A NARAIN PRASAD AGGARWAL (D) BY LRS.

v.

STATE OF M.P

MAY 18, 2007

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

Transfer of Property Act, 1882:

ss.105 and 107—Suit property purchased in auction by ancestors of
C *appellant—Record of rights show that property belongs to Government and was given on lease to ancestors of appellant—Trial Court held that Government is the owner of suit property by relying on entries made in record of rights—Held, not correct as execution of title deed has not been proved—Entries made in revenue record of rights cannot defeat the lawful*
D *title acquired by auction purchaser.*

Title of same nature cannot exist in two different persons where their claims are opposite.

Evidence Act, 1872:

E *s.35—Record of right is not a document of title—Entries made therein in terms of s.35 although are admissible as relevant evidence and may also carry presumption of correctness but such presumption is rebuttable.*

Words and Phrases: Nazul Land—Connotation of.

F **The suit property was put in auction in or about 1859 by the ancestors of 'R'and 'G'. They became the owner of the said land, and remained in possession till their death. On or about 24.3.1986, the said land was purchased by 'F' from 'R' and 'G'. He died about the year 1920. His wife 'P', being his sole heir became the owner of the said land. She expired on 8.5.1961. She did**
G **not have any issue and the plaintiff-appellant and defendant No. 2 inherited the said property as her heirs being sons of the brother of 'F'.**

The property was somehow recorded as belonging to Government in record of rights and widow of 'F' began paying lease money to Government.

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The appellant filed suit for declaration of title on the ground that the said land was never given on lease by Government to 'P' or anyone of her ancestors. The Trial Judge by a queer process of reasonings, and only having regard to the entries made in the revenue records, came to a contradictory and inconsistent findings that the State has also shown that it is the owner of the suit plot, although it was clearly opined that the plaintiff and the defendant no. 2 had proved their title and possession. The High Court affirmed the order of trial Judge. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The findings of the Trial Judge are self-contradictory. The land in question was put to auction as far back as in the year 1859. The plaintiff and the defendant No. 2 and their predecessors in interest had all along been in possession thereof. While it may be true that the land in question in the revenue records of rights had been shown as Nazul land and 'P' filed an application for grant of a lease or paid rent to the State, it is evident from the order passed by the Commissioner of Settlements dated 30.10.22 that no such deed of lease was available on record. The property in question must be held by her and her predecessor in interest as a perpetual lessee. The Trial Judge, while arriving at the finding that 'P' obtained a lease for a period of 30 years, did not refer to any documentary or oral evidence produced by the State. If a deed of lease was executed by the Collector in favour of 'P', the same should have been produced. In fact, the Settlement Commissioner arrived at a positive finding that the Collector had not executed any deed of lease. The correctness of the said order passed by the Settlement Commissioner has never been put in issue, thus, became final and binding on the revenue authorities, the question could not have been permitted to be reopened only because another officer of the Revenue Department took a contrary view.

[Para 16] [424-H; 425-A-D]

2. The Trial Judge, could not have ignored the title derived by the predecessor in interest of the plaintiffs and the defendant No. 2 which was acquired as far back as in the year 1859 being the subject matter of an auction. No document has been brought on record to show as to what was the nature of the interest which the original owner had in the land.

[Para 17] [425-E]

3. It is one thing to say that the proprietary interest of all the proprietors and under tenure holders having vested in the State, the plaintiff and the defendant No. 2 were bound to pay rent to the State, but it is another thing to

A say that the State was the owner of the land which was having the characteristics of the nature of Nazul land and the plaintiff and the defendant No. 2 or 'P' was a lessee under it for a fixed period. [Para 18] [425-F-G]

4. The term 'Nazul land' has a definite connotation. It *inter alia* means "Land or buildings in or near towns or villages which have escheated to the B Government; property escheated or lapsed to the State: commonly applied to any land or house property belonging to Government either as an escheat or as having belonged to a former Government." [Para 19] [425-G-H; 426-A]

5. The Trial Judge had categorically come to the finding that the State C had admitted the documents relied upon by the plaintiff and had not also controverted the evidence adduced by him and, hence, it could not have dismissed the suit relying only upon the entries made in the record of rights. [Para 21] [427-B-C]

