M/S. KAMAKSHI BUILDERS

v.

M/S. AMBEDKAR EDUCATIONAL SOCIETY AND ORS.

MAY 18, 2007

[S.B. SINHA & MARKANDEY KATJU, JJ.]

Rent control and eviction:

Transfer of Property Act, 1882/Limitation Act, 1963; Articles 65 & 67:

Tenancy—Tenant—Landlord issuing notice to tenant terminating tenancy—Tenant did not deliver vacant possession and continued to tender rent—Tenant allegedly acquiring title of the tenanted premises by way of oral gift from Landlord—Landlord entering into a partnership agreement with a builders & Ors.—Partner acquiring ownership of no property in terms of an Arbitration Award—Notice to tenant for payment of rent—Suit for recovery of possession and arrears of rents—Decreed by Trial Court—Recovered by High Court—On appeal, held a person who is claiming title of the property by reason of an oral gift, a heavy burden lay on him to prove the same—Tenant is an educational society claiming such title, registration of the gift deed was expected of it—Acquisition of ownership of the property by way of gift, wholly without consideration is not expected of a registered society—A letter purported to be issued by landlord, donor gifting the property to tenent but the same had not been proved—Adverse inference could be drawn which would have gone against the interest of the tenant—Besides, in making an oral gift by an owner of no property in favour of his tenant actual delivery of possession is imperative at point of time status of tenant merged from tenant to lessee—The same was within the special knowledge of the Landlord—Thus, onus lay heavily on him to prove the same—Neither did, the tenant file any application for mutation of its nature before the Revenue Authorities nor it take any steps to let others know about change of his status as claimed—Acquiescence on the part of the tenant did not confer any title on him, conduct is a relevant fact but thereby no title could be conferred—Non examination of Landlord though would give rise to a presumption but by reason of presumption alone, the burden is not discharged/ a title is not created—Since the claim of the tenant was based on a title, the

A *onus was on him to prove the same but he failed to discharge the burden under the circumstances—Trial Court committed no error in passing a decree in favour of the plaintiff.*

Limitation Act, 1963:

B *Article 67—Applicability of—Held: not applicable—Article 67 is a special provision it would apply in a case where tenant was ceased to be a tenant.*

Respondent No. 3 was the owner of a property which was let out to Respondent No.1, on a monthly rent by a deed of lease dated 16.05.1973; the C period of lease was expired in 1975. Respondent No.1, however, did not surrender the tenancy or deliver vacant possession of the tenanted premises to Respondent No.3. However, it tendered rents till December 1976. Later the landlord entered into a development agreement with the managing partner of the appellant-builders and others. However, disputes having arisen between D them, the same were referred to an arbitrator. An arbitration award was passed in terms whereof the appellant-partner became the owner of the property. the tenant was called upon to pay rents in respect of the suit property by issuing a notice; in reply, respondent no. 1 asked the appellant to furnish the evidence in proof of the ownership of the suit property. It however, did not disclose that it had acquired any ownership by reason of a purported oral gift made by the E then Landlord as claimed later. As it failed to vacate the premises, a suit for recovery of possession and arrears of rents and also for damages for wrongful use and occupation of the property was filed by the appellant/partner, which was decreed by trial court. On appeal the order of the trial court was reversed by the High Court. Hence, the present appeal.

F **Appellant-partner contended that the High Court had failed to take into consideration that Respondent No. 3 being admittedly the owner of the property, the burden lay on Respondent No. 1, tenant, who had alleged an oral gift was made in its favour, and it having failed to prove the same, assuming that the landlord did not demand rent or did not take step therefore, he cannot G be said to have proved its case; and that the question of the tenant acquiring any title by adverse possession would not arise, as at all material point of time, it was a tenant.**

Respondent No. 1, tenant submitted that the burden of proof lay heavily on the appellant to prove that the oral gift was made by Respondent No. 3 that H DW-2, one of the attestors of the oral gift in his cross-examination stated

that he had written a letter of thanks to Respondent No.3 for his generous donation, non-production thereof would not give rise to an adverse inference; that the trial judge committed a serious error in opining that he should have displayed the factum of oral gift on any board, such a conduct, is very artificial and unnatural; that although, no application for mutating the name was filed, the same was not sufficient to negative the gift, particularly in the context of other surrounding circumstances; that assumption of the Trial Judge that Respondent No.3 being a Muslim would have gifted the property to some minority institution is based on conjectures and that the suit was barred by limitation in terms of Article 67 of No Limitation Act as the deed of lease, being for a period of 11 months, expired on 16.07.1974.

