A BAINI PRASAD (D) THR. LRS.

v.

DURGA DEVI

(Civil Appeal Nos. 6182-6183 of 2009)

B FEBRUARY 02, 2023

[B. R. GAVAI AND C. T. RAVIKUMAR, JJ.]

Transfer of Property Act, 1882 : s. 51 – Protection under – C *Suit by the respondent for possession of the land by demolition of the structure put on by the appellant and for permanent prohibitory injunction restraining the appellant from interfering with the said land – Appellant's case that two years ago he had carried out construction of the verandah in the land as part of his residential house bonfidely believing it to be his own land – Suit decreed in* D *favour of the respondent – However, the first appellate court held that the respondent not entitled to the possession of the land after demolition of the structure put up based on the principles of acquiescence, however, entitled to compensation – High Court set aside the order of the first appellate court and restored that of the* E *trial court – Review application there against also dismissed – On appeal, held: Appellant cannot be treated as a 'transferee' within the meaning and for the purpose of s. 51 – To attract s. 51, the occupant of the land must have held possession under the colour of title, and his possession must have been adverse to the title of the true owner – Concurrent findings of the courts below that the* F *respondent is the owner of the land in question and the original appellants had encroached upon it and ignoring the absence of any title made structures thereon at his own risk – Thus, the appellants not entitled to rely on the provision u/s. 51 to seek for restoration of the modification made by the first appellate court* G *with respect to demolition and possession – Being the party propounding the application of the principle of acquiescence it was the burden of the original appellant to establish the fact that the respondent had acquiesced in the infringement of his legal right and still stood by and allowed the construction – Furthermore, in the absence of any misrepresentation by an act or omission, the* H

mere fact that the respondent took some reasonable time to approach the court for recovery of possession cannot, be a reason to deny him the relief – No flaw, legal error, perversity or patent illegality found in the findings – Thus, the judgment of the first appellate court set aside and that of the trial court restored – Principle of acquiescence and estoppel – Evidence Act, 1872 – s. 115.

Dismissing the appeals, the Court

HELD: 1.1 The contention of the appellants founded on Section 51 of the Transfer of Property Act, 1882 is totally misplaced and misconceived. This position would be revealed if ground 'b' raised in these appeals is *juxtaposed* to ground 'd'. Noticeably, the appellants assail the reversal of the modification of the judgment and decree passed by the First Appellate Court and attempting to sustain the modification based on contentions founded on the principle of estoppel and relying upon Section 51 of the TP Act. Conceptually, the underlying principles in Section 51, TP Act and the principle of estoppel under Section 115 of the Evidence Act, 1872 are converse and cannot co-exist. [Para 7][290-C-D]

1.2 The original appellant failed to establish that he is a "transferee" within the meaning of the TP Act and for the purpose of Section 51, TP Act. In order to attract the Section the occupant of the land must have held possession under colour of title, his possession must not have been by mere possession of another but adverse to the title of the true owner and he must be under the *bone fide* belief that he has secured good title to the property in question and is the owner thereof. Section 51 gives only statutory recognition to the above three things. At the same time, in the case on hand, the concurrent findings of the courts below is that the respondent is the owner of the land in question and the original appellants had encroached upon it and effected construction. The appellants have failed to establish the above mentioned three things. The evidence on record would also go to show that even the construction was effected in deviation of the approved plan. [Para 10][292-C-E]

1.3 In the light of the concurrent findings on the questions of ownership and encroachment, it can only be held that it was

after encroaching upon the land in question and ignoring the absence of any title that he made structures thereon at his own risk. Once it is so found, the original appellant cannot be treated as a 'transferee' within the meaning of the TP Act and for the purpose of Section 51, TP Act. Therefore, the appellants are not entitled to rely on the provision under Section 51, TP Act to seek for restoration of the modification made by the First Appellate Court with respect to demolition and possession. The appellants, rightly, did not take up the plea of adverse possession and in the circumstances, being not a transferee for the purpose of Section 51 TP Act, he cannot legally require the respondent either to pay the value of improvements and take back the land or to sell out the land to him at the market value of the property, irrespective of the value of the improvements. [Para 11][292-F-H; 293-A]

