.C. Act, 1947 was amended vide the Bihar Buildings (Lease, Rent & Eviction) Control (Amendment) Act, 1955 which contained a savings clause in Section 23 thereof. From the reading of the aforesaid section, it is clear that although the Amendment Act, 1955 changed the forum for Eviction proceeding from the Controller of Buildings to the Civil Court, but it saved proceedings that were already pending before the Controller of Buildings at the time of enforcement of the amendment and provided that the said proceeding notwithstanding the amendment would be



continued to be decided by the Controller, and as such, the Controller of Buildings, while passing order of Ext. F, holding that there is no landlord-tenant relationship between the parties under the B.B.C. Act, was completely within his jurisdiction to pass the order of Ext. F which is perfectly legal and valid and having admittedly not been assailed before higher forums, has become final and binding on the parties and, thus, the learned Courts below, especially learned Trial Court, have seriously erred and acted perversely in treating the order of Ext. F as without jurisdiction and *non-est* in law and further, that it cannot be seen. The eviction proceeding under B.B.C. Act having been dismissed vide Ext. F in 1958 and the dismissal having become final, the same operates as *res judicata* to bar the present suit under Section 11 of the BBC Act.

41. So far as the substantial question of law as framed by this Court is concerned, learned senior counsel for the appellants submitted that the learned First Appellate Court has committed an error of record in reading of Ext. F, which clearly sets out the claim of hostile title based on Ext. 10/A by and on behalf of the Club in the written objection filed in that case, which was duly noticed and considered in detail in Ext. F. The learned House Controller, while appreciating Ext. 10/A and the defence of the



Club, recorded a categorical finding that Ext. 10/A confers absolute right to the Club over the premises in-question and further held that the '*mokarrari istamrari*' deed clearly establishes that there exists no relationship of landlord and tenant between the parties and, therefore, the proceeding under the B.B.C. Act was not maintainable. It is submitted that the Controller, while dismissing the eviction petition, in clear terms held that the opposite party (Club) has got absolute right over the premises in-question under the '*mokarrari istamrari*' deed and that this is not a fit case in which relationship of landlord and tenant within the purview of the B.B.C. Act can be said to have been established. With these observations, the petition was rejected as being outside the scope of adjudication under the said Act. It is, thus, submitted that the Club had set up a hostile and absolute title in itself on the basis of Ext. 10/A and the Court, with full knowledge of the predecessor-in-interest of the plaintiffs, accepted the said position, and as such, if, at all, any forfeiture occurred, the same had necessarily occurred in the proceeding during 1955-1958 as evident from the final order dated 30.08.1958 (Ext. F). The finding of the learned First Appellate Court that no such forfeiture occurred is wholly perverse being an error of record and is liable to be set aside.



Moreover, the learned First Appellate Court has held that the alleged denial of title by the Club occurred for the first time in 1973-74 in the *Tanaza* case (Ext. 7/h) and the lease was determined under Section 111(g)(2) of the T.P. Act through Ext. 3 (notice of determination dated 25.02.1983) and, therefore, the suit is not barred under Section 27 or Articles 66 or 67 of the Limitation Act. It is submitted that this finding is wholly perverse as there is absolutely no pleading to the effect that hostile title was first claimed only during the *Tanaza* case in 1973-74, and as such, any evidence, even if assumed to exist, is inadmissible in absence of pleadings. It is further submitted that the learned First Appellate Court has proceeded on a case not set up in the pleadings of the plaintiffs and has relied upon inadmissible material rendering the findings perverse and liable to be ignored. Reliance has been placed on the decision in the case of *Ibrahim Uddin* (supra) and in the case of *Trojan & Company vs. RM. N.N. Nagappa Chettiar* reported in *AIR 1953 SC 235 (para 38)*.

42. It is further submitted that the mutation proceeding/*Tanaza* proceeding do not affect the issue of title, and the question of title was never decided in those proceeding. It is further submitted that in fact, in such proceeding the claim



was not raised for the first time; rather, it was a continuation and re-assertion of a long-standing claim already asserted and substantiated in Ext. F as early as in 1958 itself. So far as limitation is concerned, it is submitted by learned senior counsel for the appellants that both the learned Courts below have erred in law in treating the notice of forfeiture (Ext. 3), on account of setting up of title as relevant whereas, the same is not relevant as has already been discussed earlier. It is submitted that Article 66 of the Limitation Act clearly provides that the starting point of limitation is the incurring of forfeiture and not the service of notice, which depends only upon the convenience of the plaintiffs and the plaintiffs cannot be permitted to extend/enlarge the starting point of limitation at their own choice. It is further submitted that the notice, even as per the respondents' own arguments, is no longer required after the 1929 amendment of the T. P. Act in respect of past leases, as observed by the Hon'ble Supreme Court in the case of *V. Dhanapal Chettiar* (supra) wherein a Seven-Judge Constitution Bench of the Hon'ble Supreme Court was dealing with the question as to whether a notice under Section 106 of the T.P. Act determining the lease is necessary for obtaining a decree of eviction under State Rent Acts and while dealing with this issue