Allowing the appeal, the Court

HELD: 1.1. It is expected of a person who has obtained title by reason of an oral gift; Hiba although permissible in law, but a heavy burden lay on him to prove the same. Respondent No.1 is an educational society. It was running an institution on the suit property. It was, therefore, expected of it that it would insist on execution of a registered deed of gift. [Para 16] [350-D, E]

1.2. There cannot be any doubt whatsoever that only by reason of the fact that Respondent No.3 did not get himself examined for one reason or the other, the same would mean that Respondent No.1 discharged its burden. The Trial Judge did not place reliance on depositions of the witnesses examined on behalf of the Respondents to prove oral gift as they were interested persons. The High Court did not deal with the matter. The Trial Judge analysed the evidences brought on record by the parties. So far as the appreciation of evidence based on oral evidence is concerned, the Trial Judge having had the occasion to notice the demeanour of the witnesses, was the best judge to arrive at a finding in regard to their reliability or trustworthiness. The High Court did not deal with the matter, ordinarily it could not have even done so.

[Para 17] [350-E, F, G]

1.3. Non-examination of Respondent No.3 indisputably would give rise to a presumption but by reason of presumption alone, the burden is not discharged, a title is not created. [Para 28] [353-B, C]

Raj bir Kaur and Anr. v. *S. Chokesiri & Co.*, (1988) 1 SCS 19, relied on

Martand Pandharinath Chaudhari v. *Radhabai Krishnarao Deshmukh*, AIR (1931) Bombay 97; *The Ramanathapuram Market Committee,*

A *Virudhunagar* v. *East India Corpn. Ltd., Madurai,* **AIR (1976) Madras 323 and** *Vidhyadhar* **v.** *Manikrao and Anr.,* **[1999] 3 SCC 573, referred to.**

Sardar Gurbaksh Singh v. *Gurdial Singh,* **AIR (1927) PC 23, referred to.**

B **1.4. It may be true that conduct of the parties would be relevant, but what would be more relevant is the conduct of a party, who from his status of a tenant acquires the status of the owner of the property. Acquisition of such ownership by way of gift and, thus, wholly without consideration, is not expected of a society registered under the Societies Registration Act. Not only that it was acknowledged such donation to the donor by issuing an** C **appropriate letter in that behalf (which is said to have been done). DW-2 although stated before the court that such a letter had been written, the same had not been proved. As the said letter has not been produced, the inference which could be drawn therefrom is that either DW-2 did not tell the truth that such a letter was written and/or an adverse inference could be drawn** D **that had the said letter been produced, the same would have gone against the interest of Respondent No.1. [Para 18 and 21] [351-A, B, E, F]**

1.5. In making an oral gift by an owner of the property in favour of his tenant apart from it being unlikely, actual delivery of possession is imperative. There is nothing on record to show that at any point of time, Respondent No.3 E **had delivered the possession of the premises in question to Respondent No.1. Respondent No.1 being a tenant, continued to be a tenant. Its status as a lessee on its own showing merged into a higher status. At what point of time such status was changed been a relevant fact. It was within the special knowledge of Respondent No.3. The onus lay heavily on him to prove the same. It failed to discharge its burden. [Para 21] [351-F, G]** F

1.6. The Trial Judge cannot be said to have committed any error in noticing the fact that Respondent No.1 on its own showing did not file any application for mutation of its name before the Revenue authorities. It, even did not take any step to let others know about its change of status, be it the G **Revenue Department, or be it other authorities with which it was dealing. An application for mutation of one's name in the revenue records by the parties although would not by itself confer any title, but then a presumption in regard to the nature of possession can be drawn in that behalf. Had such an application been filed by Respondent No.1 before the concerned authorities, at least it could have been shown that it had claimed possession on its own** H

right, not as a tenant. [Para 22] [351-H; 352-A, B, C] A

2.1. The High Court although noticed the lease came to an end in the year 1975 and if from the said date or at least from the date of purported oral gift allegedly made in its favour by Respondent No.1. Any change in the nature of its position occurred, it was expected of it to accept the same by its conduct. Why it would pay rent to Respondent No.3 till October 1976 has not been explained. [Para 23] [352-C-D] B

