



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 12, 2022

+ RFA 204/2021, CM No. 12490/2021

RAHUL WADHWANI & ANR. Appellants
Through: Mr. Shalabh Gupta, Adv.

versus

RAJESH ANAND Respondent
Through: Mr. S K Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This appeal arises out of the judgment dated December 11, 2020 passed by the Ld. ADJ-07 (South East), Saket Courts, New Delhi in the suit numbered CS No. 8259/2016 ('impugned judgment', for short). The appellants have made the following prayers:

"It is, therefore, most respectfully prayed that in the interest of justice this Hon'ble Court may graciously be pleased to:

- (a) set aside the impugned judgment & decree dated 11.12.2020 passed by Ms. Vandana Jain, Ld. ADJ- 07, (South East), Saket Courts, New Delhi in CS No. 8259/2016 titled as "Rajesh Anand Vs. Rahul Wadhwani & Anr."; and*
- (b) pass any other order(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."*

2. The respondent/ plaintiff had filed a suit before the Ld. Trial



Court seeking possession and recovery of a sum of ₹24,07,500/- towards arrears of rent, *mesne* profits and permanent injunction along with interest. Before going into the merits of the controversy, I deem it appropriate to briefly reproduce the factual background pertaining to the instant matter as under:

- i) The respondent/plaintiff is the owner / landlord of Shop No. 6 (Private No. 6A), adjoining to Shop No. 5, Central Market, Lajpat Nagar, New Delhi consisting of a basement and ground floor ('suit property' for short). The respondent had bought the property from his predecessor-in-interest, i.e., Pushpa Kapoor, who became the owner of the suit property vide registered partition deed dated June 17, 2015. This partition is stated to have been done between Pushpa Kapoor and Mangal Sen Kapoor, after which the shop at No. 6, Lajpat Nagar was divided into two equal shares and the suit property came into the share of Pushpa Kapoor and the remaining half of the shop at No. 6, Lajpat Nagar went to the share of Mangal Sen Kapoor.
- ii) Pushpa Kapoor sold her entire share in the suit property to the respondent vide sale deed dated September 7, 2015 as registered on September 9, 2015. Respondent admits that he was informed by his predecessor-in-interest, i.e., Pushpa Kapoor about the suit property being occupied by the appellants/defendants as tenants since February 1, 2013 through an oral tenancy agreement with a monthly rent of ₹1,50,000/-. The



appellants were carrying out a business of selling foot wear under the name 'Sukanya Foot Wear' from the suit property. The respondent had been informed by his predecessor-in-interest that the appellants had not paid rent for 10 months, i.e., from November 01, 2014 till the date of execution of sale deed and as per clause 2 of the said sale deed, the respondent was given the right to recover arrears of rent from the appellants.

iii. The predecessor-in-interest of the respondent had also sent a legal notice dated October 10, 2015, to the appellants informing them about the sale of the suit property to the respondent. This notice was served upon the appellants on October 13, 2015. The appellants refused to pay the amount due to the respondent after which the respondent terminated the tenancy of the appellants vide legal notice dated January 7, 2016. After which the respondent filed the suit before the Ld. Trial Court.

3. The respondent in the plaint had stated that he is the rightful owner of the suit property which has been purchased from his predecessor-in-interest, who in turn possessed a clear title over the suit property being party to the partition deed dated June 17, 2015. In the replication, the chain of ownership regarding the suit property was clarified by the respondent. The stand of the respondent before the Ld. Trial Court was as follows:

i) The respondent stated that the absolute owner of the shop No. 6, Lajpat Nagar was Bansi Lal, who had



acquired the property by virtue of a registered lease deed dated May 14, 1962. After the demise of Bansilal his successors became the co-owners of the estate left by Bansilal including the suit property which was in the possession of Pushpa Kapoor, widow of the son of Bansilal namely Jaswant Lal Kapoor.

ii) There was a partition suit numbered CS(OS) 490/2006 between the legal heirs of Bansilal, the same was settled through a memorandum of family settlement dated December 24, 2010. The suit property fell into the share of Pushpa Kapoor who used to carry out business of selling dairy products from the said property, however, she stopped her business due to old age.

iii) In the year 2000 the appellant No.1 is stated to have approached Pushpa Kapoor, and requested that he be given the suit property to carry on business through an oral tenancy agreement, the user charges of which were to be paid to Pushpa Kapoor as per sale of articles on a daily basis. Issues arose as to the quantum of actual sale and the user charges being paid.

iv) After the memorandum of family settlement dated December 24, 2010, shop No. 6, Central Market, Lajpat Nagar was mutated in favour of Pushpa Kapoor and Mangal Sen Kapoor.

v) The terms of the user charges to be paid by the appellants were amended and the appellants through an orally executed tenancy agreement agreed to pay monthly



rent of ₹1,50,000/- from February 1, 2013 onwards. The appellants were stated to be truant in paying user charges and it was for this reason that Pushpa Kapoor decided to effect the sale deed dated September 9, 2015 in favour of the respondent.

