B.L. Sreedhar & Ors vs K.M. Munireddy (Dead) And Ors on 5 December, 2002

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Bench: Shivaraj V. Patil, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  2971 of 1995
Appeal (civil)  2972 of 1995

PETITIONER:
B.L. Sreedhar & Ors.

RESPONDENT:
K.M. Munireddy (dead) and Ors.

DATE OF JUDGMENT: 05/12/2002

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

These appeals by special leave are directed against the judgment of learned Single Judge of the Karnataka High Court, which was rendered in a First Appeal under Section 96 of the Code of Civil Procedure, 1908 (in short 'the CPC'). Same was directed against the judgment and decree passed by the First Additional City Civil Judge, Bangalore City in Original Suit No. 582 of 1982. The suit one for declaration and injunction was filed by respondent No.1 B.K. Lakshmaiah, against his sons B.L. Ganesh-defendant no.3, B.L. Sudhakar-defendant no.4, B.L. Babu-defendant no.5 and B.L. Sreedhar-defendant no.6, and defendant nos.1 and 2, 7 to 9 who were alienees of certain properties which were aliented by defendant no.3. Lands were alienated first to defendants 7 to 9 who subsequently alienated them to defendant nos. 1 and 2. The factual background needs to be noted in detail:

> Plaintiff had two wives, 9 sons, 4 daughters and in addition, two pre- deceased daughter and son. The defendants 3 to 6 were sons through the first wife, while three

sons and one daughter through the second wife were not parties to the suit. According to the plaintiff, Bovi Googa/Bingooba son of Munia was the original Barawardar, Thoti of Bommanahalli Village had service inam lands assigned to his hereditary office as an emolument in consideration of the services. Kaverappa, father of plaintiff-Lakshmaiah succeeded to hereditary office and also to the service inam lands and other properties belonging to his father by Govt. grant. He died in 1959, and plaintiff succeeded to the Village Office as well as to the properties. The suit Sy. No.3 measured 5 acres 4 guntas out of which suit schedule properties 1 acre 28 guntas, according to plaintiff was under the possession and enjoyment of the Hindu undivided family.

The Mysore Village Offices Abolition Act, 1961 (in short 'the Act') came into force w.e.f. 1.2.1963. It repealed the Mysore Village Offices Act, 1908 which provided for hereditary office. Under Section 4 of the Act the lands were resumed though there was a provision for re-grant to a holder of the village office under Section 5. Section 5(3) of the Act prohibits transfer, alienation of the land, except by partition, for a period of 15 years, without previous consent of the Deputy Commissioner. Plaintiff claimed that he and his sons were living together in joint mess and shelter and he was Karta of Hindu undivided family. Plaintiff and defendant no.3 applied for re-grant under the Act. By order dated 4.5.1972, the Assistant Commissioner, Bangalore passed an order re-granting the land. Plaintiff gave his consent for re-grant of entire land in favour of the defendant no.3. On 5.5.1972 and 3.6.1972 defendant no.3 applied for permission to sell 1 acre 28 guntas of land. The permission was granted accordingly. On 23.10.1072 defendant no.3 sold lands in favour of defendant nos. 7 to 9 who on the same date sold the land to defendant nos. 1 and 2. The sale-deeds (exhibits D11 and D12) were executed by defendant no. 3 and defendant nos. 4 to 6. Mother of minor defendant nos. 4 to 6 acted as legal guardian. The suit was filed on 24.2.1982, as according to the plaintiff, defendant nos. 1 and 2 starting dispossessing to the plaintiff. The relief sought for were as follows:

i) for a declaration that the plaintiff is the absolute owner of the suit- schedule property;

ii) and consequently for a permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the suit-schedule property either by themselves or through their agents or assignees or coolies;

iii) for costs of these proceedings, and the court may deem fit to grant in the facts and circumstances of the case and in law.

Written statement was filed by defendant nos. 1 and 2 who pleaded estoppel and also specifically pleaded that defendant no.3 was competent to sell the lands in question. Defendant no.3 in his written statement stated that he had borrowed money and the deeds in question were hypothecation deeds and were not sale-deeds. He conceded plaintiff's prayer for decree in terms of the reliefs

sought for.