6. Record of right is not a document of title. Entries made therein in D terms of s.35 of the Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable. Exhibit P-4 and Exhibit P-6, whereupon reliance has been placed by the trial judge to hold that the State had title over the property in question, were documents of year 1920-21, but failed to notice that the documents must have E been taken into consideration and/ or would be presumed to have been taken into consideration by the Settlement Commissioner when the aforementioned order dated 30.10.1922 was passed wherein it had categorically been held that no deed of lease having been executed in respect of the land in question, the title of the said 'P' should be deemed to be a permanent lessee. [Para 22] [427-C-E]

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7. Although title in respect of an immovable property may have different concepts, it is fundamental that title of the same nature cannot be found to be existing in two different persons where their claims thereover are opposite. It was possible for the court to hold in a situation of this nature that the G plaintiffs and the defendant No. 2 being a permanent lessee under the State were bound to pay rent to the State by way of land revenue or otherwise but the same would not mean that despite the plaintiff being the holder of title, the State had in it a right of reversion or for that matter the character of the land was Nazul land. It is, therefore, difficult to agree with the findings of the

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Trial Judge as affirmed by the High Court. A

[Paras 23 and 24] [427-E-H]

8. The existence of a lease deed must be proved. The same must also answer the legal requirements contained in ss.105 and 107 of the Transfer of Property Act. The relationship of lessor and lessee and the terms and conditions of a lease would depend upon the contract between the parties. It is B **not and cannot be the case of the State that an oral lease was granted in favour of 'P'. In a case involving the State and particularly when the nature of the land is said to be Nazul land, it was imperative on the part of the State to execute a deed of lease. As execution of such a document has not been proved, the Trial Judge committed a manifest error in solely relying upon the entries** C **made in the revenue record of rights despite noting the order of the Commissioner of Settlement dated 30.10.1922. Entries made in the revenue record of rights cannot defeat the lawful title acquired by an auction purchaser, particularly, in view of the fact that 'P' had questioned the order passed by the Collector of the District before the Commissioner of Settlement which ended in her favour. It is well-settled that payment or non-payment of** D **rent does not create or extinguish title. [Para 25] [427-G-H; 428-A-C]**

9. The plaint might not have been very happily drafted. But it is well known that, ordinarily, moffusil pleadings are not to be strictly construed. Pleadings must be construed in its entirety. Therefore, the findings of the Trial Judge as also the High Court, that the State was the owner of land, is E **not correct. The State has not furthermore been able to establish the character of the land as Nazul land and in any event has not been able to show that it had a right of reversion. [Paras 26 and 27] [428-D-G; 429-A]**

Des Raj **v.** *Bhagat Ram,* **(2007) 3 SCALE 371, relied on.** F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4601 of 2005.

From the Final Judgment and Order dated 11.5.2004 of the High Court M.P. at Jabalpur, in F.A. No. 8 of 1998

A.K. Sanghi for the appellant. G

B.S. Banthia and Vikrant Singh Bais for the respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. This appeal is directed against the judgment and H

A order dated 11.5.2004 passed by a Division Bench of the Madhya Pradesh High Court in First Appeal No. 8 of 1988 dismissing the appeal preferred from a judgment and decree dated 23.11.1987 passed by the Additional District Judge, Hoshangabad in C.S. No. 12-A of 1986 dismissing the suit filed by the appellant herein.

B 2. The basic fact of the matter which is not in dispute is that the suit property was put in auction in or about 1859 by the ancestors of Rai Baldev Bux and Gaurabai i.e. one Ramjanaki Prasad. They, thus, became the owners of the said land, and all remained in possession thereof till their death. On or about 24.3.1986, the said land was purchased by Late Fateh Chand from C Rai Baldev Bux and Gaurabai. He died in or about the year 1920. His wife, Smt. Putari Sethani, being his sole heir became the owner of the said land. She expired on 8.5.1961. It is not in dispute that she did not have any issue and the plaintiff Narain Prasad Aggarwal and defendant No. 2 Guruprasad Agarwal inherited the said property as her heirs being sons of Hira Lal, the brother of late Fateh Chand.

