

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

% *Judgment Reserved on: 17.01.2011*
Judgment Delivered on: 20.01.2011

+ **RSA 79/2005 & CM No. 8228/2005**

KRISHAN DEV SHARMA Appellant
Through: Mr. G.L. Rawal, Sr. Advocate along
with Mr. Kuljeet Rawal, Advocate

Versus

DIPTI LAL PASSI (THROUGH LRS.) Respondent
Through: Ms. Suman Kapoor, 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.

CM No. 8228/2005 (for early hearing)

Having become infructuous; it is dismissed.

RSA 79/2005

1. This second judgment appeal has impugned the judgment and decree dated 06.01.2005 which has reversed the finding of the Trial Judge dated 21.01.1988. Vide judgment and decree dated 21.01.1988, the suit of the plaintiff Dipti Lal Passi seeking possession of the suit property had been dismissed. Vide the impugned judgment the suit of the plaintiff was decreed.

2. The plaintiff Dipti Lal Passi had filed a suit for possession. The suit property is situated at 191/WZ/4B, Shyama Parshad,

Mukherjee Park, Najafgarh Road, New Delhi. Contention of the plaintiff is that he is the real nephew of Prithmi Chand Passi. The suit property was built by Hira Wati widow of late Prithmi Chand Passi in 1966 from the cash/assets left behind by Prithmi Chand Passi who died in December 1965. After the death of Hira Wati the property devolved on the plaintiff being her sole legal heir. Defendant is in unauthorized occupation of the property. In spite of notice dated 29.07.1977 he has not vacated the suit property. Suit was accordingly filed.

3. Defendant filed his written statement contesting the suit. It was stated that the defendant is the son of the brother of Hira Wati; plaintiff has no interest in the property; the father of the defendant had given financial assistance to Hira Wati to build the suit property. On 18.01.1967 (vide Ex.DW1/1) Hira Wati had admitted these facts in the aforementioned document which was duly proved wherein she had bequeathed her interest, if any, in this suit property to the defendant. Contention of the defendant was that the plot of land had been purchased out of the funds made available by the defendant; there were two plots bearing No. 83 and 84 which had then merged into a single plot i.e plot No. 191 and the sale deed had been effected in the joint names of the defendant and Hira Wati who is the sister of the father of the defendant. The amounts spent on the construction of the house were not contributed by Hira Wati; it was out of the funds of the defendant.

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

1. Whether Smt.Hira Wati was the owner of the property in suit?
2. Whether the property in suit devolved upon the plaintiff after the death of Hira Wati as alleged in the plaint?
3. Whether the suit is undervalued for the purpose of court fee and jurisdiction?
4. Whether the suit is within time?
5. If issue No. 1 is proved, whether Smt. Hira Wati was shown as Benami as alleged in the plaint?
- 5A. Whether the suit is not maintainable in view of the provisions of section 281 (a) of the Income Tax Act? OPD
- 6.Relief.

5. The plaintiff in support of his case had examined four witnesses; five witnesses had also been examined on behalf of the defendant. Trial Judge held that the plaintiff has failed to show that Hira Wati was the owner of the suit property. This was also evident from the document exhibited Ex.DW1/1 wherein she had clearly mentioned that she has no interest in the suit property. Suit was dismissed.

6. The impugned judgment had reversed the finding of the trial Judge. The suit of the plaintiff had been decreed. The document exhibit DW-1/1 had been repelled; it was held that it could not be treated as a will as a person can bequeath property only which is owned by him. This property was not owned by Hira Wati. It was held that the plaintiff was entitled to a decree; a decree of possession and partition was accordingly passed.

7. This is a second appeal. After its admission on 25.11.2005 the following substantial question of law formulated. It reads as follows:-

“Whether the impugned judgment dated 06.01.2005 is perverse and also for the reason as it has wrongly construed the admission made by Hira Wati in the document Ex. DW-1/1/? If so, its effect.”

