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

Reserved on: 28th July, 2022

Pronounced on: 17th August, 2022

+ RSA 13/2019

BUNDU KHAN (DECEASED) THR LRS & ORS

..... Appellants

Through: Mr.Absar Ahmad, Adv.

versus

SNEH MEHTA

..... Respondent

Through: Mr.Ghanshyam Mishra,
Ms.Sunaina Mishra and Ms.Priyanka Verma,
Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

17.08.2022

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1. These proceedings emanate from CS 82664/2016 (*Sneh Mehta v. Bundu Khan & Ors.*) instituted by the respondent against the appellants. The suit was originally instituted against Bundu Khan but, consequent to his death, he was substituted by his legal representatives who, therefore, are the appellants before this Court.

Facts

2. The respondent Sneh Mehta claimed ownership in respect of a room on the ground floor of property bearing no. 319-A, Hari Nagar



Ashram, New Delhi (“the suit property”), having obtained possession of the property in 1993 under an agreement to sell and registered General Power of Attorney and, subsequently, having obtained title under a registered sale deed, executed in favour of the respondent on 24th December 2003. The plaint asserted that, at the time of purchase of the suit property by the respondent, there were four tenants residing therein, namely Shyam Lal, Sat Paul, Daroga Mal and the original defendant Bundu Khan. The respondent also asserted, in the suit, that the previous owner of the suit property Padam Singh wrote to the aforementioned four tenants namely Shyam Lal, Sat Paul, Daroga Mal and Bundu Khan on 2nd March 1993, (consequent on the respondent coming into possession of the suit property under the agreement to sell and registered GPA) directing the said four tenants to attorn to the respondent and pay rent to her.

3. It was further averred, in the plaint, that, as Bundu Khan was a habitual defaulter in payment of rent, the respondent, *vide* notice dated 2nd June 2003, terminated his tenancy with effect from 30th June 2003. Consequent to the said termination, the plaint asserted that Bundu Khan’s status was converted from that of a contractual tenant to a statutory tenant. At the time of death of Bundu Khan on 23rd June 2009, Fiaz Ahmad, the son of Bundu Khan alone was residing in the suit property, with the remaining legal heirs of Bundu Khan residing elsewhere. As such, the plaint averred that the remaining legal heirs of Bundu Khan, who are Appellants 2 to 7 in the present appeal, were merely proforma parties, as they were unaffected by the outcome of the litigation.



4. Predicated on the above facts, the plaintiff proceeded to rely on Explanation II to Section 2(1)(iii)¹ of the Delhi Rent Control Act, 1958 (the DRC Act) to contend that Appellant 1 was entitled to continue in the suit property only for a year following the death of Bundu Khan, as he was not financially dependent on Bundu Khan. On 21st December 2011, therefore, the respondent issued a legal notice to Appellant 1, calling on him to vacate the suit property. Appellant 1 having failed to do so, the plaintiff alleged that the Appellant 1 was continuing in the suit property as an unauthorised occupant.

5. On the basis of the aforesaid facts and allegations, the respondent prayed, in the suit, for (i) a decree of recovery of possession in favour of the respondent and against the appellants, (ii) a decree of recovery of ₹ 18,000/- representing the rent unpaid for the

¹ **2. Definitions.**—In this Act, unless the context otherwise requires, -

- (l) “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be, payable, and includes -

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's—

- (a) spouse,
- (b) son or daughter, or, where there are both son and daughter, both of them,
- (c) parents,
- (d) daughter-in-law, being the widow of his pre-deceased son,

as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include, -

- (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);
- (B) any person to whom a licence, as defined by Section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation II.—If the person, who acquires by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.



period 10th December 2008 to 10th December 2011 as well as for *mesne* profits for further continued unauthorised occupation and (iii) a decree of permanent injunction, restraining the appellants from creating any third party rights in respect of the suit property.

6. A combined written statement was being filed in response to the plaint by Appellants 1, 2 and 6. As the remaining appellants failed to appear before the Court or to file written statement, their defence was struck off, and they were proceeded *ex parte* by the learned Civil Judge, *vide* order dated 9th January, 2014.

7. Appellants 1, 2 and 6 contended, in their written statement, that Bundu Khan was in lawful possession of the suit property for over 55 years and had purchased the suit property about 26 years prior to the filing of the written statement, from Padam Singh. At the same time, it was acknowledged that Padam Singh had not executed any sale documents in favour of Bundu Khan, and that Bundu Khan too, did not insist on execution of any sale documents as Padam Singh assured him that no third party would claim any right in the suit property. Two to three days after the aforesaid transaction had allegedly taken place between Padam Singh and Bundu Khan, the written statement averred that Bundu Khan came to know that Padam Singh was not the owner of the suit property and, therefore, returned the sale consideration to Bundu Khan. As Bundu Khan continued to remain in possession of the suit property, without any intervention or hindrance from any person, Bundu Khan claimed perfection of title by adverse possession. It was asserted that the possession and occupation of



Bundu Khan in respect of the suit property was hostile to everyone including the plaintiff and the original owner of the suit property, if any. Bundu Khan being a lawful owner of the suit property by adverse possession, the written statement contended that, consequent on his demise, the appellants became lawful owners of the suit property. As such, the appellants categorically denied any tenancy of Bundu Khan, in respect of the suit property, vis-a-vis the respondent. It was specifically averred, in the written statement, that neither Bundu Khan nor any of the other appellants, was ever a tenant of the respondent. None of the appellants, it was contended, had ever paid rent to the respondent.

