

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 19th November, 2018

Date of decision : 18th March, 2019

+ RSA 82/2016
MOHAN LAL SETH CHARITABLE TRUST Appellant
Through: Mr. B.R. Sharma, Adv.

Versus

M/S EMSON Respondent
Through: Mr. Deepak Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide the present Regular Second Appeal under Section 100 r.w. Section 104 and 105 of the Code of Civil Procedure, 1908 seeks the setting aside of the order dated 06.06.2015 of the learned Additional District Judge, (Central-07), Tis Hazari Court, Delhi in MCA No. 2/2015 vide which the said appeal filed by the appellant herein against the judgment dated 27.08.2013 was dismissed.

2. Vide order dated 27.08.2013, the learned Civil Judge, Central-15, returned the plaint qua Suit No. 65/13 filed by the appellant herein as the plaintiff thereof whilst disposing of the preliminary issue framed on 04.06.2013 to the effect : -

“Whether the suit of the plaintiff is barred under the provisions of Section 50 of the Delhi Rent Control Act”

in favour of the defendant i.e. the respondent herein having held that the suit was barred by Section 50 of the Delhi Rent Control Act, 1958 as amended and the plaint was returned to the plaintiff i.e. the appellant herein to be presented to the Court in which the proceedings were to be instituted.

3. The suit that has been filed by the plaintiff i.e. the appellant herein against the defendant i.e. the respondent herein was one for recovery of possession, recovery of mesne profits/damages for unauthorized use and occupation and injunction in as much as the appellant herein had sought the grant of a decree of possession in respect of the suit property shown in red in the site plan attached to the plaint as the entire basement and major portion of the ground floor forming part of the commercial property bearing No. 112E, Kamla Nagar, Delhi – 110007 and also sought a permanent injunction against the defendant, its associates, agents, from parting with possession or creating any third party interest in the suit property with a prayer for grant of a decree of damages/ mesne profits @Rs.1,00,000/- per month w.e.f. 01.04.2013 till the vacant and peaceful possession of the same was handed over to the defendant.

4. As per the averments made in the plaint, the contentions raised through the plaint were to the effect that the defendant i.e. the respondent herein was a tenant of the suit property bearing No. 112E, Kamla Nagar, Delhi – 110007 comprising of the entire basement and a major portion of the ground floor shown in red in the site plan attached with the plaint on a monthly rent of Rs.4,250/- per month excluding water and electricity charges and that the entrance to the

basement is only from and through the ground floor in possession of the defendant firm and that it was a matter of fact that it was a single tenancy and one premises but for convenience as per the demand of the defendant i.e. the respondent herein, the defendant i.e. the respondent herein was giving two cheques, one for a sum of Rs.2100/- and another for a sum of Rs.2150/- monthly and had requested the plaintiff i.e. the appellant herein also to issue two receipts for the amount so received and that thus the plaintiff i.e. the appellant herein had been issuing two receipts for the said amount. It was submitted through the plaint further that the secretary of the plaintiff trust i.e. the appellant herein had also come to know from the local property dealers of the area that the defendant i.e. the respondent herein was negotiating with some people of the area to give a portion of the shop to some other person on rent and that the action of the defendant i.e. the respondent herein of negotiating for giving a portion of the tenanted premises on rent to some other party was not only illegal and unauthorized but it amounts to sub-letting, parting with possession and creating of third party interest in the tenanted premises for which the defendant had no right and authority.

5. *Inter alia* it was averred through the plaint that the plaintiff i.e. the appellant herein requires the tenanted premises vacated for the purpose of the trust and does not want to keep the defendant i.e. the respondent herein as a tenant any more in the tenancy premises and thus terminated the tenancy of the defendant vide its notice dated 21.01.2013 sent through its counsel and called upon the defendant i.e. the respondent herein to handover the vacant and peaceful possession

of the tenanted premises on or before 01.03.2013 and that the defendant i.e. the respondent herein despite the receipt of the notice had failed to comply with the notice and instead of complying with the notice the defendant i.e. the respondent herein allegedly sent a false and frivolous reply dated 06.02.2013 and 27.02.2013. The plaintiff i.e. the appellant herein also submitted through the plaint that the defendant i.e. the respondent herein was liable to pay unauthorized user and occupation charges w.e.f. 01.03.2013 till the defendant i.e. the respondent vacated the tenanted premises @Rs. 1,00,000/- per month along with interest @15% per annum.