The trial court framed several issues which are as follows:

> 1. Whether the plaintiff proves that S.No.3 situated in Bommanahalli was regranted by the Assistant Commissioner to the plaintiff and the 3rd defendant on behalf of the joint family of the plaintiff and the defendants 3 to 8?
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> 2. Whether the plaintiff proves that the sale deed dated 23.10.1972 executed by the 3rd defendant in favour of Chikka Kaverappa and others is in fact only a mortgate?
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> 3. Whether the plaintiff proves that the said sale is hit by the provisions under the Karnataka Village Office Abolition Act, 1961 and therefore is void under law?
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> 4. Whether the plaintiff proves his lawful possession over the suit property on the date of suit?
>
> 5. Whether the defendants 1 and 2 prove that the plaintiff is estopped from questioning the sale transaction under the sale deed for the reasons stated in para-7 of their written statement?
>
> 6. What order?

On consideration of evidence brought on record, the trial court, inter alia, held that (1) the principles of estoppel were not applicable, (2) there was sale and no mortgage, (3) sale on behalf of defendant no. 4 to 6 was a nullity, various orders passed by the High Court in different proceedings and the Tribunal constituted under the Act were of no consequence as the plaintiff was not a party, plaintiff and his sons were in lawful possession, defendant nos. 1 and 2 and defendant nos. 7 to 9 were not examined to controvert stand of the plaintiff that he was in possession of the land. Evidence tendered by DWs 3 and 4 about possession of defendants 1 and 2 were not sufficient to overrule evidence of PWs 1 to 3, since possession follows title and plaintiff was in lawful possession over the suit land. In conclusion it was held that plaintiff defendant 4 to 6 are joint owners over 4/5th extent of suit land and defendant nos. 1 and 2 have a right to seek partition of 1/5 share of defendant no.3, and injunction was granted against defendant nos. 1 and 2.

As noted above, the decision of the trial court was assailed in First Appeal before the High Court. By the impugned judgment, High Court found that the rule of estoppel and logic of res judicata were applicable to the facts of the case. Several circumstances were highlighted to so conclude. The conduct of the plaintiff and defendant no.3 was highlighted. Specific references were made to the fact that though the deeds in question were executed in 1972, for about 10 years there was no challenge. There was series of litigations between defendant nos. 3 on one hand and defendant nos. 1 and 2 on the other. In all these proceedings the adjudication was adverse to defendant no.3. Plea of the plaintiff that he was unaware of the proceedings was not accepted in view of the fact that according to his own showing he was staying jointly with defendant no.3. Reference was made to a

proceeding before the Tribunal in which defendant no.3 had filed an application for grant of occupancy right. High Court noticed that the decision of the Land Tribunal was vitiated because plaintiff was a member of the Tribunal. Without going in detail, as to whether plaintiff had participated in the proceeding at the time of hearing, it was thought proper to remit the matter back to the Tribunal for fresh adjudication. On such adjudication, the claim of defendant no.3 was rejected. A writ petition and writ appeal filed before the High Court in respect thereto were unsuccessful.

In support of the appeals filed by the plaintiff and defendant no.3, the main plea is the principle of estoppel and res judicata are not applicable. The inferential conclusions of the High Court about the plaintiff's role in various proceedings are contrary to material on record. So far as the then minor sons' claims are concerned, it was held that they are barred by time, having not been presented within the specified time after attaining majority. It was submitted that the suit was on behalf of joint family. Further, the conclusion that plaintiff was not entitled to specific relief under Section 34 of the Specific Relief Act, 1963 (in short 'Specific Relief Act') he having not come to court with clean hands has no foundation or basis. The conclusion of the High Court to the effect that litigations by defendant no.3 were instituted as for himself, plaintiff and defendant nos. 4 to 6 is again based on surmises. High Court has lost sight of the fact that because of defendant no.3's wayward conduct relationship with him had turned sour and practically there was no connection between the plaintiff and other members of his family and defendant no.3. The suit was filed by plaintiff and other members of the family. On re-grant the benefit enures to the entire family.

Per contra, learned counsel for the respondents submitted that the factual position highlighted by the High Court clearly goes to show that there was a mischievous attempt to deprive the alienees of the legitimate rights. High Court has rightly came to the conclusion that plaintiff was estoppel from raising the pleas. There is no truth in the submission that the suit was filed by the plaintiff for himself and other family members as the reliefs claimed make the position abundantly clear that plaintiff had claimed absolute ownership. The plea of strained relationship between plaintiff and defendant no.3 has been taken for the first time before this Court. There was no plea to this effect in the suit, and not even before the High Court.