2.2. Acquiescence on the part of Respondent No.1, as has been noticed by the High Court, did not confer any title on Respondent No.1. Conduct may be a relevant fact, so as to apply the procedural lay like estoppel, waiver or acquiescence, but thereby no title can be conferred. [Para 24] [352-D, E] C

2.3. It is now well-settled that time creates title. Acquisition of a title is an inference of law arising out of certain set of facts. If in law, a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of other. [Paras 25 and 26] [352-E, F] D

2.4. It may be true that Respondent No.3 should have examined himself and the Trial Judge committed a serious error in drawing an adverse inference in that behalf as against Respondent No.1. It was, however, so done keeping in view the fact that Respondent No.3 was evidently not interested in the property in view of the fact that it had suffered a decree. E

[Para 28] [352-G; 353-A]

3. Article 67 of the No Limitation Act is a special provision. It would apply in a case where a tenant has ceased to be a tenant in terms of the provisions of the Andhra Pradesh (Rent and Eviction Control) Act.

[Para 30] [353-D, E] F

4.1. A claim of title by prescription by Respondent No.1 is not tenable. It based its claim on a title. It had, therefore, *prima facie*, no *animus possidendi*.

[Para 29] [353-C, D]

4.2. A tenant continues to be a tenant despite termination of tenancy. G Article 67 of the Limitation Act would not be attracted in a case where a tenant remains a statutory tenant. In a case of this nature, Article 65 would apply. As the claim of Respondent No.1 was based on a title, the onus was on him to prove the same. Respondent No.1 failed to discharge the same, and therefore, the Trial Judge has committed no error in passing a decree in favour of the H

A **plaintiff. [Para 30] [353-E, F]**

Smt. Shakuntala S. Tiwari v. *Hem Chand M. Singhania,* **[1987] 3 SCC 211, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6345 of 2000.

B

From the Final Judgment and Order dated 31.12.1999 of the High Court of Judicature of Andhra Pradesh at Hyderabad in C.C.C. Appeal No. 182 of 1998.

Dushyant A. Dave, S. Udaya Kr. Sagar, Bina Madhavan, Akhil Sibal, C Hemal K. Seth, Mishi Choudhary and Bharat Singh (for M/s. Lawyer's Knit & Co.) for the Appellant.

K. Parasaran, A. Subba Rao, Anirudh Sharma, A.T. Rao, A.V. Rangam, A. Ranganadhan and Buddy A. Rangandhan for the Respondents.

D The Judgment of the Court was delivered by

S.B. SINHA, J. 1. This appeal is directed against the judgment and order dated 31.12.1999 passed by the High Court of Andhra Pradesh, allowing the appeal from a judgment and decree dated 05.09.1998 passed by the IV Senior Civil Judge, City Civil Court, Hyderabad in O.S. No. 161 of 1989.

E

2. Respondent No. 3 herein was the owner of the property which is situated at Bagh Lingampalli, Hyderabad. It was let out to Respondent No. 1, where an educational institution was being run on a monthly rent of Rs.1,200/- by a deed of lease dated 16.05.1973. The period of lease was initially for 11 months, which expired in 1975. Respondent No. 1, however, did not F surrender the tenancy or deliver vacant possession of the tenanted premises to Respondent No.3. It tendered rents till December 1976. No rent, however, was demanded by Respondent No. 3 from Respondent No.1. Several constructions were raised by it from time to time.

