Lalmuni Devi And Ors. vs Jagdish Tiwary And Ors. on 4 October, 2004

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Bench: Sudhir Kumar Katriar

JUDGMENT

S.K. Katriar, J.

1. The defendants first set are the appellants against a judgment of reversal. This appeal is directed against the judgment and decree dated 9.6.1998, passed by the learned 5th Additional District Judge, Siwan, in title appeal No. 13 of 1992, Jagdish Tiwari v. Lalmuni Devi and Ors., whereby he has allowed the appeal preferred by the plaintiff and the defendants second set, and set aside the judgment and decree dated 9.4.1992, passed by the learned 2nd Munsif, Siwan, in title suit No. 101 of 1984, Jagdish Tiwari v. Rajpati Chaudhary and Ors. The learned trial Court had dismissed the suit which has been set aside by the impugned judgment and decreed the suit. We shall go by the description of the parties occurring in the plaint.

2. it arises out of a suit for declaration of title of the plaintiff and defendant 2nd set (respondent herein), and for confirmation of their possession over the suit land bearing plot No. 104. As per the plaint, Ram Ugrah Tiwari had four sons, namely, Sital Tiwari, Ramautar Tiwari, Muneshwar Tiwari and Deodut Tiwari. Sital Tiwari died leaving behind his two sons, Samsundar Tiwari and Nakched Tiwari. Shyam Sundar also died issueless living jointly with his full brother Nakched Tiwari who died leaving behind his sons who are plaintiffs and defendant No. 8. The property belonging to late Shyamsundar Tiwari is coming in possession of the plaintiff and defendant No. 6 (Ramautar Tiwari), full brother of Sital Tiwari who died leaving behind his son, Daroga Tiwari, Daroga Tiwari also died leaving behind his sons who are defendant Nos. 7 to 9. Thus the property belonging to Ramautar Tiwari is coming in possession of defendant Nos. 7 to 9. Deodut Tiwari also died leaving behind his two sons, namely, Bhagwati Tiwari and Pahwari Tiwari. Later on Bhagwati also died leaving behind his sons who are defendant Nos. 10 to 12. Muneshwar Tiwari, full brother of Sital Tiwari, had died leaving behind his two sons who are defendant Nos. 13 and 14 are coming in possession of the land belonging to their father, Muneshwar Tiwari. The said Sital Tiwari, Ramautar Tiwari, Deodut Tiwari, and Muneshwar Tiwari were ex-landlords of 16 Annas share with respect to

khewat No. 1, tauzi No. 18990, Mauza Dharnichapar, P.S. Mairwa, District Siwan, who were living jointly with their heirs. The further case of the plaintiffs is that there was no partition amongst the four brothers who were living and cultivating their lands jointly.

3. According to the further case of the plaintiffs, khewat No. 1, R.S. khata No. 75, plot No. 104, having an area of 10 bighas and 7 dhurs was recorded in R.S. Khatian as Gairmazarua Malik land to which the ancestors of the plaintiff and defendant 2nd set had made culturable and were cultivating it for about 60 years. At the time of abolition of Zamindari and the returns with respect to the land of R.S. Plot No. 104 including other land submitted to the State by the plaintiff and defendant 2nd set, the State Government had fixed the rent in favour of the plaintiff and defendant 2nd set under Section 5, 6 and 7 of the Bihar Land Reforms Act. Since then the plaintiff and defendant 2nd set are paying rent to the State of Bihar and obtaining rent receipts regularly without any obstruction and hindrance.

3.1. According to the further case in the plaint, the contesting defendant first set in the year 1984 put 3 palani, Nad, Khop on a portion of the land B.S. Plot No. 104, which is situate continuous west of R.S. Plot No. 103. Out of a total area of plot No. 104, 2 bighas of land towards the north has been gifted to the Sewait of temple of Lord Shiva which is situate thereon and the Pujari and Sewait are maintaining the temple from the agricultural products of the lands to gifted.

