



2026:DHC:7088



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

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Judgment reserved on: 02.07.2026
Judgment pronounced on: 24.08.2026

+ RFA 459/2009 & CM APPL. 22037/2026 (For Directions)

NIRMAL @ NIRMALA & ANR Appellants

Through: Mr. S.S. Tomar, Advocate.

versus

RAM CHAND Respondent

Through: Mr. J.K. Chawla, Advocate.
Mr. Ripudaman Bhardwaj, with
Mr. Amit Kumar Rana,
Advocate for UOI/L&DO.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present **Regular First Appeal**¹ filed under Section 96 of the **Code of Civil Procedure, 1908**², has been preferred by the Appellants assailing the **Judgment and Decree dated 31.08.2009**³ passed by the **learned Additional District Judge, Delhi**⁴, in Suit No. 123/2008 titled *Smt. Nirmala & Another vs. Ram Chand*.

2. Though the Appeal, as originally instituted, assailed the findings returned by the learned Trial Court on various issues, however, during the course of oral arguments, learned counsel

¹Appeal

²CPC

³Impugned Judgment

⁴Trial Court



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appearing on behalf of the Appellants confined the challenge solely to the findings recorded on Issue Nos. 6 and 11 in the Impugned Judgment.

3. Accordingly, the present Appeal is required to be examined only to the limited extent of determining whether the learned Trial Court was justified in holding that the Defendant was inducted in the premises as a tenant and not as a licensee as claimed by the Appellants.

4. For the sake of convenience and to avoid any ambiguity, the parties shall hereinafter be referred to in accordance with their nomenclature in the present Appeal.

BRIEF FACTS:

5. The brief facts necessary for adjudication of the present Appeal are set out hereinbelow:

- (a) The Appellants instituted a suit seeking possession of the **suit premises, i.e., rear portion of shop no.70, Sarojini Nagar, New Delhi⁵**, along with *mesne* profits and permanent injunction, asserting that the Respondent had been permitted to use a portion of the suit shop merely as a licensee on payment of licence fee at the rate of Rs. 1,000/- per day.
- (b) The Respondent contested the suit by denying the existence of any licence arrangement and asserted that he had been inducted into the suit shop as a tenant with effect from 01.10.1996 at a monthly rent of Rs. 1,000/-. It was further contended that, by virtue of the landlord-tenant relationship, the suit was barred under the provisions of the Delhi Rent Control Act, 1958.
- (c) Upon completion of pleadings, the learned Trial Court framed

⁵Suit Shop



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the necessary issues and, after recording the evidence adduced by the parties, proceeded to decide the suit by the Impugned Judgment.

- (d) While deciding Issue Nos. 6 and 11, the learned Trial Court held that the Appellants had failed to establish the alleged licence arrangement and further concluded that the Respondent had succeeded in proving that he was inducted into the suit shop as a tenant. Consequently, the said issues were decided against the Appellants and in favour of the Respondent.
- (e) Aggrieved by the aforesaid findings returned by the learned Trial Court on Issue Nos. 6 and 11, the Appellants have preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE PARTIES:

6. Learned counsel appearing on behalf of the Appellants would submit that the learned Trial Court has failed to discharge its judicial function in accordance with law while deciding Issue Nos. 6 and 11.

7. He would submit that, instead of evaluating the evidence led by both sides in a holistic manner, the learned Trial Court has confined its discussion almost entirely to the perceived shortcomings in the Appellants' case, while failing to subject the Respondent's plea of tenancy to the same degree of judicial scrutiny.

8. He would submit that the Respondent, despite asserting the existence of a landlord-tenant relationship, has failed to produce any rent agreement, rent receipts or any other documentary evidence to establish the alleged tenancy. He would contend that the learned Trial Court has erred in accepting the plea of tenancy in the absence of any cogent documentary evidence.

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9. In support of the aforesaid submission, learned counsel would place reliance upon *Prem Pal Singh v. Jugal Kishore Gupta*⁶ and *Shri Viney Kumar Mahajan v. Smt. Vishambhari Devi*⁷, to contend that where tenancy is disputed, the burden lies upon the person asserting such tenancy to establish the same by reliable documentary evidence.

10. Learned counsel would further submit that the learned Trial Court has misdirected itself in construing the **Partnership Deed dated 13.10.1996 (Ex. PW1/1)**⁸. He would submit that, instead of appreciating the document in its proper perspective, the learned Trial Court erroneously treated it as a camouflage, despite the Respondent having denied its execution.

