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

**Judgment reserved on: 30.06.2015**

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**Judgment delivered on: 21.12.2015**

+ **RSA 4/2015 and CM APPL. 339/2015 & 8696/2015**

DEVENDER BHATI

..... Appellant

Through: Mr. Rajesh Yadav & Mr. Neeraj  
Yadav, Advocates.

versus

CHANDER KANTA

..... Respondent

Through: Mr. Vijay Waghey, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

### **J U D G M E N T**

#### **VIPIN SANGHI, J.**

1. The present second appeal assails the judgment dated 29.10.2014 passed by the First Appellate Court, i.e. learned ADJ-2 (Shahdra), Karkardooma Court Delhi, whereby the first appeal preferred by the defendant/appellant, i.e. RCA No. 46/2014 was dismissed. The appellant had preferred the said first appeal to challenge the judgment and decree dated 21.02.2012 passed by the Trial Court, viz. the Civil Judge (North East), Karkardooma Courts, Delhi in Suit No. 249/2010, decreeing the suit

preferred by the plaintiff/respondent for possession and mesne profit against the defendant/appellant herein.

2. The plaintiff/respondent instituted the said suit on the premise that she is the owner of property bearing no. 263, Street no. 5, Durga Puri Extension, Shahdara, Delhi-110032 (hereinafter referred to as the 'suit property'). She stated that the defendant/appellant approached the plaintiff through one Mr. Ashok Suri to take the suit property for storing goods. The plaintiff allowed the defendant to keep his goods in the suit property for a period of six months, without charging any rent or other amount from the defendant/appellant. Thereafter, the appellant started selling milk from the suit property. The plaintiff asked the defendant to vacate the premises. The defendant then approached the plaintiff through Mr. Ashok Suri and sought three months time to vacate the premises. However, the same was not vacated. Thereafter, the plaintiff/respondent served a legal notice dated 08.07.2010 upon the defendant/appellant to vacate the premises. The plaintiff claimed that the defendant/appellant was in illegal occupation of the suit property for 10 years, and did not pay the electricity charges till date of the notice. The defendant/appellant sent a false reply to the legal notice alongwith a draft no. 364794 for Rs. 1,500 dated 20.07.2010. The plaintiff did not accept the draft, and preferred the suit in question. The plaintiff/respondent sought a decree of possession qua the suit property alongwith the mesne profit @ Rs. 5,000/- per month with effect from August, 2010 till the defendant hands over the peaceful and vacant possession.

3. Defendant/appellant while defending the suit, claimed not to know any Mr. Ashok Suri. He further claimed to be a tenant in the suit property, and the plaintiff/respondent to be his landlady. The defendant/appellant claimed to have started his business in the year 1997. He claimed that the plaintiff rented out the suit property to the defendant/appellant @ Rs. 300/- per month, which was increased to Rs. 500/- per month in November, 2009 as the defendant/appellant was harassed and pressurized by the plaintiff. Further, the defendant/appellant claimed to have always paid the rent and electricity charges, which was charged @ Rs. 200/- per month by the plaintiff/respondent. Lastly, the defendant/appellant stated that the tenancy was governed by the Delhi Rent Control Act, 1958 (DRC Act) and, thus, was claimed to be barred under Section 50, as the rent was below Rs.3,500/- per month.

4. The Trial Court framed the issues on 20.01.2011, the primary issue being - whether there exists a relationship of landlord and tenant between the parties? On the determination of this issue depended the finding on the issue – whether the suit was barred under Section 50 DRC Act.

5. Both the parties lead their respective evidence. The plaintiff examined herself as PW-1. The defendant examined himself as DW-1. He also examined his brothers, namely, Mr. Ashok Kumar Bhati as DW-2 and Sh. Vinod Bhati as DW-3.

6. The learned Trial Court decreed the suit in favour of the plaintiff/respondent on the basis that, admittedly, there was no rent agreement between the parties, nor any rent receipts were placed on record.

