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

+ **Date of Decision: 09.09.2015**

% **RSA 237/2014**

SHRI KESARI NANDAN KAUSHIK (DECEASED)

THROUGH LR

..... Appellant

Through: Mr. M.M. Kalra and Mr. Kunal Kalra,
Advocates

versus

SHRI SIRIKISHAN & ORS

..... Respondents

Through: Mr. Rajat Aneja & Ms. Chandrika
Gupta, Advocates for respondents
No.(i) to (vii).

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No.(i) to (vii).

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. These two appeals have been preferred by the same appellant, namely the legal representative of the deceased Shri Kesari Nandan Kaushik – the

original defendant, against the same set of respondents, and pertain to the same property. They involve the same basic issue, viz. whether the deceased appellant/ defendant in the suit was the owner of the suit property in his own right – as claimed by him, or whether the original plaintiff/ predecessor-in-interest of the respondents, viz. Siri Kishan was the owner and landlord of the suit premises, and the original defendant a tenant of the original plaintiff. Accordingly, both these appeals are taken up for hearing simultaneously. Learned counsels have advanced their common submissions in both the cases.

2. RSA 237/2014 has been preferred by the appellant under Section 100 CPC to assail the judgment and decree passed by the First Appellate Court, namely the ADJ-04, South-West District, Dwarka Courts, Delhi in RCA No.17/2014 (old RCA No.20/2009), preferred by the respondents herein to assail the judgment & decree dated 24.08.2009 passed by the learned Civil Judge, West, Tis Hazari Courts, Delhi in Suit No.600/1987 preferred by the original plaintiff Pandit Sirikishan to seek the relief of possession and recovery of mesne profits of Rs.480/-. The Trial Court had dismissed the said suit.

3. In the first appeal, the said judgment & decree of dismissal was reversed by the First Appellate Court, and a decree of possession was passed in favour of the respondents herein in respect of the suit property bearing No.RZ-922, Gali No.17, Sadh Nagar, Palam Colony, built on Khasra No.94/1, situated within the revenue estate of village Palam, New Delhi as shown in the site plan Ex.PW-1/9 after removing the unauthorized construction of the room shown in green colour in the said site plan, and

putting the property in its original condition. The appellant herein was further directed to pay Rs.480 towards charges for use and occupation of the suit property.

4. The original plaintiff Pandit Sirikishan had preferred another suit against the original defendant Shri Kesari Nandan Kaushik being Suit No.159/1998 for recovery of Rs.2,880/- as damages/ mesne profits for the period 01.01.1993 till 31.12.1995 at the rate of Rs.80/- per month. The said suit was dismissed by the Trial Court, namely the Civil Judge, West, Tis Hazari Courts, Delhi vide judgment & decree dated 24.08.2009, since the first suit i.e. Suit No.600/1987 had been dismissed.

5. The first appeal preferred by the respondents/ legal representatives of the deceased plaintiff being RCA No.16/2014 (old RCA No.21/2009) was allowed by the First Appellate Court, namely the Additional District Judge-04, South-West District, Dwarka Courts, New Delhi by the judgment & decree dated 02.07.2014. The appellant herein was directed to pay Rs.2,800/- to the respondent herein as mesne profits with interest at the rate of 8% per annum from the date of filing of the suit till payment of the decretal amount. Consequently, the appellant has preferred RSA No.264/2014 to assail the said judgment and decree of the appellate court.

6. The case of the original plaintiff in the two suits aforesaid was that he is the owner of the suit property aforesaid consisting of one room, boundary wall built on approximately 134 sq. yards plot, and that the suit property was let out to the original defendant Shri Kesari Nandan Kaushik in March 1983 at a monthly rent of Rs.80/-, exclusive of all other charges for

his residential purpose only. The plaintiff claimed that the tenancy was from month to month; that the defendant defaulted in making payment of rent which fell due from 01.11.1985; that the tenancy was terminated vide notice dated 12.01.1987 w.e.f. 28.02.1987, which was duly served on the defendant. The plaintiff claimed that since the termination of the tenancy, the defendant is in unauthorized possession of the suit property and he is liable to pay charges for use and occupation of the property from 01.03.1987 till the date of filing of the suit (i.e. Suit No.600/1987) at the rate of Rs.80/- per month. The plaintiff further claimed that the tenancy was governed by the provisions of the Transfer of Property Act, 1882. The plaintiff on the aforesaid premise also filed the second suit, being Suit No.159/1998, for recovery of damages/ mesne profits of Rs.2,880/- for the period 01.01.1993 to 31.12.1995.

