K. Amarnath vs Smt. Puttamma on 13 July, 2000

Equivalent citations: ILR1999KAR4634, 2000(4)KARLJ55

Author: R.V. Raveendran

Bench: R.V. Raveendran

ORDER

R.V. Raveendran, J.

1. This is a landlord's petition under Section 50(1) of the Karnataka Rent Control Act, 1961 ('the Act', for short). The petitioner filed a petition under clauses (a), (h) and (j) of Section 21(1) of the Act against the respondent herein in regard to the petition schedule premises, alleging that the respondent was in occupation of the petition premises as tenant under him, on a monthly rent of Rs. 150/-. The petitioner also averred that the respondent was inducted as a tenant, by his father (H. Krishnamurthy); that subsequently he became the owner of the petition Schedule premises in pursuance of partition decree dated 14-10-1987 passed in O.S. No. 2030 of 1982 on the file of the City Civil Court, Bangalore; that for purposes of convenience, even after petitioner became the owner and landlord of the premises, his father continued to collect the rents, and that after the death of his father, the respondent was directed to pay the rents to the petitioner; and that the respondent has not paid the rents from February 1991, It is not necessary to refer to the pleadings relating to grounds of eviction under clauses (h) and (j) for the purpose of disposal of this petition.

2. The respondent denied that she was in occupation of the petition schedule premises as a tenant. She alleged that petitioner's father Krishnamurthy had mortgaged the petition schedule premises in her favour on 9-12-1984 for a sum of Rs. 10,000/-; that therefore the relationship between petitioner and respondent was that of mortgagor and mortgagee; that as she was in possession as a mortgagee, she was not liable to pay any rent, much less a rent of Rs. 150/- per month; and that, therefore, the eviction petition was not maintainable.

3. The petitioner examined himself as P.W. 1 and the respondent examined herself as R.W. 1 and her son as R.W. 2. After considering the evidence, the Trial Court has rejected the eviction petition by its order dated 18-3-1998 holding that the petitioner had failed to prove the jural relationship of landlord and tenant.

4. The Trial Court has based its decision on the following findings: (a) the petitioner had not produced any rental agreement executed by the respondent; (b) the petitioner had not produced any document to show that the rent was being paid to his father till 1989 by the respondent and thereafter to the petitioner; (c) that the respondent had produced a document styled as mortgage

deed (Ex. R-4) in support of her contention that the property had been mortgaged in her favour by petitioner's father for a consideration of Rs. 10,000/-; (d) that though the petitioner denied the signature appearing in Ex. R-4 as being the signature of his father, the said signature appeared to be the signature of petitioner's father when compared to the admitted signature of petitioner's father found in a certified copy of a sketch attached to the final decree (Ex. P. 1) in the partition suit; (e) that though Ex. R-4 could not be treated as a valid mortgage as it was not registered, it could still be looked into for the purpose of ascertaining the intention and conduct of the parties and the nature of possession of respondent and Ex. R-4 could not be excluded from consideration while deciding the question of jural relationship; (f) that respondent could be either described as a person in possession of schedule premises under leave and licence or can be described as a person in possession of schedule premises under Ex. R-4 or can be described as a person in unlawful possession of schedule premises, but not a tenant; and (g) that it was for the petitioner, who had approached the Court seeking eviction to clearly prove the jural relationship and that petitioner failed to prove that respondent was his tenant.

5. Ex. R-4 dated 9-12-1984, which is the basis for the Trial Court to come to the conclusion that the relationship between the parties is not that of landlord and tenant, is executed on a stamp paper of Rs. 5/- and is styled as 'Bhogyada Kararu' (agreement relating to usufructuary mortgage). It is said to have been executed by petitioner's father and the respondent. It recites that the respondent approached the petitioner's father stating that she required the petition schedule premises for her residence; that he agreed to make available the house for her residence in consideration of the respondent paying Rs. 10,000/-; that she need not pay the rent and he need not pay the interest and the respondent can stay upto 3 to 5 years and when she vacates the premises he will refund the sum of Rs. 10,000/- and that the petitioner's father will pay the property taxes.

