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

Judgment reserved on: 06.08.2015

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Judgment delivered on: 11.07.2016

+ **RSA 115/2011**

SHASHANK SHEKHAR

..... Appellant

Through: Ms. Anita Sahani, Advocate

versus

SURINDER KUMAR JAIN & ANR.

..... Respondent

Through: Mr. A.K.Chandiok, Advocate with
Ms. Sanya, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present second appeal under Section 100 CPC is directed against the judgment dated 07.03.2011 passed by the learned Additional District Judge-04(West), Tis Hazari Courts, Delhi, in RCA No. 37/10 tilted, '*Surender Kumar Jain Vs. Shri Shankar Shekhar & Anr.*' The learned Addl. District Judge by the impugned judgment allowed the first appeal of the respondents/ defendants and set aside the judgment and decree passed by the trial court, namely, the learned Senior Civil Judge-cum-Rent Controller (West), Tis Hazari Courts, Delhi, in suit No.237/2006 filed by the

appellant/plaintiff Shri Shashank Shekhar and Smt. Shanti Devi against the respondents herein. The trial Court had decreed a mandatory injunction in favour of the plaintiffs and against the defendants directing the defendants to restore possession with municipal *chabutra* marked in Red colour in the site plan (Ex.PW3/1), situated in front of property No. 234-235, Ward No. V, Chandni Chowk, Delhi, after removing the wooden *takht* and the wooden show case with iron shutters placed over the wooden *takht*, to the plaintiffs. Other injunctive reliefs were also granted by the said decree in favour of the plaintiffs.

2. The case of the parties, as taken note of in the judgment of the trial court, are that late Shri Tara Chand Brij Mohan Lal, Advocate, ('TCBML' for short) was a tenant in respect of premises No. 234-235, Ward No. V, situated at Chandni Chowk, Delhi. The said premises consisted of a stair case leading from ground floor to the first floor and second floor, and the first and second floor. TCBML was running his office on the first and second floor. The passage to the said office was through a *chabutra* on the ground floor. A part of the *chabutra* was situated on the municipal land, and TCBML was paying license fee in respect of the said *chabutra* to the Municipal Corporation of Delhi (MCD). In 1951, Shri Babu Ram Gupta approached TCBML to allow him to use the said *chabutra* on licence basis. TCBML allowed him to use the *chabutra* on payment of Rs.60/- per month for a period of six months i.e. from January to 31st March and from 1st October to 31st December every year, and @ Rs.45/- per month during the period from April to September every year. After sometime, Shri Babu Ram Gupta requested TCBML that he was not interested to use the

Chabutra and introduced the defendants to him and requested him to permit the defendants to use the said Chabutra on the same terms and conditions. TCBML agreed to allow the defendants to use the said Chabutra. The user of the Chabutra by the defendants was only as licensee of TCBML. Later on, the defendants put up a wooden takht and Almirah with shutters on the chabutra with the permission of TCBML. TCBML died on 26.12.1984 leaving behind the plaintiffs as his heirs and legal representatives. After 1984, the defendants continued to occupy the said Chabutra and also pay the licensee fee to the plaintiffs upto 31.03.1990. Thereafter, they stopped payment of license fee to the plaintiffs. The plaintiffs accordingly terminated the license verbally and called upon the defendants to remove the takht and Almirah from the chabutra and restore possession to the plaintiffs. The defendants did not oblige and threatened the plaintiffs with obstruction. Consequently, the plaintiffs filed the suit in question. The original plaintiffs in the suit were Smt. Shanti Devi, widow of TCBML and Shri Shashank Shekhar, son of TCBML. The plaintiffs claimed the following reliefs:

- (a) *A decree for mandatory injunction against the defendants in favour of the plaintiffs directing the defendants to restore possession of the chabutra (shown in red in site plan), situated in front of the property No. 234-235, Chandni Chowk, Delhi after removing the wooden takht and the wooden show case with iron shutters placed over the wooden show case;*
- (b) *A decree of perpetual injunction in favour of the plaintiffs and against the defendants, restraining the defendants from inducing any other person in occupation of the said*

chabutra or to part with possession of the said chabutra to any other person;

- (c) A decree of perpetual injunction in favour of the plaintiffs against the defendants restraining the defendants from raising any construction on the said chabutra in dispute;*
- (d) A decree of perpetual injunction in favour of the plaintiffs and against the defendants not to obstruct the free passage of the plaintiffs to the first floor and second floor bearing municipal No. 234-235, Chandni Chowk, Delhi;*

3. The suit was filed against two defendants, namely, Kapur Chand Bhatnagar and Shri Surinder Kumar Jain. The suit was contested by only defendant No. 2-Shri Surinder Kumar Jain. Despite service, defendant No. 1 did not appear and was proceeded ex-parte by the trial court. The defence of the defendant No. 2 was that TCBML was a tenant in respect of first and second floor consisting of property Nos. 234-235, Ward V, Chandni Chowk, Delhi and he had no tenancy in respect of any portion on the ground floor of the said property. The takht and shop on the platform in front of the landing of the staircase of the said property was not part of the tenancy of TCBML. Defendant No. 2 claimed that he and his father had been in possession of the property in dispute for almost 50 years, and they had become owners by adverse possession. Defendant No. 2 also claimed that the shop on the chabutra was under the occupation of one Shri Jasvinder Singh who was doing his business therein under the name and style of 'Beauty Corner'. He claimed that construction in the nature of permanent structure – duly fitted with electrical connection, was raised on the said chabutra. Therefore, even if it were a licence, the same could not be interfered with. Defendant No. 2 denied payment of any license fee by his father to the plaintiffs. He claimed

that defendants were paying 'takht fee' to the MCD regularly. He claimed that defendant No. 1 was a mere ex-employee of defendant No. 2, and had been joined by the plaintiffs only to secure false evidence. An alternative plea was raised that the father of the defendant No. 2, namely, Shri Anand Mal Jain had purchased the said shop and, therefore, defendant No. 2 was the owner thereof in his own right.