7. Upon issuance of summons, the defendant filed his written statement. The defendant claimed that there was no relationship of landlord and tenant between the plaintiff and the defendant; that the suit property had been purchased by the defendant from one Sh. Amarjeet Singh vide Agreement dated 30.12.1981, and the mutation had been recorded in the record of the MCD as well as in the record of the DDA. The defendant claimed that he is the owner of the suit property and there is no relationship of landlord-tenant between the parties.

8. The Trial Court framed the following issues in Suit No.600/1987 on 20.07.1988:

*“(1) Whether plaintiff is owner/landlord of the suit property?
OPP*

- (2) *Whether plaintiff is entitled to the relief claimed in the plaint? OPP*
- (3) *Whether the suit is not maintainable in its present form? OPD*
- (4) *Whether there is no relationship of landlord and tenant between plaintiff and defendant? OPD*
- (5) *Whether the suit is bad for non joinder of parties? OPD*
- (6) *Relief.”*

9. The matter proceeded to trial. The plaintiff examined three witnesses. He examined himself as PW1; Sh. Kishan Kumar, Halqa Patwari as PW-2; and, Sh. Jage Ram as PW-3. PW-1 in his examination-in-chief on affidavit deposed on the lines of the averments made in the plaint. He exhibited nine documents, details whereof are as follows:

- i) Ex. PW1/1 is the Khatoni pertaining to the year 1977-78.
- ii) Ex. PW1/2 is the site plan.
- iii) Ex. PW1/3 is the AD Envelop.
- iv) Ex. PW1/4 is the undelivered Registered cover
- v) Ex. PW1/5 and PW1/6 are the postal receipt and UPC receipt.
- vi) Ex. PW1/7 is the another UPC.
- vii) Ex. PW1/8 is the carbon copy of reply of legal notice gave by the defendant.

viii) Ex.PW1/9 is the site plan showing the construction of one room in the suit property by the defendant.

10. PW-2 Sh. Kishan Kumar, Halqa Patwari tendered his evidence and brought the summoned record, which showed the entry Ex.PW-1/1, in the Khatauni pertaining to the year 1977 in respect of the suit property.

11. PW-3 Sh. Jage Ram testified with regard to the creation of oral tenancy by the plaintiff in favour of the defendant. All the plaintiff's witnesses were cross-examined by the defendant.

12. The defendant examined himself as DW-1. He produced photocopies of documents, which were marked as Mark D-1 to D-7. The details of the said marked documents are as follows:

- a) Mark D-1 is the copy of FIR
- b) Mark D-2 is the certificate of the Fire Brigade.
- c) Mark D-3 is the copy of receipt of Sub-Registrar's office vide which payment of the plot in dispute was made.
- d) Mark D-4 is the photocopy of GPA.
- e) Mark D-5 is the photocopy of affidavit.
- f) Mark D-6 is the photocopy of Agreement to Sell.
- g) Mark D-7 is the photocopy of receipt of House Tax.

13. DW-1 was cross-examined by the plaintiff and in cross-examination,

he exhibited FIR No.359/1999 dated 21.05.1999 lodged by the plaintiff against the defendant DW-1 as Ex.DW-1/P-1. The defendant did not produce any other witness as per his list of witnesses. Consequently, his evidence was closed.

14. Issues No.3, 4 & 5 were decided in favour of the plaintiff. Issue No.1, namely, whether the plaintiff is the owner/ landlord of the suit property was decided against the plaintiff and in favour of the defendant. The Trial Court held that the plaintiff had only produced the Khatauni pertaining to the year 1977-78, which mentioned that the plaintiff was owner to the extent of half share in Khasra No.94/1. However, no Khatauni or title document pertaining to the subsequent years was produced. The suit was instituted in 1987. The Khatauni was almost ten years old. The testimony of PW-2 Halqa Patwari – that the plaintiff is the owner of half share in Khasra No.94/1 was rejected, since the said testimony was premised on Khatauni pertaining to the year 1977-78, and PW-2 was not aware whether the said property was sold by the plaintiff thereafter. The Trial Court held that nothing prevented the plaintiff to bring on record the best evidence in his favour with regard to his ownership of the suit property, namely the latest Khatauni, which would show that he continued to remain the owner of the suit property. No Khatauni after the year 1977-78 has been placed on record.