11. He would further submit that the Respondent was merely a licensee permitted to use a portion of the suit shop on payment of a licence fee of Rs.1,000/- per day, whereunder Rs.150/- was paid to Appellant No.2 and the remaining Rs.850/- was paid towards discharge of his liabilities to various creditors.

12. He would submit that the learned Trial Court has discarded the said arrangement solely on the ground that the creditors were not examined, while overlooking the fact that there was no effective challenge to the receipt of Rs.150/- per day by Appellant No. 2 during the relevant period.

13. Learned counsel would, therefore, submit that the Impugned Judgment proceeds on an erroneous appreciation of the evidence on record and applies unequal standards while evaluating the respective

⁶1993 SCC OnLine Del 48

⁷2010:DHC:2857

⁸Partnership Deed



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cases of the parties. He would accordingly pray that the findings returned by the learned Trial Court on Issue Nos. 6 and 11 be set aside, and the present Appeal be allowed.

14. **Per Contra**, learned counsel appearing on behalf of the Respondent would support the Impugned Judgment and submit that the learned Trial Court has returned well-reasoned findings upon a comprehensive appreciation of the oral as well as documentary evidence led by the parties. He would submit that no ground warranting interference in the present Appeal is made out.

15. He would submit that the Respondent has consistently asserted and established that he was inducted into the suit shop as a tenant with effect from 01.10.1996 at a monthly rent of Rs.1,000/-. He would further submit that the learned Trial Court has rightly appreciated the evidence on record and correctly concluded that the Appellants had failed to establish the alleged licence arrangement.

16. Learned counsel would further submit that the Partnership Deed did not govern the nature of the Respondent's possession and the learned Trial Court has rightly held that the said document could not be treated as determinative of the relationship between the parties. He would submit that the findings returned by the learned Trial Court in this regard do not warrant interference.

17. He would submit that the Appellants have failed to produce any documentary evidence to substantiate their plea that the Respondent was liable to pay licence fee at the rate of Rs.1,000/- per day or that payments were being made towards discharge of Appellant No.2's liabilities. He would further submit that even the alleged creditors, who were stated to have received such payments, were not examined, thereby rendering the Appellants' case wholly unsubstantiated.



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18. Learned counsel would also submit that the findings recorded by the learned Trial Court are pure findings of fact based upon appreciation of evidence and do not suffer from any perversity or illegality warranting interference by this Court in the present Appeal.

ANALYSIS:

19. This Court has heard the learned counsel appearing for the parties and carefully perused the pleadings, oral and documentary evidence, and the entire record.

20. As noticed hereinabove, the controversy involved in the present Appeal lies within a narrow compass. The Appellants have confined their challenge exclusively to the findings returned by the learned Trial Court on Issue Nos. 6 and 11, whereby it was held that the Respondent had succeeded in establishing the existence of a landlord-tenant relationship in respect of the suit premises and that the Appellants had failed to prove their plea that the Respondent was merely a licensee. Consequently, the principal question which falls for consideration before this Court is whether the findings so returned are borne out by the oral and documentary evidence available on record and warrant interference in the exercise of appellate jurisdiction under Section 96 of the CPC.

21. Before advertng to the rival submissions and examining the evidence on record, it would be apposite to briefly recapitulate the nature and scope of the jurisdiction exercised by a First Appellate Court under Section 96 of the CPC.

22. It is well settled that a first appeal is a valuable statutory right. Unless expressly curtailed by statute, the entire case, both on facts and law, is open for reconsideration before the First Appellate Court. The



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appellate court is not confined to examining errors of law alone but is under a duty to independently assess the pleadings, appreciate the oral and documentary evidence, consider the submissions advanced by the parties, and arrive at its own findings supported by cogent reasons.

23. At the same time, it is equally well settled that where the findings recorded by the learned Trial Court are based upon a proper appreciation of oral and documentary evidence, particularly after evaluating the credibility and demeanour of witnesses who have deposed before it, such findings ordinarily deserve due weight and deference. Interference with such findings is justified only where they are shown to be perverse, contrary to the evidence on record, based on an erroneous application of law, or are such that no reasonable judicial mind could have arrived at the conclusions reached by the Trial Court.

