

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

+ **RSA No. 311/2016**

% **21st October, 2016**

SMT. INDU Appellant

Through: Mr. A.K.Dhupar, Advocate.

versus

SHRI. SRI KISHAN & ANR. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

CM No. 38776/2016 (Exemption)

1. Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 38778/2016 (condonation of delay of 90 days)

2. For the reasons stated in the application, delay of 90 days in filing the appeal is condoned.

CM stands disposed of.

CM No. 38779/2016 (condonation of delay of 60 days in re-filing the appeal)

3. For the reasons stated in the application delay of 60 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No. 311/2016 & CM No.38777/2016 (stay)

4. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent Judgments of the courts below; of the Trial Court dated 6.2.2014 and the First Appellate Court dated 20.1.2016; by which the courts below have dismissed the suit for injunction against dispossession without the due process of law filed by the appellant/plaintiff, who is the adopted daughter of the tenant Late Sh. Sai Dass. The suit was filed with respect to the suit/tenanted premises bearing no. 5590, New Chandrawal, opposite Bachoo Mal Aggarwal School, Kolhapur Road, Kamla Nagar, Delhi-110007. Appellant/plaintiff claimed injunction for restraining the respondents/landlords/defendants from dispossessing the appellant/plaintiff as she has claimed to have succeeded to the tenancy rights from her father Late Sh. Sai Dass who died on 7.9.1998. On the death of Sh. Sai Dass, he was survived by his widow Smt. Bimla Devi and the appellant/plaintiff who claims to be the adopted daughter. The widow Smt. Bimla Devi died on 24.2.2007 and hence the appellant/plaintiff claimed that she is now the tenant in the suit/tenanted premises.

5. The courts below have rightly held that the appellant/plaintiff is not the adopted daughter of late Sh. Sai Dass by rejecting the Adoption

Deed Ex.PW1/B, because, the school record of the appellant/plaintiff showed that she was not the adopted daughter of Sh. Sai Dass and Smt. Bimla Devi and the appellant/plaintiff was shown as the child of her natural parents. This finding being of appreciation of evidence, the same does not raise a substantial question of law under Section 100 CPC.

6. Even if this Court takes the appellant/plaintiff as the adopted daughter of Late Sh. Sai Dass, however, this case is a victim of the factum and not knowing even the elementary principles of law as regards inheritance of tenancy rights by all concerned. This I say so because as per the definition of Section 2(1) of the Delhi Rent Control Act, 1958 (in short 'the Act'), on the death of a tenant whose contractual tenancy was terminated, in such a case the inheritance of such statutory tenancy is limited in terms of the categories of persons specified in Section 2(1) of the Act; with the person in the higher category if once takes the tenancy rights, then a person in the category below cannot take the tenancy rights after the death of the person in the earlier category. Spouse of a tenant is in a higher category than the children of the deceased statutory tenant. Admittedly, the widow Smt. Bimla Devi of the tenant Late Sh. Sai Dass was alive when Sh. Sai Dass expired, and therefore, it is the widow Smt. Bimla Devi who takes the tenancy rights and she being a spouse is in a higher category and the appellant/plaintiff being a daughter is in the lower category and the latter

would not therefore inherit tenancy rights after the death of Smt. Bimla

Devi. Section 2(l) of the Delhi Rent Control Act, 1958 reads as under:-

“**Section 2(l):** "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes-

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy; and

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and to this clause, such of the aforesaid person's-

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,-

(A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso of section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);

(B) any person to whom a license, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation I. - The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:-

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;

(c) thirdly, his parents, if there is no surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents,

or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II. - If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III.-For the removal of doubts, it is hereby declared that, -

(a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguished shall not affect the right of any other succession of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be;

(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs;”

(underlining added)

7. Therefore, the limited issue and cause of action as averred by the appellant/plaintiff for being entitled to continue in possession of the tenancy premises on the ground that she is the adopted daughter of the tenant Late Sh. Sai Dass was *ex facie* a non legal cause of action and was thus liable to be dismissed *in limine*. The suit overlooking this vital aspect was not only was tried to the hilt by leading of evidence and passing of judgment by the trial court, but also thereafter even the first appeal has been dismissed without the relevant issue being noticed, and thereafter, this present second appeal is filed. Thus there is unnecessary wastage of valuable judicial time in trial and decision of the non-maintainable suit.

8. The only way in which the appellant's/plaintiff's claim as a tenant would have existed was if the plaint had laid out a cause of action that the monthly contractual tenancy of the tenant Sh. Sai Dass was not terminated in his lifetime, and therefore tenancy was inheritable like a property right, however, it is seen that in the plaint there is no averment that no legal notice was served for terminating the contractual tenancy of Sh. Sai Dass, with the further fact that in the trial court no issue was got framed with respect to the fact that the contractual tenancy of Sh. Sai Dass was not terminated in his lifetime. Whether or not monthly contractual tenancy of Sh. Sai Das was terminated in his lifetime being a factual aspect, raising a factual issue, until and unless the appellant/plaintiff had made such a factual averment and got an issue accordingly framed which was a factual issue thereby putting the respondents/defendants to notice for accordingly leading evidence for decision, only then the appellant/plaintiff would have had a valid claim of contractual tenancy not having been terminated of Sh. Sai Dass during his lifetime, and which is not the case.

9. This Court is entitled to give additional reasoning for discussing the suit in view of Order XLI Rule 24 CPC and the ratio of a recent judgment of the Supreme Court in the case of *Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782*.

10. It is trite that a person, who has no legal rights to stay in the suit premises, is not entitled to the discretionary relief of injunction because grant of relief of injunction is a discretionary relief as per the language of Sections 36 and 38 of the Specific Relief Act, 1963. The Supreme Court has similarly observed that no injunction shall be granted to a trespasser as per its judgment in the case of *Premji Ratansey Shah and Others Vs. Union of India and Others* (1994) 5 SCC 547.

11. In view of the above, there is no merit in the second appeal. No substantial question of law arises. Dismissed.

OCTOBER 21, 2016
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VALMIKI J. MEHTA, J