8. The appellants also sought to characterise the documents on the basis of which the respondent claimed to have acquired title over the suit property including the agreement to sell and registered GPA of 1993 and the registered sale deed of 2003 as forged and fabricated.

9. As a consequence, all other allegations in the plaint, including the allegation that the appellants were, as persons who had continued in possession of the suit property after the death of Bundu Khan, liable to vacate the suit property on the expiry of one year from the death of Bundu Khan, were denied. The written statement, therefore, prayed that the suit be dismissed with costs.

10. The appellants also advanced a preliminary objection to the jurisdiction of the learned Civil Judge to entertain the suit, predicated



on Section 50(1)² of the DRC Act. It was submitted that, as the rent, in respect of the suit property, was less than ₹ 3,500/- per month, by application of Section 3(C) thereof, the DRC Act would apply to the suit property. Per sequitur, it was sought to be contended that Section 50 barred the civil Court from entertaining the suit.

11. It is relevant to note, at this juncture that, *vide* order dated 31st January, 2019, the following substantial questions of law have been framed by this Court, as arising for consideration in the present case:

"(I) Whether the jurisdiction of the Civil Judge would be barred in terms of the provisions of the Delhi Rent Control Act, 1958 in terms of Section 50 thereof.

(II) Whether Explanation-II of Section 2 of the Delhi Rent Control Act, 1958 was applicable to the facts and circumstances of the case before the Trial Court and First Appellate Court."

Mr. Absar Ahmad, learned Counsel for the appellants also addressed arguments only on the aforesaid two issues. As such, other aspects on which the parties may have joined issue during the course of proceedings before the learned Court below, would not be of significance insofar as the present judgment is concerned.

12. The appellants filed a replication to the written statement, re-asserting the contents of the plaint.

² 50. **Jurisdiction of civil courts barred in respect of certain matters. –**

(1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.



Judgement and Decree of learned Civil Judge

13. Consequent to conclusion of recording of evidence, the suit was decreed by the learned Civil Judge *vide* judgment and decree dated 15th October, 2016.

14. During the course of proceedings before him, the learned Civil Judge framed the following issues as arising for consideration, *vide* order dated 12th February, 2014:

- “1. Whether the plaintiff is entitled to a decree for recovery of possession regarding property bearing no.319A, Hari Nagar, Ashram, New Delhi? OPP
2. Whether the plaintiff is entitled to a decree for recovery of Rs.18,000/- as unauthorized usage charges for the period 10.12.2008 to 10.12.2011? OPP
3. Whether the plaintiff is entitled to a decree of permanent injunction for restraining the defendants from handing over physical possession of the suit property to a third party? OPP
4. Whether the plaintiff is entitled to a decree of permanent injunction for restraining the defendants from creating any third party interest in the suit property? OPP
5. Whether the present suit has been filed without any cause of action? OPD
6. Whether this court has no jurisdiction to entertain the present suit? OPD
7. Whether the present suit is barred by Limitation Act? OPD



8. Whether defendant no. 1, 2 and 6 have become the owners of the suit property by way of adverse possession? OPD
9. Whether the present suit is barred under Order II Rule 2 CPC? OPD
10. Whether the present suit is bad for mis-joinder and non joinder of parties? OPD
11. Whether plaintiff has not paid sufficient court fee in the present matter? OPD
12. Relief, if any”

15. The learned Civil Judge addressed, first, the objection of the appellants regarding lack of jurisdiction with the civil Court, to entertain or decide the suit of the respondent. In this regard, the learned Civil Judge observed at the outset that the suit of the respondent was not filed on the basis of any rights flowing out of tenancy, and that the respondent had never sought to assert that the appellants were her tenants. The claim of the respondent was that Bundu Khan, the father of the appellants, was the respondent's tenant. As the tenancy of Bundu Khan stood terminated during his life time, the suit sought to contend that the appellants' right to continue in the suit premises was limited to a period of one year from the death of Bundu Khan. Further continuance by the appellants in the suit premises was, therefore, illegal and the appellants were, therefore, unauthorised occupants. Relying on the decision of this Court in *Krishna Prakash v. Dilip Harel Mitra Chenoy*³, to the effect that a suit for recovery of possession from the legal heirs of a deceased

³ AIR 2002 Delhi 81



statutory tenant who continued in the suit property for a period in excess of one year from the death of the tenant was maintainable, as the legal heirs were continuing as unauthorised occupants in the suit property, the learned Civil Judge rejected the preliminary objection of the appellants to the maintainability of the suit.