6. The manner in which the Trial Court has considered the matter is clearly irregular. Whenever the document is sought to be marked in evidence, the Court is bound to consider the following three aspects; (a) what is the nature of the document; (b) whether it bears the requisite Stamp duty under the relevant Stamp Law; and (c) whether the registration of the document is compulsory. The decision on the first question, that is identifying or deciding the nature of the document is necessary to decide the other two questions relating to Stamp duty and registration. In this case, the 'Bhogyada Kararu' was confronted by the respondent's Counsel to the petitioner in his cross-examination. P.W. 1 (petitioner) denied the said document and denied that his father had signed the document. Therefore, it was not admitted in evidence, but was assigned an Exhibit Number (Ex. R-4) for identification purpose only. The following portion of petitioner's cross-examination is relevant:--

> Thus, the admissibility of the document was not decided and left open. Even when the respondent was examined, no attempt was made to have the said document admitted in evidence through her. The following answer was elicited in her examination-in-chief without attempting to exhibit the document through her:
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> Thus, the 'Bhogyada Kararu' was not exhibited at all.

7. However, the Trial Court has referred to and relied on the said document in its order, as if it is admitted in evidence.-

> "The respondent has taken the possession of the Schedule premises under Ex. R-4. Ex. R-4 may not be a valid document, because it is not registered under law. The said document can be looked into to verify about the nature of possession of the schedule premises by the respondent".

A document which has been marked only for the purpose of identification, is not admitted in evidence and cannot be looked into for any purpose. It cannot even be used for deciding the manner of entry into possession or for determining the nature of possession. Assigning an exhibit number only for identification purposes without admitting it in evidence and without deciding on the question of admissibility and leaving the question open for decision at a later stage, is a procedure neither contemplated under the Evidence Act, nor under the Code of Civil Procedure. The Courts should desist from adopting such a procedure. Such a procedure is as irregular as marking a document subject to objection, reserving the question of admissibility to be heard at the stage of arguments. Order 13 of CPC makes it clear that all documents on which the parties intend to rely on as substantive evidence, should be produced either with the pleadings or before settlement of issues, (In summary proceedings, where issues are not framed, the documents should be produced before commencement of evidence), or thereafter with an application assigning reasons for non-production. Parties may however produce a document for the limited purpose of confronting it to a witness during his cross-examination to contradict him or to refresh the memory of a witness. It is clear from Order 13, Rule 2 of the CPC read with Section 145 of Evidence Act, 1872 that what can be produced during cross-examination, to confront a witness to contradict him, is only his previous statement in writing or reduced into writing. A witness cannot therefore be confronted in cross-examination (without previous production as per law) a document executed by someone else. In this case, therefore, the document allegedly executed by petitioner's father, ought not to have been permitted to be confronted to petitioner in his cross-examination, without prior production as required by law.

8. When a document is admitted in evidence, it is marked in the manner prescribed in Order 13, Rule 4 of the CPC. When a document is rejected as inadmissible in evidence, an endorsement has to be made as prescribed under Order 13, Rule 6 of the CPC. When a document is not admitted, but is assigned a number only for identification purposes, then an endorsement to that effect should be made on the document. Such identification number should not be in the regular series of exhibit numbers, that is Ex. 'P' series of plaintiff or petitioner, or Ex. 'D' (or 'R') series of defendant or respondent, but should be in a completely different series. The Court shall also note in the evidence and in the order sheet that such document is not admitted in evidence, but is assigned a number for purposes of identification only. In this case, the Trial Court has not noted on the document that it is marked for identification purposes only. In the order sheet for the day (21-10-1997), the Trial Court has recorded "P.W. 1 fully cross- examined, Exs, R-4 to R-7 are marked during cross-examination". The procedure adopted, to say the least, is irregular.