24. The aforesaid principles have been consistently reiterated by the Hon'ble Supreme Court in **Santosh Hazari v. Purushottam Tiwari**⁹, **Madhukar v. Sangram**¹⁰, **H.K.N. Swami v. Irshad Basith**¹¹; and several other decisions. These principles were comprehensively restated by the Hon'ble Supreme Court in **MalluruMallappa v. Kuruvathappa**¹², wherein the Court succinctly explained the scope and ambit of a first appeal under Section 96 of the CPC, the obligation of the appellate court to independently evaluate the evidence and record reasons in compliance with Order XLI Rule 31 of the CPC, while simultaneously recognizing that where the appellate court concurs with the appreciation of evidence by the Trial Court, it need not unnecessarily restate the entire evidence or reiterate every reason

⁹(2001) 3 SCC 179

¹⁰(2001) 4 SCC 756

¹¹(2005) 10 SCC 243

¹²(2020) 4 SCC 313



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recorded by the Trial Court. The relevant observations as made in the said Judgment read as under:

“10. Section 96CPC provides for filing of an appeal from the decree passed by any court exercising original jurisdiction to the court authorised to hear the appeals from the decisions of such courts. In the instant case, the appeal from the decree passed by the trial court lies to the High Court. The expression “appeal” has not been defined in CPC. *Black's Law Dictionary* (7th Edn.) defines an appeal as “a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority”. It is a judicial examination of the decision by a higher court of the decision of a subordinate court to rectify any possible error in the order under appeal. The law provides the remedy of an appeal because of the recognition that those manning the judicial tiers too commit errors.

11. In *Hari Shankar v. Rao Girdhari Lal Chowdhury*, AIR 1963 SC 698 it was held that a right of appeal carries with it a right of rehearing on law as well as on fact, unless the statute conferring a right of appeal limits the rehearing in some way as has been done in second appeal arising under CPC.

12. In *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat*, (1969) 2 SCC 74 it was held thus: (SCC pp. 77-78, para 5)

“5. ... In the well-known work of *Story on Constitution* (of United States), Vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the legislature may choose to prescribe. According to Article 1762, the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial.”

13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by



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the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions [see: **Santosh Hazari v. Purushottam Tiwari**, (2001) 3 SCC 179, **Madhukar v. Sangram**, (2001) 4 SCC 756, **B.M. Narayana Gowda v. Shanthamma**, (2011) 15 SCC 476, **H.K.N. Swami v. Irshad Basith**, (2005) 10 SCC 243 and **Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar**, (1980) 4 SCC 259.

14. A first appeal under Section 96 CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

15. Order 41 Rule 31 CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order 41 Rule 31 CPC is as under:

“31. Contents, date and signature of judgment. - The judgment of the appellate court shall be in writing and shall state-

- (a) the points for determination;
 - (b) the decision thereon;
 - (c) the reasons for the decision; and
 - (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;
- and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

16. In **Vinod Kumar v. Gangadhar**, (2015) 1 SCC 391 this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under: (SCC p. 395, para 15)

“15. Again in **B.V. Nagesh v. H.V. Sreenivasa Murthy**, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-4)

‘3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first



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appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court [**H.V. Sreenivasa Murthy v. B.V. Nagesha**, 2008 SCC OnLine Kar 837] to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide **Santosh Hazari v. Purushottam Tiwari**, (2001) 3 SCC 179, SCC p. 188, para 15 and **Madhukar v. Sangram**, (2001) 4 SCC 756, SCC p. 758, para 5.)”

17. In **Shasidhar v. Ashwini Uma Mathad**, (2015) 11 SCC 269, it was held as under: (SCC p. 277, para 21)

“21. Being the first appellate court, it was, therefore, the duty of the High Court [**Shasidhar v. Ashwini Uma Mathad**, 2012 SCC OnLine Kar 8774] to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18 It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.”



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25. Having noticed the scope of the present Appeal and the principles governing the exercise of appellate jurisdiction, this Court now proceeds to examine the challenge laid by the Appellants to the findings recorded on Issue Nos. 6 & 11. Before undertaking such an examination, it would be appropriate to first advert to the reasoning which persuaded the learned Trial Court on the said issues. The relevant findings recorded by the learned Trial Court on Issue Nos. 6 & 11 are reproduced hereunder:

“31.ISSUE 6: Whether the plaintiff no. 2 had allowed the defendant to use a portion of the suit shop on license basis @ 1,000/- per day as alleged in para-2 of the plaint? OPP

And

ISSUE NO. 11: Whether the defendant is a tenant in the suit shop? OPD

These two issues are being taken up together since they are inter se connected. The shop no. 70 was admittedly owned by plaintiff no. 2 which was sold on 05.03.1997 to Sh. J.L Jidani. The plaintiff no. 1 on the same day i.e 05.03.1997 bought the rear portion of the said shop. The area bought by plaintiff no.1 in shop no.70 has not been specified by the plaintiffs. No sale deed has been proved on record. The plaintiffs have nowhere in the pleadings set out the measurement of the area occupied by the defendant. DW1 has testified that he was always in exclusive possession of the rear portion measuring 17'x10 1/2 i.e the suit shop since 1.10.1996. It is claimed by the plaintiffs that a portion of the suit shop was given on license to the defendant @ Rs 1000/- per day since October 1996. While as per the defendant he was inducted as a tenant 01.10.1996.

