

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 12th November, 2018

Date of decision : 15th November, 2018

RSA 133/2018 & CM APPL. 43956/2018

RAJESH VERMA

..... Appellant

Through Mr. Ashok Gurnani, Advocate.

Versus

SACHIN SHARMA

..... Respondent

Through: Mr. S.C. Singhal, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 as amended has assailed the judgment dated 26.02.2016 of the learned Senior Civil Judge/Rent Controller, South West, Dwarka Courts, New Delhi and the judgment of the First Appellate Court of the learned Additional District Judge-03, South West, Dwarka Courts, New Delhi in Regular Civil Appeal No. 54614/2016 which upheld the judgment dated 26.02.2016 of the learned Senior Civil Judge/Rent Control, South West, Dwarka Courts, New Delhi whereby the suit filed by the plaintiff thereof arrayed as the

respondent to the present RSA 133/2018 vide which the respondent had sought recovery of possession of the suit shop bearing Shop No. 13, in Property No. WZ-58-61, Vashist Park, Pankha Road, New Delhi on the grounds of termination of tenancy of the appellant through a legal notice wherein the appellant had claimed himself to be a licensee of a third person, was decreed in favour of the plaintiff of the Suit No. 103/15 i.e. the respondent to the Regular Civil Appeal No. 54614/2016 which upheld the judgment of the learned Trial Court.

2. The learned Trial Court vide judgment dated 26.02.2016 put forth the facts to the effect : -

“2. The details of the version of the plaintiff emerge from the similar plaint and affidavit in evidence (Ex. P-1) tendered by the plaintiff (PW-1) as the sole witness on his behalf.

3. PW-1 asserted that he purchased the suit property from Subhash Chander and Ramesh Kumar through documents in the nature of GPA etc (Ex. PW1/1 to PW1/6) dated 07.01.1998. The similar documents executed by the initial owner namely Ganga Singh in favour of Subhash Chander and Ramesh Kumar were Ex.PW1/7 toPW1/11.

4. It was stated with respect to the tenancy of the defendant that he was inducted as a tenant but was irregular in making payment of rent since inception of the tenancy and had failed to tender the rent since October 2012. The tenancy was monthly in nature with the rent being Rs. 3500/- per month. The plaintiff proceeded to terminate the tenancy through legal notice dated 20.05.2013 (Ex. PW1/13).

5. Apart from the relief of possession, the suit also prays for grant of arrears of rent amounting to Rs. 30,000/- for the period 01.10.2012 to 31.05.2013 alongwith interest @15% per annum. The last prayer relates to damages @Rs. 1,000/- per day.

6. The defendant, who also deposed as DW-1, contended in his written statement and affidavit in evidence (Ex. DW1/A) that the plaintiff had no locus standi to file the present suit as he was neither the owner nor the landlord. The defendant asserted that he was a licensee albeit without license fee since 05.06.2008 from the real owner namely Khurshid Ali, The suit shop, though admitted to be bearing shop No. 13 was claimed to be situated in Khasra No. 26/1 instead of Khasra No. 6/1 as depicted by the plaintiff. The defendant admitted the receipt of the legal notice issued by the plaintiff and stated that he had replied through letter dated 04.06.2013 (Ex. D1 and also Ex. PW1/16).

7. The other witnesses for the defendant were Khurshid Ali (DW-2) and an official from the office of Sub Registrar who placed on record copies of two sale deeds (Ex. DW3/A and DW3/B respectively). These sale deeds were purportedly executed by Khurshid Ali in favour of one Rakesh Jaiswal and by Rakesh Jaiswal in favour of one Abhishek Rastogi respectively.”

3. The issues framed in the said suit were to the effect:-

“1. Whether the plaintiff has a locus standi to file the present suit? OPP.

2. Whether the plaintiff is entitled for decree of possession as prayed for? OPP

3. Whether the plaintiff is entitled for arrears of rent, if so, for which period and for what rate? OPP

4. Whether the plaintiff is entitled for damages and mesne profits? OPP

5. Relief.”

4. Before the learned Trial Court it was contended that the defendant had failed to establish the existence of a license arrangement with Khurshid Ali (DW-2) who had made a contradictory deposition viz a viz the defendant (DW-1). It was also contended that the version of the plaintiff was supported by title documents and the legal notice issued to the defendant.