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3. It appears from the records that a proceeding was initiated by the said Putari Sethani in connection with proceeding for assessment of enhancement of lease rent by the then Collector of Hoshangabad. An order was passed against her. The matter was taken to the Court of Commissioner of Settlements in an appeal against the order of the Collector. The said authority by an order E dated 30.10.1922 passed in C.P. No. 2454/1 held :

> "Mt. Putari Sethani appeals against the orders of the Assistant Settlement Officer, Nazual, Hoshangabad in respect of the following plots in that town.
>
> F Nos. 207/18, 87/21. 70/21, 108/21. All assessed as "riths" by the Assistant Settlement Officer. This assessment had already been cancelled in general revision order dated the 14th October, 1921 recorded on the spot.
>
> 11/7 Assessed as a Sitaphal Bari, the fruits of this bari are sold, G as admitted. It was muaf when held by a Mohammadan who looked after the tomb in it. As 30 years ago it came in to applicant's possession by mortgage, and she is a Hindu she obviously has no right to hold muaf. The assessment order of the Assistant Settlement Officer is upheld.

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No. 3/44 area 12.11	old rent	Rs. 52-6-5	A
	New rent	Rs. 60-8-0	
1/60 -do- 6,26	Old rent	Rs. 24-0-0	
	New rent	Rs. 31-4-0	

These ar. bungalow sites. In his letter No. 551-A, dated the 15th April 1920, the Commissioner, Narbudda Division distinctly ordered B that these plots for which no leases existed by considered as held on permanent lease in accordance with the Deputy Commissioner's proposals contained in his letter No. 290, dated the 24th March, 1920. The Assistant Settlement Officer Nazul has no right to enhance the rent, for in the leases executed in compliance with the Commissioner's orders, a term of 30 years, with effect from the 1st April 1899 was C entered. As laid down by the Hoshangabad Nazul Resolution, the term of these leases should have been extended, so as to expire with the term of the new Settlement and the rent left unaltered.

The Assessment order of the Assistant Settlement Officer is therefore reversed and the old rents of these plots will be recorded D in the Khasra.

Deputy Commissioner will kindly have this done.

Sd/- G.G.C. Trench
Commissioner of Settlements E
Central Provinces

19.10.1922"

The said order was marked as Exhibit P-3 in the suit.

4. An application was filed by the plaintiff-appellant and the defendant F No. 2 for mutation of their names in the revenue records, which was allowed by an order dated 12.12.1964 but the same was set aside by an order of the appellate authority passed on 26.6.1965. By an order dated 15.3.1968, the Additional Commissioner, Bhopal opined that the land in question could not have been treated to be freehold as allegedly rent was assessed under the 1881 Land Revenue Act and 1917 Land Revenue Code and the same had not G been challenged, stating :

"Moreover under the 1881 Land Revenue Act and 1917 Land Revenue Act all land was liable to pay land revenue and only as a matter of grace lands which were built over prior to 1891 were exempted from H

A assessment but the Government always reserved the right to levy assessment on these sites at the time of settlement. The present suit land was presumably not built over land at the time of settlement in 1921 and was therefore assessed. At any rate, the assessment then levied and not challenged that time cannot be questioned now. Under Sec. 100 of the M.P.L.R. Code 1959 (hereinafter termed Code) such an B assessment is liable to be revised after the expiry of the terms of settlement and was, therefore, rightly revised by the learned Collector rejecting the claim of the appellants that the property is not liable to assessment. The method of the computation adopted by the learned Collector for fixing the revised assessment and premium has not been C challenged at all and is generally in order. This in my opinion is payable by holder of the suit land irrespective of the fact the holder accepts or refuses to accept the same. If holder does not want to hold the suit land at this revised assessment and premium, it is clear that the learned Collector has no choice but to declare it as open Nazul land. The order of the learned Collector declaring accordingly does D not in my opinion call for any interference and appeal against the impugned order has to be dismissed."