32. Plaintiff no.1 has claimed to be the owner of the suit property and so she would have been the best person to have been deposed as to whether the defendant was inducted as a tenant or licensee. However she has not stepped into the witness box to testify qua this averment. In fact no document has been produced to show her ownership of the suit shop and her stand is corroborated by the mere testimony of her husband (PW1). There is also no document produced to show the attornment of the plaintiff no.1 as the alleged licensor. PW-1 has admitted in his cross examination that no notice of purchase of the shop was given to the defendant.

33. Plaintiff no.2 (PW-1) in his examination-in-chief has testified that as per the mutual discussion between the defendant and him the defendant agreed to pay a sum of Rs 1,000/- per day as licence fee for the user of a portion of the rear portion of his shop 70,



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Sarojini Nagar Market. The defendant on his part as DW-1 has testified in his affidavit in evidence that the plaintiff no.2 let out the suit shop to him w.e.f 01.10.1996 on a monthly rent of Rs 1,000/-. PW-1 admits that there was no document executed except that the "partnership deed was prepared by the defendant to satisfy me".

34. PW -1 has proved the Partnership Deed dated 13.10.1996 (Ex PW1/1) entered into between plaintiff no.2 and the defendant. The Partnership Deed dated 13.10.1996 (ExPW1/1) although claimed by the plaintiff to have been entered into between the plaintiff no.2 and the defendant to safeguard the interest of the plaintiffs seems to be entered into for the purpose of circumventing a stay order restraining the plaintiff no.2 from creating third party interest in the property. In Ex. PW1/1 it is stated that there was a status quo order in relation to the entire shop in a suit for recovery filed by one Sh. Narain Das against plaintiff no.2 who was occupying the rear portion of the shop and against Sh Gurmukh Das who was running his shop in the front portion which was as on date in possession of Sh. Jagdish Lal Jidani. This deed admittedly being more of a camouflage to overcome the restrictions imposed vide an injunction order and cannot be relied upon for determining the terms agreed to between the parties.

35. It is the word of the plaintiff no.2 against that of defendant. The plaintiff no.2 (PW-1) has testified in his examination-in-chief that after taking the rear portion of his shop on licence basis defendant paid him Rs 1000/- per day as license fee. This amount was alleged to have been paid in a particular manner in that the defendant paid Rs 150 to him and Rs 850 to his creditors in the market every day as per his instructions from October 1996 to 05.06.1997. He has further testified that the defendant paid Rs 300/- to Sh. Kanhaiya Lal of shop no. 86 Sarojini Market, Rs 300/- to Harish Chander of Shop no. 82 Sarojini Market and Rs. 250/- per day to Sh. Swaraj Kapoor a resident of Jangpura Delhi. After 06.06.1997 the defendant stopped paying licence fees to him and filed a false suit of injunction against him on the ground that he was a tenant of the premises. As per PW-1 there was no change in the licence post sale of the shop.

36. PW-1 claims that the licence money of Rs. 1,000/- was to be paid partly to him and partly to his creditors as mentioned above on a daily basis. Significantly, none of the creditors have been named in the plaint and their names have been mentioned for the first time in the examination-in-chief of PW-1. Moreover none of the creditors have been examined in support of his claim that a licence fees of Rs 1000/- per day was being paid by the defendant or that they were receiving Rs. 850/- per day out of the same, making the claim of license fees of Rs. 1,000/- per day being paid by the defendant difficult to believe. Also no books of account have been produced or proved in evidence to show receipt of the said amount.

37. PW-1 has categorically testified that "The terms of the licence



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were settled orally and this fact was well within the knowledge of Sh. Kanhiya Lal, Harish, Deepak Kumar, Gurmukh Das, Swaraj Kapoor.” He also testified that the persons except Sh Swaraj Kapoor had given affidavits which he had filed in the Court in another case. Although copies of affidavits were filed neither these persons who were allegedly creditors were examined as witnesses nor their affidavits which the plaintiff no.2 had claimed were filed by him in some other proceedings were proved.

38. PW -1 in his cross examination has claimed that the alleged license fee of Rs 1,000/- per day was paid from 13.10.1996 to 06.06.1997 in cash and that all the above mentioned three persons came every day except Monday to collect the money from the defendant. The alleged creditors to whom the alleged license fee amount was paid on a daily basis would have been the best persons to corroborate the claim of the plaintiff that the defendant was a licensee and paying Rs.1,000/- per day as licence fee. However they were not produced despite the claim of PW-1 in his cross-examination that "I knew Harish Chander and Kanhiya Lal since 1988 and they are my good friends". This makes his version regarding the premises having been given on a licence fees of Rs.1000/- per day difficult to believe .