9. When a document is produced and sought to be exhibited, the Court should decide whether it is admissible or not immediately, so that the parties will know whether such document could be relied on or not. If a document is not admitted, by refusing to mark it, the party may take steps to let in other relevant and permissible evidence to prove the document. On the other hand, if the document is marked in evidence, the parties may not choose to let in further evidence on that aspect. When the question of marking of the document is left open, the parties will have to proceed with the evidence with considerable uncertainty. Therefore, Courts should consider and decide the question of admissibility of a document sought to be exhibited, before proceeding further with the evidence. If the Court has any doubt, it may hear arguments on the question.

10. A duty is cast upon every Judge to examine every document that is sought to be marked in evidence. The nomenclature of the document is not decisive. The question of admissibility (with reference to Section 34 of Karnataka Stamp Act, or Section 35 of Indian Stamp Act and Section 49 of Registration Act) will have to be decided by reading the document and deciding its nature and classification. The tendency to mark documents without inspection and verification should be eschewed. Even while recording ex parte evidence or while recording evidence in the absence of the Counsel for the other side, the Court should be vigilant and examine and ascertain the nature of the document proposed to be marked and ensure that it is a document which is admissible. The Court should not depend on objections of the other Counsel before considering whether the document is admissible in evidence or not. Section 33 of the Stamp Act casts a duty on the Court to examine the document to find out whether it is duly stamped or not, irrespective of the fact whether an objection to its marking is raised or not. It should be borne in mind that once a document is admitted in evidence, it cannot be called in question thereafter on the ground that it was not duly stamped. Once the Court admits a document even wrongly, such admission becomes final and cannot be reopened. Hence, the need for dilligence not only on the part of the opposite Counsel, but also on the part of the Court having regard to the statutory obligation under Section 33 of Karnataka Stamp Act.

11. A combined reading of Sections 33, 34, 35, 37 and 41 of the Karnataka Stamp Act requires the following procedure to be adopted by a Court while considering the question of admissibility of a document with reference to the Stamp Act: (a) when a document comes up before the Court, it has to examine and determine whether it is properly stamped. When the other side objects to it, the Court should consider such objection and hear both sides; (b) after hearing, if the Court comes to the conclusion that the document has been duly stamped, it shall proceed to admit the document into evidence; (c) on the other hand, if the Court comes to the conclusion that the document is not stamped or insufficiently stamped, it shall pass an order holding that the document is not duly stamped and determine the Stamp duty/deficit stamp duty and penalty to be paid and fix a date to enable the party who produces the document to pay the Stamp duty/deficit Stamp duty plus penalty; (d) if the party pays the duty and penalty the Court shall certify that proper amount of duty and penalty has been levied and record the name and address of the person paying the said duty and penalty and then admit the document in evidence as provided under Section 41(2); and the Court shall send an authenticated copy of the instrument to the District Registrar together with a Certificate and the amount collected as duty and penalty, as provided under Section 37(1); (e) if the party does not pay the duty and penalty, the Court will have to pass an order impounding the document and send the instrument in original, to the District Registrar for being dealt with in

accordance with law as per Section 37(2) of the Karnataka Stamp Act.

12. The admissibility of the document should also be examined with reference to Section 49 of Indian Registration Act, that is whether it relates to an immovable property requiring registration under Section 17 of Registration Act or any provision of Transfer of Property Act or whether it confers any power to adopt.

13. The deference between Section 34 of the Karnataka Stamp Act and Section 49 of the Registration Act should also be borne in mind. Section 34 says "no instrument chargeable with duty shall be admitted in evidence for any purpose, or shall be acted upon, registered or authenticated by. . . unless such instrument is duly stamped". Subject to the provision enabling the Court to collect the deficit Stamp duty, the bar under Section 34 is absolute and an instrument which is not duly stamped cannot be admitted at all in evidence for any purpose. On the other hand, Section 49 of the Registration Act which deals with the effect of non-registration of documents provides that if a document which is required to be registered under law is not registered, then such document shall not affect any immovable property comprised therein, nor can it confer any power to adopt, nor can it be received as evidence of any transaction affecting such property or conferring such power. But the proviso to Section 49 provides that an unregistered instrument may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purpose of Section 53-A of Transfer of Property Act or as evidence of any collateral transaction not required to be effected by registered instrument. For example, if a sale deed is executed on a white paper and is not stamped, it can neither be admitted in evidence nor be used for any purpose. But if a sale deed is executed on requisite stamp paper but is not registered and the executant refuses to admit registration, then the purchaser has a right to file a suit for specific performance, and rely on the sale deed, even though it was not registered, as evidence of the contract for sale. Thus, though both Section 34 of the Stamp Act (corresponding to Section 35 of the Indian Stamp Act) and Section 49 of the Registration Act, both bar the document being received as evidence, the bar is absolute under Stamp Act (unless deficit duty and penalty is paid) and the bar is not absolute under Registration Act.

