APPELLATE CIVIL

Before Prem Chand Pandit, J.

PISHORI LAL,—*Appellant.*

versus

POORAN CHAND AND OTHERS,—*Respondents.*

Regular Second Appeal No. 306-D of 1962.

1963

Dec., 5th.

Evidence Act (I of 1872)—S. 115—Approbate and reprobate—Rule as to—How far differs from doctrine of estoppel.

Held, that the rule that a party cannot both approbate and reprobate, though a species of the law of estoppel, is different from it. In the case of an estoppel, the representee should have altered his position to his detriment; for the rule of approbate and reprobate to apply, the representor must have obtained an advantage by the representation made on the stand taken by him. A person cannot be allowed to accept and reject the same document. He cannot be permitted to take advantage on the basis of a document at one stage on the footing that it is valid and then turn round and say that it is void for the purpose of securing some other advantage.

Regular Second Appeal from the decree of the Court of the Senior Sub-Judge, Delhi dated the 21st day of August, 1962 reversing that of Shri R. L. Sehgal, Commercial Sub-Judge 1st Class, Delhi dated the 10th November, 1960 and decreeing the plaintiff's suit for the grant of preliminary decree for dis-solution of partnership and rendition of accounts.

HARKISHAN LAL, ADVOCATE, for the Petitioner.

A. R. WHIG, ADVOCATE, *for the Respondents.*

JUDGMENT

PANDIT, J.—Puran Chand and others, respondents instituted a suit, out of which the present second appeal has arisen, against Pishori Lal, appellant, for dissolution of partnership and rendition of

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accounts. Their allegations were that they were the allottees of a plot situate in Motia Khan, Pahar Ganj, New Delhi. The defendant possessed a saw-machine and on 5th December, 1956, he entered into a partnership with the plantiffs and executed a partnership deed Exhibit P. 7, to carry on the business of the sawing of wood. Later on, differences arose between them and it was not possible to continue the partnership business, which necessitated the filing of the present suit.

The defendant contested the suit. He denied the allegations of the plaintiffs and pleaded that there was no partnership between them and, as a matter of fact, the plaintiffs had sublet the property in dispute to him, where he had been carrying on his independent business. According to him, the relationship between the parties was that of landlord and tenant and the partnership-deed had been executed merely to avoid the cancellation of the allotment of the plot made in favour of the plaintiffs.

It appears that when the defendant started the business on this plot, the Managing Officer issued a notice to the plaintiffs as to why the allotment of the same in their favour be not cancelled and the defendant be not dispossessed on the ground that the plaintiffs had sublet it to the defendant. In these proceedings both the plaintiffs and the defendant had taken the position that they were partners in the business and that the plaintiffs had not sublet the premises to the defendant. The defendant filed an affidavit, Exhibit P. 5, and also made a statement, Exhibit P. 3 before the Managing Officer to this effect. By these documents, he admitted in unequivocal terms that he had entered into partnership with the plaintiffs for running the said business on the plot in dispute; that there was no relationship of land-lord and tenant between the

parties, that he was not paying any rent to the plaintiffs; and that the management and control over the plot in question was that of the plaintiffs. The Managing Officer came to the conclusion that the plaintiffs had not sublet the premises. Their allotment was, therefore, not cancelled and the defendant was allowed to remain in possession of the plot.

On the pleadings of the parties, several issues were framed. The trial Judge gave a number of findings, but in the present appeal we are only concerned with two of them. He came to the conclusion that it was open to the appellant to show the real relationship between the parties and that the partnership deed did not represent the true state of affairs. The true relationship between them was that of landlord and tenant and the partnership agreement was not binding on the appellant on this ground. In view of these findings, he dismissed the plaintiffs' suit.

Aggrieved by this decision, the plaintiffs went in appeal before the learned Senior Subordinate Judge, Delhi. He came to the conclusion that the appellant was debarred from taking the plea that the partnership-deed was executed merely to avoid the cancellation of the allotment of the plot in favour of the respondents and the real relationship between the parties was that of landlord and tenant, because he had himself admitted before the Managing Officer that he had entered into partnership with the respondents for running the business on the plot in question and had, consequently, taken advantage of the deed. In view of this finding, the learned Senior Subordinate Judge thought it unnecessary to discuss the remaining evidence produced by the parties. According to him, a partnership was created between the parties under the deed, Exhibit P. 7, the execution of which had been admitted by the defendant. He further found

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that the defendant was the accounting party, as was clear even from his own evidence. The plaintiffs were, therefore, entitled to a decree for dissolution of partnership and rendition of accounts against him. As a result, he accepted the appeal, set aside the judgment and decree of the trial Court and passed a preliminary decree in favour of the plaintiffs for dissolution of partnership and rendition of accounts. Against this, the present second appeal has been filed by the defendant.

