

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

+ **RSA Nos. 15/2017 & 37/2017**

% **20<sup>th</sup> July, 2017**

1. **RSA No.15/2017**

SH. RAM CHARAN (DHOBI) (SINCE DECEASED THROUGH  
LRs) AND ANR. .... Appellants

Through: Mr. Devender Kumar Sharma,  
Advocate.

versus

NEW DELHI, Y.M.C.A. .... Respondent

2. **RSA No.37/2017**

SH. RAM CHARAN (DHOBI) (SINCE DECEASED THROUGH  
LRs) AND ANR. .... Appellants

Through: Mr. Devender Kumar Sharma,  
Advocate.

versus

NEW DELHI, Y.M.C.A. .... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. These two Regular Second Appeals under Section 100 of Code of Civil Procedure, 1908 (CPC) impugn the judgment of the first appellate court dated 21.9.2016. There are two appeals because two

suits for injunctions were filed by the appellant/plaintiff. These suits were for injunction to restrain dispossession of the appellant/plaintiff from the quarter in question belonging to the respondent/YMCA. The suits were dismissed by the trial court in terms of its judgment dated 16.3.2012, and which was a common judgment dismissing both the suits. The judgment of the first appellate court dismissing both the appeals of the present appellant/plaintiff is also a common judgment dismissing both the appeals. Appellant/plaintiff had claimed rights in the suit quarter as a tenant which has been held against the appellant/plaintiff by the first appellate court and it is held that the appellant/plaintiff was only a licensee and hence the suits claiming tenancy rights and therefore right against being dispossessed except by due process of law were dismissed.

2. Reference in the judgment in the appeal will be as per the context by reference to the original plaintiff or the present appellants inasmuch as the original plaintiff died *pendente lite* and was substituted by the appellants as his legal heirs.

3. The facts of the case are that the appellant/plaintiff pleaded that he was a tenant with respect to one quarter/garage no.44 along with latrine, bathroom, open courtyard in front, and a tin shed along with some open space. In the first suit filed on 3.2.1984, the

appellant/plaintiff did not claim right in the tin shed but in the second suit in addition to the rights claimed in the area in the first suit, additional rights were claimed in the tin shed. Appellant/plaintiff therefore prayed grant of injunction against being dispossessed except by due process of law.

4. Respondent/defendant pleaded that the appellant/plaintiff was contracted only as a Dhobi (washerman) and he was only given the licence of quarter/garage no.44. Appellant's/plaintiff's services were terminated in February, 1983 when his licence was revoked and hence the appellant/plaintiff was asked to vacate the subject quarter which he was bound to do so. Suit was therefore accordingly prayed to be dismissed.

5. The issue before this Court is whether the appellant/plaintiff is a tenant as claimed by him or he was only a licensee as claimed by the respondent/defendant. Trial court held that the appellant/plaintiff was a tenant and for which purpose trial court relied upon the rent receipts Ex.PW1/8 to Ex.PW1/14 filed by the appellant/plaintiff. Though the appellant/plaintiff was held to be a tenant by the trial court in terms of its judgment dated 16.3.2012, however, the suits were dismissed on the ground of the appellant/plaintiff not approaching the court with clean hands as in the

second suit the appellant/plaintiff had claimed rights as a tenant not only in the area premises as stated in the first suit but additionally for a tin shed in the second suit. The first appellate court by its impugned judgment dated 21.9.2016 has held that the trial court erred in holding the appellant/plaintiff to be a tenant. The first appellate court has discussed in detail the receipts relied upon by the appellant/plaintiff and held the same not to be proved. Accordingly, it was held that since the appellant/plaintiff was not a tenant, he had no rights to claim the reliefs of injunction as prayed for in the suit.

6. The relevant observations of the first appellate court, in this regard, are contained in paras 12 to 23 of the judgment of the first appellate court, and which paras read as under:-

“12. With regard to garage/quarter no.44, the plaintiff has heavily placed reliance upon rent receipts Ex.PW-1/8 to Ex.PW-1/14. According to PW-1 himself, his father i.e. plaintiff was bonafide tenant under the defendant for about 40 years. In the beginning, rent was Rs.8/- per month which was enhanced twice and the same was being charged by the defendant at Rs.15/- per month in the year 1984. He admitted in his cross-examination that his father had not entered into any agreement for taking the suit premises on rent while also denying the suggestion that his father was merely a licensee in respect of the said quarter/garage.

13. Cross objections were filed on behalf of respondent only qua observation of Ld. Trial court holding the tenancy of garage in favour of plaintiff. It is submitted by Ld. Counsel for respondent that none of the witnesses examined by the appellant deposed regarding the author of the receipts Ex.PW-1/8 to Ex.PW-1/14. The presumption provided in Section 90, Evidence Act, as argued, is in respect of the signatures and other parts of the documents in the handwriting of a particular person and since none of the witnesses of the appellant deposed about the signature/handwriting of any particular person, the question of presuming the same as that of any particular person did not arise. The receipts were required to be proved as per Section 67 of Indian Evidence Act and ought not to have been admitted in evidence merely because of some of these were 30 years old.

14. Reliance was placed upon **AIR 1937 Oudh 353 Balram Pur Vs. Lal Bahadur Singh**, “wherein it was observed that presumption under Section 90 exists only to genuineness of documents and not to its execution by person possessed of requisite authority. Mere fact that the documents are ancient does not make them admissible unless supported by corroborated evidence.”

