CASE NO.:
Appeal (civil) 10585 of 1996

PETITIONER:
R.V.E. Venkatachala Gounder

RESPONDENT:
Arulmigu Viswesaraswami & V.P. Temple & AR

DATE OF JUDGMENT: 08/10/2003

BENCH:
R.C. Lahoti & [Ashok Bhan.

JUDGMENT:
J U D G M E N T

BHAN, J.

Present appeal has been filed against the judgment and decree in Second Appeal No. 316 of 1983 dated 12.4.1996 by the High Court of Judicature at Madras. By the impugned order the High Court has set aside the judgment and decree of the courts below as a result of which the suit filed by the plaintiff-appellant (hereinafter referred to as 'the appellant') has been ordered to be dismissed.

A brief reference to the pleadings of the parties may be made to appreciate the points raised in this appeal.

Appellant claimed himself to be the owner of the property bearing No. D.No. 40 comprised in T.S.No. 201, Block No. 4, Ward No. 5 in the Municipal City of Tirupur. That M.R. Arunachala Mudaliar, defendant No. 2 (hereinafter referred to as the 'tenant') was inducted as a tenant in the year 1952 by his father at a rent of Rs. 300/- which was enhanced to Rs. 400/- in the year 1965. Arulmigu Visweswaraswamy & Veeraragava Perumal Temples, defendant No.1 (hereinafter referred to as the 'temple') also claim ownership to the property. Appellant claimed himself to be a hereditary trustee of the temple. Originally, from 1946-47 till 1959, the property stood recorded in the municipal register in the name of three persons, namely, K.N. Palanisami Gounder, R.V. Easwaramurthi Gounder and A. Narayaanaswami Gounder. Easwaramurthi Gounder was the father of the appellant. After the death of Easwaramurthi Gounder, father of the appellant, the name of the appellant came to be registered in the Municipal record alongwith the other two persons. In an oral family partition the property came to the share of the appellant and thereafter the names of K.N. Palanisami Gounder and A. Narayaanaswami Gounder were removed from the municipal register and the appellant alone came to be recorded as the sole owner of the suit property in the municipal record. That temple taking advantage of the litigation pending between it and the appellant in respect of the trusteeship of the temple, laid claim to the suit property. Tenant paid rent till 1969 to the appellant and thereafter attorned as a tenant to temple and started paying rent to it. Appellant filed the suit for declaration of title, arrears of rent for three years immediately preceding the filing of the suit and possession of the suit premises.

The temple-defendant No.1, in its written statement, admitted that the father of the appellant and after his death the appellant has been a trustee of the temple. In 1968 new set of trustees were appointed by the Charity Commissioner and the Executive Officer took charge of the temple. The temple further alleged that the suit property belonged to the temple and the appellant wrongly claimed himself to be the absolute owner of the property. The assessment stood in the name of the appellant as Dharmakartha and not

in his individual capacity. From 1969 onwards, tenant began to pay rent to temple and the rate of rent was enhanced from Rs. 42.50 to Rs. 129/- per month. On 19th July, 1975 the tenant executed a lease deed in favour of the temple. That appellant was not entitled to the suit property and was estopped from denying the title of temple. The tenant-defendant No.2, in his written statement, took the stand that he became the tenant of the suit property under the temple. He admitted that he had been paying rent to the appellant but from the year 1969 onward he started paying rent to the temple. That the claim of the appellant for arrears of rent was not tenable and the suit for declaration and for arrears of rent was not maintainable.

On the pleadings of the parties the Trial Court framed three issues, viz., (i) relating to the title of the suit property; (ii) entitlement of the appellant to receive rent, and (iii) entitlement of the appellant to get possession.

By way of oral evidence appellant stepped in the witness box as PW 1. On behalf of the temple, Rajapandian, an employee of the temple, stepped in the witness box as DW1 and the tenant appeared as his own witness as DW2. By way of documentary evidence appellant produced Exhibit A1 to Exhibit A34 consisting of books of accounts; copies of the municipal registers; receipts of payment of property tax paid in the municipal committee; documents showing collection of rent; Exhibit A-30 dated 14.10.1969 is the order of the Assistant Commissioner, H.R. and C.E. Administration Department, Coimbatore in which it has been held that the suit property does not belong to the temple. Exhibit A-34 dated 6.7.1970 is a rent agreement executed between the appellant and tenant in respect of the suit property. Documents A-30 and A-34 are the photostat copies of the original; they were admitted in evidence and marked as exhibits without any objection from other side. Temple produced Exhibits B1 to B46 pertaining to receipt of rent from the tenant and payment of property tax to the Municipal Committee after the year 1969.