First we deal with the stand of the appellant that on re-grant benefit enures to the members of the family. Learned counsel for the respondents fairly accepted this legal position and in our view rightly because of what has been said by this Court in Nagesh Bisto Desai and Ors. v. Khando Tirmal Desai and Ors. (1982 (2) SCC 79), Kalgonda Babgonda Patil v. Balgonda Kalgonda Patil and Ors. (1989 supp.(1) SCC 246), and New Kenilworth Hotels (P) Ltd. v. Ashoka Industires Ltd. and Ors. (1995 (1) SCC 161). Therefore, indisputable legal position is that even if grant is made under the Act to any member of the family, the benefit enures to the whole family. Having cleared this legal position, the contentious issues need to be noted. First comes the question whether rule of estoppel is applicable. The factual background highlighted by the High Court to hold about its applicability is as follows.

Though the plaintiff was not a party to several proceedings referred to by the parties, conduct of the plaintiff clearly shows in the background of evidence tendered that he was conscious of the

proceedings. One instance in this regard would suffice. Defendant no.3 filed an application in Form-7 of the Karnataka Land Reforms Act, 1961 claiming occupancy rights in respect of particular items of agricultural land. Defendant nos. 1 and 2 claimed ownership on the land, they were duly notified and after hearing both sides. Tribunal allowed claim of defendant no.3. It was brought to the notice of the High Court when challenge was made to the order of the Tribunal, that plaintiff was one of the members of the Tribunal. He had participated in the proceedings in question though he had retired in the middle. The Tribunal cannot be said to have not been influenced to some extent at least by his presence. High Court in writ petition No.4430 of 1978 referred to orders of the Tribunal and came to hold that on the date of hearing plaintiff was withdrawn from the proceedings. No definite material was placed before it to show as to what was done on the date when the petition had been heard and orders were pronounced. To meet the ends of justice, High Court quashed order passed by the Tribunal and directed further inquiry and further directed to render a decision in accordance with law. Undisputedly, the Tribunal re-heard the matter and held against the defendant No. 3. Attempts before the High Court did not bring any result.

From the material on record it is clear that there was series of litigations to which reference has been made by the High Court where the contesting parties were defendant no.3 and defendant nos. 1 and 2. It would be hard to believe that plaintiff had no knowledge of the proceedings though he was living jointly with defendant no. 3 and his other children. No satisfactory explanation has been given by him in this regard. Some lands were sold by the plaintiff, which were contended to be for the benefit of the family. Same logic would apply to the land sold by the defendant no.3. In November, 1979 Tahsildar had initiated proceedings for resumption of land on the ground of alienation without permission. Notice issued for the purpose was quashed by the High Court in W.P. No.19578/79 by order dated 19.8.1980.

In the plaint though reference was made to the property as jointly family property, the reliefs claimed for, show that plaintiff sought for declaration that he was the absolute owner of the property. It could not be explained by learned counsel for the appellant, as to how in the reliefs sought, that is, absolute ownership, the dispute could be treated to be one on behalf of the joint family. It has also not explained as to why defendant no. 3 had filed the application claiming occupancy rights, and when on the date of suit, defendant nos. 3 and 4 were admittedly majors they were not added as plaintiffs. Strained relationship as pleaded before this Court, nowhere find place in the suit. Interestingly in the written statement of defendant no.3, it was stated that the deeds in question were not sale-deeds but were hypothecation deeds. The suit was not for partition. Though plea relating to manipulation of records, the same has not been rightly accepted by the court below. Though in the revenue records for some years entries were in the name of the plaintiff, but varying entries exist.

It would be appropriate to deal with the concept of estoppel which appears to be the basic foundation of the High Court's conclusions in the background of afore-noted factual conclusions.

Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that

belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. [See Sunderabai and Anr. v. Devaji Shankara Deshpande (AIR 1954 SC 82)].