15. The Trial Court further held that the plaintiff had not proved the landlord-tenant relationship between him and the defendant, since he had claimed that the tenancy was oral and no rent receipt/ rent agreement was executed. The testimony of PW-3 Sh. Jage Ram, Mason was rejected as being mere bald assertions, without any documentary or cogent proof.

16. In view of the findings returned on Issue No.1 and Issue No.2 the suit for possession and mesne profits was dismissed.

17. The respondents herein then preferred RCA No.17/2014, which has been allowed by the impugned judgment, and a decree for possession and mesne profits has been passed, as aforesaid. The First Appellate Court in the course of its discussion on Issue No.1, inter alia, observed as follows:

“15. The evidence led by plaintiff before the trial court shows that he is the owner of the suit property. Plaintiff deposed that he was the owner/landlord of the suit property which is his ancestral property. In support of his ownership, he produced the Khatauni for the year 1977-1978. This document was not considered to be sufficient proof of ownership by the learned Trial Court. Learned Judge was of the view that the plaintiff failed to produce the latest Khatauni. The Khatauni Ex. PW 1/1 shows that the same was issued on 29-4-88. The plaintiff filed the suit on 17-9-87. Thus, it is seen that on the date of filing of the suit, the plaintiff was the owner of the suit property.

16. The testimony of PW 2 Shri Kishan Kumar, Halqa Patwari, examined by appellant/plaintiff shows that the plaintiff is the recorded owner of Khasra no. 94/1 to the extent of half share. According to the record brought by him, respondent/defendant is not the owner of Khasra no. 94/1. Section 41 of The Delhi Land Revenue Act, 1954 provides that all entries in the record in rights prepared in accordance with law, shall be presumed to be true until the contrary is proved. The defendant has failed to bring any material on record to prove that the plaintiff is not the owner of the suit property. The presumption attached to the entries of the Khatauni has not been rebutted by the defendant. If there would have been any change in the Khatauni in the subsequent periods on account of sale, transfer, gift or will etc., there would have been change in the entry made in the Khatauni. The revenue record i.e. Khatauni produced by PW 2 in the court on

31-5-2000 did not show any change of ownership. In the given circumstances, the learned Trial Court was not right in holding that the appellant/plaintiff was not the owner of the suit property.

17. The defendant also claims to be the owner of the suit property on the basis of GPA, Agreement to Sell and other documents allegedly executed in his favour by Shri Amarjeet Singh. According to him, Sh. Amarjeet Singh purchased the suit property from plaintiff alongwith his brother and nephews. The defendant neither produced the original documents in the court nor proved the same in accordance with law. The executant of the aforesaid documents namely Shri Amarjeet Singh was also not produced in the court. As the documents of title were not proved in accordance with law by the defendant, therefore, his contention was rightly not believed by the learned Trial Court. The plaintiff has denied to have sold the suit property to Shri Amarjeet Singh. The documents executed in favour of Shri Amarjeet Singh by plaintiff, if any, have also not been produced on record. The defendant Shri Kesari Nandan who examined himself as DW1, himself admitted during his cross examination that he had not seen the original documents of the suit property from Shri Amarjeet Singh. He could not tell as to from whom Amarjeet Singh had purchased the suit property. Thus, the defendant miserably failed to prove on record that he was the owner of the suit property. The defendant failed to establish that there was no relationship of land lord and tenant between him and the plaintiff, therefore, the issue no. 4 was rightly decided against him.

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19. It has not been proved on record that the person named Shri Amarjeet Singh, from whom the defendant is alleged to have purchased the suit property, was the owner. No person can transfer a better title than he himself has. The documents, on the basis of which, Sh. Amarjeet Singh became the owner, has not been produced and proved on record. As the ownership in respect of suit property in the name of Sh. Amarjeet Singh

himself is doubtful, he could not have transferred the suit property in favour of defendant.”