5. It is, however, stated at the bar that the provisions of the Land Revenue Code have no application in respect of harvested land.

E 6. In regard to the order of mutation passed in favour of the appellant, it was, however, observed that mutation in respect of Nazul land being not governed by the provisions of M.P.L.R. Code, the second appeal was not maintainable.

F 7. Appellant Narain Prasad Aggarwal, thereafter, filed a suit in the Court of District Judge, Hoshangabad praying *inter alia* for the following reliefs:

"a. It may be declared that the plaintiff and defendant No. 2 Guruprasad, are the legal heirs of deceased Smt. Putri Sethani and, therefore, are G the owners and in possession of Nazul Plot No. 3, area 12-11 acre (57538 sq. ft.) Sheet No. 44, Mohalla Civil Station, city Hoshangabad, Tehsil & District Hoshangabad, as has been shown in the Schedule 'A' sketch map;

b. It may also be declared that the said place of land was never given H on lease by the Governemnt to the deceased Putri Sethani or anyone

of her ancestors. A

13(a)That a decree for permanent injunction may be passed restraining the defendant No. 1 from taking possession of any portion of the piece of plot in dispute and the defendant No. 1 may be directed that he may get the name of the plaintiff and defendant No. 2 entered in respect of the plot in dispute and he may re-assess the land revenue B in terms of the advertisement No. 4-C-63 dated 16.2.1963."

8. In its written statement, the respondent *inter alia* contended:

(i) The rate of land revenue in respect of such lands which had not been fixed bound to be increased and lease could be directed to C be renewed in law. Such a decision was to be taken irrespective of the fact as to whether the land in question had been lying vacant or houses have been constructed thereupon.

(ii) As the plaintiffs have violated the terms and conditions of the lease, a decision had been taken to determine the lease in D accordance with law wherefor recommendations were sent to the Government.

(iii) In any event, the plaintiffs have accepted the liability to pay rent and the order passed by the competent authority having not been challenged, the suit was not maintainable. E

9. The First Additional District Judge, Hoshangabad in whose Court the suit was transferred *inter alia* framed the following issues having regard to the rival contentions raised by the parties in their respective pleadings :

"1 (a) Whether this suit is within time? F

(b) Whether it is barred by time?

2. Whether the plaintiff is not in possession of the suit property? Its effect?

3. (a) Whether the suit property was purchased by Ramjanki Prasad in a public auction about 27 years prior to 1886 and thereafter he G obtained possession of the same.

(b) Whether on 24.3.1986 Gourabai, widow of Ramjanki Prasad and Rai Baldev Bux son of Bakshi sold the same to deceased Seth Fatehchand son of Seth Dharamchand by registered sale deed and obtained possession thereunder? H

A (c) Whether in 1920 after the death of Seth Fatehchand his widow Putri Sethani came in possession of the same as his legal heir?

(d) Whether on 30.10.22 Settlement Commissioner, Central Provinces and Berar at Nagpur held that about Putri Sethani was the permanent lessee of the suit plot?

B (e) Whether on 8.5.61 the plaintiff and his brother defendant 2 on death of Putri Sethani came in possession of this property as her heirs?

(f) Whether this property belongs to defendant No. 1?

C (g) Whether plaintiff and defendant No. 2 are owners of the same?

4. Relief, costs and compensatory costs?"

10. All the issues were answered in favour of the plaintiff save and except issue No. 3(f) and 3(g). While, thus, declaring title of the plaintiff, only in view of the entries made in the revenue records, the suit was held to be D not maintainable.

11. It is interesting to note the findings of the Trial Judge on the issues framed by it, which are as under :

(a) The suit is not barred by limitation.

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(b) In respect of issue No. 2, it was noticed that no evidence had been produced by the State to controvert the evidence adduced on behalf of the plaintiff. The plaintiff and defendant No. 2 had been in possession of the suit land.

F (c) In regard to issue No. 3(a), it was found that no dispute had been raised by defendant No. 1 respect thereof. It was further noticed that the suit plot was purchased on 24.3.1986 by Late Fatehchand from Rai Baldev Bux and the said fact has been admitted by the defendant No. 1. Inheritance of the said property from Late Fatehchand by Putri Sethani has also been admitted by the G defendant No. 1 in its written statement.