8. On behalf of the appellant, it has been urged that the impugned judgment suffers from perversity. The impugned judgment had cursorily ignored Ex. DW-1/1; attention has been drawn to para 16; it is pointed out that even if the Court had held that this document Ex. DW-1/1 is not a will it was incumbent upon the Court to have given a finding on the recital contained in the said document; the Court failed to examine it as an admission made by deceased Hira Wati. Reliance has been placed upon (2006) 12 SCC 552 Avtar Singh Vs. Gurdial Singh to support the submission that an admission is the best form of evidence which is postulated under Section 58 of the Evidence Act. It is pointed out that in AIR 1966 SC 405 Bharat Singh & Others Vs. Mst. Bhagirathi, the Supreme Court on the scope of admissions as contained in Sections 17 & 21 of the Evidence Act had held that an admission is an admissible evidence irrespective of whether the party making them appears in the witness box or not. In the instant case although admittedly Hira Wati had not come into the witness box, the admission made by her in Ex.DW-1/1 which has not been challenged has to be read in evidence. It is pointed out that the impugned judgment has decreed the suit of the plaintiff which was his suit for possession; a decree of partition has also been passed which was neither pleaded nor prayed for. Such an approach is clearly illegal. Reliance has been placed upon AIR 1953, SC 235 M/s Trojan & Co. Vs. R.M. N. N. Nagappa Chettiar to support the submission that a Court cannot grant relief which has neither been asked for, nor prayed. For the same proposition, reliance has also been placed upon (2004) 7 SCC 708 Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jumayath Palli Dharas

Committee & Others. It is pointed out that it is for the plaintiff to essentially plead all necessary facts so that the defendant can meet the case in the written statement and when partition had neither been pleaded nor claimed in the plaint, such a relief could not have been granted. For the same proposition, reliance has also been placed upon 1999(6) Scale 190 T.H. Musthaffa Vs. M.P. Varghese & Ors. It is pointed out that a finding which is perverse is liable to be set aside in second appeal. For this proposition reliance is placed upon (2001) 4 SCC 262 Kulwant Kaur & others Vs. Gurdian Singh Mann (dead) by LRs & others. Attention has been drawn to the finding in the impugned judgment on issue No. 5. It is pointed out that the findings on this score are perverse; it was never the case of the plaintiff that the property was owned and purchased by Mr.Prithmi Chand, the husband of Hira Wati. The case as set up by him in the plaint is that Hira Wati had made the constructions in the suit property. This finding that Prithmi Chand had given the funds for the purchase of this plot is neither supported by evidence and nor was this the case of the plaintiff. This is a perverse finding.

9. Arguments have been countered. It is pointed out that the judgment suffers from no infirmity. Document Ex.DW-1/1 was rightly cancelled as the contents of the same clearly show that Hira Wati was not claiming ownership in the suit property; question of bequeathing the property owned by her would not arise; the Court below has rightly construed it; the recital/admission, if any, also could not be read in the absence of registration of the said document. This document was rightly rejected. The plaintiff was admittedly the natural legal heir of the deceased Hira Wati and was thus entitled to the relief which was granted to him.

10. Record has been perused. Case of the plaintiff all along was that Hira Wati was the owner of the disputed property. This was first stated and pleaded by her in the legal notice which was sent by her on 29.7.1977. In this notice, it had clearly been stated that Hira Wati is the owner of the suit property in her own right. The sale deed dated 17.7.1956 had also evidenced the joint ownership of Hira Wati and Krishan Dev Sharma. Admittedly, the property comprised of two plots bearing No.83 and 84 which had then merged into a single plot i.e. plot No.199 and the sale deed is in the joint names of Hira Wati and Krishan Dev Sharma. The evidence led before the Courts below had established that Prithmi Chand who was working in Swatantra Bharat Mills had a monthly salary of ₹100/-. He was working in this mill since 1955 up to 11.12.1965 which was the date of his death. The record from the office of the employer of Prithmi Chand had been summoned through PW-1 who had reiterated and affirmed this position. In fact, the defendant in his written statement had also conceded that Prithmi Chand was earning about ₹70/- to ₹75/- per month. Parties were issueless. This has been reiterated in the version of PW-2. Contention of the plaintiff was that this was a handsome amount in the year 1955 which enabled Prithmi Chand to make savings which in turn had enabled him to purchase the disputed property in the name of his wife Hira Wati. PW-1, the plaintiff, had affirmed this version on oath. He had on oath deposed that the consideration for the plot was paid by Prithmi Chand and the disputed property was purchased in the name of his wife Hira Wati. The document which is the sale deed dated 17.7.1956 is an admitted document. It is registered evidencing the joint ownership in the suit property in

