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

Reserved on: 21st March, 2014

Decided on: 28th May, 2014

+ CS(OS) 593/2004
MRS. RAJ KHANNA

..... Plaintiff

Through: Mr. Neeraj Kishan Kaul, Senior Adv.
with Mr. Neeraj Malhotra and Mr.
Prithu Garg, Advs.

versus

SMT. MIRA CHAWLA & ORS.

..... Defendants

Through: Mrs. C.M. Chopra, Senior Adv. with
Mr. Sunil Mittal and Mr. D.S. Vohra,
Advs. for D-2.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Plaintiff has filed this suit for possession and damages against the defendants in respect of property bearing no. 3, Sri Ram Road, Civil Lines, Delhi - 110054 (for short, hereinafter referred to as the suit property); more particularly shown in red colour in the site plan annexed with the plaint. Defendant nos. 1 and 2 are cousins of plaintiff's husband Late Shri Pratap Chand Khanna.

2. Plaintiff has alleged in the plaint that the suit property was originally belonged to maternal grandfather of her husband, namely, Shri Sriram Tandon, who bequeathed the same in favour of her husband-Shri Pratap Chand Khanna by way of a registered Will dated 18th March, 1930. The suit property was put into the stock of Joint Hindu Family by Late Shri Pratap Chand Khanna known as P.C. Khanna and Sons, which comprised of Late Shri Pratap Chand Khanna, plaintiff and their son. On 4th February, 1971, a partition took place amongst the members of Joint Hindu Family and suit property fell in the share of plaintiff and she became exclusive owner thereof. Her name was duly recorded in the records of Municipal Corporation in the year 1978. Even prior to the said arrangement plaintiff's husband had let out the suit property to his parental uncle, namely, Shri B.N. Khanna at monthly rent of ₹104.50 for residential purposes only sometime in the year 1948. After the partition of the Joint Hindu Family Shri B.N. Khanna was informed about this fact and was requested to pay rent to plaintiff with effect from February, 1971. Accordingly, Late Shri B.N. Khanna started paying rent of the suit property to plaintiff with effect from February, 1971 and acknowledged her as his landlord. Tenancy was

terminated by the plaintiff, vide notice dated 13th February, 1981, with effect from 31st March, 1981.

3. Shri B.N. Khanna expired in the year 1992. He was survived by his wife Smt. Prakashvati Khanna and three daughters, that is, defendants. At the time of his death only Smt. Prakashvati Khanna was living with him in the suit property as defendants had already been married and residing in their respective maternal home(s). They were not living in the suit property at the time of death of Shri B.N.Khanna. After death of Shri B.N. Khanna his wife Smt. Prakashvati Khanna continued to occupy the suit property being spouse of Late Shri B.N. Khanna and became statutory tenant. Vide notice dated 20th July, 1993 Smt. Prakashvati was requested to increase the rent of suit property by 10% under Section 6(A) of the Delhi Rent Control Act, 1958 (the Act, for short). With effect from 1st September, 1993 rent of the suit property was increased to ₹330/- per month. Thereafter, again rent was increased to ₹363/- per month in the year 1996. Smt. Prakashvati Khanna passed away on 7th June, 1997 and upon her death tenancy automatically came to an end. Defendants did not inherit the tenancy under Section 2(1)(iii) of the Act. After the death of Smt. Prakashvati Khanna defendants did not remove her personal belongings. Suit property was lying

locked since the year 1997. After the death of Smt. Prakashvati Khanna plaintiff neither demanded nor accepted any rent from the defendants. Since plaintiff and defendants were closely related they were verbally requested by the plaintiff to remove the belongings of their parents. Defendants sought some time to do so. Defendant no.1, vide letter dated 2nd February, 2000, categorically admitted that she did not have any claim over the suit property and plaintiff was free to take over the possession. Defendant no. 3 had also written to plaintiff to the similar effect. Defendant no. 2 also promised to hand over the possession. However, finally possession was not handed over by them, hence the present suit.

