Smt. Chandrakantaben, Wife Of ... vs Vadilal Sapalal Modi And Ors. on 30 March, 1989

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Bench: L.M. Sharma

JUDGMENT

Lalit Mohan Sharma, J.

1. These appeals are directed against the decision of the Gujarat High Court in an appeal arising out of a suit for partition instituted by the respondent No. 1, Vadilal Bapalal Modi (since deceased).

2. The father of the plaintiff Vadilal was Bapalal who had 5 sons- the plaintiff, Ramanlal, Gulabchand, Kantilal and Jayantilal ; and a daughter-Champaben. Gulabchand was impleaded as the first defendant in the suit and on his death his heirs and legal representatives have been substituted. Kantilal and Champaben are defendants No. 2 and 3 respectively. Ramanlal predeceased Bapalal and his wife and son are defendants No. 4 and 5. Jayantilal also died earlier and his wife Smt. Chandrakantaben, defendant No. 6 is the appellant in Civil Appeal No. 418 of 1973. Their children are defendants No. 7 to 12. Civil Appeal No. 520 of 1973 has been preferred by the 7th defendant, Narendra.

3. The suit by Vadilal was instituted in 1960, claiming share in the considerably large properties detailed in the Schedule to the plaint, but the present appeals are not related to any other item excepting the property described as a chawl admeasuring 7 acres and 2 gunthas of land with 115 rooms and huts, situated in the Naroda locality in Ahmedabad under Lot No. 8 of the plaint which has been referred to by the counsel for the parties before us as the chawl or the Naroda chawl. According to the case of the defendants No. 6 to 12, this property exclusively belongs to defendant No. 6 and is not liable to partition. The other defendants contested the claim of the plaintiff with respect to some other items, but so far the disputed chawl is concerned, they supported the plaintiffs, case that it belonged to the joint family and is liable to partition.

4. The land of Lot No. 8 was acquired by Bapalal in 1932 for a sun of Rs. 9.450/- and the rooms were constructed thereon in about 1934 It has been held by the High Court, and the finding has not been

challenged before us, that Bapalal acquired the property and built the chawl with the aid of ancestral joint funds, and the property therefore, belonged to the family. According to the case of the defendants No. 6 to 12, Bapalal orally gifted the property to his daughter-in-law Chandrakanta the 6th defendant, in March 1946 and made a statement before the Revenue authorities on the basis of which her name was mutated, and she was put in possession thereof. Admittedly 114 rooms in the Naroda chawl had been let out to tenants and one room was retained for the caretaker. According to Chandrakanta's case, although she came in peaceful possession, the management which included realisation of rent was in the hands of Gulabchand (defendant No. 1). It appears that in 1952 some dispute arose and Chandrakanta assumed direct charge of the Naroda chawl and has remained in possession thereafter. Thus she has been in exclusive possession of the disputed chawl since 1946, and acquired good title therein by adverse possession before the suit was filed in 1960.

5. The learned Judge, City Civil Court, Ahmedabad, who tried the suit, held that Bapalal and his sons constituted a joint Hindu family and the business carried on by Bapalal was for the benefit of the family and the income from the business was thrown in the common pool and all the properties including the disputed chawl were treated as belonging to the family. Proceeding further it has been found that the case of the defendant No. 6 about the gift, the mutation of her name, and her exclusive possession from 1946 till the date of the suit was correct. She was accordingly held to have acquired a title by adverse possession. The suit therefore was dismissed with respect to the disputed chawl. For the purpose of the present appeal it is not essential to mention the findings of the trial court relating to the other items of the suit property. The plaintiff appealed before the Gujarat High Court. Some of the the defendants also filed two separate appeals against the judgment of the trial court dealing with other items of property with which we are not concerned. The appeals were heard and disposed of together by a common judgment in November 1972. The High Court reversed the finding of adverse possession in regard to the disputed chawl and granted a decree for partition. It was held that the defendant No. 6 remained in exclusive possession of the property only since 1952 and the period was thus short of the time required for prescription of title. Dealing with the relief for rendition of accounts, the Court held that since the rents of the chawl from, 1952 were collected by Jayantilal Chandrakanta's husband and after his death by her son Narendra (defendant No. 7), Chandrakanta was liable to render accounts till the death of her husband and she along With defendant No. 7 would be jointly liable for the period thereafter. The present appeals are directed against this judgment.