4. The plaintiff filed their replication, inter alia, stating that the Chabutra in question was in possession of late TCBML as a licensee of MCD who had been paying *Teh Bazari/licence fee* regularly to the MCD. Raising of pucca permanent structure on the takht was denied. Only an Almirah with shutter existed at the suit property. The plea that business under the name and style of M/s Beauty Corner was carried out by defendant No. 2 was also denied. Instead, it was claimed that the business of selling watches, goggles and pens, had been carried on from the takht. The plaintiffs claimed that Jasvinder Singh had been inducted into the suit property/takht after the passing of an injunction order in the suit in favour of the plaintiffs. During the pendency of the suit, the trial court directed maintenance of status-quo with regard to the property in dispute vide order dated 19.04.1991.

5. On the basis of the pleadings of the parties, the following issues were framed:

- (i) *Whether the plaintiff has no tenancy in respect of any portion at ground floor, i.e. the shop and takht? OPD*
- (ii) *Whether defendant No. 2 is the owner by adverse possession in respect of shop and takht? OPD*

- (iii) *Whether the defendant is licensee in respect of takht and chabutra of plaintiff? OPD*
- (iv) *Whether the plaintiff is entitled to relief of mandatory injunction, as prayed for? OPP*
- (v) *Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*
- (vi) *Relief.*

6. The plaintiffs examined three witnesses, namely, PW1 Shri Ishwar Singh Preni, Head Clerk from Delhi Electricity Supply Undertaking (DESU); PW2 Shri Mohan Kumar, UDC from MCD; PW-3 Shashank Shekhar, the plaintiff. Defendant No.2 examined four witnesses i.e. Clerk from Sub Registrar's Office Kashmere Gate, namely, Shri Shatrughan Poddar as DW1; attorney of defendant No. 2, namely, Shri Kastoori Lal Chopra as DW2 (wrongly written as DW1); UDC from Labour Department, Govt. of NCT of Delhi, namely, Shri Mahender Kumar as DW3; and UDC from MCD, City Zone, namely, Shri Chander Mohan as DW4.

7. From the evidence of Ishwar Singh Preni, Head Clerk (PW1), it was established that an application for electricity meter was made by defendant No. 1 in the name of M/s Jain Pen Store and the same was sanctioned. Thereafter, it was energized on 03.09.1956. Copy of the application for electricity meter was exhibited as Ex.PW1/1. On this basis, the trial court concluded that defendant No. 1 could not be said to have been impleaded only to create false evidence. In fact, defendant No. 1 had applied for an electricity connection at the disputed property. PW2-Mohan Kumar, UDC from MCD proved on record receipts showing payment of Chabutra fee in

the name of TCBML to the MCD till 27.07.1990. They were exhibited as Ex.PW2/1 to Ex.PW2/10. Plaintiff No. 2/appellant-Shashank Shekhar (PW3) proved the receipt of payment of fee to the MCD (Ex.PW2/1 to Ex.PW2/10). He also proved some more receipts Ex.PW3/2 to Ex.PW3/7. He proved the site plan of the disputed property Ex.PW3/1 and the letter from MCD to his father dated 13.10.1970 (Ex.PW3/8). The said letter was a show cause notice issued by MCD to TCBML calling upon him to make payment of arrears of license fee and threatening him with cancellation of license in respect of the municipal chabutra if the same was not paid. He deposed in line with his averments in the plaint. He stated that after expiry of his father TCBML, defendant No. 2 continued to pay the license fee to his mother, namely, Shanti Devi, upto 31.03.1990. He also exhibited the photographs of the disputed property as Ex.PW3/9 to Ex.PW3/12. He deposed that the plaintiffs had verbally terminated the license of the defendants and asked them to vacate the suit property. He stated that after passing of the interim order, defendant No. 2 inducted one Shri Jasvinder Singh in the property in dispute who was not there earlier. In his cross-examination, PW3 admitted that the portion of the property which was under the tenancy of his father was later on purchased by him from the erstwhile owners. He also stated that his father had given permission to defendant No. 2 only to raise wooden chabutra and Almirah.

8. The trial court discarded the evidence of DW3-Mahender Kumar, UDC, since in his cross-examination, he stated that the certificate (Ex.DW3/1) produced by him on record was not in accordance with the Register maintained in his department. DW1 – Shatrughan Poddar merely

proved the sale deed dated 29.03.1979 in respect of the first and second floor of property bearing Nos. 234-235, Ward No. V, Chandni Chowk, Delhi. Similarly, evidence of DW4 – Chander Mohan was also rejected by the trial court since he was not able to give a satisfactory answer about the document (Ex.DW2/2) i.e. the receipt dated 02.03.1967. He could not establish that the license fee for the Chabutra was ever paid by the father of defendant No. 2 to MCD. Defendant No. 2 himself did not appear as a witness. He produced his power of attorney Shri Kastoori Lal Chopra – DW2 as his witness who was, admittedly, the clerk of the counsel for defendant No. 2. He claimed personal knowledge of the facts on the premise that he had put up a ‘Phad’ outside the takht in question where he was running his business. However, he could not establish his claim to running his business from the ‘Phad’. He admitted that he was a clerk of Shri R.L.Kohli, Advocate since 1957, who was the counsel for the defendants. He could not also tell the address of defendant No.2., on whose behalf he was deposing as his attorney. However, he admitted that the area ABCD in site plan (Ex.PW3/1) is the landing area of the staircase of the property of the plaintiffs. He also made statements contrary to the defence of defendant No.2. He stated that defendant No.1-Shri Kapur Chand Bhatnagar was a partner of M/s Jain Pen Store, while the stand of defendant No.2 was that defendant No.1 was merely a servant. He also denied the suggestion that Jasvinder Singh was in exclusive possession of the takht in question.

9. On the basis of the evidence brought on record, the trial court found that the plaintiffs had proved payment of license fee in respect of the chabutra (the portion shown in red colour in site plan Ex.Pw3/1) to MCD

consistently till March, 1991 i.e. till before the filing of the suit. The last receipt of payment of license fee to MCD is Ex.PW2/10 which is for the period 01.04.1990 to 31.03.1991. The trial court observed that there was an inadvertent error in writing the date as 27.07.1990, whereas the same should have been 27.07.1991. On the other hand, the defendant had only produced one receipt of payment of license fee from April, 1966 to March, 1967 in the evidence of DW4, and even that could not be proved.

