IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL NO. 54 of 2015

In

COMPANY APPLICATION NO. 164 of 2010

In

COMPANY PETITION NO. 207 of 2001

With

CIVIL APPLICATION (OJ) NO. 762 of 2015

In

O.J.APPEAL NO. 54 of 2015

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PRAMODBHAI KANJIBHAI PATEL....Appellant(s)

Versus

OFFICIAL LIQUIDATOR OF M/S MINAL OIL AND AGRO INDUSTRIES & 3....Opponent(s)

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Appearance:

MR CHINMAY M GANDHI, ADVOCATE for the Appellant(s) No. 1

MR MB GANDHI, ADVOCATE for the Appellant(s) No. 1

MR ABHIJIT P JOSHI, ADVOCATE for the Opponent(s) No. 1

NANAVATI ASSOCIATES, ADVOCATE for the Opponent(s) No. 4

MR DEVAN PARIKH, SR COUNSEL WITH MR RAJ K VYAS, ADVOCATE for the Opponent(s) No. 3

RULE SERVED for the Opponent(s) No. 3 - 4

SINGHI & CO, ADVOCATE for the Opponent(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 23/01/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This appeal is filed by the original applicant whose Company Application No.164/2010 met with partial success at the hands of the learned Company Judge.

2. Brief facts are as under. The appellant - original applicant filed a Company Application in Company Petition No.207/2001. Respondent no.1 is the Official Liquidator of M/s. Minal Oil and Agro Industries Private Ltd, the company in liquidation. Respondent no.2 Exim Bank of India was a principal lender of the company. Respondent no.3 Kanak Castor Products Private Ltd. had purchased several parcels of the Company's assets which included the lands with the building, plants, machinery, etc. under the Court supervised auction sale. The applicant himself was closely associated with the company under liquidation and undisputably was involved in active management of the company. Because of this close relations between the applicant and the Private Limited Company, few issues have arisen with respect to sale of company's assets which have been raised in the said company petition. According to the applicant, several parcels of lands, a list of which is provided in the Company Application, belonged to the applicant in his personal capacity. These lands totally admeasuring about 23,873 sq mtrs was his private property so duly reflected in the Government records. These properties never became the properties of the company in liquidation and the Official Liquidator therefore, could not have taken the possession of such properties which did not belong to the company nor could

he have offered such properties for sale for realisation of the debts of the company. The list of properties given by the applicant in the said application is as follows :

Sr. No.	Survey No.	Measurement H-RA-Sq. Mtr.
1.	167/1	0-16-19
2.	167/2	9-15-18
3.	168/1	0-16-19
4.	168/2	0-16-19
5.	169/1	0-29-33
6.	170	0-25-26
7.	171	0-31-36
8.	340/3	0-29-34
9.	340/2	0-24-28
10.	340/1	0-35-41
	Total	2-38-73

3. In the application, the applicant further averred that such properties being his private properties and not properties of the company, such properties must be returned to him. It was pointed out that the lands belonging to the company in liquidation have already been sold since they were mortgaged to Exim bank for a sale consideration of Rs.23.80 crores paid by respondent no.3 Kanak Castors Products Private Limited. With respect to lands belonging to three specific survey nos. 340/1, 340/2 and 340/3, the applicant had the following to say in the said application :

“8. It is further submitted that so far as the lands aforesaid are concerned, from amongst which on the land bearing Survey No.340/1 over which certain employees' residential quarters were built by the present deponent. The land bearing Survey No.340/1 is a personal property but on the property of the company it was not possible or feasible at the relevant time to put up construction by way of residential quarters for the employees and therefore, on the personal property of the deponent some quarters were constructed. That as such, that property was a private property of the applicant. Not only that but initially to the best of the information and knowledge, the construction costs was debited in the accounts of the company but the Income-tax authorities did not allow the same and ultimately the expenditure in the company was not allowed and the present deponent had to bear the whole costs of construction. In the aforesaid background, the residential quarters which have been sold by the Official Liquidator to M /s. Kanak Castors Products Private Limited is illegal and sale to that extent which has been effected by the Exim Bank in favour of Kanak Castors Products Private Limited is required to be set at naught and even if the document is executed, to the extent of the said construction and the land possession is required to be returned to the present deponent. The land bearing Survey No.340/l was never a subject matter of sale with the Exim Bank being effected, the sale in favour of Kanak Castors Products Private Limited. Therefore, naturally when the land is not sold to Kanak Castors Products Private Ltd., question of superstructure being sold to them does not arise. Apart from that the superstructure was always the personal property of the applicant and it was not the property of the company in liquidation. The Official Liquidator Can examine the accounts and all the past balance sheets and can make a report to the effect that the property was never standing in the name of the company in liquidation even in the books of accounts. Under the circumstances, land bearing Survey No.340/1 with superstructure is required to be returned to the applicant and appropriate directions are required to be issued to cancel the sale deed in favour of Kanak Castors Products Private Ltd.