1.4 To invoke the concept of estoppel the defendant has to specifically plead each and every act or omission, as the case may be, that constitutes representation from the plaintiff. [Para 12][293-F]

1.5 The equity will follow the law and it would tilt in favour of law and further that to claim equity the party must explain previous conduct. [Para 14][295-G]

1.6 The trial court took note of the factual position that despite raising the specific contention that he had affected the construction of his residential house along with varandah in the year 1986, the appellant had not produced the completion certificate of building including the construction on the land in question from the local body to establish the asserted fact. [Para 16][296-F-G]

1.7 When the First Appellate Court also took note of the issuance of Ext. PW- 18/A dated 22.09.1987 and also the submission of Ext. PW-12/A dated 10.12.1987 it should have taken into account the following facts which are explicit from the records and duly considered by the trial court. Firstly, being the party propounding the application of the principle of acquiescence it was the burden of the original appellant to establish the fact that

the respondent herein had acquiesced in the infringement of his legal right and still stood by and allowed the construction. In that regard, it should have taken into account the fact that despite asserting that the construction on the land in question was carried out while carrying out the construction of the residential building on his own land in the year 1986 as per the approved plan he had failed to establish the same by producing the completion certificate from the local authority. Secondly, if that contention is taken as true, he could not have taken up the contention of acquiescence on the respondent as it was also his case that the respondent had purchased the land in question only in the year 1987. Thirdly, the oral evidence and the documentary evidence on behalf of the respondent would reveal the factum of raising objection on "carrying out the construction, in the absence of any title over the same, at least a defective title, the original appellant could not have claimed *bona fides* on his action in carrying on the construction. In the said circumstances, the mere delay in instituting the suit, especially when it was filed well within the period of limitation prescribed, should not have been held as amounting to acquiescence. The respondent after sending telegraphic message on 22.09.1987 approached the Deputy Commissioner and ultimately obtained report revealing encroachment on the part of the original appellant on 10.12.1987 and then, brought the suit on 11.05.1988. How can it be said, in the circumstances, that the respondent has not immediately taken proceedings against the original appellant and therefore, she should ever be debarred from asserting her right for recovery of possession of her land from the encroacher even after establishing her title over the encroached land in a suit instituted well within the prescribed period of limitation. [Para 17][296-G-H; 297-A-F]

1.8 Estoppel is a principle founded on equity and its object is only to prevent and secure justice between the parties. In the proven circumstances that the original appellant was not having title over the property, that the respondent is the owner of the land in question, that the concurrent finding is that the original appellant was the encroacher and further that objection was raised by the respondent against the construction she should not have shut out by the rule of acquiescence or by the rule of estoppel for

A **having made a representation to make the original appellant to believe that she had consented for the construction. [Para 19][298-A-C]**

1.9 The entire circumstances revealed from the evidence on record unerringly point to the fact that the appellant had B **encroached upon land belonging to the respondent and without *bona fides* effected constructions which is verandah which is extension of residential building. The object of estoppel, would be defeated if the said illegality is recognized and allowance is granted therefor. [Para 20][298-C-D]**

C **1.10 In a case where the owner of the land filed suit for recovery of possession of his land from the encroacher and once he establishes his title, merely because some structures are erected by the opposite party ignoring the objection, that too without any *bona fide* belief, denying the relief of recovery of possession would tantamount to allowing a trespasser/encroacher** D **to purchase another man's property against that man's will. In such a situation in the absence of any misrepresentation by an act or omission, the mere fact after making objection the plaintiff took some reasonable time to approach the Court for recovery of possession cannot, at any stretch of imagination, be a reason** E **to deny him the relief him of recovery of possession of the encroached land on his establishing his title over it. [Para 21][299-D-E, F-G]**