10. The testimony of DW2, the attorney was rejected by placing reliance on ***Janki Vashdeo Bhojwani & Anr. Vs. Indusland Bank Ltd.*** AIR 2005 SC 439 and ***Vidyadhar Vs. Mankikrao & Anr.*** AIR 1999 SC 1441. The trial court returned the following findings in its judgment dated 15.05.2010;

“The plaintiffs have been able to prove on record their right, title and interest in the “municipal chabutra” whereupon presently “takht” and “wooden almirah” is lying erected (shown in red colour in site plan Ex.PW3/1). The plaintiffs have further proved on record that Shri Tara Chand Brij Mohan Lal was the licensee of MCD in respect of “municipal chabutra”. In this regard, documents Ex.PW2/1 to Ex.PW2/20 and documents Ex.PW3/2 to Ex.PW3/7 as well as Ex.PW3/8 are enough evidence towards payment of licence fee to MCD by late Shri Tara Chand Brij Mohan Lal and after his demise by plaintiff No. 2. There is no evidence in rebuttal to show that the defendants ever paid licence fee (sic) for the “chabutra” in question to MCD. Even correctness of Ex.PW3/1 has not been assailed in cross-examination. To a question in cross-examination of DW-2, he stated the site plan aforesaid to be incorrect, but the defendants have not filed site plan of their own, to contradict the site plan filed by the plaintiffs. The evidence of PW-3 i.e. plaintiff No. 2 to the effect that defendants No. 1 and 2 are his “licensees” has gone un rebutted, as defendant No. 2 has not entered witness box to depose

otherwise. The testimony of DW2 is clearly false with regard to the status of defendant No. 1. From the evidence DW-2, it is also apparent that even at the time of filing the present suit, i.e. on 15.04.1991, defendant No. 1 and defendant No. 2 were continuing business at the “municipal chabutra”.

11. Consequently, issue Nos. 1,2,3 and 5 were decided in favour of the plaintiffs and against the defendants. Issue No. 4 was also decided in favour of the plaintiffs. The findings returned by the trial court are as under:

*“The defendants have further failed to prove on record that they have their own independent right in retaining the possession of the “municipal chabutra”, therefore, the defendant No. 2 or any person put in possession by him on the “municipal chabutra”, where presently a wooden takht and wooden almirah with shutter exist is liable to restore the possession thereof to the plaintiffs forthwith. Even otherwise, it is settled law that a licensee is estopped from denying his licensor’s title to the suit property. In this regard, reference can be had to the judgment passed by Division Bench of Hon’ble Assam & Nagaland High Court in case reported as, “AIR 1971 A&N page 143” titled as, **Dr. Dwijendra Mohan Lahiri Vs. Rajendra Nath**”, wherein it has been held:*

“9. We have found that there is a finding of fact by the learned Additional District Judge in appeal that the defendant was in permissive occupation of the land under the plaintiff and the finding is based on the evidence of the plaintiff corroborated by P.Ws. 2 and 3. The defendant’s case of an independent right directly under the temple was found by the learned Judge to be false. On the above finding as to the permissive occupation of the land, the defendant is estopped from denying the title of the plaintiff. The second part of Section

116, Evidence Act, is clearly applicable to the defendant. That part of the section provides:

“.....no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

The rule of estoppel between landlord and tenant is also extended under Section 116, Evidence Act, in terms of licence and, for the matter of that, to a person in permissive occupation of immovable property. The present suit, as framed, is therefore, clearly maintainable in law.

Accordingly, this issue is also decided in favour of plaintiffs and against the defendants.”

12. Consequently, the suit was decreed granting all the injunctive reliefs to the plaintiffs.

13. In regular first appeal, the first appellate court affirmed the findings in favour of the plaintiffs that TCBML was the licensee of the MCD qua the suit property. However, the first appellate court observed that the receipts issued by the MCD after the demise of TCBML in 1984 were also in the name of TCBML, and they were not in the name of the plaintiffs. The first appellate court noticed that TCBML was survived by his widow and two sons, namely, the appellant/plaintiff No.2 and Shri Chander Shekhar. However, Chander Shekhar was not impleaded as a party to the suit, nor any power of attorney was executed on his behalf in favour of the plaintiff to file a suit qua the suit property. Thus, the claim of plaintiff No. 2 that he and Shanti Devi are the only legal representatives of TCBML was false and

shook the credibility of the plaintiff No. 2/ PW3. The first appellate court then placed reliance on ***Kamal Bajaj Vs. Rakesh Bansiwal & Ors.*** 172(2010) DLT 44, wherein the Court had held that a licence being a personal privilege is neither transferable, nor hereditary. In this case, reliance had also been placed on ***Y.Duraisamy Vs. The Commissioner, Corporation of Chennai, Chennai and Ors.*** AIR 2002 Madras 276 wherein too, the Court had observed that a licence is only a right to do or continue to do something which, in the absence of such right, would be unlawful. A licence is only a personal privilege and it is neither transferable nor heritable. It is not annexed to the property in respect of which it is enjoyed, nor is it a transferable or heritable right but is a right purely personal between the grantor and licensee. The first appellate court held in para 10 of the impugned judgment that licence of TCBML in relation to the Chabutra in question was a personal privilege which was neither transferable nor heritable. Thus, the *teh bazari* rights/licence granted by MCD to TCBML in relation to the open Chabutra got extinguished upon his demise and was not inherited by his heirs. Thus, the plaintiffs could not claim any relief in the suit. The first appellate court further held that, in any event, the license granted by late Shri TCBML in favour of the defendants could not have been revoked. It had been proved on record that the shop was a permanent structure as it was provided with an electricity connection. The Court held that it is common knowledge that electricity connection cannot be sanctioned for any open place of business which is conducted on an open platform with a wooden takht thereon. Electricity connection is sanctioned only in respect of an enclosed place used as a residence or for business.

14. The learned Additional District Judge disbelieved the testimony of PW3 that the defendants had put up a wooden takht over the municipal chabutra and had put up an Almirah thereon and that the defendants had also provided a shutter on the said wooden Almirah, by observing that a shutter cannot be put on a wooden Almirah. The learned Addl. District Judge held that an iron shutter could not be put without masonry work. Reference was made to the photographs placed on record by the plaintiffs to say that the suit premises is a regular enclosed shop with iron shutter, with provision of lock and key. The learned Addl. District Judge held that the licence had become irrevocable because, initially the licensed open platform was converted into a permanent structure with exclusive possession. The learned Addl. District Judge held that the licence granted by late TCBML became irrevocable, and was neither inherited by the plaintiffs nor could the same be terminated. The First Appellate Court placed reliance on *Associated Hotels of India v. R.N. Kapur, AIR 1959 SC 1262* to hold that the court should ascertain the nature of relationship i.e. whether it is a lease or license not on the basis of a mere form, but on the basis of the intention of the parties to be gathered from the circumstance of the case. It held that the real intention and purpose of the license granted by TCBML was to grant a permanent and unrevocable license in respect of a permanent structure. Consequently, the judgment of the trial court was reversed and the suit was dismissed.

