

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

+ **RSA No.107/2013**

% **21st February, 2014**

MOHD. FAROOQ Appellant
Through: Mr. Maroof Ahmad, Advocate.

VERSUS

SMT. MUBASSARA AND ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908 (CPC) impugning the judgment of the first appellate court dated 16.3.2013 by which the first appellate court set aside the judgment of the trial court dated 23.11.2011 which had dismissed the suit for possession and mesne profits filed by the respondents/plaintiffs. The appellate court has decreed the suit for possession and mesne profits against the appellant/defendant/tenant.

2. The only issue which was to be decided was as to whether the appellant/defendant was a licensee or was a tenant as contended by him. The first appellate court has referred to the fact that neither there was any rent agreement nor any rent receipt relied upon by the appellant/defendant. The first appellate court also notes conflicting defences raised by the appellant/defendant as to whether rent included electricity and water charges or not, noting that in the pleadings the appellant/defendant pleaded that rent was exclusive of other charges, however, in the evidence he took up a case that rental charges included electricity and water charges. So far as the issue of exclusive possession is concerned, the first appellate court relied upon various judgments of this Court and held that exclusive possession in the facts of the present case is not such to hold that tenancy rights existed in favour of the appellant/plaintiff. The relevant observations of the first appellate court are contained in paras 12 to 17 of the impugned judgment and which read as under:-

“12. Although the defendant in his cross examination contended that there was a written rent agreement between the parties, he has not produced any such document. He has deposed that there was no rent receipt. In his written statement, the defendant has not averred that there was a written rent agreement executed between the parties. As regards the tenancy, in para 2 of the preliminary objections the defendant has averred that he was inducted as a tenant in the suit premises by the plaintiff No.2 at

a monthly rent of Rs.500/- “besides other charges”. In his cross examination the defendant as DW-1 has admitted that the plaintiff had not charged him for electricity and water. Thereafter he voluntarily deposed that electricity and water charges were included in the rent of Rs.500/-. This part of deposition of the defendant is contradictory to the averments made in the written statement that the tenancy was at the monthly rent of Rs.500/- “besides other charges”. The defendant has contradicted himself as regards terms of tenancy pleaded by him in the written statement. The defendant had not averred in the written statement that there was any written agreement but in the cross examination he has denied the suggestion that there was no written rent agreement. It was therefore incumbent upon the defendant to produce written rent agreement which is failed to produce.

13. In the case of Prem Pal Singh versus Jugal Kishore Gupta (supra), the plaintiff therein had contended that the defendant was a licensee but the defendant contended that he was a tenant under the plaintiff and that the suit for possession was barred under section 50 of the Delhi Rent Control Act. Issue No.2 framed in the said matter was whether the defendant was a tenant in the suit premises and the suit was barred under section 50 of the Delhi Rent Control Act. The defendant did not produce any rent agreement or rent receipt and the learned Trial Court concluded that the relationship was of licensor and licensee and decided the said issue against the defendant. In appeal the Division Bench of the Hon’ble High Court upheld the finding of the learned Trial Court and held in para 3 as under:

“3. As noted above, on the second issue the defendant has not led any documentary evidence except his own statement that he was the tenant. He admits that he has no document to show that he was tenant in the premises. Tenancy rights are created by contract under the statute being the Transfer of Property Act and Court has to be satisfied that there in fact a tenancy existed, and **when landlord denies the same a mere statement of the tenant may not be enough**. Mr. Chopra has also referred to a judgment of the Calcutta High Court in

shore note in *Satinath Mukherjee V. Satlendra Nath Sen alias Aailen Sen*. AIR 1991 NOC 55 (Calcutta), to contend that to prove the tenancy it is not necessary to prove an agreement, That of course, will depend up to the facts of each case and the evidence that may be led in a case. In the present case the defendant has been unable to prove that he had been a tenant.” (emphasis added)

14. The judgment in the case of Prem Pal Singh (supra) was followed by the Hon’ble High Court in the cases of Praveen Narang (supra) in which the Hon’ble High Court in para 18 reiterated that a “mere statement of the defendant that he is a tenant in the suit property without producing any document in support thereof cannot be accepted as sufficient proof of tenancy.” In the case of Mahabir Prasad Jain versus Ganga Singh (supra) the Hon’ble Supreme Court was pleased to hold in para 14 that “exclusive possession by itself will not give rise to any presumption of tenancy.”

15. It has been held in the judgments referred above that exclusive possession would be itself not give rise to presumption of tenancy. Further, mere claim of a party of being a tenant without producing any document to prove tenancy would not be sufficient and the only inference which can be drawn is that the party was a licensee in the property.

16. Learned counsel for the respondent has relied upon the case of *MN Clubwala (supra)* wherein the Hon’ble Court was pleased to hold that exclusive possession of property would not give rise to inference of tenancy. However, where a person is found to be in exclusive possession under an agreement with the landlord, the agreement would be construed as a lease, in the case of *MN Clubwala (supra)* the party concerned had produced written agreements before the Court which was called upon to determine whether its terms constituted a lease or a license. In the present case, admittedly there is no document available with the defendant to demonstrate the nature of his possession.

17. The case of the defendant before the Trial Court was that he was inducted in the suit premises by the plaintiff No.2. The plaintiff No.2 claimed that he inducted the defendant as licensee while the defendant claimed tenancy. The defendant does not have documentary evidence in his support. He has also contradicted himself regarding the terms of the tenancy. His exclusive possession even though admitted by the plaintiffs and their witnesses would not amount to a tenancy. The only inference that can be drawn on the basis of the evidence is that the defendant was a licensee in the suit premises. Hence the findings of the learned Trial Court in this regard are not sustainable and are set aside and it is held that the defendant was a licensee of the plaintiffs in the suit property.” (underlining added)

3. In view of the above, no substantial question of law arises because the appellant/defendant has rightly been held not to be a tenant of the suit premises and that he was only a licensee. Appeal is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 21, 2014
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VALMIKI J. MEHTA, J.