14. Coming back to the matter on hand, it is seen that the Trial Court has proceeded on the basis that it is a mortgage deed, because the respondent has described it as a mortgage deed. A 'Bhogyada Kararu' is an agreement relating to usufructuary mortgage. A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The characteristics of an usufructuary mortgage are the following.-

> (a) Possession of the mortgaged property is delivered/agreed to be delivered to the mortgagee;
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> (b) The mortgagee is to retain possession until repayment of the mortgage amount and to receive and appropriate the rents and profits in lieu of interest or of principal or of both;

(c) The mortgagor does not incur any personal liability to repay the money; and there being no personal liability to pay, there is no forfeiture and, therefore, the remedies by way of foreclosure or sale are not open to the mortgagee.

On the other hand, a lease is a transfer of a right to enjoy a property and is not a transfer of an interest in a property and the usufruct of the property belongs to the tenant till the determination of the lease. The difference between a usufructuary mortgage and a lease came up for consideration before the Supreme Court in Ramdhan Puri v Bankey Bihari Saran and Others. The Supreme Court held that the intention of the parties must be looked into and that once there is a debt with security of the property for its redemption, then the arrangement is a mortgage. The Supreme Court further held that where the relationship between parties was described as creditor and debtor and the debtor gave his property as security for the amount advanced, the document was a mortgage. In other words, if the money paid is a loan advanced and the transfer of possession is for the purpose of security for the repayment of such loan, the transaction would be a usufructuary mortgage.

15. Leases, on the other hand, can be of different types. The consideration for the lease can be (a) a premium i.e., a price; (b) a rent, either in cash or in kind; (c) money advanced, that is, a deposit or advance; (d) a combination of a, b and c or any two of them. A premium is a consideration or price paid for the lease which is non-refundable. Rent is normally a periodical payment. An advance or deposit is a payment made with an understanding that it should be refunded on determination of lease. A lease can be in consideration of either premium or rent or money advanced. It can also be in consideration of a combination of all the three or any two of the three; that is in consideration of premium, rent and an advance, or it can be in consideration of premium and rent or premium and advance or rent and advance. The most common of leases are those where there is a provision for monthly rent and there is an advance which is refundable. It is now common to enter into leases in consideration of money advanced with an understanding that no rent will be payable by tenant and the landlord will not be liable to pay any interest on the advance (or deposit), and the advance (or deposit) shall be refunded on termination of lease against delivery of vacant possession of the leased premises. A variation of such leases is where the lease is for money advanced and a rent is specified and interest on advance is specified and it is agreed that the interest on the advance amount shall be adjusted as rent. In such cases the advance is so worked out that the normal interest thereon will be equal to the market rent. Thus, it is common to provide a deposit of Rs. 1,00,000/- in lieu of rent, where the market rent is about Rs. 1,000/- to Rs. 1,500/-.

