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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 05th August, 2021
Date of decision: 7th September, 2021

+ **RSA 55/2020 & CM APPL. 17630/2021**
ABHISHEK GUPTA Appellant
Through: Mr. Rajat Aneja, Advocate.
versus
SHASHI KUMAR SHUKLA Respondent
Through: Mr. Shashi Kumar Shukla, R-1 in
person & Mr. Arvind Kumar,
Advocate for R-2.
Mr. Raghuvinder Verma, APP with
Mr. Dharamvir Chauhan, IO.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

1. The present is a classic case which again reaffirms the general perception of difficulties that a landlord can face in obtaining possession of a property given out on rent.
2. The present appeal challenges the impugned judgment dated 20th January, 2020 in **RCA No. 56/2019** titled ***Shashi Kumar Shukla v. Abhishek Gupta*** by which the Appellate Court has allowed the appeal of Tenant/Respondent No.1 herein, Mr. Shashi Kumar Shukla (*hereinafter "Defendant"*), and has set aside the judgment and decree dated 27th August, 2019 in **CS No. 232/2018** titled ***Abhishek Gupta v. Shashi Kumar Shukla*** passed by the Trial Court under Order XII Rule 6 of the Code of Civil Procedure, 1908 (*hereinafter "CPC"*) which partly decreed the suit qua possession of the suit premises in favour of the Landlord/Appellant herein,

Mr. Abhishek Gupta (*hereinafter "Plaintiff"*), and directed the Defendant to hand over vacant and peaceful possession of the suit premises. This Court, vide order dated 5th June, 2020, had framed the substantial questions of law that arise in this case. The relevant extract from the said order is set out hereunder:

"6. The Court has perused the rent agreement dated 6th September, 2017 and the plea of the Respondent, Mr. Shashi Shukla in the written statement. Mr. Shashi Shukla himself is an advocate and he admits that he is in possession of the third floor of the property. He submits that currently no one resides in the property. His plea is that he has signed the rent agreement with the Petitioner but the same is a loan agreement. He also claims that he is paying rent to one Mr. Sunil Kumar under an agreement of 2018.

7. Considering the overall facts and circumstances, there is a clear question of law that arises in respect of whether trial can be directed in matters of this nature where Order XII Rule 6 CPC has been invoked and whether the Respondent can be allowed to renege from the rent agreement which he has signed and argue that the same is a loan agreement. Permitting such arguments to be raised would be contrary to Section 92 of the Evidence Act. When an agreement is in writing, any oral interpretation of the same contrary to what is written is clearly not permissible. Moreover, in suits for possession of this nature, once it is admitted that the Respondent has taken the premises on rent and has in fact paid rent, on the basis of a specious plea that the rent agreement is a loan transaction, if trial of the suit is directed, it would lead to unnecessary protraction of the adjudication. Prima facie, this Court is convinced that such a plea ought not to be

permitted.

8. Accordingly, issue notice to the Respondent. Mr. Shashi Shukla accepts notice. He submits that he is returning to Delhi next month. Accordingly, list this matter for hearing on 27th July, 2020. In the meantime, the Respondent shall continue to pay Rs. 9,000/- per month to the Appellant w.e.f. 1st June, 2020, subject to further orders of this Court. The Respondent shall also not part with, alienate or create any third-party interest in the third floor of the property.”

3. Two rent agreements were executed between the Plaintiff and Defendant, dated 6th November, 2014 and 6th September, 2017 in respect of the property/flat, consisting of two bedrooms, one bathroom/toilet, one store, drawing/dining room, and a kitchen on the roof of the second floor i.e. the third floor of property bearing No. RZ-1/2, South Extension, Part-III, Uttam Nagar, New Delhi (*hereinafter “suit premises”*). In view of the irregular and erratic payment of rent by the Defendant, the Plaintiff terminated the tenancy vide Legal Notice dated 9th January, 2018. The said Legal Notice was sent by speed post and was replied to, by the Defendant’s lawyer, vide Reply dated 29th January, 2018. As averred by the Plaintiff, in the said Reply, the Defendant had sent an envelope containing two blank papers to the Plaintiff, and the same was received by the Plaintiff on 30th January 2018. On 31st January, 2018, the Plaintiff replied to the said blank envelope through his counsel and called upon the Defendant to instead send a Reply to the Legal Notice dated 9th January 2018. Vide purported Reply dated 28th January 2018, the Defendant took the stand that he was not a tenant with the Plaintiff in respect of the suit premises and that he had only taken a loan of Rs.2,00,000/- at 4% interest per month from the Plaintiff. However, as the

Plaintiff did not have a money lending license at the time, the Defendant was allegedly forced to enter into a rent agreement, as proof for the said loan agreement. As per the Plaintiff, the said Reply was filed only along with the Written Statements before the Trial Court, and was never received by the Plaintiff, contemporaneously.