1.11 No flaw, legal error, perversity or patent illegality is found in the findings on the substantial questions of law by the F **High Court ultimately, in favour of the respondent and in setting aside the judgment and decree of the first appellate court and also in restoring the judgment and decree of the trial court. [Para 22][299-H; 300-A]**

Janak Dulari Devi and Anr. v. Kapildeo Rai and Anr. **(2011) 6 SCC 555 : [2011] 6 SCR 96;** *Ram Prakash* G *Sharma v. Babulal* **(2011) 6 SCC 449 : [2011] 6 SCR 757;** *Ghisalal v. Dhapubai* **(2011) 2 SCC 298 : [2011] 1 SCR 651;** *Nedunuri Kameswaramma v. Sampati Subba Rao* **AIR 1963 SC 884 : [1963] SCR 208;** *R.S. Madanappa v. Chandramma* **AIR 1965 SC 1812 :** H **[1965] SCR 283;** *Pratima Chowdhury v. Kalpana*

Mukherjee **AIR 2014 SC 1304 : [2014] 2 SCR 656;** *B.L. Shreedhar v. K.M. Munnireddy* **AIR 2003 SC 578 : [2002] 4 Suppl. SCR 601;** *Chairman, State Bank of India & Anr. v. M.J. James* **(2022) 2 SCC 301;** *Abdul Kader v. Upendra* **40 C.W.N 1370;** *N.C. Subbayya v. Pattan Abdulla Khan* **(1956) 69 LW (Andhra) 52;** *Bodi Reddy v. Appu Goundan* (**1971) ILR 2 Madras 155 – referred to.**

Case Law Reference

[2011] 6 SCR 96	**referred to**	**Para 3**
[2011] 6 SCR 757	**referred to**	**Para 3**
[2011] 1 SCR 651	**referred to**	**Para 3**
[1963] SCR 208	**referred to**	**Para 12**
[1965] SCR 283	**referred to**	**Para 12.1**
[2014] 2 SCR 656	**referred to**	**Para 12.2**
[2002] 4 Suppl. SCR 601	**referred to**	**Para 12.3**
(2022) 2 SCC 301	**referred to**	**Para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.6182-6183 of 2009.

From the Judgment and Order dated 27.12.2007 and 27.03.2008 of the High Court of Himachal Pradesh at Shimla in RSA No.276 of 1996 and CRP No.4 of 2008 respectively.

Ms. Kiran Suri, Sr. Adv., S. J. Amith, Ms. Aishwarya Kumar, Krishna Kumar, Dr. (Mrs.) Vipin Gupta, Advs. for the Appellants.

Rajesh Srivastava, Gaurav Verma, Neeraj Dutt Gaur, Advs. for the Respondent.

The Judgment of the Court was delivered by

C. T. RAVIKUMAR, J.

1. The respondent in R.S.A. No.276 of 1996 who was the defendant in Civil Suit No. 70 of 1988 on the file of Subordinate Judge's Court, Kullu in Himachal Pradesh, is the original appellant in these appeals

