

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.315 of 2008

1. Sohail Khan alias Sohail Akhtar, Son of late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.
2. Shahnawaz Khan, Son of late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.
3. Shamsher Alam alias Shamsher, Son of late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.
4. Jamshed Alam, Son of late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.
5. Sarwar Alam, Son of Late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.
6. Akhtar Alam alias Md. Aksar, Son of Late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.
7. Kausari Begum, D/o late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.
8. Khurshida Khatoon, D/o late Jalil Akhtar, Resident of Mohalla Bag Bhai Khan, Ward No. 7, Town and P.S. Sasaram, District Rohtas.

... .. Appellant/s

Versus

1. Junaid Eqbal Khan, Son of Late Mohammad Ayub Khan, Resident of Village Baradih, P.O. Muradabad, P.S. Agar, District Rohtas, At present Mohalla Bag Bhai Khan, Town and P.S. Sasaram, District- Rohtas.
2. Mansoor Alam Khan, Son of Late Mohammad Ayub Khan, Resident of Village Baradih, P.O. Muradabad, P.S. Agar, District Rohtas, At present Mohalla Bag Bhai Khan, Town and P.S. Sasaram, District- Rohtas.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abbas Haider, Advocate
Mr. Wasi Mohammad, Advocate
For the Respondent/s : Mr. Abdul Manan Khan, Advocate
Mr. Binay Kumar, Advocate
Mr. Hafiz Shahbaz, Advocate



Mr. Allama Abdul Quadir Jamal, Advocate

**CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT**

Date : 11-03-2026

Heard Mr. Abbas Haider, learned counsel for the appellants and Mr. Abdul Manan Khan, learned counsel for the respondents.

2. This Second Appeal has been filed by the defendants-appellants-appellants against the judgment and decree of affirmance dated 18th August, 2008 passed by Additional District Judge, Fast Track Court No. V, Rohtas at Sasaram, in Title Appeal No. 06/02 of 2002/2008. The matter arises out of Eviction Suit No. 03 of 1997 filed by the plaintiffs-respondents for eviction of the defendants on the ground of default in payment of rent. The plaintiffs also sought relief for directing the defendants to vacate the suit premises and hand over the possession to them as well as for payment of arrears of rent. The defendants contested the claim by denying the title of plaintiffs and further denied the relationship of landlord and tenant between the parties.

3. The eviction suit was decreed by the learned 1st Munsif, Sasaram, vide judgment and decree dated 14.12.2001 passed in Eviction Suit No. 03 of 1997, which was thereafter challenged by the defendants by preferring Title Appeal No. 06/02 of 2002/2008. Upon hearing the parties and considering the



materials available on record, the Additional District Judge, Fast Track Court No. V, Rohtas at Sasaram vide judgment and decree dated 18th August 2008, affirmed the judgment and decree passed by the trial court and dismissed the appeal. However, earlier, in first round of litigation, in Title Appeal No. 06/02 of 2002/2008, the learned Appellate Court had set aside the judgment and decree dated 14.12.2001, by which Eviction Suit No. 03 of 1997 was decreed and remanded the matter back to the trial court namely, learned 1st Munsif, Sasaram, for deciding the regular Title Suit on amendment of plaint including the relief. The plaintiffs-respondents had filed Miscellaneous Appeal No. 356 of 2006 in this Court which was allowed by a Bench of this Court on 03.01.2008 and the judgment of Appellate Court was set aside. The High Court also directed the Appellate Court to consider the Title Appeal afresh and further observed that the learned lower Appellate Court is required to consider the main question in issue namely, the relationship of landlord and tenant between the parties and the question of title had to be gone into merely incidentally. The plaintiffs are *dominus litis* and the Court has no business to force the plaintiffs to amend its pleadings or reliefs. The Court can only decide the reliefs claimed by the plaintiffs on the basis of pleadings of the parties. If the Court does not find any relationship



of landlord and tenant between the parties, for which the question of title has to be gone into incidentally, the Court below can very well reject the claim of the plaintiffs. Furthermore, merely on the ground that the defendants had denied the title of the plaintiffs and had claimed their own title over the suit premises, the learned Appellate Court below cannot be held to be legally justified in directing that the eviction suit should be converted into regular Title Suit for declaration of title.