39. PW-1 in his cross-examination admitted that there was no agreement or settlement in writing between him, the aforesaid three persons and the defendant that the defendant would pay a monthly amount to them for the suit shop. He admitted in his cross examination that no receipt was either given by him or these three persons to the defendant. PW-1 admitted that there was no document to show the settlement of the loan amount as to how much money was left and due to his creditors after various payments were made by the defendant. PW1 also admitted that no notice was given by his wife to the defendant that she had become the owner and that he had to pay a sum of Rs. 1,000/- per day to her. All this makes his claim difficult to believe.

40. When questioned about the loan taken from the three alleged creditors, PW-1 in his cross examination could not give any satisfactory answers qua the loan amounts (towards the satisfaction of which the alleged licence fees was paid). He could not remember the month in which he had taken the loans. He claimed that he took the loan at an interest rate of 2% per month. However he could not tell when he paid the interest to the creditors and how much was paid. He could not even tell how much interest he paid in a month. He claimed he did not take any receipt in writing from these persons for the interest paid which is difficult to believe. He admitted that none of the alleged three creditors had taken any legal action against him. The testimony of PW-1 reveals the falsity of his claim.

41. The brother of plaintiff no.2 and the defendant Shri Gurmukh Das (PW-2) claimed to be in the know of every thing however



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when questioned about the loan amounts taken from various creditors by plaintiff no.2 he also could not tell the same. He admitted that "I cannot even give an approximate figure of the loan amount". He admitted having no personal knowledge about the loans taken from these persons and that the fact about the taking of loans was told to him by plaintiff no.2. Although he claimed to have worked in the front portion of shop no. 70, he could not tell the date, month or year when the three creditors came to the defendant to collect money. He claimed that they came every day however later in his cross examination he admitted that no payment was made to the creditors in his presence. If he was admittedly running his business in the same shop as the plaintiff no.2 it is unlikely that he would not have seen the creditors who were paid by the defendant everyday, as alleged.

42. No creditors having been produced nor any receipt having been proved and no cogent reason having been given for the same makes the claim of PW-1 that the defendant was paying him Rs. 1,000/- per day as license fee difficult to believe. PW-1 although claimed to have received money from the defendant no bank account statement were proved to show deposit of Rs. 30,000/- in any month. The testimony of the PW-1 does not evoke confidence.

43. The defendant (DW-1) on his part has testified that he was paying rental of Rs 1000 per month which he deposited directly in the bank account of PW-1. Plaintiffs in their replication have admitted that the defendant had deposited Rs 1000/- per month for five to six months in the loan account of plaintiff no. 2 of which defendant was a guarantor. However he claimed that this was done without his knowledge. As per directions of my predecessor the defendant filed the ITR of Kamal Jewellers for the assessment year 1998-99. The profit and loss account filed there with showed Rs. 6,000/- paid as rent for the period October 1996 till the end of the assessment year i.e 31.03.1997 (six months). In his cross-examination DW1 has categorically denied the suggestion that he did not take the suit shop on rent nor paid any rent to the plaintiff. The testimony of the defendant remains unshattered and convincing.

44. As held in issue no.7, the plaintiff was given exclusive possession of the suit shop. In his cross examination PW-1 categorically admits that "it is correct that the defendant got additions and alterations made in his portion in order to suit the shop to his jewellery business. Voltd. He did it after 13.10.1996" He admits to the defendant making alterations by putting sunshades and making shelves in the shop. It is also an admitted position that the defendant is in possession of the keys to the locks of the suit shop. The plaintiff having failed to prove that he was ever in possession of the suit shop after 13.10.1996, also in view of admissions of PW1 that the defendant got alterations made in the suit shop to shift his business and was in possession of the keys of

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the suit shop, goes to corroborate the claim of the defendant that he was a tenant and not a licensee.

45. In the light of the above observations it is held that the defendant was inducted in the premises as a tenant and not as a licensee as claimed by the plaintiffs. In view thereof it is held that the plaintiff no. 2 had not allowed the defendant to use a portion of the suit shop on license basis @ 1,000/- per day as alleged in para-2 of the plaint and the defendant was inducted as a tenant. In view of my above observations Issue no. 11 is decided against the plaintiffs and in favour of the defendant.”