A by special leave. Subsequent to his death the legal heirs got themselves impleaded as appellants 1(a) to 1(g). The former appeal is directed against the judgment and final order in R.S.A. No.276 of 1996 dated 27.12.2007 and the later appeal is directed against the order dated 27.03.2008 in Civil Review Petition No.4 of 2008, in the said Second Appeal, passed by the High Court of Himachal Pradesh at Shimla. The respondent herein
B (plaintiff) filed Civil Suit No.70 of 1988 for possession of land measuring 11 Biswancies comprised in Khasra No. 994/1-A/1 as per Talima by demolition of the structure put up thereon in Phati Dhalpur, Kothi Maharaja, Tehsil and District Kullu and for permanent prohibitory injunction restraining the defendant (the appellant herein) from interfering
C on disputed land and other land appurtenant to it, owned by her. The suit was decreed and upon holding the respondent herein/plaintiff as the owner of the encroached land handing over the same after demolition of the structures put up there was ordered. The original appellant/defendant took up the matter in appeal. As per the judgment in Civil Appeal No.9
D of 1992, the findings on ownership and the question of encroachment were confirmed. Nonetheless, the First Appellate Court modified the judgment and decree holding that the plaintiff/respondent herein is not entitled to recovery possession of 11 Biswancies of land after demolition of the structures put up thereon based on the principles of acquiescence. Consequently, she was found entitled to a decree of compensation at the
E market value prevalent at the time of filing of the suit in lieu of that relief and the compensation therefor was assessed at Rs.5500/-. Over and above the said amount, the respondent herein (the plaintiff) was held entitled to recover interest at the rate of 12 % per annum from the date of filing of the suit till realization. RSA No.276 of 1996 was filed
F challenging the modification of the judgment and decree of the Trial Court to above extent by the respondent herein. As per the impugned judgment dated 27.12.2007, the High Court allowed the Second Appeal and set aside the judgment and decree of the First Appellate Court for compensation to the respondent in lieu of recovery of possession and the judgment and decree of the Trial Court dated 18.01.1992 for demolition
G and handing over of the possession of the encroached land was restored. The review petition being; Civil Review Petition No.4 of 2008 filed by the appellant herein in the said Second Appeal was dismissed by the High Court as per order dated 27.03.2008. Hence, these appeals.

2. Heard, Ms. Kiran Suri, learned Senior Counsel for the appellants
H and Mr. Rajesh Srivastava, learned counsel for the respondent.

3. The succinct narration of facts as above would make it abundantly clear that there are concurrent findings of the Trial Court, the First Appellate Court as also the High Court on the questions of ownership over the land in question viz., land measuring 11 Biswancies, as described above and its encroachment by the original appellant. In the said circumstances, we find absolutely no reason to revisit the factual findings on the questions of ownership and encroachment based on the settled judicial principle well-established by precedents that concurrent finding of fact does not call for interference in an appeal under Article 136 of the Constitution of India in the absence of any valid ground for interference. (See the decisions in ***Janak Dulari Devi and Anr. v. Kapildeo Rai and Anr.***[1], ***Ram Prakash Sharma v. Babulal***[2] and ***Ghisalal v. Dhapubai***[3]).

4. RSA No.276 of 1996 was filed by the respondent herein/plaintiff, rightly, against the setting aside of the judgment and decree of the trial Court for demolition and handing over the possession of land measuring 11 Biswancies in Khasra No.994/1-A/1 and holding and decreeing that in lieu of the same she is entitled to a decree of compensation at the market value prevalent at the time of filing of the suit and interest at the rate of 12 % per annum on the assessed amount of Rs.5500/- from the date of filing of the suit till its realization. In this context, it is pertinent to note that as against the judgment of the First Appellate Court confirming the findings on ownership and encroachment against him and further ordering payment of compensation after rejecting his denial of encroachment, the original appellant had neither filed an independent appeal nor a cross appeal.

5. In short, for the foregoing reasons, the scope of consideration in these appeals is to be confined to the question whether the reversal by the High Court of the modification effected by the First Appellate Court warrants interference in exercise of power under Article 136 of the Constitution of India.

6. According to the appellants, the respondent herein did not object and resort to civil remedy against the construction effected on the land in dispute within a reasonable time and, therefore, she is estopped from

[1] (2011) 6 SCC 555
[2] (2011) 6 SCC 449
[3] (2011) 2 SCC 298

A claiming recovery of the land in question after demolition of the structure raised thereon. True, that the original appellant had also raised a contention that he had effected the construction on the *bona fide* belief that he was effecting construction on his own land and therefore, the construction raised by him on the land in question is protected under Section 51 of the Transfer of Property Act, 1882 (hereinafter, 'the TP Act'). This was
B pressed into service by the appellants.