5. The appellant herein contended that the plaintiff had failed to bring forth any evidence of the tenancy in the form of a rent agreement or rent receipts and that the official from the office of Sub Registrar (DW-3) had been able to establish a chain of transfer of the suit property from Khurshid Ali to Rakesh Jaiswal and further to Abhishek Rastogi. It was thus canvassed that the plaintiff was neither the owner nor the landlord of the defendant. Great reliance was placed on the deposition of Khurshid Ali (DW-2) to support the claim of a license arrangement between him and the defendant.

6. The learned Trial Court of the Senior Civil Judge/Rent Controller, South West, Dwarka Courts, New Delhi concluded qua Issue No. 1 to the effect that the claim of the appellant herein that he was a licensee under Khurshid Ali who was the actual owner of the suit property had not been corroborated by the evidence that had been led by the appellant and that whereas the appellant had maintained that he was a licensee without license fees from Khurshid Ali, the

latter contradicted the appellant herein by replying to a Court question during cross examination that he had permitted the defendant to keep goods in the suit shop upon yearly payment of Rs. 3,000-4,000/- and to a further Court question regarding the last such payment, Khurshid Ali claimed that the last payment was made in the year 2012 and that thus the learned Trial Court observed to the effect that the principal witness of the appellant herein i.e. DW-2 had led an account at complete odds with the defendant and that it appeared that the defendant in understanding with DW-2 had built a concocted defence of a license arrangement between them but had failed to tutor DW-2 i.e. Khurshid Ali with respect to the question of license fees. Further the learned Trial Court also observed to the effect that DW-2 i.e. Khurshid Ali under whom the appellant claimed to be a licensee had failed to furnish any proof of ownership over his property and rather stated that he had purchased the suit shop from one M. S. Singh in 1993 through a power of attorney which power of attorney had been handed over by him to the person to whom he had sold the shop. It was also observed by the learned Trial Court that this assertion of DW-2 i.e. Khurshid Ali was an entirely self serving and convenient account designed to claim ownership but no proof thereof had been filed. The said DW-2 i.e. Khurshid Ali also failed to produce documents of the purported sale of the suit property to one Rakesh Jaiswal in 2013. The learned Trial Court thus held that the entire effort of the appellant herein and his principal witness was to attempt to confuse the proceedings by naming multiple owners of the suit shop without proving the documents of the same and thus neither the

documents of purchase of the suit shop by Khurshid Ali nor the documents depicting transfer to Rakesh Jaiswal had been proved in evidence and the learned Trial Court thus held that the mere production of the documents from the Office of the Sub-Registrar as Ex.DW3/A and Ex.DW3/B i.e. the sale deed purportedly executed by Khurshid Ali in favour of Rakesh Jaiswal and by Rakesh Jaiswal in favour of the Abhishek Rastogi respectively did not suffice to bring forth the contention of the appellant that the said documents were proved in as much as DW-3 was only a UDC from the Office of the Sub-Registrar and not a party or witness to the execution of the documents and that the mere production of documents *per se* did not prove the documents and that mere exhibition of documents was itself not proof of the execution of the documents and was only a tool for identification of the document. The learned Trial Court also categorically observed vide para 20 of the impugned judgment to the effect : -

“20. Also, it is most perplexing that DW-2 himself did not tender in evidence or identify his signatures on Ex. DW3/A. These documents were only summoned after DW-2 had been examined. The defendant and DW-3 apparently had much to hide and did not wish to be cross examined regarding these documents.”

and thus the version of a tenancy of the defendant under DW-2 as well as the ownership of DW-2 had not been proved and thus the challenge to the locus of the respondent on the basis of defence put forth by the defendant did not succeed and it was thus held that the respondent

having instituted the suit on the basis of the documents in the nature of GPA etc. (Ex. PW1/1 to Ex. PW1/6) dated 07.01.1998, and having represented the appellant herein to have been his tenant, the locus of the respondent to institute the suit could not be denied and Issue No. 1 was decided in favour of the respondent.