4. Plaintiff has alleged that suit property was capable of fetching rent of ₹60,000/- per month and defendants were liable to pay damages amounting to ₹21,60,000/- for the period 1st June, 2001 to 1st May, 2004. Apart from this defendants were also liable to pay pendente lite and future damages at the aforesaid rates.

5. Defendants contested the suit and have filed their respective written statement(s). However, during the pendency of suit plaintiff and defendant nos. 1 and 3 compromised the matter in the month of July, 2009. On a joint application filed by the plaintiff and defendant no.3 under Order 23 Rule 3

CPC being I.A. No. 9426/2009, a compromise decree was passed on 28th July, 2009. Similarly, on the joint application filed by the plaintiff and defendant no. 1 under Order 23 Rule 3 CPC being I.A. No. 9457/2009 a compromise decree was passed on 29th July, 2009. Above-noted defendants suffered a decree of possession in respect of the suit property. Defendant no. 3 admitted that tenancy rights of her father in the suit property were inherited by her mother-Smt. Prakashvati Khanna only. She also admitted that suit property was let out for residential purposes only.

6. Defendant no.2 continued to contest the suit, accordingly, only written statement of defendant no. 2 is being adverted to in this judgment. Defendant no.2 has alleged that suit was barred under Section 50 of the Act since rent of suit property was less than ₹3,500/-. Defendant no. 2 admitted that Shri B.N. Khanna was inducted in the suit property as a tenant. However, it was denied that suit property was let out only for residential purposes. Defendant no.2 alleged that suit property was let out for residential-cum-commercial purposes. As per defendant no.2, Shri B.N. Khanna was carrying on business from the major portion of the suit property. It has been further alleged that Late Shri B.N. Khanna constructed one bedroom, one dressing and one bathroom with boundary wall in and

around 1961, with the permission of their landlord late Shri P.C.Khanna. Newly constructed portion was used for residential purposes; whereas initially let out area was used for commercial purposes. Subsequently, tenancy was transferred in the name of Smt. Prakashvati Khanna during the life time of Late Shri B.N. Khanna, thus, Smt. Prakashvati became contractual tenant. Accordingly, death of Shri B.N. Khanna on 7th May, 1992 did not make any difference on the tenancy rights of Smt. Prakashvati Khanna. It was denied that notice of termination of tenancy dated 13th February, 1981 was served on Late Shri B.N. Khanna. It is further alleged that the suit property was let out for residential-cum-commercial purposes, thus, the tenancy rights were inherited by all the legal heirs of Late Shri B.N. Khanna and not only by his widow, inasmuch as, provisions of Section 2(1)(iii) of the Act were not applicable to the residential-cum-commercial tenancies. It is further alleged that since Smt. Prakashvati Khanna was accepted as a contractual tenant and her tenancy was never terminated, thus, all the defendants have inherited tenancy rights in the suit property. Suit was barred by time since it was based on notice of termination of tenancy dated 13th February, 1981. As per the defendant no.2, suit has also not been properly valued for the purpose of court fee and jurisdiction. It is also the

case of defendant no.2 that the license was irrevocable under Section 60 of the Indian Easement Act, 1882 since Late Shri B.N. Khanna was permitted to raise additional construction by the owner/landlord. As per the defendant no.2 she was a lawful tenant in the suit property, having inherited the tenancy rights from her mother-Late Smt. Prakashvati Khanna. It is denied that defendant no.2 was in unauthorized occupation of the suit property. Defendant no.2 alleged that she was not liable to pay damages as claimed in the plaint.

7. In the replication, plaintiff has denied the averments made in the written statement and has reiterated the statements made in the plaint.

8. On the pleadings of the parties following issues were framed on 29th September, 2005.

1. Whether the jurisdiction of this Court, the agreed rate of rent being less than ₹3,500/- p.m., is barred under Section 50 of Delhi Rent Control Act? OPD
2. Whether the tenancy of Shri B.N.Khanna was validly terminated by alleged notice of termination of tenancy dated 13.02.1981 and if so, its effect? OPP
3. Whether Smt. Prakashwati Khanna became the direct tenant in respect of the suit premises during the life time of Sh. B.N.Khanna?