7. At the very outset we may say that we are of the considered view that the contention of the appellants founded on Section 51 of the TP Act is totally misplaced and misconceived. This position would be
C revealed if ground 'b' raised in these appeals is *juxtaposed* to ground 'd'. Noticeably, the appellants assail the reversal of the modification of the judgment and decree passed by the First Appellate Court and attempting to sustain the modification based on contentions founded on the principle of estoppel and relying upon Section 51 of the TP Act. Conceptually, the underlying principles in Section 51, TP Act and the
D principle of estoppel under Section 115 of the Indian Evidence Act, 1872 are converse and cannot co-exist. Section 51 of the TP Act reads thus:-

> "***51. Improvements made by bona fide holders under defective titles.***—*When the transferee of immoveable property makes any improvement on the property, believing in good faith that*
E *he is absolutely entitled thereto, and he is subsequently evicted there from by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property*
F *to the transferee at the then market value thereof irrespective of the value of such improvement. The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction. When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted*
G *therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them."*

8. A perusal of Section 51, TP Act would reveal that even after the pre-requisites for the enforceability of equity enacted in it are satisfied, the right to election for one of the two alternatives provided under that
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Section would still rest with the person evicting. In other words, he may elect either to pay the value of improvements made by the defendant who satisfies a description of "transferee" for the purpose of this Section and take the land or sell out his interests in the land to the transferee at the market value of the property, irrespective of the value of such improvements.

9. Section 51, TP Act is a general provision dealing with improvements effected by a transferee to the transferred property in the manner specifically provided thereunder. Thus, a bare perusal of Section 51, TP Act would reveal that in order to acquire the 'right to require' in the manner provided thereunder one should be a 'transferee' within the meaning of the TP Act and for the purpose of the said section. In short, Section 51 applies in terms to a transferee who makes improvements in good faith on a property believing himself to be its absolute owner. In this context, the seemingly, paradoxical statements in grounds 'b' and 'd' raised in the appeals are worthy to refer and they read thus:-

> Grounds 'b' and 'd' in the appeals read as under:-*'b'. "That the Hon'ble High Court has committed a serious error in holding that estoppel, waiver is averments in written statement specifically state all the facts leading to estoppel. The petitioner has specifically pleaded in his written statement as under: -*
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> > *"The defendant constructed the house on the land along with land in dispute with verandah and completed it in the month of September, 1986. At the time, neither the plaintiff nor her husband who was living at Raghunathpur adjoining the land of the defendant raised any objection."*
>
> *That plea of estoppel is clearly made out from the pleadings of the parties, their conduct, oral as well as documentary evidence. The said plea has been raised to put to trial and therefore, the plea of estoppel being the issue of law cannot be raised at any time.*
>
> *'d'. That the petitioner was under bona fide belief that he has constructed on its own land and the construction raised by the petitioner is protected by virtue of Section 51 of TP*

A *Act. The petitioner has acted under the bona fide defective title and therefore has been fighting the litigation since last 20 years on the belief that he has constructed on his own land but ultimately after holding several demarcations, one of the witnesses found the trespass to an extent of 9 biswasies whereas the other found it 11 biswasies. However, admittedly the area involved is very small and the encroachment is not intentional and therefore, Section 51 of TP Act will apply to the facts and circumstances of the case."*

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10. The original appellant has failed to establish that he is a "transferee" within the meaning of the TP Act and for the purpose of Section 51, TP Act. In order to attract the Section the occupant of the land must have held possession under colour of title, his possession must not have been by mere possession of another but adverse to the title of the true owner and he must be under the *bone fide* belief that he has secured good title to the property in question and is the owner thereof. In short, Section 51 gives only statutory recognition to the above three things. At the same time, in the case on hand, the concurrent findings of the courts below is that the respondent herein is the owner of the land in question and the original appellants had encroached upon it and effected construction. The appellants herein have failed to establish the above mentioned three things. The evidence on record would also go to show that even the construction was effected in deviation of the approved plan.