4. It may be noted from the impugned judgment that the defence of the appellants was struck off, however, the stand of the appellants is on record through the written statement and sur-rejoinder, wherein the appellants have claimed title through adverse possession and stated that the title of the suit property as claimed by the respondent is unclear and that the said property belongs to the other family members of the respondent's predecessor-in-interest, since the partition was not done properly and there exists an *inter se* dispute between the family members. The appellants had also urged the issues of limitation and valuation of suit (deficient court fees) in their written statement.

5. The Ld. Trial Court proceeded to frame the following issues on May 11, 2016 and an additional issue was framed on May 23, 2018:

"1. Whether the plaintiff is entitled to a decree of possession of suit property bearing no. 6 (private no. 6A), Central Market, Lajpat Nagar, New Delhi? OPP

2. Whether plaintiff is entitled to a decree towards arrears of rent of Rs. 24,07,500/- from 01.11.2014 till 31.01.2016? OPP.

3. Whether the plaintiff is entitled to any interest, if so, at what rate and for which period? OPP

4. Whether plaintiff is entitled to any damages/mesne profits/user charges if so, at what rate and for which period? OPP

5. Whether there is no relationship of landlord and tenant between the parties? OPD

6. Whether the defendant no.1 has become the owner of



the suit property by way of adverse possession? OPD

7. Whether the suit has not been properly value for the purpose of jurisdiction as well as for the purpose of court fee? OPD

8. Whether the suit is barred by limitation? OPD

9. Relief”

“1-A. Whether the erstwhile owner of the suit property Ms. Pushpa Kapoor had orally licensed the suit shop to defendant no. 1 in the year 2000? OPP”

6. An application under Order XXXIX Rule 10 Code of Civil Procedure, 1908 (‘CPC’ for short) was dismissed by the Ld. Trial Court which order was set aside by this Court and interim orders were passed for payment of rent / arrears of rent at ₹1,50,000/- per month and that the defence of the appellants was struck off vide order dated September 8, 2020 even an SLP before the Supreme Court was disposed of with the direction that the interim arrangement so made by this Court shall continue and that the Trial Court was directed to dispose of the suit by December 2020.

7. The respondent led evidence and examined himself as PW 1 and tendered his evidence by way of an affidavit and produced the original sale deed dated September 9, 2015, the certified copy of which has been exhibited as Ex.PW1/2. He was further called for examination in chief after February 22, 2017 on November 14, 2018. The respondent was cross-examined on November 14, 2018 and October 14, 2020. Pushpa Kapoor was produced as PW2 and tendered her evidence by way of an affidavit exhibited as Ex.PW2/A, bearing her signatures at points A and B and she was cross-examined on October 19, 2020. She had referred to the application under Order XXIII Rule 3 CPC which was exhibited as PW5/2. She also relied on the following documents:



- a) Copy of order dated February 9, 2011 exhibited as Ex.PW2/3 and as mentioned in the affidavit of evidence as Ex.PW5/3.
- b) The legal notice sent to the appellants informing them about the sale of suit property to the respondent exhibited as Ex.PW1/3.
- c) Copy of the postal receipts as Ex.PW1/4.
- d) Photocopy of certificate from department of posts India as Ex.PW1/5.
- e) Photocopy of courier receipts as Ex.PW1/6.
- f) Print out of tracking report as Ex.PW1/7.

8. On November 20, 2020 PW3, i.e., Charchal Dawar tendered his evidence by way of an affidavit exhibited as PW3/A, bearing his signatures at Points A & B and was cross-examined on the same date. Sanjay Goswami, Record Attendant from Office of Sub-Registrar-V, Mehrauli appeared as PW4, who produced the registered lease deeds of shop No. 9, Central Market, Lajpat Nagar in the vicinity of the suit property for the years 2008 and 2015. Ravi Kumar, JJA from Record Keeping Department of this Court appeared as PW5 along with the memorandum of family settlement between Pushpa Kapoor and the siblings of her late husband. Thereafter, the Ld. Trial Court proceeded to close the respondent's/plaintiff's evidence and since the defence of the appellants / defendants had been struck off, listed the matter for final hearing.

9. The Ld. Trial Court proceeded to give findings on Issue No.1 and Issue No.1A. The onus to prove these issues was upon the respondent. The Ld. Trial Court stated that these issues if proven,



would alone be sufficient to grant the prayers in the suit. In its judgment, the Court below recorded that the statements of the respondent were consistent. It was recorded, that only the appellant No.1 was inducted as a tenant in the suit property and that his wife, appellant No. 2 (who was arrayed as defendant No.2 in the suit) was running the shop from the suit property on his behalf; thereby there was no need for Pushpa Kapoor to give notice to defendant No.2. The sale deed dated September 9, 2015 clearly stipulates that at the time of filing the suit, the suit property was under the tenancy of the appellants and Pushpa Kapoor had given the right to recover the rent for the previous 10 months to the respondent. The Trial Court recorded that through the testimony of PW2, i.e., the sale deed dated September 9, 2015 stood proved.