the Hon'ble Seven-Judge Bench discussed various aspects of the interplay between the State Rent Acts and the T. P. Act and held that the said notice is a mere surplusage and is not required to be given for the purpose of obtaining a decree of eviction under State Rent Control Acts, i.e., B.B.C. Act in the present case. However, while dealing with this aspect, the Constitution Bench also held that notice contemplated under Section 111(g)(2) of the T.P. Act for determining the lease on account of forfeiture mentioned therein is different from a notice for determination of tenancy under Section 106 read with Section 111(h). Thus, on the point of notice, the aforesaid judgment is relied upon only for the purpose that a separate and specific notice under Section 111(g)(2) of the T. P. Act is required to determine the lease on the ground of forfeiture and a composite and vague notice such as Ext. 3 is insufficient if the Court is of the opinion that such notice is required and in absence of such specific notice with clear intention to determine the lease on that ground giving specific date as to when the forfeiture occurred which is not mentioned in Ext. 3, the present suit is not maintainable on the ground of forfeiture in terms of Section 111(g) of the T. P. Act. It is further submitted that it is apparent from the materials available on record that upon denial of title of the plaintiffs by



the Club in the earlier proceeding, Raghava Prasad Narain Sinha or any member of the plaintiffs' family could have either filed a suit for recovery of possession under the T. P. Act on the ground of denial of title by the Club or under general law by asserting his title and, that too, within a period of 12 years from 1958, but the same has, admittedly, not been done either by Raghava Prasad Narain Sinha or by any predecessor-in-interest of the plaintiffs or even by the plaintiffs before 1970.

43. Lastly, learned senior counsel for the appellants submits that the suit is liable to be dismissed for suppression of material facts. It is submitted that the present suit was filed by deliberately suppressing the vital material facts relating to the institution and dismissal of a previous eviction proceeding, i.e., House Control Case No. 2 of 1955, which was filed for eviction of the Club by the predecessor-in-interest of the plaintiffs and which has a direct and material bearing on the question of limitation as well as the maintainability of the present suit. It is submitted that the said proceeding and its rejection have been brought on record as Ext. F by the defendant-appellant Club, which has neither been challenged nor refuted in any manner by the plaintiffs and the existence of the said eviction proceeding and its rejection vide Ext. F is an admitted and undisputed fact.



It is further submitted that the law in this regard is well settled that a person who approaches the Court praying for a relief must not deliberately conceal any vital fact so as to obtain a favourable judgment and such kind of concealment amounts to fraud which can be questioned at any stage even in collateral proceeding and the plaintiffs can be non-suited on this ground. Reliance has been placed on the judgment in the case of ***S. P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs & Ors.***, reported in ***(1994) 1 SCC 1*** and also on the recent judgment in the case of ***State of Orissa & Anr. v. Laxmi Narayan Das (Dead) through legal representatives & Ors.***, reported in ***AIR 2023 SC 3425 : (2023) 15 SCC 273***, wherein in a similar case the Hon'ble Supreme Court held that the writ petition ought to be dismissed on the ground of concealment of material facts regarding filing and withdrawal of the civil suit claiming the same relief, which fact came to light only at the stage of hearing of the appeal. It is, thus, submitted that in view of the settled position of law that any judgment or decree obtained by fraud is a nullity in the eyes of law and can be challenged at any stage, the present suit deserves to be dismissed on this ground alone.

44. *Per contra*, Mr. J. S. Arora, learned senior counsel



appearing for the plaintiffs-respondents while answering the first substantial question of law submits that the *Patta Thika Mokarrari Istamrari* deed dated 17.07.1889 (Ext. 10/A) does not envisage a transaction of permanent or perpetual lease creating any absolute right in favour of the appellants so as to protect them from being evicted from the suit premises. It is further submitted that the said '*Patta Thika Mokarrari Istamrari*' deed is in respect of the buildings situated on the premises and not to any agricultural land. The said document itself shows the nature and extent of the rights and interest conferred on the Club by the said registered deed dated 17.07.1889 (Ext. 10/A). It is further submitted that settlement of land can be made only under the B.T. Act and for such settlement two essential ingredients must be satisfied, namely, that the settlor must be a '*Zamindar*' of the land sought to be settled and that the land must be agricultural in nature being used for the purposes of cultivation, as contemplated under Sections 5(1) to 5(3) of the B.T. Act. As a matter of fact, Chaudhary Mahant Raghunath Das himself was a '*raiya*' and not a '*Zamindar*' or tenure-holder in respect of the lands on which the house-building situated, which is the subject matter of Ext. 10/A. It is submitted that this fact stands proved from the



‘*Zamindari*’ receipts (Ext. 2/I to 2/Z-5) as well as from the order sheet of Rent Execution Case No. 95 of 1946 (Ext. 7/B), which was filed by the ‘*Zamindar*’ of the said lands, namely, Mohammed Ismail Khan, against the heirs of Mahant Raghunath Das for execution of the decree passed in Rent Suit case no. 322 of 1944, and in the said execution proceeding, rent was recovered from the raiyat/judgment-debtor, which clearly establishes the status of Mahant Raghunath Das as a *raiyat*. It is further submitted that *Mahant* Raghunath Das was never the *Zamindar* of the land in-question, which fact also stands admitted by the defendant-appellants themselves, inasmuch as they have pleaded in their written statement that the *Zamindari* rights in respect of the land were purchased by them from the *Zamindar* through two registered deeds of sale dated 26.02.1896 and 25.05.1899, which have been brought on record as Exts. 10/B and 10/C. It is further submitted that even after vesting of *Zamindari*, the claim/*Tanaza* raised by the Club for recognition of its ownership over the said land was rejected at all levels, and the orders to that effect have been brought on record as Ext. 7/C and Ext. 7/D, whereby Mahasundari Kuer, the daughter-in-law of Mahant Raghunath Das, was recognized as the owner and the Club did not succeed in any Court. It is further submitted that it