16. On merits, the learned Civil Judge held that the claim of the appellants that Bundu Khan had purchased the suit property from Padam Singh 25 years back was unsupported by any evidence whatsoever. Equally, it was observed that no documents, indicating that the appellants were tenants of the respondent, were forthcoming.

17. As such, observed the learned Civil Judge, the only plea of the appellants, which required consideration, was the plea of perfection of title by adverse possession.

18. The plea of adverse possession, it was observed, was directly opposed to the plea of ownership. The learned Civil Judge held that the appellants could not simultaneously seek to plead that Bundu Khan had purchased the suit property from Padam Singh and had thereby become the owner of the suit property and, in the same breath, that Bundu Khan had perfected his title to the suit property by adverse possession. That apart, it was observed that in Suit 301/2007, filed by Bundu Khan (Ex.DW-1/D-1), Bundu Khan had admitted having been inducted as a tenant in the suit property of Padam Singh. A tenant, it was observed, is in possession of the property in a permissive capacity. Permissive possession, it was observed, irrespective of the



period for which it continued, could never transmute into adverse possession.

19. As such, the appellants having failed to establish perfection of title over the suit property by adverse possession or of being tenants under the respondent, the learned Civil Judge held that they were in occupation of the suit property as unauthorised occupants. As against this, the respondent had proved registered sale deed dated 24th December, 2003 (Ex.PW-1/12), which established the ownership of the respondent over the suit property.

20. The learned Civil Judge held, therefore, that the respondent was entitled to the relief of possession.

21. Resultantly, issues 1, 5, 6, 7 and 8 *supra*, as framed by the learned Civil Judge, were answered in favour of the respondent and against the appellants.

22. Issues 2, 9, 10 and 11 were not canvassed before me by learned Counsel for the appellants. No substantial question of law, framed from the said issues has, either, been, framed in the present case. As such, reference to the said issues is being eschewed for the sake of brevity.

23. Qua Issues 3 and 4, the learned Civil Judge held, in view of his findings in respect of Issues 1, 5, 6, 7 and 8, that the respondent was also entitled to injunction against the appellants from creating any



third party interest in respect of the suit property. As such, Issues 3 and 4 were also answered in favour of the respondent and against the appellants.

24. As a result, CS 82664/2016 was decreed by the learned Civil Judge in favour of the respondent and against the appellants. The appellants were directed to hand over vacant and physical possession of the suit property, i.e. the room measuring 12x12 feet at 319-A, Hari Nagar Ashram, New Delhi, shown in red in the site plan annexed with the plaint, to the respondent, within a month from the date of decree. The respondent was also held to be entitled to damages/*mesne* profits of ₹ 18,000/- alongwith interest thereon @ 12% per annum from the date of filing of the suit till realisation of the amounts, along with damages/*mesne* profits @ ₹500/- per month from January, 2012 till the date of vacation of the suit premises by the appellants. Costs of the suit were also awarded to the respondent and against the appellants.

Impugned judgement of learned ADJ

25. Aggrieved by the aforesaid judgment and decree passed by the learned Civil Judge, the appellants appealed to the learned ADJ *vide* RCA 20401/16 (*Bundu Khan through his LRs v. Sneh Mehta*).

26. The judgment dated 16th November, 2018, of the learned ADJ, assailed in the present second appeal modifies the judgment and decree dated 15th October, 2016 of the learned Civil Judge to the



extent that the respondent has been held to be entitled to recovery, from the appellants, of user and occupation charges @ ₹ 500/- per month for the period 14th February, 2009 till 10th December, 2012. In all other respects, the impugned judgment of the learned ADJ upholds the decision of the learned Civil Judge.

27. In arriving at her decision, the learned ADJ has reasoned thus:

(i) The sale deed 24th December, 2003 (Ex.PW-1/12), tendered in evidence by the respondent as PW-1 along with her affidavit in evidence revealed that the suit property had been initially acquired by one Nanwa Singh from Shadi Ram *vide* registered sale deed dated 5th June, 1963 and that Padam Singh, the son of Nanwa Singh, became the absolute owner of the suit property by virtue of Will dated 28th December, 1972 of Nanwa Singh. In his capacity as absolute owner of the suit property, Padam Singh executed an agreement to sell dated 1st March, 1993 in respect of the suit property, with the respondent, against consideration. Additionally, Padam Singh executed a duly registered GPA in favour of Col. V.S. Mehta (Retd.), the husband of the respondent. It was further noted by the learned ADJ that the suit property was also mutated in favour of the respondent *vide* MCD letter dated 17th April, 1997 and that, subsequently, *vide* registered sale deed dated 24th December, 2003 (Ex.PW-1/12), the suit property was sold to the respondent. In this context, the learned ADJ notes that the official from the office of the Sub-Registrar, Mehrauli, has



(PW-3) produced the record of registration of the sale deed dated 24th December, 2003, which was exhibited as Ex. PW-1/12. Similarly, records in respect of property tax receipts had also been produced by the official from the property tax department, who tendered evidence as PW-4. In these circumstances, the learned ADJ holds that the respondent had successfully discharged the initial onus, on her, to establish title to the suit property, thereby shifting the onus to the appellants.

