

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

% *Judgment Reserved on: 24.02.2011*  
*Judgment Delivered on: 01.03.2011*

+ **RSA No. 116/2004 and CM No. 7312/2004**

**PRIKSHIT RAJ MEHRA & ANR.**

**.....Appellant**

Through: Mr. N.S. Vashisht along with  
Mr. Vishal Singh. Advocates.

Versus

**BIMLA DEVI**

**.....Respondent**

Through: Mr. Amit S. Chadha, Sr. Advocate  
with Mr. Mohit Gupta, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.**

1. This appeal has impugned the judgment and decree dated 17.04.2004 which had endorsed the findings of the Trial Judge dated 11.09.2001 whereby the suit filed by the plaintiff, Smt. Bimla Devi, seeking possession of the suit property i.e. property bearing shop no. 40 A, Khan Market, New Delhi had been decreed.

2. Case of the plaintiff is that one Captain Anant Singh was a licensee in respect of afore-noted suit property. Defendant no. 1 had taken over the licence from Captain Anant Singh and is since in possession of the said shop at the monthly licence-fee of ₹ 300/- excluding electricity and water charges. The defendant is running a business of a printing press in the afore-noted suit property.

3. Plaintiff had earlier filed an eviction petition against the defendant seeking his eviction. This was before the Additional Rent Controller. The plea set up by the defendant was that he is not a tenant but a licensee in the suit premises. On the said plea, the plaintiff withdrew the eviction petition. This was vide order dated 22.01.1984. The statement of the respective parties i.e. the plaintiff and the defendant was recorded separately by the Rent Controller wherein the defendant had stated that he is a licensee and not a tenant; plaintiff was accordingly permitted to withdraw the eviction petition; costs of Rs. 150 had been imposed upon the plaintiff. The said orders had been proved before the trial judge as Ex. PW 1/D7, PW 1/D8 and PW 1/D9.

4. Legal notice dated 21.01.1984 was served upon the defendant calling upon him to handover the peaceful and vacant possession to the plaintiff but to no avail. Present suit was filed.

5. Defendants contested the suit. Bar of Section 50 of the Delhi Rent Control Act was invoked. It was stated that the defendant is a tenant in the suit premises and not a licensee. The suit property had not been properly valued for the purpose of court fee and jurisdiction.

6. On the pleadings of the parties, following six issues were framed:-

*i) Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*

*ii) Whether this Court has no pecuniary jurisdiction to try the suit? OPD*

*iii) Whether defendant no. 1 is a licensee of the plaintiff? OPP*

*iv) Whether the defendant no. 1 is a tenant in the suit property of plaintiff. If so, its effect? OPD.*

v) *Whether the plaintiff is entitled to the possession of the suit premise? OPP*

vi) *Relief.*

7. Oral and documentary evidence of the parties was adverted to. The contention of the defendant in the written statement that the value of the suit property is not less than Rs. 1 lac was noted. In the same paragraph, in the later part, defendant had stated that the market value is more than Rs. 1 lac. Trial Judge returned a finding that the suit had been improperly valued; court fee should have been affixed at the market value of the suit property, plaintiff was granted opportunity to pay up the balance court fee which has since admittedly been paid. The trial court was also of the view that at the time of the filing of the suit in view of the averments made in the plaint, the court had the pecuniary jurisdiction; it returned a finding that even assuming that the suit property has to be valued at ₹1 lac, pecuniary jurisdiction of the trial court having since been enhanced, it had the jurisdiction to try the suit. On issue nos. 4 and 5, the court, after a detailed scrutiny of the oral and the documentary evidence, returned a positive finding in favour of the plaintiff holding that the defence of the defendant that he is a tenant is not substantiated; estoppel operates against him; his plea before the Rent Controller that he is a licensee in the suit property and not a tenant was an admission of fact and he cannot now set up a contrary plea. The documentary evidence including the documents Ex. DW 1 / 2 to DW 1/33 which were covering letters, postal receipt and AD Cards through which the defendants made his submission that he is a tenant had also been adverted to but were rejected. Suit of the plaintiff was decreed.

8. In appeal, the impugned judgment had endorsed this finding. They are thus two concurrent findings of fact against the appellant.