6. According to the case of defendant no, 6, her husband, Jayantilal used to indulge in speculative business and he was, therefore, not considered a dependable person. To ensure economic stability of Chandrakanta and her children, her father-in-law, Bapalal decided to make a gift of the Naroda chawl to her. Both Bapalal and Chandrakanta appeared before the Talati of Naroda on 5.3.1946 and made statements. The original statement of Bapalal recorded by the Talati and signed by Bapalal was produced and marked as Ext. 268 in the trial court and similarly the statement of Chandrakanta as Ext. 269. Bapalal has stated in Ext. 268 that Chandrakanta had loyally served him and therefore, he was making the gift. A prayer was made for substitution of her name in the revenue records. A similar prayer was made by the lady in Ext. 269. The extract from the Record of Rights is Ext. 247 which mentions Bapalal as the occupant of the Naroda chawl. The entry was made in May 1933. This entry appears to have been placed within brackets and a second entry inserted mentioning

Chandrakanta 'wife of Jayantilal Bapalal'. Mr. B.K. Mehta, the learned Counsel for the appellant : has strongly relied upon the revenue entry as proof of her title. Reference was made to the decision in Gangabai and Ors. v. Fakirgowda Somaypagowda Desai and Ors. ; and Desai Navinkant Kesarlal v. Prabhat Kabhai 9 Gujarat Law Reporter 694. It was pointed out by the learned Counsel that in the Privy Council case also the revenue records which were under consideration, were prepared under the Bombay Land Revenue Code, that is the same Code under which Ext. 247 was prepared and it was observed in the judgment that the revenue entry furnished presumptive evidence of title. The Gujarat case also indicated that a presumption : as to the rights in the concerned property arose in favour of the person whose name was entered. We are not very much impressed by this part of the argument of the learned Counsel as it cannot be denied that title to Naroda chawl could not have passed to the defendant No. 6 by virtue of the entry Ext. 247. The value of the chawl even in 1946 was large and no registered instrument of transfer was executed. Besides Ext. 247 describes Bapalal and thereafter Chandrakanta as Kabjedar, that is, occupant. In these circumstances the presumption which can be raised in favour of Chandrakanta from this entry is with respect to her possession and possession only.

7. There is a serious dispute between the parties as to the actual physical possession of the chawl during the period 1946 to 1952 and we will have to consider the evidence on this aspect in some detail. In 1952 there was direct confrontation between Chandrakanta and the defendant No. 1 Gulabchand. On 14.4.1952 a public notice was published in a local daily named 'Sandesh' vide Ext. 254 wherein Gulabchand informed and called upon the tenants in the chawl to pay the rent to him within 3 days against receipts to be issued, failing which legal steps would be taken against them. On the very next day 'Sandesh' carried another public notice Ext. 255 issued by Chandrakanta asserting her title and exclusive possession and repudiating the claim of Gulabchand. The tenants were warned that Gulabchand or any other person on his behalf had no right or authority to dispute her claim. On the same day, i.e., on 15.4.1952 another public notice was published in 'Sandesh' at the instance of Gulabchand reiterating his claim and asserting that his father Bapalal (who was then alive) was the owner. It appears that no further action was taken by any of the parties. The evidence on the record shows that Bapalal had withdrawn himself from worldly affairs and was staying in Vrindavan near Mathura. The evidence led by Chandrakanta of her exclusive possession from 1952 through her husband and son till the date of the suit was accepted as reliable by the High Court. Thus there is concurrent finding of both the two courts below accepting her exclusive possession from 1952 onwards. The learned Counsel for the plaintiff has, therefore, rightly not challenged before us this finding which we are independently also satisfied is a correct one.

8. The actual position of the chawl from 1946 to 1952 becomes crucial, as Chandrakanta is bound to fail if she is not successful in proving her adverse possession for this period. As has been stated earlier, the suit was filed in 1960 and her possession since 1952 cannot be treated long enough for a prescriptive title to accrue. The parties have, therefore, taken great pains to prove before us their rival cases as to the possession of the chawl from 1946 to 1952.