> "Estoppel is when one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to say the truth" Co.Litt., 352(a), cited in Ashpital v. Byron, 3B and S. 474(489); Simon v. Anglo American Telegraph Co., (1879) 5 Q.B.D. 188 C.A., per Bramwell L.J. at p. 202; Halsbury, Vol. 13, Para 488. So there is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it be true or not. Estoppel, or conclusion, as it is frequently called by the older authorities, may therefore be defined as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. Halsbury, Vol. 13, para. 448. The rule on the subject is thus laid down by Lord Denman, in Pickard v. Sears, 6 Ad. & E. 469 at p. 474: "But the rule is clear, that, where one by his words or conduct willfully causes another to believe the existence of a certain state of things, and induces him to act to that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time." "The whole doctrine of estoppel of this kind, which is fictitious statement treated as true, might have been founded in reason, but I am not sure that it was. There is another kind of estoppel - estoppel by representation- which is founded upon reason and it is founded upon decision also." Per Jessel, M.R. in General Finance & Co. v. Liberator, L.R. 10 Ch.D.15(20). See also in Simon v. Anglo-American Telegraph Co., L.R. 5 Q.B.D.202 Bramwell, L.J. said" An estoppel is did to exist where a person is compelled to admit that to be true which is not true and to act upon a theory which is contrary to the truth."

On the whole, an estoppel seems to be when, in consequences of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a particular state of facts. Estoppel is based on the maxim, allegans contrarir non est audiendus (a party is not be heard to allege the contrary) and is that species of presumption juries et de jure- (absolute or conclusive or irrebutable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done; it is in truth a kind of argumentum ad hominem.

> "In our old law books," said Mr.Smith in his notes to the Duchess of Kingston's case, "truth appears to have been frequently shut out by the intervention of an estoppel, where reason and good policy required that it should be admitted.... However, it is in no wise unjust or unreasonable, but, on the contrary, in the highest degree reasonable and just, that some solemn mode of declaration should be provided by law, for the purpose of enabling men to bind themselves to the good faith and truth of representations on which other persons are to act."

> "An estoppel is not a cause of action- it is a rule of evidence which precludes a person from denying the truth of some statement previously made by himself." Per Lindley L.J. in Low v. Bouveria, (1831) 3 Ch. 82 at p.101. In the same case, at p.105.Bowen L.J. added:" Estoppel is only a rule of evidence; you cannot found an action upon estoppel."

Estoppel though a branch of the law of evidence is also capable of being viewed a substantive rule of law in so far as it helps to create or defeat rights, which would not exist or be taken away but for that doctrine.

Estoppel is a complex legal notion, involving a combination of several essential elements statement to be acted upon, action on the faith of it, resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it may be so described. But the whole concept is more correctly viewed as a substantive rule of law... Estoppel is different from contract both in its nature and consequences. But the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the cause of action. But the whole case of estoppel fails if the statement is not sufficiently clear and unqualified"

> (per Lord Wright in Canada & Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Stemships Ltd. (1946) 3 W.W.R. 759 at p. 764).
>
> "The essential factors giving rise to an estoppel are, I think-
>
> "(a) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation was made.
>
> "(b) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made. "(c) Detriment to such person as a consequence of the act or omission where silence cannot amount to a representation, but, where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted." (Per Lord Tomlin, Greenwood v. Martins Bank (1933) A.C.51.) See also Thompson v. Palmer, 49 C.L.R. 547; Grundt v. Great Boulder, 59 C.I.R.675; Central Newbury Car Auctions v. Unity Finance (1957)1 Q.B.371SD.MN "Estoppe,' commeth of a French word "estoupe", from whence the English word stopped, and it is called an estoppel, or conclusion, because a man's owne act or acceptance stoppeth or closeth up his mouth to allege or plead the truth; and Littleton's case proveth this description" (Co.Litt.352 a, where it is said estoppel is of three kinds, i.e., matter (1) of record, (2) in writing, i.e, semble, by deed, (3) in Paiis). To the same effect is the definition in Termes de la Ley. (See Stroud's Judicial Dictionary, Fourth Edition, Page 943).