the name of Hira Wati and appellant Krishan Dev Sharma. Contention of the defendant that his father had paid the money for this property is farfetched; trial judge had noted that the father of the defendant i.e. the brother of Hira Wati had in fact been dismissed from government service prior to 1947 on the ground of embezzlement of public money and he was leading a retired life thereafter; having no source of income. Witnesses of the defendant could not dislodge this version of the plaintiff. The registered sale deed could not be overlooked.

11. The sale consideration in the joint plot was ₹1000/-; ₹500/- was the share of Prithmi Chand. Evidence adduced before the Courts below had thus established that Prithmi Chand had sufficient money to purchase this suit property in the year 1956.

12. Ex.DW-1/1 purported to have been executed by Hira Wati on 18.01.1967 was rightly rejected. Perusal of this document shows that it was executed by Hira Wati in Meerut. Two witnesses Jagdutt Sharma and Purshotam had attested this document. The recitals in this document state that Hira Wati is not in any manner related to the suit property; the property is admittedly in her name; but it is from the funds of her brother; she apprehends legal problem after her death; she does not wish her brother's son Krishan Dev Sharma to suffer any problem. This is the gist of the document which had been attested by the aforementioned two witnesses. This document does not in any manner create, extinguish or transfer any right in favour of Krishan Dev Sharma. Court below had rightly held it not to be a will on the ground that a will can only bequeath a property which is owned by the testator. Admittedly

even as per Ex.DW-1/1 the property which is the subject matter of Ex.DW-1/1 was never purchased by Hira Wati from her funds. It also does not contain a bequeath. Even assuming for the sake of arguments that this is an admission made by Hira Wati, yet this admission merely recites certain facts which are undisputed. Undisputed facts being that this property is in the name of Hira Wati. It further records that Hira Wati does not wish her nephew Krishan Devi Sharma to suffer any legal problem. It does not in any manner make any further statement that she wishes to transfer or assign her interest to her nephew.

13. Hira Wati was admittedly a dead person when this document was propounded. She had died on 28.10.1969. This document was produced before this Court after the suit had been filed which was in the year 1977. It was then that this document saw the light of the day. If this document was a genuine document bequeathing or transferring interest or otherwise creating any interest in favour of the appellant nothing prevented the appellant from filing a suit seeking a declaration of title on the strength of this document. The impugned judgment has noted that one of the two attesting witnesses namely Jagdutt Sharma was closely related to the appellant; he was the brother-in-law of his daughter; the second attesting witness Purshotam was also a neighbor of the appellant. Impugned judgment had also noted that it is difficult to believe that Hira Wati would have especially gone to Meerut to execute this document when admittedly she was a resident of Delhi; the witnesses set up to attest this document could not, in this scenario, be relied upon.

14. Ex.DW-1/1 was rightly repelled. The plaintiff was the only legal heir of the deceased Hira Wati. She not having left any will and having died intestate plaintiff was entitled to succeed to her property.

15. Further contention of the plaintiff was that Hira Wati has constructed the house in the year 1967; funds were raised from her own savings as also the gratuity and the provident fund which had accrued and paid to her after the death of her husband. It has come on record that the husband of Hira Wati namely Prithmi Chand had died on 11.12.1965. The gratuity amount of ₹895/- and provident fund of ₹2450/- had been paid to his widow Hira Wati on 27.12.1965; this is evident in the version of PW-2 who had produced the record from the office of Prithmi Chand. Evidence adduced had thus established that Hira Wati had sufficient funds to make construction in her share of open plot of land in the year 1966.