10. As per the impugned judgment, PW2 Pushpa Kapoor had testified to the effect that her father-in-law Bansi Lal was the owner of the shop comprising of the suit property and Pushpa Kapoor being widow of one of the sons of Bansi Lal was in possession of half of the shop, i.e., the suit property whereas the other half belonged to the other legal heir of Mangal Sen Kapoor. The documents of ownership filed by the respondent including those of his predecessor-in-interest, i.e., PW2, Pushpa Kapoor are undisputed and formed a part of the consent decree passed by this Court in favour of PW2, Pushpa Kapoor. The statement of PW2, Pushpa Kapoor that she had sent a letter to the appellants on October 10, 2015, the postal receipt / report of which has been exhibited has not been denied by the appellants. The Ld. Trial Court formed an opinion that in light of the tracking report which is not denied, the plea of the appellants that they were not informed about the sale was not



considered to be tenable. As per the Ld. Trial Court it is a matter of record that no reply was sent by the appellants to the said letter, denying the relationship of landlord and tenant. The appellants as per the written statement claimed ownership through adverse possession. The Ld. Trial Court did not go into the merits of this argument as there was no evidence to show whether the parameters for adverse possession were met. The Ld. Trial Court noted that even after receiving the legal notice dated October 10, 2015, the appellants did not reply to the same and thereby lost the opportunity to put forth their case. As per the appellants, who took a stand that they were in open and hostile possession of the suit property and that there is no evidence to show that they were inducted as licensees. The Ld. Trial Court observed that as per the joint written statement of the appellants / defendants, wherein it was stated that they came into possession of the suit property in the year 2000, this statement only fortified the case of the respondent as narrated by PW2, Pushpa Kapoor. Once the *inter se* dispute between the family of PW2, Pushpa Kapoor was settled and the suit property was mutated, the appellants were asked to vacate the property, however on the intervention of PW3, Charchal Dawar the suit property was let out to the appellants on a rent of ₹1,50,000/- on a monthly basis. The Ld. Trial Court recorded that though there is no written rent agreement or any rent receipt to prove the same, her deposition was likely to be true as the respondent had been able to establish the fact that there was a property dispute in the family of the erstwhile owner PW2, Pushpa Kapoor. As per the reasoning of the Ld. Trial Court, the respondent was able to produce the best evidence available with him in order to prove the facts. An argument was advanced before the Ld. Trial Court on behalf of the



appellants that there was a discrepancy between the testimonies of PW 2 and PW3, Ld. Trial Court reasoned that the discrepancies in the testimonies were minor and not to the extent that the said testimonies should be discredited more so when they did not alter the basic case as pleaded by the respondent, that too when the basic principle governing a civil suit is preponderance of probabilities. The Ld. Trial Court also noted the situation prevailing due to the COVID-19 pandemic when the testimony of PW2, Pushpa Kapoor was recorded and being a senior citizen she could not have been expected to give a clearer deposition than what she gave. Even though the rent agreement was oral, the impugned judgment records that at the time of deposition neither PW2 nor PW3 had any interest in the suit property.

11. Regarding the issue of appellants' / defendants' tenancy the Ld. Trial Court noted that the FIR No. 831/2015 registered under Section 354 of the Indian Penal Code, 1860 on the complaint (Ex.PW1/A) made by defendant No.2, i.e., appellant No.2 had admitted that she was a tenant in the suit property since the last 15 years and her husband came into possession of the shop in the year 2000. Such an admission was neither disputed nor denied. Even during her cross-examination, she did not deny that her husband was not a tenant and even stated in her cross-examination that the complaint exhibited as Ex.PW1/A was in her handwriting and that her husband was sitting beside her, when she wrote the said complaint though, he had not gone through the complaint. The statement of the appellant No.1 was also recorded in the said FIR which was also placed on record and during his cross-examination he stated that he was not aware who wrote the complaint Ex.PW1/A. This statement according to the Ld. Trial Court was clearly at variance with



each other, however the Ld. Trial Court proceeded to note that this was an indirect admission on behalf of the appellant No.1 that appellant No.2 wrote the complaint, Ex.PW1/A. Further he stated in his cross-examination “*possession of the suit shop in which I am a tenant was given to me by Smt Pushpa Kapoor*”, thereby supporting the testimony of PW2 Pushpa Kapoor. The Ld. Trial Court differentiated the judgment of ***Kishan Singh (D) Through LRs Vs. Gurpal Singh (Crl Appeal No. 1500 of 2010)*** by relying on the finding of the Supreme Court in the judgment of ***Union of India Vs. Moksh Builders and Financiers Ltd. and Others Etc. AIR 1977 SC 409***. The Court below proceeded to decide issue Nos. 1 and 1A in favour of the respondent since the testimony of PW2, Pushpa Kapoor had supported the case of the respondent along with the admissions made by the appellant(s).

