

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No.789/2002**

% **Date of Decision: May 26 , 2009**

# SHRI PRAVEEN NARANG ..... Plaintiff  
! Through: Mr. Krishnan Venugopal, Sr. Advocate with  
Mr.Anshu Mahajan, Advocate.

Versus

\$ SHRI DINESH GULATI & ANR. .... Defendants  
^ Through: Mr.Rakesh Tikku, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

**S.N.AGGARWAL, J**

1. The plaintiff has filed this suit against the defendants for possession, permanent injunction and damages for illegal use and occupation of the property bearing No.G-48, Jangpura Extension, New Delhi. The portion of the said property in possession of the defendants is shown in the site plan annexed with the plaint.

2. The case of the plaintiff is that one Smt. Sita Devi Narang was the owner of the suit property who had executed a registered Will dated 26.04.1988 and had thereby bequeathed the above referred property to him. The plaintiff is the son of Shri S.S. Narang who was the younger brother of the husband of Smt.Sita Devi Narang. On the death of Smt. Sita Devi Narang in July, 1991, the plaintiff filed a

Probate Case No.263/1991 and letters of administration were granted to him in respect of the property in suit on 16.10.1992. Thereafter, both the L&DO and MCD mutated the property in favour of the plaintiff by 1995. It is alleged that the plaintiff had permitted the defendants to stay in the scheduled premises as a measure of goodwill for the last seven years preceding the filing of the present suit. Since the plaintiff wanted the suit accommodation for his own use, he vide his letter dated 25.06.2001 asked the defendants to vacate the suit premises. The plaintiff also sent legal notices dated 20.09.2001 and 22.09.2001 informing the defendants that they were in unlawful possession of the suit property as they no longer had leave or licence of the plaintiff to stay in the said premises. The plaintiff is stated to have not received any reply to his legal notice from the defendants. Since the defendants failed to vacate the suit premises despite service of legal notices dated 20.09.2001 and 22.09.2001, the plaintiff has filed this suit against them seeking a decree of possession and also a decree of damages for illegal use and occupation of the suit property by the defendants @ Rs.15,000/- per month with effect from 07.10.2001 till realization. This suit was filed by the plaintiff on 05.04.2002.

3. In response to the summons of the suit, the defendants have filed their written statement. It is stated by them in their written statement that this Court has no jurisdiction to try and decide the present suit as the relationship between the predecessor-in-title of the plaintiff and the defendants herein and their predecessor-in-title

was earlier that of landlord-tenant and, according to them, in view of the provisions of Delhi Rent Control Act, this suit is barred and not maintainable in this Court. It is alleged that their predecessor-in-title, namely, Shri Ram Prakash Gulati was inducted in the suit premises on or around 1972 at a rental of Rs.70/- per month, which rent was increased from time to time and according to the defendants, the rent in respect of the suit premises in 1986 was Rs.350/- per month. The defendants have alleged that they were tenants in the suit property till 1986 and thereafter they became owner of the said premises by adverse possession since no rent after 1986 was either claimed by anybody or paid by them either to the plaintiff or to his predecessor-in-title. However, the defendants have pleaded 'adverse possession' as an alternative plea stating that in case their plea of 'tenancy' is not accepted by the Court, then in that event they are entitled to resist this suit on the ground of having become owners by adverse possession. The defendants have further taken an objection of limitation in their written statement stating that in any case, this suit is barred by limitation. They have further contended that this suit has not been valued correctly for the purpose of jurisdiction and court fee and for that reason also, according to them, the plaint is liable to be rejected. As per the defendants, this suit is also liable to be dismissed for non-joinder of all the legal heirs of deceased R.P. Gulati, as they all according to them, are necessary and proper parties to this suit. The defendants in their written statement have made additional

factual submissions to state how their predecessor-in-title Shri Ram Prakash Gulati came in possession of the suit property in the year 1972. The defendants have denied their liability for their eviction from the suit premises or to pay any damages for alleged illegal use and occupation of the suit premises by them as they are claiming themselves to be the owner of the suit property by adverse possession. The defendants have prayed for the dismissal of this suit.

