

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. 65/2014 & CM APPL.8688/2014**

Pronounced on: 7th January, 2016

SMT. SHANTI DEVI & ORS. Petitioners
Through: Mr. Sanjay Goswami, Advocate.

Versus

RAJ KUMAR Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a revision petition filed by the petitioners against the judgment and decree dated 23.04.2014 passed in CS No.149/2013, titled *Sh. Raj Kumar v. Smt. Shanti Devi & Ors.*
2. Briefly stated the facts leading to filing of the present revision petition are that the respondent/plaintiff Raj Kumar filed a suit for possession under Section 6 of the Specific Relief Act. It was alleged by the respondent/plaintiff that he was a tenant under petitioner No.1 in respect of one room, measuring 13 x 20 ft., more particularly shown red in the site plan, situated in property No.50,

Jangpura Road, Bhogal, New Delhi on a monthly rent of Rs.55/- since 1958. The tenanted premises was fully furnished with tyres and tubes of car/motorcycle, utensils for preparing chhole bhature worth Rs.1,05,000/- approximately. It is alleged that the present petitioners/defendants intended to evict the respondent/plaintiff by hook or crook and ultimately on the night of 19.11.2011, petitioner No.2 and 3 broke open the locks of the suit premises and removed all the articles lying therein and committed house trespass. They took unlawful possession of the suit premises and put their own locks in his absence. The respondent/plaintiff was constrained to inform the PCR on 20.11.2011 when he visited the premises in routine manner and lodged a complaint. The police did not take any action as a consequence of which a written complaint with the police was lodged on 25.11.2011.

3. The respondent/plaintiff simultaneously filed the present suit for possession under Section 6 of the Specific Relief Act against the petitioners/defendants.
4. So far as petitioner No.1 and 2 are concerned, they took the stand that the respondent/plaintiff has no right, title or claim to the suit

property and it has been filed without any cause of action. It was stated that petitioner No.3/defendant No.3 is in occupation of the shop in question since 14.10.2011 when Smt. Gomti Devi wife of Om Prakash, i.e. original tenant and the mother of the respondent/plaintiff had after the demise of Om Prakash willingly surrendered her tenancy rights and possession in favour of the petitioners/defendants for lawful consideration. It has been stated that the present petitioners/defendants are in lawful possession of the suit property. So far as the death of Om Prakash, father of the respondent/plaintiff, who was the original tenant is concerned, that is not in dispute. It is also not disputed that Smt. Gomti Devi was the wife of Om Prakash. Further, it has been stated that Smt. Gomti Devi has already surrendered the tenancy rights in favour of the petitioners/defendants. It has been denied that Smt. Gomti Devi was a joint tenant along with respondent/plaintiff in respect of the suit property. The documents on which reliance was placed by the respondent/plaintiff to show his tenancy rights were alleged to be forged and fabricated. On the contrary, the petitioners/defendants have placed reliance on documents with regard to surrender of the

tenancy right and possession by Smt. Gomti Devi. So far as petitioner No.3 is concerned, he supported the plea of petitioner No.1 and 2. He only claimed himself to be the attorney of petitioner No.2 in respect of the suit property.

5. The learned trial Court after framing of issues, namely:-

“(i) whether the plaintiff is entitled to a decree of restoration of possession as prayed for?”

(ii) Relief.”

6. The trial Court decided the aforesaid issues in favour of the respondent/plaintiff. Another additional issue with the regard to the payment of court fees was also framed.
7. After the completion of the pleadings, the parties adduced their evidence in support of their case. Respondent/plaintiff examined himself as PW-1 and tendered his Affidavit as Ex.PW-1/1, relied on documents Ex.PW-1/2 site plan, photographs Ex.PW-1/3 (colly), copy of DD No.16, entry No.716, dated 20.11.2011 Ex.PW-1/4, complaints to the SHO Ex.PW-1/5 (colly) and the advance rent paid by him to the petitioners/defendants No.1 and 2 Ex.PW-1/6. As against this, the petitioners/defendants in support of

their case examined Smt. Shanti Devi, petitioner No.1 as DW-1, she tendered her Affidavit Ex.DW-1/A, Naresh Kumar, petitioner No.3 as DW-2, who tendered his Affidavit Ex.DW-2/A and the most crucial witness DW-3 Smt. Gomti Devi, the mother of the respondent/plaintiff, who was examined on Local Commission and proved her Affidavit Ex.DW-3/1 and the documents, namely, receipt-cum-possession letter dated 11.10.2011 Ex.DW3/2, Surrender Deed dated 11.10.2011 Ex.DW3/3 and letter to Chowki Incharge intimating about the surrender on 14.10.2011.