12. As per the proven sale deed dated September 9, 2015, which stated that the appellants had not paid rent from November 1, 2014 onwards and the suit being filed within limitation, the Ld. Trial Court proceeded to give a finding on Issue No.2 wherein the respondent was granted user charges w.e.f. November 1, 2014 till January 31, 2016. Issue No. 4 pertaining to grant of damages / *mesne* profits / user charges was also decided in favour of the respondent based on the testimony of PW4 Sanjay Goswami who had brought along with him three registered lease agreements of October 24, 2008 pertaining to shop No. 9 near the suit property. The said lease agreements exhibited as Ex.PW4/5, Ex.PW4/6 and Ex.PW4/7 showed that the monthly rent of 1/3rd undivided share of shop No. 9 was ₹85,000/- coming to a combined total of rent being ₹2,55,000 per month. The market rent of a proximate shop in the same market pertaining to the same time period had been



proved by the respondent. The Ld. Trial Court awarded *mesne* profits @ ₹2,55,000/- per month w.e.f. February 1, 2016 till the date of handing over of possession. Issue No.3 pertaining to interest was also decided in favour of the respondent and the Ld. Trial Court granted simple interest @ 7% *per annum* on the total arrears of rent till the date of filing of the suit and further simple interest @ 5% was granted from January 1, 2020. *Mesne* profits were also granted along with simple interest of 7% *per annum*. As per findings given in issue Nos. 1 and 1A and in absence of any evidence by the defendants, issue Nos. 5, 6, 7 and 8 were decided against the appellants and the suit was deemed to be properly valued and within limitation.

13. The said suit was decreed in favour of the respondent and the Ld. Trial Court granted possession and recovery of rent of ₹1,50,000/-, with arrears of rent w.e.f. November 1, 2014 till January 31, 2016 along with *mesne* profits to the tune of ₹2,55,000/- per month w.e.f. February 1, 2016 till handing over of possession. The Ld. Trial Court also granted simple interest @ 7% *per annum* on the total arrears of rent on the date of filing of the suit till December 31, 2019 and further simple interest @ 5% was granted from January 1, 2020 in light of the situation prevailing due to the COVID-19 Pandemic. *Mesne* profits were also granted along with simple interest of 7% *per annum* which would be calculated from February 1, 2016.

SUBMISSIONS

14. Mr. Shalabh Gupta, learned Counsel for the appellants has at the outset stated that the claim of the respondent has to be decided on the strength of his own case and not on the weakness of the case of the appellants / defendants. He went on to state that there is no landlord -



tenant relationship between the parties and that the same has not been proved by the respondent and has argued the following:

I. The alleged legal notice dated October 10, 2015 by Pushpa Kapoor was only served upon the appellant No. 1 and not his wife, i.e., appellant No.2 therein and that her status as a tenant was not pleaded before the Ld. Trial Court. The notice dated January 7, 2016 was sent to the appellant No.1 for termination of the alleged tenancy, however, much prior to that the respondent had lodged a complaint dated October 07, 2015 to the SHO, PS-Lajpat Nagar against the appellants stating that they are unauthorised occupants in the suit property. Even in the earlier complaints dated October 9, 2015, October 10, 2015 and October 11, 2015 (which are of the period prior to the notice for termination of tenancy, i.e., January 7, 2016) the appellants have been referred to as unauthorised occupants. The respondent based on this document has admitted that no landlord-tenant relationship existed between the parties. According to Mr. Gupta, PW1 in his cross-examination has admitted to his knowledge being hearsay and therefore his testimony cannot be taken into consideration.

II. As per Mr. Gupta, the cross-examination of PW1 dated October 14, 2020 would reveal his statement that PW1 had neither seen the appellant No. 1 nor his wife / appellant No.2 pay rent including the alleged rent of ₹1,50,000/- to PW2, Pushpa Kapoor or anyone else. PW1



had also stated that he had never seen any rent agreement or any rent receipt in the name of the appellants. There is also a statement by PW1 that he was told by PW2, Pushpa Kapoor that the appellants came in to possession of suit property in January, 2013.

II. Another argument advanced by Mr. Gupta that the suit has not been valued properly. The suit has been valued currently at ₹18,00,000/- which amount is equivalent to the rent for 12 months. This too is on the basis of a landlord–tenant relationship which has been argued by Mr. Gupta to be contrary to the ground taken by the respondent. Neither the suit was valued for the relief claimed in the suit, i.e., damages / *mesne* profit / user charges of ₹3,00,000/- per month, nor any Court Fee was affixed in this regard. As per Mr. Gupta paragraph 6 of the respondent's plaint mentions that the appellants were occupying the suit property as tenants of Pushpa Kapoor with monthly rent of ₹1,50,000/- since February 1, 2013. This stand has been controverted in his own replication wherein he alleged that in the year 2000 the appellants were inducted as licensees by Pushpa Kapoor and that the appellants kept paying ₹300 to ₹500 on a daily basis depending on the sales of the shop running from the suit property. Therefore, there has been a change of stance by the respondent, i.e., only after the appellants took a stand in their written statement that they are in uninterrupted, peaceful, open and hostile



possession of the suit property since January 15, 2000 and have become the owners of the said property through adverse possession. This contradictory plea on behalf of the respondent is sufficient alone to disbelieve the case put forth by the respondent. If the respondent has purchased the suit property for a sum of ₹6 Crores, then he is liable to affix *ad valorem* court fees on the market value of the suit property. This fact has been admitted by PW1 during his cross-examination dated October 14, 2020 wherein he had stated that it may be correct that the market value of the suit property at the time of execution of sale deed on September 9, 2015 was and even at present not less than ₹6 Crores. Neither the appellant No.1 nor his wife, appellant No.2 were party to the alleged sale deed and that the same was executed without knowledge and consent of the appellants and therefore is not binding on them.