(ii) This onus, notes the learned ADJ, the appellants failed, miserably, to discharge. The appellants merely denounced the sale deed (Ex.PW-1/12), the agreement to sell and the GPA as forged and fabricated documents, without supporting the allegation by evidence either oral or documentary. The manner in which the forgery or fabrication was alleged was also, it was noted, not forthcoming from the evidence of the appellants. Nor did the appellants seek to contend that Padam Singh did not have a valid title which could pass on to the respondent. In fact, the appellants could not seriously question the title of Padam Singh, as it was their case that Padam Singh had inducted Bundu Khan as a tenant in the suit property. The fact of induction of Bundu Khan as a tenant in the suit property by Padam Singh, it was noted, a fact with respect to which the parties to the suit were *ad idem*.

(iii) On the aspect of acquisition of title by Bundu Khan of the suit property, by way of purchase of the suit property from



Padam Singh, the learned ADJ notes that the appellants' contention was that, having initially purchased the suit property from Padam Singh against consideration, the transaction was reversed two to three days thereafter and the sale consideration was returned by Padam Singh to Bundu Khan. The case the appellants sought to set up was that, thereafter, Bundu Khan was continuing in the suit property in a manner hostile to the respondent as well as the original owner of the suit property, if any, and had, therefore, perfected title to the suit property by adverse possession.

(iv) The learned ADJ notes that the appellants had candidly admitted that no title documents were ever executed in favour of Bundu Khan by Padam Singh and that the sale consideration, allegedly originally paid by Bundu Khan to Padam Singh was thereafter returned to Bundu Khan. The claim of ownership of Bundu Kahn over the suit property as asserted by the appellants, was, therefore, not based on any ownership documents, but was predicated solely on the principle of adverse possession.

(v) In this regard, the case that the appellants sought to make out was that Bundu Khan was in possession of the suit property for over 55 years and had sought to purchase the suit property from Padam Singh 26 years back. It was admitted by Bundu Khan that he was in possession of the suit property as a tenant of Padam Singh. A tenant, as the learned ADJ correctly holds,



acquires permissive possession of the tenanted property. A claim to being in possession of the suit property as a tenant was inherently opposed to any plea of adverse possession. On the aspect of adverse possession, the learned ADJ holds thus, in para 11 of the impugned order:

“11.The process of acquisition of title by adverse possession spring into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, enters into possession and continues in possession setting up title in himself and adversely to the title of the owner, prescribing title unto himself and such prescription continues for a period of 12 years, he acquires, in such facts and circumstances, title not on his own account but on account of the defaulter inaction on the part of the real owner, which sketched over a period of 12 years resulting into extinguishments of the latter's title.

12. The case at hand is that the predecessor of the defendants had entered into permissive possession and as the tenant was in possession as matter of right. The possession is adverse where the possession enters into possession having no right to occupy the immovable property and continues to assert remain in possession in assertion of a title adverse to, in denial of the title of the owner. There arises no question of acquisition of title by adverse possession where the possession is in exercise of a vested right as tenant. No matter how long, continues and peaceful unhindered the possession, it never catapults into adverse possession. Particularly in the case at hand that where the own case of defendants is that the predecessor of the defendants entered into possession as tenant. Continued in possession as a tenant duly acknowledging the right/title of Shri Padam Singh, from whom plaintiff has purchased the suit property by way of registered sale deed. The plaintiff having acquired title from Shri Padam Singh who had inducted Shri. Bundu Khan as the tenant, for all intents and purposes has stepped into



the shoes of Shri Padam Singh and none other whose title is acknowledged and admitted by the defendants the question of the long peaceful possession being hostile therefore does not arise in the facts and circumstances of the present case.”

In view of the aforesaid, the learned ADJ has affirmed the decision of the learned Civil Judge, except to the extent of reduction of the *mesne* profits to which the respondent was entitled, as already noted hereinabove.

28. Aggrieved thereby, the appellants have invoked Section 100 of the CPC by way of the present appeal. At the time of issuance of notice, this Court had framed the substantial questions of law extracted in para 11 *supra* as arising for consideration in the present appeal.

Rival Submissions

29. Arguments were advanced, before me, by both sides, limited to the aforesaid questions of law.

30. Mr. Absar Ahmed, learned Counsel for the appellants, emphasised the fact that the rent of the suit property was admittedly less than ₹ 3,500/- per month, for which purpose he took me through various documents. It is not necessary to advert to the said documents, as the respondent does not dispute the fact that the rent of the suit property was in fact less than ₹ 3,500/- per month.



31. The sole contention advanced by Mr. Absar Ahmed is that the rent of the suit property being less than ₹ 3,500/- per month, by application of Section 3(c) of the DRC Act read with Section 50 thereof, the civil suit instituted by the respondent against the appellants was not maintainable.

32. Responding to the aforesaid submission, Mr. Ghanshyam Mishra, learned Counsel for the respondent submits that the plea of the appellants was misguided, as the appellants were, by virtue of Section 2(1)(iii) of the DRC Act, read with Explanation II thereto, continuing in the suit property as unauthorised occupants. In that view of the matter, Mr. Mishra submits that the appellants could not seek to contend that the suit instituted by the respondent was not maintainable.