4. The suit being ***Suit No. 232/2018*** titled ***Abhishek Gupta v. Shashi Kumar Shukla*** was instituted by the Plaintiff seeking possession, permanent injunction, recovery of arrears of rent, and damages/mesne profits on 20th February 2018. Summons were issued in the suit on 22nd February, 2018. Vide order dated 6th March, 2018, considering that none appears for the Defendant despite service, the Trial Court passed an order restraining the Defendant from creating any third-party interest in the suit till final disposal. The Defendant then filed his written statement. At that stage, the Plaintiff realised that there was a typographical error in the number of the suit premises in the two rent agreements dated 6th November, 2014 and 6th September, 2017. Accordingly, the Plaintiff got a Rectification Deed dated 5th June 2018 executed from the predecessor-in-interest of the suit premises, Mr. Pankaj Rana, from whom he had purchased the property. Thereafter, an application for amendment of plaint under Order VI Rule 17 of CPC was filed by the Plaintiff. The typographical error in the number of the suit premises was sought to be corrected by the said amendment. This amendment was considered and allowed by the Trial Court vide Order dated 16th August, 2018, in the following terms:

“I have considered the submissions of both the parties and perused the records.

In the plaint the plaintiff has mentioned the suit property as RZ-3/2, third floor, South Extn. Part-III,

Uttam Nagar, New Delhi-110059, whereas, through this application plaintiff stated that actual description of the property is RZ-1/2, third floor, South Extn, Part-III, Uttam Nagar, New Delhi-110059. Plaintiff had filed on record rectification deed duly registered with concerned Sub-registrar clarifying that actual description of the suit property is RZ-1/2, third floor, South Extn. Part-III, Uttam Nagar, New Delhi-110059.

In view of the facts and circumstances, court finds that amendment regarding description of the suit property is not a change in the nature of the suit but is only regarding a typographical error. No any prejudice would be caused to other party through this amendment. The amendment is necessary to place on record the actual facts. Hence, present application under Order 6 Rule 17 CPC moved on behalf of plaintiff stands allowed. Plaintiff is directed to file amended plaint.

Plaintiff has filed amended plaint. Same is taken on record. Copy of the same is supplied to the opposite party.

Put up for filing of amended WS, if any and for further proceedings on 19.09.2018.”

5. After the amendment of the Plaint was allowed by the Trial Court, the injunction application was re-filed. The injunction was, thereafter, extended to the suit premises bearing the correct number. Issues were framed in the suit on 28th January, 2019. Thereafter, the Defendant sought to amend his written statement. In the said amended written statement, the Defendant put up a defence that he had taken the property on rent from one Sh. Sunil Kumar. The Trial Court was not convinced with this submission as recorded in its order dated 4th July, 2019. The Trial Court also granted an opportunity to the Defendant to call Sh. Sunil Kumar before the Court as a party by way

of moving the appropriate application, but the Defendant failed to do so. Thereafter, the Court considered the entire matter in detail and decreed the suit under Order XII Rule 6 of CPC. The finding of the Trial Court is that the rent agreement executed between the Plaintiff and the Defendant qua the suit premises has been admitted by the Defendant in the Written Statement and the oral averments being made contradicting the written terms of the rent agreement do not have any merit. Accordingly, the decree dated 27th August 2019 was passed in favour of the Plaintiff, directing the Defendant to handover peaceful and vacant possession of the suit premises. The relevant portion of the decree is set out below:

“Hence, as the rent agreement qua the suit property executed between plaintiff and defendant has been admitted by the defendant in the written statement and also as the oral averments contradicting the written conditions are not acceptable under the law, present suit is partly decreed in favour of plaintiff and against the defendant qua the relief of possession under Order XII Rule 6 CPC. The defendant is accordingly directed to hand over peaceful vacant possession of the suit premises i.e. RZ-1/2, Third Floor, South Extension Part-III, Uttam Nagar, New Delhi as shown in red colour in the site plan to the plaintiff. Partly decree sheet be prepared accordingly. Another application is moved on behalf of defendant under Order VIII CPC. Let copy of same be supplied to opposite party. Put up for arguments on this application as well as for further proceedings pertaining to remaining issues on 6.11.2019.”

6. The decree dated 27th August 2019 passed by the Trial Court was challenged in appeal by the Defendant. By the impugned Judgment dated

20th January 2020 in *RCA No. 56/2019* titled *Shashi Kumar Shukla v. Abhishek Gupta*, the Appellate Court reversed the decree dated 27th August 2019, primarily on the following grounds:

- i) That the claim of the Defendant that the rent agreement is a sham document or that the same was executed for some collateral purposes is a plausible defence inasmuch as the Plaintiff is absolutely silent in the plaint as regards the Defendant's possession of the suit premises prior to the commencement of lease on 06th September 2017;
- ii) If the landlord-tenant relationship subsisted for a period of three years from 06th November 2014 to 06th September 2017, and there had been no previous defaults pleaded, then the termination of the lease upon the first default by the tenant, raises suspicion as the Defendant had claimed that the default had been remedied prior to the institution of the suit.
- iii) The admission of the rent agreement executed by the Defendant with the Plaintiff, was not a clear, unambiguous and unequivocal admission so as to exercise the powers under Order XII Rule 6 of CPC.
- iv) The misdescription of the suit property as RZ-3/2, whereas the actual number of the suit property was RZ-1/2, raises suspicion. The errors in the chain of documents by which the title is claimed by the Plaintiff would have to be examined. The error does not appear to be an inadvertent error, inasmuch as if it was a typographical error, the sale deeds of the predecessors-in-interest would not carry the same typographical error.