4. Upon remand, the learned Appellate Court after hearing the parties afresh affirmed the judgment and decree dated 14.12.2001 passed by the learned trial court.

5. Aggrieved by the judgment and decree passed by the learned First Appellate Court, the defendants-appellants have preferred the present Second Appeal.

6. On 20.01.2009, the following substantial questions of law were formulated while admitting the appeal:-

I. Whether a decree passed against a dead person can be sustained in law?

II. Whether admission in the criminal case can be a deciding factor in civil suit?

7. In order to determine the matter in its correct perspective, it is necessary to briefly restate the case of the



plaintiffs. The case of the plaintiffs is that the property originally belonged to one Tamiz Ahmad Khan and he was in possession of the suit property. The municipal khatiyani was recorded in his name. The said Tamiz Ahmad Khan sold his property i.e. house standing over Municipal Plot Nos. 1776 and 1775, along with his Zamindari of Village- Misripur for a consideration of Rs. 800/- through a registered sale deed dated 22.08.1947 (Ext. 5) in favour of Ghasiti Bibi and Ayub Khan (mother and son) and delivered its possession to the purchasers. It is further pleaded in the plaint that Ayub Khan, had remained outside from his parental village due to his service in Simon Carves India Limited company since 1957. The management of the Zamindari and cultivation were looked after by Ghasiti Bibi and for this purpose Ghasiti Bibi resided at Village- Baradih. Since the house and property of Mohalla Bagh Bhai @ Nooranganj being the suit property was looked after by late Amna Bibi, the mother of Ghasiti Bibi and maternal grandmother of late Ayub Khan (father of the plaintiffs), and as such, the municipal assessment at Sasaram with respect to Plot Nos. 1776 and 1775 got prepared in the name of late Amna Bibi. It is further case of the plaintiffs that father of the plaintiffs namely, Ayub Khan constructed pucca house consisting of 3 rooms in Plot No. 1776 from his own income. Thereafter, on 14.06.1990, he died



leaving behind his mother Ghasiti Bibi and the plaintiffs-respondents as his heirs. Ghasiti Bibi is the grandmother of the plaintiffs. The grandmother of the plaintiffs gifted her right, title and interest of Plot Nos. 1776 and 1775 in favour of the plaintiffs-respondents through registered Gift Deed dated 11.07.1990 (Ext. 3) and the plaintiffs accepted the said gift. The plaintiffs became the absolute owners of the suit house and their names were substituted over the same vide Mutation Case No. 637 of 1990-91 pursuant to order dated 27.12.1990/15.06.1991 (Ext. 8). They also obtained rent receipts on payment of rent and their names were also entered into municipality and they got municipal tax receipts (Ext. 6 series). It is further pleaded that the plaintiffs reside away in connection with service and as such, house standing over Plot Nos. 1776 remained in vacant possession. In the month of November, 1990, the original defendant approached the plaintiffs and requested to let out the house standing over Plot No. 1776 on the monthly rent of Rs. 300/- per month on the terms and conditions mentioned hereunder:-

- a. The tenancy shall start from the month of December, 1990.
- b. The monthly rent will be Rs. 300/- per month payable within ten days of every next month.



c. Electric Charges and the white washing shall be done by the tenants at their expenses which will not be adjusted from the rent money and the repairing of the house shall be done by the landlord at his own expenses.

d. Tenant shall not make any alteration or pucca Construction without prior approval of the landlord and if the tenant violates the condition he will be liable for eviction.

e. The tenant will not sub-let and they will not default in payment of rent, if they are found to be defaulter they will be liable for eviction.

f. On the personal necessity of the landlord and also for his relatives, the tenant will vacate the tenanted house and give vacant possession to the landlord.

g. If the landlord seems fit and intends to extend the tenancy, he may renew the *Kirayanama*.

h. The first tenancy was to be accepted from December, 1990 to October, 1991 by the first party (defendants-appellants) Jalil Akhtar Khan.