is an admitted case of the defendants-appellants that the subject matter of the alleged lease was a building meant for occupation of the Club as a Club House along with structures and orchards appurtenant thereto and, therefore, the same is purely a tenancy of a building on non-agricultural land, which does not fall within the scope and ambit of the B.T Act. It is further submitted that a *raiyat* cannot settle or create proprietary rights of the nature as claimed by the defendant-appellants and, therefore, the contention of the appellants that the registered deed dated 17.07.1889 (Ext. 10/A) amounts to a 'settlement' conferring ownership rights under the B.T. Act is wholly unsustainable and misconceived. It is submitted that the said '*Patta Thika Mokarrari Istamrari*' deed is not a document of settlement of land, but is merely a document of lease of a building, which was initially governed by the T. P. Act and thereafter by the B.B.C. Act by implication of law. It is further submitted that the nature of a document is to be determined from its contents and not from its nomenclature and in the present case, Ext. 10/A does not fulfill the essential requirements of a deed of settlement as claimed by the appellants. It is further submitted that the defendants-appellants have been regularly making payment of rent specifically



described as “Club House Rent” and from the letters of the defendants brought on record as Ext. 1 to 1/Z-14, particularly Ext. 1/d, it is clearly admitted in categorical terms that the rent was not for the land but for the “Club House”. These undisputed facts and admissions leave no scope for the appellants to contend that there was any settlement of land. It is, therefore, submitted that the said document dated 17.07.1889 (Ext. 10/A) is neither a document of settlement of land nor does it create any agricultural tenancy, but is only a registered lease of a building and cannot be construed as a document of title or as a *Mokarrari* settlement of land under any Statute. The tenancy created thereunder is only in respect of the Club House in favour of the Club and not of the land, as claimed by the appellants.

45. It is submitted by learned senior counsel for the plaintiffs-respondents that the defendants-appellants have taken a plea that they have not admitted the documents marked as Ext. 1 series, but at the same time they have admitted payment of rent up to 1956 even in Ext. F itself, which contains such admission and further the cheque numbers mentioned by them regarding payment of rent, as reflected in the order contained in Ext. F, fully tally with the cheque numbers mentioned in the



Ext. 1 series. It is further submitted that from the recital of Ext. 10/A, it is quite apparent that the said document has been created for the purpose of creating a tenancy with regard to the buildings/structures situated in the premises and not for the land for any agricultural purpose, at all, and the defendants-appellants have not pointed out under which law or under which provision there can be any '*Patta Thika Mokarrari Istamrari*' with regard to a building. It is submitted that the further case of the defendants-appellants that the said document is a deed of permanent settlement and that they have acquired title by virtue of the same is wholly misconceived. It is also submitted that the said Club being an unregistered body had no right to enter into any such deed and on that ground also the same is void. It is further submitted that the defendants-appellants, in support of their contention, placed reliance on the judgments rendered in the case of ***Ram Rachhya Singh vs. Kumar Kamakhya Narayan Singh*** reported in ***AIR 1925 Patna 216*** and in the case of ***Charan Mahton*** (supra) to submit that the document '*Patta Thika Mokarrari Istamrari*' is to be treated as a permanent settlement, but even that submission is not correct, inasmuch as in the said case the settlor was admittedly a *Zamindar* and the property settled was agricultural land meant for cultivation and



not for any building or non-agricultural purpose. As such, the said judgment is of no assistance to the defendants-appellants even if the document in-question, is sought to be treated as a document of settlement of agricultural land. It is further submitted that the contention of the defendants-appellants that the suit is barred by limitation in light of the order passed by the House Controller (Ext. F) is wholly untenable. It is submitted that the defendants-appellants have claimed that their hostile possession commenced from July 1956 on account of denial of the relationship of landlord and tenant and non-payment of rent thereafter, but the records clearly show that the appellants continued to make payment of rent up to December 1958 and not merely up to 1956, as is evident from Ext. 1/Z-10. It is submitted that the said document is not merely a letter, but contains details of the cheque numbers through which the Club made payment of rent and the defendants-appellants have not brought any material on record to show that the cheque numbers mentioned therein did not belong to them. It is further submitted that the order dated 30.08.1958 (Ext. F) itself records that the defendants were consistently paying rent to the landlord and had cleared all arrears up to 30.06.1956, whereas Ext. 1/Z-10 clearly shows payment of rent up to December 1958, the said letter



being dated 23.03.1959.

46. It is further submitted by learned senior counsel for the plaintiffs-respondents that, in fact, the first express denial of title by the appellants-defendants arose only during the *Tanaza* proceeding of 1973-74. It is further submitted that under Section 111(g) of the T. P. Act, forfeiture commences only upon service of notice by the landlord and not prior thereto. In the present case, notice was given by the plaintiffs-respondents on 25.02.1983 and the suit was filed soon thereafter and, therefore, the suit is well within the period of limitation. It is further submitted that according to the own admission of the defendants-appellants, after coming in occupation of the premises in-question on the basis of Ext.10/A, the Club continued to make payment of rent from 1889 to 1956 and once the said document is accepted as a document of lease, the relationship of landlord and tenant between Mahant Raghunath Das and his successors stands admitted. It is submitted that this is further supported by regular payment of rent by the Club from 1889 to 1956, as admitted by the defendants-appellants, which leaves no scope for them to deny the title and ownership of the successors of Mahant Raghunath Das or to deny the relationship of landlord and tenant. It is further submitted that once the