4. The plaintiff in his replication to the written statement of the defendants has reiterated the fact that the predecessor-in-title of the defendants, namely, Late Shri Ram Prakash Gulati was inducted into suit premises by plaintiff's predecessor-in-title late Smt. Sita Devi Narang in 1972 merely as a licensee. The plaintiff has reiterated that the predecessor-in-title of the defendants was brought into the suit premises by late Smt. Sita Devi Narang because late Shri R.P.Gulati was distantly related to late Smt. Sita Devi Narang and also because of the fact that after the demise of her husband Smt. Sita Devi Narang in her old age, she was feeling lonely and wanted somebody to take care of her. The plaintiff has refuted the claim of ownership by adverse possession set up by the defendants in their written statement. The plaintiff has re-asserted its claim for possession and also for recovery of damages at market rate for use and occupation of the suit premises by the defendants ever since the date their license was terminated vide legal notices dated 20.09.2001 and 22.09.2001. The plaintiff has denied all the

allegations which are inconsistent and contrary to his averments contained in the plaint and in specific reply thereto, he has reiterated, re-asserted and re-affirmed the averments contained in his plaint to be correct.

5. Following issues were framed on 16.02.2005:-

- "1. Whether the plaintiff has validly terminated the license of the defendants? OPP*
- 2. Whether the defendant is a tenant or a licensee in the suit property? OPD*
- 3. Whether the defendant is liable to pay mesne profits to the plaintiff, if so, at what rate? OPP.*
- 4. Whether the defendant has become the owner of the suit property by way of adverse possession? OPD*
- 5. Whether the suit is barred by limitation? OPD*
- 6. Whether the suit is not correctly valued for the purposes of court fee and jurisdiction? OPD*
- 7. Whether the suit is bad for non-joinder of necessary parties, if so, its effect? OPD*
- 8. Whether the plaintiff is entitled to a decree of possession? OPP.*
- 9. Whether the plaintiff is entitled to a decree of permanent injunction? OPP.*
- 10. Relief."*

6. In evidence, the plaintiff has examined two witnesses. PW-1 Shri Parveen Narang is the plaintiff himself and PW-2 Shri S.S. Narang is his father. The defendants have examined only one witness, namely, defendant No.1 Shri Dinesh Gulati as DW-1. The witnesses examined by the parties have filed their evidence-in-chief by affidavits and they were thoroughly cross-examined by counsel

for each other's party. The plaintiff (PW-1) has tendered 36 documents in his evidence affidavit and they are Ex.PW-1/1 to Ex.PW-1/36. Though defendant No.1 (DW-1) in his evidence affidavit has tendered 17 documents marked Ex.DW-1/1 to Ex.DW-1/17 but when he appeared before the Court to give evidence, only one document, i.e. document Ex.DW-1/1 was tendered by him in his evidence-in-chief.

7. I have heard the arguments of Mr. Krishnan Venugopal, learned senior counsel for the plaintiff and of Mr. Rakesh Tikku, learned counsel for the defendants. I have also perused the entire case file carefully and have given my anxious consideration to the rival arguments advanced by counsel for the parties.

8. Before I proceed to give my issue-wise findings, I would like to mention that defendant No.2, being the mother of defendant No.1, died during the pendency of the present suit around July, 2006 and her name was deleted from the array of defendants vide order of the Joint Registrar dated 27.07.2006. After deletion of the name of defendant No.2 from the array of the defendants, the Court is concerned only with the legal rights of defendant No.1, being the sole surviving defendant in the suit. The defendant No.1, hereinafter, will be referred to as the 'defendant'.