It was not the case of the defendant/appellant that an oral rent agreement came about in the presence of DW-2 or DW-3. As there was no documentary evidence, the Trial Court relied upon the oral statements of the parties. It held that there was no reason to give preference to the oral testimony of the defendant over the plaintiff, when there were no material contradictions. The Trial Court held that the defendant/appellant failed to establish the tenant-landlord relationship. Accordingly, it was held that the suit was not barred under Section 50 of DRC Act.

7. The Trial Court held, as there was no tenant-landlord relationship between the parties, inference could only be drawn from the nature of the possession of the defendant/appellant. The Trial Court held that the defendant/appellant was only a permissive user. The same was terminated by the plaintiff vide the legal notice. Thus, the plaintiff/respondent was entitled to possession of the suit property.

8. Further, the plaintiff/respondent claimed that she was entitled to damages/mesne profits @ Rs. 5,000 per month. The plaintiff/respondent was not cross-examined on this aspect by the defendant/appellant. Consequently, the Trial Court awarded damages/mesne profits @ Rs. 5,000/- per month w.e.f. August 2010 till vacant possession of the suit property is handed over by the defendant/appellant.

9. The First Appellate Court reaffirmed the judgment and decree passed by the Trial Court. The First Appellate Court relied upon *Prem Pal Singh Vs. Jugal Kishore Gupta*, 1993 (50) DLT 49; *Vikas Jain v. Naresh Kumar*, RFA No.492/2011, decided on 08.02.2012, and; *Ram Chand Premi v.*

*Nawab Kumar*, 2004 (3) LJR 555, wherein it has been held that when the defendant orally claims a tenancy and the plaintiff orally denies the same, then tenancy cannot be presumed in absence of any cogent evidence. Thus, it was held by the First Appellate Court that there cannot be a presumption of a tenancy in absence of any cogent evidence. Further, the First Appellate Court held that the defendant/appellant was permitted to use the suit property only as a licensee, thus, the defendant/appellant was barred from challenging the title of the plaintiff with respect to the suit property. Thus, the appeal was dismissed.

10. Being aggrieved by the impugned judgment, the defendant/appellant has preferred the present second appeal.

11. The submission of counsel for the appellant, firstly, is that the plaint filed by the respondent/plaintiff was defective, since the same does not comply with the requirements set out in Order 7 Rule 1 CPC. The plaint does not state as to when the cause of action arose. Thus, the appellant submits that the suit filed by the respondent was barred by limitation. Learned counsel submits that since the plaintiff has not disclosed as to when the cause of action arose, the same has to be taken as arisen beyond the period of limitation. He submits that under Article 65 of the Schedule to the Limitation Act, a suit for possession of immovable property based on title could be filed within 12 years from the time when the possession of the defendant becomes adverse to that of the plaintiff.

12. Learned counsel further submits that in her cross examination, the plaintiff, who appeared as PW-1 admitted that the defendant was selling

milk from the suit premises since 1997. The suit was filed only on 06.09.2010. Therefore, even according to the plaintiff, the defendant/appellant had been in possession of the suit property since more than 12 years prior to the filing of the suit. Learned counsel has also placed reliance on the cross examination of the defendant/appellant, who appeared as DW-1. It was suggested to DW-1 that in the year 1997, he had taken the suit premises for keeping his goods – meaning thereby that the admitted position was that the suit premises was in occupation of the appellant/defendant since 1997.

13. He submits that even though the defendant did not raise the plea of limitation, under section 3 of the Limitation Act, the courts below were obliged to themselves examine as to whether, or not, the suit was barred by limitation and if the same was found to be so barred, to dismiss the same.

14. The primary submission of learned counsel for the appellant is that the two courts below have seriously erred in not correctly appreciating the law, that in the absence of a written document when someone is in exclusive possession of an immovable property, and when no evidence has been led as to how he has got into the property, the intention has to be gathered from the other evidence that may be available on record, and in such cases exclusive possession of the property would be the most relevant circumstances to arrive at the conclusion that the intention of the parties was to create a lease. In this regard, he places reliance on the judgment of the Supreme Court in *Delta International Ltd. v. Shyam Sundar Ganeriwala & Anr.*, (1999) 4 SCC 545.