15. From the above narration, it emerges that the findings returned by the trial court in favour of the plaintiffs that late TCBML was the licensee from MCD in respect of the chabutra / suit property stood re-affirmed. The

finding that the defendants or the predecessor-in-interest of defendant No. 2 was never a licensee of the MCD was also not disturbed. The defence of ownership/ adverse possession, which was not accepted by the trial Court, was also not disturbed by the First Appellate Court.

16. In the aforesaid background, on 28.02.2014, while admitting the second appeal, the Court framed the following substantial question of law:

- (i) *Whether the first appellate court has committed perversity in holding that the licensee rights of Sh. Tara Chand Brij Mohan Lal were not inherited by the appellant inasmuch as, licensee rights in the present case are not such licensee rights which could not be inherited in law? Included this substantial question of law would be the aspect of setting aside the finding recorded against the appellant in para 10 of the judgment of the first appellate court.*
- (ii) *Whether the first appellate court has committed an illegality in holding that the respondents had made permanent construction and therefore were entitled to permanent licence rights under Section 60(b) of the Indian Easement Act, 1882 inasmuch as the permanent construction was not made with the specific consent of the appellant or his predecessor-in-interest?*

17. The submission of learned counsel for the appellant Ms. Sahni, firstly, is that the First Appellate Court has passed the impugned judgment on mere conjectures and surmises without considering the materials on record and the evidence led by the parties. The First Appellate Court did not find any fault with the judgment of the Trial Court, but decided the first appeal on questions which were neither raised, nor considered, by the Trial Court. She relied on ***Arun Kumar Keshari v. Ganesh & Ors.***, (2011) 15

SCC 666, wherein the Supreme Court disapproved of the interference by the High Court with concurrent findings of fact without adverting to the pleadings in the case and the evidence produced by the parties. The High Court in that case did not conclude that the findings of fact recorded by the two courts below were perverse.

18. She submits that the First Appellate Court assumed that the license granted by the MCD in favour of TCBML was a general license under Section 52 of the Easements Act, 1982, without examining whether the same was a case of specific license annexed to the property of the appellants/ plaintiffs, namely, property no.234-235, Ward V, Chandni Chowk, Delhi and that such a license was governed by Section 55 of the Easements Act.

19. She submits that the reliance placed on *Associated Hotels of India* (supra) by the First Appellate Court is misplaced. Learned counsel submits that the Trial Court had returned the finding “*as regards the raising of construction permanent nature at the “takht” is concerned, there is no material on record to prove the same*”. This finding has not been reversed by the first appellate Court by giving any germane reasons. The wooden takht with a shutter could not, firstly, be considered as a construction of permanent nature in view of the aforesaid finding of the Trial Court – which had not been disturbed by the First Appellate Court by giving reasons and, secondly, there was nothing to show that TCBML or the plaintiffs had ever consented to the raising of any construction or the putting up of an iron shutter on the wooden almirah on the chabutra by the respondents. Ms. Sahni submits that, in fact, the raising of kacha or pucca structure on the

MCD chaburtra is illegal as per the MCD bye laws. Where a licensee executes the work of a permanent character *de hors* the license granted to him, he cannot take advantage of the contravention committed by him. In this regard, reliance is placed on ***Annathu Sarojini & Ors. v. Muhammed Sainulabdeen & Ors.***, AIR 1990 Ker 248. In this decision, the court, *inter alia*, observed as follows:

"11. In (1988) 1 KLT 335 (Ulahannan v. George) I had occasion to consider this aspect of the matter. I said that "A contract to the contrary disentitles the licensee from deriving advantage conferred by Section 60. There is nothing to preclude a party from binding himself to surrender land, although there may be a construction of a permanent character standing thereon. In the document in this case, there is a clear provision that at the time of surrender of possession, the defendant should dismantle the structure put up by him in the land in question and even in the written statement, the defendant's case appears to be that in case of termination of tenancy at the instance of either party, he would only be entitled to value of improvements in respect of the permanent structures put up by him. There is a clear contract which would disentitle the appellant from claiming the benefit under Section 60 of the Easements Act". In AIR 1942 All 330 (Ganga Sahai v. Badrul Islam), the court observed that "A condition in the licence that the landlord would have the right to get the site vacated whenever he so chose by the licensee deprives the licensee of the benefit of Section 60." In the same decision it is stated that "A contract to the contrary disentitles the licensee from deriving advantage conferred by Section 60. There is nothing to preclude a party from binding himself to surrender land, although there may be a construction of a permanent character standing thereon". In AIR 1950 All. 661 (Chotey Lal v. Durga Bai), the court observed that "Where a licensee executes a work of a permanent character under a clear understanding that he or his heirs may be called upon after

certain time to leave the land, it is not open to him to plead such work as a bar against his eviction on a suit brought by the plaintiff in pursuance of the solemn undertaking given by him."

12. As I said earlier, Ext.A1 clearly debars the licensee under Ext.A1 from executing any work of a permanent character. In these circumstances, I do not think that the defendants can sustain the plea that there was an oral licence and they have made constructions of permanent nature acting on that oral licence and so they are entitled to get protection under Section 60(b) of the Indian Easements Act".

20. Ms. Sahni submits that the decision in ***Y. Duraisamy*** (supra) relied upon by the First Appellate Court, in fact, supports the case of the appellant and not the respondents. This decision itself recognises that unless a different intention appears, a general license cannot be exercised by the licensee's servants or agents, and that such an intention must be gathered from the terms of the grant, to be inferred from the surrounding circumstances, or be found as an incident of legal usage.