(d) While adverting to issue No. 3(d), the Court accepted that the State has not produced any evidence to controvert the order passed by the Settlement Commissioner dated 30.10.22 (wrongly stated as 3.10.22) wherein it was held that the property in question H had not been given on lease in favour of the predecessors in

interest of the appellant and, thus, the said issue was also answered in favour of the plaintiff. A

(e) Yet again while adverting to issue No. 3(a), the learned Trial Judge noticed that no evidence had been produced by the defendant No. 1 to controvert the fact that after the death of Smt. Putari Sethani, the plaintiff and the defendant No. 2 had been in possession of the whole property. It was further held that the dispute in the whole case is mainly centered on the decision of these two issues. B

(f) The plaintiff has shown that his ancestors are the owners and in possession of the plot. For this reason, he and the defendant No. 2 are now owners of the said plot. C

(g) The defendant No. 1 i.e. the State of Madhya Pradesh has shown that in the Nazul settlement for the year 1920-21, the suit plot was given to the ancestor of the plaintiff no.2 'Putari Sethani' on lease for a period of 30 years. The land was a Nazul residential land and, therefore, the ownership rights of this land were with the State Government. D

(h) Smt. Putri Sethani was only a lessee and rent used to be recovered from her.

(i) As Putari Sethani had no title over the plot in dispute, the plaintiff and defendant No. 2 also do not have any title over this plot. E

12. The learned Trial Judge by a queer process of reasonings, and only having regard to the entries made in the revenue records, came to contradictory and inconsistent findings that the State has also shown that it is the owner of the suit plot, although it was clearly opined that the plaintiff and the defendant no. 2 had proved their title and possession. Exhibit P-4 and Exhibit P-6 certified copy of the Khasras were relied upon by the learned Trial Judge to hold : F

"in column No. 8 thereof, the same thing is written. Both these documents have been produced on behalf of the plaintiff who has relied on the same. From the 1920-21 settlement report produced by defendant No. 1 and the documents of the Revenue appeal, it is proved that the ownership rights over the urban residential Nazul lands are with the State and such land is given by the State on lease G H

A to individual persons and in this case also the same thing is proved that the suit plot was given to Smt. Putri Sethani on lease upto the period 31.3.1951. Exhibit P-4 and Exhibit P-6 submitted by the plaintiff are certified copies of the Khasra numbers. He has also relied on them. These come in the category of public documents, which are admissible in evidence in terms of the provisions of Section 35 of the Evidence B Act, unless the same are proved otherwise. On both these documents, it is written that the suit plot was given to Smt. Putri Sethani on lease upto the period 31.3.1951. It supports the side of defendant No. 1"

13. On the aforementioned findings, the suit was dismissed. The trial C Court also rejected the contention of the appellant stating "the lands in question are not Nazul lands stating that in the wake of all these documents, the contention that the suit land was not Nazul land and was in ownership right of the appellant and his brother or their predecessor-in-title cannot be accepted. The lease of Nazul land can be terminated if the conditions of lease are violated by the holder. Therefore, the contention of learned counsel for D the appellant that the Government has no right to terminate the lease cannot be accepted. If there is illegality in the termination of the lease, the holder is free to make recourse to the legal remedy, but it cannot be said that the Government or other competent authorities have no jurisdiction to terminate the lease".

E 14. Mr. A.K. Sanghi, learned counsel appearing on behalf of the appellant in support of this appeal *inter alia* submitted that the learned Trial Judge as also the High Court committed a manifest error in arriving at self-contradictory and inconsistent findings insofar as while, on the one hand, it was held that the plaintiffs have title over the lands in suit, on the other, opined that the F defendants have also proved their title.

15. Mr. B.S. Banthia, learned counsel appearing on behalf of the respondent-State, on the other hand, contended that Smt. Putari Sethani having been paying rent for the Nazul land and thus accepting the State as her lessor, the appellant now cannot be permitted to turn round and contend G that the land in question is not Nazul land. It was submitted that an application had been filed as far back as on 2.7.1920 for grant of a Putta and, in that view of the matter too, the State's title must be held to have been admitted and acknowledged.