6. Through the written statement that was submitted on behalf of the defendant i.e. the respondent herein, it was submitted that the suit was barred in terms of the Section 50 of the Delhi Rent Control Act, 1958 as amended submitting to the effect that the averments in para-3 of the plaint were to the effect : -

“That the defendant is the tenant of a commercial property bearing No. 112-E, Kamla Nagar, Delhi - 110 007, comprising of entire basement and a major portion of the ground floor, hereinafter referred as to the suit property, (More particularly shown red in the site plan attached), under the plaintiff on a presently monthly rent of Rs. 4,250/- per month excluding water and electricity charges. The entrance to the basement is only from and through the ground floor in possession of the defendant firm. Hence, as a matter of fact, it is single tenancy and one premises. However, for the convenience, as per the demand of the defendant, the defendant is giving two cheques, one for a sum of Rs. 2100/- and another for a sum of Rs. 2150/- monthly and had requested the plaintiff also to issue two receipts for the amount so received. The plaintiff is thus issuing two receipts for the aforesaid amount.” and that

along with the plaint, the plaintiff i.e. the appellant herein had placed on record the photocopies of the counterfoils of two rent receipts issued on 05.01.2013 and the second on 08.01.2013 acknowledging payment of rentals by the defendant i.e. the respondent herein to the plaintiff in respect the premises demised to the plaintiff at the site and that these receipts admittedly issued by the plaintiff themselves clinched the fact that there were two distinct tenancies qua two different portions created by the plaintiff in favour of the defendant for which rentals were being separately paid by the defendant to the plaintiff and **as per these rent receipts one of the tenancies was at a rental of Rs.2,100/- per month and the other was at a rental of Rs.2,150/- per month.**

7. The respondent also contended that on astute drafting, the plaintiff i.e. the appellant herein had alleged that it was a single tenancy for two portions @Rs. 4,250/- per month whereas the documents that were placed on record by the plaintiff i.e. the appellant herein themselves established that there were two distinct tenancies for two distinct portions in the same building bearing No. 1 12-E, Kamia Nagar, Delhi - 110 007 in which the defendant i.e. the respondent herein was a tenant under the plaintiff i.e. the appellant herein. Reliance was placed on behalf of the defendant i.e. the respondent herein on the reply dated 27.02.2013 sent by the respondent to the appellant in response to the plaintiff's notice dated 21.01.2013 submitting the correct position. It was also submitted on behalf of the respondent that the reply of the respondent was a document produced on record by the plaintiff and that the

relevant portion of the reply of the respondent vide paragraph Nos. 2, 3 and 4 was to the effect : -

“2. In order to keep the record straight, my clients, shorn of details, instruct me to add that my clients M/s.EMSON were originally inducted as tenants in a specified portion of the said property E-112, Kamia Nagar, Delhi - 110 007 namely, the ground floor portion at a rental of Rs.350/- (Rs. three hundred fifty only) per month. This is evident on the face of rent receipts issued since 1975 to my clients M/s EMSON by the Mohan Lal Seth Charitable Trust, a regular intervals (and more particularly when my clients refused to pay any further rentals unless and until a proper / normal rent receipt was actually issued in respect of the rentals already paid in respect of the said tenanted accommodation hereinbefore described / mentioned by the landlord - Mohan Lai Seth Charitable Trust). My clients inform me that all the aforesaid payments (on account of rentals) were invariably made by my clients by crossed cheques.

3. My clients further inform me that in the year 1981, as the business carried on by my clients from the said tenanted premises, namely, the ground floor portion of the building E-112, Kamla Nagar, Delhi - 100 07 prospered, my clients required additional accommodation for expanding their business activities and consequently on being approached by my clients the landlord - Mohan Lal Seth Charitable Trust had let out (separately) to my clients additional accommodation comprising of the entire basement floor at the aforesaid address E-112, Kamla Nagar, Delhi - 110 007 along with user of one bath room and one toilet on the first floor of the said premises at the rental of Rs. 300/- (Rs. three hundred only) per month. Once again, as per practice and contract, the rentals in respect of the (second / other) tenanted

accommodation, namely, the basement floor (along with the said bath room and toilet) were paid by my clients to the Mohan Lal Seth Charitable Trust by crossed cheques, against rent receipts issued (now and then) by the said Trust intermittently, namely, as and when my clients refused to pay any more rentals in respect of the tenanted premises unless the pending rent receipts were issued / cleared by the representatives of the landlord.”