18. The First Appellate Court has considered the issue whether the respondents were entitled to the relief sought in the suit. The discussion on the said aspect, as found in the impugned judgment of the First Appellate Court, reads as follows:

“21. This court has already observed in para nos. 15 and 16 of the judgment that the appellant is the owner of the suit property. In order to seek the relief of possession, a party is required to prove that :-

1. There is a relationship of landlord and tenant between the parties.

2. Tenancy in respect of the premises has come to an end, either by efflux of time or by a valid notice sent by plaintiff to defendant under Section 106 of The Transfer of Property Act and the same was duly served on the defendant.

3 The rent of the premises in question is more than Rs. 3,500/- per month, therefore, there is no protection of the provisions of The Delhi Rent Control Act, available to the tenants.

22. Appellant/plaintiff has stated that he let out the premises to defendant in the month of March 1983 at a monthly rent of Rs.80/- for residential purpose. According to him, the tenancy was oral. He alleged that the defendant had not paid him rent from 01-11-1985, therefore, he sent a legal notice dated 12-1-1987 to him. The factum of letting out of the premises, has also been proved by PW 3 Jage Ram. Defendant has admitted the service of notice. He replied to the legal notice of the plaintiff. The plea of defendant that he purchased the suit property from Sh. Amarjeet Singh and he became the owner, has been found to be false and incorrect. The plaintiff has proved that the rate of rent qua the tenanted premises was Rs.80/- per month. Service of legal notice upon defendant is

proved. In view of above, the plaintiff is entitled to recover the possession of suit property from the defendant.

23. Plaintiff deposed that the suit property initially consisted of one room and boundary wall and the same was built up on khasra no. 94/1. He stated that during the pendency of the suit, defendant constructed one room in the suit property in the western side as shown green in the site plan Ex. PW 1/9 without obtaining his permission or consent. He further stated that he requested defendant to remove the said room from the disputed property but the same was not removed by him. In his cross examination, plaintiff stated that the site plan was prepared at the site. As per the averment made by defendant, he purchased the suit property from Shri Amarjeet Singh on 30-12-1981. He stated that when he purchased the property, it was an open land and he made construction over it. According to defendant, he constructed one room, one boundary wall and two tin sheds. Defendant stated that he made the entire construction after purchasing the plot in 1980. The testimony of defendant is self contradictory. This court fails to understand as to when the suit property was purchased by defendant in 1981, how he could have made construction in 1980. From the deposition of defendant himself, it is seen that the construction over the suit property was raised one year prior to its purchase by him. The plea of defendant for raising construction after its purchase, is found to be false. Thus, it stands proved on record that defendant during the pendency of the suit raised construction of one room on the western side of the suit property without the consent of the plaintiff.”

19. The submission of Mr. Kalra, learned counsel for the appellants is that the impugned judgments and decrees passed by the First Appellate Court are patently erroneous and laconic, and substantial question of law arises for consideration in the present appeal, namely whether the original plaintiff was the owner of the suit property, and whether the relationship of landlord-tenant existed between the original plaintiff and the defendant in respect of

the suit property. Mr. Kalra submits that merely because the defendant may not have been able to establish his defence, the plaintiff could not be granted relief, and the plaintiff has to stand on his own legs and prove his case to be able to obtain relief in his suits. Mr. Kalra submits that the original plaintiff was neither able to establish his ownership in respect of the suit property, nor able to establish the relationship of landlord-tenant between the plaintiff and the defendant. He supports the judgment of the Trial Court on Issue No.1.

20. Mr. Kalra submits that PW-1 admitted that he had never issued any rent receipt under the alleged tenancy. He also stated that he did not remember how much of his share, in the half share out of Khasra No.94/1 – which admeasures 4 Bighas and 60 Biswas, he had sold. He also did not remember how much land his brother or nephews had sold. He did not know if his brother or nephew has sold the plot in question to Sh. Amarjit Singh. He also did not know, whether the suit property was assessed to House Tax, or not. It was suggested to him that the area of the disputed plot was 125 sq. yards and that the same had been purchased by the defendant in the year 1981 from Sh. Amarjit Singh, and that the defendant had taken possession from Sh. Amarjit Singh on 30.12.1981.

21. PW-2 in his cross-examination stated that after the year 1977, he do not know if the land in Khasra No.94/1 was ever sold to anyone or not.