9. Similarly, on land bearing Survey No.340/2 admeasuring 2428 sq.mtrs. and land bearing Survey No.340/3 admeasuring 2934 sq.mtrs. On this also the present applicant had constructed certain quarters in the year 1996 before the liquidation petition was moved. So far as these lands are concerned, they are the personal properties of the deponent and the construction which was made there on was also personal construction and therefore, the construction which has been illegally sold of by the Official Liquidator in the sale effected by Exim Bank, is required to be set at naught and the superstructure of the land is required to be returned to the present deponent. The present deponent is trying to get the relevant documents with regard to his personal liability for costs of construction but apart from that, to the best of information, in the books of accounts of the company, this expenditure has not been debited at all. In the facts and circumstances, the reliefs which are sought for are required to be granted."

4. With these averments in the Company Application, it was prayed that the Court should hold and declare that the lands bearing survey nos.167/1, 167/2, 168/1, 168/2, 169/1, 170, 171, 340/3, 340/2 and 340/1 admeasuring 23,873 sq mtrs are the private and personal properties of the applicant and the Official Liquidator therefore, has no right to sell the same and the Official Liquidator may be directed to remove the seals from such properties, possession of which has been taken over by the Official Liquidator and he should further be directed to handover

the same to the applicant. It was also prayed that the lands bearing survey nos. 340/1, 340/2 and 340/3 are personal properties of the applicant and the superstructures thereon are also the private properties of the applicant; any sale which has been effected in favour of Kanak Castors Products Private Limited to this extent, is required to be cancelled and the sale deed is also required to be set at naught. In the alternative prayer which was added with the leave of the Court granted on 29.6.2011, the applicant prayed in the alternative that if the Court comes to the conclusion that survey no. 340/1 is not of the ownership of the applicant, then the superstructure which is existing on remaining survey nos. 340/2 and 340/3 which are the properties of the ownership of the applicant, be directed to be removed by respondent no.3 or in the alternative by the Official Liquidator and the properties may be handed over to the applicant free from encumbrances and encroachments and in the alternative, respondent no.3 company may vacate the superstructures over survey nos. 340/2 and 340/3 and then the Official Liquidator may handover the physical possession of such lands to the applicant.

5. Respondent no.3 appeared before the learned Company Judge and strongly opposed the prayers, particularly, with respect to land bearing survey no. 340/1 with superstructure and superstructures standing on land bearing survey nos. 340/2 and 340/3. In the reply dated 17.8.2010 filed on behalf of respondent no.3, following averments were made :

"8. It is further submitted that with regard to residential quarters of Kanak Castors, the same were on survey Nos.340/1, 340/2 and 340/3. The entire bidding process, auction process, etc. were carried out keeping the aforesaid, in view. Thus, the bids and their acceptance were kept in mind, keeping in view the substantial number of quarters of employees who were using them at the relevant point of time. It is denied that these quarters were built by the applicant. These quarters have been built by Minal Oil & Agro Industries limited at their own expense. It is admitted even in the said application that the quarters stood there since 1996. **It is submitted that right to use the quarters and to use the land independently in this regard is thus the right of the Company, even if one looks at the period of adverse possession. In such circumstances, there can be no reason whatsoever to pass any orders in this regard at this stage.**

9. It is further submitted that the said quarters have regularly been used by the employees and labour of the Company since more than 15 years. Even as of date, they are being used for the residence of workers and labour of Kanak Castors. It is submitted that any claim for the said structure and the right to use the land is clearly barred by limitation as well as by principles of adverse possession. In these circumstances, there can be no question whatsoever of any order being passed in this regard."