4. Ever since then (i.e., 1981), there have been two independent tenancies for two distinct and different portions of the property bearing No. E-112, Kamla Nagar, Delhi - 110 007, let out separately by the Mohan Lal Seth Charitable Trust, to my clients M/s. EMSON, on different dates, as specified hereinbefore. My clients have been paying rentals for the said two accommodations / premises (separately demised) at the rate of Rs. 350/- (Rs. three hundred fifty only) for the first tenancy (ground floor) per month and Rs. 300/- (Rs, three hundred only) per month for the second tenancy (basement floor etc.), respectively. This practice has continued without break since then. I am repeatedly informed that since the inception of the two tenancies, for distinct portions separately, rentals have been invariably paid separately (for the two portions) and have been acknowledged as stated above by the Mohan Lal Seth Charitable Trust by issuing two separate rent receipts for the two separate tenanted portions, acknowledging receipt of two distinct / separate cheques, one for the first tenancy (regarding the ground floor etc.) and the other for the second tenancy (regarding the basement floor etc.).

8. The respondent further submitted that the plaintiff i.e. the appellant herein at no stage had refuted, traversed and / or denied the facts stated in the reply dated 27.02.2013 that has been placed on

record in the instant case by the plaintiff i.e. the appellant herein themselves. It was thus submitted on behalf of the respondent that it was thus the admitted case on behalf of the plaintiff i.e. the appellant herein that there were / are two tenancies in respect of two distinct portions in favour of the defendant created by the plaintiff i.e. the appellant herein at different points of time, the first at a rental of Rs.2,100/- per month (after enhancement / escalation, as demanded by the plaintiff i.e. appellant herein and the other for Rs.2,150/- per month (once again after enhancement / escalation, as demanded by the plaintiff i.e. the appellant herein). It has thus been reiterated on behalf of the respondent that it was an admitted case of the plaintiff i.e. the appellant herein that there were two distinct portions that had been let out to the defendant at two distinct points of time for which rentals are still continued to be paid separately since then @ rate of Rs.2,100/- per month and Rs. 2,150/- per month and thus the defendant i.e. the respondent herein was a tenant duly protected under the provisions of the Delhi Rent Control Act against its eviction from the premises in suit and thus the Civil Court had no jurisdiction to try the case in as much as the exclusive jurisdiction to evict the defendant i.e. the respondent herein from the suit premises is that of the Rent Controller and not of the Civil Court.

9. The records of the learned Trial Court indicate that the service of the summons of the settlement of issues was effected on 18.05.2013. The defendant i.e. the respondent herein put in appearance on 04.06.2013 before the learned Trial Court and raised contentions that the suit of the plaintiff was barred under the provisions of Section

50 of the Delhi Rent Control Act, 1958 contending that the defendant i.e. the respondent herein was a tenant in respect of two portions under separate tenancy, rent of which is less than Rs.3,500/- and thus the preliminary issue in relation to the jurisdiction of learned Civil Judge in terms of the Section 50 of the Delhi Rent Control Act, 1958 was framed on 04.06.2013, which was decided in favour of the defendant / respondent.

10. The observations of the learned Trial Court vide the impugned order dated 27.08.2013 vide paragraphs 14, 15, & 16 are to the effect:-

“14. In the instant case, the plaintiff has not mentioned on record even a single instance of the defendant making a composite payment with respect to the two tenanted portions rather the documents relied upon by the plaintiff themselves show separate payments vide separate cheques for same periods for the two portions of the tenancy. There have been no exception shown to the Court to the aforesaid practice of making separate payments for the two portions under the tenancy and as such no other influence can be drawn in the circumstances except to the fact that it was the intention of the parties to enter into separate tenancies with respect to the two portions.

15. The decision of Hon'ble Delhi High Court in the case of Mercury Travels {supra.} is more directly applicable in the circumstances and as noted herein above the payments and acceptance of the rents of contemporaneous periods by way of separate cheques and issuing separate rent receipts for the two portions of the tenancy is clearly indicative of the intentions of the parties to treat the tenanted portions to be under different and separate tenancies for which rents were paid separately and separate receipts were issued.

16. Since admittedly the rent of each of such tenancies is less than Rs. 3500/- per month, as per the provisions of Section 3 of the Delhi Rent Control Act, the Act is applicable to the tenanted premises and as such to the present proceedings for ejectment and in light of Section 50 of the Act, this Court has no jurisdiction to entertain and try the present suit. Issue stands decided in favour of the defendant. Plaint is to be returned to the plaintiff as per the rules after proper endorsement for the plaintiff to be presented to the Court in which the proceedings were to be instituted. File be consigned to record room after necessary compliance.”