G 3. Respondent No. 3, however, entered into a development agreement with the managing partner of the appellant and other persons on 01.04.1986. A deed of partnership was executed on 21.04.1986. Disputes and differences having arisen between the partners, the same were referred to an arbitrator. An arbitration award was passed on 22.11.1987, in terms whereof a sum of Rs.4,00,000/- was awarded in favour of Respondent No. 3. The said award was H made the rule of court in terms of Section 14(2) of the Arbitration Act, 1940

by an order dated 29.02.1988. Allegedly, by reason of the said award, the appellant became the owner of the property. Respondent No. 1 was called upon to pay rents in respect of the suit property by a notice dated 22.11.1987. The tenancy was terminated by a notice dated 30.10.1988. On or about 08.12.1988, Respondent No. 1, in reply to the said notice, asked the appellant to furnish the particulars in regard to the ownership of the suit property. It, however, not claimed therein that it had acquired any ownership by reason of a purported oral gift made by Respondent No. 3 herein, as appears to be the case now. As it failed to vacate the premises, a suit for recovery of possession and arrears of rents and also for damages for wrongful use and occupation of the property was filed by the appellant. In the written statement filed in the suit, it was, *inter alia*, contended that Respondent No. 3 herein made an oral gift in its favour on or about 01.10.1975. In the alternative, it was contended that it had acquired an indefeasible title in respect of the property in question by adverse possession. Respondent No. 3 in its written statement supported the case of the appellant, *inter alia*, denying and disputing the claim of Respondent No. 1 herein that he made an oral gift in its favour.

4. In the suit, *inter alia*, the following issues were framed :

"I. Whether the oral gift by the third defendant in favour of first defendant is true and valid and binding on the plaintiff ?

II. Whether the documents relied upon by the plaintiff are brought into existence in between the plaintiff and third defendant in the circumstances alleged in W.S. ?"

5. Respondent No. 1 admittedly did not examine himself. The suit of the appellant was decreed. The learned Trial Judge opined :

(i) The burden was on Respondent No. 1 to prove the oral gift.

(ii) There was no reason for it not to disclose thereabout in its reply to the notice issued by the appellant.

(iii) No declaration was filed by Respondent No. 1 before the Urban Land Ceiling Authority in the year 1976.

(iv) A purported letter written by Respondent No. 3 confirming the oral gift had not been produced.

(v) Although constructions were raised by it on the suit premises, in none of the applications, the right to make constructions was based on the ownership of the property derived by reason of the

A

oral gift.

(vi) No disclosure was made in regard to the ownership of the property, in the return filed by it before the Registrar under the Societies Registration Act.

B

(vii) No resolution had been passed by the Governing Body accepting alleged oral gift.

(viii) No special quota or any reservation in the institution run by Respondent No. 1-Society for Muslims, having been made, the plea of oral gift cannot be believed.

C

(ix) No display on any board was made mentioning that the property was gifted to Respondent No.1-Society.

(x) No mutation was effected pursuant to or in furtherance of the alleged oral gift on 01.10.1975.

D

(xi) The witnesses of the purported oral gift being DW-2, DW-3 and DW-4, being the Chairman of the Respondent No.1-society, his P.A. and a Chartered Accountant and friend of DW-2 respectively, no reliance can be placed upon their evidence.

(xii) Plea of purported oral gift was made for the first time only in the written statement.

E

(xiii) No gift tax was paid in respect of the said purported gift either by Respondent No. 3 or by Respondent No.1.

(xiv) Had Respondent No. 1 any intention to make any gift, ordinarily it would have been presumed to do so in favour of the minority Muslim Societies.

F

(xv) No explanation had been offered by Respondent No. 1 as to why it paid rent upto October 1976.

(xvi) In none of the letters addressed by Respondent No. 1 to the University Grants Commission, Osmania University, Urban Land Ceiling Authority, Registrar of Cooperative Societies, Municipal Corporation of Hyderabad, the factum of the alleged deed of gift was disclosed.

G

(xvii) The purported reply sent to the notice marked as Ex. A4 had not been disclosed.

H

(xviii) For proving the oral gift Respondent No. 1 should have examined Respondent No.3. A

(xix) Respondent No. 1 had not been able to show that it had acquired title by adverse possession.

6. The High Court, however, by reason of the impugned judgment reversed the said judgment holding : B

(i) There was no reason as to why there was no demand to pay rent from Respondent No.1 for a period of ten years.