6. Official Liquidator also filed his replies before the learned Company Judge. In one such affidavit dated 13.7.2011, he stated as under :

"4) As regarding the construction standing on the Survey No. 340/2 and 340/3 are concern the same is not the property of the applicant as it can be seen the Balance Sheet filed by the Company which shows that the Workers

Colony has been shown as the assets of the Company in the Balance Sheet year ended 31-03-2000. Therefore the claim of the applicant on the owner ship of superstructure is vague all together. A copy of Balance Sheet year ended 31-03-2000 is annexed hereto and marked as Annexure-"C""

7. The Official Liquidator had filed a report dated 12.12.2014 before the learned Company Judge in which the issue of ownership of the said lands in question came to be clarified as under :

"4) That the Official Liquidator further most respectfully submits that after scrutinizing aforesaid documents Shri Chaitanya Joshi, Advocate for Title Search has concluded in his report as under

a) Property situated at Moje: Nandasana, Taluka: Kadi, Sub-District:Kadi, District Mahesana bearing Survey nos. 173, 176/1, 176/2, 176/3, 177/1, 177/2, 178/2, 179/3, 179/4, 188, 189/2, 340/1 in all admeasuring about 31,719 Sq. Mtrs. was property owned by Company in liquidation and accordingly after the auction purchase they are under the legal ownership of Kanak Castor Products. Pvt Ltd .

b) Property situated at Moje : Nandasan, Taluka Kadi, Sub-District : Kadi, District Mahesana bearing Survey Nos. 340/2 and 340/3 are under individual ownership of Shri Pramodbhai Kanjibhai Patel. Though it appears that some servant quarters are constructed thereon of the Company in liquidation however that in itself would not confer any right title or interest in the land as such.

c) Property situated at Moje : Nandasana, Taluka Kadi, Sub-District Kadi District Mahesana bearing Survey nos.167/1, 167/2, 168/1, 168/2, 169/1, 170, 171, 340/2 and 340/3 in all admeasuring about 20,332 Sq. Mtrs is property in the individual ownership of Shri. Pramodbhai Kanjibhai Patel. Hence the Company in liquidation that is M/s. Minal Oil and Agro Industries Pvt. Ltd. (In Liquidation) has not rights, interests or title in the said property.

A copy of Title Search Report dated 02-12-2014 of Shri Chaitanya Joshi, Advocate is annexed herewith and marked as Annexure-B (colly)

5) In view of the above facts and circumstances, the land situate at Survey Nos. 167/1, 167/2, 168/1, 168/2, 169/1, 170, 171, 340/2 and 340/3 in all admeasuring about 20,332 sq. mtrs is property in the individual ownership of Shri Pramodbhai Kanjibhai Patel and not of company in liquidation i.e M/s. Minal Oil & Agro Industries Pvt. Ltd (In Liquidation)."

8. By the time, the order came to be passed by the learned Company Judge, the applicant had given up the claim of ownership qua land bearing survey no.340/1. The learned Company Judge by the impugned judgment allowed the Company Application of the applicant in part. Learned Judge placed heavy reliance on the averments made by the Official Liquidator in his report dated 12.12.2014 and held that the lands bearing survey nos. 167/1, 167/2, 168/1, 168/2, 169/1, 170, 171, 340/2 and 340/3 in all admeasuring around 20,332 sq mtrs are of the individual ownership of the applicant and not of the company. The Learned Judge was also of the opinion that in view of such conclusions, the Official Liquidator is required to handover the possession of the lands bearing survey nos. 167/1,

167/2, 168/1, 168/2, 169/1, 170, 171. With respect to land bearing survey nos. 340/2 and 340/3, however, learned Judge held and observed as under :

"(22) ....However, so far as the parcels of land bearing Survey Nos. 340/2 and 340/3 are concerned, it is clear from the record that the applicant himself has permitted the company in liquidation to construct the residential quarters of the workers on the land bearing survey Nos. 340/1 i.e. the property of the company in liquidation as well as land bearing survey Nos. 340/2 and 340/3 i.e. the properties of the applicant. The said quarters are constructed in the year 1996. Respondent No.3 herein - Kanak Castors Products Private Limited purchased the property of the company in liquidation in pursuance of the advertisement issued in the newspaper. The terms and conditions of the said advertisement reads as under:

The sale is of pieces or parcels of free hold non-agricultural Lands situate, lying and being at Village Nandasan, bearing Survey Nos. 173, 176/1, 176/2, 176/3, 177/1, 177/2, 178/2, 179/3, 179/4, 188, 189/2 and 340/1 of Moje Nandasan of Kadi Taluka, in the registration sub-district Kadi, and registration district Mehsana, admeasuring 31719 sq. mtrs or thereabout together with the buildings and other structures, erections and godowns and movable plant and machinery, equipments, appliances, furniture, machinery, spares and stores, tools and accessories.

23. Thus, respondent No.3 had purchased the aforesaid land together with the buildings and other superstructures, erections and godowns and this Court had confirmed the sale in favour of respondent No.3. The respondent No.3 is also using the said quarters constructed on the land bearing survey No.340/1, 340/2 and 340/3 since long. This Court had confirmed the sale in favour of respondent No.3 in the year 2004 and respondent No.3 is using the said quarters for its workers since then.