16. Impugned judgment had correctly decreed the suit in her favour.

17. The findings in the impugned judgment qua these issues have been dealt with in para 13 onwards of the judgment. The relevant extract of the judgment reads as follows:

“13. It is not in dispute that the suit property was constructed over plot No. 83-84. It is not in dispute that both these plots were purchased by way of a single sale deed in the name of Smt. Hira Wati and the defendant. It is not in dispute that there is a single construction raised on both these plots. Ld. Trial court came to the conclusion that Smt. Hira Wati was not the owner of the property on the ground that the plaintiff has not led any evidence on the record to show that house was constructed by Hira Wati and the plaintiff was not able to tell which plot was purchased by Smt.

Hira Wati and the plaintiff was not able to tell whether it was a single unit construction or it was a separate construction. The conclusion of Ld. Trial Court is not based on proper appreciation of evidence. It is an admitted fact that the suit property was jointly purchased in the name of Smt. Hira Wati and the defendant for a consideration of Rs. 1,000/-. Only this which is to be seen whether in the year 1956 when the suit property was purchased by the husband of late Smt. Hira Wati paid the sale consideration or sale consideration was paid by the defendant through his father. Defendant has failed to prove any document on the record to show that in 1956 he had Rs.1,000/- with him to his father for the purchase of this property. In fact a suggestion was given to the plaintiff while appearing as PW-1 in cross-examination that the father of the defendant paid the entire consideration for both the plots and both the plots were purchased benami in the name of Smt. Hira Wati and Kishan Dev implying that the entire consideration was paid by the father of the defendant and the property was purchased benami in the name of Hira Wati and the defendant which is contrary to the stand of the defendant in the WS because stand of the defendant is that he paid the entire sale consideration of Rs.1,000/-.

14. It is settled law that when defendant asserts that the entire sale consideration was paid by him then onus is on him to prove the same. As already stated that defendant has not proved anything that in the year 1956 he sent a sum of Rs.1,000/- to his father and his father purchased the property.

15. It is an admitted fact that the husband of Smt. Hira Wati was employed in Swatanter Bharat Mills in 1951. PW-2 Ram Karan Goel who was employee of Swatanter Bharat Mills specifically stated Sh. Prithmi Chand joined the Mill in 1951 and continue in service up till his death, i.e. 11.12.1965 and he used to draw a sum of Rs.100/- per month. Even plaintiff specifically stated in his statement that Sh. Prithmi Chand was earning Rs.100/- per month and the entire sale consideration was paid by him. He further stated that defendant never paid anything to Smt.Hira Wati for the construction of the plot. The father of defendant was in Govt. Service prior to 1942. He was dismissed from service on the ground of embezzlement and he had no source of income. He further stated in his cross-examination that father of the defendant was prosecuted and convicted and he was dismissed from service in 1942 and he was jailed. So what has emerged from the evidence of the plaintiff and in other witnessed is that Sh. Prithmi Chand was employed in Swatanter Bharat Mill since 05.09.1951 and he was earning approximately Rs.100/- per month. He was also

residing in the Quarter allotted by the mill. In 1951 a sum of Rs. 100/- was fair amount of the salary. Sh. Prithmi Chand had no liability except his wife. He was issueless and he has means to purchase the plot and from the evidence on record, it is established that the money for which plot was purchased was given by Sh. Prithmi Chand. It is significant to note that defendant stated in his examination that in 1959 about the inclusion of name of Smt. Hira Wati in the plot in question. He further stated that he did not give any notice to Smt. Hira Wati that she was only the benami. It is significant to note that on hand the case of the defendant is that Smt. Hira Wati was brought up by his father like a daughter and as security and out of love and affection plot in question was purchased in the name of Smt. Hira Wati and defendant by his father, though, the entire consideration was paid by the defendant and on the other hand he stated that when he came to know about the inclusion of the name of the defendant in the sale deed he was agitated.

16. Much emphasis has been placed on the document Ex.DW 1/1 which is alleged to have been executed on 18.11.1967 by late Smt. Hira Wati wherein she has stated that the plot in question was purchased by the defendant out of his own funds and her name was introduced in the sale deed without consulting her. She has no right over the land in question and she has not purchased the same. This document is of no significance because the definitely it is not a Will. A person can execute a Will in respect of property which is owned by her and as per this document she is not claiming herself to be the owner of the property. Once this document is discarded as a Will then obviously this document has no value in the eyes of law.