> "An estoppel," says Lord Coke, "is where a man is concluded by his own act or acceptance to say the truth." Mr. Smith, in his note to the Duchess of Kingston's case, characterizes this definition as a little startling but it nevertheless gives a good idea of what it is, by no means easy to include within the limits of a definition. (1 Smith L.C. 760) Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. An estoppel, which enables a party as against another party to claim a right of property which in fact he does not possess is described as estoppel by negligence or by conduct or by representation or by holding out ostensible authority.
>
> Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppel can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in cases affecting rights. Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. It would be useful to refer in this connection to the case of Depuru Veeraraghava Reddi v. Depuru Kamalamma, (AIR 1951 Madras 403) where Vishwanatha Sastri, J., observed:
>
> "An estoppel though a branch of the law of evidence is also capable of being viewed as a substantive rule of law in so far as it helps to create or defeat rights which would not exist and be taken away but for that doctrine."

Of course, an estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. But where such is not the case a right may be claimed as having come into existence on the basis of estoppel and it is capable of being enforced or defended as against the person precluded from denying it.

In his illustrious book "Law of Estoppel" 6th Edition, Bigelow has noted as follows:

> "Situations may arise, indeed, in which a contract should be held an estoppel, as in certain cases where only an inadequate right of action would, if the estoppel were not allowed, exist in favour of the injured party. In such a case the estoppel may sometimes be available to prevent fraud and circuity of action."

In another illustrious book "Estoppels and the Substantive Law" by Arthur Caspersz under title 'Conduct of Indifference or Acquiescence' it has been noted as follows:

> "40. It is, however, with reference to the third class of cases that the greatest difficulty has arisen, especially where statements have been made, expressly or by implication, which cannot properly be characterized as representations at all. It must now be regarded as settled that an estoppel may arise as against persons who have not willfully made any misrepresentation, and whose conduct is free from fraud or negligence, but as against whom inferences may reasonably have been drawn upon

which others may have been induced to act.

The doctrine of Acquiescence may be stated thus:

"If a person having a right, and seeing another person about to commit, or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act." (Duke of Leeds v. Earl of Amherst 2 Ph. 117 (123) (1846). This is the proper sense of the term acquiescence, "and in that sense may be defined as acquiescence, under such circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct." (De Bussche v. Alt. L.R. 8 Ch.D. 286 (314). Acquiescence is not a question of fact but of legal inference from facts found. (Lata Beni Ram v. Kundan Lall, L.R. 261 I.A. 58 (1899).

The common case of acquiescence is where a man, who has a charge or incumbrance upon certain property, stands by and allows another to advance money on it or to expend money upon it. Equity considers it to be the duty of such a person to be active and to state his adverse title, and that it would be dishonest in him to remain willfully passive in order to profit by the mistake which he might have prevented. (Ramsden v. Dyson L.R. 1 E & I, Ap. 129(140)(1865).

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42. In such cases the conduct must be such that assent may reasonably be inferred from it. The doctrine of acquiescence has, however, been stated to be founded upon conduct with a knowledge of legal rights, and as stated in some cases appears to imply the existence of fraud on the part of the person whose conduct raises an estoppel. The remarks of the Judicial Committee, however, in Sarat Chunder Dey v. Gopal Chunder Laha, (L.R. 19 I.A. 203) clearly extend the doctrine of estoppel by conduct of acquiescence or indifference to cases where no fraud whatever can be imputed to the person estopped, and where that person may have acted bona fide without being fully aware, either of his legal rights, or of the probable consequences of his conduct. In every case, as already pointed out, the determining element is not the motive or the state of knowledge of the party estopped, but the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.

Lapse of time and delay are most material when the plaintiff, by his conduct may be regarded as waiving his rights, or where his conduct, though not amounting to a waiver, has placed the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards asserted. When, however, an argument against a relief, otherwise just, is founded upon mere delay not amounting to bar by

> limitation, the validity of that defence must be tried by principles substantially equitable."

In Snell's Principles of Equity, 27th Edition, Chapter 3, 12 Maxims of Equity have been indicated. Of these maxims principles 5, 6 and 7 are relevant for the purpose of the case in hand. They are as follows:

> x x x x "5. He who seeks equity must do equity.
>
> 6. He who comes into equity must come with clean hands.
>
> 7. Delay defeats equities, or, equity aids the vigilant and not the indolo Vigilantibus, non dormientibus, jura subveniunt."

x x x x x The following passage from the "Law relating to Estoppel by Representation" by Geroge Spencer, Second Edition as indicated in Article 3 is as follows:-

> "It will be convenient to begin with a satisfactory definition of estoppel by representation. From a careful scrutiny and collation of the various judicial pronouncements on the subject, of which no single one is, or was perhaps intended to be, quite adequate, and many are incorrect, redundant, or slipshod in expression; the following general statement of the doctrine of estoppel by representation emerges; where one person ("the representor") had made a representation to another person ("the representee") in words or by acts and conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive), and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the represent in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the represent at the proper time, and in the proper manner, objects thereto."