III. Mr. Gupta argued that the cross-examination of PW1 is important and demands a closer scrutiny. As during the cross-examination on October 14, 2020, PW1 admitted that the appellants had never paid the alleged rent of ₹1,50,000/- per month to Pushpa Kapoor and that he was also not present in the alleged meeting wherein the appellants agreed to pay such sum. PW1 has on one hand taken a stand that he can bring the lease deed on record, whereas in the pleading it has been averred that there existed an oral agreement between the respondent



and the appellants. Subsequently on the next date of cross-examination, he failed to bring the said lease deed. The entire evidence so led by the respondent, is embedded with contradictions and is contradictory to the pleadings. As per Mr. Gupta, the rent as alleged as ₹1,50,000/- could not have been agreed to without execution of any rent deed or any other document, specially when as per the case of the respondent, the appellants were not even paying the license fees of ₹200-₹500 per day.

IV. He argued that the testimony of PW2 Pushpa Kapoor is also contrary to the pleadings and to the testimony of the other witnesses. She stated that the appellant No.1 approached her around 20 years ago and had agreed to pay half of the profit from the sales of the shop as rent. She went on to state that the appellants kept paying her amounts of ₹200, ₹300 and ₹500 till the year 2013. As per her testimony the appellant No.1 along with Charchal Dawar met her and asked her to allow the appellants to continue running his business from the suit property with a rent of ₹1,50,000/- per month. According to Mr. Gupta during the cross-examination dated October 19, 2020 she stated that she asked the appellant No.1 to prepare a rent agreement whereas the appellant No.1 had said that she ought to believe him. This testimony is contradicted by the statement of PW3, Charchal Dawar who in his cross-examination dated November 20, 2020



stated that he had asked them to prepare a written agreement but both of them had stated that it is with their mutual understanding that a written agreement will be executed. Mr. Gupta stated that this is a contradiction in the statements of PW2 and PW3 wherein it has been pointed out that the alleged meeting never took place. Even so, PW2 on October 19, 2020 further stated that the appellants have paid rent only for 3-4 months of ₹1,50,000/-. However, in the plaint an averment has been made that rent has not been paid since November 1, 2014. This too only goes to show the contrary stand taken by the respondent.

V. Further he stated, PW3, Charchal Dawar on November 20, 2020 made another contradictory statement wherein he testified that he does not know Pushpa Kapoor, rather only her husband. As per the testimony he was not aware of the family members of Pushpa Kapoor as he was not in constant touch with them and knew them only by virtue of being located in the same market. He was also not aware of the address of Pushpa Kapoor. Thereby the cross-examination has clearly established that PW3, Charchal Dawar, had either committed perjury or that his evidence by way of affidavit has been proven as false. PW3 has further stated in his cross-examination that he was not aware of the family members of the appellant No.1 (Rahul Wadhvani). PW3 further went on to state that it was the appellant No.1 who approached



him and not any other person from the market for the purpose of arriving at a settlement with PW2, Pushpa Kapoor since PW3, Charchal Dawar had good relations with the appellant No.1 and had visited the shop of the appellants. In a subsequent statement, he stated that he had never visited the suit property. As per Mr. Gupta many contradictory statements have been made by PW3, which only goes to show that PW3 was not aware about the facts of the present case and was also not a witness to the alleged settlement between the appellants and PW2, Pushpa Kapoor. He had in his statement admitted that the respondent (Rajesh Anand) is his friend and that the respondent had asked PW3 to give evidence in the present case. Upon being cross-examined on this aspect, enquiring about his relation to PW2, Pushpa Kapoor, he stated that he does not know PW2, Pushpa Kapoor much, but only knows her husband. Later on a subsequent cross-examination he stated that he is neither aware of the family details of PW2, Pushpa Kapoor, i.e., including the names of children of PW2 nor of the date, month or year of death of husband of PW2, Pushpa Kapoor. This he had stated as he is not in constant touch with them and only knows them by virtue of being in the same market. As per Mr. Gupta when PW3, Charchal Dawar is not well acquainted with the appellants or the appellants' family members, then the question remains as to why he was approached for a settlement. That apart the notice given



by PW2, Pushpa Kapoor was in the year 2015, which contradicts the statement of PW3, wherein he had stated that after the meeting taking place in the end of January, 2013, PW2 gave a notice to the appellants after which PW3 was approached for settlement.

VI. It is the case of Mr. Gupta that neither the respondent nor his predecessor-in-interest, i.e., PW2 Pushpa Kapoor were able to produce any document in order to show that the appellants were the licensees of PW2, Pushpa Kapoor or that they became tenant w.e.f. February 1, 2013. According to Mr. Gupta, PW1 had earlier stated that PW2, Pushpa Kapoor was the proprietor of the business, 'Sukanya Footwear' and that the appellant No.1 was a salesman there, a stand which has been changed in tune with the pleadings. The statement given by PW3, Charchal Dawar that the appellants are tenants is contradicted by the statement given by PW2 wherein it was stated that the appellants were inducted as a licensees.

