

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

% *Date of Judgment: 25.01.2011*

+ **RSA No.242/2008 & CM No.17090/2008**

HARI PARKASH Appellant
Through: Mr.Puneet Bhatnagar,
Advocate.

Versus

SHRI KESHAV SAMARAK SAMITI Respondent
Through: Mr.Alok Kumar and
Ms.Manisha Narain, 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)

CM No.17090/2008 (for additional evidence)

1. Before this Court a prayer has been made that two of the rent receipts issued by the plaintiff would in fact elucidate upon the case and additional evidence is sought to be led to place these documents on record. This application has been filed under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure.

2. There is no dispute about the proposition that even at the second appellate stage additional evidence can be permitted. It is, however, necessary that before this prayer is granted the applicant must make out a case; there has been no averment or pleading in the body of the application that in spite of exercise of due diligence the applicant could not produce these documents in the Courts

below. Relevancy of the said documents is also not made out. The counter foils of the rent receipts in fact had been proved as Ex. PW-1/4 to Ex.PW-1/6; execution of which the defendant had admitted. There is no merit in the application. It is dismissed.

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3. This appeal has impugned the judgment and decree dated 24.4.2008 which had endorsed the finding of the trial judge dated 3.1.2007 whereby the suit of the plaintiff Keshav Samarak Samiti, Delhi seeking perpetual and mandatory injunction against the defendant Hari Parkash from raising any construction in the tenanted premises let out to him was decreed in his favour.

4. The case of the plaintiff was that it was a society registered under the Societies Registration Act 1860. The owner of this land is Badri Bhagat Jhandewalan Temple Trust Society. Plaintiff had been granted a lease of 4620 sq. yards of land for a period of 99 years with option of successful renewals. The lease deed was duly registered. After the execution of the said lease deed late Mool Chand father of the defendant who was the tenant in respect of one room measuring 13 feet x 10 feet with a tin roof became the tenant of the plaintiff. Monthly rent was Rs.10/-. After the death of Mool Chand the defendant Hari Parkash became the tenant of the plaintiff. Plaintiff accepted the tenancy of Hari Parkash. It has been urged that the defendant has collected building material in front of his tenanted premises with the intent to raise an unauthorized construction and to make additions in the room let out to him. In para 14 it is stated that the defendant had been successful in putting up the tin shed outside the tenanted room. He has also made a latrine there. Suit for permanent and

mandatory injunction seeking removal of the unauthorized construction has been filed. The site plan has also been filed along with the plaint.

5. The defence of the defendant was that a pucca room measuring 13 feet x 10 feet and a tin shed measuring 9 feet x 10 feet was already built up and the defendant is residing there; the tin shed had become old and shabby and the defendant had replaced it with a new one. No cause of action has arisen in favour of the plaintiff.

6. The trial judge had framed five issues. On the basis of oral and documentary evidence led, the suit of the plaintiff was decreed.

7. Before the trial judge, the rent receipts Ex.PW-1/4 to Ex.PW-1/6 had been proved by the plaintiff. It was noted that defendant had in fact admitted his signature on the rent receipts; his contention was that the same had been put under pressure of one Ranjit Singh.

8. This is a second appeal. It is yet at the stage of admission. On behalf of the appellant, it has been urged that the rent receipts Ex.PW-1/4 to Ex.PW-1/6 have described the tenancy premises as one room for residential purpose but this has been inserted subsequently by the plaintiff; it was not there in the original tenancy receipts Ex.PW-1/4 to Ex.PW-1/6. This contention now raised was never the defence of the defendant before the Courts below. No cross-examination on this point has been effected by the defendant of the plaintiff. In fact, the defendant as noted above had admitted the execution of the aforementioned documents without any objection except that the same had been obtained under

pressure of one Ranjit Singh.

9. It has been urged that in view of the judgment of this Court reported in 103(2003) DLT 645 Suraj Prakash Chopra Vs. Baij Nath Dhawan a tin shed is a temporary structure; since it is not built by digging a foundation or erecting walls; having no pucca structure, the appellant/tenant is entitled to protection under Section 108 (p) of the Transfer of Property Act (hereinafter referred to as 'the TPA').

10. It is contended that such a tin shed which being only a temporary structure, the decree in the impugned judgment directing the appellant/tenant to demolish this structure is an illegality. This has raised a substantial question of law.

11. The substantial questions of law have been framed on page 1 of the appeal. They have been termed as questions of law and not substantial questions of law. Be that as it may, this Court shall address the arguments which have been urged by the learned counsel for the appellant and which have been countered by the respondent.

12. The judgment of Suraj Prakash Chopra (supra) wherein an observation has been made that a tin shed is a temporary structure was the proceedings effected under the provisions of Section 14(1)(j) of the Delhi Rent Control Act (hereinafter referred to as 'the DRCA') to determine the nature of substantial damage caused to the tenanted premises. An enquiry under this provision of law is distinct and different from the case in hand. In the present case, admittedly it has come on record that what has been let out by the plaintiff to the defendant was a single room. Both the fact finding Courts have held that in front of this room measuring 13 feet x 10

feet, a tin shed had been erected along with a latrine by the defendant. It was not the case of the defendant in the Courts below that he had not made any pucca wall before he had covered them with the tin shed. His defence was that both the rooms including the room with the tin shed had been let out to him. In this scenario it can in no manner be said that this tin shed which is the disputed portion as also latrine was only a temporary structure. No substantial question of law has arisen. The appeal is dismissed in limine.

INDERMEET KAUR, J.

JANUARY 25, 2011
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