commencement of tenancy and the relationship of landlord and tenant are not in dispute, the occupation of the Club over the premises in suit becomes a permissive occupation/possession, which gives no scope to the defendants-appellants to deny the title and ownership of the successors of Mahant Raghunath Das or to claim adverse possession in view of Section 116 of the Evidence Act and in view of the settled law that a tenant, unless he surrenders and restores possession to the landlord, cannot claim adverse possession, as enunciated in the case of ***Surajmal Marwai & Ors vs. Rampearaylal Khandelwal & Ors.*** reported in ***AIR 1966 Patna 8 (DB) (paras 7 to 11)***, and also reaffirmed in the case of ***Ram Kumar v. State of Uttar Pradesh and Ors.*** reported in ***(2023) 16 SCC 691***. It is further submitted that inconsistent pleas of title and adverse possession cannot be taken by the same party, as laid down in several judgments including in the case of ***Karnataka Board of Wakf v. Government of India and Ors.*** reported in ***2004 (3) PLJR (SC) 245 (paras 11-12)***. It is further submitted that a suit based on default in payment of rent is not barred by limitation, inasmuch as rent is payable month to month, giving rise to a continuous cause of action and a fresh cause of action arises every month when the rent is not paid. It is submitted that it is only the



amount of arrears of rent which may become barred by limitation, but not the suit for eviction of the tenant on the ground of default. It is further submitted that the contention of the defendants-appellants that the suit is barred by limitation based on Ext. F is wholly misconceived, inasmuch as the said Court, while holding that it had no jurisdiction, could not have recorded any finding with regard to title of the property. It is submitted that once the Court itself held that it had no jurisdiction on account of non-existence of relationship of landlord and tenant, it had no jurisdiction to pass any other order or record any finding, particularly, with regard to title, except to dismiss the case. It is, thus, submitted that any observation made in Ext. F with regard to title is wholly without jurisdiction, void and a nullity in the eyes of law and cannot be relied upon or taken advantage of by the defendants-appellants. It is further submitted that it is a settled principle of law that any finding recorded by a Court having no jurisdiction is of no value in the eyes of law and does not bind the parties and further that any order passed by a Court on the question of its own jurisdiction is not conclusive and does not operate as *res judicata* in subsequent proceeding.

47. It is further submitted by learned senior counsel for



the plaintiffs-respondents that the claim of title set up by the defendants-appellants has never been adjudicated by any Court earlier nor have they made any counter-claim in the present suit. It is further submitted that any vague and unadjudicated finding contained in Ext. F, passed by the House Controller in an eviction proceeding is wholly without jurisdiction inasmuch as, the said Court was competent only to decide the issue of eviction and had no jurisdiction to adjudicate in respect of title or any matter beyond the scope of eviction proceeding. It is further submitted that once the Court, while dealing with the eviction proceeding, came to the conclusion that in absence of relationship of landlord and tenant it had no jurisdiction, it ought to have confined itself only to hold that the case was not maintainable and had no jurisdiction to proceed further or to record any finding with regard to the title of the property in question. It is further submitted that the defendants-appellants had suppressed material documents filed by the plaintiffs which contained admission of the landlord's title by the Club and by such suppression obtained the said order and, therefore, the observation/finding recorded in Ext. F is vitiated by fraud and is a nullity in the eyes of law, in view of the law laid down in ***S.P. Chengalvaraya Naidu*** (supra).



48. It is further submitted by learned senior counsel for the plaintiffs-respondents that it is quite apparent from Ext. 10/A that the rent payable is Rs. 50/- per month, and therefore, in view of the admission of the appellants themselves that they have not made payment of rent for years together, according to them after 1956, they on their own admission are defaulters in payment of rent and are, thus, liable to be evicted from the premises under the tenancy. It is further submitted that the learned Trial Court has rightly held the defendants-appellants to be defaulters in payment of rent and has, accordingly, decreed the suit for eviction and on appeal being preferred by the defendants-appellants, the learned First Appellate Court has affirmed the said findings of the learned Trial Court. Since the appellants-defendants have neither paid nor tendered any rent since 30.06.1956 in terms of the registered lease deed dated 17.07.1889 and have further expressly denied the relationship of landlord and tenant between the parties by setting up a plea of ownership by adverse possession without even surrendering or restoring possession of the tenanted premises upon determination of the lease, they are liable to be evicted.

49. So far as the substantial question of law with regard to forfeiture under Section 111(g)(2) of the T.P. Act is concerned, it



is submitted by learned senior counsel for the plaintiffs-respondents that forfeiture is a mode of determination of lease which occurs when the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. It is submitted that the said principle is well founded on the doctrine that a tenant cannot at the same time enjoy the benefits of tenancy and deny the title of the landlord, as one cannot be permitted to approbate and reprobate. It is further submitted that what is material to be noted is that mere non-payment of rent does not amount to a disclaimer by the lessor to the lessee so as to indicate any intention to set up a claim of title over the tenanted premises. It is next submitted that the learned First Appellate Court has rightly held that there was, in fact, no forfeiture within the meaning of Section 111(g)(2) of the T.P. Act during the proceeding before the House Controller in House Control Case No. 2 of 1955, which had been instituted by the predecessor of the plaintiffs-respondents under Section 11(3)(e) of the B.B.C. Act, 1947. It is further submitted that the order passed by the House Controller does not operate as *res judicata* between the parties inasmuch as, any decision or order passed by a Court or Tribunal which lacks jurisdiction to try such a cause is a nullity in the eyes of law under Section 44 of the



Evidence Act and, therefore, cannot bind the parties or affect their rights in subsequent proceeding.