This application is filed in the year 2010 i.e. after 6 years since the date of confirmation of sale. Thus, this Court is of the opinion that respondent No.3 is required to be permitted to use the quarters constructed on land bearing Survey Nos. 340/2 and 340/3. Applicant is, therefore, not entitled to get back the possession of Survey Nos. 340/2 and 340/3 situated at village Nandasan, Taluka: Kadi, District: Mehsana, from respondent No.3."

9. The learned Judge disposed of the Company Application with the following observations and directions :

"25. Thus, in the facts and circumstances of the present case, this application is partly allowed. The Official Liquidator is hereby directed to handover the possession of the land bearing survey Nos. 167/1, 167/2, 168/1, 168/2, 169/1, 169/2, 170 and 171, situated at village Nandasan, Taluka: Kadi, District: Mehsana, to the applicant within a period of six weeks from the date of receipt of this order. However, so far as lands bearing survey nos. 340/2 and 340/3 with construction made thereon are concerned, as observed earlier, the same are in possession of respondent No.3 since 2004 and the present application is filed in the year 2010. In fact, as observed hereinabove, the applicant himself has constructed the quarters of workers in land bearing Survey Nos. 340/1 as well as survey nos. 340/2 and 340/3. **Therefore, when the respondent No.3 had purchased the land bearing survey No.340/1 with superstructure thereon and when the superstructure made on survey nos. 340/2 and 340/3 is made in such a manner that it would be difficult to separate it, now the applicant at this belated stage cannot claim and is not entitled to get back the possession of land bearing survey Nos. 340/2 and 340/3. Therefore, the relief prayed for in prayer clause (c) and (cc) of the Judges Summons are not granted.**"

10. This judgment the original applicant has challenged

in the present appeal.

11. Contention of the counsel for the appellant is that land bearing survey nos. 340/2 and 340/3 were of the ownership of the applicant and not of the company. It was so held by the learned Company Judge on the basis of irrefutable evidence on record which included the report of the Official Liquidator agreeing to this position. Such lands were therefore, never part of the sale proceedings undertaken by the Official Liquidator nor sold to respondent no.3. It was further submitted that even the superstructure existing on such lands was not sold to respondent no.3. Respondent no.3 is enjoying the possession of the lands and the superstructure without any authority of law. The Official Liquidator having mistakenly put respondent no.3 in possession thereof, must be directed to recover the possession and handover the same to the appellant.

Counsel drew our attention to an advertisement for auction sale published in the newspaper on 30.5.2007 in which several parcels of lands of the applicants including the lands bearing survey nos. 340/2 and 340/3 were offered for sale for the purpose of realising the dues of the company in liquidation. Counsel submitted that this would clearly establish that neither the land nor the superstructures standing thereon were part of the sale made in favour of respondent no.3. Our attention was also drawn to the public advertisement dated 15.12.2003 as per which respondent no.3 purchased the properties of the company under a registered sale deed dated 16.6.2005.

Drawing our attention to the said advertisement as well as to the sale deed, counsel submitted that in neither of these two documents there was any reference to the lands bearing survey nos. 340/2 or 340/3 or the superstructures existing thereon.

12. On the other hand, learned counsel Shri Devan Parikh for respondent no.3 strongly opposed this application raising the following contentions :

1) Respondent no.3 had purchased the properties of the company through the Court assisted sale proceedings. The superstructures standing on lands bearing survey nos.340/2 and 340/3 were part of such sale proceedings. On the basis of the valuation reports and the materials made available to the bidders, respondent no.3 had offered the highest price. He submitted that in the advertisement reference to the superstructures belonging to the company must include superstructures standing on land bearing survey nos. 340/2 and 340/3 also.

2) As per the records, the construction of superstructures standing on lands bearing survey nos. 340/2 and 340/3 was carried out by the company. The applicant had not borne the cost and was therefore, not the owner thereof. It was always open for the Official Liquidator therefore, to sale such assets of the company to realise the company's debts.