22. PW-3 – who claimed to be a Mason till 4-5 years before his deposition, in his cross-examination stated that no agreement/ contract was executed between him and the plaintiff with regard to making construction

for the plaintiff on the suit property, and that no receipt was issued by him in token of receipt of contract amount. He also had not taken any receipt or bill regarding purchase of cement and other building material from the vendor. He also did not know whether any rent receipt was issued by the plaintiff to the defendant. He also could not say as to who was in possession, or owner of the premises in question, in 1983. He admitted that he was not a summoned witness and that he had come with the plaintiff to the Court.

23. Mr. Kalra submits that even if it were to be assumed, for the sake of arguments, that the defendant had not established his ownership in respect of the suit property and that the plaintiff had established his ownership in respect of the suit property, the plaintiff had not established the relationship of landlord-tenant between the plaintiff and the defendant. The suit had been filed on the premise of the said relationship and not on the premise that the defendant was a trespasser in the suit property. Thus, in the absence of proof of the said relationship, the plaintiff was not entitled to the relief sought in the suit.

24. Mr. Kalra has sought to place reliance on several decisions in support of his submission. The said decisions enlisted in chronology are the following:

- (i) ***Jagan Nath Vs. Smt. Shanti Devi***, 1976 RCJ 245;
- (ii) ***Shri Shanti Ram Vs. Sagli Ram and Another***, 1981 (1) RCJ 406;
- (iii) ***Krishna Oraon & Others Vs. Sukhi Chamar & Ors.***, 1999 (1) BLJR

76;

(iv) *Badar Rabbani Qutbi & Others Vs. Saiedan*, 181 (2011) DLT 148;
and

(v) *Kailash Paliwal Vs. Subhash Chandra Agrawal*, AIR 2013 SC 2923.

25. On the other hand, learned counsel for the respondent has supported the impugned judgments and decrees. Mr. Aneja submits that the plaintiff had claimed that the land in Khasra No.94/1 in the revenue estate of village Palam, New Delhi was ancestral land, in which the respondent/ plaintiff had half share. The same was evidenced by the Khatauni Ex.PW-1/1. Mr.Aneja submits that the Khatauni filed by the plaintiff, though pertaining to the year 1977-78, had been obtained on 29.04.1988, i.e. after the filing of the suit (the suit was instituted on 17.09.1987). Thus, Ex.PW-1/1 contain the up-to-date recording of rights in Khasra No.94/1, which remained unchanged since 1977-78. Mr. Aneja submits that the Trial Court fell in error in assuming that the Khatauni, like the Khasra Girdawari, is recorded each year. The Khasra Girdawari records the possession of the occupant each year, whereas the Khatauni is not recorded annually. The Khatauni would be updated/ recorded only in the event of a party applying for mutation on the basis of transfer/ transmission of ownership of the revenue land. Mr.Aneja submits that the tenancy of the defendant had been orally proved by producing PW-3, whose testimony is completely reliable. Merely because he was a Mason 5-6 years before his testimony was recorded, does not make him unreliable. Mr. Aneja submits that PW-3 withstood his cross-examination, and his testimony could not be shaken in any way.

26. Mr. Aneja further submits that since the suit property falls in village Palam, the Delhi Rent Control Act is not applicable to the suit property. In this regard, he placed reliance on the judgment of this Court in ***Santosh Solanki Vs. Dada Dev Prabhandhak Sabha (Barah Gaon) Palam***, RSA No.105/2014 decided on 22.04.2014.

27. Having heard learned counsel for the parties, perused the judgment of the Trial Court, the First Appellate Court, the relevant evidence and the decisions relied upon by learned counsels, I am of the view that there is no merit in these second appeals, and no substantial question of law arises for consideration by this court in either of the appeals.

28. On issue no.1, i.e. whether the plaintiff is the owner of the suit property, the plaintiff had produced the Khatauni Ex PW-1/1 pertaining to the year 1977-78, issued on 29.04.1988. Thus, it established that there was no change in the recording of rights in the revenue record with regard to the suit property from 1977-78 onwards till the date of issue of the Khatauni Ex. PW-1/1 on 29.04.1988. The suit had been instituted on 17.09.1987, i.e. prior to the copy of the Khatauni being obtained. A Khatauni, though not a title document, is a record of rights. (See Section 20 read with Section 40 of the Delhi Land Revenue Act, 1954 and Rule 83 of the Delhi Land Revenue Rules, 1962). Such a record of rights raises a rebuttable presumption in favour of the person in whose name the Khatauni is recorded. This position is noticed in ***Gurunath Manohar Pavaskar & Ors. v. Nagesh Siddappa Navalgund & Ors.*** relied upon by the appellant. In this decision, the Supreme Court referred to and relied upon an earlier decision in ***Narayan***

Prasad Aggarwal (D) by LR v. State of Madhya Pradesh, 2007 (8) Scale 250, wherein the Supreme Court had observed:

“22. Record of right is not a document of title. Entries made therein in terms of Section 35 of the Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable.”

