

Before M. M. Kumar, J.

SANDHA SINGH (DECEASED) THROUGH  
HIS L.Rs,—*Plaintiff/appellants*

versus

AMRIK SINGH AND OTHERS,—*Defendants/Respondents*

R.S.A. No. 1957 of 1986

9th August, 2005

*Indian Evidence Act, 1872—S. 90—Predecessor-in-interest of defendant mortgaged the land in favour of predecessor-in-interest of plaintiff in 1947—On account of partition of country the entry of mortgage could not be incorporated in the revenue record—Allotment of land to plaintiff in lieu of land mortgaged by the defendant—Defendant failing to redeem the land from mortgage—Mortgage deed more than 30 years old produced from the proper custody of mortgagee for making a claim before the competent authority—Whether the execution of mortgage deed in the year 1947 would be covered by the presumptions envisaged by Section 90 of the 1872 Act—Held, yes—Possession of the land also found to be that of plaintiff—Ist Appellate Court failing to meet the reasoning given by the trial Court—Appeal allowed, judgment and decree passed by the trial Court accepting the due execution of the mortgage deed restored.*

*Held*, that a perusal of the provisions of Section 90 of the Evidence Act reveals that when a document is proved to be 30 years old and if it is produced from any custody which the Court in particular case considers proper then the Court may presume various facts. Both the aforementioned requirements are satisfied in the instant case. It has been produced from the custody of mortgagee which is proper custody because mortgage deed is expected to be in the custody of a mortgagee till the mortgage is redeemed. The provision further shows that the Court may presume that the signatures on such a document are in the handwriting of the person who purported to have signed it. Still further, in case where the document is executed or attested, the Court may also presume that it was duly executed and attested by persons by whom it purports to be executed and attested. Apart from the aforementioned findings of fact it has been shown in the

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present case that the mortgage deed was presented before the competent authority at the first available opportunity when the claim of property in lieu of the property left in Pakistan was submitted after the plaintiff-appellant migrated to this part of the then India. There is no controversy with regard to the fact that the mortgage deed on the date of filing the suit was more than 30 years old and it, therefore, follows that when the deed was produced it must be much more older than thirty years. The date of mortgage deed is 21st January, 1947 and the suit was instituted on 21st May, 1982. The second requirement, that is must be produced from proper custody would also be satisfied because the document has been produced by the plaintiff-appellant.

(Para 12)

*Further held*, that the learned lower appellate Court has failed to meet the reasoning given by the learned trial Court. Merely because Section 90 of the Evidence Act uses the word "May" does not necessarily means that it must. The observations of the lower appellate Court cannot be appreciated when it remarks that no evidence has been produced on record that the mortgage deed was acted upon. Mortgage deed is dated 21st January, 1947 and great exodus of population had started in that year. Common man was simply aiming to save his life. No such evidence could be produced by the plaintiff-appellant. However, he has been asserting his rights since 1947 i.e. first available opportunity. Therefore, the lower appellate Court could not have reversed the findings of the trial Court without meeting the reasoning of the trial Court.

(Para 16)

None, for the appellant.

Hemant Sarin, Advocate, *for the respondent*.

### JUDGEMENT

**M. M. KUMAR, J.**

(1) This is plaintiff's appeal filed under Section 100 of the Code of Civil Procedure, 1908 challenging decree and judgement of reversal, dated 12th June, 1986 delivered by the lower appellate Court on the crucial issue as to whether the suit land was mortgaged by the predecessor-in-interest of defendant-respondents in favour of plaintiff-appellant on 21st January, 1947 for an amount of Rs. 7,400 and

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whether the plaintiff-appellant has become owner of the suit land by efflux of time as the defendant-respondents have lost the right to redeem the mortgage. The afore-mentioned issue is fundamental to the question of law raised in the instant appeal which is as under :

“Whether the mortgage deed, dated 21st January, 1947 was executed by the predecessor-in-interest of the defendant-respondent in favour of the predecessor-in-interest of the plaintiff-appellant raising a presumption in favour of the plaintiff-appellant under Section 90 of the Indian Evidence Act, 1872 (for brevity ‘the Act’) ?