16. Merely because an amount is advanced and possession is delivered, a transaction will not become a mortgage. As stated above, mortgage contemplates the taking of a loan and delivering possession to secure payment of the loan, the relationship being that of a creditor and debtor. On the other hand, in a lease for money advanced or deposit made, there is no relationship of debtor and creditor between the landlord and tenant. In such a transaction, the tenant who desires to take the premises on lease, agrees to make a Deposit, instead of making a monthly payment as rent, with the understanding that the landlord will continue to hold the said advance or deposit so long as the tenant continues in possession and he should refund the same when the tenant vacates the leased premises. It may be noticed that in such a transaction, the property is not given up security for the amount advanced. While the primary transaction in a mortgage is advancing of a loan and securing

the advance by an immovable property, in a lease against deposit, the primary intention is to make available the premises to the tenant and receive the consideration therefor by way of interest free advance.

17. Let me examine the terms of the 'Bhogyada Kararu' to find out whether it is a lease or a mortgage. The document recites that the respondent approached the petitioner's father with a request that she requires the premises for her residence and the petitioner's father agreed to give the premises for the residence of the respondent in consideration of the respondent paying Rs. 10,000/- with an understanding that the said sum of Rs. 10,000/- shall be repaid without interest on the respondent vacating and delivering vacant possession of the premises in the same condition and in view of such payment, the respondent need not pay any rent for the premises. If it was a mortgage, the recitals would have been that the petitioner's father approached the respondent for a loan and the respondent wanted possession of the premises as security and petitioner's father agreed to take the loan and deliver possession of the premises as security. The very fact that the respondent approached the owner requesting him to make available the premises for her residence and agreed to pay a consideration of Rs. 10,000/- as deposit to be held during the period of occupation and refundable on vacating the premises and the fact that there is no reference to a request for any loan or the premises being held as a security for the amount discloses that the document was a lease for deposit/advance, and not an usufructuary mortagage. Therefore, the description of the document as 'Bhogyada Kararu' (usufructuary mortgage agreement) is misleading and not correct.

18. Having identified and decided on the nature of the document, the next question that arises for consideration is whether it was properly stamped. If it is a usufructuary mortgage, it is subject to Stamp duty at a rate equivalent to that of a conveyance on the mortgage amount under Article 34(a) of the Schedule to the Karnataka Stamp Act. On the other hand, if the document is a deed of lease, or even an agreement to lease, Stamp duty will be payable under Article 30. For the purpose of Stamp duty, it makes no difference whether the deed is a deed of lease or agreement to lease. Both require the same Stamp duty. There is a prevalent wrong impression that lease deeds and lease agreements for a period of less than one year (normally executed for eleven months) do nut require registration and can be stamped as a mere agreement. Once the terms of a lease are reduced to writing, the instrument requires to be stamped as per Article 30 and requires registration under Section 107 of the Transfer of Property Act. Even Agreements/Deeds of lease which do not provide for payment of any rent, but merely provide for payment of a premium which is non-refundable or a deposit which is refundable at the end of the lease, are liable to Stamp duty, the duty being at a rate equivalent to a conveyance on the value of such premium or deposit. Thus the deed dated 9-12-1984 which is a lease agreement was liable to a Stamp duty of Rs. 1,000/- under Article 30(b). The Stamp duty paid is only Rs. 5/-. The deficit Stamp duty is Rs. 995/-. Having regard to Section 34, if the respondent wanted to overcome the bar against admissibility under the Stamp Act, he has to pay Rs. 995/- as deficit Stamp duty and Rs. 9,950/- being ten time the deficit duty as penalty, in all Rs. 10,945/-.

19. At this juncture let me digress to consider the vexed question as to whether lease agreements and tenancy agreements require registration and whether they are liable to Stamp duty under Article 30 or the residuary clause of Article 5.