4. Whether the suit premises were let out only for residential purposes or for residential-cum-commercial purposes? Onus on parties.
5. Whether the tenancy of Smt. Prakashwati Khanna was heritable by her legal heirs? OPD
6. Whether the present suit, based on the notice dated 13.02.1981, is barred by time? OPD
7. Whether the suit is properly valued for the purposes of court fee and jurisdiction? OPP
8. Whether the plaintiff is debarred from filing the present suit for possession under Section 60 of (The Indian) Easements Act, 1882 as stated in para 5 of the preliminary objection? OPD
9. Whether the possession of the defendant is unauthorised? OPP
10. If issue No.10 is decided in affirmative, whether the plaintiff is entitled to any damages, if so at what rate and for what period? OPP
11. Whether the defendant no.3 is not a necessary or a proper party to the suit as pleaded in the written statement?
12. To what relief the plaintiff is entitled to?
13. Relief.

9. Plaintiff has stepped in the witness box as PW1. Her husband Late Shri P.C. Khanna has also deposed as PW2. Mr. N.K. Maurya, Record Keeper, Municipal Corporation of Delhi has been examined as PW3. PW-4

Mr. Ravi Shankar Kumar, LDC, Record Room, Tis Hazari Courts, Delhi, has produced the record from the Record Room. The above-noted witnesses have also proved several documents. Site plan of the suit property has been proved as Ex.PW1/1. Partition deed dated 4th February, 1971 has been proved as Ex.PW1/2. Letter of mutation dated 30th December, 1978/3rd January, 1979, pertaining to the suit property and issued by the MCD in favour of the plaintiff, has been proved as Ex.PW1/3. PW3 has confirmed that this letter was issued by the MCD. House tax receipts for the period 1981-82 and 1983-84, issued by the MCD in favour of the plaintiff, have been proved as PW1/4. Notice dated 13th February, 1981, issued by the plaintiff to Late Shri B.N. Khanna, has been proved as Ex.PW1/5. Letter dated 20th July, 1993 written by the plaintiff to Smt. Prakashvati Khanna, has been proved as PW1/6. Will dated 18th March, 1930 executed by Mr. Sriram along with English Translation thereof have been proved as Ex.PW2/1. Declaration of Shri P.C. Khanna dated 2nd November, 1954 has been proved as Ex.PW2/2. Letter dated 20th February, 1971, written by Shri P.C. Khanna to Late Shri B.N. Khanna, has been proved as Ex.PW2/3. Letter dated 7th July, 1997, written by defendant no. 3 to the plaintiff and her husband, has been proved as PW2/4. Ex.P-1 is the

letter dated 2nd February, 2000 written by the defendant no.1 to Shri P.C. Khanna. Letter addressed by defendant no. 3 to Shri P.C. Khanna has been proved as Ex.PW2/5. Certified copy of Eviction Petition bearing No. E-96/1981 has been proved as PW4/1. Certified copy of application dated 25th May, 1981 seeking leave to defend, has been proved as Ex.PW4/2. Certified copy of reply to the said application has been proved as Ex.PW4/3. Certified copy of the deposition of Shri B.N. Khanna (father of the defendants) has been proved as Ex.PW4/4. Certified copy of the deposition of plaintiff has been proved as Ex.PW4/5.

10. As against this, defendant no. 2 has examined herself as DW1. She did not examine any other witness nor has proved any document. Defendant has not led any documentary evidence and only her oral testimony is there to prove her defence.

11. I have heard learned senior counsel for the parties and have perused the written submission as well as entire record and issue wise findings are as under :-

Issue Nos. 1, 2, 3, 4, 5 and 9

12. The above issues are decided together since they are inter connected, inasmuch as, require common discussions to answer the same.