50. It is submitted by learned senior counsel for the plaintiffs-respondents that the appellants-defendants have forfeited whatever heritable and perpetual rights, if any, flowing under the registered lease deed dated 17.07.1889 by setting up a claim of absolute ownership over the tenanted premises during the *Tanaza* proceeding before the Revenue Authorities in the year 1974. It is submitted that this was the first occasion when the appellants-defendants attempted to assert title in themselves by way of adverse possession, therefore, the period of limitation as prescribed under Articles 66 and 67 of the Limitation Act, 1963 would operate only from such date when the landlord issues a notice to the lessee/tenant to determine the lease in accordance with Section 111(g)(2) of the T.P. Act and not from the mere denial of title by the tenant. It is submitted that in the present case, the plaintiffs-respondents have issued notice determining the registered lease deed dated 17.07.1889, thus, fully complying with the requirements of Section 111(g)(2) of the T.P. Act. It is further submitted that the case of the plaintiffs-respondents stands fortified by the findings of the learned First Appellate Court with regard to forfeiture on the part of the



appellants, inasmuch as, even permanent tenancies of the nature involved in the present case are subject to forfeiture under Section 111(g)(2) of the T.P. Act. It is further submitted that the learned First Appellate Court has rightly adjudicated that no forfeiture had taken place during the proceeding before the House Controller in House Control Case No. 2 of 1955 within the meaning of Section 111(g)(2) of the T.P. Act and, accordingly, the substantial question of law is liable to be answered in favour of the plaintiffs-respondents. It is, thus, submitted that the present second appeal filed by the defendants-appellants is devoid of merit, and the judgments and decrees passed by both the learned Courts below do not warrant any interference and the present second appeal is liable to be dismissed in *toto*.

51. Having considered the submissions advanced on behalf of the parties, the materials available on record as well as the impugned judgments, it becomes necessary before adjudicating upon the substantial questions of law, to examine the scope of the suit. The present eviction suit was filed for eviction on the ground of personal necessity, default in payment of rent as well as realization of arrears of rent for the last 3 years at the rate of Rs. 50/- per month along with *pendente lite* and



future interest at the bank rate till realization and compensation in respect of damages occurred to the plaintiffs under the provision of BBC Act.

52. It is settled principle of law that existence of landlord-tenant relationship is *sine qua non* for maintaining a suit for eviction under the B.B.C. Act. In any event, inquiry into title of the plaintiffs is beyond the scope of Court exercising jurisdiction under the B.B.C. Act. The scope of the inquiry before the Court was limited to the question as to whether the grounds of eviction of the defendants have been made out in the B.B.C. Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms 'landlord' and tenant in clause 'f' and 'h' of Section 2 of the BBC Act.

53. The substantial questions of law framed in the present appeal are confined to examine the existence of a landlord-tenant relationship between the plaintiffs and the defendants on the strength of the '*Patta Thika Mokarrari Istamrari*' deed dated 17.07.1889 (Ext.-10/A). It is the case of the plaintiffs that they are the owners of the suit property and that the said deed is in the nature of a lease.

54. On the other hand, the defendants/appellants assert



their rights on the basis of *Patta Thika Mokarrari Istamrari*' deed dated 17.07.1889 (Ext.-10/A) claiming that it creates a permanent, heritable and perpetual right over the suit property. The interpretation of Ext.-10/A necessarily requires the application of settled legal principles. In this context, substantial question of law no. (i) has been framed, namely, whether Ext. 10/A dated 17.07.1889 envisages a transaction of permanent/perpetual lease granting the appellants absolute rights, including protection against eviction from the suit premises.

55. The true meaning of Ext.-10/A can be gathered by examining the legal meaning of the terms used in its nomenclature. The word '*Thika*' generally means a temporary arrangement. '*Patta*' refers to a document that shows lawful possession or grant of land. However, the term '*Istamrari Mokarrari*' usually indicates a permanent and long-term right over the property. It is not in dispute that the rent was fixed on a permanent basis and the rights created were heritable. The parties have admitted that the '*Patta Thika Mokarrari Istamrari*' deed dated 17.07.1889 (Ext.-10/A) was executed by Choudhary Mahant Raghunath Das in favour of A.M. Stuart, Secretary, Station Club, Muzaffarpur. On the strength of Ext.-



10/A, the defendants came into possession of the suit premises. The contents of the deed reveal that the rights granted were not confined to the executantee alone, namely the Club, but were expressly made heritable, as reflected in the expression “*naslan baad naslan and batnan baad batnan*,” meaning from generation to generation. The cumulative effect of the document, along with the intention of the parties suggests that the rights conferred are of a permanent, perpetual and heritable character. It is the case of the plaintiffs that the defendants have failed to pay the fixed rent at the rate of Rs. 50/- per month for several months and years. It is further contended that Ext.-10/A concerns only to the buildings standing on the suit premises and does not relate to any agricultural land. They further contend that settlement of land is permissible only under the B.T. Act, subject to fulfillment of two essential conditions. Firstly, it is contended that for a valid settlement of land, two essential conditions must be fulfilled: the settlor must be the *zamindar* (Land Lord) of the land in-question and second, the land must be agricultural in nature, used for cultivation as contemplated under Sections 5(1) to 5(3) of the B.T. Act. It is further emphatically argued that Choudhary Mahant Raghunath Das did not possess the status of a *zamindar*, but was only a *raiyyat* or



tenure-holder in respect of the land on which the house/building was constructed. This is clearly reflected from Ext.-7/B being Rent Execution Case No. 95 of 1946, in which Md. Ismail Khan, as *zamindar*, instituted execution proceedings against the heirs of Mahant Raghunath Das for realization of dues under the decree passed in Rent Suit No. 322 of 1944. In the said execution proceeding, rent was, in fact, recovered from the heirs of Mahant Raghunath Das.