9. The defendant No. 1 was admittedly managing the properties Belonging to the family. Out of 115 rooms in Naroda chawl only 114 were let out to tenants and one room was retained in which, according to the case of Chandrakanta, a caretaker known as Gangia Pathan, engaged by Bapalal,

was staying. After collecting the rent from the tenants the Pathan used to hand over the money to the defendant No. 1. After the gift, it was decided that the same arrangement would continue but the defendant No. 1 would be managing the property on her behalf and after receipt of the rent he would deliver the same to her. She claims that this arrangement was acted upon. Admittedly the total rent collection from the chawl was not large and after deducting the expenses including the maintenance and repair costs and the salary the Jamadar (caretaker) the money left was not a considerable sum. According to the evidence of Chandrakanta the Pathan left the service and his whereabouts are not known and another Jamadar with the name of Maganji came his place. He looked after the chawl till 1950. Thereafter he was substituted by Nathu Singh. Muganji's present whereabouts are also not known. In 1952 Gulachand made a claim to the chawl repudiating the ownership of Chandrakanta and he was, therefore, removed.

10. The appellant has relied on a large number of rent receipts by her and her learned Counsel laid great stress on five of them which have been marked as Exts. 240 to 243 and 250 issued in December 1947, January 1948, June 1948, April 1949 and July 1947 respectively. It is significant to note that the defendant No. 1 was in charge of the collection of the rent upto 1952 according to the case of all the parties. The parties contesting the claim of the appellant contend that he was so doing on behalf of the entire family and not on behalf of Chandrakanta as claimed by her. The defendant no 1, however, did not choose to enter the witness box nor did he produce any document which could have supported his case. The counter-foil receipts were in possession and neither they were filed by the defendant No. 1 nor the plaintiff called for the same. Defendant No. 6 was able to examine two of the tenants-Vajesingh (D.W.1) and Nathaji (D.W. 2). They filed a large number of receipts issued to them evidencing payment of rent. The list of documents filed by them are printed on pages 394 to 395 of the paper book and have been marked as Exts. 237 and 239. 12 receipts in the list Ext. 237 are for the period 1.6.1946 to 30.5.1949 and 7 of the list Ext. 239 are from 1.1.1947 to 30.9.1949. They support the case of Chandrakanta inasmuch as on the top of these receipts are printed the following words ;

CHAWL OF BAI CHANDRAKANTA THE WIFE OF MODI JAYANTILAL BAPALAL Out of them the receipts Exts. 240 to 243 were admittedly Issued when the defendant No. 1 was incharge of collection of rent and it is not denied that they were issued at his instance during the crucial period, The other receipt Ext. 250 was issued for the period 1,6.1947 to 1.7.1947 under the signature of the plaintiff Vadilal and this also similarly carried the description of the chawl as belonging to Chandrakanta. No explanation is forthcoming on behalf of either the defendant No. 1 or the plaintiff as to how they were issuing receipts of the above description.

11. From the evidence it appears that although defendant No. 1 was in-charge of the management of the chawl during 1946 to 1952, the actual collection from the individual tenants was made by the Jamadar (caretaker) who generally signed the receipts and handed over the collected amount to the defendant No. 1. The tenant Nathaji (D.W. 2) has said that Maganji Jamadar used to prepare the receipts. It has been argued before us on behalf of the plaintiff that the receipts were filed after the examination of the plaintiff was over and so he could not explain the same, specially the one receipt issued under his signature. It is significant to note that the cases of the plaintiff, the defendant No. 1 and the other defendants excepting defendants 6 to 12 are common so far the Naroda chawl was