3) The application is barred by delay, laches and acquiescence. The staff quarters for the labourers of the

company were constructed on such lands way back in the year 1996 by the company. At no point of time, the applicant raised any dispute nor possession of the lands was taken from the company. By way of law of adverse possession, the company's title would have been perfected by now. The applicant cannot seek eviction of lands after so many years. Reliance was placed on section 41 of the Transfer of Property Act, 1882, to contend that the applicant having acquiesced in the sale of the superstructures in favour of respondent no.3, at this belated stage, cannot be allowed to dispute the position which is prevailing for such a long time. It was pointed out that to question the validity of sale which took place in the year 2005, the Company Application was filed in the year 2010. Counsel submitted that even without the shadow of the liquidation proceedings, the applicant could not have raised any claim against the company with respect to the superstructures or sought eviction of the possession of such superstructures. During the pendency of the winding up proceedings, such claim would not revive.

4) Counsel also submitted that as per the pleadings itself, even according to the applicant, the superstructures have been sold to respondent no.3. The applicant now cannot be allowed to take a different stand or lead evidence contrary to such pleadings.

5) Counsel submitted that all the assets of the company were under sale and sold to respondent no.3. The balance sheet of the company included the cost of construction of the superstructures standing on lands bearing survey nos.

340/2 and 340/3 also and thus these assets of the company were also conveyed to respondent no.3 under the said sale deed.

6) In support of his contentions counsel relied on the following decisions :

i) In case of **Hardev Singh v. Gurmail Singh (Dead) by Lrs.** reported in (2007) 2 Supreme Court Cases 404, in which while explaining the provisions contained in section 41 of the Transfer of Property Act, 1882, Supreme Court has observed as under :

"9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair interference to be drawn from his conduct."

ii) In case of **Syed Abdul Khader v. Rami Reddy and others** reported in (1979) 2 Supreme Court Cases 60, in which the facts were that father of the plaintiff throughout acted in relation to others as the owner of the property though the plaintiff was the real owner of the property. The father executed an agreement to sell the land in favour of defendant no.1. Such transaction was completed in presence of the plaintiff. The sale consideration was put in the hands of the plaintiff. In such background, the

Supreme Court held that the plaintiff would be estopped from contesting the validity of sale on the ground that his father had no authority to sell the land.

iii) Reliance was also placed on decision of Supreme Court in case of **Unoin of India v. Ibrahim Uddin and another** reported in (2012) 8 Supreme Court Cases 148 in which it was observed that no evidence is permissible to be taken on record in the absence of the pleadings in that respect and no party can be permitted to travel beyond its pleadings.

13. The Official Liquidator had no further inputs, except for abiding by the averments made in the multiple reports filed before the learned Company Judge.

14. Having heard the learned advocates for the parties and having perused the documents on record, we may recall, the appellant had filed the said Company Application mainly contending that several parcels of lands belonging to him are in the possession of the Official Liquidator of the company, mistakenly proceeding on the basis that the properties are of the ownership of the company, he had referred to lands bearing various survey numbers including lands bearing survey nos. 340/1, 340/2 and 340/3. By the time the learned Company Judge passed the impugned judgment, the applicant had given up the claim of ownership over land bearing survey no. 340/1. With respect to all remaining lands mentioned in the

application including lands bearing survey nos.340/2 and 340/3, the learned Judge on the basis of clear averments made by the Official Liquidator in his report dated 12.12.2014 came to the conclusion that the applicant was the owner of the lands and not the company. With respect to other lands, except lands bearing survey nos. 340/2 and 340/3, the learned Company Judge accepted the request of the applicant and directed the Official Liquidator to handover the possession of such lands to the applicant. Lands bearing survey nos. 340/2 and 340/3, were separated for different treatment. This was on the basis that such lands carried superstructures which was occupied by the labourers of the erstwhile company. With respect to the ownership of the superstructures, the learned Company Judge made somewhat conflicting observations. At one part of the judgment it was observed that :

“....it is clear from the record that the applicant himself has permitted the company in liquidation to construct the residential quarters of the workers on the land bearing survey Nos. 340/1 i.e. the property of the company in liquidation as well as land bearing survey Nos. 340/2 and 340/3 i.e. the properties of the applicant."

15. At a later portion of the judgment, learned Judge observed as under :

“In fact, as observed hereinabove, the applicant himself has constructed the quarters of workers in land bearing Survey Nos. 340/1 as well as survey nos. 340/2 and 340/3."

16. The learned Company Judge did not allow the prayer of the applicant to handover the possession of the said two parcels of lands mainly on the ground that the respondent No.3 had purchased the land bearing survey No.340/1 with superstructure and when the superstructures made on survey nos. 340/2 and 340/3 is made in such a manner that it would be difficult to separate it, now the applicant at this belated stage cannot claim and is not entitled to get back the possession of land bearing survey Nos. 340/2 and 340/3.