26. Having perused the findings recorded by the learned Trial Court, this Court proceeds to independently examine the evidence led by the parties in the backdrop of the challenge raised by the Appellants. The principal grievance urged before this Court is that the learned Trial Court failed to properly appreciate the evidence on record, erroneously rejected the Appellants' case that the Respondent was merely a licensee, misread the Partnership Deed, and accepted the Respondent's plea of tenancy despite the absence of any cogent documentary evidence establishing the existence of a landlord-tenant relationship. It is, therefore, these aspects which fall for consideration in the present Appeal.

27. The principal contention advanced on behalf of the Appellants is that the Respondent was a licensee in the suit shop and he has failed to establish the existence of a landlord-tenant relationship by any documentary evidence and that the learned Trial Court committed an error in accepting the plea of tenancy in the absence of a rent agreement, rent receipts or any contemporaneous document evidencing payment of rent. In support thereof, reliance has been placed upon the decisions in ***Prem Pal Singh (supra)*** and ***Shri Viney Kumar Mahajan (supra)***.



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28. This Court is unable to accept the aforesaid submission in the manner canvassed by the Appellants, as there can be no quarrel with the proposition that documentary evidence, where available, constitutes the best evidence to establish a contractual relationship of tenancy. Likewise, the burden to establish such relationship initially rests upon the party asserting its existence. Sections 101 to 103 of the **Indian Evidence Act, 1872**¹³ embody this principle by casting the burden of proof upon the party seeking the Court to believe in the existence of a fact. The aforesaid sections of the IE Act are reproduced hereinbelow:

“101. Burden of proof. – Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies. – The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

103. Burden of proof as to particular fact. –The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

29. A conjoint reading of the aforesaid provisions makes it manifest that the burden of proving a fact rests upon the party who asserts its existence and seeks a finding thereon. In the present case, the Appellants instituted the suit by asserting that the Respondent was merely a licensee in respect of the suit shop and that his occupation was under a distinct arrangement. The burden, therefore, squarely rested upon the Appellants to establish the existence of the said arrangement by leading cogent and reliable evidence. The Respondent's plea of tenancy, raised in defence, would necessarily fall

¹³ IE Act



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for consideration only upon the Appellants discharging the burden cast upon them in accordance with law.

30. It is noted that the reliance placed by the Appellants upon the aforesaid decisions is, however, misconceived in the facts of the present case. In ***Prem Pal Singh***(*supra*), the plea of tenancy was rejected in the absence of any documentary or other satisfactory evidence establishing the relationship of landlord and tenant. In the present case, however, the learned Trial Court has not proceeded solely on the Respondent's oral assertion but has taken into consideration the documentary material available on record, including the Income Tax Returns, the deposits made in the loan account of Appellant No.2 and the surrounding circumstances emerging from the evidence while returning its findings.

31. Similarly, the decision in ***Shri Viney Kumar Mahajan*** (*supra*) arose in an entirely different factual context concerning the nature of possession between an employer and a servant, where the principles governing the occupation of the premises were materially distinct. Apart from the factual distinction, that case also turned upon the absence of satisfactory evidence establishing tenancy. The said decision, therefore, does not advance the Appellants' case and cannot be mechanically applied to the facts of the present dispute.

32. At the same time, the mere failure of the Appellants to establish the licence arrangement pleaded by them would not, by itself, result in the Respondent's plea of tenancy being accepted. The existence of a landlord-tenant relationship is equally a question of fact to be determined upon an overall appreciation of the oral and documentary evidence, viewed in the light of the conduct of the parties and the surrounding circumstances attending the transaction.

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33. Consequently, the absence of a written rent agreement or rent receipts, though undoubtedly a relevant circumstance, cannot by itself be regarded as conclusive where the remaining evidence on record is capable of disclosing the true nature of the Respondent's possession.

34. In view of the aforesaid, this Court proceeds to examine whether the evidence led by the parties, when appreciated in its entirety and in the light of the surrounding circumstances, supports the Appellants' plea that the Respondent was merely a licensee or the Respondent's assertion that he occupied the suit shop as a tenant.

35. The Appellants have sought to explain the Respondent's occupation of the suit shop by asserting that he was merely permitted to use a counter space on the rear side of the suit shop upon payment of licence fee at the rate of Rs.1,000/- per day, whereunder a sum of Rs.150/- was allegedly paid directly to Appellant No.2 and the remaining Rs.850/- was paid towards discharge of the liabilities owed by Appellant No.2 to various creditors.

36. A careful appreciation of the evidence, however, reveals that the aforesaid arrangement has remained largely unsubstantiated. Apart from the oral assertions of PW-1, Appellant No.2, no contemporaneous record evidencing payment of licence fee, maintenance of accounts or acknowledgement of such payments has been brought on record.