7. As regards Issue No. 2 framed to the effect : -

“2. Whether the plaintiff is entitled for decree of possession as prayed for? OPP”,

the learned Trial Court concluded that the landlord and tenant relationship existed between the respondent and the appellant observing *inter alia* to the effect that the appellant in his reply dated 04.06.2013 Ex.PW1/16 to the legal notice dated 20.05.2013 Ex.PW1/13 sent by the respondent had made no mention of his being a licensee of Khurshid Ali and in the said reply only denied a tenancy under the respondent that the failure of the appellant herein to disclose the existence of a license arrangement with a third party at first instance through reply to the legal notice of the respondent brought forth further emboldened the existence of the only other version of the appellant being a tenant of the respondent. The learned Trial Court observed to the effect that the appellant having received the legal notice dated 19.05.2013 sent by the respondent, the tenancy came to end on the expiry of the period of 15 days provided in the notice and thus the respondent was entitled to recover possession from the defendant upon termination of the tenancy. Issue No. 2 was thus also decided by the learned Trial Court in favour of the plaintiff of the suit

i.e. the respondent herein to the present appeal and against the defendant.

8. Qua Issue No. 3 adverted to hereinabove, the learned Trial Court on the scale of the probabilities upheld the contentions of the plaintiff i.e. the respondent herein to the effect that the rate of rent of the tenanted premises was Rs.3,500/- per month which had not been paid from October, 2012 till the date of termination of the tenancy i.e. 05.06.2013 and also upheld the contention of the respondent of his seeking the prayer for grant of interest @15% per annum on the unpaid arrears and thus also concluded the Issue No. 3 in favour of the respondent and also concluded Issue No. 4 in favour of the respondent and against the appellant holding that the appellant was liable to pay damages to the respondent from 06.06.2013 @Rs.3,500/- per month inasmuch as he became an unauthorized occupant of the suit premises from the said date and the suit was decreed in favour of the respondent and against the appellant. A decree of possession was passed in favour of the respondent and against the appellant with respect to the suit property apart from directing the grant of arrears of rent to be paid by the appellant @Rs.3,500/- per month from 01.10.2012 to 05.06.2013 alongwith interest @15% per annum calculated separately on the defaulted rent amount for each month during the above period with the direction to the appellant to pay damages to the respondent @Rs.3,500/- per month from 06.05.2013 till handing over of the possession of the suit property to the respondent.

9. Significantly, the learned Trial Court vide its observations in para 26 observed to the effect : -

“Also, since the suit property is situated in the area of village Dabri where the Delhi Rent Control Act, 1958 is not applicable, there also was no mandate upon the landlord to issue rent receipts as is provided under section 26 of the said Act.”

10. The defendant to the said suit i.e. the appellant herein in Regular Civil Appeal No. 54614/2016 before the First Appellate Court of the learned Additional District Judge-03, South West, Dwarka Courts, New Delhi challenged the said judgment dated 26.02.2016 of the learned Senior Civil Judge/Rent Controller, South West, Dwarka Courts, New Delhi whereby vide the said judgment *inter alia* an application under Order 1 Rule 10 Code of Civil Procedure, 1908 filed by Abhishek Rastogi seeking to be impleaded as a necessary party to the appeal on the premises that he was a purchaser of the suit property in question from Rakesh Jaiswal to whom Khurshid Ali had sold the property, was also dismissed as being collusive and misconceived.

11. The First Appellate Court upheld the judgment of the learned Trial Court and categorically observed vide para 27 of its impugned judgment to the effect : -

“Moreover it is also significant to note that alleged owner Shri Khurshid Ali has not disclosed about title deed in his affidavit Ex.DW-2/A tendered in evidence and gave evasive answers during his cross-examination by insisting that he had purchased the shop in the year 1993 but could not re-collect the number of

building/property where his shop is situated and the name of erstwhile owner.”