9. This is a second appeal. After its admission on 12.12.2008, the following substantial questions of law had been formulated:-

*“Whether the Trial Court and the Appellate Court was justified in holding that the appellant was barred from raising a plea that the relationship between the parties constituted a tenancy and therefore, the Civil Court did not have jurisdiction to entertain the suit?”*

Thereafter, on 15.02.2011, this court had framed an additional substantial question of law which reads as follows:-

*“ Whether the finding in the impugned judgment dated 17.04.2004 while answering issues No. 1 & 2 (as framed by the trial court) was a perverse finding and if so, its effect?”*

10. On behalf of the appellant, it has been urged that the findings on issue nos. 1 and 2 are perverse; trial court had no jurisdiction to try the suit; it is pointed out that jurisdiction of the court is a pure question of law and going to the root of the matter, the inherent lack of jurisdiction, would make the entire proceedings *non est*. Reliance has been placed upon judgment reported in (1991) 1 Supreme Court Cases 494 Isabella Johnson Vs. M.A. Susai by Lrs. to support the submission that a mere fact that the appellant had made a statement before the Rent Controller (in the earlier eviction proceedings) that he was a licensee would not be a conclusive finding of fact and the courts below in this case having relied upon this sole so- called admission of the defendant to decree the claim of the plaintiff has committed an illegality; it was incumbent upon the courts below to have examined this issue;

the said admission would not operate as *res judicata*. It is pointed out that this judgment would apply to all four squares to the facts of the instant case. Reliance has also been placed upon the judgments reported in 1970 (1) SCC 613 Mathura Prasad Bajoo Jaiswal and Ors Vs. Dossibai N.B. Jeejeebhoy and (1987) 4 SCC 410 Richpal Singh and Ors. It is submitted that the order of the Rent Controller was not a final decision upon the relationship of landlord and tenant between the parties; it was still open to challenge and would not operate as *res judicata*.

11. Arguments have been countered. It is submitted that this is a second appellate court and concurrent findings of fact cannot be interfered with easily. The first substantial question of law formulated on 12.12.08, in fact, had not arisen and was also not a part of memorandum of appeal, in the absence of which the court could not have formulated such a substantial question of law.

Reliance has been placed upon a judgment of the Apex Court reported in (200) 1 SCC 134 Veerayee Ammal Vs. Seenii Ammal as also another judgment reported in (1997) 4 SCC 713 Panchugpal Barua and Ors Vs. Umesh Chandra Goswami and Ors to support the submission that unless and until a substantial question of law arises, no interference is called for at the second appellate stage. Reliance has also been placed upon AIR 2002 Kerala 133 Raman Pillai Krishna Pillai and Ors. Vs. Kumaran Parameswaran and Ors. as also upon AIR 1974 SC 471 D.G. Palekar V.S. R. Krishna Iyer and R.S. Sarkaria to support the submission that under Section 58 of the Indian Evidence Act 1872; admission is the best form of evidence and an admission does not require any proof. It is submitted that the admission made by the defendant before the

Rent Controller that he is not a tenant but a licensee was an admission of fact which requires no proof; it has to read. Reliance has also been placed upon AIR 1978 Andhra Pradesh 160 Appannammanayuralu Vs. B. Sreeramulu to support his submission that lack of pecuniary jurisdiction is not a lack of inherent jurisdiction; it is curable; in this case, defect has been cured when trial court had granted opportunity to make up the deficiency in the court fee, it had since been paid. Lastly, reliance has been placed upon AIR 1996 Orissa, 172 D.M. Surendra Mahanti Vs. Ghasiram Mahanti & Ors. to support the submission that the objection on pecuniary jurisdiction, if rejected and decision given cannot be interfered with unless there has been any failure of justice which principle would operate in the instant case as well.

12. Record has been perused. The plaintiff, Bimla Devi, had filed an eviction petition against the defendant on the ground of non-payment of rent; the said document had been proved as Ex. PW 1 /2. Her contention was that the defendant was her tenant. The defence of the defendant in his written statement was that he was a licensee and not a tenant; relationship of landlord and tenant had been denied; this written statement was proved as Ex. DW 1/P1. Ex. PW 1/D7 to Ex. PW 1/D9 dated 02.11.1992 are the proceedings dated 02.11.1829 before the Rent Controller whereby this plea of the defendant that he is a licensee and not a tenant, the plaintiff, Bimla Devi, had been permitted to withdraw the eviction petition with a permission to seek her remedy in terms of the admission of the defendant that he is a licensee in the suit premises; respondent was also awarded costs of Rs. 150. It is also the case before this court that this admission was made by the respondent either under