VII. Mr. Gupta contended that the Ld. Trial Court erred in holding that the complaint dated October 9, 2015 on the basis of which FIR No. 831/2015 registered proved that appellant No.2, stated herself to be tenant of the suit property. Further the impugned judgment is wrong in holding that, in the sale deed it has been recorded that the appellants have not paid rent from November 1, 2014 and further gives the right to recover the said rent and in the



light of the fact that the appellants were not signatories and / or parties and / or witnesses to the said agreement which was executed without their knowledge and consent and therefore they are not bound by the same.

VIII. While seeking the reliefs as prayed for in the appeal, Mr. Gupta in support of his arguments above has placed reliance on the following judgments:

- a. Biswanath Agarwalla v. Sabitri Bera and Ors., (2009) 15 SCC 693;*
- b. Kailash Paliwal v. Subhash Chandra Agrawal, (2013) 9 SCC 372;*
- c. Nazir Mohamed v. J. Kamala and Ors., AIR 2020 SC 4321;*
- d. Shalu v. Sandeep Soni, (2016) 228 DLT 257 (DB);*
- e. Messrs Bansidhar Ganga Pershad Agency v. Chanan Lal and Ors., ILR (1975) 1 Del 445;*
- f. Kashi Nath (Dead) through Lrs. v. Jaganath, (2003) 8 SCC 740.*

15. Mr. S. K. Sharma, learned Counsel who appeared on behalf of the respondent has argued that PW2 Pushpa Kapoor became the owner of the suit property after a settlement which took place before this Court between different owners. The said settlement deed has already been exhibited as Ex.PW2/1 to Ex.PW2/3. He stated that the partition deed dated June 17, 2015 between PW2, Pushpa Kapoor and others, has been exhibited as Ex.PW4/1. Mr. Sharma contended as follows:

- I. According to him, the respondent / landlord purchased the suit property vide sale deed dated September 9, 2015 from PW2 Pushpa Kapoor, wherein paragraph 2 at internal page 6 it is clearly stated that the appellant No.1 is



the tenant in the suit property and is liable to pay a rent of ₹1,50,000/- per month which rent has not been paid for the last 10 months. The previous landlady vide legal notice dated October 10, 2015 (Ex.PW1/3) informed the then tenant, i.e., the appellant No.1 regarding the sale of suit property to the respondent.

II. Mr. Sharma stated that the appellant No.2, filed a complaint before PS-Lajpat Nagar against the respondent stating that they are the tenants in the suit property. This statement of the appellant No.2 was recorded by a Coordinate Bench of this Court on December 5, 2019 in CM(Main) 1375/2018, wherein the appellant No.2 admitted to the correctness and contents of the said complaint.

III. According to Mr. Sharma, since the order for depositing of monthly user charges was from December, 2019 and no arrears were granted by this Court, the same were directed to be decided by the Ld. Trial Court and the respondent / landlord approached the Supreme Court through an SLP seeking payment of arrears as well. Similarly, the appellants also filed an SLP challenging the order passed by this Court CM(Main) 1375/2018. Mr. Sharma stated that both these petitions were heard on July 14, 2020 and through a consent order, it was directed that the appellants / tenants were to pay damages / occupation charges of ₹1,00,000/- from September 7, 2015 and pay the arrears in six equal instalments.



IV. It is the case of the respondent that the appellants failed to pay any amount in terms of the order of the Supreme Court, due to which the Ld. Trial Court on September 8, 2020 passed an order under Order XV-A CPC and the defence of the appellants was struck off. The order wherein the defence of the appellants had been struck off, attained finality as the same had not been challenged anywhere. Whereas the respondent being aggrieved by the arrears of rent not being paid, filed a contempt petition before the Supreme Court wherein the Supreme Court was pleased to issue notice.

V. As per Mr. Sharma, even though the appellants in their written statement took a plea of adverse possession, but did not lead evidence in support of this plea. In this regard, Mr. Sharma has placed reliance on the statement recorded by the Ld. MM on October 13, 2015, wherein it had been recorded that there is a clear admission by the appellant No.1 that the possession of the suit property was given to him by PW2 Pushpa Kapoor.

VI. As per Mr. Sharma, the respondent who is the landlord of the suit property examined himself as PW1 and proved the documents PW1/1 to PW1/16 as referred to in his affidavit of evidence. Thereafter, the respondent examined his predecessor-in-interest, i.e., PW2, Pushpa Kapoor and proved the documents exhibited as Ex.PW2/1 to Ex.PW2/3 and PW1/3 to PW1/7. Thereafter PW3, Charchal Dawar was produced as a witness to prove the



fact of creation of tenancy in the suit property and in order to prove market rent and quantum of damages. The respondent proved on record the registered lease agreement in respect of the shop in the vicinity of the suit property being in the same lane; these documents have been exhibited and proved as Ex.PW4/2 to PW4/7 by the officials of the office of the Sub-Registrar.