concerned and the turn of these defendants leading evidence at the trial of the suit came later. The evidence of Chandrakanta was closed on 29. 9. 1964 and the witnesses for the defendant No. 1 were examined on 20.10 1964. Besides, the plaintiff could have re-examined himself if he had any explanation to offer. The cross-examination of D. W. 2 on his behalf also indicates that no suggestion to the witness by way of explanation was made. In his evidence plaintiff stated that he was also collecting the rent from the different tenants in chawl at the instance of defendant no, 1 and he used to hand over the collections to him. He admitted the fact that there were counter-foils which remained with the defendant No. 1, The High Court while examining this aspect accepted and relied on Ext. 250 signed by the plaintiff, but failed to appreciate the significance of the description of the Naroda chawl on the receipt as the property of the defendant No. 6. Similar is the position of the defendant No. 1 who did not come to the witness box at all. Chandrakanta examined herself as D.W. 3 and supported her case. Although there are some minor discrepancies in her deposition, the same is consistent with the documents and the circumstances in the case and appears to be reliable.

12. While reversing the finding of the trial court that Chandrakanta was in exclusive possession of the chawl not only from 1952 onwards but even earlier since 1946, the High Court was mainly impressed by three items of the evidence, namely, i) certain account books claimed to be the books of the joint family, ii) several Income-Tax returns filed by the defendant No. 1, and iii) a document of agreement, Ext. 167. So far the Income-Tax papers are concerned, they are of the period after 1952 and it has already been stated earlier that the High Court has agreed with the trial court that since 1952 the defendant No. 6 was in adverse possession of the chawl. In view of this finding, with which we fully agree, the Income-Tax documents do not have any impact, except showing that the author of these returns was falsely including income therein which did not accrue to the family. So far the account books and the deed of agreement are concerned it will be necessary for appreciating their true nature and impact on this case, to consider some more facts.

13. The account books were produced by the defendant No. 1 with a list of documents, Ext. 123. The defendant No. 1, however, did not lead any evidence with respect to the same when his turn at the trial came. As mentioned earlier, he personally avoided the witness box, but examined some witnesses who did not attempt either to prove the books or speak about their authenticity. The books were admitted in evidence and marked as exhibits on the statement of the plaintiff which he made in cross-examination. Some of the books were shown to him and he admitted that they were in his hand writing, but immediately added:

> I have written them as per the instructions of defendant No. 1 and as directed by him. They are maintained from month to mouth.
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> The income from the Naroda chawl which was admittedly very small as compared to the vastness and the present value of the property, was included in the account books. According to the case of the respondent the books are authentic, and disclosed the true state of affairs. There was considerable discussion at the bar before us as well as before the High Court as is apparent from the judgment under appeal, relating to the law of evidence dealing with account books. Reliance was placed on Section 34 of the Indian Evidence Act which provides that entries in books of account regularly

> kept in the course of business are relevant whenever they refer to a matter into which the Court has to enquire. It has been contended on behalf of the respondents that since the plaintiff stated that the books were being maintained from month to month the requirement of law was satisfied. Mr. Mehta, the learned Counsel for the appellant argued that apart from the formal proof of the execution of the document, the party relying thereon was under a duty to lead evidence in support of the correctness of the entries in the books which is completely lacking here. Besides, it was pointed out that the relevant books are merely joint khatabahis of Samvat 2005 to 2006 equivalent to 1948 to 1949 without the support of primary evidence of the cash books. The other relevant documents which are admittedly in possession of the defendant No. 1 have not been produced, including the account books of other years during the crucial period, the Income-Tax returns and assessment orders for the period 1946 to 1952 and the counterfoil rent receipts

14. It is apparent from the evidence that nobody takes the responsibility of supporting the correctness of the entries in the account books. When they were produced in Court the plaintiff filed his objection as per his purshis, Ext. 172 (page 368 of the paper book). Many of the documents produced by the defendant No. 1 were accepted, but the- account books which were serial Nos. 123-75 to 123-97 of the Mist Ext. 123 were in express terms not admitted The plaintiff said that they might be exhibited, but subject to his objection. The defendant No. 6 also filed her objection as per the purshis Ext. 275. The plaintiff did not make any statement supporting the books in his examination in chief and only in reply to the question of the cross-examining lawyer of the defendant No. 1, he stated as mentioned earlier. It is significant to note that by saying that he had written as per the instructions of the defendant No. 1 he made it clear that he could not vouchsafe for their reliability. In spite of this situation, the defendant No. 1 could not summon courage to support them either personally or through any witness. No reason has been suggested at all on his behalf as to why he did not produce the other important documents in his possession which would have supported the account books and the joint case of the parties resisting the appellants' claim. In view of all these circumstance, we have no hesitation in rejecting the account books as not reliable.