Trial Court relying upon the oral as well as documentary evidence held that the appellant was the owner of the property and that respondent no. 2 was the tenant of the appellant. Appellant was held to be the owner and entitled to recover the possession as well as the arrears of rent for three years immediately preceding the filing of the suit. Temple filed an appeal before the District Judge, Coimbatore which was dismissed. Aggrieved temple filed the second appeal in the High Court. High Court reversed the judgment and decree of the courts below and held that no reliance could be placed upon the documentary evidence. The books of accounts produced by the appellant were not kept in regular course of business and therefore no reliance could be placed on them. Entry made of property in the municipal records in the name of a person was not evidence of the title of that person to the property. That the courts below erred in admitting Exhibit A-30 and A-34 in evidence as these were photostat copies. Documents being photostat copies could not be admitted in evidence without producing the originals. That Exhibit A-34 was not even readable.

Learned Counsel for the parties have been heard at length.

While entertaining the second appeal the High Court framed the following three questions as substantial questions of law as arising for its consideration:

"1. Whether a person who has been in possession of the temple as an hereditary trustee can claim title to one of the items of the property belonging to the temple as his own?

2. Whether the certificate issued by the Assistant Commissioner, Hindu Religious and Charitable Endowments is conclusive as the question of title

to the immovable properties belonging to the temple?

3. Whether the right of a temple can be negatived on the mere strength of the assessment register standing in the name of the plaintiff/Respondent or any other person?"

[Emphasis supplied]

All the three questions framed proceed on the assumption as if the property belongs to the temple whereas the findings of the courts below were to the contrary. Second appeal in the High Court can be entertained only on substantial questions of law and not otherwise. The point in issue was as to whom the property belongs. Instead of proceeding to decide the issues arising in the suit the High Court assumed second appellate jurisdiction by erroneously assuming the fact that property belongs to the temple while framing the substantial questions of law. High Court seems to have unwitting fallen into a serious error in doing so. As to whether the appellant or the temple had the title to the property in suit was the question to be determined in the case and the High Court erred in assuming and proceeding on an assumption that the property belonged to the temple. The questions framed by the High Court did not arise as substantial questions of law based on the findings recorded by the courts below â\200\223 concurrently in this case. In our opinion, the High Courts' judgment deserves to be set aside on this short ground and the case remitted back to the High Court for decision afresh and in accordance with the law, after re-framing only such substantial questions of law, if any, as do arise in the appeal. But since the suit was filed in the year 1978 and the parties have been in litigation for the last 25 years, we are refraining from remitting the case back to the High Court for re-decision on merits.

Onus to prove title of the property undoubtedly is on the person asserting title to the property. Appellant produced Ledger Books A9, A11, A13, A15, A17, A19, A21, A23, A25 & A27 for the years 1952, 1953, 1954, 1955, 1957, 1958, 1959, 1960, 1962 & 1964 respectively maintained by the father of the appellant up to 1959 and thereafter by him. Exhibits A10, A12, A14, A16, A18, A20, A22, A24, A26 & A28 are the entries of receipt of rent from tenant made at pages 155, 81, 57, 92, 115, 137, 180, 16, 171 and 139 of Ledger Books marked A9, A11, A13, A15, A17, A19, A21, A23, A25 & A27 respectively. In his statement in court, appellant stated that the ledgers were maintained properly and were submitted to the income tax authorities. The Ledger Books bear the seal of the department of income tax. That the books were maintained by his father till 1959 and after his death the appellant has maintained the Ledgers. Courts below accepted that the books were maintained in regular course of business but the High Court ruled out the ledger accounts from consideration on the ground that day books supporting the ledger entries were not produced. That the person who made the entries in the ledger books was not produced which caused a doubt as to whether the books were kept in due course or not. We do not agree with the finding recorded by the High Court. On a perusal of the statement of the appellant and the books of accounts it becomes abundantly clear that the accounts were duly maintained by the father of the appellant till 1959 and thereafter by the appellant for every year separately and were submitted to the department of income tax with annual returns. The books bear the seal of the income tax department. These facts deposed to by the appellant under oath were not even challenged in cross-examination. No question was asked from the appellant to the effect that the books were not maintained by him or by his father properly. No questions were asked from him in cross-examination about the authenticity of the books or the entries made therein. In the ledger, for each year, there is an entry regarding receipt of rent. In our view, the books were maintained properly and regularly and there is no reason to doubt their veracity.