21. Learned counsel submits that the issue of heritability of the license granted to TCBML by the plaintiff was never a question raised before the Trial Court. Thus, the First Appellate Court could not have gone into the said issue for the first time. She submits that where the license is granted annexed to a property, such license is heritable. She submits that had any such issue/ defence been raised by the respondents, the appellant/ plaintiffs would have produced ample evidence to establish that the license granted by the MCD to TCBML was heritable. In this regard, reliance is placed on the following documents produced at the time of hearing:

(a) Bye laws of Delhi Municipal Committee, Part II, Rules & Directions (corrected upto 31.03.1954) contained in Chapter 17 which deals with “chabutra” and in particular on bye law nos.1, 2, 4, 6 and 9, which reads as follows:

“1. No Chabutras or any portions of them built by Municipal Committee of Delhi in Bazars and on public sheets shall be occupied by any person or persons unless permission therefore has been obtained from the committee in accordance with these directions.

2. No application for grant of such permission shall be considered unless: -

(a) It is either from the owner or if the refuses to do so, the tenant of the property adjoining the chabutras on the inner side.

In case the lease is granted in favour of tenant he shall pay the annual rent in advance and shall not be entitled to the use of the chabutra the moment his tenancy or the possession of the shop adjoining the chabutra the inner side ceases and the lease shall then finally determine and become inoperative. In such case he will be allowed a refund of rent for the unexpired period of his lease.

(b) It is in writing and in form attached to these directions, and Rates increased vide resolution No.32 of the executive and Finance Sub-Committee dated 22.2.46, confirmed by resolution No.1 of Special Meeting dated 13.3.46.

Resolution No.9 of the Executive and Finance Sub-Committee, dated 6th December, 1922, confirmed at the Ordinary meeting held on 12th December, 1922.

4. The permission when granted shall be regarded only as temporary under section 170 of the Punjab Municipal Act, 1911, and shall not entitle the hold there of to use the Chabutra otherwise than to exhibit goods for sale or to receive

customers during business hours. In no case and at no time shall the holder of the permission close up the Chabutra or any part of it in any direction by any means whatsoever as to form a takhatabandi, nor shall he so block it up either with goods boxes, almirahs, machinery or otherwise as to prevent free draught of air to the adjoining properties or chabutra on either side.

Note: - Such takhtabandis will, however, be allowed in the Chandni Chowk and Khari Baoli only at a rental equal to that paid for the chabutra on which they have been erected, and subject to the condition of advance payment laid down in rule 2(c) of the directions for the occupation of Municipal Chabutras. All takhtabandis will be built subject to the Municipal Engineer's approval of the design.

6. The grant of permission to occupy the Chabutra shall render the person on whose application permission is granted or the person in actual occupation of the chabutra liable to pay to the committee in advance the fees stated in his permission and to continue doing so until the temporary permission is determined.

9. In the event of the rent having remained unpaid for one month, the Municipal Committee will be entitled to terminate the tenancy and dispossess the tenant after serving him with a month's notice and without seeking any assistance from the Civil Courts and would be entitled to re-enter into the property demised and is authorised to remove any good or goods or any other property either movable or immovable belonging to the tenant. The Municipal Committee will in no case be liable for any damages suffered or claimed to have been suffered by the tenant or his sub tenant or representatives but will be entitled to realize the cost incurred by the Municipal Committee from the tenant in taking physical possession of the property demised or in removing the movable or immovable property belonging to the tenant for the purpose and with the object of taking such possession". (emphasis supplied)

(b) Resolution no.320 passed by the MCD, accepting the report of the Sub-Committee of the Standing Committee regarding tehbazari in Chandni Chowk area. Ms. Sahni has tendered in court a copy of the said Resolution No.206 dated 02.07.2003 of the Standing Committee, which was accepted by the MCD vide Resolution no.320. The standing committee in its resolution no.206 dated 02.07.2003, inter alia, resolved:

“No permanent structure made-up brick cement or any other material over the Chabutra will be allowed. Structure on the ground level only made-up of temporary material shall only be allowed.

4. Change of hand will not be allowed and in special cases where allottee of Chabutra is someone else and the occupant is different person who is also occupant of the shop behind the Chabutra, change of hand will be considered as per Rules and By-Laws, existing of framed for this purpose under the orders of Competent Authority”.

(c) Communication dated 13.12.2004 issued by the MCD to the then Hon’ble Minister of State (Independent Charge), Science & Technology and Ocean Development, Govt. of India stating that the chabutras in Chandni Chowk area are legal structures. However, any kind of permanent construction over the chabutra has no legal sanctity. She also places reliance on the detailed note referred in the communication dated 13.12.2004 of the Commissioner-MCD, aforesaid. The said detailed note, insofar as it is relevant, reads as follows:

“LEGAL STATUS OF CHABUTRAS

*The erstwhile Municipal Committee built the Chabutras in front of the shops in Chandni Chowk area with a view to align the frontage of all shops during 1911-12. **Later on the***

possession of these Chabutras were given to the shop owners at quarterly rental of Rs.4/- per ft. The Rules framed by the erstwhile (sic) Municipal Committee also allowed Takhatbandi in Chandni Chowk and Khari Baoli only on a payment of an amount equal to the rental for chabutras by the persons in occupation. Subsequently Delhi Municipal Corporation vide its Resolution No.206 of the Standing Committee dated 2, ...2003 resolved that:

1. *“The Chandni Chowk area from Jain Lal Mandir to Fatehpuri on both sides of the road, Khari Baoli, Naya Bans and Church Mission Road, the number of Chabutras are 704:*
2. *No permanent structure made up of brick cement or any other material over the Chabutras will be allowed, structure on the ground level only made-up of temporary material shall only be allowed:*
3. *The rate of fees should be charged on the basis of Rs.30/- per square feet.”*

All these facts indicate that:

- i) *These Chabutras are legal structures;*
- ii) *Only temporary structure over these Chabutras at the ground level is permissible.*

However a detailed survey of the area gives a different picture. Most of these Chabutras are having permanent structures ranging up to 4th floor, which is not permissible under any rule. As per our detailed survey (conducted in October, 2004) of Chabutra situated at Chandni Chowk, Khari Baoli and Sadar Bazar, the construction over these Chabutras are summarized as follows”. (emphasis supplied)

(d) The judgment of this court in *Chandni Chowk Sarv Vyapar Mandal v. MCD*, WP (C) No.4133/2005 decided on 03.10.2005 by a learned Single Judge of this court. The court quashed the notices issued by the MCD requiring the allottees/ occupiers of chabutras in Chandni Chowk to remove the same and threatening removal of the unauthorised construction/ structures raised over chabutras, if the same were not removed by the allottees/ occupiers on their own. At the same time, the court preserved the right of the MCD to carry out a survey of the individual shopkeepers/ allottees, inter alia, in respect of the nature of encroachers (permanent/ temporary) and also whether the enclosures went beyond the chabutra. The MCD was permitted to issue individual notices clearly setting out the nature of violations and to afford an adequate opportunity of hearing to allottees/ shopkeepers before passing orders on the show cause notice.