15. The rent receipt Ex.PW-1/8 is dated 03.05.1966 for sum of Rs.15/- for rent upto February 1966’. Ex.PW-1/9 is receipt dated 31.12.1963 for sum of Rs.8/-. For ‘December rent’. Ex.PW-1/10 is receipt dated 22.03.1969 against ‘garage fee’ for sum of Rs.150/-. Ex.PW-1/11 is for sum of Rs.12/- dated 13.09.1974 for “balance of Rs.73-74 on account of ‘against member loan”. Ex.PW-1/12 is receipt for sum of Rs.50/- against the ‘Sundry debtor’ (MSB account) garage rent part payment’ dated 01.11.1976. Ex.PW-1/13 is receipt against ‘M S Bank’ for sum of Rs.50/- dated 05.05.1977. Ex.PW-1/14 is towards ‘garage rent’ for sum of Rs.50/- dated 27.02.1978.

16. Except for Ex.PW-1/8 which is for amount of Rs.15/- and Ex.PW-1/19 which is for amount of Rs.8 all receipts are either for the member loan, sundry debtor or garage rent for sum of Rs.50/- whereas one receipt is for sum of Rs.150/- against the garage fee. Alleged rate of rent was initially Rs.8 and was enhanced maximum to Rs.15/- which was being paid in the year 1984.

17. Ex.PW-1/9 is receipt against ‘December rent’ for sum of Rs.8 whereas Ex.PW-1/10 dated 22.03.1969 is for ‘garage fee’ for Rs.150/-. Ex.PW-1/8 dated 03.03.1966 is for sum of Rs.15/-. No explanation is on record as to when and how so much variation was made in the amount of rent payable with further no explanation on record for receipt of Rs.50/-. Rs.150/- towards members loan, Sundry debtor etc upon which the words garage rent seem to have been suffixed.

18. PW-2 also claimed herself as a tenant in another quarter of the same premises who had also filed case against the respondent which was dismissed. She admitted that rent receipts were not issued in her presence. The rent receipt for her own premises were also not issued.

19. In the replication filed by PW-2 in the other case she admitted that the defendant was not issuing the rent receipt and the other occupants had not been issued rent receipt who were residing in the said premises. It was submitted by Ld. Counsel for respondent that PW-2 had claimed her deceased husband as a tenant but her husband had never shown any rent receipts issued by the defendant as admitted by PW-2.

20. Per-contra it was submitted by Ld. Counsel for appellant that husband of PW-2 was employed with them, therefore, there was no question for issuance of rent receipts. It was also submitted by Ld. Counsel for appellant that contradictory plea was taken by the defendant as on one side they stated about the allotment to the husband of PW-2 against his employment with defendant/respondent and on other side they stated about her status as a tenant in another quarter.

21. In terms of record, it was plea of PW-2 regarding the tenancy of the quarter in her possession, but no rent receipt had ever been issued. Plea of the respondent throughout remained regarding the allotment of quarter to

the husband of PW-2 as part of employment similar to the status of the plaintiff of the instant case.

22. Besides the unexplained inconsistency in the alleged rent receipts, some of which do not even reflect the receipts having been issued against the payment of rent, the receipts having not been proved in accordance with the Evidence Act, no presumption can be drawn regarding the genuineness of receipts in absence of any corroborating and authentic evidence.

23. Apart from the plaintiff had been working as a washer-man and was in possession of the servant quarter/garage no.44 within the YMCA premises. No rent agreement or the genuine rent receipts or any other evidence regarding the tenancy of the subject premises were brought on record by the plaintiff. It is also difficult to believe that within YMCA premises, possession of a servant quarter/garage was given to the plaintiff as a tenant. Allotment of any servant quarter during the employment of an employee with respondent could be only on license basis which also stands to the logic considering the preponderance of probability in the civil suits."

(underlining added)

7. A reading of the aforesaid paras shows that the first appellate court has rightly disbelieved the alleged rent receipts because the alleged rent receipts cannot have the benefit of presumption of validity under Section 90 of the Indian Evidence Act, 1872. I may note that in law not only a document has to be filed, it has to be proved and admittedly no evidence has been led on behalf of the appellant/plaintiff to show that the rent receipts were not issued by any specific person of the respondent/defendant. Also, the appellant/plaintiff has failed to lead any evidence to show that the alleged rent receipts were signed by a duly authorized person/attorney of the respondent/defendant. The respondent/defendant is YMCA, a legal body, and therefore any person who issues the receipts is required to be shown to have been duly authorized to issue the rent receipts, and which has not been so proved

by the appellant/plaintiff. The first appellate court has rightly held that with respect to no other quarter rent receipt is issued to occupant of any quarter, and therefore, even the appellant/plaintiff would not be a tenant.

8. I completely agree with the findings and conclusions of the first appellate court. A tenancy is a contract and the contract has to be duly proved, more so when it is with a legal body such as YMCA. Also rent receipts have to be shown to be duly executed not only by duly authorized person but also the fact that they are in fact executed by a particular person who was working with the respondent/defendant. Admittedly, this has not been done by the appellant/plaintiff. The first appellate court is entitled to take a view by re-apprising the evidence as was available with the trial court. The first appellate court is an appellate court both of facts and law. The first appellate court has rightly come to a conclusion that there was no contract of tenancy and the alleged rent receipts Ex.PW1/8 to Ex.PW1/14 are not proved to have been executed/issued by the respondent/defendant, much less an authorized person. A right of a licensee is only to enter and exit the licenced premises and a licensee has no legal possession which can be protected.

9. No substantial question of law arises. Dismissed. Parties are left to bear their own costs.

**JULY 20, 2017**  
Ne

**VALMIKI J. MEHTA, J**

