

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 07, 2021

+ RFA 396/2018

KISHAN LAL

..... Appellant

Through: Mr. Ankit Jain, Adv.

versus

RK ASSOCIATES AND ANR

..... Respondents

Through: Mr. Sachin Gupta, Ms. Jasleen Kaur
and Mr. Pratyush Rao, Adv. for R1.
None for respondent No.2.

AND

+ RFA 397/2018

KISHAN LAL

..... Appellant

Through: Mr. Ankit Jain, Adv.

versus

RK ASSOCIATES AND ANR

..... Respondents

Through: Mr. Sachin Gupta, Ms. Jasleen Kaur
and Mr. Pratyush Rao, Adv. for R1.
None for respondent No.2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. These appeals arise from judgment/decreed dated March 05, 2011 in two suits for recovery of possession involving two plots; one measuring 600 sq. yds. forming part of Khasra No. 75 (private no. 87/4) situated in revenue estate of village Zamrudpur, Delhi in

Suit No. 305/2009; and the second one measuring 200 sq. yds. forming part of Khasra No. 321/75 (private no. 87/4) situated in revenue estate of village Zamrudpur, Delhi in Suit No.304/2009 (collectively referred to as 'suit property' hereinafter) passed by ADJ-06 (Central) Delhi. Having noted that both these appeals have a similar factual background and raise common issues, I deem it appropriate to decide these appeals through this common judgment.

2. These appeals were earlier filed as revision petitions numbered as CRP 100/2011 and CRP 101/2011, however these petitions were then converted as Regular First Appeals (RFA) vide order dated April 16, 2018 and renumbered as RFA 396/2018 and RFA 397/2018 respectively.

3. RFA 396/2018 earlier numbered as CRP100/2011 has been filed with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble court may kindly be pleased to set aside / quash the Judgment and Decree dated 05.03.2011 passed by Shri Rajinder Kumar Shastri, Additional District Judge 06 (central), Tis Hazari Courts, Delhi in CS No. 305/2009 titled as "M/s. R.K. Associates Vs. shri Kishan Lal and another.

AND/OR

Any other further order (s) / relief (s) which this Hon'ble. Court may deem just fit and proper in the facts and circumstances of the case may also kindly be passed in favour of the petitioner herein."

4. Whereas RFA 397/2018 earlier numbered as CRP101/2011 has been filed with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble court may kindly be pleased to set aside / quash the Judgment and Decree dated 05.03.2011 passed by

Shri Rajinder Kumar Shastri, Additional District Judge 06 (central), Tis Hazari Courts, Delhi in CS No. 304/2009 titled as "M/s. R.K. Associates Vs. Shri Kishan Lal and another.

AND/OR

Any other further order (s) / relief (s) which this Hon'ble. Court may deem just fit and proper in the facts and circumstances of the case may also kindly be passed in favour of the petitioner herein."

5. Brief factual background in the appeals is, the respondent No.1/plaintiff claimed ownership of the suit property through decree dated January 21, 1993 passed by the Mr. Shiv Charan learned ADJ, Delhi in its favour. The sale deeds got registered in its favour by the order of the court dated November 08, 1993 through the Court Stenographer (though in RFA 397/2018 the sale deed is stated to be of November 08, 1994). The possession of the suit property was taken by the respondent No.1/ plaintiff on January 16, 1997 / March 16, 1997 respectively. According to the respondent No.1/plaintiff, appellant/defendant No.1 along with his sons and ten other persons entered forcibly the suit property and upon being questioned, threatened the partners of respondent No.1/plaintiff and took possession of the suit property forcibly and unlawfully. In this background the respondent No.1 / plaintiff approached the learned Trial Court seeking a decree of possession of the suit property, *mesne* profits for a sum of Rs. 30,000/- and Rs. 10,000/- per month w.e.f. date of dispossession till restoration of possession.

6. Whereas the appellant/defendant No.1 questioned the title of respondent No.1/plaintiff and took a stand that the respondent

No.1/plaintiff claims to have purchased the suit property from Murti Devi (whom the appellant/defendant's father treated as a daughter). According to the appellant/defendant No.1, Murti Devi was allowed to occupy 500 sq. yds. of land, out of the suit property plots bearing no. 87/3 and 87/4. Since there was some acrimony between appellant/defendant No.1 and Murti Devi, it resulted in a suit for partition of the said plots, which resulted in a compromise. Plot bearing no. 87/4 fell into the share of Murti Devi and the other plot bearing no.87/3 came to the share of the appellant/defendant No.1. It was the case of the appellant/defendant No.1 before the Trial Court that Murti Devi had no right to sell the suit property in favour of respondent No.1/plaintiff.