3.2. Defendant 1st set dispossessed the plaintiff and defendants 2nd set from schedule No. I land on 20th April 1984 when the plaintiff was in service at Kalyani within the State of West Bengai. The plaintiff and defendant 2nd set after having come to know of it, requested the defendant 1st set to remove the encroachment but they refused to do so.

4. The defendants 1st set filed their written statement and pleaded that 11 bighas, 4 kathas, 14 dhurs out of R.S. Plot Nos. 104, 103 and 115 was allotted to Malik Shital Tiwari on partition between the ex-landlord and the brothers. Shital Tiwari was in exclusive possession of the aforesaid land and ancestor of defendant 1st set (Motilal Chaudhari) was his watch man and used to serve him. Shital Tiwari settled the lands in question in favour of Motilal Chaudhari in lieu of his ungrudging services and put him in possession.

4.1. Defendant 1st set further pleaded that the settlement was made in the year 1921 and since then the ancestors of the defendant 1st set and after their death, the present contesting defendants, are coming in possession of the land within the knowledge of all including the plaintiff and defendant 2nd set.

4.2. Defendant 1st set further pleaded that a criminal case was filed by them in the year 1970 against the plaintiff and defendant 2nd set in which the learned trial Court had found the possession of defendant 1st set, and the plaintiff and defendant 2nd set were convicted and sentenced. The conviction was maintained up to the High Court.

5. Defendant 3rd, set also filed written statement and contested the suit.

6. On the basis of the pleadings of the parties, the learned trial Court framed the following issues for adjudication,-

(1) Is the suit as framed maintainable?

(2) Has the plaintiff got any cause of action for the suit?

(3) Is the suit barred by limitation?

(4) Is the Court fee paid sufficient?

(5) Has the plaintiff got right, title, interest and possession?

(6) Is the suit hit by adverse possession?

(7) Is the story of possession and dispossession propounded by plaintiff correct?.

(8) Was Shital Tiwari separate by partition?

(9) Is the suit bad for defect of parties?

(10) Have the ancestors of defendant 1st set take settlement from Shital Tiwari?

(11) Is the plaintiff entitled to the relief or any of the reliefs claimed by him?

7. The plaintiff and defendant 2nd set had a common cause before the trial Court, were appellants before the learned Court of appeal below as well as this Court. The learned trial Court on contest and on a consideration of the oral and documentary evidence of the parties dismissed the suit. He held that the plaintiff has not been able to establish his case for declaration of title and recovery of possession against defendant first set. He further found that defendants 1st set (appellants herein) have been able to prove their case of adverse possession. The learned trial Court, therefore, dismissed the suit and declared the right, title and possession of the defendants first set with respect to the suit property.

8. The plaintiff and the defendants second set preferred appeal which has been allowed and the suit has been decreed. The learned Court of appeal below has in substance held that the plaintiff has been able- to prove his case as set out in the plaint and, therefore, granted declaration of title and recovery of possession. He has further held that the defendant first set have not been able to prove their title based on oral settlement. He has also found that the defendant first set have not been able to prove their title based on adverse possession.

9. The following substantial questions of law seem to arise in this appeal,-

(i) Whether or not the defendant first set having set up their case of oral settlement, was precluded from setting up their case based on adverse possession?

(ii) Whether or not judgments of criminal Courts are admissible in civil proceedings?