7. These findings of the Appellate Court have been challenged by the

Plaintiff before this Court and submissions have been heard on behalf of the parties.

Proceedings in this appeal

8. On 5th June, 2020, when this appeal was listed for the first time, the Defendant had appeared in-person through the online platform, and submitted that he is located in Bihar, and he is currently not living in the suit premises. He submitted that he could not join the video conference due to lack of internet connectivity. However, he made submissions through his mobile phone. The Defendant admitted that he had signed the rent agreement with the Plaintiff, but the same is a loan agreement. *Prima facie*, this Court was of the view that the Defendant's stand is contrary to Section 92 of the Evidence Act, 1872, according to which, when an agreement is in writing, any oral interpretation of the same contrary to what is written is clearly not permissible. This Court had further observed that the plea raised by the Defendant that the rent agreement was in fact a loan transaction was a specious plea, and such a plea ought not to be permitted. Further, this Court had directed the Defendant to continue to pay the admitted rent amount of Rs. 9,000/- per month as he had continued to retain possession of the suit premises. The said direction reads:

“Accordingly, issue notice to the Respondent. Mr. Shashi Shukla accepts notice. He submits that he is returning to Delhi next month. Accordingly, list this matter for hearing on 27th July, 2020. In the meantime, the Respondent shall continue to pay Rs. 9,000/- per month to the Appellant w.e.f. 1st June, 2020, subject to further orders of this Court. The Respondent shall also not part with, alienate or create any third-party interest in the third floor of the property.”

9. In view of the defence raised before the Trial Court that one Mr. Sunil Kumar was the landlord, with whom the Defendant had entered into a subsequent rent agreement dated 22nd February 2018 and was paying rent thereunder, the Court deemed it appropriate to implead Mr. Sunil Kumar as Respondent No.2 in the matter, merely to afford him a hearing. Thereafter, the Defendant continued to violate this Court's directions, and not pay the amount of Rs. 9,000/- as was directed by the Court. Both the Defendant & Respondent No.2 started making contradictory submissions and thus, vide order dated 27th July 2020, a status report was called from the SHO, Bindapur to ascertain as to who is in possession of the suit premises. The said status report dated 21st September, 2020 revealed that the Defendant was in the possession of the suit premises, and the Defendant further claimed that he is paying rent of Rs.9,000/- to the Respondent No.2. Again, on 25th September, 2020, owing to the repeated defaults on the part of the Defendant, last opportunity was given to the Defendant to make payments of the use and occupation charges, failing which he was directed to deposit the keys of the property with the Registrar General of this Court. The said directions read as under:-

“9. Accordingly, the tenant is given a last and final opportunity to make the payment of the monthly use and occupation charges of Rs.9,000/- per month to the Appellant w.e.f. 1st June, 2020 within two days, failing which, the tenant shall deposit the keys of the property with the Registrar General of this Court within one week from today. The said deposit shall be subject matter to the further orders of this Court which may be passed in the present appeal.”

10. The present order is being passed in order to ensure that no further rights are created in the favour of any third parties, in respect of the suit property, as the Court severely doubts the bonafide of both the Respondents in the present case.”

10. This conduct of the Defendant continued and repeated opportunities were given to him to make payments. On 15th January, 2021, Mr. Mishra, Id. counsel appearing for the Defendant submitted that he would obtain instructions as to whether his client would be willing to hand over vacant and peaceful possession of the property, if some leeway is granted in the time and arrears of rent is granted. The extract of the order reads as under:-

“1.1. Mr. Mishra says that without prejudice to the rights and contentions of respondent no.1, he will obtain instructions as to whether respondent no.1 would hand over the vacant and peaceful possession of the property if some leeway is granted in terms of time and arrears of rent.”

11. On 21st January, 2021, Mr. Mishra, Id. Counsel appearing for the Defendant, submitted that the key to the property would be deposited within ten days. The said order reads as under:

“Mr. Ghanshyam Mishra, who appears for respondent no.1, has returned with instructions. Mr. Mishra says that the keys to the subject premises will be deposited with the Registry of this Court within the next 10 days. List the matter on 08.02.2021.

Mr. Mishra reaffirms that the keys to the subject premises will be deposited contemporaneously with the vacation of the subject property by respondent no.1.”