56. From the materials available on record, it is evident that Mahant Raghunath Das was a *raiyat* in respect of the land in-question. This clearly indicates that at the time of execution of Ext.-10/A, Mahant Raghunath Das was the owner of the land and building. The '*Patta Thika Mokarrari Istamrari*' deed was executed by Mahant Raghunath Das in his capacity as owner, incorporating specific terms and conditions. By virtue of the said deed, a perpetual lease conferring heritable tenancy rights was created in favour of the appellant-Club. As per the aforesaid deed, the Secretary of Station Club, Muzaffarpur along with his heirs, administrators and assignees were entitled to retain possession of the tenanted premises, subject to the obligation of paying rent to the landlord and his successor-in-interest. The document Ext. 10/A speaks about the obligation of the lessee



(Station Club, Muzaffarpur) to pay municipal taxes, rent to the ex-landlord and all other taxes that may accrue over and above the rental amount, which are payable to the landlord. It is further mentioned that the lease would stand terminated in the event of the extinguishment or closure of Station Club, Muzaffarpur or if the Club house is required to be shifted to another location or if the leased premises are required by the landlord or his heirs, assignees or administrators on account of personal necessity. In such an event, the leased property was to revert to the Jaitpur Estate and on payment of rent for the Club house, a receipt for the same was to be issued to the Secretary of the Club. The Station Club, Muzaffarpur, made payment of rent up to December, 1958. However, the defendants-appellants have admitted that the Club continued to pay rent from 1889 to 1956. This fact is further corroborated by a series of letters written by the Honorary Secretary of the Muzaffarpur Club, marked as Ext. 1 dated 28.10.32, Ext. 1/A dated 12.11.1932, and Exts. 1/e to 1/i, all of which referring to the payment of rent in respect of the Club House. Ext. 1 is the letter dated 28.10.1932, which discloses that the Honorary Secretary requested Babu Badri Prasad Narain Singh, M.L.C., *Zamindar* of Jaitpur Estate, Muzaffarpur, to send his representative to collect the rent due



for the Club House up to 31st December, 1932. Subsequently, by letter dated 12.11.1932 (Ext. 1/A) it was informed that a cheque for Rs. 900/- (Rupees Nine Hundred only), drawn on the Imperial Bank of India, Muzaffarpur, had been sent in full payment of the Club House rent for one and a half years, i.e., from July 1931 to December 1932, with a request to acknowledge the same and issue a formal receipt for the said amount. The record shows that vide letter dated 8th January, 1940, the Honorary Secretary of the Muzaffarpur Club informed Raghava Prasad Narayan Sinha that a cheque for Rs. 600/- (Rupees Six Hundred only) bearing No. OB/1 01946 and drawn on the Imperial Bank of India, Muzaffarpur, was being sent towards rent for the year ending 31st December, 1939. Thereafter, by letter dated 25th January, 1940 (Ext. 1/f) a request was made to issue an official stamped receipt in respect of the cheque that had been forwarded through registered post. Further, as per Ext. 1/g, the Honorary Secretary forwarded cheque No. OB/1 04022 for Rs. 300/- (Rupees Three Hundred only), drawn on the Imperial Bank of India, Muzaffarpur, towards payment of Club House rent up to June, 1940 with a request to acknowledge the same and issue an official stamped receipt at the earliest.



57. Likewise, by letter dated 24th December, 1941, the Honorary Secretary of the Muzaffarpur Club enclosed a cheque for Rs. 300/- (Rupees Three Hundred only) towards full payment of Club House rent for the period from July to December, 1941. Ext. 1/i is another letter issued by the Honorary Secretary enclosing a cheque for Rs. 300/- (Rupees Three Hundred only) towards rent for the half-year ending 30th June, 1943. Further, vide letter dated 29.06.1945 (Ext. 1/j), a cheque for Rs. 300/- (Rupees Three Hundred only) was sent towards rent for the period from January to 30th June, 1945, which shows that rent for the Club House was being regularly paid through cheques time to time. Moreover, in terms of Ext. 1/Z-5, the Honorary Secretary forwarded cheque No. OB/1 18090, drawn on the Imperial Bank of India, Muzaffarpur, for Rs. 300/- (Rupees Three Hundred only) towards rent due for the term ending 31st December, 1952 and also undertook to remit another cheque for the period up to December, 1953. Subsequently, as per letter dated 23.03.1959 (Ext. 1/Z-10), the Honorary Secretary informed Raghava Prasad Narayan Sinha that a sum of Rs. 688.27 nP was being remitted towards Mokarrari rent due up to December, 1958, after adjustment of certain outstanding amounts payable by Mr. K.K. Singh and the



addressee. Moreover, on perusal of Exts. 1/Z-13 to 1/Z-15, it appears that the plaintiffs' Club membership dues were adjusted against the rent dues till March 1973. It is significant to note that all such communications/letters issued by the Honorary Secretary were written on the official letterhead of the Club.

58. In reply to the aforesaid letter, Raghava Prasad Narayan Sinha stated that he regretted that adjustments in the accounts had been made without his consent which was essential. He further stated that such adjustment could be allowed only if the ground rent due was paid in full up-to-date in accordance with the terms of the deed along with the house rent due up-to-date and requested the sender to submit cheques for both the ground rent and house rent to avoid any litigation, as reflected in Ext.1/Z-12 dated 5th May, 1959. These documents show payment of rent up to December, 1958. All the documents admit that the successor-in-interest of Mahant Raghunath Das is the landlord and that Ext. 10/A is a lease deed of tenancy in respect of the premises in suit. It further appears that till 1958 the defendants paid rent for the Club House as tenants. The defendants themselves have admitted that rent for the Club House was paid from 1889 to 1956. Moreover, the tenancy created through the '*Patta Thika Mokarrari Istamrari*'



is a lease deed of tenancy and in terms of the said lease deed, the defendants-appellants continued to pay rent up to December, 1958. Therefore, the conduct and admission of the defendants do not permit them to challenge the deed in-question, as a deed of title. The records further show that the defendants-appellants and their predecessors accepted the status of the plaintiffs as landlords and the relationship of landlord and tenant between the parties stood admitted till 1956-58. Accordingly, the '*Patta Thika Mokarrari Istamrari*' deed is to be treated as a lease deed of tenancy under which rent was paid up to the year 1958.