(2) Before answering this spinal question it would be appropriate to notice skeleton facts. Sandha Singh, plaintiff-appellant, has sought a declaration by filing a suit on 25th May, 1982 being civil suit No. 217 of 1983 to the effect that he has become owner of the suit land because his predecessor-in-interest was the mortgagee of the land which was mortgaged by predecessor-in-interest of the defendant-respondents. The case of the plaintiff-appellant as projected before the Courts below is that one Jarnail Singh, predecessor-in-interest of defendant-respondent was resident of Chak No. 75 Jannwala, District Lyallpur (now in Pakistan) and he was the owner of the land measuring 67 kanals 3 marlas. On 21st January, 1947 he mortgaged the suit land through his attorney Ram Singh in favour of Sandha Singh plaintiff-appellant. On account of the partition of the country the entry of mortgage could not be incorporated in the revenue record and Sandha Singh, plaintiff-appellant was allotted the suit land in lieu of the land mortgaged by Jarnail Singh. It is the admitted position that after the death of Jarnail Singh in Pakistan, who had no child or widow his interest was inherited by his brother Surat Singh. Four years before the filing of the suit Surat Singh also died and was survived by his widow, defendant-respondent No. 1 his sons who are defendants respondents 2 to 7 and his daughters who are defendant-respondent Nos. 8 to 11. The land has not been redeemed from mortgage till the filing of the suit as no mortgage money has ever been paid to the plaintiff-appellants. As a period of more than 30 years had passed the assertion by the plaintiff-appellant has been that the right of redemption has extinguished by efflux of time. The stand of the defendant-respondents in the reply has been that the land was never mortgaged in favour of the plaintiff-appellant nor any mortgage deed

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was ever executed. The mortgage deed dated, 21st January, 1947 is stated to be the result of fraud and mis-representation. The allegation further is that the land has not been allotted to the plaintiff-appellant in lieu of the mortgaged land by any competent authority and possession of the plaintiff-appellant over the suit land has also been disputed. It is claimed that the dispute has been finally decided by the Chief Settlement Commissioner on 31st July, 1980 under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the Civil Court has no jurisdiction.

(3) On the basis of the pleadings of the parties various issues were carved out and the trial Court gave categorical finding holding that the plaintiff-appellant has been in possession of the suit land. It has further been held that the Chief Settlement Commissioner had although earlier decided the dispute in favour of the defendant-respondent but that view was reversed in favour of the plaintiff-appellant because the judgement of the Chief Settlement Commissioner was set aside by the Financial Commissioner,—*vide* Ex. PX. It is pertinent to mention that the Financial Commissioner has upheld the mortgage deed,—*vide* his judgement Ex. PX.

(4) On the crucial issue as to whether there was due execution of the mortgage deed and whether the plaintiff-appellant has become owner of the suit land by the efflux of time, the trial Court heavily relied upon the judgement Ex. PX which noticed the earlier litigation between the parties that has gone upto the High Court at that time. A reference in this regard has been made to the order passed in RSA No. 1752 of 1959 allowing the plaintiff-appellant to remain in possession of the suit land on the basis of the mortgage deed. Reliance was also placed on provisions of para 17 page 72 of the Land Settlement Manual. Taking notice of the evidence with regard to the execution of the mortgage deed Ex. P2, the trial Court has referred to the power of attorney Ex. P1 in favour of one Ram Singh who executed the mortgage deed because Jarnail Singh alongwith his brother Surat Singh were confined to Central Jail. The trial Court raised a presumption under Section 90 of the Act on the ground that the document Ex. P1 the original power of attorney in favour of Ram Singh executed by Jarnail Singh and the mortgage deed Ex. P2 executed by Ram Singh in favour of the predecessor-in-interest of the plaintiff-appellants were more than 30 years old. However, on the plea

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of mis-representation and fraud set up by the defendant-respondents, the trial Court preferred to rely upon the claim in writing of the plaintiff-appellant which was submitted before the competent authority after he migrated to this Country. The observations of the trial Court in this regard in para 12 read as under :

“.....It may be seen that the plaintiff on coming to this country, preferred his claim before the competent authority and there was some activity by the competent authority and they put the plaintiff in possession of the suit land. Though it is correct that the sanad in question has not been executed, but at the same time, it may be seen that the mother of Jarnail Singh contested the claim of the plaintiff before the competent authority and obviously the competent authority stayed the issuance of the sanad. If the mortgage deed at all was a fictitious document, the competent authority could ask(ed) for the proof of the same as far as the execution is concerned. It may be seen that the previous orders of the authorities clearly show that the plaintiff was ready to give the proof of the mortgage deed but when he was allowed to give proof, the orders of the various officers have been challenged before the Revisional Authorities by the defendant. That means, it is the defendant alone who obstructed the plaintiff from leading proof of the mortgage and obviously if i.e. The conduct of the defendants, it does not lie in their mouths how to say that the mortgage deed in a fictitious document until and unless they give a cogent reason as to how that was fictitious.”