7. It is the case of the appellant/defendant No.1 that the respondent no.1/plaintiff had filed the suit with the averments that it is the owner of the property by virtue of a sale deeds dated November 08, 1993 executed in pursuance to a decree of specific performance dated January 21, 1993. After execution of the said sale deeds, it took possession of suit property on January 16, 1997 and March 16, 1997 through a Court Bailiff; thereafter it constructed four rooms over the suit property. The appellant stated that the case of the respondent No.1 was that the latter (respondent No.1) was in possession till June 04, 2002 (plot measuring 200 sq yds) August 02, 2003 (plot measuring 600 sq yds) when the appellant took forcible possession.

8. The appellant state that in his written statement before the Trial Court he had raised the plea that the suit property is agricultural land and hence the suit for possession is barred under

Section 185 of the Delhi Land Reforms Act, 1954 ('DLR Act' for short). It was also his contention that the suit is not maintainable under Section 6 of the Specific Relief Act, 1963 ('SR Act' hereinafter) and also due to non-joinder of necessary parties i.e., M/s. DLF Universal Ltd., who is also claiming ownership. It was his stand before the Trial Court that respondent No.1 / plaintiff was never in possession of the suit property and that the alleged possession given to respondent No.1 / plaintiff as per the report of the bailiff is false and collusive.

9. It is the case of the appellant that M/s. DLF Universal Ltd. filed an application for impleadment claiming itself to be the owner of the suit property. This application was allowed by the Trial Court vide order dated September 06, 2004. Later, an application was filed by Delhi Vocational School Society for its substitution in place of M/s. DLF Universal Ltd. This application was allowed vide order dated February 06, 2007 repelling the contention of respondent No.1 / plaintiff that under Section 6 no third party can be impleaded.

10. Mr. Ankit Jain learned Counsel appearing on behalf of the appellant / legal heirs has argued that the impugned judgement needs to be set aside as the Suits were barred under section 185 of the DLR Act. He argued that entry No.19 in Schedule I clearly provides that any suit for ejection of any person who is an occupant without title would be maintainable only before the Revenue Assistant. According to him, the Trial Court erred by holding that no such entry exists, as under the DLR Act there are *Bhumidars* and

Asamis and the concept of ownership does not exist. In this regard he has relied upon the following judgements:-

- i. ***Hatti vs. Sunder Singh MANU/SC/0410/1970***
- ii. ***Usha Gupta vs. Subash Chand Tyagi MANU/DE/6696/2011***
- iii. ***Jag Narain Mallah vs. Bhagauti Prasad Pandey MANU/UP/0019/1958***

11. It is submitted by Mr. Jain that the Trial Court has erred in recalling the order of impleadment of M/s. DLF Universal Ltd. (with which the Delhi Vocational School Society was substituted), as the order so passed would act as *res judicata* at the final stage of the suit. He places reliance on the judgment in the case of ***Pfizer Products Inc. vs. Rajesh Chopra & Ors. 142 (2007) DLT 300.*** (para 8B)

12. Mr. Jain submitted that the suit could not have been tried under the provisions of Section 6 of the SR Act. According to him Respondent No.1 came in possession pursuant to a sale deed having been executed in its favour and therefore the claim of the respondent No.1 / plaintiff is based on its title to the suit property. It is for this reason that the present suit could not have been tried under Section 6 of the SR Act and also for the reason that the impleadment of M/s. DLF Universal Ltd., led to the suit losing its character as a suit under Section 6 of the SR Act. It is his case that issue had also been framed and evidence had been led by parties on the said issues, which demonstrates that the suit was never treated as a suit under Section 6 of the SR Act. Since the respondent No.1 / plaintiff claimed other reliefs and the Trial Court framed other

issues, apart from the issues concerning the entitlement of the respondent No.1/plaintiff to claim possession, the suit could have not been tried under Section 6 of the SR Act.

13. It is the case of the appellant that the respondent No.1 failed to prove that it was in possession of the suit land, no evidence apart from the testimony of PW1 has come on record to prove possession. In his deposition, he stated that at the time when he got the property, the same was not demarcated and PW1 did not even know the area of the plot. Moreover, PW1 did not know the names of the persons who had dispossessed respondent No.1.