VII. Mr. Sharma argued that the Ld. Trial Court has examined each and every aspect of the case and has passed a well-reasoned judgment which has been impugned in this appeal. The reasoning given by the Trial Court while deciding Issue No. 1 and Issue No.1A is also clear and the Trial Court had found veracity in the case put forth by the respondent which is also his case before this Court. He argued that the appellants are not entitled to be heard in this appeal in light of the fact that the appellants despite having consent orders from the Supreme Court have not paid any amount to the respondent as damages in terms of the orders of the Supreme Court in addition to the impugned judgment/decree (against which no stay has been granted) of more than ₹2 Crores along with possession.

VIII. In support of his submissions, Mr. Sharma has also placed reliance on the following judgments in the cases of:

- a. Modula India v. Kamakshya Singh Deo, (1988) 4 SCC 619;*
- b. Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and Ors., (1974) 1 SCC 242;*



*c. Seth Ramdayal Jat v. Laxmi Prasad, (2009)
11 SCC 545.*

FINDINGS

16. Having heard the learned counsel for the parties and perused the record including written submissions filed by them, it is noted that Pushpa Kapoor (PW2) the predecessor-in-interest of the respondent became the owner of the suit property of shop No.6 (private No.6A) consisting of ground floor and basement in terms of memorandum of family settlement dated December 24, 2010, and order dated February 09, 2011 in CS(OS) 490/2006 and partition deed dated June 17, 2015.

17. Accordingly, she executed the sale deed dated September 07, 2015 as registered on September 09, 2015 and on the strength of the sale deed, the respondent became the owner of the suit property. The sale deed in paragraph 2 records as under:

“2. That the Vendor has told to the Vendee that the said Half Portion of the said Shop is under tenancy of Mr. Rahul Wadhwani S/o Smt. Jyoti Wadhwani, where no Rent Agreement was executed and it was a oral tenancy, but the tenancy was started from 1st day of February, 2013, at the monthly rent of Rs.1,50,000/- (Rupees one lakh fifty thousand only) which was payable in cash by the tenant and the tenant has not paid rent since the last ten months, and therefore Vendor has handed over the possession of the said Half portion of the said Shop on as is where is basis to the Vendee at the time of signing of this Sale Deed and also Vendor hereby gives the right to the Vendee to recover rent for the last ten months from the tenant and to deal with the tenant and get the tenant evicted from the said Half Portion of the said Shop.”

18. The case of the respondent before the Trial Court was that he is the owner of the suit property having purchased from Pushpa Kapoor. The plea of the appellants as advanced by Mr. Gupta is that the



relationship of landlord-tenant between the appellants and the respondent has not been proved. In this regard, his pleas were; (i) the legal notice dated October 10, 2015 by Pushpa Kapoor (PW2) has only been served upon the appellant No.1 and not on appellant No.2 and her status as tenant has not been pleaded; (ii) the complaints of the respondents dated October 07, 2015, October 10, 2015 and October 1, 2015 refer to the appellants as unauthorised occupants and not as tenants; (iii) the respondent admitted in his cross-examination that his knowledge of tenancy between Pushpa Kapoor and the appellants is based on hearsay as he has not seen the appellants tendering the rent to Pushpa Kapoor nor has he seen the rent deed / rent receipt.

19. The submissions of Mr. Gupta are unmerited, this I say so, as the appellants have not contested the sale deed dated September 9, 2015, whereby the suit property has been sold to the respondent. The sale deed incorporates clause 2 (reproduced above), which clearly states that the appellant No.1 is a tenant and the oral tenancy has started from February 01, 2013 at the monthly rent of ₹1,50,000/- and Pushpa Kapoor has given the right to the Vendee (respondent herein) to recover rent for the last ten months from the said tenant / appellant(s).

20. Mr. Gupta's plea was that the appellants were not associated with the execution of the sale deed and as such not bound by the same. The said submission is not appealing, such factum of the execution of the sale deed was informed to the appellants by Pushpa Kapoor vide her legal notice dated October 10, 2015 wherein the following has been stated:

“2. This property has since been sold, conveyed and transferred in favour of Shri Rajesh Anand son of Shri Krishan Lal Anand r/o M-56, Lajpat Nagai-II, New Delhi-



110024 by virtue of sale deed dated 7th September 2015.

3. Notice is hereby given to you that you are to attorn in favour of Shri Rajesh Anand as owner-landlord and pay rent to him after the date of purchase of the property by him and deal with him as your landlord.

4. You have neither paid nor tendered arrears of rent to my client for the last 10 months i.e. with effect from 01.11.2014.

5. You are hereto asked to pay the said arrears of rent to my client within 15 days of the receipt of this communication by you. In case you fail to do so, you will be responsible for all the consequences and the costs incurred in recovering the said arrears of rent from you.

This communication is without prejudice to all the legal rights, claims and demands which my client may have against you in this behalf."