11. The learned First Appellate Court vide its impugned order dated 06.06.2015 vide paragraphs 5, 6, 7 & 8 observed to the effect : -

“5. Per Contra, The Ld. Counsel for respondent/defendant contended that the Ld. Trial Court has rightly appreciated the material on record and returned the plaint to the appellant/plaintiff as two separate tenancies were created by the appellant/plaintiff in favour of the respondent/defendant and the respondent/defendant is paying separate rent for separate tenancies in respect of two portions of the suit property and the appellant/plaintiff is also issuing separate rent receipts qua two separate tenancies created in favour of the respondent/defendant in the suit property. Therefore, this appeal being devoid of merits deserves to be dismissed.

6. It may be noted here that the contention of the appellant that tenancy was created by the appellant even though two rent receipts are issued and defendant/respondent has admitted such single tenancy in his written statement appears to be attractive but the same is fallacious and deserves to be

rejected in as much as defendant/respondent has not admitted in its written statement that single tenancy was created in respect of different portions of the suit property. Furthermore the reliance upon Kishan Lal (supra) is also misconceived as in Kishan Lal case, it has been observed that

"even though two portions of the same building might have been let out on different dates for different rents, but the landlord was entitled to composite rent of both the flats, may be that amount might have been paid on different dates or in two cheques, but as the tenant has been the same from the very inception of the creation of tenancy, even though the amount was not paid in lump sum or by one cheque or more than one cheque, that would not lead to inference that the tenancy was separated."

But in Kishan Lal case separate rent receipts were not issued by Landlord and matter was pertaining to the question of misjoinder of the cause of action. But in the present case, the appellant/plaintiff was issuing two different rent receipts after getting two cheques for two different portions of the suit property. Therefore, ratio of Kishan Lal is distinguishable to the facts of the present case and has no applicability to the present case.

7. In the same manner in Subhash Kusum Lata (supra) the Hon'ble Supreme Court has recorded a categorical finding that:

"Though the appellant would say that different portions of the house were leased out to them under separate tenancies, the fact remains that a sum of Rs. 1,700/- had been paid by them towards security deposit on 10.12.1975. The appellant has no doubt acknowledged the payment under two receipts but both the receipts have been typed on the same paper. The

receipts would read as if a sum of Rs.850 had been received separately from each one of them but the recital is of no consequence because the respondents have paid the appellant a sum of Rs.5,100/- by means of a single cheque towards advance rent for a period of three months at the rate of Rs.1,700/- per month. The appellant has tried to explain away the payment by saying that the payment represented a sum of PG NO 248.

It is also worthy of note that the tenancies said to have been granted to the two respondents are for the same period i.e., from 1.3.76 to 28.2.78. If all these factors are taken note of, the only conclusion that can be reached is that only a single tenancy in favour of both the respondents should have been created for the entire portion leased out and not two tenancies, viz. one for the ground floor and the other for the first and second floors and that the story of two tenancies put forwarded by the appellant is a make-believe affair. It is in this background the appellant's contentions have to be examined."

But in the present case two portions of the suit property were rented out to the defendant/'respondent on different dates at different rates of rent and defendant/respondent issued two cheques for such two tenancies and further more appellant has issued two rent receipt to the respondent/defendant for such two tenancies, therefore the ratio of Lata case is distinguishable to the facts of the present case and has no applicability to the present case.

8. It is relevant to mention here that the Ld. Trial Court has rightly appreciated the facts and evidence of the present case and found the case of appellant distinguishable to the facts of case law relied upon by appellant. In addition to it, the Ld. Trial Court has rightly appreciated the fact that case of the appellant is

squarely covered by 'Mercury Travels (India) Ltd. Vs. Mahabir Prasad' and I found no ostensible reason to take a different view already taken by the Ld. Trial Court. Therefore, this appeal is dismissed. No order as to cost. TCR be sent back along with copy of this order. Appeal file be consigned to Record Room."

12. The appellant through the present appeal has contended that both the learned Trial Court and the learned First Appellate Court have drawn erroneous conclusions in as much as the ground floor of the premises was let out by the appellant to the respondent as also the entire basement of the tenanted premises and that furthermore the entrance to the basement was only one i.e. through the ground floor portion which was in the tenancy of the respondents firm.

13. The appellant also contended that mere issuance of two receipts of rent paid by two cheques did not result into two tenancies being created and that the respondent's tenancy could thus not be protected by the Delhi Rent Control Act, 1958 as amended.

14. It was also contended on behalf of the appellant that the two tenancy portions were part of only one property and that the orders of the learned Trial Court and the learned Appellate Court be set aside.