(Emphasis supplied)

29. Thus, a rebuttable presumption arose in favour of the plaintiff with regard to the title of the plaintiff over the suit property on the basis of the Khatauni for the year 1977-78, which remained unchanged till after the filing of the suit. It was for the defendant to rebut the said presumption. Far from rebutting the said presumption, the defendant, in fact, reinforced the said presumption in favour of the plaintiff by his stand taken in his written statement and in his deposition. The defendant claimed that he had purchased the suit property from one Sh. Amarjeet Singh, s/o. Ram Lahoya, r/o. Rajouri Garden, New Delhi vide agreement dated 30.12.1981, and that Sh. Amarjeet Singh had received full payment from the defendant. During the cross examination of the plaintiff PW-1, the defendant had suggested to the plaintiff that he had sold the plot in question to Sh. Amarjeet Singh, meaning thereby, that the plaintiff was the original owner of the suit property. The defendant DW-1 in his examination in chief had, inter alia, stated that he had purchased the suit property from Sh. Amarjeet Singh on 30.12.1981. *“Before Sh. Amarjeet Singh, the property in suit was owned by the plaintiff along with his brother and nephews”*. Thus, there was a clear admission made by the defendant that the plaintiff was the original owner of

the suit property. It was claimed that the plaintiff had sold the suit property to Sh. Amarjeet Singh.

30. The First Appellate Court has rightly observed that there is a presumption raised by Section 41 of the Delhi Land Revenue Act, 1954 that all entries in the record of rights prepared in accordance with the provisions of Chapter-IV of the said Act, shall be presumed to be true until the contrary is proved, but no such entry or decision shall affect the right of any person to claim and establish in the Civil Court any interest in land which is required to be recorded in the register prescribed by Section 20. Therefore, it was for the appellant/defendant to prove, to the contrary, that the entry in the record of rights viz. the Khatauni in favour of the plaintiff was not true, or was false. As noticed above, the defendant/appellant, far from proving to the contrary, himself claimed that the plaintiff was the original owner of the suit property and he traced his title to the plaintiff through Sh. Amarjeet Singh. However, the defendant did not produce any document claimed to have been executed by the plaintiff in favour of Sh. Amarjeet Singh. Pertinently, the defendant did not even produce the documents of transfer on which he placed reliance, though he claimed that the same were registered in the office of the Sub-Registrar, Delhi. He claimed that on 07.11.1997, a fire broke out in his shop and the documents which were kept in his shop were destroyed in the fire. He produced evidence of the fire breaking out in his shop on 07.11.1997. He produced a photocopy of the receipt, claimed to have been registered in the office of the Sub-Registrar by which he had made payment for the plot in dispute to Sh. Amarjeet Singh, which was marked D-3; photocopy of the General Power of Attorney, marked D-4;

photocopy of affidavit, marked D-5, and; photocopy of the agreement to sell, marked D-6.

31. The defendant, despite claiming that the documents of transfer in his favour were registered in the office of the Sub-Registrar, Delhi, failed to produce the witness from the office of the Sub-Registrar with the relevant register to prove the said documents. The photocopies relied upon by the defendant were not admissible in evidence. He also did not produce his so-called vendor Sh. Amarjeet Singh as his witness. In his cross examination, the defendant DW-1 stated that he had not seen the original documents of the suit property from Sh. Amarjeet Singh. Sh. Amarjeet Singh handed over some documents of the suit property to him, i.e. one registry, but he did not know from whom Sh. Amarjeet Singh had purchased. (He had earlier stated in his examination in chief that Sh. Amarjeet Singh purchased the property from the plaintiff).