17. We find two primary errors in the view expressed by the learned Company Judge. Firstly, as noted, with respect to the construction of the superstructures on lands bearing survey Nos. 340/2 and 340/3, learned Judge has made somewhat conflicting observations. Secondly, the learned Judge was of the opinion that since respondent no.3 has purchased the land bearing survey no. 340/1 with superstructure and when superstructures made on survey nos. 340/2 and 340/3 are not possible to be separated out, the applicant cannot claim the possession back of the lands bearing survey no. 340/2 and 340/3. Element of delay was also pressed in service. Whether delay would

defeat the claim of the applicant would be commented upon a while later. However, merely because the superstructure is constructed in such a manner that it is difficult to separate out from the superstructure standing on land bearing survey no. 340/1 as against that portion standing on 340/2 and 340/3 cannot by itself be a ground to defeat the title of the owner of the land. If the superstructures were therefore, not sold to respondent no.3, respondent no.3 cannot claim continued use and possession thereof in absence of any right, title or interest therein. Merely because the Official Liquidator mistakenly put respondent no.3 in possession of such superstructures would not result into any legally sustainable right.

18. From the record we have reason to believe that the company under liquidation had expended for construction of superstructures on lands bearing survey nos. 340/2 and 340/3. In the Company Application, the applicant has tried to develop this issue by suggesting that the construction cost was debited in the accounts of the company but since the income tax authorities did not allow the same ultimately, the applicant had borne the whole cost of construction. There is no matching material to establish this submission. The balance-sheet of the company clearly shows cost of construction. There is no break-up of cost of construction on Survey no.340/1 vis-a-

vis on Survey Nos.340/2 and 340/3. The applicant has produced no material to show that he had spent for any part of construction. We have therefore, proceeded on the basis that it was the company which had put up the construction on lands being Survey Nos. 340/2 and 340/3 which belonged to the applicant. The fact that these lands belonged to the applicant is not disputed either by the Official Liquidator or even by respondent no.3. These lands therefore, could not have been put up for sale. In fact, these lands were neither offered for sale nor actually sold is clear from the public advertisement and the sale deed. The short question is, was the superstructures up for sale which respondent no.3 purchased during the auction proceedings?

19. Two crucial documents in this respect would be the advertisement inviting offers from interested bidders and the sale deed conveying title in the properties purchased by respondent no.3 through such auction. We may first refer to the sale deed. It is the sale deed dated 16.6.2005. First page of the document describes it as Deed of Conveyance and carries the following recitation :

"DEED OF CONVEYANCE of Non Agricultural land bearing Survey No. 173, 176/1, 176/2, 176/3, 177/1, 177/2, 178/2, 179(2)3, 179/1(4), 188, 189/2 and 340/1 admeasuring 31,719 Sq. mtrs or thereabout of Village

Nandasan of Taluka Kadi of District Mehasana along with the Buildings Constructions standing thereon admeasuring 17,173=50 sq mtrs and/or thereabout for a Sale consideration of Rs.2,80,00,000/- (Rupees Two Crores Eighty Lacs Only)"

20. Thus crucially neither the lands bearing survey nos. 340/2 or 340/3 nor the superstructures standing on such lands were part of such sale deed. Same recitation is found in the body of the document at more places than one. For example, the recitation of the document begins with the following :

"WHEREAS :

1. The Non Agricultural land bearing the Survey No.173, 176/1, 176/2, 176/3, 177/1, 177/2, 178/2, 179(2)3, 179/1(4), 188, 189/2 and 340/1 admeasuring 31,719 sq. mtrs or thereabout of village Nandasan of Taluka Kadi of District Mehsana which hereinafter referred to as 'the Said land' along with its construction standing thereon which herein after referred to as 'the building/super structure' and the plant, machineries, vessels, tanks, gadgets, pumps etc. lying or attached/affixed which herein after referred to as the plant, machineries etc thereon are owned, possessed, seized and occupied by the Vendor."

21. The sale deed also contains a schedule of properties being sold which reads as under :

"The Buildings and or Super structures admeasuring 17,173:5 sq mtrs or thereabout Compound walls worker's colony, main gate and shock well etc. Standing on the said land on ground along with the Non Agricultural land bearing the Survey No.173, 176/1, 176/2, 176/3, 177/1, 177/2, 178/2, 179/1(4), 188, 189/2 and 340/1 admeasuring 31,719 Sq mtrs of Village Nandasan of Taluka Kadi of District Mehsana."