Section 34 of the Evidence Act declares relevant the entries in books of account regularly kept in the course of business whenever they refer to a matter into which the court has to enquire. When such entries are shown to have been made in the hands of a maker who is dead, the applicability of clause (2) of Section 32 of the Evidence Act is attracted according to which the statement made by a dead person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business etc. is by itself relevant. The maker of the entry is not obviously available to depose incorporation of the entry. In a given case, depending on the facts and circumstances brought on record, the Court of facts may still refuse to act on the entry in the absence of some corroboration. In the present case the courts of fact, subordinate to High Court, have not felt the need of any further corroboration before acting upon the entries in the ledger books made by the deceased father of the appellant. So far as the entries made by the appellant are concerned, he has deposed to making of the entries and corroborated the same by his own statement. The appellant has been believed by the trial Court and the first appellate Court and his statement has been found to be enough corroboration of the entries made by him. Here again no such question of law arose as would enable the High Court to reverse that finding. The entries amply prove that for a length of time, upto the year 1959 the appellant's deceased father, and then the appellant, was collecting the rent of the suit property claiming to be the landlord from the defendant No.2 inducted as tenant by them. They were in possession of the property through their tenant, the defendant No.2.

We are definitely of the opinion that the High Court has erred in ruling out the books from consideration on the ground that the same were not duly maintained or were not proved in the absence of the maker having stepped in the witness box.

A2 is the extract of Property Tax Demand Register. A3 is the receipt of payment of property tax by the appellant to the Municipal Committee. The name of the appellant is entered in ownership column of Municipal record. Earlier the entries were in the name of his father, K.N.Palanisami Gounder and A.Narayaanaswami Gounder. A31 is the letter/notice issued by the Commissioner, Tirupur Municipality to the appellant in the complaint filed by one Subramaniam Tirupur under The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act'). A32 is the reply filed by the appellant to the said notice. A33 is the postal acknowledgement signed by the Commissioner of the receipt of the reply sent by the appellant. A30 is the photo copy of the order passed by Assistant Commissioner H.R. and C.E.(Admn.) Department, Coimbatore in exercise of its jurisdiction under Section 63 of the Act in which it has been held that temple is not the owner of the property in dispute. A34 is the photo copy of the rent agreement executed between the appellant and the tenant-respondent No.2. The said rent note has also been attested as witness by the Executive Officer of the Municipal Committee. Tenant while appearing as DW2 admitted having signed rent note, Exhibit A34 in favour of the appellant.

The High Court has, by entering into the question of admissibility in evidence of the abovesaid two very material pieces of documentary evidence which were admitted in evidence without any objection when they were tendered in evidence and taken into consideration by the two courts below while evaluating evidence and recording findings of facts, excluded the documents from consideration. Was it permissible for the High Court to do so?

One document A/30 is the photocopy of a certified copy of the decision given by Charity Commissioner. This document was tendered in evidence and marked as an exhibit without any objection by the defendants when this was done. The plaintiff has in his statement deposed and made it clear that the certified copy, though available, was placed on the record of another legal proceedings and, therefore, in the present proceedings he was

tendering the photocopy. There is no challenge to this part of the statement of the plaintiff. If only the tendering of the photocopy would have been objected to by the defendant, the plaintiff would have then and there sought for the leave of the Court either for tendering in evidence a certified copy freshly obtained or else would have summoned the record of the other legal proceedings with the certified copy available on record for the perusal of the Court. It is not disputed that the order of Charity Commissioner is a public document admissible in evidence without formal proof and certified copy of the document is admissible in evidence for the purpose of proving the existence and contents of the original. An order of Charity Commissioner is not per se the evidence of title inasmuch as the Charity Commissioner is not under the law competent to adjudicate upon questions of title relating to immovable property which determination lies within the domain of a Civil Court. However, still the order has relevance as evidence to show that the property forming subject matter of the order of the Charity Commissioner was claimed by the temple to be its property but the temple failed in proving its claim. If only the claimant temple would have succeeded, the item of the property would have been directed by the Charity Commissioner to be entered into records as property of the charity, i.e. the temple, which finding and the entry so made, unless dislodged, would have achieved a finality. On the contrary, the appellant herein, who claimed the property to be his and not belonging to the charity, succeeded in the claim asserted by him.

The other document is the rent note executed by defendant No.2 in favour of plaintiff. Here also photocopy of the rent note was produced. The defendant No.2 when in witness box was confronted with this document and he admitted to have executed this document in favour of the plaintiff and also admitted the existence of his signature on the document. It is nobody's case that the original rent note was not admissible in evidence. However, secondary evidence was allowed to be adduced without any objection and even in the absence of a foundation for admitting secondary evidence having been laid by the plaintiff.