32. On further cross examination, the defendant DW-1 stated *“It is wrong to suggest that originally the plaintiff and his nephews were owners of the suit property”*. Thus, the defendant miserably failed to establish his defence of being the owner of the suit property through Sh. Amarjeet Singh. The testimony of the defendant in this regard was not reliable, since he contradicted his own statement made during his examination in chief to the effect that Sh. Amarjeet Singh – his alleged vendor, had purchased the suit property from the plaintiff, by subsequently claiming that the plaintiff and his nephews were not the original owners of the suit property. He not only failed to produce his original documents of title (which were claimed to have been destroyed in a fire in his shop), he did not even summon the

witness with relevant record from the office of the Sub-Registrar, even though it was claimed that his documents of title were duly registered. Even more pertinent it is to note that he did not produce any evidence to show as to how the said Sh. Amarjeet Singh acquired any right, title or interest in the suit property. Thus, his transaction with Sh. Amarjeet Singh, even if believed, was an incomplete chain as it did not trace the title to the original owner.

33. Reliance placed on ***Krishna Oraon*** (supra), in the facts of the present case, is inappropriate. In this decision, the High Court held:

“When the plaintiffs have come up with the suit, it was their bounden duty to stand on their own legs. Any defect or lacuna in the defence case cannot support the plaintiffs’ legs to stand rather the plaintiffs must prove their case to the satisfaction of the Court for getting a decree in their favour”.

34. It cannot be said that the plaintiff did not discharge the burden to establish his title to the property. The claim of the plaintiff was that his family was ancestrally the owner of the suit property. In these circumstances, the plaintiff had placed reliance on the Khatauni recorded in the year 1977-78, which raised a presumption in favour of the plaintiff. The same Khatauni recording had continued till after the filing of the suit. The defendant had not dislodged the said presumption and, on the contrary, the defendant had reinforced the said presumption, as already discussed above. Thus, it cannot be said that it was merely a case of a defect or a lacuna in the defence of the defendant. The plaintiff had led sufficient evidence to prove his title to the suit property.

35. So far as the issue of relationship between the plaintiff and the defendant is concerned, the plaintiff had claimed and established – by leading the evidence of PW-3, Sh. Jage Ram that the suit property had been let out in his presence to the defendant. He was thoroughly cross examined, but he could not be shaken in his testimony. Merely because Jage Ram was a mason, he does not stand discredited.

36. The testimony of PW-3 is convincing and establishes that an oral tenancy was created in favour of the defendant by the plaintiff and PW-3 was an eye witness to the said transaction. This is a concurrent finding of fact returned by the two Courts below and there is no reason to interfere with the same.

37. Reliance placed on *Jagan Nath* (supra) is of no avail. In this case, the appellate authority had placed reliance on the assessment register maintained by the municipal committee, wherein certain information was recorded with regard to the name of person in possession of the property with his parentage, caste and place of residence, and whether the occupant is different from the owner. On the basis of the entries made in the assessment register, the appellate authority concluded that Jagan Nath was a tenant in respect of two rooms and kitchen at a monthly rent of Rs.40/-. The High Court set aside the said order of the appellate authority by holding that no such conclusion could be drawn merely on the basis of the entry in the assessment register. It was held that an entry in the assessment register could not be taken to establish the relationship of landlord and tenant, or with regard to the rate of rent. However, as noticed above, in the present case, there is testimony of an eye witness to the transaction between the

plaintiff and the defendant. For the same reason, the decision in ***Shanti Ram*** (supra) has no application to the facts of the present case.

38. In ***Badar Rabbani Qutbi*** (supra), the relationship of landlord and tenant was held to be established on the basis of a report of the local commissioner. There was no rent receipt or rent agreement executed between the parties. The Rent Control Tribunal had set aside the said finding. This Court concurred with the decision of the Rent Control Tribunal and held as follows:

“11. In appeal the Rent Control Tribunal had set aside this finding; the question of law raised before the Tribunal was as to whether, in fact, a relationship of landlord and tenant had existed between the parties. The Tribunal had correctly appreciated the fact that the report of the Local Commissioner was of little value as the Local Commissioner had not been summoned in the present eviction proceedings and has not been subjected to any cross-examination; more over the report of the Local Commissioner had been filed in a pending proceedings which was yet pending adjudication which was a suit for permanent injunction where admittedly the Petitioner/landlord has not got any interim relief. That apart there was No. other document to support the submission of the landlord that Saieda was his tenant. The tenant had categorically and clearly denied this relationship. Her contention being that she was the owner in her own right of her property i.e. the property bearing No. 1025”.