coercion, duress or under any mistake of fact of law. It was a voluntary admission. Facts admitted need not be proved; this is a statutory provision as contained in Section 58 of the Evidence Act. They are in fact the best proof of facts and stand on a higher footing than any other evidentiary admission. The trial judge had noted that this admission operates as an estoppel; defendant now setting up a plea that he is a tenant of the suit property is estopped from doing so. However, this was not the only reason for arriving at this finding. Trial judge had scrutinized and appreciated the host of documentary evidence led by the respective parties which included documents of the defendants Ex. DW 1/ 2 to DW 1/ 33 which were covering letters, postal receipts and AD cards whereby the defendant had tendered rent to the plaintiff on various occasions; his contention being that these documents which were after the date of the withdrawal of the eviction petition i.e. after 2.11.1982 had recognized him as a tenant. Ex. DW 1/P1 was also the document relied upon by the defendant which was a rent receipt purportedly issued by the plaintiff in favour of Anant Singh; plaintiff had denied this document; Anant Singh had not come into the witness box. This document had also been rightly discarded.

On an appreciation of this documentary evidence, this court had returned a finding against the defendant holding that these were unilateral acts of the defendant enacted to create a defence in his favour; no document had been produced by the defendant to show that the plaintiff had, in fact, accepted this amount as a rent; the payment of rent by the afore-noted documents had thus not been established by the defendant.

13. DW-1 in his cross-examination had also admitted that the premises had not been let out to him; plea of the defendant all along was that the premises had been let out to Anant Singh and since he had purchased the running business of Anant Singh, the tenancy also stood transferred to him. These submissions were, however, not proved by the plaintiff. On this cogent and coherent evidence led before the trial court, the trial judge was of the view that the defendant had failed to establish the plea that he is a tenant; he was a licensee. This was while disposing of issues no. 3 and 4. The impugned judgment had endorsed this finding. It was rightly held by the two courts below that contrary and inconsistent pleas cannot be taken by the appellant, he cannot be allowed to approbate and reprobate, he cannot blow hot and cold in the same breath. Submission made by the defendant before the Rent Controller admitting himself to be a licensee was the reason why the eviction petition had been withdrawn by the plaintiff; he could not now go back and take a contrary plea that he was a tenant. The entire evidence had been scrutinized by the facts finding courts below to draw the conclusion that the plea of tenancy set up by the defendant had on all counts not been established. These findings can in no manner be said to be perverse; they call for no interference.

14. The judgments relied upon by the learned counsel for the appellant reported in (1991) 1 Supreme Court Cases 494 Isabella Johnson Vs. M.A. Susai by Lrs. is distinct on its fact in that case. The apex court in that case had held that the question of jurisdiction of a court is a pure question of law unrelated to the rights of the parties and such a question cannot operate as res

*judicata* in a subsequent suit. There is no dispute to this proposition. However, this ratio is inapplicable to the instant case. That apart from the narration noted hereinabove, it is clear that the courts below have not decided this issue (issue no 5 and 6) on the point of res judicata, the defendant had made a factual admission that he is a licensee; court had rightly returned a finding that he is estopped from changing his stand. This answers the first substantial question of law.

15. The submission of the respondent on this score that the substantial question of law which does not form a part of the memorandum of appeal cannot be framed by this court is negatived; this court has ample powers under the provisions of Section 100 read with its proviso to frame any substantial question of law even if it has not being noted in the memorandum of appeal.

16. This court shall now answer the additional substantial question of law.

17. The present suit was a suit for possession/mesne profits. Para 14 has detailed the value of the suit for the purposes of court fee and jurisdiction. It had valued it at Rs. 3300/- which was the annual licence fee recoverable from the defendant. Defendant had contested this claim in the corresponding part of the written statement. His submission was that the court fee has to be affixed on the market value of the premises which is not less than Rs. 1 lac; in another part of para 14, he had stated that the market value is more than Rs. 1 lac. Issue nos. 1 and 2 had been framed on this count (as afore-noted). The onus to discharge these issues was on the defendant. DW 1 had deposed that the market value of the premises in the year 1985-86 was more than a lac of rupees; this

court has no pecuniary jurisdiction. In his cross- examination, he admitted that he had given this opinion on the basis of the information received from the property dealers; he could not tell their names and addresses; he denied the suggestion that he had made this statement on a guess/presumption; he did not know whether any shop in the locality had been sold or purchased for the said amount. This evidence had been appreciated by both the fact-finding courts. The trial judge had recorded this in para 13 of this judgment. It had noted that apart from the bald statement of defendant no. 1 which had been subjected to cross -examination wherein he had admitted that this information of the value of the suit property of about more than Rs. 1 lac was given to him by property dealers whose names and addresses he did not know coupled with his admission in the matter stating that it is about 1 lac and the onus to discharge being on the defendants, the trial judge was of the view that the defendant has failed to prove that the market value of the suit premises was more than Rs. 1 lac. It was held to be about ₹ 1 lac. This fact finding was assailed and upheld by the first appellate court. The first appellate court had re- examined and re- appreciated the evidence led on this score by the defendant. This second appellate court not being a third fact finding court, unless the finding is perverse cannot interfere in such a fact finding. Time had thereafter been granted to the plaintiff to correct valuation and to make up the deficiency in the court fee which he had accordingly done. There was no bar; Order 7 Rule 11 is, in fact, the statutory provision engrafted for the said purpose.