15. Vide proceedings dated 21.03.2016 in the present appeal, the following tentative questions of substantial law were formulated to the effect : -

"1) Whether merely by issuing two cheques towards the rental of the suit property, the respondent can claim a single tenancy?

2) Whether two different receipts with regard to the rental of the suit property would necessarily be taken

as evidence of two separate tenancies?

3) Whether other factors namely the respondent/defendant being one and the same organisation and the access to the basement of the property being through the ground floor only, were also relevant factors for deciding whether the tenancy was one or two separate tenancies and whether such factors have been overlooked by the courts below?

4) Whether the judgments given by the Courts below suffer from perversity and if so, to what effect?”

16. It was also observed vide the said order dated 21.03.2016 of this Court that these tentative substantial questions of law could be varied at the instance of the respondent.

17. The details of the rent receipts placed on the record of the learned trial Court are as under:

Table A

S. No.	Receipt No.	Date	Period	Amount	Received from	Floor
1.	2514	07.02.2009	1 st April, 2008 to 31 st March, 2009	8160/-	Emson	Ground Floor
2.	2516	09.01.2010	1 st April, 2009 to 31 st March, 2010	8160/-	Emson	Ground Floor
3.	2518	17.09.2010	1 st April to 30 th September, 2010	12,900/-	Emson	Ground Floor
4.	2520	11.01.2011	1 st October, 2010 to 31 st March, 2011	12,900/-	Emson	Ground Floor
5.	2522	09.05.2011	1 st April to 30 th June, 2011	6450/-	Emson	Ground Floor
6.	2528	07.01.2012	1 st January to	6450/-	Emson	Ground

			31 st March, 2012			Floor
7.	2543	24.04.2012	April to June, 2012	6450/-	Emson	Ground Floor
8.	2545	21.07.2012	July to September, 2012	6450/-	Emson	Ground Floor
9.	2546	27.10.2012	October, 2012 to December, 2012	6450/-	Emson	Ground Floor
10.	2524	15.11.2012	1 st July to 31 st December, 2011	12,900/-	Emson	Ground Floor
11.	2550	05.01.2013	January to March, 2013	6450/-	Emson	Ground Floor

Table B

S. No.	Receipt No.	Date	Period	Amount	Received from	Floor
1.	2515	07.02.2009	1 st April, 2008 to 31 st March, 2009	7140/-	Emson	Basement
2.	2517	09.01.2010	1 st April, 2009 to 31 st March, 2010	7140/-	Emson	Basement
3.	2519	15.07.2010	1 st April to 30 th September, 2010	12,600/-	Emson	Basement
4.	2521	11.01.2011	1 st October, 2010 to 31 st March, 2011	12,600/-	Emson	Basement
5.	2523	19.06.2011	1 st April to 30 th June, 2011	6300/-	Emson	Basement
6.	2525	15.11.2011	1 st July to 31 st December, 2011	12,600/-	Emson	Basement
7.	2529	07.01.2012	1 st January to 31 st March, 2012	6300/-	Emson	Basement
8.	2542	28.04.2012	April to June, 2012	6300/-	Emson	Basement
9.	2544	25.07.2012	July to September, 2012	6300/-	Emson	Basement
10.	2547	27.11.2012	October to December,	6300/-	Emson	Basement

			2012			
11.	2548	08.01.2013	January to March, 2013	6300/-	Emson	Basement

all of which receipts have been issued by the appellant herein, Mohan Lal Seth Charitable Trust to M/s Emson.

18. The factum that the said receipts have admittedly been issued to the respondent by the appellant for different portions in as much as receipts at serial nos. 1 to 11 in Table B are for the basement and receipts at serial nos. 1 to 11 in Table A are for the ground floor, coupled with the factum that the premises let out as per rent receipts filed by the respondent with the written statement as borne out from the record are that the ground floor portion was rented out to the respondent at a time different from the letting out of the premises forming the basement at the same address at E-211, Kamla Nagar, Delhi-07 in as much as the respondent was a tenant from 1975 on the ground floor portion of the said premises and became a tenant under the appellant on the basement with user of one bathroom and one toilet of the premises from 1981. The factum of issuance of separate rent receipts and admittedly separate payments being made by the respondent to the appellant for two portions i.e. for the basement and for the ground floor, in relation to which, the respondent continuously issues separate cheques which were also accepted by the appellant, which cheques as per the averments made in para 3 of the plaint itself were for Rs.2100/- p.m. and Rs.2150/- p.m. both for rates of rent less than Rs.3500/- p.m., thus apparently as held by the concurrent

findings of the learned trial Court and the First Appellate Court do not bring forth the contention of the appellant of one single tenancy of two separate portions of one premises let out in 1975 and 1981 at different rates of rent.