22. Learned counsel submits that merely because the other co-owner had not been joined as a party plaintiff, the right of the plaintiffs to seek the relief was not impaired. It is upto any co-owner to individually sue a trespasser/ ex-licensee, or even a tenant, and merely because the other co-owners may not have been joined, such an action is not incompetent.

23. On the other hand, learned counsel for the respondents supports the impugned judgment. Learned counsel submits that PW-3 in his cross examination admitted that the plaintiffs were not concerned at all of the shops on the ground floor, as they do not belong to the plaintiffs. They further admitted that the permission to put choket and private almirah was given by his father, namely, TCBML. He also stated that earlier permission related only to wooden shutter and almirah, and thereafter iron shutter was

put. He also stated that there is no masonry construction involved in the suit property and that only a takht with almirah is there.

24. Learned counsel for the respondent has also drawn the attention of the court to the photographs exhibited on record, namely, Ex. PW-3/9 to PW-3/12 to submit that the iron shutter is firmly affixed by brick and mortar, and it was not merely a wooden almirah with a wooden shutter which exists at the spot. He also places reliance on the receipt Ex. PW-3/3, PW-2/3, PW-2/4 and PW-3/4 to submit that the dimensions of the construction on the chabutra has been recorded as 4 ft. 2 inches.

25. Learned counsel for the respondent submits that the plaintiff did not establish the tenancy in respect of premises no.234 and 235 situated at 1st and 2nd floor of the property. On this aspect, here itself I may observe that the defendants had not raised a defence to challenge the claim of the plaintiffs with regard to the tenancy of TCBML in respect of the said premises. No issue was framed on the said aspect and, thus, there was no occasion for the plaintiffs to establish their claim in respect of premises no.234 and 235 situated on the first and second floors. This submission of the respondent, therefore, lacks merit and is rejected.

26. Learned counsel for the respondents submit that the tehbazari/ license granted in favour of TCBML was a personal right, and not heritable. Upon demise of TCBML in 1984, the said license came to an end. Mere deposit of license fee by the plaintiffs after 1984 in the name of TCBML without disclosing to the MCD the fact that TCBML had passed away, did not tantamount to mutation of license in their favour. He places reliance on

Kamla Bajaj (supra) and in particular para 9 thereof, wherein this court has held, by placing reliance on *Y. Duraisamy* (supra), that a general license is only a personal privilege and it is neither transferable nor heritable. A license is annexed to property in respect of which it is enjoyed. It is purely a personal right between the grantor and the licensee.

27. Having heard learned counsels for the parties and perused the impugned judgment, the judgment of the Trial Court and the evidence brought on record, I am of the view that the impugned judgment suffers from glaring and patent errors. It is premised on lack of appreciation of the facts and evidence brought on record in the case. The principles invoked by the First Appellate Court while reversing the judgment of the Trial Court – by placing reliance on *Kamla Bajaj* (supra), *Y. Duraisamy* (supra) and *Associated Hotels of India* (supra), were completely misplaced in the factual context in hand.

28. First, and foremost, to my mind the First Appellate Court gravely erred in assuming that merely because the other co-owner, namely, Chandrasekhar was not impleaded as a party plaintiff in the suit, or as a party to the suit, the suit was not maintainable at the instance of the plaintiffs who, undisputedly, were also co-owners of the suit property. It is well settled that a suit for ejectment/ possession may be filed by any or all the co-owners, and it is not necessary that all of them should be joined as parties to such a suit. Reference may be made to the decision of the Supreme Court in *Dhannalal v. Kalawathibai & Ors.*, AIR 2002 SC 257, followed in *Tmt. Kasthuri Radhakrishnan & Ors. v. M. Chinnian & Anr.*, AIR 2016 SC 609. The fact whether, apart from the plaintiffs, Sh.

Chandrasekhar was also the legal heir/ representative of TCBML was of no relevance or significance to the decision of the suit. Therefore, to assume that the credibility of PW-3/ plaintiff no.2 was shaken because the plaintiffs had not disclosed the interest of Sh. Chandrasekhar in the suit premises is completely misplaced and borders on perversity. Pertinently, this aspect was not even raised in their defence by the defendants, and no such issue was framed by the Trial Court. It was not that Chandrasekhar had come forward to dispute the right of the plaintiffs to sue the defendants for the reliefs sought in the suit.

29. TCBML and, thereafter, the plaintiffs claimed interest in premises no.234 and 235 on first and second floor in the suit property. The chabutra in question was situated at the landing of the staircase coming from the first and second floor of the property. The plan Ex. PW-3/1 shows that the municipal chabutra adjoins the chabutra of the landlord, which leads to the staircase leading upto the first and second floor premises in occupation of the appellant/ plaintiffs/ TCBML originally as tenant, and thereafter owners. The use and occupation of the chabutra of the MCD is, therefore, bound to impinge on the enjoyment of his premises by the owner/ occupier of the first and second floor, who have to access their premises through staircase which opens in the chabutra - a part whereof land belongs to the municipality. It appears, that it was for this reason that the municipality prohibited occupation of the municipal chabutra by any person without obtaining permission in accordance with the directions, namely, the Bye-Laws of the Delhi Municipal Committee contained in Part II Chapter 17, corrected upto 31.03.1954. Evidently, it was for this reason, that the application for grant

of permission to occupy the chabutra built by the municipal committee in bazaars and on public streets could be made, in the first instance, by the owner. Only if the owner refused to obtain license, “*the tenant of the property adjoining the chabutra on the inner side*” could make an application for obtaining license. Thus, the licensee could be none other than either the owner, or if he refuses, the tenant of the property adjoining the chabutra “*on the inner side*”. A third party/ stranger could not insist on the grant of license of the municipal chabutra, precisely for the reason that the occupation of the municipal chabutra by a third party would cause obstruction in the enjoyment of “*property adjoining the chabutra on the inner side*” by the owner/ tenant thereof.