33. In rejoinder, Mr. Ahmed questions the validity of the alleged termination of tenancy, by the respondent, of Bundu Khan, by the legal notice dated 2nd June, 2003. He submits that, as the respondent acquired title in respect of the suit property, even as per her own showing, *vide* registered sale deed dated 24th December, 2003, she could not have terminated the tenancy of Bundu Khan prior thereto, by issuing legal notice dated 2nd June, 2003. As such, he submits that there was no legal termination of the tenancy of Bundu Khan by the respondent.

34. Additionally, submits Mr. Ahmed, there was no evidence to indicate that the appellants were not dependent on Bundu Khan, which



is one of the statutory pre-requisites for application of Explanation II to Section 2(1)(iii).

35. In view thereof, Mr. Ahmed submits that the reliance, by the respondent, on Explanation II to Section 2(1)(iii) of the DRC Act is misguided and therefore, the objection of the appellants, to the maintainability of the suit instituted by the respondent, in the face of Section 50 of the DRC Act was valid and justified and required to be upheld.

36. Inserting a submission by way of a response to the rejoinder of Mr. Ahmed, Mr. Mishra draws attention to Issue 6, as framed by the learned Civil Judge, which placed the onus of proof on the defendant, i.e. on the appellants, regarding the aspect of jurisdiction of the learned civil Court to entertain the suit. As such, submits Mr. Mishra, the onus to prove the existence of the ingredients of Explanation II to Section 2(1)(iii) of the DRC Act was on the appellants, and not on the respondent.

Analysis and Findings

37. Having perused the material on record and heard learned Counsel at length, I am of the opinion that both the substantial questions of law, formulated by this Court in the present case, are required to be answered in favour of the appellants and against the respondent. The reasons may be set out thus:



(i) Section 50 of the DRC Act prohibits civil Courts from entertaining suits or proceedings, insofar as they relate to (a) fixation of standard rent in relation to any premises to which the DRC Act applies or (b) eviction of any tenant from premises to which the DRC Act applies or (c) any other matter which the Rent Controller is empowered to decide by or under the DRC Act.

(ii) Circumstance (a) obviously does not apply in the present case, as the suit instituted by the respondent did not seek fixation of standard rent.

(iii) Circumstance (b) envisages a suit or proceeding for eviction of a tenant from premises to which the DRC Act applies. Such a suit or proceeding, according to Section 50(1), would not be maintainable before a civil Court.

(iv) That the provisions of the DRC Act apply to the suit property in the present case is not in dispute. The respondent does not dispute the contention of the appellants that the rent applicable to the suit property was less than ₹ 3,500/- per month.

(v) No suit or proceeding would, therefore, lie before a civil Court for eviction of a tenant from the suit property.



(vi) The prayers in the suit were for recovery of possession, by the respondent, of the suit property, by directing the appellants to hand over physical, vacant and peaceful possession thereof to the respondent. The respondent, therefore, clearly sought eviction, from the suit property, of the appellants.

(vii) If, therefore, the appellants were “tenants” in respect of the suit property, the suit of the respondent would not lie, in view of Section 50.

(viii) The issue that arises is, therefore, whether the appellants could be treated as “tenants” in respect of the suit property.

(ix) The definition of “tenant” in Section 2(l) of the DRC Act includes, in clause (ii) any person continuing in possession after the termination of his tenancy and, in clause (iii) in the event of the death of such person (who continues in possession after the termination of his tenancy), his spouse, son or daughter, parents or widow of a pre-deceased son who had been living in the premises with such person.

(x) There is no dispute about the fact that Appellant 1, was, in fact, living in the suit premises with Bundu Khan, prior to his demise, and was in occupation of the suit property thereafter.

(xi) Clause (iii) of Section 2(l) is, however, subject to Explanation I and Explanation II thereto.



(xii) Explanation II expressly stipulates that a person who continues in possession of tenanted premises after the termination of tenancy, by virtue of succession to the erstwhile tenant, would acquire such right to continue in the premises only for a period of one year from the date of death of the erstwhile tenant, *provided such succeeding occupant was not financially dependent on the deceased tenant on the date of his death*. In other words, if (a) the tenancy is terminated, (b) thereafter, the tenant expires, (c) the person in occupation of the premises continues in occupation as a successor of the tenant who expired and (d) *the person in occupation was, on the date of expiry of the tenant, not financially dependent on him*, then the said occupant, who continues in occupation after the expiry of the tenant, can do so only for a period of one year from the date of expiry of such tenant.

(xiii) Section 2(1)(iii) has expressly been made subject to Explanation II. Meaning, thereby, that the right of the person to continue in occupation after the death of the tenant whose tenancy had been terminated during his life time, can continue in such occupation only for a period of one year from the date of death of such erstwhile tenant. Beyond that date, the person continuing in occupation of the said premises would be an unauthorised occupant and would not be entitled to be treated as a “tenant” within the meaning of Section 2(1).