19. Reliance has been placed on behalf of the appellant on the verdict of this Court in ***Mercury Travels (India) Ltd. Vs. Shri Mahabit Prasad &Anr. 2001 IIAD Delhi 381*** with specific reliance on observations in paras 23, 24, 25, 26, 27, 28, 29 & 30 of the said verdict which read to the effect:

23. Concluding the submission on this aspect it was submitted that purposive interpretation be given to the contract in question. Agreement was clearly with the object of payment of Rs.6,000/- as rent to the landlord. It is not an object of the Delhi Rent Control Act that person like the appellant should be given protection of such an act as it does not require any protection. In fact Delhi Rent Control Act was amended specifically for this purpose so that those tenants who have the paying capacity should not be given any protection of the Delhi Rent Control Act and the vires of the amendment were upheld by this Court as well as Supreme Court. Reliance was placed on the judgment of Supreme Court in the case of D.C.Bhatia and others Vs. Union of India and another reported in 56(1994)DLT 324 as quoted by the learned Trial Court also.

24. Admittedly, two lease deeds were executed and got registered in respect of two portions of the premises in question. First question which needs to be determined is as to whether the execution of two lease deeds would lead to inevitable and necessary conclusion that two tenancies were created? Further discussion on this

aspect would depend on the outcome of this question. For answering this question one may refer to Section 107 of the Transfer of Property Act, 1882 which stipulates as to how leases are made. The operative portion of this Section reads as under:

"Section-107. Leases how made.Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one each such instrument shall be executed by both the Lesser and the lessee:..."

25. This section gives an indication that a lease of immovable property can be made by more than one instrument. It is also an accepted position that a contract may be incorporated in more than one instrument (REFER - TREITEL ON 'THE LAW OF CONTRACT' NINTH EDITION, 1995, PAGE-175-176) : (CHITTY ON CONTRACTS, TWENTY-SEVENTH EDITION, PAGE-588) : (CORPUS Jurisdiction SECUNDUM. VOL.51C, PAGES-540 TO 544 AND 609 TO 611) : (THE INTERPRETATION OF CONTRACTS, SECOND EDITION BY KIM LEWISON, Q.C. PAGES-25 TO 29).

26. In CHITTY ON CONTRACTS (supra), it is observed that where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to the case as if they were one deed. Similarly, KIM LEWISON, O.C. IN THE INTERPRETATION OF CONTRACTS (supra) has observed that a document executed contemporaneously with, or shortly after the primary document to be construed may be relied upon as an aid

to construction, if it forms part of the same transaction as the primary document.

27. Many transactions take place by the entry into a series of contracts, for example a sale of land involving an exchange of identical contracts, a sale and lease-back of property; an agreement of sale and a bill of sale and so on. In such cases, where the transaction is in truth one transaction all the contracts may be read together for the purpose of determining their legal effect. In Smith v. Chadwick, Jessel M.R. said:

"...when documents are actually contemporaneous, that is two deeds executed at the same moment,... or within so short an interval that having regard to the nature of the transaction the Court comes to the conclusion that the series of deeds represents a single transaction between the same parties, it is then that they are treated as one deed; and of course one deed between the same parties may be read to show the meaning of a sentence and may be equally read, although not contained in one deed but in several parchments, if all the parchments together in the view of the Court make up one document for this purpose."

28. The rationale behind this principle was explained by Fletcher Moulton L.J. in ManksV.Whiteley as follows:

"...where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they were one deed. Each is executed on the faith of all the others being executed also and is intended to

spea only as part of the one transaction, and if one is seeking to make equities apply to the parties they must be equities arising out of the transaction as a whole. It is not open to third parties to treat each one of them as a deed representing a separate and independent transaction for the purpose of claiming rights which would only accrue to them if the transaction represented by the selected deed was operative separately. In other words, the principles of equity deal with the substance of things, which in such a case is the whole transaction, and not with unrealities such as the hypothetical operation of one of the deeds by itself without the others"

29. Similarly, in *Toyota (G.B.) Ltd. v. Legal & General Assurance (Pensions Management) Ltd.*[1989] 2 E.G.I.R. 123 it is observed that a landlord granted to a tenant a lease for a term of 16 years, and a reversionary lease for a term of 34 years immediately following. The lease contained a rent review clause. It was held that for the purpose of interpreting the rent review clause, regard could be had to the fact that the two leases were executed as part of a single transaction.