8. Both the parties signed over it before the witnesses and the said Agreement-cum-*Kirayanama* was notarized by the Notary, Sri Jwala Prasad, Advocate on 30.11.1990. On the basis of said Agreement-cum-*Kirayanama*, the defendants came in



possession over the house as tenant and relationship between the plaintiffs-respondents and the defendants-appellants started as landlord and tenant with respect to the suit house. The aforesaid tenancy was extended twice and a fresh *Kirayanama* was executed which was signed by the defendants. They are residing as tenants. The original defendant paid rent upto October, 1996 to the plaintiffs and thereafter the defendants stopped payment of rent from November, 1996. The plaintiffs demanded the rent and it was promised by the tenant to clear off the due rent by February, 1997. However, the defendants-appellants did not pay the due rent as promised and forcibly tried to obtain the receipts from the plaintiffs-respondents due to which the quarrel occurred. The defendants along with his associates assaulted the plaintiffs for which Sasaram P.S. Case No. 96 of 1997 under Sections 323, 341, 379, 504 of the Indian Penal Code was lodged by plaintiffs. The plaintiffs-respondents asked defendants to make payment of arrears of rent and give vacant possession of the suit house but they did not pay any heed. Hence, the present suit was filed.

9. On summons, original defendant appeared and filed his written statement, besides, the ornamental objection, the defendant challenged the title of plaintiffs and pleaded that there was no relationship of landlord and tenant between the plaintiffs



and the defendants. It is further pleaded that the property in suit originally belongs to Tamiz Ahmad Khan, who was issueless. It is vehemently pleaded that Tamiz Ahmad Khan orally gifted the suit property/house to his wife Asiya Khatoon in lieu of dower debt on 01.01.1946. The house of entire M.S. Plot No. 1776 and part portion of Plot No. 1775 was gifted by Tamiz Ahmad Khan to Asiya Khatoon in lieu of her dower debt in presence of her mother, Amna Khatoon, who accepted the same and came in possession thereof. The said Tamiz Ahmad Khan died in the year 1947 and Asiya Khatoon had also died in 1949 leaving behind her heirs, the brother Abdul Wahid Khan and Jalil Akhtar Khan. The original defendant, son of late Habib Khan, inherited the suit house and came in actual and physical possession over the same as the brother. The alleged sale deed dated 22.08.1947 in favour of Ghasiti Bibi and Md. Ayub Khan is illegal, invalid and might have been created by playing fraud. Ghasiti Bibi was not entitled to make any gift in favour of plaintiffs and Gift Deed dated 11.07.1990 is also illegal, invalid, forged and fabricated. It is further case of the original defendant that he and his brother Abdul Wahid Khan has also purchased 5 aanas 4 paise share of Ghasiti Bibi in Plot No. 1775 and partitioned the land and mutated his name separately in Plot No. 1775 and paid the holding tax and the



holding tax of Plot No. 1776 still exists in the name of Amna Bibi. Assessment of the holding is also in the name of Amna Bibi. The purchased Plot No. 1775 is parti land and the name of the purchaser is mutated. The defendant has also pleaded that he has been coming in peaceful possession since more than 12 years to the knowledge of all including the plaintiffs and in this way the defendants got the title by adverse possession and by way of ouster.

10. The story of tenancy and terms and conditions mentioned in Agreement-cum-*Kirayanama* is wrong and baseless and also denied the relationship of landlord and tenant and rent at the rate of Rs. 300/- per month. It is vehemently denied that the defendant has ever signed any *Kirayanama* on 30.11.1990 or on any other date. The said *Kirayanama* was never authenticated by Notary, Jwala Prasad. In fact, the defendant has been coming in possession since long over the plot no. 1776. It is pleaded that the suit is actually for declaration of the title and recovery of possession but the plaintiffs have wrongly filed the suit under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act, 1982, so, the plaintiffs are not entitled to get any relief, therefore, prays for dismissal of the suit.



11. On the basis of the pleadings of the parties before the trial court, following issues were framed in the eviction suit by the learned trial court:-

I. Whether the suit as framed is legally maintainable?

II. Whether the plaintiffs have got valid cause of action and right to sue?

III. Whether the suit is barred by law of limitation?

IV. Whether the suit is bad for misjoinder and non-joinder of necessary parties?

V. Whether there is relationship of landlord and tenant between the plaintiffs and defendants?

VI. Whether the plaintiffs are entitled for decree of eviction?

VII. Whether the plaintiffs are also entitled to a decree of arrears of rent and future rent till eviction?

VIII. Whether the plaintiffs are entitled to any relief or reliefs?

12. The learned trial court on the basis of evidence adduced by the parties and the materials on record has held that admittedly Tamiz Ahmad Khan transferred his right, title, interest and possession over Plot Nos. 1775 and 1776 in favour of Ghasiti Bibi and Ayub Khan vide registered sale deed dated 22.08.1947