The abovesaid facts have been stated by us in somewhat such details as would have been otherwise unnecessary, only for the purpose of demonstrating that the objection raised by the defendant-appellant before the High Court related not to the admissibility of the documentary evidence but to the mode and method of proof thereof.

Order 13 Rule 4 of the CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.

The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission Vs. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In

the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

Privy Council in Padman and Others vs. Hanwanta and Others [AIR 1915 PC 111] did not permit the appellant to take objection to the admissibility of a registered copy of a will in appeal for the first time. It was held that this objection should have been taken in the trial court. It was observed:

"The defendants have now appeal to the Majesty in Council, and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being led for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such objection being made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their lordships think that there is no substance in the present contention."

Similar is the view expressed by this Court in P.C.Purushothama Reddiar vs. S.Perumal [1972 (2) SCR 646]. In this case the police reports were admitted in evidence without any objection and the objection was sought to be taken in appeal regarding the admissibility of the reports. Rejecting the contention it was observed:

"Before leaving this case it is necessary to refer to one of the contention taken by Mr. Ramamurthi, learned counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility â\200\223 see Bhagat Ram V. Khetu Ram and Anr. [AIR 1929 PC 110]."

Since documents A30 and A34 were admitted in evidence without any objection, the High Court erred in holding that these documents were inadmissible being photo copies, the originals of which were not produced.

So is the observation of the High Court that the photocopy of the rent note was not readable. The photocopy was admitted in evidence, as already stated. It was read by the trial court as also by the first Appellate Court. None of the said two courts appear to have felt any difficulty in reading the document and understanding and appreciating its contents. May be, that the copy had fainted by the time the matter came up for hearing before the High Court. The High Court if it felt any difficulty in comfortable reading of the document then should have said so at the time of hearing and afforded the parties an opportunity of either producing the original or a readable copy of the document. Nothing such was done. The High Court has not even doubted the factum of the contents of the document having been read by the two courts below, drawn deductions therefrom and based their finding of fact on this document as well. All that the High Court has said is that the document was inadmissible in evidence being a photocopy and with that view we have already expressed our disagreement. Nothing, therefore, turns on the observation of the High Court that the document was not readable when the matter came up for hearing before it.

Exhibit A34 is a decision of the Deputy Commissioner in exercise of his jurisdiction under the Act. He has recorded a finding that the temple is not the owner of the property in dispute. This decision has become final between the parties. This document has relevance at least to the extent that the temple was held by Charity Commissioner to be not the owner of the property. Consequence of this would be that the attornment by the tenant in favour of temple during the continuance of tenancy in favour of the appellant was not valid. The defendant No.2 had attorned as a tenant to temple treating the latter to be the owner which it could not do as he was inducted as tenant by the appellant and the estoppel flowing from Section 116 of the Evidence Act operated against him.

From the other documents produced by the appellant i.e. the account books and Exhibit A34 rent note, it is proved that tenant had always been treating the appellant as landlord and paying rent to him. Only after 1969 tenant started paying rent to the temple treating it to be the landlord. In the property tax register the appellant and prior to that his predecessors have been shown to be the owners. An entry in the municipal record is not evidence of title. The entry shows the person who was held liable to pay the rates and taxes to the municipality. The entry may also, depending on the scope of the provision contemplating such entry, constitute evidence of the person recorded being in possession of the property. Such entries spread over a number of years go to show that the person entered into the records was paying the tax relating to the property and was being acknowledged by the local authority as the person liable to pay the taxes. If the property belonged to the temple, there is no reason why the temple would not have taken steps for having its own name mutated into the municipal records and commencing payment of taxes or claimed exemption from payment of taxes if the charity was entitled under the law to exemption from payment of taxes. Temple has not been able to produce any evidence oral or documentary to prove its title to the property. Only because tenant attorned to the temple and started paying rent to the temple in 1969 or that the temple paid the property tax to the municipal committee after 1969 does not establish its title to the property in question. These documents are not of much evidentiary value as these documents came in existence after the dispute had arisen between the parties. In the absence of any other lawful claimant the appellant on the strength of the documents produced by was rightly held to be the owner by the Courts below the High Court. Attornment by the tenant in favour of the temple was also rightly held to be invalid. The appellant, in our opinion, would be entitled to recover possession well as the arrears of rent.

The High Court has, for the purpose of non-suiting the plaintiff, placed reliance on Brahma Nand Puri Vs. Neki Pur since deceased represented by Mathra Puri & Anr., AIR 1965 SC 1506, wherein it has been held that in a suit for ejectment the plaintiff has to succeed or fail on the title he establishes and if he cannot succeed on the strength of his title his

suit must fail notwithstanding that the defendant in possession has no title to the property. The law has been correctly stated and the High Court rightly felt bound to follow the law as laid down by this Court. However, the question is one of applicability of the law so stated by this Court.