17. It is settled law that there was no bar in purchasing property in the name of wife and daughter by a person provided these are purchased for the benefit of wife and daughter even prior to coming into force the Benami Transactions (Prohibition) Act 1988 and in fact under Section 3 of the Act it is so specifically stated. It is a restatement of the legal position which was already prevailing. So far all practical purposes Prithmi Chand Passi had purchased this property for his wife out of the funds supplied by him. Suit is not covered under Section 281(A) of the Income Tax Act because this was purchased by the husband in the name of his wife moreover, it was held by the Division Bench of Hon'ble High Court of Calcutta in 1983 Tax Law Report 730 that Section 281 (A) was never intended to be and it does not cover the case of a person who claims title to the property by inheritance, although he in tracing such title plead that one amongst his predecessor held the same in benami. Moreover the suit property was purchased in

the year 1956 and Section 281(A) was introduced in 1972 and the same is now repealed.

18. Now the question is whether entire sale consideration was paid by him or he paid the sale consideration for half of the property since the sale deed was executed in favour of Hira Wati and defendant in 1956. It is emphasised that the sons of the father of defendant were well placed and they have been sending money to their father hence there was sufficient fund to purchase the property. It has come in evidence that they were all married having number of children. There is nothing on the record to suggest that they were sending money to their father and if they were sending money to their father then there was no occasion for him to purchase the property in the name of defendant. In that eventuality he would have purchased the property either in his own name or in the name of all his sons. Rather the property was purchased in the name of defendant and Smt. Hira Wati and the reasonable inference is that property was purchased in the name of defendant and Hira Wati as the money was paid by them. The money in respect of Hira Wati was paid by her husband Prithmi Chand Passi. Only conclusion which can be drawn safely in the absence of any cogent evidence on the record is that half of the property was purchased by Prithmi Chand in the name of Hira Wati and half of the property was purchased by the defendant. So it is proved that Smt. Hira Wati was co-owner of the suit property to the extent of half share.

19. Now the question is who constructed the suit property. It is an admitted fact that the suit property was constructed in the year 1966. It is also an admitted fact that husband of Smt. Hira Wati died on 11.12.1965. PW-2 proved that a sum of Rs. 895/- was given to Smt. Hira Wati towards gratuity and a sum of Rs. 2450/- was given towards PF. Husband of Hira Wati was gainfully employed from 1951. He was issueless. Obviously he had money and other thing in 1965. This amount of Rs. 3300/- approximately was more than sufficient to construct the property. Though, the case of the defendant is that he had been sending money and the same was spent on the construction when it was under construction. Defendant could have very well constructed the property in 1956 itself. The construction was made only after the demise of husband of Hira Wati which shows that the amount was paid by Smt. Hira Wati. Defendants tried to establish that the father of defendant has amount in his pass book and he has been sending the amount to his father for the construction of the property. The amount in the pass book was never sufficient for the construction but never the less in the absence of co-gent proof on the record again it is to be inferred that the property was

jointly constructed by Smt. Hira Wati and Krishan Dev. The money which Hira Wati spent on the construction of the house belongs to her husband and she received the same after the demise of her husband.”

18. The said findings call for no interference. The judgments relied upon by the learned counsel for the appellant on this score do not help him.

19. The next submission of the learned counsel for the appellant that the relief of partition could not have been granted when the suit filed was for possession alone is also devoid of force. The impugned judgment has dealt with this issue in para 20. The finding reads as follows:

“20. It is finally submitted by Ld.counsel for the defendant that on the face of it this is property jointly purchased by two persons and in that case plaintiff should have filed suit for partition and possession and since no relief of partition is sought, the suit is likely to fail. It is further submitted by him that court has to see only the averments made in the plaint and the prayer made in the plaint and he has referred to Murlidhar Haspuria Vs. Bashidar Halwai AIR 1973 Cal.193.