39. The decision in ***Badar Rabbani Qutbi*** (supra) has no application in the facts of the present case. Firstly, as noticed above, in the present case, there is an eye witness to the transaction, who deposed about the oral tenancy being created by the plaintiff in favour of the defendant. Secondly, in ***Badar Rabbani Qutbi*** (supra), the finding of relationship of landlord and

tenant was premised on the report of a local commissioner, who was, obviously, not an eye witness to the transaction. Even otherwise, the local commissioner had not been subjected to cross examination. The said report of the local commissioner had been filed in a pending proceeding, which was still pending adjudication. Thus, reliance placed on *Badar Rabbani Qutbi* (supra) is rejected.

40. Even if it were to be assumed, as contended by the appellant, that there was no relationship of landlord and tenant between the plaintiff and the defendant, the same does not advance the case of the appellant/defendant. This is so, because by recognizing the defendant as a tenant, the plaintiff raised the status of the defendant as a legal occupant during the subsistence of the tenancy. If the said tenancy did not exist, it would have the effect of rendering the occupation of the defendant as that of a mere trespasser.

41. What would be the fate of the appellant/ defendant in the suit if he was held not to be a tenant? The defendant/appellant claimed to have come into occupation of the suit property on 30.12.1981 when the same was allegedly purchased from Sh. Amarjeet Singh. Pertinently, the defendant did not disclose as to when the said Sh. Amarjeet Singh allegedly came into occupation of the suit property prior to that. The suit itself was filed in the year 1987, i.e. within a period of about 6 years from the date of the defendants occupation. In this background, the plea of adverse possession was not even available to the appellant/defendant to raise as a defence. In any event, the plaintiff would have been entitled to grant of the relief of possession of the suit property, and it would have made no difference

whether the defendant was, prior to termination of the tenancy, a tenant or not. The difference would have been to the nature of relief i.e. instead of claiming ejectment, the plaintiff would have had to seek a decree of possession, and the plaintiff would have had to pay requisite court fee on the basis of the assessment of the market value of the suit property when the suit was filed, and not by valuing the relief of ejectment at 12 times the monthly rent. The other difference being that in a suit for possession, the plaintiff would have to establish his title, whereas in an ejectment suit, no such obligation is cast on the plaintiff.

42. In ***Santosh Solanki*** (supra), this Court has held that the DRC Act has no application in respect of lands falling in village Palam. Consequently, it makes no difference – whether or not the appellant/defendant is a tenant or a trespasser in the suit property. In any event, he would be liable to be ejected/dispossessed. The plaintiff did not proceed to claim the relief on the premise that – being a landlord, it is not necessary for him to establish his title. The plaintiff, in fact, was required to establish his title, and a specific issue was raised in that regard. The plaintiff was able to establish his title as already discussed above.

43. Mr. Kalra had also placed reliance on ***Kailash Paliwal*** (supra) in support of his submission that once the First Appellate Court had concluded that the plaintiff was the owner of the suit property, the matter should have been remanded back to the Trial Court for its decision on other issues. In support of this plea, he placed reliance on ***Kailash Paliwal*** (supra). I do not agree with this submission of Mr. Kalra.

44. *Kailash Paliwal* (supra) was a case where the High Court had concluded that the relationship of landlord and tenant had not been established by the plaintiff/appellant and, thus, the suit was held to be not maintainable. The High Court had then remanded the matter back to the Trial Court with a direction to the Trial Court to try the suit as a suit for possession based on title, and the defendant was at liberty to raise all contentions available to him, including the plea based on adverse possession. This order of the High Court was assailed before the Supreme Court by the landlord with the plea that the High Court fell in error while permitting the defendant/respondent to raise a plea of adverse possession. The appellant/plaintiff made a statement before the Supreme Court that he would prefer a fresh suit on the basis of title to the property and withdrew the first suit from which the appeal arose before the Supreme Court. This course of action was agreed to by the defendant. In this background, the Supreme Court set aside the orders passed by the courts below and permitted the plaintiff to withdraw the suit and file a fresh suit based on his title to the property. There is no discernible ratio as is sought to be contended by Mr. Kalra in this case.

45. For all the aforesaid reasons, I do not find any merit in these appeals, and no substantial question of law arises for consideration by this Court. Dismissed.

VIPIN SANGHI, J

SEPTEMBER 09, 2015

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