12. The First Appellate Court upheld the findings of the learned Trial Court of the existence of the landlord and tenant relationship between the plaintiff and the defendant to the suit i.e. the appellant and the respondent arrayed to the present appeal in view of the purchase of the suit shop bearing Shop No. 13, in Property No. WZ-58-61, Vashist Park, Pankha Road, New Delhi by the respondent from Subhash Chander and Ramesh Kumar through documents in the nature of GPA etc (Ex. PW1/1 to PW1/6) dated 07.01.1998 and that similar documents were executed by the initial owner namely Ganga Singh in favour of Subhash Chander and Ramesh Kumar were Ex.PW1/7 to PW1/11 and thus vide judgment dated 08.08.2018, the First Appellate Court of the learned Additional District Judge-03, South West, Dwarka Courts, New Delhi dismissed the Regular Civil Appeal No. 54614/2016 as being devoid of merits and the stay of the operation of the judgment and decree dated 26.02.2016 was vacated.

13. Vide the present appeal, the appellant herein contended that the judgment of the learned Trial Court and the First Appellate Court suffer from inherent infirmity of dismissal of the application filed by Abhishek Rastogi for impleadment on the ground that the same was collusive and misconceived and also contended that there was a complete misappreciation of evidence by the learned Trial Court and the First Appellate Court qua the testimony of Khurshid Ali examined as DW-2.

14. The appellant herein also contended that the First Appellate Court committed material irregularity and illegality in coming to the conclusion that the sale dated 23.12.2013 and 11.04.2014 in favour of the Rakesh Jaiswal and in favour of one Abhishek Rastogi respectively, which were executed after institution of the suit of the respondent were beyond pleadings and not relevant and it was contended that the said aspects were relevant for adjudication of the rights alleged by the respondent herein. The appellant herein also contended that the non-impleadment of Abhishek Rastogi who was a necessary party to the proceedings rendered the impugned judgment and decree wholly infirm.

15. Vide the instant second appeal the appellant herein sought to urge the stated substantial questions of law to the effect : -

“A. Whether premises in question i.e. Shop No. 13, in Property No. WZ-58,-61, Vashist Park, Pankha Road, New Delhi is situated in an area where the provision(s) of The Delhi Rent Control Act, 1958 are applicable /extended ?

B. Whether the appellant has the protection against the eviction / dis-possession of the appellant from the property bearing Shop No. 13 in property WZ58,-61, Vashist Park, Pankha Road, New Delhi under The Delhi Rent Control Act, 1958 in view of the fact that rent of the premises in question to Rs.3,500/- per month and does not exceed Rs.3,500/- (Rupees three thousand five hundred only) per month ?

C. Whether in view of the suit filed by Sh. Abhishek Rastogi against the respondent for declaration that the General Power of Attorney, Affidavit, Agreement to sell

dated 07.01.1998 in favour of the respondent herein relating to the suit property bearing No. WZ-58,-61, Vashist Park, Pankha Road, New Delhi is null and void, is not sufficient to disentitle the respondent herein for the grant of the relief as sought for in the suit against the appellant herein ?

D. Whether the pendency the suit filed by Shri Abhishek Rastogi against the respondent here in was not sufficient to make it necessary and expedient in the interest of justice that the two suits consolidated and heard together ?

E. Whether the disposal of the suit filed by the respondent herein against the appellant resulting in passing of the aforesaid judgments / decrees is not liable to be set aside ?

16. Vide order dated 14.09.2018 of this Court it was observed *inter alia* to the effect : -

“3. The appeal is accompanied with an application for condonation of delay in re-filing of 144 days. The question of considering the application for condonation of delay will arise only if the Second Appeal is found to entail a substantial question of law which is sine qua non for entertaining a Second Appeal as per dicta of the Supreme Court in Surat Singh Vs. Siri Bhagwan (2018) 4 SCC 562.

4. The counsel for the appellant/plaintiff has been heard.

5. The appellant/plaintiff and the two respondents/defendants are brothers. The appellant/plaintiff claimed to have purchased the said property from respondent/defendant no.2 through Agreement to Sell, Power of Attorney, Affidavit, Receipt etc. and further claimed to have allowed the respondent/defendant no.1 use of the said property.

6. The respondent/defendant no.2, in his written statement, denied Agreement to Sell and other documents on the basis of which the appellant/plaintiff claimed to have purchased the property.