In Article 1175 at page 637 of Halsbury's Laws of England, 3rd Edition, Volume 14, it is stated as follows:

> "Waiver is the abandonment of a right, and is express or implied from conduct. A person who is entitled to the benefit of a stipulation in a contract or of a statutory provision may waive it....."
>
> "The essence of waiver is "estoppel" and where thee is no "estoppel" there can be no "waiver", the connection between "estoppel" and "waiver" being very close. But, in spite of that, there is an essential difference between the time and that is whereas estoppel is a rule of evidence waiver is a rule of conduct. Waiver has reference to man's conduct, while estoppel refers to the consequences of that conduct."

A few decisions of this Court which have illuminatingly dealt with the concept of estoppel may be noted.

In S. Shanmugam Pillai v. K. Shanmugam Pillai (AIR 1972 SC 2069) it was observed that there are three classes of estoppels that may arise for consideration in dealing with reversioner's challenge to a widow's alienation. They are (1) that which is embodied in S.115 of the Evidence Act, (2) election in the strict sense of the term whereby the person electing takes a benefit under the transaction, and (3) ratification i.e. agreeing to abide by the transaction. A presumptive reversioner coming under any one of the aforesaid categories is precluded from questioning the transaction, when succession opens and when he becomes the actual reversioner. But if the presumptive reversioner is a minor at the time he has taken a benefit under the transaction, the principle of estoppel will be controlled by another rule governing the law of minors. If after attaining majority he ratifies the transaction and accepts the benefit thereunder, there cannot be any difference in the application of the principle of election. The effect would be the same. It may be that on attaining majority he has the option to disown the transaction and disgorge the benefit or to accept it and adopt it as his own. Whether after attaining majority the quondam minor accepted the benefit or disowned it, is a question to be decided on the facts of each case.

In Provash Chandra Dalui v. Biswanath Banerjee (AIR 1989 SC 1834), it was observed as follows:

> "21. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such right. It means the forsaking the assertion of a right at the proper opportunity. The first respondent filed suit at the proper opportunity after the land was transferred to him, and no covenant to treat the appellants as Thika tenants could be shown to have run with the land. Waiver is distinct from estoppel in that in waiver the essential element is actual intent to abandon or surrender right, while in estoppel such intent is immaterial. The necessary condition is the detriment of the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right. Thus voluntary choice is the essence of waiver for which there must have existed an opportunity for a choice between the relinquishment and the conferment of the right in question. Nothing of the kind could be proved in this case to estop the first respondent."

In Indira Bai v. Nand Kishore (1990 (4) SCC 668), it was observed as follows:

> "Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustice may have been perpetrated. Present case is a glaring example of it. True no notice was given by the seller but the trial court and the appellate court concurred that the pre-emptor not only came to know of the sale immediately but he assisted the purchaser-appellant in raising construction which went on for five months. Having

> thus persuaded, rather mislead, the purchaser by his own conduct that he acquiesced in his ownership he somersaulted to grab the property with constructions by staking his own claim and attempting to unsettle the legal effect of his own conduct by taking recourse to law. To curb and control such unwarranted conduct the courts have extended the broad and paramount considerations of equity, to transactions and assurances, express or implied to avoid injustice."

If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

It cannot be doubted that there may be cases in which there is deception by omission, silence may be treated as deception only where there is a duty to speak; in other words as Biglow points out in his book "Biglow on Fraud" (Volume 1 at page 597), ground of liability arises wherever and only where silence can be considered as having an active properly that of misleading.

In view of the factual conclusions arrived at by the High Court, which are perfectly in order, the appeals are bound to fail. The rule of estoppel has clear application, and in view of this finding it is not necessary to go into the question whether Explanation 6 of Section 11 C.P.C. has any application or not.

The appeals are accordingly dismissed.