Whether a civil or a criminal case, the anvil for testing of 'proved', 'disproved' and 'not proved', as defined in Section 3 of the Indian Evidence Act, 1872 is one and the same. A fact is said to be 'proved' when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists. It is the evaluation of the result drawn by applicability of the rule, which makes the difference. "The probative effects of evidence in civil and criminal cases are not however always the same and it has been laid down that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. BEST says : There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision: but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. (BEST, S. 95). While civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt." (See Sarkar on Evidence, 15th Edition, pp.58-59) In the words of Denning LJ (Bater Vs. B, 1950, 2 All ER 458,459) "It is true that by our law there is a higher standard of proof in criminal cases then in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. So also in civil cases there may be degrees of probability." Agreeing with this statement of law, Hodson, LJ said "Just as in civil cases the balance of probability may be more readily fitted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others." (Hornal V. Neuberger P. Ltd., 1956 3 All ER 970, 977).

In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the Court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored with him. However, as held in A. Raghavamma & Anr. Vs. Chenchamma & Anr., AIR 1964 SC 136, there is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title.

In the present case, the trial Court and the first appellate Court have noted that the plaintiff has not been able to produce any deed of title directly lending support to his claim for title and at the same time the defendant too has no proof of his title much less even an insignia of title. Being a civil case, the plaintiff cannot be expected to proof his title beyond any reasonable doubt; a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged. In the opinion of the two Courts below, the plaintiff had succeeded in shifting the onus on the defendant and, therefore, the burden of proof which lay on the plaintiff had stood discharged. The High Court, in exercise of its limited jurisdiction under Section 100 of CPC, ought not to have entered into the evaluation of evidence afresh. The High Court has interfered with a pure and simple finding of fact based on appreciation of

oral and documentary evidence which the High Court ought not to have done.

The suit property, which is a shop, is situated just adjoining the property owned by the temple. It has come in the evidence that the property which is now owned by the temple was at one time owned by the forefathers of the plaintiff and they made an endowment in favour of the temple. The father of the plaintiff, and then the plaintiff, continued to be the trustees. The trouble erupted when in the late sixties the Charity Commissioner appointed other trustees and Chief Executive Officer of the trust dislodging the plaintiff from trusteeship. The plaintiff staked his claim to trusteeship of the temple submitting that the office of the trustee of the temple was hereditary and belonged to the plaintiff. The plaintiff was managing the trust property as trustee while the property adjoining to the property of the temple, i.e. the suit property, was in possession of the plaintiff as owner occupied by the tenant, the defendant No.2., inducted as such by the father of the plaintiff. At the instance of the Chief Executive Officer of the trust, the defendant No.2, during the continuance of the tenancy in favour of the plaintiff, executed a rent note in favour of the temple attorning the latter as his landlord. This the defendant no.2 could not have done in view of the rule of estoppel as contained in Section 116 of the Evidence Act. It was at the instance of the newly appointed trustees and the Chief Executive Officer who on behalf of the temple started claiming the suit property in occupation of the tenant, defendant No.2, to be trust property belonging to the temple. But for this subsequent development the title of the plaintiff to the suit property would not have been in jeopardy and there would have been no occasion to file the present suit.

The learned counsel for the temple, defendant-respondent No.1, faintly urged that the appellant being a trustee of the temple was trying to misappropriate the property belonging to the temple. For such an insinuation there is neither any averment in the written statement nor any evidence laid. Such a submission made during the course of hearing has been noted by us only to be summarily rejected. We have already held that the appellant is the owner of the suit property entitled to its possession and recovery of arrears of rent from the defendant No.2.

The offshoot of the above discussion is that no question of law much less a substantial question of law arose in the case worth being gone into the by the High Court in exercise of its second appellate jurisdiction under Section 100 of the CPC. The High Court was bound by the findings of fact arrived at by the two courts below and should not have entered into the exercise of re-appreciating and evaluating the evidence. The findings of facts arrived at by the courts below did not suffer from any perversity. There was no non-reading or misreading of the evidence. A high degree of preponderance of probability proving title to the suit property was raised in favour of the appellant and the courts below rightly concluded the burden of proof raised on the plaintiff having been discharged while the onus shifting on the defendant remaining undischarged. The judgment of the High Court cannot be sustained and has to be set aside.

For the reasons stated above, the appeal is accepted. Judgment and decree of the High Court is set aside and that of the trial court as confirmed by the first appellate Court is restored. No costs.