14. Mr. Jain has argued that the alleged report of the bailiff relied upon by respondent No.1 was a forged and fabricated document and the same could not have been relied upon in the absence of the examination of the bailiff. This stand had also been taken by the appellant before Trial Court and according to Mr. Jain it was incumbent upon the respondent No.1/plaintiff to prove the bailiff's report in accordance with law i.e., by examining the person who created the said document.

15. It was the submission of Mr. Jain that the Trial Court failed to take into consideration that the appellant/defendant was not a party to the suit filed by the respondent No.1/plaintiff against Murti Devi, when specific performance was sought. It is for this reason the decree could have not been read and used against the appellant. According to Mr. Jain the Trial Court erred in not deciding the contention regarding the title of Murti Devi as this issue was vital in deciding the controversy between the parties. The case of the appellant is that Murti Devi was not entitled to sell the suit property

to the respondent No.1 / plaintiff and hence the respondent No.1 / plaintiff could not claim any rights in regard to the suit property.

16. As per Mr. Jain the Trial Court erred in granting *mesne* profits in favour of respondent No.1, as the suit had been decided by the Trial Court under Section 6 of the SR Act. Accordingly, in a suit under the Section 6 of the SR Act, no decree for *mesne* profits could've been granted by the Trial Court. Moreover, the respondent No.1/plaintiff had sought *mesne* profits in the suit, however the suit was not valued for the said relief and no court fee had been paid to that effect. Even the Trial Court did not direct the respondent No.1/plaintiff to pay any deficient court fee for the decree of *mesne* profits. Therefore, such a relief could not have been granted by the Court. Mr. Jain places reliance in this regard on the judgment in the case of ***Dharam Dhir & Ors vs. Ancha Devi 53 (1994) DLT 191.***

17. Mr. Sachin Gupta learned Counsel who appears on behalf of the respondent No.1 / plaintiff submitted that the respondent No.1/plaintiff came into possession of the suit property as on January 16, 1997, through Court Bailiff in Execution Petition No. 62/1993 arising out of the decree dated January 21, 1993 passed in the suit seeking specific performance of agreement to sell dated November 04, 1989 against Murti Devi being Suit No.444/1991.

18. He submitted that another suit involving the suit property had been filed by B.S. Dhillon on May 30, 1997, against respondent No.1 / plaintiff and Murti Devi for setting aside decree dated January 21, 1993; cancellation of sale deed November 08, 1993; possession of suit property and *mesne* profits. This suit, he states

was later dismissed on the ground of non-prosecution vide order dated March 03, 2002.

19. Mr. Gupta stated that Suit involving 200 Sq. Yds. filed by the appellant/defendant against respondent No.1/plaintiff and Murti Devi for declaring decree dated January 21, 1993 as illegal and void; cancellation of sale deed dated November 11, 1993; and possession of suit property. This suit, he submitted was dismissed vide order dated May 08, 2002. An appeal numbered as RFA 627/2002 was dismissed by a Coordinate Bench of this Court vide judgment dated November 21, 2011. Thereafter a Special Leave Petition preferred against the dismissal of RFA 627/2002 was also dismissed on February 04, 2013. Objections filed under Section 47 of the Code of Civil Procedure, 1908 ('CPC' for short) by the appellant/defendant were also dismissed vide order dated November 19, 1999.

20. According to Mr. Gupta, on August 02, 2003 the appellant/defendant forcibly dispossessed the respondent no.1/plaintiff. Thereafter the respondent No.1/plaintiff filed an FIR on November 03, 2003. The Suits were filed on November 03, 2003 and July 27, 2002 respectively for possession, *mesne* profits and permanent injunction which were decreed vide judgment dated March 05, 2011. CRP 100/2011 and CRP 101/2011 were filed and the execution of the impugned judgments was stayed by this Court vide order dated August 02, 2011 and that the petitions were converted into RFAs vide order dated April 16, 2018.

21. Mr. Gupta has countered the argument that the suit is barred under Section 185 of the DLR Act and that civil Courts have no

jurisdiction, by stating that the land of village Zamrudpur stands entirely urbanised vide Notification dated May 28, 1966 issued by the Municipal Corporation of Delhi under Section 507 of the Delhi Municipal Corporation Act, 1957. He went on to argue that the appellant/defendant himself filed a suit for declaration, cancellation and possession of suit property against the respondent No.1 and Murti Devi in 1997 being Suit no. 70/02, which was later dismissed and the appeal thereto was also dismissed by a Coordinate bench of this Court vide order dated November 21, 2011; and a Special Leave Petition against the dismissal was also dismissed on February 04, 2013.