(5) The trial Court also heavily relied upon the adjudication of the Financial Commissioner Ex. PX and the order of this court in RSA 1752 of 1959. The aforementioned view of the trial Court is discernible from para 13 which reads as under :

“Perusal of the judgement Ex. PX shows that earlier there was a litigation between the parties and they went up to the High Court as observed by the Id. Financial Commissioner on page 4 of the judgement, the Hon'ble High Court, its order RSA 1752 of 1959 allowed the plaintiff to remain in possession of the suit land on the basis of the mortgage

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deed read with provisions of para 17 p. 72 of the Land Settlement Manual. That shows that the validity of the mortgage has already been upheld and no cogent reasons have been given by the Chief Settlement Commissioner and other authorities subordinate to him as to how the mortgage deed is fictitious. The validity of the mortgage deed has been upheld by the Financial Commissioner,— *vide* his judgement Ex. PX. The Chief Settlement Commissioner and the authorities subordinate to him simply declared the mortgage deed as invalid and ignored the mortgage deed on the solitary ground that the registered mortgage deed executed in Pakistan on 21st January, 1947 could not be given effect to in the revenue record. It is a matter of common sense that after 21st January, 1947 the partition was effected on 15th August, 1947 and during this period the people were more concerned about the migration and obviously in such like situation the effect of the mortgage deed could not be given in the revenue record. The other reasons advanced by the authorities i.e. Chief Settlement Commissioner and authorities subordinate to him also have been discussed in Ex. PX by the Financial Commissioner and all those reasons have been ignored and the validity of the mortgage has been upheld. The reason given in Ex. PX appear to be more correct than the reasons given in the judgement of the Chief Settlement Commissioner and his subordinates.”

(6) On the basis of hte afore mentioned evidence the trial Court accepted the due execution of the mortgage deed and the fact that the defendant-respondent has not been able to redeem their land from the mortgage which by efflus of time has become unredeemable. The finding of the trial Court in this regard reads as under :—

“The plaintiff has been asserting his mortgagee rights, right from 1947 and he preferred his claim before the competent authorities. Had the mortgage deed been recognized by the defendants earlier, they could easily avail the right of redemption and they could apply for redemption by paying the mortgage money before he Collector or in the Civil Court as the case may be. When the litigation between

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the parties has come to the climax by going to the Court of the Id. Financial Commisisoner, it cannot be said that the earlier litigation tantamount to suspension of time. Clearly therefore, no redemption could be effected now and the redepmtion question has become time barred. The mortgage deed was executed in 1947 and there is a recital in the mortgage deed that the redemption has to be effected after three years and taking into consideration those three years, it could be safely said that the redemption could be effected on or before 21st January, 1980. The present suit is dated 16th May, 1980 showing thereby that the right of redemption does not subsist now as the plaintiff has become owner of the suit land now. Both the issues are decided in favour of the plaintiff and against the defendants.”

(7) The lower appellate Court accepted the findings of the trial Court on the issue of possession of the plaintiff-appellant on the suit land as is evident from a perusal of para 20. However, on the crucial issue whether a presumption of due execution of the mortgage deed dated 21st January, 1947 under Section 90 of the Act could be raised the finding of the trial Court has been reversed by discarding the claim made before the competent authority in respect of the land mortgaged,—*vide* mortgage deed dated 21st January, 1947, entry in the jamabandi for the year 1975-76, Ex. P3 showing the plaintiff-appellant as mortgagee, the order of the Financial Commissioner Ex. P. 6 as well as the order of this Court passed in RSA 1752 of 1959 refusing to accept the afore mentioned evidence in support of presumption which was raised by the trial Court under Section 90 of the Act, lower appellate Court has observed as under :

“There is word “may” in the aforesaid section which means that the court may or may not presume correctness of a document. In this case, the alleged execution of any such mortgage deed was denied. Sandha Singh should not have, therefore, remained contended only with the production of the mortgage deed on the ground that it was 30 years old. He should have produced certain other evidence to show that it was a genuine document, and its execution had been wrongly denied. Not to speak of any such evidence even this much is not proved that it was acted upon and

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Sandha Singh entered into possession of the land as mortgagee in Pakistan. According to AIR 1975 Madras 88 N. Ramaswamy Padayachi *versus* Ramswami Padayachi and others, the rule is Section 90 of the Evidence Act is not absolute one and even in cases where the document is produced from proper custody, the Court has a discretion to draw the presumption or require the proof of execution. It was further held in this ruling that the Court must have regard to the surrounding circumstances and apply its mind as to whether the presumption should be drawn or not. In view of the denial of the execution of the mortgage deed, I stop my hands to draw a presumption. Moreover, such presumptions are rebuttable and when the execution of the mortgage deed is denied the presumption stand rebutted. In that case also, Sandha Singh should have brought sufficient evidence to prove valid execution of the document. I am, therefore, of the opinion that the production of the mortgage deed itself is not sufficient to prove that Jarnail Singh had mortgaged his land with Sandha Singh.”