(ii) No explanation was offered as to why Respondent No. 1 was asked to deliver vacant possession of the property only in the year 1987 and a suit was filed only in the year 1989. C

(iii) As Respondent No. 1 constructed a large number of structures on the schedule property upon obtaining necessary permission from the Municipal Corporation, Hyderabad and has been paying taxes thereupon and having informed thereabout to various authorities like University Grants Commission, Osmania University, Government of Andhra Pradesh, no explanation was offered from Respondent No. 3 as to why he had been keeping silence for the period upto his entering into agreement with the appellant as a partner and allowing an award to be passed by the learned Arbitrator. D E

(iv) Acquiescence on the part of Respondent No. 3 would give rise to a presumption that Respondent No. 1 had been allowed to raise construction, which must have been done pursuant to the oral gift of the property. F

(v) The reasoning of the trial court that donor being a Muslim would not have gifted it to an institution belonging to other community cannot be accepted. It was not necessary for Respondent No. 1 to inform about the said oral gift to various authorities including the University Grants Commission. G

(vi) The findings of the learned Trial Judge disbelieving the case of Respondent No. 1 are based on surmises and conjectures.

(vii) Non-examination of Respondent No. 3 would give rise to an adverse inference as burden of proof lay to show *lay on him to* show that he had not made any oral gift having regard to his H

A conduct apart from the oral testimony that Respondent No.1 has paid rent to Respondent No. 3 till 1976.

(viii) No materials was produced to show that in fact such rent was tendered after 1975.

B 7. As regards the claim of Respondent No. 1 that it had perfected its title by adverse possession, it was held that although a tenant cannot claim adverse possession so long as he continues to be a tenant, but once his tenancy is determined, his possession would be adverse to that of the owner.

8. Appellant is, thus, before us.

C

9. Mr. Dushyant A. Dave, learned Senior Counsel appearing on behalf of the appellant, would submit :

(i) The High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that D Respondent No. 3 being admittedly the owner of the property, the burden lay on Respondent No. 1 who had alleged an oral gift was made in its favour, and it having failed to prove the same, assuming that Respondent No. 3 did not demand rent or did not take step therefor, Respondent No. 1 cannot be said to have proved its case.

E

(ii) The question of Respondent No. 1 acquiring any title by adverse possession would not arise, as at all material point of time, it was a tenant.

10. Mr. K. Parasaran, learned Senior Counsel appearing on behalf of F Respondent No. 1, would, on the other hand, submit :

(i) The burden of proof lay heavily on Appellant to prove the oral gift was made by examining the donor i.e. Respondent No. 3 in the suit and in any event, as it was incumbent on him to examine himself inasmuch he having supported the case of the appellant G must also be held to be plaintiff.

(ii) Although DW-2, one of the attestors of the oral gift in his cross-examination stated that he had written a letter of thanks to Respondent No. 3 for his generous donation, non-production thereof would not give rise to an adverse inference, inasmuch as H had the Respondent No. 3 gone into the witness box, a suggestion

would have been put to him in regard thereto. A

(iii) The learned Trial Judge committed a serious error in opining that Respondent No. 1 should have displayed the factum of oral gift on any board, such a conduct, Mr. Parasaran would contend, is very artificial and unnatural.

B

(iv) Although, no application for mutating the name of Respondent No. 1 was filed, the same was not sufficient to negative the gift, particularly in the context of other surrounding circumstances.

(v) The learned Judge applied different standards by making observation that Respondent No. 1 had not made any declaration before the Urban Land Ceiling Authorities about the gift and no minutes thereabout had been produced, as the appellant or Respondent No. 3 should have produced records of declaration before the Urban Land Ceiling Authorities, particularly having regard to the fact that the burden of proof in that behalf was on the appellant as it filed a suit for ejectment. C D

(vi) Assumption of the learned Trial Judge that Respondent No. 3 being a Muslim would have gifted the property to some minority institution is based on conjectures.

(vii) The Trial Court has also committed a serious error in drawing adverse inference against Respondent No. 1 for not issuing any letter to the University Grants Commission, Osmania University, Urban Land Ceiling Authorities, Registrar of Cooperative Society, Municipal Corporation of Hyderabad, as there was no occasion therefor. E

F

11. The learned counsel would contend that having regard to the provisions contained in Article 67 of the Limitation Act, the suit was barred by limitation. The deed of lease, being for a period of 11 months, expired on 16.07.1974 and limitation would be deemed to run from the said date.