12. In a shocking twist, on the date of the next hearing on 8th February,

2021, an application was filed by the Defendant stating that the earlier counsel who had made the submissions on behalf of the Defendant on the previous two dates had acted without instructions, and that the Defendant had withdrawn his mandate. On 8th February 2021, notice was issued by the Court to the earlier counsel. The Defendant continued to dodge the Court in this manner. Finally, on 5th March, 2021, this Court directed the personal presence of the Defendant, and the *Vakalatnama* in favour of the new counsel representing the Defendant, Mr. Manoj Kumar Jain, was directed to be brought on record. As reflected in the order dated 23rd March 2021, an attempt was made by the parties to amicably resolve the disputes, but the same was unsuccessful. Thereafter, the matter has been heard by this Court. On 31st May, 2021, an application was moved by the Plaintiff seeking urgent directions to the Defendant to vacate the suit premises. On the said date, show cause notice was issued as to why contempt action ought not to be taken against the Defendant, and the SHO, Bindapur was also directed to visit the suit premises to ascertain the status thereof, and after ascertaining whether the Defendant was residing there or not, to put a lock on the suit premises and present the keys before this Court through the Standing Counsel (Criminal) on the next date, i.e., 3rd June, 2021. In terms of Order dated 27th July 2020, a status report dated 2nd June, 2021 was then filed, in which it was reported that the Defendant was found residing in the property, and hence, the same could not be locked. On 3rd June, 2021, the Defendant appeared in-person and submitted that pursuant to the order dated 5th June 2020 passed by this Court, he has paid the use and occupation charges of Rs. 9,000/- per month to the Plaintiff for a period of seven months, but he admitted that he had not paid the same for the last five months. Since the

Defendant was not willing to hand over vacant and peaceful possession of the suit premises, the hearing in the appeal itself was commenced and the parties made their respective submissions.

13. During the course of hearing, on 12th July, 2021 again contradictory submissions were made as to who is in possession of the various plots of the property. In terms of Order dated 12th July 2021, a third status report dated 26th July 2021 was called for, from the SHO, Bindapur, which shows that the Defendant was in possession of the third floor of the suit premises, and in so far as the remaining floors were concerned, there was divergence of opinion between the parties and complaints and cross-complaints were filed with the SHO, Bindapur. In terms of Order dated 27th July 2021, a fourth status report dated 03rd August 2021 was called for in respect of the complaints which have been filed between the parties and the DCP, District Dwarka, Delhi had assured that the complaints have now been marked to the concerned SI at PS Bindapur, who would investigate the matter.

Submissions of the Parties:

14. Mr. Rajat Aneja, Id. Counsel for the Plaintiff, firstly, refers to the rent agreement dated 6th November, 2014 and submits that this rent agreement has been admitted by the Defendant. As per the said agreement, the monthly rent payable was Rs.8,000/-, which the Defendant continued to pay to the Plaintiff. Thereafter, a second rent agreement was executed on 6th September, 2017. In the said agreement, the monthly rent was fixed at Rs.9,000/-. After the execution of the second agreement, the rent was paid by cheque for three months i.e., October, 2017, November, 2017 and December, 2017. The payment made for the month of October, 2017 was encashed. However, for the subsequent two months, the cheques were

dishonoured. The dishonoured cheques have been placed on record. Considering the fact that the cheques were dishonoured, the Plaintiff terminated the tenancy vide Legal Notice dated 9th January, 2018. The Id. Counsel for the Plaintiff reiterated the facts leading up to the filing of the suit and the decree by the trial court.

15. Mr. Aneja, Id. Counsel for Plaintiff, thereafter, took the Court through the impugned judgment dated 20th January, 2020 in which, according to him, the Appellate Court made an error by holding, in paragraph 5.5, that in the sale deed of Mr. Pankaj Rana, the property is described as RZ- 3/2, South Extension-III, Uttam Nagar, Delhi-110059. Mr. Aneja relied upon the sale deed dated 23rd October, 2010, wherein Mr. Pankaj Rana acquired the rights to the second floor along with roof rights i.e., third floor, to argue that the findings of the Appellate Court in paragraph 5.5 is incorrect. The said sale deed clearly describes the property as RZ-1/2, South Extension-III, Uttam Nagar, Delhi-110059. He submits that it is because of this error that the Appellate Court has set aside the decree incorrectly. He submits that the rent agreement being admitted by the Defendant and the Defendant having been in possession of the property, the identity of the suit property not being in question, the mere mis-description of the rent agreement should not lead to the decree being set aside by the Appellate Court.

16. Mr. Aneja, Id. Counsel for Plaintiff, thereafter has taken the Court through the written statement and relies upon the portions where the Defendant admits that the two rent agreements were entered into by him. However, he tries to cover it up claiming that there was a loan which was converted into a rent agreement. He submits that paragraph 12 of the written statement filed by the Defendant clearly admits the rent agreement both the

first and second one. The amount which was paid was Rs.1,01,000/- in respect of the first rent agreement dated 06th November 2014, and Rs.99,000/- in respect of second agreement dated 06th September 2017. Since the Defendant does not dispute the execution in rent agreement, but the challenge is to only to the interpretation of the same, the rent agreement being an admitted document, the decree has been rightly passed.