9. I now proceed to give my issue-wise findings as follows:-

### **ISSUE NO.2**

*"Whether the defendant is a tenant or a licensee in the suit property?"*

10. This is the most crucial issue as the findings on the said issue will more or less decide the fate of the suit.

11. The defendant has not produced any documentary or cogent oral evidence to prove his plea of alleged tenancy. However, Mr. Rakesh Tiku, learned counsel appearing on behalf of the defendant, has placed heavy reliance on a complaint dated 10.10.1991 (Ex.PW-1/35) lodged by the plaintiff with Chowki Incharge, Jangpura Extension, New Delhi, wherein in that complaint, the plaintiff himself has described the defendant as a tenant. Mr. Venugopal, learned senior counsel appearing on behalf of the plaintiff, has responded to the above contention of the defendant's learned counsel and said that the use of the word 'tenant' in the letter Ex.PW-1/35 was totally unintentional and an error. According to Mr. Venugopal, the use of the word 'tenant' in letter Ex.PW-1/35, should in no way, be construed as an admission by the plaintiff, of any landlord-tenant relationship between the plaintiff and the defendant or his predecessor-in-interest. According to the learned senior counsel appearing on behalf of the plaintiff, the defendant and his predecessor-in-interest were staying in the suit property as pure licensee till their licence was terminated vide legal notices dated 20.09.2001 and 22.09.2001. In this context, Mr. Venugopal has referred to and relied upon the contents of another complaint dated 24.01.1992 (Ex.PW-1/36) made by the plaintiff to the Police of Police Post, Jangpura Extension, wherein the defendant has been

described in so many words as a 'licensee'. Mr. Vengopal has also relied upon a letter dated 18.03.1987 (Ex. PW-1/34) written by plaintiff's predecessor-in-title, Smt. Sita Devi Narang, to the MTNL asking the MTNL people not to install independent telephone connection in the name of defendant's predecessor-in-interest, Shri Ram Prakash Gulati, as he was only a licensee in the suit premises. The letter Ex.PW-1/34 dated 18.03.1987 is important and is extracted below :-

*"To,*

*Manager Telephone Nigam Ltd.,  
Through its Secretary,  
Corporate Office, 3<sup>rd</sup> Floor,  
19, Ashok Road,  
NEW DELHI-110 001*

*Subject:      Regarding allotment of New Telephone  
                 Connection in the name of Mr.R.P.Gulati.*

*Dear Sir,*

*The undersigned is the owner of property No.G-48 Jangpura Extn., New Delhi-110 014 and she had permitted Shri Ram Prakash Gulati to live in a portion of her property No.G-48, Jangpura Extn., New Delhi as caretaker and her licency as she is a lonely widow. The possession of Shri R.P.Gulati is only permissive to live with the undersigned.*

*That it appears Shri R.P.Gulati without the knowledge and consent of the undersigned has applied a new telephone connection in his name and the said connection has been allotted and is going to be installed by you.*

*That it is illegal to install telephone connection in the property of the undersigned without her knowledge and consent and your action is illegal and without jurisdiction by installing a telephone connection in the name of Shri R.P.Gulati or any of*

*his family members name, you are indirectly creating illegal interest.*

*Please take notice and refrain from installing a telephone connection in the name of Shri R.P.Gulati or any of his family members name otherwise I shall have no option but to take out appropriate legal action against you according to law.*

*Thanking you,*

*Yours truly,  
(SITA DEVI NARANG)  
R/o G-48, Jangpura Extn.,  
New Delhi-110 014”*

12. I have carefully gone through all the three documents, Ex.PW-1/34 to Ex.PW-1/36 and on going through the same, it appears to me that the description of the defendant as 'tenant' given by the plaintiff in his complaint Ex.PW-1/35 is a loosely worded expression and in any case in the teeth of documents Ex. PW-1/34 and Ex.PW-1/36 also written by the plaintiff and his predecessor-in-title describing the defendant as licensee, no weightage can be attached to the term 'tenant' and his complaint Ex.PW-1/35. Even otherwise, I am of the view that the question as to whether the defendant or his predecessor-in-interest Shri Ram Prakash Gulati was a tenant or a licensee in the property in dispute, has to be determined on the basis of the evidence of the parties available on record, to be discussed hereinafter.

13. Admittedly, the defendant claims his right, title and interest in the suit property from his predecessor late Shri Ram Prakash Gulati. Shri Ram Prakash Gulati was the father of the defendant. He was brought into the suit property by late Smt. Sita Devi Narang,

widow of title owner Shri R.S.Narang in 1972. Shri Ram Prakash Gulati was staying in the suit property along with his wife (defendant No.2), two sons, namely, Dinesh Gulati (defendant No.1) and Sanjay Gulati and his one daughter. Shri Ram Prakash Gulati died on 03.11.1992 and after his death his sons and widow continued residing in the suit property. One of his sons, Shri Sanjay Gulati, after his marriage along with his family shifted to Rohini and the daughter of late Shri Ram Prakash Gulati after her marriage was settled in her matrimonial home. Even the widow of late Shri R.P.Gulati has died during the pendency of the present suit and after her death only one of her sons, namely, Shri Dinesh Gulati (defendant herein) is residing in the suit property and seeks to resist the present suit for possession against him on the ground that his father late Shri Ram Prakash Gulati was inducted in the suit premises as a tenant and, therefore, he being his son acquired the tenancy rights from his father in respect of the suit premises. In the alternative, he also seeks to resist this suit on the ground of his ownership by adverse possession.