(8) Discarding the order Ex. PX passed by the Financial Commissioner where the mortgage deed Ex. P2 dated 21st January, 1947 has been accepted as a genuine document, the lower appellate Court opined as under :

“No doubt,—*vide* order Ex. PX of the Financial Commissioner (Revenue), the mortgage deed was held to be a genuine document but I am of the opinion that this finding is also not sufficient to hold the document as genuine. Litigation about this document was proceeding below also and the authorities below had not found the mortgage deed to be genuine. These Authorities had acted under the Displaced Person (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as ‘1954 Act’.) It is well settled that question of title is to be decided by the competent civil court. The 1954 Act no where envisages that such a question can be decided by any authority under the Act. When Sandha Singh was claiming possession of land as mortgagee on the basis of the mortgage deed in his favour, and that mortgage had not been admitted by the other



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party, the question of title was clearly involved, and hence this question should have been referred to the civil Court by the authorities under the Act instead of deciding the question themselves.”

(9) None has appeared for the plaintiff-respondents. However, on account of the fact that the appeal is pending since 1986 I am not inclined to adjourn the hearing of the case.

(10) Mr. Hemant Sarin, learned counsel for the defendant-respondents, has argued that due execution of the mortgage deed was required to be proved by the plaintiff-appellant. The precise argument is that somebody from the office of the Registrar could have been called and at least the plaintiff-appellant Sandhu Singh should have come the witness stand to prove the execution of the mortgage deed. Learned counsel has then placed reliance on a judgment of this Court in the case of **Amrit Nath versus Union of India (1)** and argued that the order Ex. P-X passed by Financial Commissioner cannot be taken into consideration because the dispute concerning the title could have been decided by the Civil Court alone. Learned counsel has also submitted that the authority under the 1954 Act was not competent to express any opinion on that question.

(11) The only question which requires determination by this Court is whether the execution of mortgage deed dated 21st January, 1947 (Ex. P-2), would be covered by the presumptions envisaged by section 90 of the Act, because at the time of proving its authenticity the document was more than 30 years old. Section 90 of the Evidence Act reads as under :—

**“Presumption as to documents thirty years old :—**Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person’s handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.”

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*Explanation.*—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be ; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

***Illustrations***

- (a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.
- (b) A produces deed relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.
- (c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper."

(12) A perusal of the above provision reveals that when a document is proved to be 30 years old and if it is produced from any custody which the Court in particular case considers proper then the Court may presume various facts. Both the above-mentioned requirements are satisfied in the instant case. It has been produced from the custody of mortgagee which is proper custody because mortgage deed is expected to be in the custody of a mortgagee till the mortgage is redeemed. The provision further shows that the Court may presume that the signatures on such a document are in the handwriting of the person who purported to have signed it. Still further, in case where the document is executed or attested, the Court may also presume that it was duly executed and attested by persons by whom it purports to be executed and attested. Apart from the aforementioned findings of fact it has been shown in the present case that the mortgage deed was presented before the competent authority at the first available opportunity when the claim of property in lieu of the property left in Pakistan was submitted after the plaintiff-appellant migrated to this part of the then India. A reference to these facts has been made by the trial Court in para 12 of its judgement which has been reproduced in the preceding para. There is no controversy with regard to the fact

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that the mortgage deed on the date of filing the suit was more than 30 years older and it, therefore, follows that when the deed was produced it must be much more old than thirty years. The date of the mortgage deed is 21st January, 1947 and the suit was instituted on 21st May, 1982. The second requirement, that it must be produced from proper custody would also be satisfied because the document has been produced by the plaintiff-appellant.