17. Further, an FIR which was registered against the Defendant by the occupant of the first floor of the property in question - Mrs. Manvinder Kaur - is relied upon. In the rent agreement which was executed between the Defendant and Respondent No. 2, the latter described himself as a resident of first floor which is completely false and incorrect. The said FIR establishes this fact. He further submitted that only the documents on the basis of which Respondent No.2 claims rights is an unregistered GPA dated 4th May, 1990 and an unregistered agreement to sell, both of which do not confer any title upon Respondent No.2. Reliance is also placed upon the electricity bill which is in the name of Mr. Pankaj Rana qua the second floor of the property. Finally, it is submitted that due to the order passed by this Court on 12th July, 2021, locks of the second floor were broken up by Respondent No.2 which is also clear from the status report and an **FIR No. 695/2021** under Section 448 of IPC has been lodged at PS Bindapur, Delhi on 03rd August 2021. The Respondent No. 2 has taken advantage of the order of this Court just to show that he is in possession. Under these circumstances, he submits that the decree for possession is liable to be upheld, and impugned judgment is liable to be set aside.

18. The Defendant, Mr. Shashi Kumar Shukla, who is a practising advocate in the Dwarka Courts, Delhi, appears in-person and has

commenced his submissions. He relied upon paragraph 2 of the Replication filed by the Plaintiff to argue that it is clearly noticed by the Plaintiff himself that the Defendant has denied the rent agreement. Post the Replication being filed, issues were framed on 20th January 2019, and one of the issues was as to whether the Plaintiff is entitled to possession. His submission is that if there was an admission by the Defendant, there was no necessity of framing issues in the matter. The matter was also fixed for leading of evidence. Thereafter, the Defendant had moved an application for amendment which was considered in the order dated 27th August, 2019. While deciding the amendment, the decree under Order XII Rule 6 of CPC was passed by the Trial Court. Mr. Shukla also relies upon the sale deed dated 23rd October, 2003 and the sale deed dated 29th September, 2006, to argue that there is a discrepancy in the property number which has been described in the said sale deeds.

19. The Defendant, appearing-in-person, submits that there are three questions of law which arise: firstly, relating to estoppel under Section 116 of the Indian Evidence Act, 1872; secondly, in respect of Sections 91 & 92 of the Indian Evidence Act, 1872; and thirdly, as to whether there are any admissions by him in the suit before the Trial Court. The submission in respect of the various sale deeds is that these sale deeds are forged and fabricated, inasmuch as the property belongs to the Gram Sabha, which cannot be transferred to any person. The chain of documents, on the basis of which the Plaintiff claims right, cannot be authenticated and the proceedings are, in fact, going on before the concerned SDM. He submits that the sale deed and agreements are completely null and void. Hence, there cannot be an estoppel against the Defendant. He, thereafter, submits that this is an

attempt by the Plaintiff to grab the Gram Sabha land, and all the pleadings and chain of documents are fabricated. On the third question relating to Judgment on Admission under Order XII Rule 6 of CPC, it is submitted that in order for any decree to be passed, the admission has to be clear and unequivocal. There is no admission of tenancy with the Plaintiff. Instead, the tenancy and ownership are admitted in respect of Respondent No.2, Sh. Sunil Kumar. He submits that the police report which has been filed in the status report dated 03rd August 2021, itself is surprising, inasmuch as in the original Trial Court record, there is a tenancy report, which has been filed by the police confirming that the Defendant is the tenant in respect of the suit premises. He further submits that the Plaintiff's case is completely false as, the second floor of the property is in the possession of Mr. Sunil Kumar's son and not the Plaintiff. He emphasises that there is no admission by him in this case. The rent deed, which is placed on record, relates to RZ-3/2, and not RZ-1/2. Thus, he submits that the Appellate Court has rightly remanded the matter back to the Trial Court for trial, and this is a case where a FIR ought to be registered against the Plaintiff.

20. Mr. Arvind Kumar, Id. Counsel for Respondent No.2, submits that there is a discrepancy in the property in respect of which relief is being sought by the Petitioner. The suit was filed on 22nd February, 2018 seeking eviction from the 3rd floor of property bearing No. RZ-1/2, Third Floor, South Extension Part-III, Uttam Nagar, New Delhi-110059. The lease deed dated 6th September, 2017 which was for a period of 11 months is relied upon. He repeated the stand of Defendant no.1. He submits that the Rectification Deed dated 5th June, 2018 was a complete afterthought, as the suit was filed in February, 2018 itself. It was after the defence was raised

that the rectification of the sale deed took place. Reliance is placed upon Section 52 of the Transfer of Property Act, 1882, to argue that the rectification, in effect, amounts to a fresh sale deed which could not have been executed except with the permission of the Court. Further, he submits that the Respondent No.2 claims rights in the property on the basis of an allotment letter by the Gram Sabha to one Sh. Sudan Ram. It is submitted that the first floor of the property is in the possession of the Respondent No.2 and not the Petitioner.