14. The plaintiff has denied both the above claims of the defendant, as according to him the late father of the defendant was inducted by late Smt. Sita Devi Narant (predecessor-in-title of the plaintiff) only as a licensee. Therefore, the main question that needs to be considered is whether the late father of the defendant was inducted as a licensee or a tenant in the suit premises by late Smt. Sita Devi Narang.

15. The defendant in para 3 at page 32 and in para 7 at page 34 of his written statement has admitted that he does not have a single piece of documentary evidence such as a written tenancy agreement or a rent receipt that directly supports his plea of tenancy. He has stated in his cross-examination recorded on 29.08.2007 that he has not shown in any of the returns of the income tax that he is residing as a tenant in the suit property. In his cross-examination recorded on 03.09.2007, he has deposed that his late father had paid rent to late Smt. Sita Devi Narang upto the year 1986. He has deposed that the rent receipts were never issued by late Smt. Sita Devi Narang despite demand. He further said that neither his late father ever asked late Smt. Sita Devi Narang to issue rent receipt nor she issued any rent receipt to them. He went on to say that his late father did not deposit the rent in any Court after 1986 or sent the same by money order or by way of cheque. He candidly admitted in his cross-examination recorded on 03.09.2007 that after the death of Smt. Sita Devi Narang neither his father nor he ever paid any rent to the plaintiff. In fact, the defendant has admitted against his own interest in his cross-examination on 13.11.2007 that :

*“It is correct that after the death of Smt. Sita Devi Narang, my father and later on myself was allowed to continue in the property in dispute by the plaintiff as a licensee.”*

16. In view of the above candid admission of the defendant in his cross-examination, his plea of tenancy stands contradicted and

defeated by the plea that he became owner by way of adverse possession as pleaded in para 2 of the preliminary objections and para 11 of the factual submissions (on page 8) in the written statement. It will be significant to mention the statement made by the defendant in his cross-examination on 13.11.2007 and the same is reproduced below:-

*“At this stage, the witness is shown para 11 of the written statement filed by him wherein it was mentioned that in 1998, the defendant became entitled to the ownership of the property in dispute by way of adverse possession. The witness has stated that this statement written in para 11 of the written statement filed by him is correct.*

*Q. Since in para 11 of your written statement, you have claimed that you became owner by way of adverse possession in the year 1998, therefore, as per you, you are claiming to remain in the property as owner and not as a tenant. What you have to say?*

*A. I cannot answer this question as I will have to consult my lawyer.*

*Q. I put it to you that since you have claimed ownership in the property in dispute, your claim to tenancy in the property does not survive?*

*A. I cannot answer this question as I will have to consult my lawyer.”*

17. The evasive answers given by the defendant in response to specific questions relating to tenancy and adverse possession put to him, clearly reflect that he has mischievously taken the plea of 'tenancy' and in the alternative, 'ownership by adverse possession',

only to prolong the trial and enjoy the suit premises as long as he can. Not only are these pleas self-contradictory and mutually inconsistent but they are demolished in the course of cross-examination, particularly the admission of the defendant himself in his cross-examination referred above wherein he candidly admitted that after the death of plaintiff's predecessor-in-title, late Smt. Sita Devi Narang, his father and later on, he himself was allowed to continue in the property in dispute as a licensee. This candid admission by the defendant demolishes his defence that he is a tenant in the suit premises. The plaintiff has proved by his evidence that the defendant is occupying the suit premises as a licensee and the defendant has not been able to controvert or rebut the said plea in his cross-examination.