(13) It is also pertinent to mention that the land, which was allotted to the plaintiff-appellant, in lieu of the submission of the claim has been found to be in his possession and reference in this regard has been made even by the lower appellate Court which has accepted the finding of the trial Court on this issue in para 20 of its judgement. Once there is such an overwhelming evidence on record, I find it extremely difficult to accept the view of the learned lower appellate Court stating that execution of the mortgage deed was required to be proved by the plaintiff-appellant merely because the Court has discretion to presume execution. The discretion envisaged by Section 90 of the Act is based on sound principles. It appears to me that after furnishing evidence in respect of mortgage deed dated 21st January, 1947, a reasonable person would be compelled to take only one course of raising a presumption in favour of the profern and it is for the defendant-respondents to rebut that presumption by adducing cogent evidence on those lines. A mere denial or allegations of fraud and misrepresentation would not be adequate to rebut that presumptions. It is also interesting to notice the order Ex. PX passed by the Financial Commissioner which in unequivocal terms demonstrate that a jamabandi was received from Pakistan showing that Jarnail Singh, predecessor-in-interest of defendant-respondents had mortgaged the land earlier in favour of one Hazura Singh for a sum of Rs. 4,000 and the mortgage was without possession. However, the same land was mortgaged by Jarnail Singh *vide* mortgage deed, Ex.P-2, dated 21st January, 1947. The Financial Commissioner has also observed that there was no bar on the mortgagor Jarnail Singh to mortgage the land again with possession in favour of the plaintiff-appellant. The order of the Financial Commissioner is detailed one and has been ignored from consideration by the lower appellate Court without any legal justification. Such like orders are relevant pieces of evidence under Section 13 of the Evidence Act because such orders help the Court in determining the rights of the parties accruing from

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documentary evidence. Moreover, the order is inter parties which has gone through the hierarchy of revenue authorities and has reached the Financial Commissioner which is the highest revenue authority.

(14) The aforementioned view is amply supported by celebrated Treatise on the Law of Evidence by Chief Justice M. Monir (Vol. 1 1986 Edition, 934-5) and the same read as under :—

**“Evidentiary value of ancient documents; need for corroboration :—**The presumption under Section 90 of the Evidence Act can only dispense with the necessity of proving a document and does not touch the question of the evidentiary value of the document. The mere production of an ancient document, unless supported by some corroborative evidence of acting under it or of modern possession, is entitled to little, if any, weight. Ancient documents are admissible in evidence upon proof that they have been produced from proper custody; but their value as evidence, when admitted, must depend in each case upon the corroboration derivable from external circumstances. In order to form an estimate of the evidentiary value of ancient documents, the following considerations have been usually regarded as important (i) have they been produced on those previous occasions on which they would have been naturally produced. If in existence at the time; (ii) have any acts been done under them; and (iii) has there been ancient or modern corresponding enjoyment? The degree of credit to be given to an ancient document depends chiefly on the proof of transactions or state of affair necessarily or at least properly or naturally referable to it. An ancient deed must be corroborated by evidence of ancient or modern corresponding enjoyment, or by other equivalent or explanatory proof; it is then presumed to have constituted part of the actual transfer of the property mentioned. Though absence of proof of possession under an ancient document does not effect the admissibility of the document, it undoubtedly affects the weight to be attached to it. A document without possession to support it and without proof of any act done in connection with it, would generally have

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almost no weight in this country as a ground of inference. The illustrations to Section 90 are all cases of deeds relating to land, produced by the person in possession, or by one to whom the person in possession has committed their custody. They do not extend to documents by which a person out of possession strives to reduce the possession actually enjoyed by another to a temporary or limited interest."

(15) The analysis of the evidence would show that the lower appellate Court committed a grave error in law by refusing to read the corroborative pieces of evidence in support of mortgage deed dated 21st January, 1947. In such circumstances, the presumption envisaged by Section 90 of the Act must be raised, especially, when the original deed has been produced from the proper custody and it has been shown that on the first available opportunity, the document was produced for making a claim before the competent authority when the plaintiff-appellant have migrated from Pakistan to India after partition. Then there is evidence in the form of judicial precedent as RSA No. 1752 of 1959 also throw some light on the mortgage deed (Ex.P-2) as well as the order of the Financial Commissioner (Ex. P-X). The possession has also been found to be that of plaintiff-appellant. Therefore, the view of the lower appellate Court taken in para 14 and 15 of the judgement deserves to be rejected. The reliance of the learned lower appellate Court on the judgement of the Madras High Court in the case of *N. Ramaswamy Padayachi (supra)* is also not proper because it merely reiterates the principle that presumption with regard to due execution and attestation of a document by a person by whom it is purported to be executed or attested is not the absolute rule. The Court may require a profern to prove due execution. However, there is nothing in the afore-mentioned judgement which may prohibit raising of presumption in the instant case as there is sufficient evidence on record in support of such a presumption.