30. From the aforesaid material one can conclude that merely because there are two lease deeds in respect of the premises, it will not necessarily follow that intention was to create two tenancies. Even for creating one tenancy, in a given case, two lease deeds can be executed. Therefore, we have to examine as to what was the intention of the parties in the case in hand. For ascertaining this intention one can look into the documents exchanged between the parties prior to execution of lease deeds. Letter dated 24th July, 1978 (EX.DW1/X-4) written by Shri NetarS.Rana on behalf of the appellant clearly uses the expression that the parties

had been able to draw "an agreement" for the lease for both the units of the house in question. By this letter Shri Rana has given further assurance on behalf of himself and that of the company that at the end of the tenancy period landlord shall get vacant possession of the entire premise. Significantly this letter was made part of both the lease deeds and was registered along with both these deeds. This gives an impression that it was one agreement which was arrived at between the parties. Further letter dated 28th July, 1978 (Ex.PW1/3) expresses the intention of parties beyond doubt. This letter very clearly states that the agreement of lease is in respect of the entire bungalow No. 2A Road Maharani Bagh, New Delhi to be given to the appellant for a rent of Rs.6,000/- and only on the suggestion of the appellant that two separate rent deeds are executed and the rent apportioned in the manner as desired by the appellant. It further in no uncertain terms states that the apportionment is an internal concern of the appellant and landlord had no objection to the acceptance of suggestion of apportionment or execution of two rent deeds so long as he is receiving Rs.6,000/- as rent. This clearly shows that agreement was to let out the entire premises for a rent of Rs.6,000/- and the intention was to create one tenancy. Two separate rent deeds were executed only because appellant had suggested it to be so and not because there was any intention to create two tenancies. Otherwise the rent of the two premises should have been Rs.3000/- for each portion or even if the rent of front unit is treated to be higher, then that should have been marginally higher than the rear unit. By no stretch of imagination two tenancies could be created with separate agreements having such a substantial difference in the rent, namely, Rs.4,200/ PM for one unit and Rs.1,800/- for another unit thereby making rent of one unit almost two and a half times than the rent of the other unit. Not only this both the lease deeds are executed on same day i.e. 1st August, 1978 and also

registered on 21st August, 1978. Therefore, these are contemporaneously documents evidencing one tenancy agreement. There is yet another letter dated August 19, 1978(EX.DW1/X-2) which points out to the same direction. This is a letter written by Mr. P.K.Ghosh, Manager of appellant and is addressed to the landlord. In this letter Mr. P.K. Ghosh is mentioning that through Power of Attorney he is empowered to sign on behalf of the appellant the "rent deed agreement" in respect of property in question and further mentions that "this agreement" will be ratified by the Board of Directors, if considered necessary. Thus even in this letter written after 1st August, 1978 and before the Registration of two lease deeds, reference is to one agreement for which two lease deeds were executed."

to contend that there was a single tenancy created in the instant case despite separate rent receipts being issued.

20. It is essential to observe that para 30 of the verdict relied upon, adverted to hereinabove, clearly spells out that though for creating one tenancy in a given case, two lease deeds can be executed, nevertheless it is the intention of the parties in the case in hand which has to be ascertained, which can be so done from looking into the documents exchanged between the parties and also from the factum as detailed in CHITTY ON CONTRACTS to the effect that where there are several deeds which form part of one transaction and are contemporaneously executed, they would have the same effect for all purposes such as are relevant to the case as if they were one deed. It is essential to observe that the letting out of the ground floor was from 1975 at least and of the basement was in the year 1981. The letting out thus of two separate portions not being contemporaneous in time, coupled with the

factum that there were separate rent receipts issued for separate portions details of which have been specified hereinabove coupled with the factum that there were no lease deeds executed and as rightly observed by the learned Civil Judge-15 (Central) vide its impugned judgment dated 27.08.2013, the plaintiff i.e. the appellant herein has not mentioned on record a single instance of the defendant i.e. the respondent herein making a composite payment with respect to tenanted portions and thus the intention of the parties to create two tenancies is not even remotely brought forth.

21. Though the plaintiff i.e. the appellant herein vide a list of documents filed on 02.05.2013 before the learned trial Court has placed on record rent receipts dated 08.01.2013 & 07.02.2019 details of which are as under:

1.	2548	08.01.2013	January to March, 2013	6300/-	Mr. Emson	Basement	Cheque No.000010 dated 08.01.2013, Andhra Bank.
2.	2550	05.01.2013	January to March, 2013	6450/-	Emson	Ground Floor	Cheque No.022104 dated 05.01.2013, Andhra Bank.

the said rent receipts are in the name of Emsons without any description of the tenanted portions significantly, the said rent receipts do not give any details of the period for which they had been issued in relation to the cheques received from the respondent.