22. On the issue of whether respondent No.2 could be deleted or not after being impleaded, Mr. Gupta has argued that neither DLF Universal Ltd. nor Delhi Vocational School Society are a necessary party in the matter and that they have also not challenged the impugned judgement wherein the deletion had been directed. He submitted that DLF Universal Ltd./ Delhi Vocational School Society has filed an independent suit and if it were to succeed, they may recover possession from the respondent No1/plaintiff.

23. Mr. Gupta submitted that the suit was not tried as a suit under Section 6 of the SR Act and that respondent No.1/plaintiff had also sought injunction and possession and proved its title on the basis of the sale deeds. He argued, appellant had also filed a suit against the respondent No.1 and Murti Devi seeking cancellation of sale deed, declaring that the decree obtained by the respondent No.1 against Murti Devi as illegal and void; the appellant also sought possession of the suit property in 1997. The Suit filed by the

appellant which was later numbered as Suit No. 70/02, was dismissed; the appeal against the dismissal was also dismissed by a Coordinate Bench of this Court vide order dated November 21, 2011 and the Special Leave Petition was also dismissed on February 02, 2013.

24. Mr. Gupta argued that the appellant is estopped from questioning the title after appellant failed to prove his own title and his suit seeking cancellation of sale deed with respect to the suit property was dismissed against respondent No.1 and Murti Devi. He rebuts the argument of Mr. Jain by stating that this Court is not hearing appeal against the Special Leave Petition and that the appellant cannot re-agitate the same issues in these proceedings as well as the same are hit by *res judicata*.

25. It is the case of respondent No.1, that the possession of the suit property was received from the appellant through the Court Bailiff. The question which needs to be looked into is, whether the appellant took law in his own hands and took forcible possession of the suit property from respondent No.1 and whether respondent o.1 can be allowed to retain such illegal possession. Mr. Gupta submits that predecessor Bench of this Court had observed that the suit had been tried as a title suit and not merely a suit under Section 6 of the SR Act and it was for this reason that the petitions filed by the appellant/defendant No.1 were converted into regular first appeals.

26. The question, whether the respondent No.1/plaintiff was in possession of the suit property at the relevant time or not was addressed by Mr. Gupta, by stating respondent No.1 in order to

prove possession had relied on the following documents which have been referred to in paragraph 26 of the impugned judgment:-

- i. Sale Deed (Ex. PW – 1/3)
- ii. Report of the Bailiff (Ex. PW – 1/3A)
- iii. Electricity Meter Bill July 2003 (Ex. PW – 1/4)
- iv. Telephone (MTNL) Bill January 2002 (Ex. PW – 1/5)
- v. Water (DJB) Bill April 2001 (Ex. PW – 1/6)
- vi. Police Complaint dated August 04, 2003 (Ex. PW – 1/7)

27. Mr. Gupta stated that the appellant/defendant was himself seeking possession from respondent No.1/plaintiff and filed a suit in 1997 numbered as Suit No. 70/02, which was dismissed. The appeal was also dismissed by a Coordinate Bench of this Court vide order November 21, 2011 and the subsequent Special Leave Petition was also dismissed upholding the judgement in the appeal, thereby the rights of the parties were finalised with respect to the suit property. He stated that the judgement in the appeal operates as *res judicata*.

28. So far as the authenticity of the report of the Court Bailiff is concerned, Mr. Gupta argued that the same report is not disputed in the written statement. No issue had been framed in this regard. Moreover, the exhibition of the Bailiff report was not objected to during the trial and no cross examination was done in this regard.

29. Mr. Gupta contended that, in the suit filed by the respondent No.1/plaintiff against Murti Devi wherein specific performance was sought, appellant/defendant No.1 was not a necessary party. Additionally, the appellant/defendant No.1 filed a suit against respondent No.1 & Murti Devi seeking cancellation of sale deed

and that the decree obtained by the respondent No.1 and Murti Devi is illegal and void, thereby seeking possession of suit property in 1997. This suit was numbered as Suit No. 70/02 which was dismissed and the appeal arising from the decree was also dismissed on November 21, 2011, followed by the dismissal of the Special Leave Petition on February 04, 2013.

30. Mr. Gupta argues, that the issue of whether the Trial Court could have granted *mesne* profits / damages or not in a suit under Section 6 of the SR Act, does not remain an issue in the light of the Revision Petition being converted into a Regular First Appeal vide order dated April 16, 2018. He seeks the dismissal of the appeals.