7. The respondent/defendant no.1 claimed to be a tenant under the respondent/defendant no.2 in the property at a rent of Rs.100/- per month. Needless to state that if the occupation/possession of the respondent/defendant no.1 of the property is as a tenant, at a rent of Rs.100 per month, the Delhi Rent Control Act, 1958 would apply and under Section 14(1) and 50 thereof, the jurisdiction of the Civil Court to order recovery of possession would be barred.

17. During the course of the proceedings in the present appeal vide order dated 22.10.2018 in CM APPL. 43956/2018 which was filed on behalf of the respondent herein i.e. the plaintiff of the suit before the learned Trial Court seeking modification of the order dated 14.09.2018 by seeking payment of user charges in terms of the verdict of the Hon'ble Supreme Court in ***Atma Ram Steel Co. versus Federal Motors Pvt Ltd.*** dated 10.12.2014 in Appeal (Civil) 7988/04, and whilst placing reliance on the verdict of Hon'ble Supreme Court in ***Mitter Sen Jain vs. Shakuntaia Devi (2000) 9 SCO 720*** whilst granting an opportunity to the appellant to file a response to the said application, the appellant was also granted opportunity to file rejoinder to the counter affidavit filed on behalf of the respondent, which rejoinder has been so filed by the appellant and submissions on behalf of the either side qua the appeal RSA 133/2018 and application CM APPL. 43956/2018 were addressed on 12.11.2018.

18. Vide the rejoinder to the counter affidavit submitted, the appellant sought the consideration of this Court for framing of an additional substantial question of law to the effect : -

"Whether the documents in the form of G.P.A, affidavit, agreement to sell and purchase, receipt, will dated 07.01.1998, confer any right on the respondent with respect to the suit property and as to whether the same are sufficient to make the respondent landlord or owner of the suit property and whether the decision of the Hon'ble Supreme court in the matter of "Suraj Lamp & Industries (P) Ltd., vs State of Haryana & Anr" reported in AIR 2012 SC 206, does not show that the respondent does not have any right title, interest in the suit property and he is neither the owner nor the landlord of the suit property and as such has no locus standi to institute the suit against the appellant nor he is entitled to the grant of any relief in his favour and against the appellant with respect to the suit property."

19. Documents were also submitted by the appellant alongwith the rejoinder filed.

20. During the course of the submissions that were made on behalf of either side as regards the substantial question of law in terms of the para 5 of the order dated 14.09.2018 in the present RSA 133/2018, which essentially has to relate back to the observations in para 4 of the order dated 14.09.2018 and the substantial question of law in relation to the jurisdiction of the Civil Court being barred as per the averments made in the plaint and of the Civil Court and the First Appellate Court having exercised jurisdiction not vested in them, in view of the

observations of the learned Trial Court already adverted to hereinabove vide para 26 thereof, it is apparent that the suit property falls within the area of Village Dabri to which the Delhi Rent Control Act, 1958 is not applicable and has already been rightly held to be not applicable. This is so in as much as the terms of Section 1(2) of the Delhi Rent Control Act, 1958, it is provided as follows: -

“(2) It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.”

and the first Schedule to the Delhi Rent Control Act, 1958 in terms of Section 1(2) provides to the effect: -

“THE URBAN AREAS WITHIN THE LIMITS OF THE MUNICIPAL CORPORATION OF DELHI TO WHICH THE ACT EXTENDS

The areas which, immediately before the 7th April, 1958, were included in-

- 1. The Municipality of New Delhi excluding the area specified in the First Schedule to the Delhi Municipal Corporation Act, 1957. (66 of 1957);***
- 2. The Municipal Committee, Delhi;***

3. *The Notified Area Committee, Civil Station, Delhi;*

4. *The Municipal Committee; Delhi-Shahdara;*

5. *The Notified Area Committee, Red Fort;*

6. *The Municipal Committee, West Delhi;*

7. *The South Delhi Municipal Committee;*

8. *The Notified Area Committee, Mehrauli.”*

21. Section 507 of the Delhi Municipal Corporation Act, 1957, provides as follows: -

“507. Special provisions as to rural areas.—

Notwithstanding anything contained in the foregoing provisions of this Act,—

(a) the Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;

(b) the Corporation with the previous approval of the Government may, by notification in the Official Gazette,—

(i) exempt the rural areas or any portion thereof from such of the provisions of this Act as it deems fit,

(ii) levy taxes, rates, fees and other charges in the rural areas or any portion thereof at rates lower than those at which such taxes, rates, fees and other charges are levied in the urban areas or exempt such areas or portion from any such tax, rate, fee or other charge;

(c) the Corporation shall pay a Gaon Sabha—

(i) an amount equal to the proceeds of the tax on profession, trades, callings and employments, as and when that tax is levied in the Gaon Sabha area, and

(ii) an amount equal to such portion of the proceeds of the property taxes on lands and buildings in that area as may from time to time be determined by the Corporation, after deducting the cost of collection from such proceeds.