59. So far as the second substantial question of law is concerned, i.e., whether Title Suit No. 69 of 1983 for eviction is barred by the law of limitation, the defendants-appellants argue that the appellant-Club, admittedly, stopped paying rent from July, 1956 and asserted a hostile claim over the suit premises. The case of the plaintiffs, however, is that the appellant-Club stopped payment of rent from July, 1956 during the pendency of House Control Case No. 2 of 1955, which had been filed for eviction of the Club, *inter alia*, on the ground of default in payment of rent and that the Club also set up a hostile claim over the suit premises on the basis of the '*Patta Thika Mokarrari Istamrari*' deed dated 17.07.1889 (Ext. 10/A). It is



further stated that vide order dated 30.08.1958 (Ext. F) passed under the B.B.C. Act the said eviction suit was dismissed on the ground of non-existence of a landlord-tenant relationship between the parties relying upon the claim of title set up by the Club on the basis of Ext. 10/A. In the aforesaid facts, the defendants-appellants have vehemently submitted that the present suit having been filed after expiry of 12 years is barred by the law of limitation. It is also submitted that no appeal was preferred against the order of the Rent Controller (Ext. F) nor was any amicable settlement arrived at between the parties to continue the tenancy, particularly, in view of the plaintiffs' own pleadings that the Club had stopped payment of rent since July, 1956. According to the defendants, this being clear admission in the pleadings furnishing a cause of action in 1955-58 itself and is binding upon the plaintiffs, as it is admitted that rent was not being paid from July, 1956 and the eviction proceeding stood dismissed in the year 1958. Thus, despite accrual of cause of action for seeking eviction and recovery of rent, no suit was filed until 1983 rendering the suit barred by the law of limitation in view of such admission. However, this submission is required to be scrutinized on the basis of the materials and evidence available on record. In this regard, Ext. 1/Z-10 clearly reveals



that despite the order passed by the Rent Controller (Ext. F), the defendants-appellants continued to pay rent for the suit premises. The conduct of the defendants clearly establishes that even after passing of Ext. F, they continued to admit their status as tenants. Letter No. MISC/6/59 dated 23rd March, 1959 (Ext. 1/Z-10), issued on the official letterhead of the Honorary Secretary of the Muzaffarpur Club, reads as follows:—

No MISC/6/59. POST Box No.12
PHONE No. Muz. 17

The Hony. Secretary

Muzaffarpur Club.

Muzaffarpur 23rd March, 1959

To,

Raghava Prasad Narain Sinha Esq.,
Jaintpur Estate,
Jaintpur House,
Muzaffarpur.

Dear Sir,

Mokarari rent due upto December 1958.

We are transferring Rs. 688.27nP.in payment of the Mokarari rent due upto December 1958, less the amount of bills due by Mr.K.K. Singh and yourself.

Please acknowledge.

Yours faithfully,

Statement of account-
July 1956 to December

Hony. Secretary

1958... .. Rs. 1500.00

Bills against-

Mr. K.K. Singh Rs. 408.06

“ R.P. N Singh ” 403.69 “ 811.75

Rs. 688.25

=====”



60. Although the defendants-appellants have denied the genuineness of the said letter, it is evident that the other letters issued by the Honorary Secretary since 1932 are almost all on the official letterhead of the Club and relate to the payment of rent for the Club House, Muzaffarpur. Ext. 1/Z-10 does not disclose or assert any hostile title on behalf of the defendants.

61. The defendants-appellants, during the proceeding before the Revenue Authority in Tanaza Case No. 4 of 1974, claimed their title by way of adverse possession and asserted themselves to be statutory tenants with permissive possession. The defendants-appellants as well as the State of Bihar, applied for mutation of their names in the revenue records relating to the suit premises; however, the same was rejected on 31.03.1975. Thereafter, the successors-in-interest of Mahant Raghunath Das were recorded and *jamabandi* was created after vesting of *Zamindari* on payment of rent and rent receipts were issued vide Ext. 2 series. Subsequently, the respondents-plaintiffs issued a notice dated 25.02.1983 under Section 106 of the T.P. Act and thereafter, preferred the present suit on 13.05.1983, i.e., within 12 years of such unequivocal assertion made by the defendants-appellants denying the landlord's title amounting to a forfeiture of tenancy. It is apparent from the record that no hostile claim



was raised after Ext. 1/Z-10 dated 23.03.1959 and the defendants-appellants continued to pay rent from July, 1956 to December, 1958. Therefore, the suit is not barred by the law of limitation.