(xiv) Explanation II to Section 2(1)(iii) applied, however, where the person so succeeding in occupation of the earlier



tenanted premises was, on the date of death of the earlier tenant, not financially dependent on him. In other words, if the person continuing in such occupation was financially dependent on the deceased tenant on the date of his death, the bar of Explanation II to Section 2(l) would not apply to him and he would be entitled to continue in possession of the premises as a statutory tenant. His eviction, in such situation, could only be effected by following the protocol under the DRC Act.

(xv) If, on the other hand, the person continuing in occupation was not financially dependent on the deceased tenant on the date of his death, he cannot continue in occupation of such premises for more than a year after the death of the tenant. Any such continuation would be at pain of his being treated as an unauthorised occupant. Proceedings to remove him from the premises and recover possession of the premises would, then, be maintainable by way of a suit, as they would not be proceedings for eviction of a tenant.

- (xvi) In the present case, there is no dispute about the fact that
- (a) Bundu Khan was the tenant of Padam Singh,
 - (b) Bundu Khan's tenancy was validly terminated by notice dated 2nd June 2003,
 - (c) Bundu Khan expired after the termination of his tenancy and
 - (d) Appellant 1 was continuing in occupation of the suit property as the successor of Bundu Khan.



(xvii) The question of whether Appellant 1 was entitled to continue in occupation of the suit property for more than a year beyond the death of Bundu Khan would, therefore, depend on whether Appellant 1 was financially dependent or not financially dependent on Bundu Khan on the date of his death.

(xviii) If, on the date of death of Bundu Khan, Appellant 1 was financially dependent on Bundu Khan, he would be entitled to continue in the suit property as a statutory tenant who had succeeded to statutory tenancy on the demise of Bundu Khan. His eviction from such premises could only be by proceeding under the DRC Act, for one or more of the reasons envisaged in Section 14 thereof.

(xix) If, however, the appellant was not financially dependent on Bundu Khan on the date of his death, then, he would not be entitled to continue in occupation of the suit property for more than a year after the death of Bundu Khan. As on the date of institution of the suit, the appellant would then be regarded as an unauthorised occupant, and Section 50 would not operate, as the proceeding would not be one for eviction of a tenant. The suit would then be maintainable.

(xx) At this juncture, a somewhat nuanced issue arises, with respect to the person on whom the onus of proof, in respect of the aspect of jurisdiction of the learned Civil Judge to entertain the suit instituted by the respondent, would vest. Issue 6, as



framed by the learned Civil Judge, has placed the onus, in that regard, on the defendants, i.e. on the appellants.

(xxi) On this aspect, however, I am unable to agree. In my considered opinion, the onus of proof would be on the respondent, and not on the appellants. I say so for more than one reason.

(xxii) Inasmuch as the onus to establish maintainability is always on the person instituting a suit, the initial onus of proof, to prove that the suit was maintainable, would be on the respondent.

(xxiii) Admittedly, the property was amenable to the jurisdiction of the DRC Act, the rate of rent being less than Rs 3500/- p.m.

(xxiv) The prayer, in the suit, was for recovery of possession from the appellants. If the appellants were tenants, the suit would, effectively, be for eviction of tenants from the suit property and would not, therefore, be maintainable in view of Section 50 of the DRC Act.

(xxv) In view of the fact that Section 50 engrafts a statutory proscription to entertainment of the *lis* by the civil Court in the circumstances envisaged therein, the onus, to prove that the circumstances *did not exist*, and that the suit *was, therefore, maintainable*, would be on the plaintiff as the *dominus litis* who had filed the suit.



(xxvi) In this context, the fact that there is a statutory embargo on the jurisdiction of the civil Court to entertain a suit, under Section 50 of the DRC Act, is significant and determinative. As the respondent chose to prefer a suit, and such a suit would not lie if the embargo under Section 50 were to apply, the initial onus would be on the defendant to positively establish that the suit was maintainable despite the embargo of Section 50 of the DRC Act. The fact that the embargo of Section 50 was pointed out by the appellants in their written statement in response to the suit would not shift the initial burden of proof, to show that the suit was maintainable despite Section 50, to the appellants.

(xxvii) There is yet another reason why the onus of proof, in that regard, would be on the respondent. The appellants pleaded that the suit was *not maintainable*, as they were tenants in respect of the suit property, having succeeded to tenancy from Bundu Khan. Section 2(1)(iii) in fact includes, in the definition of “tenant”, the sons of a tenant, whose tenancy was terminated during his lifetime, who continue in occupation of the property after the death of the tenant. By this token, the appellants would also be “tenants”, as they were the sons of Bundu Khan, who was continuing in occupation after the termination of the tenancy during his lifetime.