12. In this connection, our attention has also been drawn to the evidence of PW-1, who was the Managing Partner of the appellant, which reads thus: G

"Just one or two months prior to execution of A.10, I came into contact with D.3. I do not remember the persons who introduced D.3 to me I came to know through D.3 that D.1 is tenant. On the date D.3 was introduced to me, he informed that D. 1 is not paying the rents H

A for the last 10 years"

13. As it was known to the said witness that Respondent No. 1 had not been paying rents even before the partnership deed was entered into, the appellant would be presumed to have no knowledge that Respondent No. 1 had been in possession of the property in assertion of his title by not paying B rents. As Respondent No. 1 was in possession for a period of more than 12 years, it must be held to have acquired title by prescription.

14. Respondent No. 3 was admittedly the owner of the property. As his ownership had not been disputed, the burden was on Respondent No. 1 to C prove his title. It has, as noticed hereinbefore, claimed title : (i) by reason of an oral gift; and (ii) by adverse possession.

15. The case that the oral gift was made on 01.10.1975 was specifically made out. The witnesses to the said oral gift were members of the Governing Council, his Personal Assistant and a Chartered Accountant, who admittedly D was a friend of DW-2.

16. It is expected of a person who has obtained title by reason of an oral gift; Hiba although permissible in law, but a heavy burden lay on him to prove the same. Respondent No. 1 is an educational society. It was running an institution on the suit property. It was, therefore, expected of it that it E would insist on execution of a registered deed of gift.

17. It may be true that, as a defendant, it was not required to examine Respondent No. 3 herein , who had been siding with the plaintiff by calling him as a witness by getting summons to depose in the court. There cannot be any doubt whatsoever that only by reason of the fact that Respondent F No. 3 did not get himself examined for one reason or the other, the same would mean that Respondent No. 1 discharged its burden. The learned Trial Judge did not place reliance on depositions of the witnesses examined on behalf of the Respondents to prove oral gift as they were interested persons. The High Court did not deal with the matter. The learned Trial Judge analysed the G evidences brought on record by the parties. So far as the appreciation of evidence based on oral evidence is concerned, the learned Trial Judge having had the occasion to notice the demeanour of the witnesses, was the best judge to arrive at a finding in regard to their reliability or trustworthiness. The High Court did not deal with the matter, ordinarily it could not have even done so [See *Raj bir Kaur and Anr.* v. *S. Chokesiri & Co.,* [1988] 1 SCS 19].

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18. It may be true, as has been contended by Mr. Parasaran, that conduct of the parties would be relevant, but what would be more relevant is the conduct of a party, who from his status of a tenant acquires the status of the owner of the property. Acquisition of such ownership by way of gift and, thus, wholly without consideration, is not expected of a society registered under the Societies Registration Act. Not only that it was acknowledged such donation to the donor by issuing an appropriate letter in that behalf (which is said to have been done). DW-2 although stated before the court that such a letter had been written, the same had not been proved.

19. Mr. Parasaran himself has relied upon a decision of this Court in *Gopal Krishnaji Ketkar* v. *Mamomed Haji Latif & Ors.*, [1968] 3 SCR 862 wherein this Court laid down the law in the following terms :

> "...Even if the burden of proof does not lie on a party, the Court may draw an adverse inference, if he withholds important documents in his possession which can throw light on the facts at issue. It is, in or opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof:"

20. The said decision has been noticed by this Court in subsequent decisions in *Punit Rai* v. *Dinesh Chaudhary,* [2003] 8 SCC 204 and *Citibank N.A. etc.* v. *Standard Chartered Bank and Ors etc.,* [2004 1 SCC 12.