Explanation.—In this section the expressions "Gaon Sabha" and "Gaon Sabha area" have the same meanings as in the Delhi Panchayat Raj Act, 1954 (Delhi Act 3 of 1955)."

22. In terms of the 14th Schedule of the Delhi Municipal Corporation Act, 1957 framed in terms of the Section 3A thereof which provides for the division of an area of a corporation under the zones and wards of the village Dabri falls at serial no. 129 of the West zone of the South Delhi Municipal Corporation w.e.f. 13.01.2012.

23. However the requisite notification in terms of Section 1(2) of the Delhi Rent Control Act, 1958 as amended in relation to Village Dabri has not yet been issued.

24. During the course of arguments addressed on behalf of the respondent, reliance was placed on the verdict of the Hon'ble Supreme Court in "**MITTER SEN JAIN VS. SHAKUNTALA DEVI**" **85 (2000) DLT 658** which lays down categorically vide Para 3 thereof to the effect that whilst advertng to Section 507 of the Delhi Municipal Corporation Act, 1957 already reproduced elsewhere hereinabove and Section 1(2) of the Delhi Rent Control Act, 1958 (as amended) also reproduced elsewhere hereinabove:-

"3. Subsequently, by a notification dated 24.10.1994 issued under Section 507 of the Delhi Municipal Corporation Act, the rural area falling under Sagarpur when the property in dispute is situate was included within the urban area of Delhi Municipal Corporation. It is on the strength of this notification, learned Counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable the argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the proviso to Sub-section (2) of Section 1 of the Delhi Rent

Control Act specifying Sagarpur area within the Schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur.”

25. The verdict of this Court in “***Rajpal Singh Vs. Deen Dayal Kapil***” in **RSA No. 129/13** decided on 23.01.2014 reported in **207(2014) DLT 651** lays down specifically that even though the village Dabri has been urbanized vide notification No.F.33/Engg./TP(DP)11424/94 Delhi, dated 24.10.1994 under Clause (A) of Section 507 of Delhi Municipal Corporation Act, 1957, nevertheless village Dabri has not yet been notified in terms of Section 1(2) of the Delhi Rent Control Act, 1958 (as amended) and thus its mere urbanization does not make it fall within the ambit of the Delhi Rent Control Act, 1958 (as amended).

26. The verdicts of this Court in “***Bhagirath Verma Vs. Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Palam***” in **RSA No.286/2016** and “***Rajesh Solanki Vs. Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Palam***” in **RSA No.287/2016** and ***Sanjay Singh Vs. Dada Dev Mandir Prabhandhak Sabha (Barah Gaon) Palam*** in **RSA 288/2016** reported in **234 (2016) DLT 3** are to similar effect. The Special Leave Petition to Appeal (C) No (s).31870-31872/2016 against this verdict dated 26.09.2016 of this Court in RSA Nos. 286/2016, RSA No.287/2016 and RSA No.288/2016 have already been dismissed by the Hon’ble Supreme Court on 11.11.2016.

27. It is apparent that in the circumstances, the Delhi Rent Control Act, 1958 as amended does not apply to the suit property situated within the area of village-Dabri as rightly held by learned Senior Civil Judge, South-West vide judgment dated 26.02.2016 in Suit No.103/2013. Thus the rate of rent of the premises in question being Rs.3500/- p.m. as contended through the plaint, does not *ipso facto* make the Delhi Rent Control Act, 1958 as amended applicable to the suit premises and the question of law formulated on 14.09.2018 is thus answered to the effect that the jurisdiction of the civil Court i.e. both the Suit Court and the First Appellate Court was not barred and that they had the jurisdiction to decide the *lis* pending before them in suit No.103/2013 and in RCA 54614/2016.