22. Thus unequivocally and undisputably, neither the lands bearing survey nos. 340/2 and 340/3 nor the superstructures standing thereon form part of the sale deed. Learned counsel for respondent no.3 however, submitted that such sale deed must be appreciated and interpreted in light of attendant facts and circumstances. He referred to the advertisement for sale. First and foremost when we find that the document itself is more than sufficiently clear and find that such properties were never sold, reference to any external material would not be permissible. Any external aid to interpret a written document can be used only if the language used therein is unclear, possible of more than one meaning. Nevertheless, we have also perused the advertisement in question. The advertisement also did not include any reference to these superstructures. This advertisement called the interested bidders to make their offers in a sealed cover for sale of the property of the company in liquidation with the upset price of Rs.20.30 crores on as is where is basis. The terms and conditions for sale included the description of the properties of the company up for sale and read as under :

> "The sale is of pieces or parcels of free hold non-agricultural Lands situate, lying and being at Village Nandasan, bearing Survey Nos. 173, 176/1, 176/2, 176/3, 177/1, 177/2, 178/2, 179/3, 179/4, 188, 189/2 and 340/1 of Moje Nandasan of Kadi Taluka, in the registration sub-district Kadi, and registration district Mehsana, admeasuring 31719 sq. mtrs or thereabout together with the buildings and other structures, erections and godowns and movable plant and machinery, equipments, appliances, furniture, machinery, spares and stores, tools and accessories."

23. The advertisement referred to several parcels of lands of village Nandasan, Taluka Kadi of the ownership of the company admeasuring about 31,719 sq mtrs together with the buildings and other structures, erections and godowns and movable plant and machinery, equipments, appliances, furniture, machinery, spares and stores, tools and accessories. When this advertisement therefore, referred to the buildings and other structures and erections and godowns, together with the land, same must be understood in relation to the lands of the company under sale which were specified by giving survey numbers, total area of which came to 31,719 sq mtrs. If there was any intention to put for sale any of the superstructures without the lands, the same would have been so stated in the advertisement itself. It is not unknown but not very common that only superstructure is up for sale without the

land underneath such superstructure. Even in such a case, nature of the company's right to use and occupy the land would be relevant and ordinarily stated in the advertisement. If for some reason, therefore, the Official Liquidator claimed that the company was the owner of the superstructures, but not the lands, which superstructures were to be sold for realisation of debts of the company, the same would have definitely found specific mention in the advertisement or any other contemporaneous document. We cannot readily accept the contention that when the advertisement referred to buildings and other structures, erections and godowns together with the land, same had no relation to the lands referred in the advertisement for sale. The words “together with the buildings and other structures, etc.” are of significance. If we accept the contention of Mr. Parikh that the land and superstructures for sale can be separate, the words “together with” lose their importance and become redundant. Thus, standalone the sale deed does not further the case of respondent no.3 that the title in the superstructures standing on survey nos. 340/2 and 340/3 was also conveyed to respondent no.3 nor with the aid of advertisement such meaning can be discerned.

24. The learned Company Judge of-course, also has not proceeded on the basis that though the lands belonged to

the applicant, the superstructures were sold to respondent no.3 under the sale deed. As noted, the reason for declining the relief for return of the lands merely was that the superstructures were not possible of partition from the superstructure standing on land bearing survey no. 340/1 which was actually sold to respondent no.3 company.

25. The contention of adverse possession also cannot be accepted. The Official Liquidator has not set up any such case. Respondent no.3 in reply filed before the Company Judge has merely made a passing remark that even if one looks at the period of adverse possession, the application cannot be granted. Firstly, mere length of possession would not result into any claim of adverse possession. No one has put up a case that the possession of the company of lands bearing survey nos. 340/2 and 340/3 was hostile to the applicant. By all accounts, the applicant being an active administrator of the company, allowed his lands to be used by the company for construction of the residential quarters of the labourers. Even according to respondent no.3, the company had put up the construction at its own cost. There is nothing on record to suggest that the company was not permitted by the applicant to do so or that the continued possession of the company was hostile to the applicant. Merely because the company put up construction of the residential quarters in the year 1996

and the applicant did not seek eviction thereof for long time, would not result into the claim of adverse possession. In case of **Karnataka Board of Wakf v. Union of India** reported in (2004) 10 Supreme Court Cases 779, the Supreme Court observed as under :

"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi(1993) 4 SCC 375 and D N Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma (1996) 8 SCC 128)."