13. It is not in dispute that Late Shri B.N. Khanna was inducted in the suit property as a tenant. He was occupying the suit property as a tenant and not in any other independent right to the property. His occupation in the suit property as a tenant has been duly proved from the depositions of PW1 and PW2 wherein categorical assertions have been made in this regard. Defendant no.2 has not denied that Late Shri B.N. Khanna was occupying the suit property as a tenant. Rent of the property being less than ₹3,500/- is also not in dispute. However, case of the plaintiff is that after death of Shri B.N. Khanna in the year 1992 her widow Smt. Prakashvati Khanna became statutory tenant under Section 2 (1) (iii) of the Act since the tenancy was terminated during the life time of Shri B.N. Khanna vide notice dated 13th February, 1981 (Ex.PW1/5) and the daughters of Shri B.N. Khanna including defendant no. 2 were married and not living with Shri B.N. Khanna at the time of his death. Case of defendant no.2 is that Smt. Prakashvati Khanna was accepted by the plaintiff as tenant in her individual capacity during the life time of Shri B.N. Khanna, inasmuch as, rent was accepted from her, thus, Smt. Prakashvati Khanna became contractual tenant in respect of the suit premises even during the life time of Shri B.N. Khanna. Accordingly, death of Shri B.N. Khanna on 7th May, 1992 did not make any

difference on the tenancy rights of Smt. Prakashvati Khanna. Thus, all the legal heirs of Smt. Prakashvati Khanna became statutory tenant in the suit property after her death. It is also the case of defendant no.2 that suit property was let out for residential-cum-commercial purpose, thus, Section 2(1) (iii) was not attracted and tenancy rights devolved on all the legal heirs by applying general law of inheritance. In nutshell case of defendant no.2 is that she is lawful tenant in the suit property and not an unauthorized occupant as alleged by the plaintiff. According to her suit is not maintainable.

14. Accordingly, firstly, I will delve on the question as to whether the suit property was let out to Late Shri B.N. Khanna for residential purposes only or for residential-cum-commercial purposes. PW1 and PW2 have categorically deposed that suit property was let out for residential purposes only. Their this testimony has remained un-shattered in their cross-examination. Defendant no.2 has not placed any document on record to show that suit premises was let out for residential-cum-commercial purposes. Only her bald statement in this regard is available on record which is not sufficient to prove that the suit property was let out for residential-cum-commercial purposes. Her statement in cross-examination

also clearly indicates that suit property was not let out for residential-cum-commercial purposes as has been claimed by her. She has deposed that her father was dealing in the business of petrol pump, departmental store and distribution of bread through the partnership concerns. She has admitted that the suit property was situated in a residential area. She also admitted that electricity bills were raised by applying tariffs applicable for residential premises and commercial rates were not applied. She admitted that she was not having any document to show that suit premises was used for commercial purpose. She admitted that business was carried out by the firm, namely, 'Exchange Stores' from 13, Alipur Road. She further admitted that sales tax registration was in respect of the said premises. She further admitted that no application was made to the concern authorities for conversion of electricity connection from residential to commercial. She further admitted that address of the suit premises was not shown in the records of partnership business. Accordingly, I am of the view that defendant has failed to prove that suit premises was let out for residential-cum-commercial purposes. Thus, it has to be taken that suit premises was let out to Late Shri B.N. Khanna for residential purposes only.

15. PW1 has categorically deposed that tenancy was terminated vide

notice dated 13th February, 1981 which has been proved by her as Ex.PW1/5. Plaintiff has categorically deposed that during the life time of Shri B.N. Khanna tenancy was terminated by her vide notice dated 13th February, 1981 with effect from 31st March, 1981. She has further deposed that notice was duly received by Shri B.N. Khanna. In her cross-examination, she has reiterated that termination notice was handed over to Shri B.N. Khanna by hand. A question was put to PW1, in her cross-examination, that signatures of Shri B.N. Khanna were forged by her which suggestion she has denied. In cross examination, DW1 has admitted the signatures of Shri B.N. Khanna at point 'A' on Ex.PW1/5. In my view, the categorical assertion of PW1 that notice was served upon Late Shri B.N. Khanna by hand coupled with the fact that signatures of Late Shri B.N. Khanna appear at point 'A' on Ex.PW1/5 is sufficient to prove that notice of termination dated 13th February, 1981 was duly served on Late Shri B.N. Khanna.