28. However, as already observed vide order dated 14.09.2018 apart from the question of law in relation to the jurisdiction of the Civil Court and First Appellate Court having claimed to have been barred in terms of Section 50 of the Delhi Rent Control Act, 1958 as amended which is concluded in the negative as held hereinabove, nevertheless there were other pleas taken in the appeal. Thus as rightly contended on behalf of the appellant by learned counsel for the appellant that in terms of Section 100(5) of the CPC and the proviso thereto which reads to the effect:

“100. Second Appeal- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is

satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.”,

the Court has essentially to consider whether there are any other substantial questions of law which are involved in the second appeal even though not framed.

29. Arguments were addressed on the said aspect also on behalf of either side in relation to other additional issues that would be involved and as already observed elsewhere hereinabove, the appellant through the rejoinder had sought the framing of an additional issue. In relation to this aspect, it is essential to observe that there are concurrent findings of the Senior Civil Judge, South- West and of the First

Appellate Court of the ADJ, South-West in relation to the defendant of Suit No.103/2013 having been inducted as a tenant in 2010 in the suit premises. As it has also been observed hereinabove in reply to the legal notice issued to the defendant terminating his tenancy vide notice dated 20.05.2013 Ex. PW-1/3 as rightly observed by the learned trial Court and the First Appellate Court, the plea of defence of the defendant i.e. the appellant herein of having been inducted as a licensee in the suit premises by Shri Khurshid Ali, DW-2 has not been established. In fact the testimony of Khurshid Ali, DW-2 has consistently been held by the learned trial Court and the First Appellate Court to be inconsistent with the testimony of the defendant i.e. the appellant himself. The relationship of landlord and tenant between the parties having been held to have been established, in terms of Section 116 of the Indian Evidence Act, 1872 an estoppel is raised against the tenant i.e. the appellant herein who thus cannot deny the title of the landlord. The plaintiff i.e. the appellant has been held to be in possession of the suit premises in view of the documents Ex.PW-1/1 to 6 dated 07.01.1998 on purchase of suit property from Shri Subhash Chander, s/o Shri Vasudev and Shri Ramesh Kumar, s/o Shri Dashrath Raj who in turn had purchased the property from Shri Ganga Singh, s/o Shri Basant Lal vide the GPA, agreement for sale, affidavit, registration will dated 25.10.1991 Ex.PW-1/7 to Ex.PW-1/11. The existence of documents of title in favour of Shri Khurshid Ali, DW-2 alleged licensor of the appellant having not been established in accordance with law as held by the learned trial Court and by the First Appellate Court, it is apparent thus that there exists no substantial

question of law that requires to be essentially framed as rightly contended on behalf of the respondent.

30. The verdict of the Hon'ble Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana & Ors.*** 2011XAD (SC) 365 which lays down to the effect that :-

"16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a

large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale.

Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter,

brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions."

and the verdict of this Court in ***Bishan Chand Vs. Ved Prakash (since deceased)***, a verdict dated 14.09.2018 in RSA 131/2018 which observes to the effect:

"14. However, as would be clear from the aforesaid paragraphs, the judgment does not lay down any new law or principle and is not pathbreaking and merely reiterates the well settled legal position as always understood in the past as well. Even on request to make the judgment applicable prospectively, it was clarified that SPS/GPA/Will transactions effected prior to the said judgment, could not be treated as completed transfers or conveyances and could be treated as existing agreements of sale on basis of which conveyance deeds to perfect title could be obtained or specific performance sought or defence of Section 53A

of Transfer of Property Act, 1882 taken or registration from development authorities sought. It was further clarified that where on basis of SPA/GPA/Will transactions, mutations had already been effected, such mutations will also not be disturbed on account of the judgment. Supreme Court nowhere said that SPA/GPA/Will transactions of a date prior to the judgment will constitute a title. Rather, it was held, they would not. The appellant/ plaintiff thus cannot claim that he has title to the property as agreement purchaser and the courts cannot declare the appellant/ plaintiff to be having title to the property.”