10. I have perused the materials on record and considered the submissions of learned counsel for the parties. It appear to me that the case of the defendants first set as disclosed in the written statement is that their ancestors had served the ancestors of the plaintiff and the defendants second set. Felt pleased by the services, the landlords had settled the lands in question by an oral settlement way back in 1921 without payment of rent. The defendants first set had thereafter set up their huts, planted trees, and have been in cultivating possession ever since. In other words, the case of the defendants first set was that ancestors of the plaintiff and the defendant second set had orally settled the lands in question in favour of the defendants 1st set accompanied with delivery of possession. In the alternative, the defendants first set had set-up their case that they have been in open and defiant possession of the lands in question surely since 1970 which has ripened into title. It appears to me that the defendants first set had, according to their own case in the written statement, initially come in possession lawfully. In my view, therefore, they are, precluded from setting up an inconsistent plea based on adverse possession. The two or mutually destructive pleas and the plea of adverse possession is not available to the defendants first set. Learned counsel for the plaintiff and defendants second set have rightly relied on the judgment of the Supreme Court reported in 1996 SC 910, Mohan Lal and Ors. v. Mira Abdul Gaffar and Anr., paragraph-4 of which is relevant in the present context is set out hereinbelow for the facility of quick reference ;-

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription Nec Vi Nec Clam Nec Precario. Since the appellant's claim is founded on Section 53A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

11. Learned counsel has also relied on the judgment of the Supreme Court reported in 2004 (3) PLJR (SC) 245, Karnataka Board of Wakf v, Government of India and others, which is to the same effect, paragraph-11 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference :-

"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and assets a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a

> well-settled principle that a party claiming adverse possession must prove that his possession is 'Nec Vi, Nec Clam, Nec Precario', that, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period, See; S.M. Karim v. Bibi Sakinal, AIR 1964 SC 1254, Parsinni v. Sukhi, (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of Kamataka, (1997) 7 SCC 567. Physical fact or exclusive possession and the Animus Possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party; (d) how long his possession had continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has ho equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. Dr. Mahesh Chand Sharma v. Raj Kumari Sharma, (1996) 8 SCC 128."

12. I am thus of the view on the authority of the Supreme Court that in view of the case of the defendants first set of title to the lands in question on the basis of oral settlement accompanied with delivery of possession way back in 1921, the plea of adverse possession is not available to them in the facts and circumstances of the present case. The Supreme Court has observed that the possession must be adequate in continuity, in publicity, and in extent to show that their possession is adverse to the true owner. It must start with a wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. In the present situation, the case of the defendants first set was that it was a case of oral settlement accompanied with delivery of possession by the ancestors of the plaintiff and the defendants second set, the landlords. It is thus manifest that on the own showing of the defendants first set that they started with valid and lawful possession. On their own showing, the defendants first set did not start with illegal dispossession of the plaintiff and the defendants second set. In that view of the matter, the basic ingredient of adverse possession ripening into title is absent. The plea of adverse possession is, therefore, not available to the defendants first set.

13. The learned trial Court held that the defendants first set have been able to prove their continuous and hostile possession since 1970 and for which he has relied on Exhibit-I which is a judgment of the criminal Court inter-parties, wherein the plaintiff and the defendants second set were convicted which was maintained up to the High Court with modification of sentence, and the defendants second set were found to be in possession of the suit lands. Law is well settled by a long line of cases of high authority that judgment of the criminal Court is inadmissible in evidence in civil Court even on the self-same facts because it is open to the parties to lead different sets of evidence in the two cases, and the standard of proof are different in the two proceedings. The judgment of the criminal Court would be evidence only to show that there was such a trial resulting in conviction and sentence of the accused persons, namely, the plaintiff and the defendants second set. Learned

counsel for the plaintiff and the defendants second set has rightly relied on the judgment of the Supreme Court reported in AIR 1955 SC 566, Anil Behari Ghosh v. Smt. Latika Bala Dassi and Ors. The following portion of paragraph 15 of the judgment is relevant in the present context and is set out hereinbelow for the facility of quick reference :-

> ".....The learned counsel for the contesting respondent suggested that it had not been found by the lower appellate Court as a fact upon the evidence adduced in this case, that Girish was the nearest agnate of the testator or that Charu had murdered his adoptive father, though these matters had been assumed as facts. The Courts below have referred to good and reliable evidence in support of the finding that Girish was the nearest reversioner to the estate of the testator. If the will is a valid and genuine Will, there is intestacy in respect of the interest created in favour of Charu, if he was the murderer of the testator. On this question the Courts below have assumed on the basis of the judgment of conviction and sentence passed by the High Court in the session trial that Charu was the murderer. Though that judgment is relevant only to show that there was such a trial resulting in the conviction and sentence of Charu to transportation for life, it is hot evidence of the fact that Charu was the murderer. That question has to be decided on evidence....."