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11. In the light of the concurrent findings on the questions of ownership and encroachment, as noted above, it can only be held that it was after encroaching upon the land in question and ignoring the absence of any title that he made structures thereon at his own risk. Once it is so found, the original appellant cannot be treated as a 'transferee' within the meaning of the TP Act and for the purpose of Section 51, TP Act. Therefore, we have no hesitation to hold that the appellants are not entitled to rely on the provision under Section 51, TP Act to seek for restoration of the modification made by the First Appellate Court with respect to demolition and possession. The appellants, rightly, did not take up the plea of adverse possession and in the circumstances, being not a transferee for the purpose of Section 51 TP Act, he cannot legally require the respondent either to pay the value of improvements and take back

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the land or to sell out the land to him at the market value of the property, irrespective of the value of the improvements.

12. Now, what remains to be considered is whether the appellant herein/defendant has pleaded and proved his plea of estoppel. The appellants would contend that non-framing of the question of estoppel as an issue is not fatal in the facts and circumstances as also in view of the evidence available on record, in the case on hand. To buttress the contention, the appellants rely on the decision of this Court in ***Nedunuri Kameswaramma v. Sampati Subba Rao***[4]. The relevant recital in the paragraph 5 of the said decision reads thus:-

> *"5. ...No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion."*

The position of law revealed from the afore-extracted recital from the said decision cannot be disputed. In fact, for the very same reason despite the non-framing of the issue of estoppel we are inclined to consider the contentions founded on the principle of estoppel. We may hasten to add that indubitably the position is that to invoke the concept of estoppel the defendant has to specifically plead each and every act or omission, as the case may be, that constitutes representation from the plaintiff. Before delving into the said question it is only appropriate to refer to the enunciation of the settled position in respect of the concept of estoppel.

12.1 In the decision in ***R.S. Madanappa v. Chandramma***[5]**,** this court considered the object of estoppel. It was held that its object is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. It was therefore, further held that when one

[4] AIR 1963 SC 884
[5] AIR 1965 SC 1812

party makes a representation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation.

12.2In the decision in ***Pratima Chowdhury v. Kalpana Mukherjee***[6], while considering Section 115 of the Evidence Act, this Court held that four salient conditions are to be satisfied before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering a position, should be such, that it would be iniquitous to require him to revert back to the original position. After holding so, it was further held that the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.

12.3 In the decision in ***B.L. Shreedhar v. K.M. Munnireddy***[7], this Court held that when rights are invoked estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. The appellant relies on this decision, more particularly paragraph 30 of the said decision and it reads thus :-

> *"30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct."*

It is to be noted that in the said decision this Court clarified that a legal status expressly denied by a statute could not be conferred on the basis of estoppel.

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[6] AIR 2014 SC 1304

[7] AIR 2003 SC 578

13. The appellant has also relied on the decision of this Court in ***Chairman, State Bank of India & Anr. v. M.J. James***[8], more particularly, paragraph 39 which read thus:-

> *"39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence."*

The position expounded as above certainly request consideration with reference to the facts of this case. In that regard we will have to consider whether there was acquiescence on part of the respondent and if so, whether lapse of time, if any, is of no importance or consequence, with reference to the factual position, in view of the exposition thereunder 'that acquiescence would not apply if lapse of time is of no importance or consequence'.

14. What is crystal clear from the enunciation of law in catena of cases is that the equity will follow the law and it would tilt in favour of law and further that to claim equity the party must explain previous conduct.