(xxviii) Section 2(1)(iii) is, however, *subject to Explanation II*. The expression “subject to” has been defined, in *S.P.*



Industries Co. Ltd v. Electricity Inspector⁴ as “(conveying) the idea of a provision yielding place to another provision or provisions subject to which it is made”. In ***Ram Gopal Sharma v. Madhya Pradesh State Road Transport Corporation***⁵, the High Court of Madhya Pradesh, speaking through none less than G.P. Singh, C.J., held thus:

The phrase "subject to" is a simple provision which merely subjects the provisions of the subject section to the provisions of the master-section, "where there is no clash, the phrase does nothing: if there is collision, the phrase shows what is to prevail. The phrase provides no warranty of universal collision." ***C. and J. Clark Ltd. v. Inland Revenue Comrs***⁶. In our opinion, as regulations made under Section 14(3), read with Section 45, are subject to the instructions and directions issued under Section 34 of the Act on the subject of conditions of service, the directions and instructions must prevail over the regulations in case of conflict. There is, however, no presumption of conflict and, therefore, directions and regulations are to be read together and effort is to be made, as far as possible, to give effect to both.”

(xxix) Where Provision A is “subject to” Provision B, there may be two distinct situations which are opposed, as well as complementary, to each other.

(xxx) One would be where the subsection of Provision A to Provision B indicates that the benefit of Provision A would be *conditional upon* Provision B applying. Provision B, in such a situation, engrafts a *condition* which has to be satisfied for the

⁴ AIR 2007 SC 1984

⁵ (1976) MPLJ 858

⁶ (1973) 2 All ER 513



benefit of Provision A to be available. One such situation arose in ***K.R.C.S. Balakrishna Chetty & Sons v. State of Madras***⁷ in which it is observed, in para 6 of the report, thus:

“Next there is Rule 5 of the General Sales Tax Rules which provided that if any person desired to avail himself of the exemption provided in Section 5, he had to submit an application in Form I for a licence *and the Form of the licence shows that the licence was subject to the provisions of the Act and the rules made thereunder which required the licensee to submit returns as required and also to keep true accounts under Section 13. This shows that the giving of the licence was subject to certain conditions being observed by the licensee and the licence itself was issued subject to the Act and the rules.* But it was contended that the words “subject to” do not mean “conditional upon” but “liable to the rules and the provisions” of the Act. So construed Section 5 will become not only inelegant but wholly meaningless. On a proper interpretation of the section it only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself; that is, a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. The use of the words “subject to” has reference to effectuating the intention of the law and the correct meaning, in our opinion, is “conditional upon”.”

(Emphasis supplied)

In ***K.R.C.S. Balakrishna Chetty***⁷, therefore, the words “subject to” denoted statutory provisions which contained the conditions *subject to the fulfilment of which* the benefit of the principal would be available.

⁷ AIR 1961 SC 1152



(xxxi) As against this, another connotation of the expression “subject to”, when used in a statute, is exclusionary in nature, in that it excludes, from the ambit of the principal provision, matters which fall within the ambit of the provision to which it is made subject. An example is to be found in Item 11 of List II of the VIIth Schedule to the Constitution of India, which empowers the State legislature “to legislate in respect of “education including Universities subject to the provisions of Items 63, 64, 65 and 66 of List I and 25 of List III” ”. Interpreting this provision, the Supreme Court held, in **Gujarat University v. Shri Krishna Ranganath Mudholkar**⁸, thus:

“Use of the expression “subject to” in Item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures.”

Similarly, in the context of Article 372 of the Constitution, which continues pre-constitution laws of taxation, the Supreme Court held, in **South India (P) Ltd. v. Secretary, Board of Revenue**⁹, that “the expression “subject to” conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject”.

(xxxii) Whether it is treated as conditional or exceptional, the *subjection*, of Section 2(l)(iii) of the DRC Act to Explanation II indicates that, if Explanation II applies, Section

⁸ AIR 1963 SC 703

⁹ AIR 1964 SC 207



2(1)(iii) would not. In other words, the entitlement of the appellants (in the case at hand) to be regarded as “tenants” within the meaning of Section 2(1)(iii) would be conditional upon Explanation II *not applying*.

(xxxiii) In the present case, the plea, of the appellants, that Bundu Khan was the owner of the suit property, having purchased it from Padam Singh, and that, therefore, the appellants succeeded to the title of Bundu Khan as his heirs, has been categorically rejected by the learned Civil Judge as well as the learned ADJ as unsupported by any material whatsoever.

(xxxiv) At the same time, the learned Courts below have also held, concurrently, that

- (a) Bundu Khan was Padam Singh’s tenant in the suit property,
- (b) the tenancy was validly terminated on 2nd June 2003 during the lifetime of Padam Singh,
- (c) Appellant 1 was the son of Bundu Khan, and
- (d) Appellant 1 was continuing to occupy the suit property after Bundu Khan died, in his capacity as Bundu Khan’s successor.

These findings would entitle the appellants to be treated as “tenants” within the meaning of Section 2(1)(iii).

(xxxv) A perusal of the plaint filed by the respondent discloses that the respondent has, in fact, acknowledged this position. In order to escape Section 2(1)(iii) which, if



applicable, would render the suit incompetent by virtue of Section 50, the respondent relied exclusively on Explanation II to Section 2(1)(iii) of the DRC Act. According to the respondent, by application of Explanation II, Appellant 1 could not have continued in the suit property for more than a year beyond the death of Bundu Khan. As on the date of institution of the suit, therefore, according to the respondent (as the plaintiff in the suit), Appellant 1 was an unauthorised occupant. In his character as an unauthorised occupant, the respondent would seek to aver that Appellant 1 could be removed from the premises by resort to a civil suit, without having to follow the protocol under the DRC Act.