30. In recognition of the aforesaid position, the license/ permission clearly stipulated that the same would be temporary and that the licensee shall not hold or use the chabutra otherwise than to accept goods for sale or to receive customers “*during business hours*”. It also provided that in “*no case and at no time shall the holder of the permission close up the Chabutra or any part of it in any direction by any means whatsoever as to form a takhatabandi, nor shall he so block it up either with goods boxes, almirahs, machinery or otherwise as to prevent free draught of air to the adjoining properties or chabutra on either side*” (see bye law no.4). Takhatabandi was, however, allowed in Chandni Chowk subject to, inter alia, the condition that the same would be built subject to the municipal engineer’s approval of the design. Once again, it may be reminded that this license/grant could be availed of either by the owner, or by the tenant of the property adjoining the chabutra on the inner side, and not by an outsider.

31. I may also take note of the following clause in bye law 2 as extracted above. The said clause reads as follows:

*“In case the lease is granted in favour of tenant he shall pay the annual rent in advance **and shall not be entitled to the use of the chabutra the moment his tenancy or the possession of the shop adjoining the chabutra the inner side ceases** and the lease shall then finally determine and become inoperative. In such case he will be allowed a refund of rent for the unexpired period of his lease”.*

32. Thus, the grant of license is subject to the condition that the licensee/ tenant continues to remain a tenant or in possession of the shop adjoining the chabutra on the inner side. The moment the tenancy/ occupation of the shop on the inner side ceases, the license/ tenancy of the chabutra also ceases. This is a clear indication of the fact that the license/ tenancy granted by the MCD to the licensee/ tenant is not a mere general license under Section 52 of the Easements Act.

33. Pertinently, Bye Law no.9 entitles the municipal committee *“to **terminate the tenancy and dispossess the tenant**”* (emphasis supplied), in the event of the rent remaining unpaid for one month. Thus, qua the owner or a tenant of the property adjoining the chabutra on the inner side, the license for use of the municipal chabutra with takhatabandi was, even under the bye laws, treated as a “tenancy” and not merely as a general license under Section 52 of the Easements Act.

34. At this stage itself I may observe that the Municipal Bye-Laws relied upon by the appellant are subordinate legislation and, therefore, can be relied upon at any stage without being led in evidence during the trial. I

also find force in the appellants grievance that the first appellate court went into the issue of heritability of the licence granted by the MCD to TCBML, without appreciating that no such defence was raised by the respondents/defendants; the decision on the said issue was dependant on the facts and circumstances existing under which the licence was granted by the MCD, and; no evidence had come on record to enable the court to conclusively return a finding that the licence granted by MCD to TCBML in the present case was a general licence under Section 52 of the Easements Act. Had a specific plea with regard to heritability of the licence granted by MCD to TCBML been raised, and the defendants/ respondents sought an issue on the same, the plaintiffs would have had the opportunity to lead evidence thereon in support of their plea that the licence of TCBML was heritable, and that it did not extinguish upon his demise. Pertinently, it was not shown by the defendants/ respondents that the MCD had taken the stand that the licence was not heritable. In these circumstances, the first appellate court fell into grave error in proceeding to assume that the licence in question granted by MCD in favour of TCBML was a general licence under Section 52 of the Easements Act.

35. Pertinently, the Trial Court returned the finding that as regards the plea of the defendants/ respondents that construction of permanent nature had been raised on the municipal chabutra, there is no material on record. The first appellate court has taken a contrary view, though without any basis. I find force in the submission of learned counsel for the appellant that had the occasion arisen, the plaintiffs would have led evidence in rebuttal to

show that raising of permanent structure was not even permissible under the license.

36. In this regard, the recommendation of the Standing Committee contained in Resolution No.206 dated 02.07.2003, which was adopted by the MCD in resolution no.320, (produced by the appellant at this stage) becomes relevant. The said recommendation of the Standing Committee provided for two things. Firstly, it provided that no permanent structure made up of brick, cement or any other building material over the chabutra would be allowed. Structure on the ground level, only made up of temporary material, could be allowed. Secondly, it provided that change of hand will not be allowed. Only in special cases, *“where allottee of Chabutra is someone else and the occupant is different person who is also occupant of the shop behind the Chabutra, change of hand will be considered as per Rules and By-Laws”*. Thus, the making of a permanent structure by use of brick and mortar or, for that matter, affixing of iron shutter by use of brick and mortar was not permitted by the MCD to the landlord/ licensee of the municipal chabutra.

37. This shows that the documents now sought to be produced by the appellant are material and pertinent documents, which throw light on the aspect whether, assuming that the nature of construction raised by the respondents/ their predecessor-in-interest was of permanent nature, the raising of such construction could be taken advantage of by them to claim a permanent licence. On account of lack of any evidence by the respondents on the said issue – the onus to prove which squarely fell on them, the appellant/ plaintiffs were prevented from leading the above documents in

evidence. If these documents are to be believed, it would follow that a sub-tenant/ sub-licensee cannot derive a better right than a tenant/ licensee. Since the primary lessor/ licensor, namely, the MCD specifically prohibited raising of permanent structure made up of brick, cement or other building material over the chabutra, TCBML was not entitled to either on his own undertakes such an activity, or to permit the defendants predecessor-in-interest to do the same. Even if TCBML had permitted - consciously or tacitly, the use of brick, cement and mortar by the predecessor-in-interest of the defendants, or by the defendants, the same could not vest in them a higher right so far as the right to occupy the chabutra in question is concerned.

38. Thus, the finding of the first appellate court that the licence of the defendants/ respondents, or their predecessor-in-interest was irrevocable or permanent in nature, because construction of permanent nature existed, is contrary to the evidence on record, and is set aside. The finding of the Trial Court on this aspect is restored.

39. I agree with the submission of learned counsel for the appellant that even if it were to be assumed for the sake of argument (though such an assumption would be contrary to the finding returned by the Trial Court in para 19 of its judgment to the effect “*as regards the raising of construction of permanent nature at the ‘takht’ is concerned, there is no material on record to prove the same*”), that construction of permanent nature was raised by the respondent/ his predecessor-in-interest, the same cannot create any right or equity in favour of the respondents as they cannot seek to benefit by breach of an express stipulation in the grant made by the

municipal committee, which prohibits the raising of any construction by use of brick, cement or mortar or other building material. Even under the Byelaws of the Municipal Committee, there is sufficient regulation prescribed, to prohibit the raising of any construction of permanent nature. They specifically provide that the license is only to use (and not to occupy) the municipal chabutra to sell goods during business hours. They also provide that the licensee shall not “*close up the chabutra in any direction by any means whatsoever nor shall he block it up with goods, boxes, almirah or otherwise to prevent free draught of air to the adjoining properties or chabutra on either side*”.