(Ext. 5). The said Ayub Khan died before the death of Ghasiti Bibi, who was the mother of late Ayub Khan. The said Ghasiti Bibi executed a registered Deed of Gift dated 11.07.1990 (Ext. 3) in respect of plot no. 1775 and 1776 in favour of plaintiffs, who are grandsons of Ghasiti Bibi which was accepted by them and they came in possession over the suit property, their names were mutated and they paid tax and got municipal receipts (Ext. 6 series). The plaintiffs became the owner of the property which was never challenged by the defendants in any Court of competent jurisdiction. It is also apparent from mutation order (Ext. 8) that the names of the plaintiffs were mutated vide Mutation Case No. 637 of 1990-91. The plaintiffs have brought on record Ext. 2 Series which is indicative of the fact that the parties entered into the agreement for creation of tenancy, in question, and accordingly with certain terms and conditions, a *Kirayanama* was executed, the plaintiffs proved the *Kirayanama* (Ext. 3). The defendants have also accepted the plaintiffs as landlord of the defendant in bail petition filed in Sasaram P.S. Case No. 96 of 1997 and Complaint Case No. 148 C of 1997 filed by the defendant. The learned trial court has held that the plaintiffs are the owners of the suit premises. They inducted the defendant as their tenant for the monthly rent of Rs. 300/-. The *Kirayanama* has been fully proved



and the tenancy is admitted by the defendants. The plaintiffs have been able to prove their case. They are entitled to get a decree of eviction of the tenant from the suit premises.

13. Aggrieved by the judgment and decree dated 14th December, 2001 passed in Eviction Suit No. 03 of 1997, the defendants-appellants preferred Title Appeal No. 06 of 2002. After hearing both the parties, the learned Appellate Court set aside judgment of trial court and remanded the matter with a direction to convert the eviction suit into Title Suit. Ultimately, the said judgment and decree dated 01.07.2006 passed in Title Appeal No. 06 of 2002 was set aside in Miscellaneous Appeal No. 356 of 2006 by a Co-ordinate Bench of this Court and the matter was remanded to the 1st Appellate Court to decide the issues afresh.

14. On remand, after hearing the parties, the learned Appellate Court considered all the issues separately and elaborately framed by the trial court and also took into consideration the issue no. V framed by the trial court as to whether there is a relationship of landlord and tenant between the plaintiffs and defendants?, and issue no. II. Whether the plaintiffs are entitled for arrears of rent and future rent till eviction?

15. Learned Appellate Court observed that the documents Ext. 1 & 2 series prove the signature of appellants as



tenants who executed the *Kirayanama* deed and signature of the defendant-appellant has been proved by P.W. 3, Basant Kumar Singh, Advocate. P.W. 9 has proved the signature of Jalil Akhtar Khan (original defendant-appellant) (Ext. 1/A) in Urdu script on *Kirayanama* (Ext. 2). P.W. 6, Muzaffar Jamal has also proved Agreement-cum-*Kirayanama* (Ext. 2/A) from 30.10.1991 to 30.09.1992. P.W. 7, Md. Anis has proved Agreement-cum-*Kirayanama* (Ext. 2/B) for the period extending from 30.09.1992 to 30.08.1993.

16. From the aforesaid documentary evidences, the plaintiffs have proved their case that the defendants are the tenant of the suit premises. Apart from aforesaid findings, the learned trial court also mentioned that the original defendant-appellant in criminal cases either filed by him or filed against him had admitted regarding tenancy of the plaintiffs which have also been admitted into evidence as exhibits as well as considered in the oral and documentary evidence adduced by the parties and thus, held that the original defendant is the tenant and plaintiffs are the landlords of the suit premises. Once a person has admitted his tenancy, he will be stopped from claiming ownership.