15. So far Ext. 167 is concerned, the High Court has relied upon it as the Naroda chawl has been treated by the document as belonging to the joint family. It was executed on 24.10. 1954 by the plaintiff and his three brothers but not by Jayantilal, the husband of defendant No. 6, although he is also shown as a party thereto. The brothers appear to have settled their dispute with respect to different items of property and the disputed Naroda chawl is shown as the seventh item in the list of properties. Although the four brothers personally signed the document, so far Jayantilal's branch was concerned the signature of Narendra, defendant no, 7, who was a minor then, was taken. Reliance has been placed on the attestation of Bapalal, the father of the executants, Two days earlier, i.e., on 22.10. 1954, he had executed a release deed, Ext. 222 giving up his right in the family properties for a sum of money named therein. He was already staying in Vrindavan for sometime past and proposed to spend the rest of his life there. The release deed, however, did not contain any list of properties and the document, therefore, is not of any help to either side. So far the agreement Ext. 167 is concerned, it has not been stated by anybody that Bapalal went through its contents or that somebody read the same to him before he attested it. There is no presumption that an attesting

witness of a document must be assumed to be aware of its contents. What is significant, however, is that it was executed in 1954 when the defendant No. 6 was in adverse possession to the exclusion of the defendant no 1 and the other members of the family, and Jayantilal did not join the document and his brothers chose to get the signature of his minor son. This is consistent with their dishonest attempt to include the income from the chawl in the Income-Tax returns of the period after 1952, when the defendant no 6 undoubtedly was in exclusive possession. As has been stated earlier, in 1952 there was a direct confrontation between them on the one hand and the defendant No. 6 on the other, when public notices were published in 'Sandesh'. If their case about their earlier possession had been true they would have produced their Income-Tax returns and the assessment orders of that period, i.e., 1946 to 1952. The family was possessed of vast properties and was paying Income-Tax. The entire circumstances lead to the irresistible conclusion that after the defendant No. 1 was removed by the defendant No. 6 from the management of the disputed Naroda chawl he. and the other members of the family started creating evidence in support of their false claim. We do not in the circumstances place any reliance on this deed of agreement.

16. So far the oral evidence in the case is concerned, the plaintiff, Vadilal examined himself as a witness, but was not supported by any other member of the family, although his brothers, Gulabchand and Kantilal, defendants 1 and 2 respectively, were alive when the case was heard in the trial court. Even his nephew, Rajnikant, defendant No. 5, son of deceased Ramanlal did not prefer to come to the witness box. The husband of the Defendant No. 6, Jayantilal had died in 1956, i.e., about 3-4 years before the institution of the suit. Chandrakanta examined herself in support of her case and was cross-examined at considerable length. Her son, Narendra, defendant No. 7, who was minor in 1954 when Ext. 167 was executed, was also examined as a witness. After the death of his father, Jayantilal in 1956, he started collecting the rent of the chawl, and as stated earlier both the courts have concurrently held in favour of the exclusive possession of the defendant No. 6 from 1952 onwards. The plaintiff, however, claimed that the chawl was in the possession of the family even later than 1952. We have taken through his evidence and the evidence of Chandrakanta in extenso by the learned Counsel for the parties, who made long comments thereon during their arguments. Both the judgments of the trial court and the High Court have discussed the evidence at length and we do not consider it necessary to once more deal with them in detail. We agree with the reasons given by the trial court for accepting the case and the evidence of the defendant No. 6 and rejecting the plaintiff's oral evidence and the case of the respondents. The plaintiff contradicted himself so seriously during his examination that at one stage he had to expressly admit that several of the statements made in his examination in chief were 'false' (see paragraph 25). It was demonstrated by the further cross-examination that he had made many mare incorrect statements. On the other hand, Chandnkanta's evidence is far superior. Although she also made some inconsistent statements, but the discrepancies did not relate to any matter of vital importance, Her evidence substantially is reliable and is supported by important circumstances of (i) the mutation of her name in place of Bapalal on the basis of a statement of the latter ; (ii) the description of the chawl as belonging to her on the printed rent receipts given to the tenants out of which some were issued by the defendant No. 1 and the plaintiff, and (iii) the suppression of vital materials in possession of the defendant No. 1 which were withheld from the Court. The conduct of the parties in not filing the suit before 1960 is also consistent with the correctness of her case. When the defendant No. , 1 was effectively removed from the management of the property by the defendant No. 6 in 1952, Bapalal