21. As the said letter has not been produced, the inference which could be drawn therefrom is that either DW-2 did not tell the truth that such a letter was written and/or an adverse inference could be drawn that had the said letter been produced, the same would have gone against the interest of Respondent No. 1. In making an oral gift by an owner of the property in favour of his tenant apart from it being wholly unlikely, actual delivery of possession is imperative. There is nothing on record to show that at any point of time, Respondent No. 3 had delivered the possession of the premises in question to Respondent No. 1. Respondent No. 1 being a tenant, continued to be a tenant. Its status as a lessee on its own showing merged into a higher status. At what point of time such status was changed been a relevant fact. It was within the special knowledge of Respondent No. 3 The onus lay heavily on him to prove the same. It failed to discharge its burden.

22. The learned Trial Judge cannot be said to have committed any error

A in noticing the fact that Respondent No. 1 on its own showing did not file any application for mutation of its name before the Revenue authorities. It, even did not take any step to let others know about its change of status, be it the revenue department, or be it other authorities with which it was dealing, namely, the University Grants Commission, Government of Andhra Pradesh, B Osmania University, or even Municipal Corporation of Hyderabad. An application for mutation of one's name in the revenue records by the parties although would not by itself confer any title, but then a presumption in regard to the nature of possession can be drawn in that behalf. Had such an application been filed by Respondent No. 1 before the concerned authorities, at least it could have been shown that it had claimed possession on its own C right, not as a tenant.

23. The High Court although noticed the lease came to an end in the year 1975 and if from the said date or at least from the date of purported oral gift allegedly made in its favour by Respondent No.1. Any change in the nature of its position occurred, it was expected of it to accept the same by D its conduct. Why it would pay rent to Respondent No. 3 till October 1976 has not been explained.

24. Acquiescence on the part of Respondent No. 1, as has been noticed by the High Court, did not confer any title on Respondent No. 1. Conduct may be a relevant fact, so as to apply the procedural law like estoppel, waiver E or acquiescence, but thereby no title can be conferred.

25. It is now well-settled that time creates title.

26. Acquisition of a title is an inference of law arising out of certain set of facts. If in law, a person does not acquire title, the same cannot be vested F only by reason of acquiescence or estoppel on the part of other.

27. It may be true that Respondent No. 1 had constructed some buildings; but it did so at its own risk. If it though that despite its status of a tenant, it would raise certain constructions, it must have taken a grave risk. There is G nothing on record to show that such permission was granted. Although Respondent No. 1 claimed its right, it did not produce any document in that behalf. No application for seeking such permission having been filed, an adverse inference in that behalf must be drawn.

28. It may be true that Respondent No. 3 herein should have examined H himself and the learned Trial Judge committed a serious error in drawing an

adverse inference in that behalf as against Respondent No. 1. It was, however, so done keeping in view the fact that Respondent No. 3 was evidently not interested in the property in view of the fact that it had suffered a decree. For all intent and purport, even if the submission of Mr. Parasaran is accepted that the appellant is claiming is claiming only by reason of an award, he has transferred the property in his favour. He received a valuable consideration in terms of the award. We are not concerned with the validity thereof. Non-examination of Respondent No. 3 indisputably would give rise to a presumption, as has been held by this Court in *Sardar Gurbaksh Singh* v. *Gurdial Singh,* AIR (1927) PC 23, *Martand Pandharinath Chaudhari* v. *Radhabai Krishnarao Deshmukh,* AIR (1931) Bombay 97, and *The Ramanathapuram Market Committee, Virudhunagar* v. *East India Corpn. Ltd., Madurai,* AIR (1976) Madras 323 and *Vidhyadhar* v. *Manikrao and Anr.,* [1999] 3 SCC 573, but by reason of presumption alone, the burden is not discharged. A title is not created.

29. A claim of title by prescription by Respondent No. 1 again is not tenable. It based its claim on a title. It had, therefore, *prima facie,* no *animus possidendi.*

30. Reliance placed by Mr. Parasaran on Article 67 of the Limitation Act is also not apposite. It is a special provision. It would apply in a case where a tenant has ceased to be a tenant in terms of the provisions of the Andhra Pradesh (Rent and Eviction Control) Act. A tenant continues to be a tenant despite termination of tenancy. Article 67 would not be attracted in a case where a tenant remains a statutory tenant. In a case of this nature, Article 65 would apply. As the claim of Respondent No. 1 was based on a title, the onus was on him to prove the same. Respondent No. 1 failed to discharge the same and, therefore, the learned Trial Judge, in our opinion, has committed no error in passing a decree in favour of the plaintiff.