15. Learned counsel submits that the continuous uninterrupted occupation of the suit property by the appellant for 13 long years leads to a presumption of tenancy in his favour. By relying on Section 107 of the Transfer of Property Act, he submits that the creation of an oral tenancy in respect of an immovable property is not prohibited by the law. On the contrary, it could be made by an oral agreement accompanied by delivery of possession if it is not a lease from year to year, or for any term exceeding one year, or reserving a yearly rent.

16. Learned counsel submits that the court is entitled to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case (section 114 of the Evidence Act). He submits that it does not stand to reason, and is against the course of human conduct that the respondent/plaintiff would allow the appellant to remain in occupation of the suit premises for 13 long years without payment of rent or other consideration when, according to her, the premises were given on a pure license basis for a period of six months initially. Learned counsel for the appellant has also submitted that in the plaint, the respondent/plaintiff described herself as “owner/landlord” of the suit property, implying that the appellant/defendant was the tenant. If that were not so, there was no need to use the expression “landlord” along with the expression “owner”.

17. Learned counsel also places reliance on the judgment of the Punjab & Haryana High Court in *Amir Chand v. G.R. Dhir*, (2010) 2 RCR (Rent) 129 wherein the court, in similar circumstances, held that it could not be

believed that a stranger to the family had been authorised to occupy a residential premises in a town, gratuitously. When the case of the landlord was that there was no lease deed, it would be begging the question to expect documentary proof of such oral tenancy. It has to be essentially a matter of inferential finding. Learned counsel submits that the so-called Ashok Suri, who was the alleged to be the go-between, between the parties, was not produced as a witness by the respondent/plaintiff.

18. Learned counsel further submits that there is absolutely no basis discernible as to how the damages have been assessed @ Rs.5,000/- p.m. by the Trial Court. Learned counsel submits that merely because the defendant did not lead evidence to establish the rate of market rent/damages, it does not mean that the courts below could have awarded the entire claim of Rs.5,000/- p.m. made by the respondent/plaintiff towards mesne profits/damages. It was for the respondent/plaintiff to lead independent and cogent evidence on the said aspect, which she has failed to do. In this regard, he has placed reliance on ***Harish Mansukhani v. Ashok Jain***, 2009 (109) DRJ 126 (DB), wherein a Division Bench of this court observed:

*“23. A plaintiff has to prove his case and stand on his own legs. No doubt, the defendant did not produce his books of account but that does not mean that the plaintiff must succeed on said account”.*

19. For the same purpose, he also places reliance on ***Ganpatlal v. Nandlal Haswani & Ors.***, AIR 1998 M.P. 209.

20. On the other hand, learned counsel for the respondent has fully supported the impugned judgment and decree. Learned counsel submits

that since the title of the appellant/plaintiff was duly recognised, it was for the appellant/defendant to establish its claim of being a tenant in the suit property, which is a higher right/status than that of a licensee. If there was no tenancy created, the respondent/plaintiff/owner could not be expected to establish the factum of its non-creation, as the respondent could not be expected to prove the negative, or something that did not exist. He submits that the consistent view taken by the courts is that if the defendant sets up a plea/defence that he is a tenant in the property, which is denied by the plaintiff/owner/landlord, then it is for him to establish to the factum of existence of a tenancy.

21. Having heard learned counsels, I am of the view that the substantial questions of law that arises for consideration in the facts of the present case are, firstly, whether the courts below erred in law in arriving at the finding that the relationship of landlord-tenant did not exist between the parties qua the suit property and, secondly, whether the courts below were justified in awarding damages @ Rs.5,000/- p.m. as claimed by the respondent/plaintiff in the absence of any independent and reliable evidence on the said aspect.

22. The real dispute between the parties was whether the appellant/defendant was a mere licensee – as claimed by the plaintiff, or a tenant – as claimed by the appellant/defendant, in the suit property. Admittedly, there is not a shred of paper led in evidence by either party to substantiate their respective positions. The ownership of the plaintiff in respect of the suit property is not really disputed. By claiming that the appellant/defendant was a tenant, the appellant/defendant admits the superior title of the plaintiff, and also the position that it was through the

respondent/plaintiff that he came into occupation of the suit property. He is estopped from denying her title.