21. He submits that the estoppel under Section 116 of the Indian Evidence Act would not apply *qua* the property in question which is RZ-1/2, inasmuch as the rent deed only mentions RZ-3/2. Finally, he concludes by saying that the property is located in Khasra No. 2 which is a *Gram Sabha* land. There can be no sale deed that can be executed in respect of *Gram Sabha* land. His client's father was allotted the land by the *Harijan Samaj Kalyan*, and therefore, he is in valid and legal possession of the property. Since all the causes of action have been vitiated prior to the execution of the Rectification Deed, the suit itself is liable to be dismissed, and this property belongs to his client.

22. On a query from the Court as to whether any suit has been filed by him or his client seeking any relief for declaration etc., he submits that **CS No. 49020/2020** was filed before the Civil Court in Dwarka. However, the same was dismissed due to the pendency of the present RSA on 19th October, 2020. Mr. Arvind Kumar, Id. Counsel finally submits that the order dated 16th August 2018 permitted only the amendment in the plaint and not in the sale deed.

Analysis and Conclusions in the present appeal:

23. In the present case, the two Rent Agreements between the parties, dated 6th November, 2014 and 6th September, 2017, are both admitted by the Defendant. Vide the first rent agreement dated 6th November, 2014, the Plaintiff let out to the Defendant the suit premises. Inadvertently, in both of the aforementioned rent agreements, the suit premises is described as property bearing No. **RZ-3/2** instead of **RZ-1/2**. It is this typographical error that the Defendant is attempting to encash upon in order to continue to retain possession of the suit premises.

24. The first rent agreement dated 6th November 2014, executed between the Plaintiff and the Defendant, was for a period of two years. The rent agreed upon, under the said rent agreement, was Rs.8,000/- per month, excluding electricity and water charges. The rent was payable either in cash or cheque, in advance for every month regularly, on or before the 10th of every month. The suit premises were to be used only for residential purposes. The second rent agreement dated 6th September 2017, executed between the Plaintiff and the Defendant, was for a period of 11 months, with effect from 1st August 2017. Under this rent agreement, other terms remaining the same, the rent was increased from Rs. 8,000/- per month to Rs. 9,000/- per month. The present appeal only relates to the third floor i.e the roof of the second floor of the suit premises, which is in occupation of the Defendant. The two rent agreements dated 6th November, 2014 and 6th September, 2017 executed between the Plaintiff and Defendant are clearly admitted in the written statement filed by the Defendant before the Trial Court. Para 12 of the said written statement reads as under:

*“That it is pertinent to mention here that the answering defendant has taken a loan of Rs.2,00,000/- from the plaintiff @ 4% per month but as at that time the plaintiff was not having any money lending license, **so he asked the answering defendant to execute a Rent Agreement** regarding a proof of taking loan agreement of the property i.e. RZ-3/2 so that the money paid by him shall become white and further the plaintiff had also paid most of the said loan amount to the answering defendant through cheques in a very clever manner for a period of two years and a sum of Rs.1,01,000/- was returned back by the answering defendant to the plaintiff at the time of demonetization and thereafter another loan agreement was executed and at that time the answering defendant has handed over 11 cheques to the plaintiff, all amounting to Rs.9,000/- each for the payment of the remaining amount of Rs.99,000/- but later on the plaintiff told the answering defendant that he has misplaced the previous rent agreement executed between them and **asked the answering defendant to execute a fresh Rent Agreement** containing the same address i.e. RZ-3/2, to give the same to his Income Tax Department.”*

25. A perusal of the above paragraph of the Written Statement filed by the Defendant shows that the he does not dispute the fact that he executed the said rent agreement with the Plaintiff. However, he chooses to characterise the same as a loan agreement. The Defendant also admits to handing over 11 cheques amounting to Rs. 9000/- each to the Plaintiff. The Defendant also does not dispute the fact that he came into possession of the suit premises in the year 2014. The plea that the rent agreement is in fact a loan transaction cannot be accepted by this Court, as the same would be contrary to the

written terms of the agreement. It is the settled position in law, under Sections 91 & 92 of the Indian Evidence Act, 1872, that when documents are in writing, no plea contrary to the said documents can be taken by the parties. This position of law was upheld by the Hon'ble Supreme Court in ***T.N. Electricity Board v. N. Raju Reddiar [AIR 1966 SC 2025]*** that the agreement between the parties was a written agreement and therefore, the parties are bound by the terms and conditions of the agreement. Once the contract is reduced in writing, by operation of Section 91 of the Evidence Act, it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties. Under Section 92 of the Evidence Act, 1872, where the written instrument appears to contain the whole terms of the contract then parties to the contract are not entitled to lead by oral evidence to ascertain the terms of the contract. Similarly, in ***R. N. Sachdeva v. Ram Lal Mahajan Charitable Trust [1997 SCC OnLine Del 344]***, the Court observed as under:

“When the terms of a contract, grant, or other disposition of property have been reduced into writing, Section 91 excludes production of any other oral or documentary evidence in proof of such terms. Under Section 92 of the Evidence Act, production of oral evidence for the purpose of contradicting varying, adding to or subtracting from such terms is not permissible.