19.1 if an agreement or deed of lease relates to a 'present demise', that is, grants or creates a lease (to 'demise' is to create an estate by way of lease) either from that date or from the future date, it requires Stamp duty as per Article 30 and requires to be compulsorily registered, irrespective of the period of lease being more than or less than one year. On the other hand, an agreement merely agreeing to grant or create a lease in future, subject to fulfilment of some conditions or happening of some contingencies will be a simple agreement (liable to Stamp duty under the residuary clause in Article 5) which does not require registration. The following illustrations will demonstrate the difference: (a) If the instrument (be it a deed of lease or agreement of lease) confirms, grants or creates a lease, either from any past date or from that date or from a future date, it will be an instrument requiring Stamp duty under Article 30 and requiring registration. Thus, an instrument executed on 1-1-1999 stating that the lease is for a term of 5 years from 1-12-1998 or from 1-1-1999 or from 1-2-1999 is a present demise; (b) If the instrument records an agreement to grant a lease in future subject to a contingency or contingencies, then it is a mere agreement which does not require Stamp duty under Article 30 of the Stamp Act, or registration. An instrument which records an agreement to construct a building and then grant a lease by executing a separate deed will be a mere agreement which can be stamped under the residuary clause of Article 5 and may not require registration.

19.2 There is also a prevalent practice of Rent Notes, Rental Agreements or 'Badige Karars' being executed by the tenant in favour of the landlord merely agreeing to pay the rents, to which the landlord is not a signatory. Such documents are not lease deeds or lease agreements as there is no 'transfer' of any right of enjoyment by the lessor/landlord under the instrument. To be termed as a 'lease', necessarily there should be an act of transfer by the landlord/lessor. Such documents emanating from the tenant, cannot and do not create a lease and the tenant cannot claim any right thereunder, nor enforce the terms thereof. They may however be evidence of nature of possession and the rent. Such documents need not be stamped as lease under Article 30, nor will they require registration unless they fall under the extended definition of that term in Section 2(7) of the Registration Act, 1908.

19.3 To avoid the prevalent confusion and uncertainty in regard to Stamp duty in these matters and to encourage parties to execute proper deeds relating to leases and register them, the Legislature/Government may consider a more practical, logical and reasonable structure of Stamp duty regarding leases and lease agreements. While logic need not be a hallmark of taxing statutes, apparent inconsistencies may be pointed out for rectification in the interests of revenue, to encourage public to enter into lease deeds and pay Stamp duty instead of resorting to oral agreements coupled with delivery of possession. One area where the anomaly is glaring is the prescription of same Stamp duty on the amount paid as premium and advance/deposit. As noticed above, a premium is the consideration or price for the lease which is non-refundable. On the other hand, payment of an advance/deposit relating to a lease is refundable on termination of the lease. The nature of the two payments are completely different.

19.4 Let me illustrate by reference to a lease of a premises (for a term of one year) which may fetch a market rent of Rs. 1,000/- per month, under different modes adopted by landlords and tenants:

(i) Rs. 12,000/- is paid as premium for the lease of one year, without any rent, the said premium being non-refundable;

(ii) Rs. 6,000/- is paid as premium (non-refundable) with a provision for payment of rent of Rs. 500A per month;

(iii) Rs.1,000/- per month is paid as rent;

(iv) Rs. 25,000/- is paid as refundable advance/deposit and rent of Rs. 750/- per month is provided;

(v) Rs. 1,00,000/- is paid as refundable deposit, without any rent.

While the third and fourth modes are the most prevalent modes, the fifth mode is also becoming popular among middle class landlords and tenants as it avoids the hassle of monthly payments, defaults and arrears. It will be seen that the return to the landlord from any of five modes will approximately be the same, that is about Rs. 1,000/- per month. But the Stamp duty varies enormously. The details are as below:

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No. Mode Return per month Stamp duty

(i) Full premium (Rs.

10,000/-) Rs. 1,000/- as premium Rs. 1,000/-

(ii) Part premium (Rs. 6,000/-) part rent (Rs. 500/-

pm) Rs. 500/- as premium, Rs. 500/- as rent Rs. 900/-

(iii) Full rent (Rs. 1.000/-

pm) Rs. 1,000/- as rent Rs. 600/-

(iv) Part refundable advance (Rs. 25,000/-) part rent (Rs. 750/- pm) Rs. 250/- as interest Rs. 750A as rent Rs. 2,950/-

(v) Full refundable advance (Rs. 1,00,000/-) Rs. 1,000/- as interest Rs. 10,000/-

In fact the Stamp duty on a sale of a property for Rs. 1,00,000/- and lease of the same property for one year with a refundable advance of Rs. 1,00,000/- is the same. The anomaly of same Stamp duty on premium (non-refundable consideration for the lease) and advance (refundable deposit) requires to be rectified. Be that as it may.