26. Reliance on section 41 of the Transfer of Property Act is misconceived. The applicant has at no point of time acquiesced in the sale of the superstructure in favour of respondent no.3. In fact, the trigger for moving the Company Judge appears to be the advertisement issued in such proceedings on 30.5.2007 when all the properties mentioned in the Company Application including lands bearing survey nos. 340/2 and 340/3, were put for auction sale. These properties were shown to be the properties of the company. The applicant applied to the learned Company Judge and established that he was the owner of the properties and not the company. Section 41 of the Transfer of Property Act would apply where with the consent of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it. Proviso to section 41 is also important providing that the transferee after taking reasonable care to ascertain that the transferor had power to make the transfer, had acted in good faith. In the

present case, neither the applicant had consented to the transfer of immovable property in question nor the company in liquidation had claimed to be ostensible owner of such property. In fact, by all accounts, the property in question was never transferred to respondent no.3.

27. The ground of delay raised by respondent no.3 is also not valid. There is nothing on record to suggest that in the Court assisted sale, the properties in question were transferred to respondent no.3 or that the same was to the knowledge of the applicant. It was only when in the year 2006, advertisement came to be issued for sale of the properties for the dues of the company, that the applicant made efforts to segregate his properties from those of the company. He thereafter, filed the Company Application. Even if there was some time-gap in moving the application, that by itself would not defeat the ownership and title rights of the applicant. Any such delay on his part would not defeat his rights without reference to the period of limitation.

28. The issue can be looked from a slightly different angle. The respondent no.3 claim to have purchased the superstructure standing on the lands being Survey No.340/2 and 340/2 without the lands. Such superstructure is attached to earth and cannot be bought

and sold without reference to the right of the user or occupier to use and occupy the same. Under which condition the company under liquidation was allowed to occupy the land for constructing the superstructure has not come on record. Was it a case of leave and license, was it a case of lease or was company a tenant or mere permissive user has not been established. The respondent no.3 cannot get better title than what the company under liquidation had. Respondent no.3 in the present case is trying to establish right by which it seeks to hold and occupy the superstructures in perpetuity. There is nothing on the record to suggest that company under liquidation had any such right. The Official Liquidator has not purforth any case that the company under liquidation enjoyed a lease for a particular period which cannot be terminated.

29. The conclusions we have broadly arrived at on the basis of the materials on record are :

i) It is universally accepted that the applicant is the owner of the lands bearing survey nos. 340/2 and 340/3 and not the company in liquidation.

ii) The superstructures standing on such lands were put up by the company at its cost.

iii) The labourers of the company were residing in such quarters when the company was actually operational. We are informed that currently the labourers employed by respondent no.3 in the factory are occupying such premises for their residential use.

iv) Neither the lands nor the superstructures standing thereon were put for sale under the advertisement dated 30.5.2007

v) Neither the lands nor the superstructures formed part of the sale deed dated 16.6.2005.

vi) Consequently, respondent no.3 never became and is not the owner of the superstructures standing on lands bearing survey nos. 340/2 and 340/3.

30. Despite these conclusions, we are not inclined to grant reliefs of the applicant as claimed. This is so because, as noted, the superstructures were constructed by the company at its own cost and would therefore, be the property of the company. If the applicant seeks restoration of the possession, the applicant must pay the cost of such construction to the Official Liquidator which proceeds can be used for the purpose of discharging Company's

remaining debts. The assessment of such cost must be on the basis of scientific exercise undertaken for such purpose. We may also add a caveat that nothing stated in this order or the order that we may pass later on reverting the possession of the lands and the superstructures to the applicant would enable him to seek eviction of the occupants therein without following due process of law. Learned advocate Shri M.B. Gandhi for the appellant agreed that the applicant will pay the assessed cost of construction.

31. On such basis, we pass the following order :

1) The Official Liquidator shall have the cost of construction standing on lands bearing survey nos. 340/2 and 340/3 assessed by a Government approved valuer. The construction is quite an old one. Value of such construction as on date therefore, shall have to be on the basis of the current cost of similar construction reduced by depreciation for the period between the completion of construction till date. We make it clear that the valuer shall not apply the rate of depreciation provided in the Income-tax Act which is entirely for different purpose but actual reduction in value of construction with passage of time.

2) Such report shall be placed before the Court on the next date of hearing. SO to 21.3.2018.

3) The applicant shall deposit an ad-hoc sum of Rs.50,000/- with the Official Liquidator towards the possible cost of such valuation subject to adjustments in future latest by 5.2.2018.

32. At this stage, learned counsel for the respondent no.3 prayed for stay of this order to enable him to approach the Supreme Court. Request is granted upto 21.3.2018 subject to a clarification that task of obtaining and placing before the Court report of the valuer may go on.

(AKIL KURESHI, J.)

(A.Y. KOGJE, J.)

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