21. On the other hand it is submitted by Ld. counsel for the plaintiff that this court has ample power to pass any decree in order to arrive at the just conclusion of the case. Ld. counsel for the plaintiff has referred to Karam Dass & Ors. Vs. Som Prakash AIR 1986 P &H 89 and Managobinda & Ors. Vs. Brajabandhu Misra AIR 1986 Orissa 281 and Arakhita Swain Vs. Kndhuni Swain AIR 1983 Orissa 1999, where it was held that court can grant relief which is not specifically prayed for.

22. Since I have already come to the conclusion that the property was jointly purchased by Smt. Hira Wati, through the funds supplied of Prithmi Chand and Krishan Dev-defendant, hence they are joint owners. Under these circumstances Smt.Hira Wati and Krishan Dev have 50% share in the suit property.

23. As I have already held that half of the suit property was purchased by Smt. Hira Wati by the amount given by her husband, hence, in view of Section 15 of Hindu Succession Act, it is the plaintiff who has become the owner of the property after the death of Smt. Hira Wati.

24. In this case there was no question of plaintiff originally filing suit for partition and possession because case of the plaintiff is that entire property was purchased from the funds supplied by Prithmi Chand. Now it is proved that the property was purchased equally by Smt. Hira Wati and Krishan Dev, hence, at this stage it is appropriate to pass decree of partition as well. Since it is held that they are entitled to 50% share each, Ld. Trial court will appoint some local commissioner who will submit his report and Ld. Trial court can pass the final decree on the basis of report of Local Commissioner.”

20. Order 7 Rule 7 of the Code of Civil Procedure reads as follows:

7. Relief to be specifically stated- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

This provision enables the Court to grant a relief although not specifically prayed for. This is keeping in view the grounds as set out in the plaint and looking at the substance of the matter and not to its form.

21. The Supreme Court in the case of 1994(2) SCC 594 Hindalco Industries Ltd Vs. Union of India and Ors. in the context of the provision of Order 7 Rule 7 of the Code had inter alia held as follows:

“It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The Court must have regard for all the reliefs and look at the substance of the matter and not its forms. It is equally settled law that grant of declaring relief is always one of discretion and the Court is not bound

to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the Court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right, something is included in his cause of action and if he establishes his cause of action, the Court perhaps has been left with no discretion to refuse the same. But when it is not as of right, then it is one of the exercise of discretion by the Court. In that even the Court may in given circumstances grant which includes 'may refuse' the relief. It is one of exercising judicious direction by the Court."

22. In a subsequent judgment i.e. AIR 2002 SC 136 Rajendra Tiwary Vs. Basudeo Prasad, the Supreme Court had held as follows:

"Where the relief prayed for in the suit is a larger suit and if no cause is made out for granting the same but the facts, as established, justify granting of a smaller relief. O. VIII Rule 7 permits granting of such a relief to the parties. However, under the said provisions a relief larger than the one claimed by the plaintiff in the suit cannot be granted."

23. In the instant case the plaintiff had filed a suit for possession. He was claiming his right and title to the suit property through Hira Wati. The suit property was admittedly in the joint names of Hira Wati and the defendant Krishan Dev Sharma. There was no dispute to this factual averment. Once the court had returned a finding that the plaintiff was entitled to a decree of possession, the relief of partition had necessarily to flow from it; being a joint property; the decree of possession alone could not be effective without following it with a decree of partition. It was in these circumstances that a preliminary decree of partition had also been passed directing the local commissioner to make a preliminary enquiry and pass a final decree of partition. There was no legal

impediment with the Court from passing such a decree. The substance of the matter before the Court had necessitated the passing of the decree for partition although it was not specifically prayed for in the plaint.

This answers the second query raised by the learned counsel for the appellant. The judgments relied upon by learned counsel for the appellant as noted supra would not apply to this factual scenario.

24. This is a second appeal. After its admission on 25.11.2010, the following substantial question of law has been framed; it inter alia read as follows:

“Whether the impugned judgment dated 6.1.2005 is perverse and also for the reason as it has wrongly construed the admission made by Hira Wati in the document Ex.DW-1/1? If so, its effect?”

25. The discussion as aforenoted has answered this substantial question of law. It is answered against the appellant and in favour of the respondent. The appeal is without any merit. Dismissed.

INDERMEET KAUR, J.

JANUARY20, 2011
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