20. Coming back to the case on hand, the Trial Court ought to have determined the nature of the document and then determined the Stamp duty and called upon the person tendering the document to pay the deficit Stamp duty and penalty. If the deficit duty and penalty was not paid, the Court ought to have impounded the document. The document could not be marked in evidence.

21. Simultaneously, the Trial Court ought to have dealt with the question whether it was compulsorily registerable. Section 107 of the Transfer of Property Act requires that a lease for a term exceeding one year can be only by a registered instrument; and leases for a term of less than one year can be made either under a registered instrument or by an oral agreement accompanied by delivery of possession. In other words, a lease deed, even if it is for a period of less than one year, once it is reduced to writing in the form of a lease agreement, requires registration.

22. The deed dated 9-12-1984 was, therefore, compulsorily registerable and as it was not registered, it could not be received as evidence of the lease. The respondent did not take the trouble of getting the said document admitted in evidence. Hence, it cannot be relied on for any purpose. It is no doubt true that if the deficit Stamp duty and the penalty is paid, it could thereafter be relied on for the limited purpose of ascertaining the nature of possession of the respondent. Even then, the said document would have shown that the transaction was a lease and the respondent occupied the premises as a tenant. But, as Stamp duty and penalty have not been paid and the document is not admitted in evidence, the said document has to be eschewed from consideration. What then remains is the oral evidence.

23. The petitioner has clearly stated that the premises was let out by his father to the respondent on a monthly rent of Rs. 150/-. The respondent has stated that the property belonged to petitioner's father and premises was mortgaged in her favour by the petitioner's father for a sum of Rs. 10,000/-. But she failed to prove the existence of a mortgage. Therefore, the position that would emerge is that, the respondent does not dispute ownership of the petitioner (and earlier petitioner's father). The respondent does not claim ownership of the property. Respondent admits that she was placed in possession by petitioner's father. The mortgage sought to be put forth by the respondent is not established. Where the title/ownership of the petitioner is not in dispute and where the respondent does not claim title to the property and respondent admits entry into possession through the owner and when the owner states in his evidence that the respondent is his tenant, the petitioner discharges his burden regarding the relationship of landlord and tenant. It is then for the respondent to prove that his/her possession is not that of tenant, if the respondent still wants to contend that there is no relationship of landlord and tenant. In the absence of such proof by the tenant, the Court will have to accept the claim of the landlord.

24. In this case, the Trial Court, however, proceeded on the basis that irrespective of the fact that the lord's title was not in dispute and the respondent did not claim ownership to the property and the mortgage claimed by the tenant was not proved, and even though landlord clearly stated that respondent was the tenant, it was still necessary for the petitioner to prove by other evidence the existence of relationship of landlord and tenant. It is not possible for the landlord to produce any other evidence. It is for the tenant to prove the contrary, in the factual circumstances. To reiterate, where the petitioner's ownership/title is not disputed by the tenant, and where the respondent

admits that he was inducted into the premises by the petitioner or his predecessor-in-title, and where the respondent does not set up title in himself or herself, and where petitioner gives evidence that he is the landlord and respondent is the tenant, in the absence of any evidence to the contrary by the respondent showing that his/her possession is either as a mortgagee or as a licensee, the landlord's claim that the respondent is in possession as a tenant will have to be accepted by the Court. It therefore, follows that the Trial Court committed a serious error in holding that the relationship of landlord and tenant is not established.

25. In the result, this petition is allowed, the order dated 18-3-1998 of the Trial Court dismissing HRC No. 1434 of 1991 is set aside. The petitioner and the respondent are permitted to let in further evidence and the Trial Court will have to consider such evidence and decide the matter afresh in accordance with law. Send copies of this order to the Chief Controlling Revenue Authority and the Commissioner for Revenue, regarding Para 19.