17. The Appellate Court also discussed the documents filed by the defendants-appellants before the trial court such as



Municipal rent receipts (Ext. A to A/7) issued in the name of Amna Bibi, the electric receipts for security deposit in the name of Abdul Wahid Khan (Ext. D) and other documents. The original defendant, late Jalil Akhtar Khan claimed the suit premises in his written statement as absolute owner and specifically pleaded that Tamiz Ahmad Khan originally gifted the suit property and house standing over it along with Plot No. 1775 in lieu of dower debt of Rs. 40,000/- and 4 Asharfies to his wife, Asiya Khatoon on 01.01.1946, who was sister of the original defendant, late Jalil Akhtar Khan and his brother, late Abdul Wahid Khan. Tamiz Ahmad Khan died after a year i.e. in the year 1947 and thereafter, Asiya Khatoon also died in the year 1949 leaving behind her heirs, the brother, Abdul Wahid Khan and Jalil Akhtar Khan (original defendant) who inherited the suit house along with Plot Nos. 1775 and 1776 and became absolute owner. Ext. A to A/7 i.e. the rent receipts issued in the name of Amna Bibi do not show the title and possession of Jalil Akhtar Khan. The name of Jalil Akhtar Khan (original defendant) has not been mutated in municipal register and defendant has not been able to produce any such documents of the disputed property. Ext. C cannot be connected with the disputed holdings. The appellants or his predecessor have not proved their title and possession over the disputed land as absolute



owner. So far story of oral gift is concerned, Tamiz Ahmad Khan gifted the property in favour of Asiya Khatoon (his wife) in lieu of dower debt which could not be accepted as the gift in lieu of dower debt under Mohammedan law which is called as Hibba-bil-Aiwaz and it should be registered (if value is more than Rs. 100/-) gift deed in lieu of dower debt. The oral gift of the disputed property could not be made in favour of Asiya Khatoon on 01.01.1946 thus, no property of the suit premises could ever pass to the original defendant, Jalil Akhtar Khan and his brother, Abdul Wahid Khan. The original defendant has made a futile attempt to grab the suit property on the basis of alleged oral Hibba-bil-Aiwaz dated 01.01.1946 by Tamiz Ahmad Khan as also to defeat registered sale deed dated 22.08.1947 (Ext. 5) executed by Tamiz Ahmad Khan in favour of late Ghasiti Bibi and her son, Ayub Khan. The landlords-plaintiffs have proved that they are the owner of the suit property whereas the tenant-original defendant miserably failed to disprove the case of the plaintiffs-landlords by reliable evidences and the relationship of landlord and tenant is proved. The plaintiffs have proved their prima facie ownership over the suit land. The defendant has not disproved it therefore, there is relationship of landlord and tenant between the plaintiffs and defendants.



18. The learned Appellate Court further held that since the defendants-appellants had raised the plea of their own title and possession over the suit property denying the title and possession of the plaintiffs and stopped payment of rent from November, 1996, a valid cause of action arose in favour of this plaintiffs and lastly it has been observed that the judgment and decree of the trial court is based on valid reasons and does not require interference by the Appellate Court. Accordingly, the judgment and decree of the trial court was affirmed.

19. Mr. Abbas Haider, learned counsel for the appellants submitted that the present suit was filed for eviction of defendants on the ground of default in payment of rent and for payment of arrears of rent. The eviction suit has been filed invoking the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act. It is further submitted that the established legal position governing the eviction suit which is brought within the scope of the BBC Act is that, there has to be an established landlord-tenant relationship between the plaintiffs and defendants of the case. It is further submitted that the oral gift deed of 01.01.1946 by Tamiz Ahmad Khan to his wife in presence of his mother, Amna Khatoon has not been considered in correct perspective. The wife of Tamiz Ahmad Khan died issueless leaving behind his two brothers



namely, Jalil Akhtar Khan (original defendant) and Abdul Waheed Khan. It is further submitted that during pendency of the Title Appeal, the original defendant-appellant, Jalil Akhtar Khan died on 07.03.2004 and an application for substituting the names of his heirs was filed on 01.05.2004 wherein, Abdul Wahid Khan was arrayed as appellant no. 9. The said Abdul Wahid Khan died on 11.05.2008 during the pendency of title appeal and an application for substitution of the names of his heirs was filed but the judgment was passed against a dead person. The judgment against a dead person is nullity in the eyes of law because the legal heirs of the deceased party did not get an opportunity to represent their case.