15. Besides, bearing in mind, the enunciation of law on the principle of estoppel we will have to take note of certain crucial aspects borne out

[8] (2022) 2 SCC 301

A of the records in the case. The case of the original appellant is that he had carried out the construction of the varandah in the land in dispute as part of his residential house in the year 1986 *bona fidely* believing it to be his own land before the acquirement of land in question by the respondent. This contention is incoherent with that of acquiescence viz., the contention claims to be embedded in ground 'b' that the respondent
B remained silent and thereby, made a representation persuading him to alter his position and to go ahead with the construction in the land in question.

Actually, the original appellant took up the contention thereunder
C that neither the plaintiff (respondent herein) nor her husband who were living at Raghunathpur adjoining his land raised any objection during the construction. Obviously, this contention was taken up jesuitically as what is stated in the preceding sentence is that he constructed house on the land along with land in dispute with verandah and completed it in the month of September, 1986; whereas, admittedly, the respondent herein
D purchased the land only in the year 1987. But the evidence on record, dealt with by the Courts below, would reveal that the respondent herein had objected to the carrying out of the construction by the original appellant in the land in question. It is evident from the record that the respondent sent telegraphic notice Ex. PW-18/A dated 22.09.1987 to the original
E appellant for stopping construction thereon. It is also on record that she made a complaint before the Deputy Commissioner through her husband under Ex. PW-12/A on 10.12.1987 which ultimately resulted in a report pursuant to an inspection by PW-12, the then Tehsildar, Kullu of the suit land on 12.01.1988. The suit was instituted thereafter on 11.05.1988.

F 16. Contextually, it is relevant to note that the trial court took note of the factual position that despite raising the specific contention that he had affected the construction of his residential house along with varandah in the year 1986, the appellant herein had not produced the completion certificate of building including the construction on the land in question from the local body to establish the asserted fact.

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17. We are of the considered view that when the First Appellate Court also took note of the issuance of Ext. PW-18/A dated 22.09.1987 and also the submission of Ext. PW-12/A dated 10.12.1987 it should have taken into account the following facts which are explicit from the records and duly considered by the Trial Court. Firstly, being the party

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propounding the application of the principle of acquiescence it was the burden of the original appellant to establish the fact that the respondent herein had acquiesced in the infringement of his legal right and still stood by and allowed the construction. In that regard, it should have taken into account the fact that despite asserting that the construction on the land in question was carried out while carrying out the construction of the residential building on his own land in the year 1986 as per the approved plan he had failed to establish the same by producing the completion certificate from the local authority. Secondly, if that contention is taken as true, he could not have taken up the contention of acquiescence on the respondent as it was also his case that the respondent had purchased the land in question only in the year 1987. Thirdly, the oral evidence and the documentary evidence on behalf of the respondent would reveal the factum of raising objection on "carrying out the construction, in the absence of any title over the same, at least a defective title, the original appellant could not have claimed *bona fides* on his action in carrying on the construction. In the said circumstances, the mere delay in instituting the suit, especially when it was filed well within the period of limitation prescribed, should not have been held as amounting to acquiescence. As noticed hereinbefore, the respondent herein after sending telegraphic message on 22.09.1987 approached the Deputy Commissioner and ultimately obtained report revealing encroachment on the part of the original appellant on 10.12.1987 and then, brought the suit on 11.05.1988. How can it be said, in the circumstances, that the respondent has not immediately taken proceedings against the original appellant and therefore, she should ever be debarred from asserting her right for recovery of possession of her land from the encroacher even after establishing her title over the encroached land in a suit instituted well within the prescribed period of limitation.

18. In the situation and circumstances expatiated above it is only apposite to refer to the decision in ***Abdul Kader v. Upendra***[9]**.** It was held therein that in the case of acquiescence the representations are to be inferred from silence, but mere silence, mere inaction could not be construed to be a representation and in order to be a representation it must be inaction or silence in circumstances which require a duty to speak and therefore, amounting to fraud or deception.