16. DW1 has admitted in her cross-examination that she was married on 19th February, 1968. Her sister Veena Kalra was married in the year 1962. Her other sister Meera Chawla was married in the year 1970. They were living in their respective matrimonial homes. She has further admitted in

her cross-examination that her matrimonial home is at 8, Link Road, Jangpura Extension. She further admitted that she was out of Delhi for several years. She was in Mumbai for 4 years and in Mauritius for 10-11 years. She returned in the year 1983 only. She admitted that she was having cordial relations with her husband. She has further admitted that her husband never accompanied her to live at the suit premises. She claimed that she used to visit the suit premises to look after her parents. On some occasions she used to stay in the suit premises during nights. It is, thus, apparent that in the year 1992 when Shri B.N. Khanna died all her daughters were already married and happily living in their respective matrimonial homes. They were not living with him though they might have been visiting him off and on. Only Smt. Prakashvati Khanna was living with her husband Shri B.N. Khanna at the time of his death.

17. Relevant it would be to refer and reproduce Section 2 (l) of the Act which reads as under :-

“Definitions. - In this Act, unless the context otherwise requires-

(l) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes-

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of

his tenancy; and

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's-

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,-

(A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso of section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);

(B) any person to whom a licence, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation 1.- The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:-

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;

(c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person

up to the date of his death.

Explanation II.- If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in

possession after the termination of the tenancy shall become extinguished.

Explanation III.-For the removal of doubts, it is hereby declared that, -

(a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguished shall not affect the right of any other succession of the same category to continue in possession after the termination of the

tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishments, pass on to any other successor, specified in any lower category or categories, as the case may be;

(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs”

18. Upon service of notice of termination being Ex.PW1/5 on Shri B.N.

Khanna contractual tenancy came to an end, however, he continued to enjoy protection, as available to a tenant paying less than ₹3,500/- as rent under the Act. His status was rendered to be that of statutory tenant from a contractual tenant. A perusal of afore-quoted section makes it clear that in case of a statutory tenant, if the tenant, at the time of his death, leaves

behind a widow who was ordinarily residing with him at the time of his death, she alone will get a right to inherit the statutory tenancy to the exclusion of all other heirs, and that too for her own lifetime only. This right does not pass on to any other heir or legal representative of the deceased-tenant. In this case, Smt. Prakashvati Khanna was living with Late Shri B.N. Khanna at the time of his death. Defendants were married and were not ordinarily residing with Late Shri B.N. Khanna. Their casual visits will not bring them within the ambit and scope of meaning of ‘ordinarily living in the premises as envisaged under Section 2(1) (iii) of the Act.

19. In **Capt. Praveen Davar (Retd.) and Anr. vs. Harvansh Kumari and Ors. 2010 (119) DRJ 560**, a Single Judge of this Court has held thus:

“A bare glance at the aforesaid Section shows that the position of law with regard to the heritability of residential premises in the case of a Statutory tenancy is that if the tenant, at the time of his death, leaves behind a widow who was ordinarily residing with him at the time of his death, she alone will get a right to inherit the statutory tenancy to the exclusion of all other heirs, and that too for her own lifetime only. This right does not pass on to any other heir or legal representative of the deceased-tenant. In other words, the person mentioned in Category A” i.e. spouse living with the statutory tenant inherits the tenancy rights and upon his/her death they do not devolve on the next category, i.e., sons and daughters financially dependent on the statutory tenant and living with him in the demised premises.”