22. Taking into account the averments that have been made in para 3 of the plaint itself as per which the cheques were being issued for a

sum of Rs.2100/- p.m. and Rs.2150/- p.m., the said rent receipts being no.2148 and 2550 dated 08.01.2013 and 05.01.2013 for Rs.6300/- and Rs.6450/- respectively, apparently are for rent paid for a period of three months each in relation to which the said receipts were issued and cannot be considered thus to be for any composite payment of rent for two portions of the building in which separate portion of the tenanted premises exist in as much as the composite rate of rent for two portions i.e. basement and the ground floor would be Rs.4250/- p.m. as per averments in para 3 of the plaint.

23. Another aspect which was sought to be contended on behalf of the appellant was that the egress and ingress into the basement of the property E-112, Kamla Nagar, Delhi-07 is only from the ground floor portion of the property, which itself spelt out that it was a single tenancy created in one premises in relation to which it has been specifically averred in the written statement of the defendant i.e. the respondent herein in para 3 to the effect:

“It is specifically denied that two premises demised to the defendant at the site of building bearing No.112-E, Kamla Nagar, Delhi – 110007 are correctly shown in the plaintiff’s site plan being the first document filed by the plaintiff (although it does not feature in the list of documents at page 6-A of the paper book). This purported plan, on its own face, is farcical to say the least. The said plan does not show even the staircase that leads into the basement floor of the building. All other features, that ought to be reflected in this site plan, are conspicuously absent. It is not shown that the shop on the ground floor has two entrances, one from the front and the other from the rear side. This plan also does not show the staircase that starts from the rear side

of the building and goes up to the first floor of the building, where there is a large toilet cum bath room and a room. This toilet is in the tenancy of the defendant (along with the basement). It was let out to the defendant in 1981 and has been in possession, use and occupation of the defendant since then without break although the rentals therefore, which were at that point of time were Rs. 300/- per month, have escalated due to coercive measures adopted by the plaintiff from the aforesaid figure of Rs. 300/- per month to the current rate of rent, i.e., Rs. 2,100/- (Rs two thousand one hundred only) per month, over the years.”

The said contention of the respondent in relation to a separate stair case leading to the basement of the building and to the entrance to the tenanted portion on the ground floor has not been refuted by the appellant.

24. The available record thus spells out clearly that there were two separate tenancies created, one in 1975 in relation to the letting out of the portion of the ground floor and that the basement was let out to the respondent in the year 1981. The separate letting outs for separate rates of rent and issuance of separate rent receipts by the appellant to the respondent indicate clearly that none of the substantial questions of law as sought to be urged by the appellant herein in the instant case arise for consideration as urged nor as tentatively formulated on 21.03.2016 arise in the instant case.

25. The suit as filed by the appellant/the plaintiff of the suit bearing no.65/2013 has rightly been held by the learned trial Court and First Appellant Court to be barred in terms of Section 50 of the Delhi Rent Control Act, 1958 (as amended) in view of Section 3 (c) of the DRC

Act, 1958 (as amended) in as much as the monthly rent of each of the rented portions of the suit property is less than Rs.3500/- p.m. This is so in as much as Section 3 (c) of the DRC Act, 1958 provides as follows:

3. Certain provisions not to apply to premises.

(1) Nothing in this Act shall apply—

(a).....

(b).....

(c) to any premises, whether residential or not and whether let out before or after the commencement of this Act, whose monthly deemed rent on the date of commencement of this Act exceeds three thousand and five hundred rupees.

(d).....”

26. As laid down by the Hon'ble Supreme Court in ***KondibaDagadu Kadam Vs. Savitribai Sopan Gujar and Ors. 1999 (36) AIR 218*** the High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the First Appellate Court were erroneous being contrary to the mandatory provision of law applicable or was based upon inadmissible evidence arrived at without evidence and that where no question of law much less any substantial question of law arises, the regular second appeal under Section 100 of the CPC cannot be held to be maintainable.

27. Thus, in the facts and circumstances of the instant case, there is no merit in the prayer made by the appellant and no substantial question of law arises for determination. The appeal is thus dismissed.

ANU MALHOTRA, J

MARCH 18TH, 2019/mk/vm