62. With regard to substantial question of law no. (iii) is concerned, namely, whether the instant suit is barred by the principle of *res judicata* in view of the order dated 30.08.1958 (Ext. F) passed in House Control Case No. 2 of 1955, wherein, it was held that there was no relationship of landlord and tenant subsisted between the parties, the appellant-Club has vehemently submitted that the son of Mahant Raghunath Das, namely Raghava Prasad Narayan Sinha (uncle of original plaintiff no. 1), had filed House Control Case No. 2 of 1955 before the Controller of Buildings, Muzaffarpur under the B.B.C. Act against the members of the Station Club, Muzaffarpur, seeking eviction from the suit property on the grounds of default in payment of rent and personal necessity relying upon Ext. 10/A '*Thika Patta Mokarrari Istamrari*' deed as a lease deed. In the said proceeding, the Station Club, Muzaffarpur, denied the landlord-tenant relationship between the parties and set up its own title over the suit premises on the basis of Ext. 10/A. After hearing the parties and considering the



nature of the deed and the claim of the Club, the Controller of Buildings, Muzaffarpur, rejected the case vide order dated 30.08.1958 (Ext. F) holding that there was no landlord-tenant relationship between the parties under the B.B.C. Act. It is further submitted that after rejection of House Control Case No. 2 of 1955 (Ext. F), no appeal was filed by the heirs of Mahant Raghunath Das and as such, the said order attained finality. However, the present suit has been filed after about 25 years of rejection of the said House Control Case, *inter alia*, claiming eviction under the B.B.C. Act on the grounds of default in payment of rent and personal necessity which, according to the appellants-defendants, is clearly barred by the principles of *res judicata*, as no suit again under the B.B.C. Act on the strength of Ext. 10/A can be maintained. It is also submitted by the learned counsel for the appellants-defendants that the learned First Appellate Court without properly considering the question of *res judicata* arising out of Ext. F held that Ext. F has no effect on the ground that it does not amount to forfeiture under Section 111(g) of the T.P. Act. According to the appellants-defendants, the order passed in House Control Case No. 2 of 1955 holding non-existence of landlord-tenant relationship between the parties is binding upon the parties, including the plaintiffs who



are litigating under the same title relying upon Ext. 10/A and operates as *res judicata* so as to bar the present suit under the B.B.C. Act.

63. On the other hand, learned senior counsel for the plaintiffs-respondents submits that the present suit is not barred by the principle of *res judicata* on the basis of the order dated 30.08.1958 passed by the House Controller in House Control Case No. 2 of 1955. It is asserted that the Controller had no jurisdiction to pass such an order, and as such, the order passed under the B.B.C. Act is not applicable to the present case. The contention is limited to the plea of inherent lack of jurisdiction of the authority in passing the said order.

64. Moreover, in the present case, subsequent to the order dated 30.08.1958 passed in House Control Case No. 2 of 1955, the defendants-appellants admitted in their letters dated 23.03.1959 (Ext. 1/Z-10) and Exts. 1/Z-13 to 1/Z-15 (membership fee due adjusted against rent due till 1973) much after passing of the aforesaid order, the *Mokarari* rent due to the landholder from July 1956 to December 1958, in which certain amounts were deducted on account of accruing bills due against Mr. K.K. Singh and Mr. Raghava Prasad Narain Sinha. This clearly shows that the defendants-appellants were tenants of the



suit premises and never claimed hostile title and they continued in possession as tenants as established vide Ext. 1/Z-10 dated 23rd March 1959, Ext. 1/Z-13 dated 11th March 1973, Ext. 1/Z-14 dated 21st April 1969 and Ext 1/Z-15 dated 29th September 1966. In view of such occupation by the defendants as tenants even after the order of the House Controller, the said order is not barred by the principle of *res judicata* in the aforesaid fact and circumstances of the case.

65. So far as substantial question of law no. (iv) is concerned, namely, whether the First Appellate Court has erred in making out a third case that no forfeiture within the ambit of Section 111(g)(2) of the T.P. Act ever took place in the year 1955-56 during the proceeding of House Control Case, this question has already been considered in the preceding paragraph. The defendants, while claiming hostile title on the strength of Ext. 10/A in the proceeding of House Control Case No. 2 of 1955, after passing of the order dated 30.08.1958, the Club paid due rent to the ancestor of the plaintiffs and accepted the plaintiffs as landlord on the strength of Ext. 10/A (lease deed). Subsequently, in the year 1974 during *Tanaza* proceeding before the Revenue Authority, the defendants-appellants claimed hostile title against the plaintiffs by way of adverse possession



contrary to their status as lessees. The suit having been filed on 13.05.1983 within 12 years from such denial, forfeiture under Section 111(g) commenced only in the year 1974. Therefore, the legal notice dated 25.02.1983 (Ext. 3) and the suit filed thereafter are within the prescribed period of limitation.

66. From the materials on record, it is evident that the appellants-defendants failed to pay the fixed rent as stipulated under the lease deed dated 17.07.1889 as reflected from Letter No. Misc./6/59 dated 23rd March, 1959 (Ext. 1/Z-10), which reveals that rent having been paid up to December 1958, although the defendants-appellants had admitted receipt of rent only up to 1956. Further, from Exts. 1/Z-13 to 1/Z-15, it would appear that the defendants- appellants were tenant of the suit premises. As per the admission of the defendants-appellants, there is a clear breach of the terms of the lease dated 17.07.1889 (Ext. 10/A). Non-payment of rent is a fundamental breach. Even if the lease is permanent, consistent default entitles the landlord to seek eviction on the ground of default in payment of rent. Admittedly, the defendants-appellants have defaulted in the payment of rent.

67. Having regard to the narrative and discussion made herein above, this Court is of the considered opinion that both



the learned courts below were justified in decreeing the suit in part. In the facts and circumstances of the case, the substantial questions of law formulated are answered against the appellants-defendants.

68. Accordingly, the second appeal, being devoid of merit, is dismissed but in the facts and circumstances of this case, there will be no order as to costs.

69. Pending interlocutory application(s), if any, shall stand disposed of.

70. Let the lower Court records be transmitted to the Courts below forthwith.

(Khatim Reza, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	27.11.2025
Uploading Date	06-05-2026
Transmission Date	