23. The case of the plaintiff, as clearly set out in the plaint, was that the defendant was permitted to keep his goods for a period of six months in good faith without any rent or other charges. The mere use of the expression “owner/landlord” in para 1 of the plaint by the plaintiff qua the suit property cannot lead to the conclusion that the plaintiff - by describing herself as the “landlord”, impliedly admitted the appellant/defendant to be her “tenant”. The pleadings are to be read as a whole, and one word cannot be picked out of context. The expression “landlord” used along with the expression “owner” clearly conveys that the respondent/plaintiff used the two expressions “owner” and “landlord” synonymously.

24. In the present case, upon appreciation of evidence, the Trial Court returned the finding that the appellant/defendant could not establish his tenancy in the suit property under the respondent/plaintiff. This finding of the Trial Court has been concurred with by the First Appellate Court. The First Appellate Court, as noticed, has taken note of three decisions, wherein it has been held that where a dispute arises with regard to the claim of tenancy, it would be for the party asserting creation of tenancy to establish the same, when it is denied by the opposite party.

25. This court in second appeal would not interfere with the concurrent findings of fact premised on the appreciation of evidence led by the parties, unless the appellant is able to point out a perversity in the judgment of the courts below. For this purpose, it was essential for the appellant to point out

that either the courts below have omitted to take into consideration any evidence led by the parties; or have taken into consideration extraneous matters, or; that the findings of fact returned are such that they cannot be supported in the light of the evidence brought on record. Alternately, it is essential for the appellant to point out that the approach of the courts below is contrary to the law. In the present case, it certainly cannot be said that the impugned judgment and decree is perverse on account of wrong appreciation of evidence; omission to consider relevant evidence, or; consideration of extraneous materials as evidence. It also cannot be said that the findings returned on the aforesaid aspect could not have been arrived at in the face of the evidence led by the parties.

26. The issue, therefore, that remains to be considered is whether the courts below should have presumed the existence of a tenancy on the basis that the appellant/defendant was in occupation of the suit premises since 1997, and the respondent/plaintiff initiated action in the year 2010.

27. In ***Delta International Ltd.*** (supra), the issue before the Supreme Court was whether the agreement contained in the document was a lease or a licensee. It was in this context that the Supreme Court observed in para 16 of the said judgment as follows:

*“16. Learned Counsel for the respondent had also relied upon the decision of this Court in the case of Sohan Lal Naraindas v: Laxmidas Raghunath Gadit, [1971] 1 SCC 276, (paras 6 & 9) wherein the Court has observed as under : -*

*"6. An attempt was deliberately made to camouflage the true nature of the agreement, by reciting in several clauses that the agreement was for lease and licence and it emphasise the*

*pretence, it was also recited that the defendant was not to have any right as tenant or sub-tenant in respect of the loft.*

*9. Intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operates as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property the subject-matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession, though not decisive, is of significance," (Emphasis added)*

*From the aforesaid discussion what emerges is :-*

*(1) To find Out whether the document creates lease or license real test is to find out 'the intention of the parties'; keeping in mind that in cases where exclusive possession is given, the line between lease and licence is very thin.*

*(2) The intention of the parties is to be gathered from the document itself; Mainly, intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that document is a camouflage. If the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties.*

*(3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in, the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be most relevant*

***circumstance to arrive at the conclusion that the intention of the parties was to create a lease.***

(4) *If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. But in cases where the landlord alleges that the tenant has sublet the premises and where the tenant in support of his own defence sets up the plea of a mere licensee and relies upon a deed entered into inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; the tenant and the sub-tenant may jointly set up the plea of a license against the landlord which is a camouflage. In such cases, the mask is to be removed or veil is to be lifted and the true intention behind a facade of a self-serving conveniently drafted instrument is to be gathered from all the relevant circumstances. Same would be the position where the owner of the premises and the person in need of the premises executes a deed labelling it as a licence deed to avoid the operation of rent legislation.*

(5) *Prima facie, in absence of a sufficient title or interest to carve out or to create a similar tenancy by the sitting tenant, in favour of a third person, the person in possession to whom the possession is handed over cannot claim that the sub-tenancy was created in his favour; because a person having no right cannot confer any title of tenancy or sub-tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sublet or transfer the premises, cannot confer any better title. But, this question is not required to be finally determined in this matter.*