37. More importantly, the three creditors, *namely* Shri Swaraj Kapoor, Shri Harish Chander and Shri Kanhiya Lal, to whom substantial payments are alleged to have been made by the Respondent on behalf of Appellant No.2, and who were admittedly aware of the terms of the arrangement between PW-1 and the Respondent, have admittedly not been examined. The said witnesses,



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in the considered opinion of this Court, would have been the most material witnesses to corroborate the Appellants' version regarding the alleged financial arrangement, and their non-examination materially weakens the evidentiary foundation of the Appellants' case. The relevant testimony of PW-1 is extracted hereinbelow:

“After taking the rear site portion of my shop on licence basis deft. has paid me Rs.1000/-per day licence money in the manner that he 1s to pay Rs.150/- cash to me and Rs.850/- to my creditor in the market as per my instructions. He used to pay Rs.300/- to Sh. Kanhiya Lal shop No. 86 Sarojini Nagar market. He used to pay Rs.300 /- to Harish Chander shop No. 81, Sarojini Nagar market. He used to pay Rs.250/- per day to one Sh.Swaraj Kapoor I/o Jangpura, N.Del. This practice continued till 6.6.97.

XXXXXXX

I have never leased out /rented out the shop in question to the deft. The terms of the licence were settled orally and this fact was well within the knowledge of Sh. Kanhiya Lal, Harish, Deepak Kumar, Gurmukh Dass, Swaraj Kapoor.”

38. This Court also finds that the evidence of PW-1 does not satisfactorily explain the manner in which the alleged licence arrangement was implemented over the relevant period. Despite asserting that the substantial amounts were being paid daily towards discharge of his liabilities, no books of account, receipts, ledger entries or any other contemporaneous material has been produced by him which could lend assurance to such assertion. Therefore, the said assertion rests substantially upon oral testimony unsupported by any independent evidence.

39. It is well settled that while a party is not required to examine every conceivable witness, the failure to produce the best available evidence on a material aspect of the case is a circumstance which the Court is entitled to take into consideration while appreciating the probabilities of the rival versions.



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40. The aforesaid principle embodied in Illustration (g) to Section 114 of the IE Act, as explained by the Hon'ble Supreme Court in ***Gopal Krishnaji Ketkar v. Mohamed Haji Latif***¹⁴, recognizes that where material evidence, which is within the power of a party to produce, is withheld without any satisfactory explanation, the Court may legitimately draw an adverse inference. In the present case, the omission to examine the very persons through whom the alleged licence arrangement was admittedly implemented assumes considerable significance while evaluating the credibility of the Appellants' case.

41. The testimony of PW-2, Shri Gurmukh Das, also does not lend any meaningful corroboration to the case set up by the Appellants. Though PW-2 professed to be aware of the arrangement between the parties, his cross-examination reveals that he had no personal knowledge regarding the loans allegedly taken by Appellant No.2, was unable to state the amount of such liabilities and admitted that no payments were ever made to the alleged creditors in his presence. His testimony, therefore, remains largely *hearsay* and falls short of independently corroborating the version put forward by PW-1. The relevant testimony of PW-2 is extracted hereinbelow:

“He has come as a licensee on the licence fee of Rs.1000/-perday. Terms of licence were oral. **However, he has got one partnership deed prepared himself to satisfy Nand Lal but in reality no partnership was created in between Plaintiff no.2 and deft.** The deft. has been paying Rs.150/-per day to Nand Lal and balance of Rs. 850/- to the creditors in the market i.e. Kanhiya Lal, Harish Kr. and one Swaraj Kapoor. This money was paid to this creditor by Nand Lal as per instructions of plttf. no.2.

Xxxxx

It is wrong to suggest that the plaintiff No.2 had inducted the defendant as tenant in the suit shop. The plaintiff No.2 had

¹⁴ AIR 1968 SC 1413



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inducted the defendant in the suit shop as a brother and he was charging from the deft. Rs. 1,000/- per day for his user of the said shop. The shop which the plaintiff No.2 allowed the deft to use at the said rate is shown in red colour in the site plan Ext. Pw1/2. **I was present when the plaintiff No.2 and the deft. entered into an agreement for user of the said shop by the deft., but no agreement was executed in writing. None else other than myself, plaintiff No.2 and deft., was present when the said agreement was arrived at.**

XXXXX

I was not present when the said three persons had advanced the said loan amounts to the pltf. No.2. All the aforesaid facts about taking of loan were told to me by the plaintiff No.2.