26. In the present case, the last rent agreement was for a period of 11 months with the monthly rental payment of Rs. 9000/-. Thus, the Defendant cannot be permitted to renege from the rent agreement which he has signed and argue that the same is a loan transaction. Insofar as the number of the

suit premises as to whether it is RZ-3/2 or RZ-1/2 is concerned, the Appellate Court has committed an error. In the Sale Deed dated 23rd October 2003 executed qua the second-floor of the suit premises along with roof rights, between Mr. Ashok Jagga and Mr. Pankaj Rana, who is the predecessor-in-interest from whom the present Plaintiff purchased the property, the suit premises is clearly described as RZ-1/2. It is only in the Sale Deed dated 20th June, 2012 executed between Mr. Pankaj Rana and the Plaintiff that it is described as RZ-3/2. The Appellate Court seems to have been confused between the sale deeds executed for the ground floor and the first floor with one Ms. Sushma Rana, where there may have been an error in the property number. Insofar as the suit premises is concerned, the chain of title clearly shows that it is only in the last document i.e. the Sale Deed dated 20th June, 2012 executed between Pankaj Rana and the Plaintiff that the error of describing the property as RZ-3/2 has crept in. Therefore, the Appellate Court's suspicion in respect of the number of the suit premises is completely misplaced and appears to be conjectural. In any event, the said error has also been rectified by the Plaintiff post the filing of the suit through the Rectification Deed dated 5th June 2018. After execution of the Rectification Deed, the Plaintiff moved an application under Order VI Rule 17 of CPC and sought an amendment in the Plaint which was allowed by the Trial Court by Order dated 16th August 2018. The said Order is not challenged and has attained finality.

27. Even otherwise, it is the settled principle in law that a tenant cannot challenge the title of the owner/landlord, and there is an estoppel in this regard, in terms of Section 116 of the Indian Evidence Act, 1872. The Hon'ble Supreme Court in *Sri Ram Pasricha v. Jagannath* [(1976) 4 SCC

184], observed that, in a suit for eviction by the landlord, the tenant is estopped from questioning the title of the landlord as per Section 116 of the Indian Evidence Act, 1872. Similarly, in **Tej Bhan Madan v. II Additional District Judge & Ors. [(1988) 3 SCC 137]**, the Hon'ble Supreme Court observed as under:

“9. The law as to the estoppel of a tenant under Section 116 of the Evidence Act is a recognition and statutory assimilation, of the equitable principles underlying estoppel in relation to tenants. The section is not exhaustive of the law of estoppel. The section, inter alia, predicates that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the landlord of such tenant had, at the beginning of tenancy, title to such property.”

The said principle of law has also been reiterated by this Court in **Mohd. Burhan v. Triloki Nath Nirmal** in **CM(M) 748/2018** decided on 27th April, 2020.

28. Insofar as the other findings of the Appellate Court are concerned i.e. that there is no clear, unambiguous and unequivocal admission by the Defendant in order to decree the suit under Order XII Rule 6 of CPC also appears to be completely incorrect inasmuch as in Paragraph 12 of the Written Statement filed by the Defendant as extracted above, the signing of the rent agreement is admitted. Once the execution of the rent agreement is admitted, the Defendant cannot claim any right in law to continue to remain in occupation of the suit premises. Even during oral arguments, the Defendant did not dispute the signing and execution of the rent agreement. The finding of the Appellate Court that there is no explanation as to how the

Defendant came into possession of the suit premises prior to 2017, clearly ignores the earlier rent agreement dated 6th November, 2014.

29. The case set up by the Defendant that he took the premises from Respondent No.2 is completely false inasmuch as the alleged rent agreement between the Defendant and Respondent No.2 is dated 22nd February 2018. Prior to this date, the Defendant had been paying rent to the Plaintiff under the rent agreements dated 6th November, 2014 and 6th September, 2017. Thus, it is clear to this Court that the case sought to be made out by the Defendant, that the suit premises was taken on rent from Respondent No.2 is nothing but a collusive attempt to usurp the suit premises from the Plaintiff. Insofar as Respondent No.2 Sh. Sunil Kumar and his claim is concerned, in the opinion of this Court, he is clearly a person who has been put up by the Defendant with a view to continue to retain the occupation of the suit premises. It is usual in such cases for parties who are in occupation to set up sham documents and raise defences in collusion with third parties only to defeat the rights of the Plaintiff. The Defendant being an Advocate by profession has clearly resorted to these means to defeat the Plaintiff's right. He has personally appeared and made submissions. He does not deny that he came into the suit premises by virtue of the first rent agreement dated 6th November 2014. Thus, he having been put in possession of the suit premises by the Plaintiff, and having paid monthly rent for several months, is completely estopped from setting up such a sham and collusive defence by fabricating documents. Such conduct poses a severe threat to the Plaintiff's title and ownership in the suit premises itself, as is clear from the last status report dated 3rd August, 2021 where the Defendant and Mr. Sunil Kumar seem to be indulging in all kinds of nefarious conduct to claim title and

ownership, even in respect of the other floors of the building.