(6) *Further lease or licence is a matter of contract between the parties. Section 107 of the Transfer of Property Act inter alia provides that leases of immoveable property may be made either by registered instrument or by oral agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the lessor. This contract between the parties is to be interpreted or construed on the well laid principles for construction of*

*contractual terms, viz, for the purpose of construction of contracts, the intention of the parties is the meaning of the words they have used and there can be no intention independent of that meaning; when the terms of the contract are vague or having double intendment one which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do.”*

(emphasis supplied)

28. It is sub-para (3) of the aforesaid paragraph – which has been printed in bold, that the appellant has sought to place reliance upon. The said sub-para (3), in my view, seeks to emphasise the fact that exclusive possession of the property would be a relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease. However that, by itself, can certainly not be conclusive of the intention of the parties to create a lease. Pertinently, in the present case, the appellant/defendant was not able to establish the payment of any rent or other occupation charges whatsoever at any point of time over the long period of over 12 years, for which the appellant/defendant was in occupation prior to the filing of the suit to the plaintiff. Exclusive possession without any consideration would certainly not imply a tenancy. An essential ingredient of a lease is rent, i.e. *“consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee”*. Thus, where existence of consideration is not in dispute, or even if it is in dispute it is established (whether termed as “rent”, or “occupation charges”, or by any other name), the issue may arise whether the occupier was inducted into possession as a tenant or as a licensee. Even in that situation, it would not

be safe to jump to conclusion that mere exclusive possession with payment of consideration therefor must necessarily result in a lease. But, where the payment of rent/consideration by the occupier has not been substantiated at all, the mere exclusive possession of the occupier over a length of time would be of no avail. Thus, in the present case, the decision in ***Delta International Ltd.*** (supra) would have no application, as the appellant could not establish any agreement between the parties that they had agreed upon payment of rent/consideration by the appellant to the respondent or that the same was ever paid by the appellant to the respondent, and accepted by her.

29. No doubt, a lease can be created orally. However, for a party which asserts the creation of an oral lease, in case of dispute being raised, it is essential to establish the existence of the creation and existence of the lease by leading other cogent evidence. Pertinently, apart from examining his brothers, the defendant/appellant did not examine any independent witness to establish the existence of a lease. Over the years, the parties would have had some interaction in relation to payment of rent etc. – had a lease been in existence. However, no such correspondence/document was produced.

30. Consequently, in my view, the courts below correctly appreciated the evidence in the light of the legal position recorded in ***Prem Pal Singh*** (supra); ***Vikas Jain***(supra) and; ***Ram Chand Premi*** (supra), to conclude that the appellant/defendant had failed to establish the existence of tenancy between the parties in respect of the suit property.

31. The decision in ***Amir Chand*** (supra) is of no avail to the appellant. In this case, the petitioner before the High Court had contended that there was

no tenancy between the parties; that the respondent had failed to establish the jural relationship, and; was not entitled to secure an order of eviction by invoking Section 13A of the East Punjab Urban Rent Restriction Act, 1949. The case of the respondent was that the petitioner was his tenant in the property in question. Before the Rent Controller, the petitioner had claimed that he had been inducted into the possession of the property by one Bimla Devi, the widow of the respondent's brother as a licensee without payment of rent. This claim had been rejected by the Rent Controller as being extraordinarily artificial and not worthy of acceptance, for it was inconceivable that a person who was stranger to a family could have been permitted to be in possession of a property for no rent. The High Court concurred with this finding and observed that it could not be believed that a stranger to a family would have been authorised to occupy the residential premises in a town, gratuitously. Thus, the factual matrix in the said case was entirely different and it has no relevance to the present case.