20. In **Gian Devi Anand vs. Jeevan Kumar and others AIR 1996, SC**

796, Supreme Court held that Legislature though it fit in the case of residential premises to limit the right of the heirs of a statutory tenant 'in the manner and to the extent' provided in Section 2(1)(iii) of the Act. The relevant portion of the judgment reads as under:

“We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of 'tenant' with retrospective effect introduced by the Delhi Rent Control Amendment Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the 'so-called statutory tenant' in respect of commercial premises, indicates RFA 72/2005 Page No. 46 of 53 that the heirs of so-called statutory tenants” therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the 'so called statutory tenant' in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. The very premise on the basis of which the argument is advanced is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary. We have earlier noticed the decision of this Court in Damadilal case. This view has been taken by this Court in Damadilal and in our opinion this decision represents the correct position in law. The observations of this Court in the decision of the seven Judge Bench in the case of V. Dhanapal Chettiar v. Yesodai

Ammal which we have earlier quoted appear to conclude the question. The amendment of the definition of tenant by the Act 18 of 1976 introducing particularly 2(1)(iii) does not in any way mitigate against this view. The said Sub-clause (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to Sub-clause (ii) of Section 2(1) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the absence of the provision contained in Section 2(1)(iii) the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the 'so-called statutory tenant' on his death and the heirs of such tenant would in law step into his position. This sub-clause (iii) of Section 2(1) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(1) (iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in Section 2(1)(iii). The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(1)(iii) of the Act does not create any additional or special right in favour of the heirs of the 'so called statutory tenant' on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(1) (iii). It appears that the Legislature has not thought it fit to put

any such restrictions with regard to tenants in respect of commercial premises in this Act.”

21. In **Kishori Lal and Mukat Behari Lal Mathur vs. Siri Krishan, S.N. Nigam and Anr. 63 (1996) Delhi Law Times 577**, this Court has held that if a tenant leaves behind a widow she alone will get a right to inherit the statutory tenancy to the exclusion of all other heirs and that too for her own lifetime only. This right does not pass on to any other heir or legal representative of the deceased-tenant.

22. Learned senior counsel for defendant no.2 has heavily relied on the judgment of **Keshav Das and Ors vs. Prem Nath AIR 1996 Delhi 47** and **Gian Devi Anand** (supra), in support of her contention that tenancy rights devolved upon all the legal heirs of Smt. Prakashvati Khanna, in accordance with law of inheritance. A careful perusal of these judgments, reliance whereupon has been placed by the learned senior counsel, makes it clear that such a view has been propounded in respect of commercial tenancies and does not include residential tenancies, which are governed by Section 2 (l) of the Act.

23. The plea of defendant that Smt. Prakashvati Khanna was accepted as a tenant in her independent rights even during the lifetime of Shri B.N. Khanna and became contractual tenant has remained unproved. Except bald

oral statement of defendant no.2 no other evidence has been adduced on record to prove that Smt. Prakashvati Khanna was accepted as a contractual tenant during the life time of Shri B.N. Khanna. Ex. PW1/6 is of no consequence since the same was written after the death of Shri B.N. Khanna. Vide Ex. PW1/6 Smt. Prakashvati Khanna was simply asked to enhance the rent by 10% in terms of Section 6A of the Act. This document is not sufficient to prove that Smt. Prakashvati Khanna was accepted as a contractual tenant during the life time of Shri B.N. Khanna. In view of the above discussions, I am of the view that after the death of Shri B.N. Khanna his wife Smt. Prakashvati Khanna became statutory tenant under Section 2(l)(iii) of the Act and upon her death tenancy rights did not devolve on her daughters.

24. Accordingly, after the death of Smt. Prakashvati Khanna status of defendant no.2 was rendered to be that of an unauthorized occupant in the suit premises. Her status in the suit premises is not that of a tenant either statutory, contractual or by law of inheritance, thus, plea of suit being barred under Section 50 of the Act cannot be entertained.

