

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

% Judgment delivered on: 19.04.2011

+ **RSA No.317/2006 & CM No.13426/2006**

SMT. RICHA DEVI @ KAPILA DEVI Appellant
Through: Mr. Anuj Aggarwal and Mr. P.K.
Nayyar, Advocates.
Versus
SHRI RAM DASS Respondent
Through: Mr. M.S. Khan and Mr. A.K. Sharma,
Advocates.

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. Oral

1 This appeal has impugned the judgment and decree dated 07.08.2006 which had endorsed the findings of the trial Judge dated 03.07.2004 whereby the suit filed by the plaintiff Ram Dass seeking recovery of possession of suit property i.e. quarter No.183, Tilak Khand, Giri Nagar, Kalkaji along with damages had been decreed in his favour.

2 The case of the plaintiff is that he was allotted the aforementioned suit property by the Labour Commissioner; the plaintiff was an industrial worker employed with M/s Federal Lloyds, Okhla Industrial Estate, New Delhi; his monthly license fee was Rs.37/-. Out of love and affection the plaintiff allowed his brother Jiwan Lal and his wife Richa Devi to live in the said accommodation. After the death of Jiwan Lal on 26.09.1985 his wife left for her village on

20.03.1986. The plaintiff had himself gone to the railway station to see off the widow of his brother. He had locked the suit property at that time. When he returned, he found one Sukhdev Singh was present in the suit property; his valuable articles had also been removed; police complaint was lodged; proceedings under Section 145 of the Cr.PC had also been initiated; the defendant is in occupation of the suit property; she is trespasser; she is liable to be ejected; present suit was accordingly filed.

3 The defendant had contested the suit. Her contention was that her husband Jiwan Lal had been allotted the aforementioned suit property in his life time; in fact the plaintiff Ram Dass had ceased to be an industrial worker in 1973; he had himself written a letter dated 06.03.1974 to the Assistant Housing Commissioner (Ex. RDW-1/1) requesting him to allot this quarter in favour of his brother Jiwan Lal; the same had in fact been allotted to Jiwan Lal on 20.04.1974.

4 On the pleadings of the parties, six issues were framed. Oral and documentary evidence was led. The suit had been decreed in favour of the plaintiff.

5 This order of the trial Judge had been affirmed in the first appeal.

6 This is a second appeal. Along with the present suit an application under Order XLI Rule 27 of the Code of Civil Procedure (hereinafter referred to as the 'Code'). By virtue of this application, the appellant/defendant seeks to place on record a document dated 20.04.1974 purported to be an allotment in favour of Jiwan Lal which has been signed by Jiwan Lal in his own hand writing and

duly attested by two witnesses. This is in Form A under Rule 6; it contains the terms and conditions of the allotment of industrial housing colonies; allottee has been mentioned as Jiwan Lal. Learned counsel for the appellant has urged that the appellant/defendant was an illiterate and uneducated lady; she had given all her documents including the present document to her lawyer in the proceedings below; however, inadvertently counsel for the defendant has not been able to place these documents on record. Permission has accordingly been sought to place these documents on record as it is urged that inspite of due diligence the said documents could not be placed on record earlier. The reply filed has opposed the application. It is stated that time and again the plaintiff has been moving such like applications and all with the same excuse that the defendant is an uneducated and illiterate person; it is pointed out that this is only to prolong the trial. However, in the entire body of the reply, the authenticity and veracity of this purported document dated 20.04.1974 has not been disputed; it is not the case the respondent this document is a fabricated or forged document. Be that as it may, no opinion is being expressed on the veracity of the document.

7 Record shows that on 28.05.1996, an application had been filed by the defendant under Order 13 Rule 1 of the Code to place on record certain receipts; these were rent receipts showing payment of rent by the defendant; they had been proved on record as Ex. DW-1/1 to Ex. DW-1/3. Before the first appellate court, an application under Order XLI Rule 27 of the Code had been filed by the defendant which had been allowed and vide order dated 16.09.2002, the matter had been remanded back to the trial Judge

permitting the plaintiff to adduce additional evidence. Learned counsel for the appellant has placed reliance upon a judgment of the Apex Court reported in (2008) 5 SCC 444 Lachman Singh Vs. Hazara Singh to submit that in exceptional cases where the interest of justice demands provisions of Order XLI Rule 27 of the Code can be resorted to even before the second appellate court; this is one such fit case.

8 This submission of learned counsel for the appellant does not carry force. Record shows that even before the first appellate court the ground as has been urged today had been addressed; it had been urged that the appellant is an illiterate lady and although she had given all her documents including the present document dated 20.04.1974 to her counsel yet for unknown reasons this document has not been adduced in evidence. Attention has also been drawn to the testimony of RDW-1 who had brought the summoned record pertaining to the suit property from the office of the Assistant Housing Commissioner. This witness had admitted that receipts are issued only to allottees of the houses; receipts Ex. DW-1/1 to Ex. DW-1/3 are rent receipts which have been issued in favour of Jiwan Lal. The other documents on record which include the letter dated 17.12.1979 along with an affidavit of the same date (Ex.RDW-1/3 & Ex. RDW-1/4) also show that Jiwan Lal had written to the Assistant Housing Commissioner clearly specifying that he is an allottee of the aforementioned suit property. Document Ex.RDW-1/1 is a letter dated 06.03.1979 written by the plaintiff Ram Dass to the Assistant Housing Commissioner requesting them to allot the aforementioned suit property in the name of his brother Jiwan Lal.

9 Order XLI Rule 27 of the Code specifies certain contingencies in which case additional evidence can be adduced before the second appellate court. It cannot be resorted to as a mean to fill in lacuna; however the averments in the present application clearly spells out the bonafides of the applicant; the applicant is an uneducated lady and this is apparently clear from the fact that before the two courts two separate applications had been filed to place additional evidence on record as in spite of the fact that the relevant documents had been handed over her counsel, the same had not been filed. In the reply filed by the respondent to the present application, the non-applicant/plaintiff has also not disputed the veracity of this document. In the peculiar facts and circumstances of the case, interest of justice demands that the applicant/defendant should be given one more opportunity to prove the document i.e. document dated 20.04.1974 for which she is granted one opportunity.

10 The matter is accordingly remanded back to the District & Sessions Judge who will assign the case to the first appellate court who will proceed to decide the case on merits after permitting the appellant/defendant to adduce additional evidence to prove the document dated 20.04.1974 in accordance with law. For the said purpose, the parties are directed to appear before the District & Session Judge on 27.04.2011 at 10:30 A.M.

Appeal is disposed of.

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Applications are dismissed as having become infructuous.

**(INDERMEET KAUR)
JUDGE**

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