was alive. The defendant No. 1 as also the other members of the family contesting her claim kept quiet and did not risk starting a litigation during his life time. Even in 1960 it was the plaintiff and not the defendant No. 1 who instituted the present suit in which he included the Naroda chawl in the schedule of properties to be partitioned. The defendant No. 1 was managing the affairs of the family, but did not take any steps to dislodge the defendant No. 6 from the chawl. The impugned judgment indicates that there were serious differences between the plaintiff and the defendant No. 1 on other items of property and the main reason for the plaintiff to file the suit does not appear to be his claim to the Naroda chawl. We do not consider it necessary to reiterate the other reasons given in the trial court judgment in support of the decision in favour of the appellant, with which we agree. We, therefore, hold that the defendant no 6 remained in exclusive adverse possession of the disputed Naroda chawl right from 1946 onwards till the suit was filed in 1960.

17. Mr. Dholakia, the learned Counsel for the contesting respondents contended that since the chawl has remained in actual possession of the tenants, Bapalal or the family must be held to be in symbolic possession in 1946 and for that reason the defendant No. 6 also can not be treated to have come in actual possession of the property, which could have permitted her to prescribe a title in the chawl. The learned Counsel further argued that since the defendant No. 1 and the plaintiff were actually collecting rent from the tenants they also must be held to be in joint possession and, therefore, the Defendant No. 6 can not succeed as she has not been able to prove their ouster. The other members of the joint family will also be entitled to rely on this aspect so as to successfully defend their right. Reliance was placed on the decision of the Patna High Court in Hari Prasad Agarwalla and Anr. v. Abdul Haq and Ors. ; in support of the argument that for adverse possession actual physical possession is necessary and mere constructive possession is not sufficient. We are afraid, it is not possible to accept the argument.

18. The subject matter of dispute in the present case is the title to the chawl as the owner-landlord subject to the tenancy of the tenants in possession. Neither the plaintiffs nor the defendants are claiming the actual physical possession of the chawl by eviction of the tenants Any reference to the actual physical possession of the tenant is, therefore, wholly irrelevant for the purpose of the present controversy. It has to be remembered that the title to the chawl as owner, subject to the tenancy was an interest in immovable property so as to be covered by Article 144 of the Indian Limitation Act, 1908, which specifically mentioned, "...or any interest therein". These words were retained in Article 65 of the new Limitation Act. It is true that it is the intention to claim exclusive title which makes possession adverse and this animus possidendi must be evidenced and effectuated by the manner of occupancy which again depends upon the nature of the property. The manner of possession depends upon the kind of possession which the particular property is susceptible. That possession to the extent to which it is capable of demonstration must be hostile and exclusive and will cover only to the extent of the owner's possession. In the present case the parties have been fighting for the rent from the chawl so long as it continues in possession of the tenants. Before the gift of 1946 the defendant No. 1 was collecting the rent and he continued to do so even thereafter till 1952. The appellant has, however, established her case that the defendant No. 1 acted as her agent after 1946 and when he repudiated this agency in 1952 he was effectively removed from the management of the chawl. Since 1946 the tenants attorned to the defendant No. 6 and paid rent to her under printed receipts announcing her onwership, but of course through her agent the defendant No. 1. The actual