XXXXX

I cannot say about the dates, months or year as to when the said/persons came to pltf.No.2 to collect the said amounts. I cannot tell the date, month and year on which the said three people used to come to the defendant to take money in my presence, Vol. They used to come daily.”

42. Moving further, this Court has independently examined the Partnership Deed, upon which the Appellants have placed considerable reliance. Although the Respondent has disputed the execution and evidentiary value of the said document, the same forms part of the record and has, therefore, been duly considered by this Court. Significantly, even the testimony of PW-2 does not unequivocally support the Appellants' reliance on the said document, as he himself deposed that the Partnership Deed had merely been prepared to satisfy Appellant No.2 and that, in fact, no partnership ever came into existence between the parties.

43. In such circumstances, even assuming the document to form part of the evidentiary record, it neither unequivocally establishes the Respondent as a licensee nor conclusively determines the juridical nature of his possession. The true character of the Respondent's occupation must necessarily be gathered from the substance of the transaction, the conduct of the parties and the evidence led during the



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course of trial, rather than from the nomenclature or isolated recitals contained in a single document.

44. Having found that the Appellants have failed to establish the licence arrangement pleaded by them, this Court now proceeds to independently examine the Respondent's plea of tenancy. It is trite that the weakness of the Appellants' case cannot, by itself, result in acceptance of the Respondent's defence. The Respondent's evidence must therefore stand or fall on its own merits.

45. In this regard, the evidence on record indicates that the Respondent has consistently asserted induction as a tenant with effect from 01.10.1996 at a monthly rent of Rs.1,000/-. His testimony is supported by circumstances noticed during trial, including the entries reflected in the Income Tax Returns, the deposits made in the loan account of Appellant No.2, and the nature of possession enjoyed by the Respondent over the suit premises. These are all circumstances which, though not individually conclusive, lend support to the Respondent's version when viewed cumulatively.

46. In view of the aforesaid independent appreciation of the evidence, this Court now proceeds to examine the Appellants' contention that the learned Trial Court failed to properly discharge its judicial function while deciding the suit.

47. The Appellants have urged that the learned Trial Court failed to perform its judicial function by subjecting the Appellants' case to strict scrutiny while readily accepting the Respondent's plea of tenancy. Having independently re-appreciated the entire evidence on record, this Court is unable to subscribe to the said contention.

48. A reading of the Impugned Judgment demonstrates that the learned Trial Court has examined the oral as well as documentary



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evidence led by both sides and has recorded reasons for accepting one version over the other. Merely because the conclusions ultimately recorded are adverse to the Appellants would not, by itself, justify the inference that the evidence was not judicially appreciated. The function of a Court is not to count the number of witnesses examined by either side, but to assess the quality and probative value of the evidence led before it.

49. It is necessary to bear in mind that civil proceedings are decided on the touchstone of preponderance of probabilities. The Court is not required to determine whether one version has been established beyond all possible doubt, but whether, on an overall assessment of the evidence, one version appears more probable than the other. Consequently, each circumstance emerging from the record cannot be viewed in isolation; rather, the cumulative effect of the entire evidence has to be considered while determining the probabilities of the rival cases.

50. Viewed in the aforesaid backdrop, this Court finds that the Appellants have not been able to satisfactorily establish the license arrangement pleaded by them. The evidence led in support thereof leaves material aspects unsubstantiated and falls short of displacing the Respondent's version on a preponderance of probabilities.

CONCLUSION:

51. Upon an independent re-appreciation of the entire material on record, including the pleadings, the oral and documentary evidence led by the parties, the testimonies of the witnesses and the surrounding circumstances emerging from the record, this Court is satisfied that the Appellants have failed to establish their plea that the Respondent



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was merely a licensee in respect of the suit shop. The alleged licence arrangement has remained unsupported by cogent and reliable evidence and falls short of the standard required to discharge the burden cast upon the Appellants in law.

52. Even then, this Court finds that the Respondent's plea of tenancy cannot be accepted merely because of the failure of the Appellants' case. However, upon an independent appraisal of the evidence, including the Respondent's testimony, this Court is satisfied that the Respondent has succeeded in projecting his defence on the touchstone of preponderance of probabilities. The cumulative effect of the evidence lends greater assurance to the Respondent's version than to the case projected by the Appellants.

53. Consequently, this Court finds no infirmity in the findings recorded by the learned Trial Court on Issue Nos. 6 and 11. The impugned findings neither suffer from perversity, illegality, nor any material misreading or misappreciation of the evidence so as to warrant interference in the exercise of appellate jurisdiction under Section 96 of CPC.

54. Accordingly, the present Appeal, along with pending Application(s), if any, stands dismissed in the aforesaid terms.

55. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 24, 2026/m/jk