30. Moreover, the alleged new owner i.e., Respondent No.2 Mr. Sunil Kumar, himself filed a suit before the Dwarka Court, Delhi seeking declaration, permanent injunction and mandatory injunction in respect of the suit premises. In the said suit being **CSD 490/2020** titled **Sunil Kumar vs. Abhishek Gupta**, the Id. ADJ has clearly highlighted the contradictions in the case of Respondent No.2 before this Court and in the said suit. The Id. ADJ holds Respondent No.2 guilty for suppression of material facts. The counsel who was appearing for Respondent No.2 before the District Court had concealed all the proceedings in this present appeal, which led to the Court to conclude that Respondent No.2 is making contrary submissions. Thus, Respondent No.'s attempt to claim rights in the suit premises has also been settled by the Id. ADJ. The findings of the Trial Court in the said suit are as under:

“This Court cannot lose sight of the fact that the averments in the plaint are contrary to the submissions advanced by the plaintiff before the Hon’ble High Court of Delhi. The plaintiff is hoodwinking the courts of justice to such an extent that in the present suit has moved two interim applications, an application under Order XXXIX, Rule 1 and 2, CPC seeking ad-interim injunction against the defendants, and an application under Order XXXVI, Rule 9 read with Section 75, CPC seeking appointment of local commissioner.

9. *The position in law is well settled that he who approaches the Court with unclean hands is not entitled to any relief – See T.Arvindandam v. T.V.Satyapal & Anr. and S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by*

LRS. And Others.

10. At this stage, learned counsel for the plaintiff submits that the plaintiff may be allowed to withdraw the suit with leave to file afresh in accordance with law.

11. In view of the above submissions and observations in the preceding paragraph of this order, this Court deems appropriate to dismiss the suit as withdrawn, however, this Court does not find sufficient ground to exercise the discretionary power under Order XXXIII, Rule 1(3), CPC as there exists no formal defect or sufficient ground for allowing the plaintiff to institute a fresh suit for the subject matter i.e. suit property and grant such permission.

Accordingly, the suit is dismissed as withdrawn.

12. File be consigned to record room only after due compliance and necessary action, as per Rules.”

31. There is no plausible reason as to why the suit ought not to be decreed in favour of the Plaintiff. The Appellate Court clearly appears to have been misled by the Defendant.

32. The facts of this case show clearly as to how many obstacles and impediments can be caused by tenants who take properties on rent. The landlord/Plaintiff in the present case has been pushed to a situation wherein his ownership of the property has itself been jeopardised by the Defendant who was inducted as a tenant. Attempts have been made to create confusion on the basis of the property number. The tenant has tried to characterise the rent agreement as a loan agreement. Courts ought to be extremely cautious in entertaining such defences. The mere wrong numbering of the property in

the rent agreement cannot lead to a situation where the owner loses his property itself. The property in this case is located in an area which was earlier part of village Bindapur, which may not be located within municipal limits. Such areas do not have proper municipal numbers for the properties which is a matter of which judicial notice can be taken. Thus, the mere error in the description of the property in the rent agreement, when there is no dispute as to the identity of the property, cannot lead to the admission by the Defendant being ignored by the Court. The admission is clear and unambiguous insofar as the execution of the rent agreement has not been denied by the Defendant.

33. Under these circumstances, this Court is of the opinion that the judgment and decree dated 27th August 2019 passed by the Trial Court is liable to be upheld. The Appellate Court's Judgment dated 20th January 2020, reversing the same, is liable to be set aside. The Trial Court's judgment and decree dated 27th August 2019 is restored. The Defendant is directed to immediately hand over vacant and peaceful possession of the suit premises.

34. During the pendency of this appeal, the Defendant has made every attempt to hoodwink the Court in the following manner:

- i) by not paying the use and occupation charges of Rs.9000/- per month, as agreed upon under the rent agreement dated 6th September 2017.
- ii) by initially submitting to the Court that he would vacate the property and hand over the keys, and thereafter, resiling from the same by changing his counsel.

35. For this reason, this Court had issued show cause notice as to why

contempt action should not be initiated against the Defendant. Accordingly, in the facts and circumstances of this case, the Defendant is directed to pay the entire outstanding use and occupation charges at Rs.9000/- per month from the date of decree, i.e., 27th August, 2019 till date, after adjustment of the amounts already paid. In addition, costs of Rs.1 lakh shall also be paid by the Defendant to the Plaintiff. The compliance Affidavit in respect of the same shall be filed before the Court within a period of two weeks.

36. If upon expiry of two weeks, the Defendant does not hand over possession of the suit premises and there is no stay of this order, the Plaintiff is permitted to produce from the internet, a downloaded copy of this order and seek the assistance of the local SHO, Bindapur for executing and taking the vacant and peaceful possession of the suit premises.

37. The appeal, along with pending applications, is allowed in the above terms.

SEPTEMBER 07, 2021/mw/AD

PRATHIBA M. SINGH, J.