32. The submission of counsel for the appellant that the plaint is defective has not merit. A perusal of the plaint shows that it indeed contains all the relevant averments of fact which constitute the cause of action. Though the plaintiff may not have expressly stated as to when the cause of action arose, even the said averment can easily be gathered from a plain reading of the plaint. The plaintiff has disclosed that he issued a legal notice on 08.07.2010, despatched on 10.07.2010 to the defendant and inspite of the said notice, the defendant had failed to vacate the property. Thus, it is clear from a reading of the plaint that the cause of action arose upon failure of the defendant/appellant to vacate the suit property despite issuance of notice

dated 08.07.2010. Pertinently, this submission/objection was not raised before the Trial Court in the written statement. If it had been so raised, the plaintiff would have had the opportunity to amend the plaint to obviate such a hyper technical objection. Thus, this objection cannot be permitted to be raised, in any event, at this stage.

33. The plea of bar of limitation has only to be stated to be rejected in the facts of this case. The case of the appellant/defendant was that he was a tenant in the suit property of which the respondent/plaintiff is the landlord. He claimed that he was regularly paying rent to the plaintiff. That being the position, it was not open to him to set up a plea of adverse possession. The plea of adverse possession has to be specifically raised and it has to be clearly established as to from which date the possession of the occupier became hostile to the title of the plaintiff, to the knowledge of the plaintiff. Admittedly, the same was not done. The defence of tenancy set up by the appellant/defendant militates against a claim/defence of adverse possession. Thus, there was no obligation of the courts below to delve into the issue of limitation of its own in the facts of this case.

34. The only aspect that needs consideration now is whether the impugned judgment and decree awarding damages @ Rs.5,000/- p.m. in favour of the respondent/plaintiff w.e.f. August 2010 till vacant possession of the suit property is delivered to the plaintiff is legal and justified. On the aspect of damages, the respondent/plaintiff in her examination in chief on affidavit stated as follows:

*“9. That the defendant is also liable to pay a sum of Rs.5000/- per month from August 2010 as damages/usable*

*valve of the suit property till handing over the vacant peaceful physical possession of the suit shop in question to me on account of damages/mesne profits for illegal user and occupation of the said shop in question”.*

35. The assertion of the respondent/plaintiff in her deposition was simply that the defendant is liable to pay a sum of Rs.5,000/- p.m. as damages/usable value of the suit property from August 2010 onwards till delivery of possession. There is no assertion contained in the said testimony that the market rent of the suit property from August 2010 onwards was atleast Rs.5,000/- p.m.

36. The Trial Court decreed the relief of damages claimed by the respondent/plaintiff on the premise that there is no cross examination by the defendant on the said aspect. This is only partly true, because in her cross examination the plaintiff was put the suggestion that the suit shop in question would fetch a rent of Rs.300 to Rs.500 p.m. The plaintiff did not deny the suggestion. Rather, she stated that she was not aware if that was the position. It is noteworthy that apart from the mere desire expressed by the plaintiff that she should awarded damages @ Rs.5,000/- p.m. from August 2010, no independent evidence was led by her to establish that the market rent of the suit property was indeed Rs.5,000/- p.m. at the relevant time.

37. In ***Harish Mansukhani*** (supra), the Division Bench noticed that the plaintiff has to prove his case and had to stand on his own legs. Similarly, in ***Ganpatlal*** (supra), the Madhya Pradesh High Court took note of the elementary rule of civil litigation in this country that the plaintiff must stand

or fall on the strength of his own case. Thus, the failure of the defendant to establish that the market monthly rent of the suit property was not Rs.5,000/- p.m., by itself, would not amount to a proof of the plaintiffs claim of damages of Rs.5,000/- p.m.

38. In view of the aforesaid discussion, I am of the view that there was no evidence before the courts below to conclude that the respondent/plaintiff was entitled to damages @ Rs.5,000/- p.m. from August 2010 onwards. The said finding returned by the two courts below is not premised on any cogent evidence and, therefore, cannot be sustained. The said finding is, accordingly, set aside.

39. The appellant had himself deposed that he is willing to pay Rs.500/- p.m. for the occupation of the suit premises. Thus, he cannot deny that the market rent of the suit premises was atleast Rs.500/- p.m. Consequently, the respondent/plaintiff is held entitled to damages @ Rs.500/- p.m. from August 2010 onwards till delivery of vacant possession of the suit premises to the respondent/plaintiff. With the aforesaid modification, the present appeal stands disposed of leaving the parties to bear their respective costs.

**VIPIN SANGHI, J.**

**DECEMBER 21, 2015**

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