18. From the evidence of the plaintiff on record, it is established that the late father of the defendant was brought into the suit premises by late Smt. Sita Devi Narang in 1972 on sympathetic grounds because Late Shri R.P. Gulati was in a bad financial condition at that time and to ensure that the family of Shri R.P. Gulati will take care of Late Smt. Sita Devi Narang, who did not want to live completely alone. The plaintiff's evidence in this regard has remained unshaken in cross-examination. There is nothing in the cross-examination either of PW-1 or PW-2 to impinge on their credence. The mere statement of the defendant that he is a tenant in the suit property without producing any document in support thereof, cannot be accepted as sufficient proof of tenancy.

19. In ***Prem Pal Singh Versus Jugal Kishore Gupta, 1993 (50) DLT 49***, it was held by the Division Bench of this Court that the plea of tenancy cannot be accepted in the absence of documentary evidence of tenancy. Para 3 of the judgment is relevant and is extracted below:-

*“As noted above, on the second issue the defendant has not led any documentary evidence except his own statement that he was the tenant. He admits that he has no document to show that he was a tenant in the premises. Tenancy rights are created by contract under the statute being the Transfer of Property Act and court has to be satisfied that there in fact a tenancy existed, and when landlord denies the same a mere statement of the tenant may not be enough. Mr. Chopra has also referred to a judgment of the Calcutta High Court in short note in Satinath Mukherjee Versus Savilendra Nath Sen alias Aailen Sen, AIR 1991 Noc 55 (Calcutta), to contend that to prove the tenancy it is not necessary to prove an agreement. That, of course, will depend upon the facts of each case and the evidence that may be led in a case. In the present case the defendant has been unable to prove that he had been a tenant.”*

20. In view of the above judgment of the Division Bench of this Court in Prem Pal Singh's Case (supra), I have no hesitation in holding that the defendant has miserably failed to prove his plea of tenancy. Rather the plaintiff has proved, through reliable and cogent evidence, that the late father of the defendant was inducted in the suit premises as a licensee and even after the death of his father, he was also treated as a licensee by the plaintiff till his licence was terminated vide legal notices dated 20.09.2001 and 22.09.2001. This issue is, therefore, decided against the defendant and in favour of the plaintiff.

**ISSUE NO. 4 :**

*"Whether the defendant has become the owner of the suit property by way of adverse possession? OPD*

21. The plea of 'ownership by adverse possession' has been taken by the defendant in the written statement in the alternative to the plea of 'tenancy', i.e., in case the plea of 'tenancy' is not accepted.

22. Mr. Venugopal, learned senior counsel appearing on behalf of the plaintiff, has strenuously argued that the plea of 'tenancy' as well as the plea of 'ownership by adverse possession' are not tenable as they are mutually destructive to each other. In support of his said contention, he has referred to and relied upon a Division Bench judgment of this Court in ***S. Pritam Singh and Others Versus Ram Narain Vij, 1999 (77) DLT 76*** wherein it has been held as under:-

*"the appellants had simply claimed to be in occupation of the premises. The appellants also simply denied the ownership of the respondent. The plea of tenancy and that of having acquired ownership by adverse possession are mutually destructive of each other. As discussed earlier, the amendment application deserves dismissal and is dismissed. The appeal also has no merit and is dismissed. Appeal dismissed." (Emphasis Supplied).*

23. In view of the above judgment of the Division Bench of this Court in Pritam Singh's Case (supra), Mr. Venugopal had argued that the defendant is precluded even from raising the plea of ownership by adverse possession.

24. On the other hand, Mr. Rakesh Tikku, learned counsel

appearing on behalf of the defendant, had taken a stand that the plea of 'tenancy' and the plea of 'ownership by adverse possession' set up by the defendant are alternative pleas and cannot be said to be mutually destructive to each other. However, Mr. Tiku, could not give any reason as to how and why the Division Bench judgment of this Court in Pritam Singh's Case (supra) which holds that the plea of 'tenancy' and the plea of 'ownership by adverse possession' are mutually destructive to each other, is not applicable to the facts of this case. It will be significant to mention that the defendant has admitted in his cross-examination that the plea of 'ownership by adverse possession' taken by him was on the advice of his lawyer. The relevant part of the cross-examination of the defendant (DW-1) is reproduced herein below :-