14. Relying on the judgment of the Supreme Court in Anil Behari Ghosh v. Smt. Latika Bala Dassi and Ors., (supra), a Division Bench of this Court in its judgment reported in 1968 BLJR 197, Mundrika Kuer v. President, Bihar State Board of Religious Trusts, and 8 others, has laid down to the same effect. Paragraph 7 of the judgment is set out hereinbelow for the facility of quick reference :-

> "7. It is true that, if the Board acted capriciously and arbitrarily without any material whatsoever and attempts to administer private property, saying that it is a public religious trust, this Court may have to interfere in appropriate cases; but it cannot be said here that there were no prima facie materials to show that the trust is a public religious trust. The acquittal of the petitioner in the criminal case (Annexure-A) was very much relied upon; but it is well settled that acquittal or conviction in a criminal case has no evidentiary value in a subsequent civil litigation except for the limited purpose of showing that there was a trial resulting . in acquittal or conviction, as the case may be. The findings of the criminal Court are inadmissible See Anil Behari Ghosh v. Smt. Latika Bala Dassi, AIR 1955 SC 566, Ramadhar Chaudhary v. Janki Chaudhary, AIR 1956 Pat. 49 and Hollington v. Hewthorn and Company, Limited, (1943) 2 All ELR 35."

15. In an exhaustive judgment of a learned single Judge of the Kerala High Court reported in AIR 1982 Kerala 238, Narayanan and Anr. v. Mathan Mathai, inter alia, relying on the judgment of the Supreme Court in Anil Behari Ghosh v. Smt. Latika Bala Dassi (supra), it has been held to the same effect. Paragraphs 7 to 16 of the judgment are relevant in the present context and are set out hereinbelow for the facility of quick reference :-

"7. I find it impossible to accept the contention that the acquittal in the prosecution entitles the defendants to exoneration from civil liability. The plaintiff was no party to the prosecution and it is not known what evidence was called by the prosecutor. That apart, the question is whether the judgment in the prosecution is relevant and binding on the civil Court even if the subject of consideration is the same. Apart from Sections like Section 13 under which judgments in other proceedings might be relevant the subject of relevancy of judgments is dealt with under a fasciculus of Sections 40 to 43 Evidence Act. Section 44 which is the last of the sections in the rubrie 'judgments of Courts of justice when relevant merely indicating the circumstances under which a party might impeach the judgment, order or decree which is relevant under Sections 40, 41 or 42 and which has been proved by the adverse party. Of the remaining Sections, Section 43 makes a previous judgment relevant if it bars a second suit or trial, Section 41 provides for the relevance of what is generally called judgments "in rem" though the term itself is not used in the section, and Section 42 provides for the relevancy of judgments on matters of public nature. Section 43 declares that "judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act.

8. Now it is not claimed that the judgment in the criminal prosecution is of the character mentioned in Sections 40, 41 or 42 or that its existence is a fact in issue or that it is relevant under some other provisions of the, Act; which means that it is in terms of Section 43 irrelevant. Nevertheless counsel argued that the acquittal of the accused established his innocence of the offence which is the very matter in issue in the suit and that in view of the acquittal he could no longer be made liable for damages for the same incident. Counsel could quote no statutory provision or judicial precedent in support of this bar; nor could he effectively answer the query whether he would let the plaintiff have a decree in damages against the defendants on the basis of their conviction by the criminal Court. Now the statute does not support the appellants' contention neither does the case law, as I shall show.