25. For the foregoing reasons, Issue Nos. 1 to 5 and 9 are decided in favour of the plaintiff and against the defendant.

Issue No. 6

26. Present suit is not for eviction of a tenant based on the notice of termination dated 13th February, 1981. Suit of plaintiff is that after the notice of termination Shri B.N. Khanna became statutory tenant. After his death Smt. Prakashvati Khanna became statutory tenant in view of Section 2(1) (iii) of the Act. Smt. Prakashvati Khanna died in the month of June, 1997 and thereafter defendant no.2 was left with no right to continue to hold over the possession of the suit premises. Defendant no. 2 was supposed to remove the belongings of Late Smt. Prakashvati Khanna which she failed to do. She kept the premises locked unauthorizedly. Defendants were closely related to plaintiff. They were orally requested to remove the belongings of their parents. They sought time to do the same which was granted. However, defendants dragged on their feet and ultimately in the month of June, 2001 refused to hand over the possession. As per the plaintiff, limitation to file the suit commenced after the death of Smt. Prakashvati Khanna in the year 1997 and not from the date of service of Ex.PW1/5. I find force in this contention. Smt. Prakashvati Khanna being statutory tenant was entitled to protection under the Delhi Rent Control Act and no such suit against her could have been filed except the eviction petition that too on the

grounds as envisaged under the Act. It is only after her death when defendants refused to remove the belongings of Late Smt. Prakashvati Khanna cause of action arose in favour of the plaintiff to file the suit for possession against the unauthorized occupant, that is, defendants. In this case, suit has been filed within 12 years from the date of cause of action and is within time. Accordingly, this issue is decided in favour of the plaintiff and against the defendant.

Issue no.7

27. Learned senior counsel for the defendant has contended that the value given in paras 23 and 25 of the plaint by the plaintiff is without any basis. After admitting that for relief of possession suit is valued for ₹4,356/-, plaintiff could not have increased the alleged claim of damages to ₹60,000/- per month orally with a view to bring the suit within the pecuniary jurisdiction of this Court. No evidence has been led by the plaintiff with regard to the valuation. Statement of the counsel for the plaintiff about the prevalent market rate of rent of the premises cannot be accepted. In para 25 of the plaint plaintiff has alleged that for the purposes of jurisdiction, suit is valued at ₹4356/- being the last paid annual rent by the statutory tenant under the provisions of Section 7(xi)(cc) of the Court Fees Act for the relief of possession in terms of prayer (a). Plaintiff has paid court fee of ₹565/- on

the aforesaid amount. It has been further stated that the suit is valued at ₹21,60,000/- on which the court fee of ₹23,456/- has been paid for the purpose of damages. Damages have been calculated for a period of three years @ ₹60,000/- per month. It has been further stated that in case decree of damages being passed for the period subsequent to filing of the suit, plaintiff undertakes to pay the court fee as may be found due and payable. Plaintiff has valued the suit for the purposes of possession on the last paid monthly rent. As regards money decree with regard to the damages is concerned, plaintiff has claimed ₹21,60,000/- and has paid court fee thereon. Pecuniary jurisdiction of this court is 20 lacs and above. Accordingly, I do not find any force in the contentions of learned senior counsel for the defendant that suit has not been valued properly for the purpose of pecuniary jurisdiction. No other argument has been advanced on this issue during the course of hearing nor any other point has been pressed in the written submissions by the defendant no.2 on this issue. Accordingly, this issue is decided in favour of the plaintiff and against the defendant no.2.

Issue no. 8

28. First of all, defendant no.2 has failed to prove that any construction was raised by Late Shri B.N. Khanna in the suit premises with or without the

consent of landlord. Except her bald statement in this regard no other documentary evidence has been produced. Bald statement of defendant no.2 cannot be accepted as a gospel truth. No documentary evidence has been produced on record to prove that any such construction was raised. No document has been placed on record to show that any permission was sought from the Municipal Corporation of Delhi to raise additional construction. No document has been placed on record to show that any construction material was purchased. In her cross-examination, defendant no.2 has stated that site plan was prepared by her father regarding additional construction. However, she has failed to prove any such site plan on record. She conceded that she was not in possession of any such site plan. She deposed that construction was raised with the consent of landlord but admitted that there was nothing in writing in this regard. She further stated that additional construction was raised with the approval of Municipal Corporation of Delhi, however, she has failed to produce any such approval on record. She has admitted that she had not placed any document to show that her late father had raised additional construction in the suit premises at his cost. Thus, her plea that additional construction was raised has remained unproved and cannot be accepted.