*“Adverse possession’ means that I have occupied a place for 12 to 15 years and no rent is being taken from me by the landlord.”*

*“At this stage, the witness is shown para 11 of the written statement filed by him wherein it was mentioned that in 1998, the defendant became entitled to the ownership of the property in dispute by way of adverse possession. The witness has stated that this statement written in para 11 of the written statement filed by him is correct.*

*Q. Since in para 11 of your written statement, you have claimed that you became owner by way of adverse possession in the year 1998, therefore, as per you, you are claiming to remain in the property as owner and not as a tenant. What you have to say?*

*A. I cannot answer this question as I will have to*

*consult my lawyer.*

*Q. I put it to you that since you have claimed ownership in the property in dispute, your claim to tenancy in the property does not survive?*

*A. I cannot answer this question as I will have to consult my lawyer.”*

*It is correct that I have not informed in writing to the plaintiff that I have become the owner of the property in dispute.”*

25. It shall further be significant to mention that the defendant (DW-1) in his cross-examination on 13.11.2007 has very categorically admitted that neither he nor his father had ever claimed themselves to be the owner of the property in dispute either against Smt. Sita Devi Narang or against the plaintiff. This admission of the defendant coupled with his admission that he took the plea of 'ownership by adverse possession' on the advice of his lawyer completely demolishes the foundation of the defendant's plea of 'ownership by adverse possession'.

26. In view of the above admission of the defendant on his plea of adverse possession, I do not find any merit in the argument of Mr. Tiku that the plea of 'adverse possession' taken by the defendant is in the alternative or that it is not mutually destructive to the plea of 'tenancy' taken by his client. In the peculiar facts and circumstances of this case, the plea of 'tenancy' and the plea of 'adverse possession' taken by the defendant are anti-thesis to each other and the same are not acceptable.

27. The plaintiff has proved that he is the owner of the entire property bearing No. G-48, Jangpura Extension, New Delhi, part of which is in possession of the defendant. The plaintiff is the real nephew of the husband of late Smt. Sita Devi Narang, who after the death of her husband, had inherited the above referred property from her late husband. The plaintiff has proved that late Smt. Sita Devi Narang had executed a registered Will dated 26.04.1988 (Ex.PW-1/1) and that he has also proved the judgment of the Probate Court as Ex.PW-1/3 and Letters of Administration granted in his favour as Ex.PW-1/4. The original mutation letter dated 16.01.1995 for the above referred property including the portion in possession of the defendant issued by the Land and Development Office and MCD respectively have been proved on record as Ex.PW-1/5 and Ex.PW-1/6 respectively.

28. The defendant in his evidence has not disputed the ownership of the plaintiff in respect of the suit property. As per the testimony of the defendant himself in his cross-examination, the property bearing No. G-48, Jangpura Extension, New Delhi, has two portions, one in possession of the plaintiff and the other in possession of the defendant. The portion of the said property in possession of the defendant is shown in the site plan of the property proved (Ex.PW-1/21) in the testimony of PW-1. The fact that the above referred property has two portions, one in possession of the plaintiff and the other in possession of the defendant, stands admitted by the defendant, in his cross-examination recorded on 03.09.2007. He

has admitted that there is a connecting door connecting the two portions of the house and that the portion in possession of Late Smt. Sita Devi Narang was locked by the plaintiff after her death. The defendant has very categorically admitted that the portion of the above referred property except the portion in his possession, is in possession of the plaintiff being the true owner of the said property. He has also stated in his cross-examination on 03.09.2007 that there are two name plates of stone fixed on the outer gate of the house, one bears the name 'Sita Ram House' and the other bears the name 'Prem House'. He has further stated that after the death of Smt. Sita Devi Narang, the plaintiff is continuously paying the house tax for the above referred property.

29. I am of the view that how a person, knowing fully well about the possession of the true owner over a substantial portion of the property in dispute and that the true owner is continuously paying house tax of the entire property, can claim his possession in a portion of the property to be hostile or adverse to the possession of the true owner (plaintiff herein). In fact, the defendant has admitted in his cross-examination that neither he nor his late father ever claimed themselves to be the owner of the property in dispute either against Smt. Sita Devi Narang or even against the plaintiff. The essential ingredients required to prove the ownership by adverse possession are, therefore, conspicuously absent in the present case.