40. Though the respondent claimed that it had been recognised as a licensee by the MCD (thereby impliedly claiming a change of hand), they were not able to establish the same, as the evidence led by them was disbelieved by the Trial Court and that finding has not been disturbed by the First Appellate Court. It is not even the case of the respondents that they were eligible for the said “*change of hand*” in terms of the recommendations made by the Standing Committee vide Resolution No.206 dated 02.07.2003, which was adopted by the MCD vide Resolution No.320. It was not their case that they were also the occupants of the shops behind the chabutra.

41. Reliance placed by the Trial Court on ***Kamla Bajaj*** (supra) in the aforesaid circumstance appears to be completely misplaced in the facts of this case. A perusal of the said decision would show that a shop was allotted to the original allottee Sohanlal Bansilal on license basis. On 08.11.1982, he died leaving behind number of legal heirs. The licensor

filed a suit for possession. The married daughter of the licensee sought impleadment in the suit on the ground that she was a Class I legal heir and had an equitable right in the suit property. It was in this background that the court applied the principle that a license is only a right to do or continue to do something which, in the absence of such right would be unlawful and that a general license is only a personal privilege which is neither transferable nor heritable. It was held that a license is not annexed to the property in respect of which it is enjoyed. Thus, it would be seen that the facts in *Kamla Bajaj* (supra) were starkly different. The grant of license in respect of the shop had no such factual background, as in the facts of the present case.

42. Unlike in the present case, the licensor was a private entity. It was not the case of a grant by an instrumentality of the State. It was also not a case of grant of license under a municipal policy to whosoever was owner/tenant of the property adjoining the chabutra on the inner side. The municipal Byelaws/ policy did not, and could not discriminate on the basis as to who the applicant for grant of license was – so long as he was eligible under the Byelaws. However, in the case of a private license, the same is granted by the licensor in his own wisdom and he is entitled to choose the person to whom he grants the licence. It is for this reason that such a license is considered non-heritable, and personal to the person to whom it is granted.

43. The understanding of the first appellate court of the judgment in *Y. Duraisamy* (supra) is completely misplaced, and is a result of misreading of the said decision. Para 5 of the said decision reads as follows:

*“5. A licence is only a right to do or continue to do something which, in the absence of such right be unlawful. In general licence is only a personal privilege as such it is neither transferable or heritable. A licence is not annexed to the property in respect of which it is enjoyed nor is it a transferable or heritable right but is a right purely personal between the grantor and licensee. Unless a different intention appears, it cannot even be exercised by the licensee (licensee’s) servants or agents. Such an intention must be gathered from the terms of the grant, be inferred from surrounding circumstances or be found as an incident of legal usage. In order to be irrevocable under Section 60 of the Easement Act, a licence is to be coupled with a transfer of property. **In this case, the licence held by the deceased Hasarathiah was annexed to the property in respect of which it is enjoyed is descendible and heritable**”.* (emphasis supplied)

44. Thus, it would be seen that *Y. Duraisamy* (supra) was a case where the court held that the license was annexed to the property in respect of which it was enjoyed and was heritable.

45. In the present case, the bye laws governing grant of license stipulated a condition that the same shall remain in force so long as the licensee/tenant continues to enjoy the ownership/ tenancy of the *“property adjoining the chabutra on the inner side”*.

46. I also agree with the submission of learned counsel for the appellant that the First Appellate Court has proceeded on assumptions and surmises on aspects which were not raised before the Trial Court. The First Appellate Court proceeded to observe that *“it is common knowledge that electricity connection cannot be sanctioned for any open place of business being carried or open platform with a wooden takht thereon. Electricity connection is sanctioned only in respect of an enclosed place used as*

residence or business”. It is not clear as to from where the First Appellate Court came to draw such a conclusion without any pleading or evidence.

47. The First Appellate Court was also impressed by the fact that neither in the plaint nor in the deposition of PW-3 any date, month or termination of the license has been disclosed. It is rather well settled that mere filing of a suit for possession/ ejectment/ dispossession, and service of summons in the said suit tantamounts to termination of a lease/license. In this regard, reference may be made to ***Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha (HUF) & Anr.***, 2011 (182) DLT 402.

48. In the light of the aforesaid discussion, the first question of law is answered in favour of the appellant and against the respondents. The First Appellate Court has indeed committed grave errors bordering on perversity, and has mis-directed itself in law in holding that the license rights of TCBML were not inherited by the appellant on the premise that such rights could not be inherited in law. In my view, considering the background that the license/ lease was granted under the municipal bye law aforesaid, the same appear to be heritable for the reasons indicated herein above. Pertinently, a definite finding to the contrary could not have been returned by the First Appellate Court in the absence of, and behind the back of the licensor MCD. Pertinently, the respondents did not raise any issue of heritability before the Trial Court, and did not object to non-impleadment of MCD as a party defendant to the suit, whose presence would have been necessary to determine the said issue.

49. The second question of law is also answered in favour of the appellant. Firstly, there was no basis to set aside the finding of the learned

Trial Court that “*as regards the raising of construction permanent nature at the “takht” is concerned, there is no material on record to prove the same*”. Evidently, the making of permanent construction by the respondents was not permissible under the terms of the license/ lease granted by the MCD itself, and the respondents could not have derived a better right under the sub license granted by TCBML. The raising of construction, if any, by them was contrary to the terms of the license granted in favour of TCBML and could not be resorted to as a defence premised on Section 60(b) of the Easements Act. As held in *Annathu Sarojini* (supra), the work of a permanent character is to be undertaken on the strength of the license itself, i.e. “*acting upon the license*”, which, admittedly, is not the case.

50. Consequently, the appeal is allowed with costs throughout. The impugned judgment and decree passed by the learned ADJ in RCA No.31/2010 dated 07.03.2011 is set aside and the judgment and decree passed by the learned Senior Civil Judge cum Rent Controller (W) Tis Hazari in Suit No.237/2006 on 15.05.2010 is restored.

VIPIN SANGHI, J.

JULY11,2016

sl/sr