9. In Anil Behari Ghosh v. Latika Bala Desai, AIR 1955 SC 566, in a proceeding for revocation of the grant of a probate the question arose whether the testator was murdered by his adoptive son Charu who was a legatee under the will, for if it were so, there would be intestacy in respect of the interest created in his favour. The Court below had assumed on the basis of the judgment of conviction and sentence passed by the High Court in the sessions trial that the adoptive son was the murderer.

... ...

... ...

... ...

> Though the Supreme Court has not referred to any provision in the Evidence Act or even to the Evidence Act, it is clear that the Court has laid down that the question in issue has to be decided on the evidence in the proceeding and that the judgment of conviction is irrelevant except for showing that there was a trial, conviction and sentence. The position is no different on a judgment of acquittal.
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> 10. In Onkarmal v. Banwarilal, AIR 1962 Raj 127, the lower appellate Court had disallowed the plaintiff's claim for damages in respect of wrongful confinement on the main ground that the defendant had been acquitted in the criminal case, inter alia of the charge of wrongful confinement for which they had been prosecuted. Holding that in taking this view the lower appellate Court had fallen into a grave error of law, the High Court observed (at p. 133) :
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> "There is, however, abundant authority for the proposition that a judgment of acquittal in a criminal Court is irrelevant in a civil suit based on the same cause of action, just on a judgment of conviction cannot, in a subsequent civil suit, be treated as evidence of facts on which the conviction is based. The correct position in law, therefore, is then the civil Court must independently of the decision of the criminal Court investigate facts and come to its own findings."

The Court relied upon AIR 1933 Mad 429, AIR 1956 Pat. 49 and AIR 1955 SC 566.

11. Ramadhar v. Janki, AIR 1956 Pat 49, followed in this case also concerned the admissibility of a criminal judgment.

... ...

... ...

..... The Court discussed the question with reference to the provisions of the Evidence Act and judicial precedents and held that the judgment was inadmissible for proving the plaintiff's parentage.

12. In suits for damages for malicious prosecutions, the law is well settled by a long line of decisions that the judgment of the criminal Court is evidence merely to show that the prosecution has terminated in favour of the plaintiff and that its findings and reasonings are irrelevant being opinion evidence and that the civil Court has to reach its conclusion on the evidence produced before itself. Chamu v. Valayanad Tharayil Chirutha, 1970 Ker. LJ 1023, following AIR 1933 Mad 429 and 1969 Ker. LJ 760.

13. In the last of these cases J. Spadigam v. State of Kerala, 1969 Ker LJ 760, Mathew J. held that the judgment of a criminal Court acquitting the petitioner was no bar to disciplinary proceedings against him on the basis of the same facts and that it does not operate as conclusive evidence in the disciplinary proceedings. If this be the position in a disciplinary proceeding which is unfavoured by

the Evidence Act, the result cannot be different in a civil suit. The learned Judge however felt no doubt:

> "A judgment of acquittal by a criminal Court is inadmissible in a civil suit based on the same cause of action, except for the very limited purpose mentioned in Section 43, Evidence Act. Just as a civil Court must independently of the decision of the criminal Court investigate facts and come to its own findings, so also, I think, a tribunal conducting a disciplinary proceeding must investigate the facts and come to its own finding and that without being hampered by the strict rules of evidence."

14. In Ramanamma v. Appalanarasayya, AIR 1932 Mad 254, a criminal complaint and a suit for damages for defamation were filed. The suit was dismissed. The judgment of the civil Court was sought to be admitted in the criminal case, the position being the converse of the present case. Holding against the admissibility of the judgment the Court observed:

> "Can we not have the civil Court trying over again a matter which has been decided by a Court of competent jurisdiction and coming to a different conclusion? The truth is that, although the civil suit and the prosecution may be based on exactly the same cause of action, the parties are strictly speaking, not the same, the burden of proof is differently placed and different considerations may come in. The result may therefore be a conflict in decision. For instance, A is tried for murdering B, but acquitted, because of confessional statement by him is, in a criminal trial, inadmissible in evidence. C, B's widow, sued him for damages for the murder and gets a decree, the confessional statement being admissible in a civil suit. In the matter of defamation, again, there is a good deal of difference between a suit for damages and criminal prosecution. The prosecution is governed by the provisions of the Indian Penal Code, the suit by the English Law of slander and libel."