30. In ***Thakur Kishan Singh Versus Arvind Kumar, 1994 (6)***

**SCC 591** it was held by the Hon'ble Supreme Court as under:-

*“As Regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. Apart from it, the appellate court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse. The learned counsel, despite strenuous argument, could not demolish the finding on adverse possession. Attempt was made to rely on the evidence led on behalf of the parties and the evidence of the Commissioner who prepared the map. We are afraid that such an exercise is not permissible even in second appeal, what to say of the jurisdiction exercised by this court under Article 136 of the Constitution. Further, we do not find that the appellant has suffered any injustice which requires to be remedied by this court.”*

31. In view of the above judgment of the Hon'ble Supreme Court in Thakur Kishan Singh's Case (supra), mere long possession of the defendant over the suit property, does not prove his plea of 'ownership by adverse possession'.

32. For the reasons delineated above, I hold that the defendant has failed to prove his plea of 'ownership by adverse possession'. Hence, this issue is decided against the defendant and in favour of the plaintiff.

**ISSUE NO. 1 :**

*"Whether the plaintiff has validly terminated the licence of the defendants? OPP"*

33. The onus of proof to prove this issue was upon the plaintiff. The plaintiff had terminated the licence of the defendant with regard to the suit property in his possession vide his letter dated 25.06.2001, proved on record as document Ex.PW-1/22. The licence of the defendant was also terminated by serving the defendant with legal notices dated 20.09.2001 and 22.09.2001, which have been proved on record as documents Ex.PW-1/25 and Ex.PW-1/27 respectively. The defendant in his cross-examination on 13.11.2007 has admitted that the plaintiff had sent a letter dated 25.06.2001 (Ex.PW-1/22) to him for vacating the property in dispute. He has also admitted the receipt of legal notices dated 20.09.2001 and 22.09.2001 (Ex.PW-1/25 and Ex.PW-1/27). It may be noted that in the evidence of the defendant, there is no denial of termination of licence by the plaintiff vide legal notices dated 20.09.2001 and 22.09.2001. I, therefore, hold that the plaintiff has validly terminated the licence of the defendant prior to filing of the present suit. This issue is decided against the defendant and in favour of the plaintiff.

**ISSUE NO. 3 :**

*"Whether the defendant is liable to pay mesne profits to the plaintiff, if so, at what rate? OPP"*

34. After termination of the licence of the defendant by the plaintiff vide legal notices dated 20.09.2001 and 22.09.2001, the possession of the defendant over the suit premises became illegal and unauthorized. The defendant is, therefore, liable to pay damages/mesne profits for illegal use and occupation of the suit property by him after termination of his licence. What should be the rate of damages/mesne profits, is the question that needs to be considered by the Court.

35. The plaintiff has proved on record the Valuation Report of Er.B.P.Singh as Ex.PW-1/32 and Ex.PW-1/33 and in the said reports, the Valuer has assessed the fair rental of the suit premises at Rs.35/- per Sq.Ft. or Rs.17,850/- as monthly rental value. There is no challenge to this report in the cross-examination of the plaintiff by the defendant. The reports of the Valuer (Ex.PW1/32 to Ex.PW-1/33) have remained un-controverted and un-rebutted. There is absolutely no cross-examination on the rate of damages as deposed by the plaintiff. It is not disputed that the property in dispute is located in a prime locality of South Delhi.

36. Mr. Venugopal, learned senior counsel appearing on behalf of the plaintiff, had argued that the rentals in the locality where the suit property is situated, have gone up by two to three times after the date of the Valuation Reports especially in view of the ceilings carried out throughout Delhi under the supervision of this Court and, therefore, he had submitted that the damages/mesne profits be awarded to the plaintiff at least @ Rs.17,850/- per month as

assessed by the Valuer in his reports referred above.