18. The plea of the appellant that it was incumbent upon the

court to have decided the question of pecuniary jurisdiction as a preliminary issue also holds no water; it was for the plaintiff to have pressed this plea before the trial court; in the absence of which, nothing precluded the trial court to decide this issue along with the other issues. The trial judge had also noted that although at the time of the filing of the suit, its pecuniary jurisdiction was Rs. 25,0000 but at the time of the decision (11.09.2001), the pecuniary jurisdiction of the court had been Rs. 1 lac; the court was of the view that it had the pecuniary jurisdiction to try the case.

A plaintiff is at liberty to value his suit as per his averments in the plaint. In this case, he had valued it for the purpose of court fee and jurisdiction at Rs. 3600/-; on an objection by the defendant which was decided along with the main judgment, opportunity had been granted to the plaintiff to make up the deficiency. Thus, at the time of the institution of the suit as per the plaintiff, court did have the pecuniary jurisdiction to try the suit. At the time of its disposal, its pecuniary jurisdiction had admittedly been enhanced; court had rightly concluded that at that time, it had the requisite pecuniary jurisdiction to do so.

19. Section 6 of the Code of Civil Procedure (hereinafter referred to as the 'Code') relates to the pecuniary jurisdiction of Courts and stipulates that a Court shall not have jurisdiction over suits where the amount or value of its subject matter exceeds its pecuniary limits. The Code by itself does not prescribe any pecuniary limits. Section 9 is the general provision in the Code which confers the jurisdiction on the courts to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly

barred. Section 11 of the Suit Valuation Act, 1887 indicates that notwithstanding anything contained in Section 578 of the Code, an objection that the Court which had no jurisdiction over the suit or appeal had decided it by reason of over-valuation or under-valuation should not be entertained by the appellate court unless the under-valuation or over-valuation thereof has prejudicially affected the disposal of the suit or the appeal on its merits. Although this provision deals with the over-valuation/under-valuation of the suit, it is also concerned with the pecuniary jurisdiction of the court. If the court is vested with jurisdiction to entertain a matter of a particular value, the change in the value on account of under or over valuation shall not affect the validity of its decree unless it has prejudicially affected the disposal of the suit on its merits. This section is founded on the principle that the Court's decree shall not be affected on the ground of its lack of pecuniary jurisdiction, if it had the inherent jurisdiction to deal with such a matter.

20. The Supreme Court in Kiran Singh V. Chaman Paswan, AIR 1954 SC 340 had considered the principle behind this statutory provision and the relevant extract as quoted in the judgment of V. Appannammanayuralu Vs. B. Sreeamulu reads as follows:-

*“S.11 of the Suits Valuation Act of 1887 is that a decree passed by a Court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under-valuation, is not to be treated as what it would be put for the section, null and void and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that section and not otherwise. The same principle has been adopted in S. 21 of the Civil P.C, with reference to the objection relating to territorial jurisdiction. The policy underlying S. 21 and S. 99, C.P.C. and S. 11 of the Suits Valuation Act, is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both*

*territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits.”*

21. In Hira Lal Vs. Kali Nath (AIR 1962 SC 199) (supra), the Supreme Court had explained what is meant by inherent lack of jurisdiction. It was pointed out as under:-

*“ the objection to the local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case. Competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. As we have already pointed out, it could be said that the Court, which has passed a decree, is lacking in inherent jurisdiction only when it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction, or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it.”*

22. Thus the decree did not suffer from any inherent want of jurisdiction. The appellant/defendant has even otherwise failed to show that he has suffered any prejudice or injustice on this count. Section 21 of the Code states that no objection on jurisdiction shall be entertained by the appellate or the revisional court, unless the appellant/objector is able to show that there has been a consequent failure of justice. This has neither been pleaded and nor argued. The additional question of law is answered accordingly.

23. There is no merit in the appeal. Appeal as also the pending application is dismissed.

**INDERMEET KAUR, J.**

**March 01 , 2011**  
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