31. In *Smt. Shakuntala S. Tiwari* v. *Hem Chand M. Singhania,* [1987] 3 SCC 211, whereupon Mr. Parasaran placed strong reliance, this Court was considering a case where termination of tenancy in terms of Sections 12 and 13 of the Bombay Rent Act stood admitted. The question of applicability of Articles 66 and 67 of the Limitation Act was considered from that end. It was held:-

> "12. If that is so then on the strict grammatical meaning Article 67 of the Limitation Act would be applicable. This is indubitably a suit by the landlord against the tenant to recover possession from the tenant.

A Therefore the suit clearly comes within Article 67 of the Limitation Act. The suit was filed because the tenancy was determined by the combined effect of the operation of Sections 12 and 13 of the Bombay Rent Act. In this connection, the terms of Sections 12 and 13 of the Bombay Rent Act may be referred to. At the most it would be within Article 66 of the Limitation Act if we hold that forfeiture has been incurred by the appellant in view of the breach of the conditions mentioned in Section 13 of the Bombay Rent Act and on lifting of the embargo against eviction of tenant in two. Article 66 or Article 67 would be applicable to the facts of this case; there is no scope of the application of Article 113 of the Limitation Act in any view of the matter. Sections 12 and 13 of the Bombay Rent Act co-exist and must be harmonized to effect the purpose and intent of the legislature for the purpose of eviction of the tenant. In that view of the matter Article 113 of the Limitation Act has no scope of application. Large number of authorities were cited. In the view we have taken on the construction of the provisions of Articles 67 and 66 of the Limitation Act and the nature of the cause of action in this case in the light of Sections 12 and 13 of the Bombay Rent Act, we are of the opinion that the period of limitation in this case would be 12 years. There is no dispute that if the period of limitation be 12 years, the suit was not barred."

32. The said decision has no application in the facts and circumstances of the present case as there is nothing to show that after the expiry of period envisaged in the lease and despite the fact that the respondent itself had been paying/tendering monthly rent, there had been final determination of the tenancy pursuant whereto the respondent was required to hand over the vacant possession to the landlord. Nothing has been brought on record to show that the landlord has served any notice directing the tenant to handover vacant possession upon valid termination of the lease.

33. In *Devasahayam (Dead) By Lrs.* v. *P. Savithramma and Ors.*, [2005] 7 SCC 653], whereto our attention has again been drawn, this Court came to the conclusion that the civil court had no jurisdiction to try the suit covered by the rent control legislation. No such contention had, however, been raised. The question which as to whether the Civil Court would have jurisdiction to determine a matter must fall for consideration of the trial court. An issue in that regard should have been framed. In this case, the respondents have raised a plea of title in itself, the question in regard to the jurisdiction of the Civil Court has not been raised, presumably in view of the fact, that ultimately

the civil court was bound to determine the question whether the defendant/ respondent No. 3 made an oral gift or not being a complicated question, could not have gone into in a suit under the Rent Control Act. In any event, such a question having not been raised, we are of the opinion that the same should not be permitted to be raised before us for the first time.

34. The plea in regard to lack of jurisdiction of the Civil Court has been raised for the first time in the Written Submissions filed by the respondents and not even by the learned counsel while making oral submission.

35. In *Sohan Singh and Ors.* v. *General Manager, Ordnance Factory, Khamaria, Jablapur and Ors.*, AIR (1981) SC 1862, this Court noted the following in this regard :

> "We think that the view taken by the High Court on the facts of this case is not correct because the jurisdiction of the labour court was not challenged by the respondents in that court."

36. In *Nagubai Ammal and Ors.* v. *B. Shama Rao and Ors.*, AIR (1956) SC 593, this Court made a distinction between a proceeding which is collusive and one which is fraudulent. Respondents have never questioned the validity of the Award and the decree. No issue was framed in that behalf. It is not a case where the suit can be dismissed on the ground of there being a collusive proceeding between defendant No. 3 and plaintiff.

37. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. No costs.

S.K.S. Appeal allowed.