31. Having heard the learned counsel for the parties and perused the record, at the outset, I may state that during the pendency of the appeals, the appellant had expired. This Court while reserving the appeals for judgment on March 26, 2021 had directed the learned counsel for the appellant to file an amended memo of parties bringing on record the legal heirs. The counsel for the appellant had filed an amended memo of parties on May 25, 2021. One of the legal heirs as per amended memo of parties i.e. Mukesh Kumar has also expired. His legal heirs have not been brought on record. Accordingly, I listed the matter under the headings *Directions* on June 02, 2021, when I have recorded the submission made by Mr. Jain that he will make efforts to file amended memo of parties bringing on record the legal heirs of the Mukesh Kumar within ten days. The Court has stated that if the amended memo of parties is not filed then the appeal qua Mukesh

Kumar / his legal heirs shall stand abated. The legal heirs of Mukesh Kumar have not been brought on record as no amended memo of parties is filed.

32. Now coming to the submissions made by Mr. Ankit Jain are concerned, his initial plea was that the suits filed by the respondent No.1 / plaintiff were barred under Section 185 read with entry 19 in Schedule I of the DLR Act is concerned, Mr. Gupta, learned counsel appearing for the respondent No.1 has submitted that the appellant himself having filed a suit being 70/02 for declaration and possession of the suit property against the respondent No.1 / plaintiff and Murti Devi which suit was dismissed on May 08, 2002 cannot make such a plea. The fact that suit for possession was also filed by the appellant Kishan Lal shows that it was his own case that the suit property was not regulated by the DLR Act. I find even the appeal against the judgment dated May 08, 2002 was dismissed by this Court on November 21, 2011. Even the SLP filed by Kishan Lal was dismissed by the Supreme Court. During the submissions, Mr. Gupta conceding that though it was not the case of the respondent No.1 / plaintiff before the Trial Court that the land in Zamrudpur stands entirely urbanized vide notification dated May 28, 1966 issued by the MCD under Section 507 of the DMC Act but this submission has not been seriously contested by Mr. Jain before this Court is appealing. The plea of Mr. Jain based on Section 185 read with entry 19 Schedule I of DLR Act is rejected.

33. Mr. Jain during his submissions has relied upon the judgments in the case of *Hatti (supra)*, *Usha Gupta (supra)* and

Jag Narain Mallah (supra) in support of his submission that the suit for ejectment of a person occupying land without title and damages shall lie before the Revenue Assistant have no applicability in the facts of these appeals and the judgments are distinguishable on facts.

34. Insofar as the submission of Mr. Jain that the suits could not have been tried under the provisions of Section 6 of the SR Act is concerned, I agree with the submission made by Mr. Gupta that in view of the order of this Court in Civil Revision Petitions being CRP 100/2011 and 101/2011 dated April 16, 2018 holding that the suits prayed for recovery of possession and also for injunction and damages particularly when the said claim was also based on title and the appropriate remedy for the appellant is to seek remedy of Regular Civil Appeal under Section 96 of the CPC and the Civil Revision Petitions having been converted into Regular First Appeals and numbered accordingly, the plea is unsustainable. In this regard, I may reproduce para 3 of the order passed by this Court in CRP 100/2011 dated April 16, 2018 as under:

“3. The case in which the impugned judgment was passed was clearly not one instituted only for the relief under Section 6 of the Specific Relief Act, 1963. Had that been the case, the remedy in the nature of civil revision could have been appropriate. But the fact that the suit prayed for relief of recovery of possession, as also injunction and damages, particularly when the said claim was also based on title, the judgment cannot be challenged by invoking

revisional jurisdiction of this court in terms of Section 6 of the Specific Relief Act, 1963. The appropriate remedy is by a regular civil appeal under Section 96 CPC.”

35. A similar order was passed in CRP 101/2011 dated April 16, 2018 of which para 3 is reproduced as under:

“3. The copy of the plaint of the suit in which the impugned judgment was passed has been filed (Annexure B). A bare perusal shows that it was not based on the provision contained in Section 6 of the Specific Relief Act, 1963. Even if the suit has been so treated, it has to be borne in mind that the recovery of possession was not the only relief claimed. The plaintiff had also sought permanent injunction and mesne profits. In these circumstances, the judgment cannot be challenged by invoking revisional jurisdiction of this court in terms of Section 6 of the Specific Relief Act, 1963. The appropriate remedy is by a regular civil appeal under Section 96 CPC”.