both nevertheless clearly lay down that transactions on the basis of SPA/GPA/Wills that have been effected even prior to the judgment as in the instant case in ***Suraj Lamp and Industries Pvt. Ltd. (supra)*** i.e. prior to the judgment dated 11.10.2011 of the Hon’ble Supreme Court, though they cannot be treated as completed transfer of conveyance, nevertheless could be treated as existing agreements of sale on the basis of which the lease deed to perfect the title could be obtained or specific performance sought or defence of Section 53A of the Transfer of Property Act, 1882 and registration from Development Authority could be sought. As in the instant case, the appellant has been held to be the tenant of the respondent vide consistent verdicts of the learned trial Court and the First Appellate Court in view of the evidence on record before the learned trial Court, coupled with the factum that the provisions of the Delhi Rent Control Act, 1958 as amended have been held to be not applicable in the facts and circumstances of the instant case in view of the requisite notification

in terms of Section 1(2) of the Delhi Rent Control Act, 1958 as amended having not been issued and the DRC Act, 1958 having not yet been made applicable to village Dabri, the observations in para-16 of the verdict relied upon on behalf of the appellant in ***Bishan Chand*** (supra) which reads to the effect:-

“16. As far as the contention of the counsel for the appellant/ plaintiff, of the application of the appellant/plaintiff under Order XLI Rule 27 of the CPC having been wrongly dismissed by the First Appellate Court, is concerned, even if the said evidence were to be allowed and considered, it would not take away from the fact that the appellant/plaintiff cannot be declared as owner of the property and the appellant/plaintiff cannot be granted the decree for recovery of possession inasmuch as even if the respondent/ defendant no.1 were to be held to be a tenant under the appellant/plaintiff, the jurisdiction of the Civil Court to order this eviction would be barred as aforesaid by the provisions of the Rent Act.”

are not applicable in the facts and circumstances of the instant case.

31. In view thereof, it has to be held that the proposed additional substantial question of law as sought to be framed by the appellant does not arise in the instant case. The proposed substantial questions of law at serial nos. C, D, E as averred in the appeal and adverted to hereinabove also do not arise in the instant case. The proposed questions of law at serial nos. A & B in the appeal are already covered in the substantial questions of law framed on 14.09.2018 which has

already been answered hereinabove. In the circumstances, there is no merit in the RSA 133/2018 as no substantial question of law arises in the matter.

32. The RSA 133/2018 and accompanying application CM APPL.37829/2018 are dismissed.

33. The interim order dated 14.09.2018 staying the execution of the judgment and decree of the learned trial Court is vacated.

CM APPL. 43956/2018

34. Vide this application, the respondent has sought the grant of user and occupations charges in terms of the verdict of the Apex Court in *M/s Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.* in Appeal (Civil) 7985/2004, decided on 10.12.2004. In relation to this aspect, it is essential to observe as rightly contended on behalf of the appellant, the applicant/respondent has not filed any cross appeal against the judgment dated 26.02.2016 of the learned trial Court of the Senior Civil Judge, South-West in Suit No. 103/2013 and thus as the respondent herein as plaintiff of the said suit has already been granted arrears of rent from the defendant i.e. the appellant herein @ 3500/- p.m. from 01.10.2012 to 05.06.2013 along with interest @ 15% per annum calculated separately on the default rent amount for each month during the said period with the defendant i.e. the appellant herein having also been directed to pay damages to the plaintiff i.e. the respondent/ applicant herein @ 3500/- p.m. from 06.05.2013 till the handing over of the possession of the suit property to the plaintiff. i.e.

the appellant herein, it is apparent that the prayer made by the applicant/ respondent herein vide CM 43956/2018 seeking user and occupations charges as the execution of the stay of the operation of the judgment and decree dated 26.02.2016 and execution thereof have been vacated hereinabove, no further action is called for qua the said application inasmuch as the respondent/ applicant has recourse to seeking execution of the judgment/decreed dated 26.02.2016 in Suit No.103/2013 of the Court of the Ld. Senior Civil Judge, South-West, Dwarka.

35. The application is disposed of accordingly.

NOVEMBER 15th, 2018
mk/vm/NC

ANU MALHOTRA, J