16. We feel it difficult to appreciate the findings of the Trial Judge, H which are, in our opinion, self-contradictory. We have noticed hereinbefore

that the land in question was put to auction as far back as in the year 1859. The plaintiff and the defendant No. 2 and their predecessors in interest had all along been in possession thereof. While it may be true that the land in question in the revenue records of rights had been shown as Nazul land and the said late Smt. Putari Sethani filed an application for grant of a lease or paid rent to the State, it is evident from the order passed by the Commissioner of Settlements dated 30.10.22 that no such deed of lease was available on record. The property in question must be held to have been held by her and her predecessor in interest as a perpetual lessee. The learned Trial Judge, while arriving at the finding that Late Smt. Putari Sethani obtained a lease for a period of 30 years, did not refer to any documentary or oral evidence produced by the State. If a deed of lease was executed by the Collector in favour of Smt. Putari Sethani, the same should have been produced. In fact, as noticed hereinbefore, the Settlement Commissioner arrived at a positive finding that the Collector had not executed any deed of lease. The correctness and/or validity of the said order passed by the Settlement Commissioner has never been put in issue. As the said order attained finality, the said order of the Commissioner of Settlement, thus, became final and binding on the revenue authorities, the question could not have been permitted to be reopened only because another officer of the Revenue Department took a contrary view.

17. The learned Trial Judge, in our opinion, could not have ignored the title derived by the predecessor in interest of the plaintiffs and the defendant No. 2 which was acquired as far back as in the year 1859 being the subject matter of an auction. No document has been brought on record to show as to what was the nature of the interest which the original owner had in the land.

18. It is one thing to say that the proprietary interest of all the proprietors and under tenure holders having vested in the State, the plaintiff and the defendant No. 2 were bound to pay rent to the State of Madhya Pradesh, but it is another thing to say that the State was the owner of the land which was having the characteristics of the nature of Nazul land and the plaintiff and the defendant No. 2 or the said late Smt. Putri Sethani was a lessee under it for a fixed period.

19. The term 'Nazul land' has a definite connotation. It *inter alia* means "Land or buildings in or near towns or villages which have escheated to the Government; property escheated or lapsed to the State: commonly applied to any land or house property belonging to Government either as an escheat or

A as having belonged to a former Government."

20. Even in the Revenue Book Documents, Part four Serial No. 1, Nazul land situated within the prescribed limits of the Municipal Corporation and the Nagar Palika is stated as under:

B "1. "Nazul" and "Government land"

1. That land which is the property of the Government and which

(a) is not forming part of the records in the account of any village;

C (b) is not recorded as Banjar, jharidar jungle, hilly and chattans, rivers, village trees or Government trees;

(c) is not recorded for Village roads, gothan, charai land, or in the shape of grazing in abadi Chargahs;

(d) is not ear-marked and reserved for development of the village D or any other community development projects; or

(e) is not service land.

There are two categories i.e. "Nazul" and "Government land". In "Nazul" lands, such Government lands are included which are used for construction projects or for general public facilities like Bazars or E entertainment parks, or the lands which may possibly be required to be used in future for such projects.

The categorization of the land which is in custody of any Department of the State Government or Central Government or which is recorded in the records of Government Lands, will be done. In brief, F it can be said that "Nazul" is that land which if kept as open site carries more importance and not agriculture related. The lands which are generally categorized as "Nazul" lands, are as under:

- Plots of lands near the buildings, whether they are Government or non-government.

G - Cantonment lands;

- Parks

- Plots of lands used for Bazards, Haat or fairs;

- Lands of Shamshan Chat (Crematorium);

H - Lands where possibility of construction is there, and other such

lands where there is a possibility that these can be used for public purposes in the near future. Under the 'Nazul' land, those Government plot of lands will also be included which are meant for Sarais, Kanji Hauzes, Bazars, etc. and which are in possession of the local residents or which are standing in their names."