37. On the other hand, Mr. Rakesh Tiku, learned counsel appearing on behalf of the defendant, had relied upon a Division Bench judgment of this Court in ***S.Kumar Versus G.R. Kathpalia, 1999 (1) RCR 431*** to contend that the Division Bench of this Court had awarded damages @ Rs.25,000/- per month for a property built on a 500 Sq.Yd. plot in East of Kailash, New Delhi. He had submitted that since the property in dispute has much lesser area than the East of Kailash property dealt with by the Division Bench in S.Kumar's Case (supra), the Court should not assess the damages/mesne profits at a rate more than Rs.7500/- per month agreed upon by counsel for both the parties before the Division Bench in FAO(OS) 614 and 615/2006 disposed of vide order dated 11.10.2006. Mr. Venugopal, in response to this submission made by Mr. Tiku, left the matter regarding assessment of rate of damages/mesne profits to the discretion of the Court and said that whatever damages/mesne profits shall be assessed by this Court, will be acceptable to the plaintiff.

38. I have given my anxious consideration to the above rival submissions made by the counsel for the parties for determining the rate of damages/mesne profits payable by the defendant.

39. The licence of the defendant was terminated by the plaintiff vide legal notices dated 20.09.2001 and 22.09.2001 and thereafter the possession of the defendant over the suit property became illegal and unauthorized, which rendered him liable to pay

damages/mesne profits for the period he retained the possession unauthorisedly, i.e., w.e.f. 07.10.2001. Though there is no rebuttal either set up or proved by the defendant against the Valuation Reports Ex.PW-1/32 and Ex.PW-1/33, according to which, the damages/mesne profits in respect of the property in dispute in possession of the defendant has been assessed @ Rs. 17,850/- per month, I am of the view that the ends of justice will be adequately met by awarding the damages/mesne profits to the plaintiff against the defendant @ Rs. 7500/- per month already agreed upon by the parties before the Division Bench as referred above. The defendant is, therefore, held liable to pay mesne profits for illegal use and occupation of the suit property by him to the plaintiff @ Rs. 7500/- per month w.e.f. 07.10.2001. He shall be entitled to adjustment of the payments on account of damages already made by him pursuant to the order of the Single Judge dated 09.05.2006 and the order of the Division Bench dated 11.10.2006. This issue is decided accordingly in favour of the plaintiff and against the defendant.

**ISSUES NO. 5, 6 and 7 :**

*"Whether the suit is barred by limitation? OPD*

*Whether the suit is not correctly valued for the purposes of court fee and jurisdiction? OPD*

*Whether the suit is bad for non-joinder of necessary parties, if so, its effect? OPD"*

40. The onus of proof to prove all these three issues was on the defendant. The defendant has not led any evidence to prove as to

how this suit is barred by limitation or how this suit is not correctly valued for the purposes of court fee and jurisdiction. The defendant has also not led any evidence to show how this suit is bad for non-joinder of necessary parties. In fact, none of these three issues was pressed by Mr. Tiku who appeared for the defendant. Hence, all these three issues are decided against the defendant.

**ISSUES NO. 8, 9 & 10 :**

*“Whether the plaintiff is entitled to a decree of possession? OPP.*

*Whether the plaintiff is entitled to a decree of permanent injunction? OPP.*

*Relief.”*

41. All these three issues are proposed to be dealt with together because they all relate to the relief to be granted to the plaintiff in the present suit.

42. In view of my findings on the above issues, I hereby pass a decree of possession in favour of the plaintiff and against the defendant directing eviction of the defendant from the suit premises as per the site plan Ex.PW-1/21. The plaintiff is also held entitled to damages/mesne profits in respect of the property in dispute in unauthorized and illegal occupation of the defendant @ Rs. 7500/- per month w.e.f. 07.10.2001 till the date the vacant and peaceful possession of the suit property is handed over by the defendant to the plaintiff and this decree for damages/mesne profits granted in favour of the plaintiff will be subject to his paying

the court fees within four weeks from today, on the decretal amount to be worked out by the Registry. The defendant is granted six weeks time from the date of this judgment for handing over the vacant and peaceful possession of the suit property by him to the plaintiff and in the meanwhile, the defendant is restrained from creating any third party interest in respect of the property in dispute in favour of anyone whomsoever. The plaintiff shall also be entitled to the costs of this suit.

43. Decree sheet be prepared in terms referred hereinabove.

**May 26, 2009**  
**vg/ma**

**S.N.AGGARWAL**  
**[JUDGE]**