29. Secondly, defendant no.2 cannot be permitted to take such a plea to invite protection under Section 60 of the Indian Easements Act, 1882. It is not her case that her father was a licensee in the suit premises. Admitted case of defendant no.2 is that her father was a tenant. Defendant no.2 cannot be permitted to take mutually repugnant and contradictory pleas destructive to each other.

30. In **Shankar Gopinath Apte vs. Gangabai Hariharrao Patwardhan (1976) 4 SCC 112**, Supreme Court has held thus: “only one more thing need, be stated: even assuming that the appellant has executed work of a permanent character on the land it cannot be said that he has done so "acting upon the licence", as required by Section 60(b) of the Easements Act. If he really improved the land by executing a work of a permanent character, he did so in the belief that being a tenant he will become a statutory purchaser of the land, or that the oral agreement of sale will one fine day be implemented. The execution of work would therefore be in his capacity as a tenant or a prospective purchaser and not in his capacity, as a licensee”.

31. Accordingly, this issue is decided in favour of the plaintiff and against the defendant.

Issue No. 10

32. Plaintiff has not led any documentary evidence on this issue. Plaintiff has failed to lead any evidence to prove the rent prevalent in the area in respect of similarly situated premises. In absence of such evidence it is not possible to determine exact mesne profit to which plaintiff would be entitled to. In the plaint, plaintiff has pleaded that she was entitled to receive ₹60,000/- per month keeping in mind size of the property which was more than 2000 sq. yards.

33. By placing reliance on **State Bank of India vs. H.C. Takyar, MANU/DE/0761/2012, S. Kumar vs. G.R. Kathpalia 1999 RLR 114** and **Anant Raj Agencies Properties vs. State Bank of Patiala 2002 IVAD (Delhi) 733**, learned senior counsel has contended that though no evidence has been led to prove the market rent yet Court can order payment of fair market rent by taking judicial notice of the fact that a 2000 sq. yards property in a posh locality like Alipur Road could easily fetch ₹60,000/- per month in the year 2004. I have perused the above judgments and find that the some documentary evidence was available on record in respect of the rent of the suit premises involved therein in respect of earlier period which was taken as a base to assess damages for the subsequent period. However, in this case, no such document is available on record. However, judicial

notice of the fact can be taken that the premises is situated in Alipur which is part of a posh locality like Civil Lines as also the fact that area is more than 2000 sq. yards, thus, could have fetched a monthly rent of ₹15,000/-. Plaintiff would be entitled to this amount from 1st June, 2001, that is, three years period to filing of the suit till possession of the suit property is handed over by the defendant no.2 to the plaintiff.

34. Accordingly, this issue is decided in favour of the plaintiff, in the above terms.

Issue No.11

Since compromise decree has already been passed against the defendant no.3, no discussion on this issue is required. This issue is answered accordingly.

Issue No.12 and 13

35. For the forgoing discussions and findings returned on the above issues, a decree of possession is passed in favour of the plaintiff and against the defendant no.2 in respect of the property bearing no.3, Sri Ram Road, Civil Lines, Delhi-110054 more specifically shown in red colour in the site plan. Defendant no.2 shall also pay ₹15,000/- per month to the plaintiff with effect from 1st June, 2001 till handing over the vacant possession of the

suit property to plaintiff. Additional court fee, if any, be paid by the plaintiff before seeking execution of the money decree. No order as to costs. Decree sheet be drawn accordingly.

A.K. PATHAK, J.

May 28, 2014
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