[9] 40 C.W.N 1370

19. There can be no doubt with respect to the position that estoppel is a principle founded on equity and as held by the court in ***Madanappa's*** case (supra) its object is only to prevent and secure justice between the parties. In the proven circumstances that the original appellant was not having title over the property, that the respondent herein is the owner of the land in question, that the concurrent finding is that the original appellant was the encroacher and further that objection was raised by the respondent herein against the construction she should not have shut out by the rule of acquiescence or by the rule of estoppel for having made a representation to make the original appellant to believe that she had consented for the construction.

20. The entire circumstances revealed from the evidence on record unerringly point to the fact that the appellant had encroached upon land belonging to the respondent and without *bona fides* effected constructions which is verandah which is extension of residential building. The object of estoppel, as held in ***Madanappa's*** case, would be defeated if the said illegality is recognized and allowance is granted therefor. In the contextual situation, a decision of a learned Single Judge of High Court of Andhra Pradesh in ***N.C. Subbayya v. Pattan Abdulla Khan***[10] extracted in agreement in the decision by the learned Single Judge of High Court of Madras in the decision in ***Bodi Reddy v. Appu Goundan***[11], is worthy to be looked into. In the decision the learned Single Judge of the High Court of Andhra Pradesh after posing a question "has the court an absolute discretion to award damages instead of a mandatory injunction where there is a trespass by the defendant on the plaintiff's land?" held thus:-

> *"To say the building erected in such circumstances should not be directed to be removed and only damages could be awarded would, in my opinion, be ineffective, to sanction a condemnation of the plaintiff's property and an appropriation of it for the defendant's use…. To confine the relief to compensation in such a case is tantamount to allowing a trespasser to purchase another man's property against that man's will. No man should be compelled to sell his property against his will at a valuation and no person should be*

[10] (1956) 69 LW (Andhra) 52

[11] (1971) ILR 2 Madras 155

encouraged to do a wrongful act or commit a trespass relying on the length of his purse and his ability to pay damages for it.

To say that a small strip of building site could thus be appropriated by a trespasser would be to admit a rule of law which can be applied limitlessly. In cases of trespass, the Court should ordinarily grant an injunction directing the defendant to remove the encroachment and restore possession of the vacant site to the plaintiff. Neither serious inconvenience to the defendant—trespasser nor the absence of serious injury to the plaintiff is a ground for depriving the latter for his legal right to the property."

21. True that the learned Single Judge further held that if the plaintiff is guilty of laches amounting to acquiescence or has knowingly permitted the defendant to make the construction and made him to incur heavy expenditure without protest or objection, mandatory injunction could be declined and damages could be given. As held by the learned Single Judge we are of the considered view that in a case where the owner of the land filed suit for recovery of possession of his land from the encroacher and once he establishes his title, merely because some structures are erected by the opposite party ignoring the objection, that too without any *bona fide* belief, denying the relief of recovery of possession would tantamount to allowing a trespasser/encroacher to purchase another man's property against that man's will. In ***Bodi Reddy's*** decision (supra) the learned Judge held that in a suit for recovery of possession filed within the period of limitation provided under Limitation Act, the doctrine of laches or acquiescence has no place to defeat the right of the plaintiff to obtain the relief on his establishing his title. We may hold that in such a situation in the absence of any misrepresentation by an act or omission, the mere fact after making objection the plaintiff took some reasonable time to approach the Court for recovery of possession cannot, at any stretch of imagination, be a reason to deny him the relief him of recovery of possession of the encroached land on his establishing his title over it.

22. Considering all the aforesaid circumstances, we do not find any flaw, legal error, perversity or patent illegality in the findings on the substantial questions of law by the High Court ultimately, in favour of

A the respondent herein and in setting aside the judgment and decree of the First Appellate Court and also in restoring the judgment and decree of the Trial Court.

23. Resultantly the appellants are bound to fail and the appeals are accordingly dismissed.

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24. There is no order as to cost.

Nidhi Jain Appeals dismissed.
(Assisted by : Pareekshit Bishnoi and Shashwat Jain, LCRAs)