20. Learned counsel for the appellants further submitted that both the learned Courts below have heavily relied upon Ext. 12 and 12/A i.e. bail petition in Sasaram P.S. Case No. 96 of 1997 and have come to the conclusion that tenancy is admitted between the parties. The admission in a criminal case has got no bearing in civil dispute which has to stand on its own evidences and cannot take aid of the evidences adduced in criminal trial. The statement contained in bail application have been relied upon by both the courts and they came to the findings that relationship of landlord and tenant is admitted. In this connection, reliance has been placed



in the case of **Seth Ramdayal Jat Vs. Laxmi Prasad** reported in **AIR 2009 SC 2463** wherein, Hon'ble Supreme Court has held that admission in a criminal case cannot be relied upon and become an adjudicatory factor in deciding a civil case. It is further submitted that the entire deposition of defendant, D.W. 9, shows that no question was put before him in the cross-examination regarding his purported admission in the bail petition on the issue of existence of relationship of landlord and tenant. The defendant has not admitted relationship of landlord and tenant. Both the courts did not consider the documents and evidences adduced by the defendants. Both the courts below have completely overlooked the contents in paragraph 5 of Ext. 12/A, wherein, it has been stated that the appellants are tenants in the room of informant from before in which they are co-sharers. It is further submitted that non-consideration of material evidences of the parties amounts to perversity in the judgment.

21. Per contra, learned counsel for the plaintiffs-respondents submitted that there is a concurrent findings of learned courts below on proper consideration of evidences on record that there is a relationship of landlord and tenant between the parties, the defendant is defaulter and is liable to be evicted from the suit premises. It is further submitted that the substantial



questions of law are not applicable to the present case. So far 1st substantial question of law is concerned, the original defendant-appellant had died on 07.03.2004 during pendency of Title Appeal and his heirs were substituted in Title Appeal No. 08 of 2002 vide order dated 22.11.2004. However, besides the heirs of original defendant i.e. sons and daughters of deceased original defendant-appellant, the name of Abdul Wahid Khan was also substituted as heir of deceased Jalil Akhtar Khan (original defendant). The plaintiffs/respondents objected to the substitution of Abdul Wahid Khan, who was neither the legal heir of the deceased original appellant nor a necessary party in the appeal. The learned lower Appellate Court on the objection of the plaintiffs-respondents passed following orders:- *“Considering the submissions and objection, the petition of the appellant dated 01.05.2004 (substitution petition) is allowed and it will be open for the respondent to place his objection as legal right of the appellant (deceased) brother.”*

22. It is also submitted that during the pendency of title appeal, the said Abdul Wahid Khan died, his legal heirs were not substituted in the appeal as he was not a proper and necessary party. Therefore, due to non-substitution of the heirs of Abdul Wahid Khan, the appeal will not stand abated. The said Abdul



Wahid Khan was neither a proper nor necessary party. Hence, his heirs are also not a necessary party. It is submitted that the Hon'ble Supreme Court repeatedly held that non-substitution of a formal/proforma party in case will not cause abatement rather it will be proceeded against the remaining party.

23. So far substantial question no. 2 is concerned, the admission of a party in a criminal case may be an important piece of evidence in a civil suit, if the facts in issue are same in both the cases. The Hon'ble Supreme Court has considered this question in a large number of cases and categorically held that admission of guilt in a criminal case would be admissible in evidences in a civil suit being relevant in the fact in issue. Therefore, any statement made in a criminal case could be proof of the relationship of landlord and tenant. It is further submitted that in a large number of cases decided by the different High Courts or Hon'ble Supreme Court, it has been held that although the judgment of a criminal case is not binding upon the Civil Court but the admission of the party in a criminal case which is also fact in issue in civil suit is relevant and a good piece of evidence, if the fact in issue is same in civil suit as well as criminal case. Moreover, the learned courts below have not at all relied upon the judgment of any criminal court but they have considered the admission of the defendant in



criminal case. Apart from that, they have also considered number of unimpeachable evidences on record, the sale deed, gift deed and *Kirayanama* which all are exhibited during evidences. Both the substantial question of law, under the facts and circumstances, are not applicable in the present case.