36. So, it is to be seen whether the respondent No.1 / plaintiff could able to prove it was in possession of the suit property. According to Mr.Jain, no evidence apart from testimony of PW-1 has come on record to prove it was in possession. That apart, it was stated that the report of the Bailiff relied upon by the respondent No.1 / plaintiff is a forged and fabricated document. The same could not have been relied upon in the absence of Bailiff having been examined in the Court below. In this regard,

I may state, the report of the Bailiff was exhibited as Ex.PW-1/3A by PW-1 R.K. Gupta vide his evidence by way of affidavit. The said affidavit was tendered by PW-1 on January 09, 2008. On the same date the PW-1 has also exhibited the certified copy of the report of the Bailiff along with map as Ex-PW1/3A (Colly). The PW-1 was cross examined by the counsel for the appellant / defendant no.1 on November 25, 2009. The cross examination of the PW-1 is in the following manner:

“We were not shown titled deeds of property in question by Smt. Murti Devi at the time of its purchase by us. I do not remember whether we verified her title from revenue record. This property is comprising in Khasra no. 75, Village Jamrudpur. I do not know total area of said khasra. I cannot say that it is 14 bigha and 17 biswas. It was not demarcated as it was already a built up property. We had purchased said property on the basis of an agreement to sell. I do not know whether copy of same has been put on file or not. We have not raised any construction after its purchase. It is true that I had signed plaint of this case after going through it. It is wrong to say that Smt. Murti Devi was not competent to sell property in dispute in favour plaintiff or that we had filed a suit of specific performance against Smt. Murti Devi in collusion with her. It is wrong to say that property in dispute was in possession of father of defendant no.1 i.e. Narain Singh. I do not know whether the latter had sold a piece of land measuring 500 sq yds to Smt. Murti Devi on the basis of arbitration award which was made rule of the court by the court of Sh. Mahender Pal, the then ADJ, Delhi. The property in dispute was bearing private no. i.e. 87/4. I do not know the total area of this plot is 500 sq yds. I do not know that adjoining plot of property in dispute i.e. no. 87/3 is also measuring 500 sq yds or is in possession

of defendant no. 1. It is wrong to say that land i.e. plot no. 87/4 and 87/3 is in possession of defendant no.1. We were dispossessed from property in dispute by defendant no.1 and his sons whose names I do not know. We had lodged a complaint to police in this regard against defendant no. 1 and his Sons. It is wrong to say that we had never come in possession of suit property or hence question of dispossession never arose. It is wrong to say that I am deposing falsely in this regard.”

37. From the above, the deposition of PW-1 it is seen that the appellant / defendant No.1 has never contested Bailiff report which was exhibited as Ex.PW-1/3A. No suggestion has been given by the counsel for the appellant / defendant No.1 that the said report exhibited is false and fabricated. That apart, I find that the PW-1 has denied the suggestion that the respondent No.1 / plaintiff had never come in possession of the suit property. Rather, I find the appellant Kishan Lal had during his cross examination held on November 15, 2010 has stated “.....*I have no knowledge that the present plaintiff have taken possession of the suit property through Court Bailiff on 16/01/97.....*” Hence the plea of Mr.Jain as noted above on the possession is clearly an afterthought and is liable to be rejected.

38. Insofar as the plea of Mr.Jain that the Trial Court had erred in not deciding title of Smt. Murti Devi is also unmerited. The said issue as attained finality till the Supreme Court, pursuant to proceedings initiated by the appellant Kishan Lal by filing a suit being 70/02 of which a reference has already been given above.

39. Insofar as the plea of Mr.Jain that the trial Court having

decided the suit under Section 6 of the SR Act no relief of mesne profits could have been granted is concerned, the same is also untenable as the issue stands settled by the order passed by this Court on April 16, 2018 which orders have been reproduced above which clearly states that the suits were also for permanent injunction and mesne profits. The reliance placed by Mr.Jain on the judgment of the Court in *Dharm Dhir (supra)* to contend that the suit having been filed under Section 6 of the SR Act and as such mesne profits could not have been awarded by the Trial Court has no applicability in view of my aforesaid conclusion.

40. Mr.Jain has also challenged the order of the Trial Court recalling the order of impleadment of defendant No.2. Concedingly, the deletion of respondent No.2 can be the grievance of the said defendant and not of the appellant. In fact, it has come on record that the defendant No.2 has also filed a suit against the respondent No.1 / plaintiff. The parties shall workout their rights qua the property in that suit. In view of my conclusion above, I do not see any merit in the appeals, the same are dismissed. No costs.

V. KAMESWAR RAO, J

JULY 07, 2021/aky