15. It was suggested that this view of the law would produce possible conflicting decisions by different Courts but then in the words of Jackson J. in Gnanasigamani Nadar v. Vedamuthu Nadar, AIR 1927 Mad 308:

> "Conflicting decisions are the inherent risk of the division of causes into civil and criminal."

A similar opinion was expressed by a Full Bench in Kashyap v. Emperor, AIR 1945 Lah 23(at p. 27):

> "I must admit that it would have been a good thing to avoid conflict of opinions between the two Courts if it were legally possible so to do but in the absence of any provision to that effect in the Evidence Act, I cannot see how could this be avoided as long as it is possible for two independent Judges to come to two different findings on the same evidence."

16. In relation to the unavoidability one has also to bear in mind that the standard of proof for imposing liability of widely different between the civil and criminal Courts and that while in a civil suit a defendant can be made liable on probabilities or the action decided on a mere consideration of the burden of proof in the absence of other evidence, no accused can be convicted on such uncertain grounds."

16. The issue before a Full Bench of Lahore High Court in the case of B.N. Kashyap v. Emperor, AIR (32) 1945 Lahore 23, was a reverse case, and it was held that the vise-versa is equally true, namely, the judgment of the civil Court cannot bind the criminal Court. The relevant portion (at page-27) is set out hereinbelow for the facility of quick reference :-

> "…. There is no reason in my judgment as to why the decision of the civil Court particularly in an action in personam should be allowed to have that sanctity. There appears to be no sound reason for that view. To hold that when a party has been able to satisfy a civil Court as to the justice of his claim and has in the result succeeded in obtaining a decree which is final and binding upon the parties, it would not be open to criminal Courts to go behind the findings of the civil Court is to place the latter without any valid reason in a much higher position than what it actually occupies in the system of administration in this country and to make it master not only of cases which it is called upon to adjudicate but also of cases which it is not called upon to determine and over which it has really no control. The fact is that the issues in the two cases although based on the same facts (and strictly speaking even parties in the two proceedings) are not identical and there appears to be no sufficient reason for delaying the proceedings in the criminal Court, which, unhampered by the civil Court, is fully competent to decide the question that arise before it for its decision and where in the nature of things there must be a speedy disposal. This view has been consistently adopted by the Calcutta High Court for which see 6 Cal. 247, 23 Cal, 610, 51 Cal. 849, 59 Cal. 136. The same view has been taken by the Madras High Court in 52 MU 80 and 55 Mad. 346. It is true that a learned single Judge of that Court made certain observations in an earlier case reported in 72 IC 172 which are different but they were clearly obiter and were not followed by that Court subsequently. The Calcutta view was accepted by the Patna Court in 15 Pat. 336."

17. The issues are also concluded by findings of facts which bind this Court in second appellate jurisdiction. As stated hereinabove, the learned Court of appeal below has upheld the plaintiff's case and granted declaration of title and recovery of possession. It has equally disbelieved both parts of the case of the defendant first set, namely, their case based on oral settlement in 1921 from the ancestors of the plaintiff and the defendants second set, being the landlords, as well as the case based on adverse possession. Reference may be made to the judgment of the Supreme Court reported in (1999) 3 SCC 722, Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors., paragraph-5 of which is set out hereinbelow for the facility of quick reference :-

> "5. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact, being the first appellate Court.

> It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial Court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous, being contrary to the mandatory provisions of the law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

18. In the results, the appeal fails and is dismissed with costs throughout.