24. Having regard to the submissions made on behalf of the parties and materials available on record as well as impugned judgments, it is quite apparent that the premises, in question, was acquired through registered Gift Deed dated 11.07.1990 (Ext.3) by the plaintiffs. The plaintiffs became the absolute owners of the premises, in suit, and their names were mutated over the same pursuant to order dated 27.12.1990/15.06.1991(Ext. 8). The original defendant has denied the title of the plaintiffs. It is also an admitted case of the defendants that they are residing in the suit premises. Moreover, the Gift Deed executed in favour of the plaintiffs has neither been challenged nor cancelled by any Civil Court. This Court in the case of **Maharana Pratap Singh Vs. Ambika Prasad Singh**, reported in **2023 (2) PLJR 321** as well as in the case of **Shamim Ara Naz & Anr. Vs. Mohammad Quamruddin**, reported in **1997 (1) PLJR 526** has held as follows "*When the learned court below has come to a prima facie finding that the plaintiff established his ownership over the suit premises*



then the application ought not to have been rejected on the ground that there was no evidence of payment of rent by the defendant to the plaintiff or their vendor". The defendants-appellants have asserted that they are residing in the premises as absolute owner but they have failed to substantiate their claim.

25. In the present case, although the original defendant denied the title of the plaintiffs and claimed his title as absolute owner being the brother of wife of Tamiz Ahmad Khan, but the said Tamiz Ahmad Khan executed a sale deed in favour of Ghasiti Bibi and Ayub Khan (father of the plaintiffs) on 22.08.1947. Ghasiti Bibi, who is the grandmother of the plaintiffs, gifted her right, title and interest of the suit property in favour of plaintiffs-respondents through registered Gift deed dated 11.07.1990 (Ext.3). The plaintiffs became the absolute owners of the house in suit. The substantial question of law having been framed by this Court in this appeal with regard to decree passed against a dead person cannot be sustainable in law. It is admitted fact that appellant no. 9 in Title Appeal No. 06 of 2002/ 02 of 2008 was substituted, who is the brother of deceased original defendant. It is admitted fact that the original defendant-appellant died leaving behind his sons and daughters, who were appellant nos. 1 to 8 before the trial court. The brother of original defendant cannot have interest in the suit



premises in presence of appellant nos. 1 to 8. Moreover, in eviction suit, title of the parties could not be decided and it can only be gone into incidentally. The eviction suit was filed against original defendant and after his death the judgment passed in eviction suit is binding upon the heirs of the original defendant, who were appellant nos. 1 to 8 in Title Appeal before the First Appellate Court. The substitution petition of deceased brother of the original defendant-appellant in title appeal was allowed with a liberty to raise objection with regard to legal right of the brother of original defendant. The original eviction suit was not filed against Abdul Wahid Khan (appellant no . 9 in Title Appeal) and no relief was claimed against said appellant no. 9. The appellants before the first appellate court made him party- appellant for claiming his right, title and interest. Hence, Abdul Wahid Khan was neither heir of original defendant nor a proper or necessary party in the appeal. All the heirs (sons and daughters) have filed the present appeal and represented the interest of original defendant. Therefore, the impugned judgment is not passed against a dead person neither the judgment is nullity in the eye of law. Therefore, the substantial first question of law is answered against the appellants.

26. So far second substantial question of law is concerned, both the courts below firstly decided the plaintiffs



being owner of the premises, in question, and on the basis of evidence adduced by the parties i.e. *Kirayanama* executed by the parties (Ext.3) and signature on the said *Kirayanama* has been proved by the plaintiffs and prima facie title is in favour of the plaintiffs having acquired the title on the basis of registered Gift deed dated 11.07.1990 (Ext. 3) and there is a specific case of the plaintiffs that since November, 1990, the defendant has not paid rent. Since the defendant denied the claim of title of the plaintiffs, and therefore he was not paying rent to the plaintiffs. Both the courts below also discussed the admission of the defendant in criminal proceeding apart from the above oral and documentary evidences. Therefore, the second question of law is also decided against the appellants.

27. In view of the above discussions and findings, the judgment and decree of the learned court below is affirmed and in the aforesaid facts and circumstances of the case, the substantial questions of law formulated in this appeal are answered against the appellants.

28. Thus, this Second Appeal has got no merit and accordingly, it is dismissed.



29. The stay of proceeding of Execution Case No. 05 of 2005 granted by this Court vide order dated 27.11.2008 is hereby vacated.

30. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

Sankalp/-

AFR/NAFR	AFR
CAV DATE	30.10.2025
Uploading Date	17.03.2026
Transmission Date	N/A