(16) There is another aspect of the matter. The learned lower appellate Court has failed to meet the reasoning given by the learned trial Court. Merely because Section 90 of the Evidence Act uses the word "May" does not necessarily means that it must. The observations of the lower appellate Court cannot be appreciated when it remarked that no evidence has been produced on record that the mortgage deed was acted upon. Mortgage deed is dated 21st January, 1947 and great

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exodus of population had started in that year. Common man was simply aiming to save his life. No such evidence could be produced by the plaintiff-appellant. However, he has been asserting his rights since 1947 i.e. first available opportunity. Therefore the lower appellate Court could not have reversed the findings of the trial Court without meeting the reasoning of the trial Court. The Supreme Court in the case of **Santosh Hazari versus Parshotam Tiwari (2)** has categorically observed that the lower appellate Court in exercise of jurisdiction under Section 96 of the Code may be entitled to reverse findings of fact but it must bear in mind two sound principles. The observations of their Lordship in this regard reads as under :

“... Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgement. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact. See **Madhusudan Das versus Narayanibai** AIR 1983 SC 114. The rule is and it is nothing more than a rule of practice—that when there is conflict or oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge’s notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. See **Sarju Pershad Ramdeo Sahu versus Jwaleshwari Pratap Narain Singh** AIR 1951 SC 120. Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would

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satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present section 100 substituted in the Code. The first appellate Court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one.” (emphasis added)

(17) It would be appropriate at the stage to deal with the submission made by Shri Hemant Sarin who had argued that due execution of mortgage deed was required to be proved by the plaintiff-appellant by producing some one from the office of the Registrar or by the plaintiff-appellants Sandhu Singh atleast taking to the witness stand to prove the execution. I find that the argument is wholly misconceived because there is sufficient supporting evidence to raise a presumption under Section 90 of the Act in favour of the mortgage deed Ex. P.2 that the document is 30 years old and it has been duly executed. Mortgage deed has been produced from the proper custody as has already been discussed above. Moreover, the trial Court did not accept the order of the Financial Commissioner Ex. PX dated 22nd March, 1983 as a proof of title and based its decision on that order. However, it has been taken into account as a supporting piece of evidence. The trial Court has recorded the finding independently and by analysing the evidence on record.

(18) Reliance of the learned counsel on a judgement of this Court in the case **Amar Nath** (supra) to the effect that the authorities under the 1954 Act cannot decide the question of title with regard to the property left in Pakistan does not call for any detailed consideration because it has been observed that the authorities under the 1954 Act have to come to a tentative decision in case of dispute for the purposes

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of awarding of compensation. Such a decision in the opinion of this Court expressed in **Amar Nath's case** (supra) has always been made subject to the decision of a competent civil Court. If the facts of the present case are examined, the trial Court has not relied upon the order of the Financial Commissioner Ex. PX accepting as an order determining title of the parties. It has only referred to the order for the purposes of corroborative piece of evidence. Therefore, the judgement of this Court in **Amar Nath's case** (supra) would not govern the issue raised in this appeal.

(19) For the aforementioned reasons, the appeal is accepted and the judgement and decree passed by the trial Court, dated 22nd October, 1983 is restored. Accordingly, it is clear that the plaintiff-appellant has become the owner of the suit land and he has been found to be in possession thereof. The defendant-respondents have lost their rights to redeem the land altogether. Therefore, a decree for permanent injunction restraining the defendant-respondents from interfering in the possession of the plaintiff-appellant is also passed in favour of the plaintiff-appellant and against the defendant-respondents. The plaintiff-appellant shall be entitled to the costs which is quantified as Rs. 10,000.

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**R.N.R.**

*Before S.S. Nijjar, & Nirmal Yadav, JJ.*

MANJEET,—*Petitioner*

*versus*

STATE BANK OF PATIALA & OTHERS,—*Respondents*

*C.W.P. NO. 19475 OF 2003*

15th September, 2005

*Constitution of India, 1950—Art. 226—State Bank of Patiala (Employees) Pension Regulations, 1995—Reg. 34—Death of a Gunman of a Bank in a terrorist attack while performing his duties—Widow of Gunman appointed on compassionate grounds—As per regulation 34 family of the deceased employee who worked between 1st January, 1986 to 31st October, 1993 shall be eligible for family pension with effect from 1st November, 1993—Unmarried daughter is eligible for*