(xxxvi) The respondent, therefore, effectively seeks to contend that Section 2(1)(iii) would *not* apply as the case would be covered by Explanation II, to which Section 2(1)(iii) is *subject*. Explanation II, therefore, being in the nature of a provision which carves out *an exception* to Section 2(1)(iii), the onus to prove that Explanation II would apply would, therefore, be on the respondent.¹⁰

(xxxvii) It was, therefore, for the respondent to establish that Appellant 1 was not financially dependent on Bundu Khan. If the respondent was unable to discharge this onus, Explanation II to Section 2(1)(iii) would not apply;

¹⁰ See **M.A. Rumugam v. Kittu**, (2009) 1 SCC 101, **Subramanian Swamy v. U.O.I.**, (2016) 7 SCC 221, which hold that the onus is on him, who pleads an exception, to prove that the ingredients of the exception are met.



consequently, Appellant 1 would be entitled to continue in occupation of the suit property as a statutory tenant and his removal from the suit property could only be by way of proceedings under Section 14 of the DRC Act.

(xxxviii) A perusal of the material on record indicates that there is no material whatsoever, placed on record by the respondent, to establish that Appellant 1 was not financially dependent on Bundu Khan. The assertion to the said effect, as urged in para 7 of the plaint, was categorically denied in the corresponding para of the written statement filed by the appellants.

(xxxix) Thus, the respondent failed to discharge the onus, casted on her, to establish that Appellant 1 was not financially dependent on Bundu Khan and was not, therefore, entitled to continue in the suit property for more than a year after the death of Bundu Khan.

(xl) In this context, it is also interesting to note that, in the present appeal, the appellants have, in para VI of the brief facts of the case, specifically, asserted that Appellants 1, 2 and 6 were financially dependent on Bundu Khan in his life time. *Qua* this assertion of the appellants, the respondent has, in her reply to the appeal, stated the assertion to be a matter of record. This would amount, *prima facie*, to an admission of the assertion of the appellants that they were financially dependent on Bundu Khan during his life time. Thus, not only had if the



respondent failed to discharge the onus, on her, to establish that the appellants were financially independent on Bundu Khan at the time of his death, so as to be able to legitimately invoke Explanation II to Sections 2 and 3; the respondent also impliedly admitted, in her reply to the present appeal filed by the appellants that, in fact, the appellants were financially dependent on Bundu Khan during his life time-and, therefore, at the time of his death as well.

(xli) In that view of the matter, Explanation II to Sections 2 and 3 of the DRC Act would not apply, so as to permit the appellants to continue in the suit property only for a year beyond the death of Bundu Khan. They could not, therefore, be treated as unauthorized occupants on the date of institution of the suit by the respondent. They were entitled to continue as statutory tenants, in view of the definition of “tenant” in Section 2(1)(iii) of the DRC Act, as Explanation II was not applicable.

(xlii) The inexorable sequitur is that removal of the appellants from the suit property, and recovery of possession of the suit property by the respondent would not have been effected as the jurisdiction of the civil Court to entertain a civil suit for eviction of a tenant from premises to which the DRC Act applies, is expressly proscribed by Section 50 thereof.

38. The orders of the learned Civil Judge and of the learned ADJ are not, therefore, sustainable in law. The learned Civil Judge has merely accepted the averment of the respondent, in the plaint, that the



appellants were not financially dependent on Bundu Khan on the date of his death. The averment to the said effect, as contained in para 7 of the plaint, was specifically denied by the appellants, in the written statement filed by them in response to the plaint. As such, the onus was on the respondent to establish that the appellants were not financially dependent on Bundu Khan on the date of his death, so that the suit instituted by the respondent would be maintainable. Neither was any evidence to the said effect led by the respondent, nor do the orders of the learned SCJ or of the learned ADJ advert to any such evidence.

39. As such, I am of the opinion that

- (i) the jurisdiction of the learned Civil Judge would, in the present case, be barred in view of Section 50 of the DRC Act and
- (ii) Explanation II to Section 2(1)(iii) of the DRC Act would not be applicable in the facts of the present case.

40. Both the substantial questions of law, framed by this Court in the present case, are, therefore, answered in favour of the appellants and against the respondent.

41. Resultantly, the impugned order dated 15th October 2016 of the learned Civil Judge and the impugned judgement dated 16th November 2018 of the learned ADJ are quashed and set aside. CS 82664/2016, filed by the respondent before the learned Civil Judge, is dismissed as not maintainable in view of Section 50 of the DRC Act.



42. The appeal filed by the appellants is, accordingly, allowed with no orders as to costs.

43. Pending applications, if any, stand disposed of.

C.HARI SHANKAR, J

AUGUST 17th, 2022

kr/r.bararia

HIGH COURT OF DELHI



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