physical possession of the tenants in the circumstances would enable the appellant to establish her prescriptive title. The decision in Uppalapati Veera Venkata Satyanarayanaraju and Anr. v. Josyula Hanummamma and Anr. (1963) 3 SCR 910, indicates that if a tenant makes an attornment in favour of a person who is not the true owner and follows by paying the rent to him, such a person must be held to have effective possession. The landlord must be deemed to be in possession through his tenant is also demonstrated by another illustration. It the tenant trespasses over the neighbour's land treating it to be covered by his tenancy and remains in possession for requisite period so as to prescribe a title thereto, his interest therein is limited to the interest of the tenant and his landlord acquires the title of the owner. The conduct of such a tenant has been aptly described as stealing for the landlord, (see I.L.R. 10 Calcutta 820 and (1949) 54 C.W.N. 879). The fact that the tenants have been in actual physical possession of the chawl is, in the circumstances, of no assistance to the respondents. What is material is that they paid the rent to the defendant No. 6.

19. There is no merit in the further argument that the defendant No. 1 must be treated to be in joint possession as he was actually collecting the rent from the tenants. It is well settled that the possession of the agent is the possession of the principal and in view of the fiduciary relationship the defendant No. 1 cannot be permitted to claim his own possession. This aspect was well emphasised in David Lyelly v. John Lawson Kennedy 1889 XIV H.L. (E) 437, where the agent who was collecting the rent from the tenants on behalf of the owner and depositing it in a separate earmarked account continued to do so even after the death of the owner. After more than 12 years of the owner's death his heir's assignee brought the action against the agent for possession and the agent defendant pleaded adverse possession and limitation. The plaintiff succeeded in the first court. But the action was dismissed by the Court of Appeal. The House of Lords reversed the decision of the Court of Appeal and remarked: ''For whom, and on whose behalf, were those rents received after Ann Duncan's death ? Not by the respondent for himself, or on his own behalf, anymore than during her life time". Emphasising the fiduciary character of the agent his possession was likened to that of trustee, a solicitor or an agent receiving the rent under a power of attorney. Another English case of Williams v. Pott L.R. XII Equity Cases 149, arising out of the circumstances similar to the present case was more interesting. The agent in that case was the real owner of the estate but he collected the rents for a considerably long period as the agent of his principal who was his mother. After the agent's death his heir claimed the estate. The mother (the principal) had also by then died after purporting by her will to devise the disputed lands to the defendants upon certain trusts. The claim of the plaintiff was dismissed on the plea of adverse possession. Lord Romilly, M.R., in his judgment observed that since the possession of the agent was the possession of the principal, the agent could not have made an entry as long as he was in the position of the agent for his mother, and that he could not get into possession without first resigning his position as her agent which he could have done by saying : "The property is mine ; I claim the rents, and I shall apply the rents for my own purpose". The agent had thus lost his title by reason of his own possession as agent of the principal. A similar situation arose in Secretary of State for India v. Krishnamoni Gupta 29 Indian Appeals 104, a case between lessor and lessee. There the proprietors of the land in dispute, Mozumdars were in actual physical possession but after getting a settlement from the Government in ignorance of their title. The Government contended that the possession of the Mozumdars was, in the circumstances, the possession of the Government claiming the proprietary right in the disputed land that such possession was in exclusion and adverse to the claim of the Mozumdars to be proprietors

thereof. The plea succeeded. It was observed by the Judicial Committee.

It may at first sight seem singular that parties should be barred by lapse of time during which they were in physical possession, and estopped from disputing the title of the Government. But there is no doubt that the possession of the tenant is in law the possession of the landlord or superior proprietor, and it can make no difference whether the tenant be one who might claim adversely to his landlord or not. Indeed, in such a case it may be thought that the adverse character of the possession is placed beyond controversy.

20. We are, therefore, of the view that the defendant No. 6 was in adverse possession from the period 1946 to 1952 through her agent defendant No. 1 and thereafter through her husband, Jayantilal and son, defendant No. 7 till 1960 when the suit was filed, the total period being more than 12 years.

21. For the reasons mentioned above, the decision of the High Court must be held to be erroneous. Consequently the decrees for accounts against the defendants No. 6 and 7 must also go. Accordingly, the appeals are allowed, the decision of the High Court, so far the subject matter of the present appeals is concerned, is set aside and that of the trial court restored. In view of the close relationship of the parties and the other circumstances, the parties are directed to bear their own costs throughout.