8. The learned trial Court after analysis of the evidence recorded a finding that the respondent/plaintiff was in possession of the suit property prior to filing of the suit and he was illegally or unlawfully dispossessed by the petitioners/defendants and therefore passed a decree of possession in his favour.
9. I have heard the learned counsel of the petitioner and have also gone through the record.
10. The learned counsel for the petitioner has contended that the document of receipt which indicates that the rent has been paid in advance by the respondent/plaintiff is actually a forged document

and while the respondent/plaintiff testified as PW-1 a suggestion was given to him in this regard that the document in question is forged, which was denied by him. But no effort was made by the petitioners/defendants to either get an expert examined or produce any evidence to show that the document which was alleged by them to be a forged document does not seem to be a document purported to have been signed by defendant No.1 and 2 in token of having received the rent in respect of the suit property. Therefore, the testimony of PW-1 remains almost un-demolished.

11. It is well settled that the onus of proving the document to be a forged, fabricated or drawn of misrepresentation is on the party who asserts to that effect. In this regard, the petitioners/defendants have failed to discharge their onus and accordingly respondent's testimony remained unchallenged. Seen from another angle, so far as testimony of DW-1 and DW-2 is concerned, the testimony given by both the parties, who are the petitioners and were the defendants to the suit that cannot be basis of accepting their version to be correct that DW-3 Smt. Gomti Devi had actually surrendered her tenancy. For seeing the genuineness of the plea of the

petitioners/defendants with regard to alleged surrender one needs to see the documents to arrive at a conclusion that the plea of surrender of tenancy rights by Smt. Gomti Devi or that she was the sole tenant in respect of the suit premises is totally belied by these facts. The receipt-cum-possession letter dated 11.10.2011 Ex.DW-3/1 and the Surrender Deed dated 11.10.2011 Ex.DW-3/2 clearly show that the latter document i.e. Surrender Deed was bearing the name of the sons of Gomti Devi, Pramod Kumar as well as Raj Kumar, i.e. respondent herein with regard to surrender of possession but neither of the two have signed the said document which clearly shows that this document can reasonably be presumed to be a forged document because if a document is bearing the names of the parties whether that as executants or as witnesses belonging to the same family then unless and until the document is signed by all the said parties, there is a fair presumption that the document is not genuine and no reasonable explanation has been furnished by the petitioners for the same. Therefore, these two documents which have been sought to be relied upon by the petitioners/defendants in order to contend that

Smt. Gomti Devi had surrendered the tenancy rights seems to be only a false plea. This is further fortified by the fact that Smt. Gomti Devi in her testimony has stated that when she had signed the documents they were blank and were not written. If the documents were blank then the signatures can be misused by any party which may have happened in the instant case also and that is the reason Smt. Gomti Devi being an illiterate person may have been made to sign certain documents while as it would have been otherwise difficult for the petitioners/defendants to have obtained signatures of sons of Smt. Gomti Devi to oust respondent/plaintiff from the possession. So, first petitioners/defendant No.1 and 2 obtained these documents and thereafter dispossessed the respondent/plaintiff.

12. I accordingly feel that the evidence has been rightly appreciated and a correct conclusion has been arrived at by the learned trial Court in decreeing the suit for possession in favour of the respondent/plaintiff.
13. I accordingly hold that there is no illegality, jurisdictional error or impropriety in the judgment and decree dated 23.04.2014 passed

by the learned trial Court decreeing the suit for possession in favour of the respondent/plaintiff, who was dispossessed by the petitioners/defendants. Accordingly, he deserves to be put back in possession. Hence, the present revision petition being misconceived, the same is dismissed.

14. Pending application also stands disposed of.

V.K. SHALI, J.

JANUARY 07, 2016

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