The sole question that has been argued before me is whether the finding of the lower appellate court that the appellant was debarred from raising the plea that the partnership-deed, Exhibit P. 7, did not represent the true state of affairs and the real relationship between the patries was that of landlord and tenant is correct or not. Learned counsel for the appellant submitted that the principle of estoppel mentioned in section 115 of the Indian Evidence Act would be attracted in this case only when it was shown that the respondents had in any way altered their position to their detriment. In the present case, it had not been so proved. Consequently, it could not be held that the appellant was estopped from raising this plea. He could show that the admissions made by him in the partnership-deed and before the Managing Officer were wrong. Learned counsel for the respondents, on the other hand, argued that strictly speaking the question of estoppel would not apply to the present case, but it was the principle of approbation and reprobation, which governed the same. The appellant had accepted the deed of partnership as correct and taken advantage of the same by remaining in possession of the premises in dispute for all these years. If he had taken the position before the Managing Officer that he was a tenant of the plaintiffs he would have been evicted from the plot in question and his business would have suffered.

After hearing the counsel for the parties, I am of the view that there is merit in the contention raised by the learned counsel for the respondents. There is no doubt that the appellant had sworn an affidavit and made a statement before the Managing Officer that there was no relationship of landlord and tenant between him and the respondents and that they were partners. By taking this position, he had definitely accepted the deed to be correct and admitted that it represented the true state of affairs. It is also correct that by taking up this position, he had secured an advantage, beacuse otherwise he would have been dispossessed from the plot in dispute. After doing so, he cannot now be allowed to take up a different position and urge that the real relationship between the parties was that of landlord and tenant. The rule of approbation and reprobation would apply to such a case. In order to appply this rule, it is not necessary to prove that the respondents had in any way altered their position to their detriment. This rule has been explained in a Full Bench decision of the Madras High Court in *Kuppanna Gounder and others* v. *Peruma Gounder and others* (1), where it was observed thus:—

> "The rule that a party cannot both approbate and reprobate, though a species of the law of estopped, is different from it. In the case of an estoppel, the representee should have altered his position to his detriment; for the rule of approbate and reprobate to apply, the representor must have obtained an advantage by the representation made or the stand taken by him. As we shall show; the rule in its origion was confined to cases of legatees and donees under wills

(1) A. I. R. 1961 Mad. 511.

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and gift who were precluded from accepting a benefit under the document and repudiating the same so far as it was disadvantageous to them. In *Verchures Crammeries Ltd.*, v. *Hull and Netherlands Steamship Co., Ltd.* (2), *Scrutton L. J.*, observed at page 611:

"A plaintiff is not permitted to approbate and reprobate. The phrase is apparently borrowed from the Scotch Law where it is used to express the principle embodied in our doctrine of election, namely, that no party can accept and reject the same instrument: *Ker* v. *Wauchope* (3), *Douglas Menzeiz* v. *Umphelby* (4). The doctrine of election is not, however, confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be entitled on the footings that it is valid and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate and reprobate the transaction."

It would, therefore, be clear that the appellant cannot be allowed to accept and reject the same document, that is, the deed of partnership in the present case. He cannot be permitted to take advantage on the basis of this document at one stage and then turn round and say that it was void for the purpose of securing some other advantage. It was also held in a Supreme Court decision in *Sahu Madho Das and others* v. *Mukand Ram and another* (5)—

"Estoppel is rule of evidence which prevents a party from alleging and proving the truth.

(2) (1921) 2 K.B. 608
(3) (1819) 1 B.G.I. (21).
(4) 1908 A.C. 224 (232)
(5) A.I.R. 1955 S.C. 481

Here the plaintiff reversioner (the son of one of the daughters of the widow) is not shut out from asserting anything; assuming that the widow had only a life estate. Where the plaintiff asserts that he did not assent to the family arrangement, the principle applicable is, therefore, not estoppel. It is a rule underlying many branches of the law, which precludes a person who, with full knowledge of his rights, has once elected to assent to a transaction voidable at his instance and has thus elected not to exercise his right to avoid it, from going back on that and avoiding it at a later stage. Having made his election, he is bound by it."

Under these circumstances, it is not, possible to reverse the finding of the lower appellate Court.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this court.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Shamsher Bahadur, JJ.

SAMPURAN SINGH,—*Petitioner.*

versus

THE STATE THROUGH PEPSU LAND COMMISSION, CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ No. 425 of 1962.

1963

Dec., 6th.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32-D—"If claimed by the landowner"—Meaning of—Objections by the landowner to the draft statement