21. The learned Trial Judge had categorically come to the finding that the State had admitted the documents relied upon by the plaintiff and had not also controverted the evidence adduced by him and, hence, in our opinion, it could not have dismissed the suit relying only upon the entries made in the record of rights.

22. Record of right is not a document of title. Entries made therein in terms of Section 35 of the Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable. Exhibit P-4 and Exhibit P-6, whereupon reliance has been placed by the learned trial judge to hold that the State had title over the property in question, were documents of year 1920-21, but failed to notice that the documents must have been taken into consideration and/ or would be presumed to have been taken into consideration by the Settlement Commissioner when the aforementioned order dated 30.10.1922 (Exhibit P-3) was passed wherein it had categorically been held that no deed of lease having been executed in respect of the land in question, the title of the said Putri Sethani should be deemed to be a permanent lessee.

23. Although title in respect of an immovable property may have different concepts, it is fundamental that title of the same nature cannot be found to be existing in two different persons where their claims thereover are opposite. It was possible for the court to hold in a situation of this nature that the plaintiffs and the defendant No. 2 being a permanent lessee under the State were bound to pay rent to the State by way of land revenue or otherwise but the same would not mean that despite the plaintiff being the holder of title, the State had in it a right of reversion or for that matter the character of the land was Nazul land.

24. It is, therefore, difficult to agree with the findings of the learned Trial Judge as affirmed by the High Court.

25. The existence of a lease deed must be proved. The same must also answer the legal requirements contained in Section 105 and 107 of the Transfer

A of Property Act. The relationship of lessor and lessee and the terms and conditions of a lease would depend upon the contract between the parties. It is not and cannot be the case of the State that an oral lease was granted in favour of Putri Sethani. In a case involving the State and particularly when the nature of the land is said to be Nazul land, it was imperative on the part of the State to execute a deed of lease. As execution of such a document has B not been proved, the learned Trial Judge, in our opinion, committed a manifest error in solely relying upon the entries made in the revenue record of rights despite noting the order of the Commissioner of Settlement dated 30.10.1922. Entries made in the revenue record of rights, it would bear repetition to state, cannot defeat the lawful title acquired by an auction purchaser, particularly, C in view of the fact that Putri Sethani had questioned the order passed by the Collector of the District before the Commissioner of Settlement which ended in her favour. It is well-settled that payment or non-payment of rent does not create or extinguish title.

26. The plaint might not have been very happily drafted. But it is well D known that, ordinarily, moffusil pleadings are not to be strictly construed as has been held in *Des Raj* v. *Bhagat Ram,* (2007) 3 SCALE 371 in the following terms:

> "It may be true that in his plaint, the plaintiff did not specifically plead ouster but muffosil pleadings, as is well known, must be E construed liberally. Pleadings must be construed as a whole. Only because the parties did not use the terminology which they should have, *ipso facto,* would not mean that the ingredients for satisfying the requirements of statute are absent. There cannot be any doubt whatsoever that having regard to the changes brought about by F Articles 64 and 65 of the Limitation Act, 1963 *vis-a-vis* Articles 142 and 144 of the Limitation Act, 1908, the onus to prove adverse possession would be on the person who raises such a plea. It is also furthermore not in dispute that the possession of a co-sharer is presumed to be possession of the other co-sharers unless contrary is proved."

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27. Pleadings, as is well known, must be construed in its entirety. We, therefore, are of the opinion that the findings of the learned Trial Judge as also the High Court, that the State was the owner of land, is not correct. The State has not furthermore been able to establish the character of the land as Nazul land and in any event has not been able to show that it had a right

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of reversion. A

28. We, however, do not intend to express any opinion as to whether the State of Madhya Pradesh is otherwise entitled to receive any rent from the appellants or not. Such a question if raised may be determined in an appropriate proceedings.

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29. For the reasons stated hereinabove, we set aside the impugned order of the High Court as well as of the learned Trial Judge and the suit of the plaintiff shall be decreed. The appeal is allowed with costs. Counsel's fee assessed at Rs. 25,000/-.

D.G. Appeal allowed. C