21. The case of the appellant as contended by Mr. Gupta was that the said notice dated October 10, 2015 has not been received by them. This stand was disbelieved by the Trial Court by holding that the tracking report being on record, the plea is unacceptable. No submission has been made by Mr. Gupta, before this Court, contesting the said finding. Suffice to state, the notice having not been replied to, the contents are deemed to have been accepted including the rate of rent being ₹1,50,000/- per month and the same being in arrears for the last ten months i.e., from November 01, 2014 till September 30, 2015.

22. That apart, there is no counter claim or a separate suit by the appellants seeking a declaration that they are neither the tenants nor the rent is ₹1,50,000/- and also that they are not in arrears. No doubt, the appellants had contended that they have become the owner of the suit property by way of an adverse possession, this stand of the appellants of adverse possession has not been proved as the defence of the appellants



was struck off.

23. Even, I find that it is the case of the appellants themselves, that they are tenants in the suit property and the same is clear from the complaint dated October 09, 2015 of the appellant No.2, to the SHO of Lajpat Nagar, Police Station wherein she has clearly stated that she is running a shop No. 6, Central Market, Lajpat Nagar for the last 15 years as a tenant. I find that this aspect of the complaint and the effect thereof has been dealt with by the Trial Court in paragraphs 55 and 56 in the following manner:

“55..... It is pertinent to mention here that apart from leading all possible and best evidence which could be led by the plaintiff, plaintiff has also brought on record certified copy of complaint made by defendant no. 2 against plaintiff on the basis of which FIR No. 831/15 u/s 354 IPC was registered. The complaint made by defendant no. 2 was exhibited as Ex PW1/A in the said FIR. In the opening lines of said complaint Ex PW1/A, she has stated that she is running business from shop no. 6, Central Market, Lajpat Nagar, New Delhi as Sukanya Footwear from 15 years as a tenant. Her evidence which was recorded in the said FIR has also been placed on record by the plaintiff wherein she admitted that she had filed the said complaint and admitted her signatures on the same. During her cross examination, she was put a question by plaintiff's counsel that "Q: Can you tell when you came to know that the shop under the tenancy of your husband has been purchased by accused Rajesh Anand?". In this also, she did not deny that her husband was not a tenant. She stated in the later part of her cross examination that complaint Ex PW1/A is in her handwriting and when she wrote the complaint her husband was also present though he had not gone through complaint. Statement of her husband (Defendant no. 1 herein) was also recorded in that FIR which is also placed on record. During his cross examination he stated that he was not aware who wrote the complaint Ex PW1/A, however, when his wife wrote the



complaint Ex PW1/A, he was sitting beside her. Indirectly, he admitted that his wife wrote the complaint. He has also stated during his cross examination that "possession of the suit shop in which I am a tenant was given to me by Smt Pushpa Kapoor" thereby supporting the testimony of PW-2 Smt Pushpa Kapoor.

xxx

xxx

xxx

56. This admission of defendant no. 2 is not disputed anywhere.....”

24. Insofar as the plea of Mr. Gupta that the respondent in his complaints dated October 07, 2015, October 10, 2015 and October 11, 2015 has referred to the appellants as unauthorised occupants and not tenants and as such they cannot be construed as tenants is also unmerited. The identical plea taken before the Trial Court is answered by the said Court in the following manner:

“50. Ld counsel for defendant has pointed out that in the complaints filed by plaintiff and his wife in October 2015, before SHO, PS Lajpat Nagar, they have addressed defendants to be unauthorized occupants. This argument is completely frivolous in view of the recitals of the sale deed reproduced above. Smt. Pushpa Kapoor in the sale deed of a prior date had already clarified that defendant no. 1 is her tenant. So any layman's language/words in a self drafted complaint of harassment cannot be read in a hyper technical manner. It is not at all expected out of a common person having no knowledge of principles of law to choose words and write in the complaint. They cannot, be expected to know the difference between an unauthorized occupant and tenant/licensee and the effect of writing so in their complaint. Plaintiff being a layman would have only been concerned with the property he had purchased for a valuable consideration. Any objection on handing over the same back from the opposite side would make that party an unauthorized occupant. Plaintiff has stated in the plaint itself that defendant no. 1 was asked to vacate the property orally. So this argument is not at all tenable.”



25. I am in agreement with the aforesaid conclusion of the learned Trial Court. This is apart from my finding above, that the appellants have admitted that they are the tenants in shop No.6 (private No.6A). Hence, this plea is also rejected.

26. Further, referring to the appellants as unauthorised occupants does not mean that they are / were not tenants. The purport of the expression in the said notice is, the appellants though tenants, their continuance in the suit property, has become unauthorised.

27. The plea of Mr. Gupta that the respondent having not seen the appellants paying rent to Pushpa Kapoor and also the rent deed and rent receipt and the knowledge of tenancy being hearsay, the tenancy between the appellants and Pushpa Kapoor and also between appellants and respondent as not having been proved is misplaced / unmerited. My conclusion above, clearly depicts that the tenancy between the appellants and Pushpa Kapoor, having been attorned in favour of the respondent vide her notice dated October 10, 2015, thenceforth, the respondent has become the landlord with regard to tenancy of the suit property of which the appellant(s) was the tenant.

28. Insofar as the plea of Mr. Gupta that there is contradiction in the testimonies of respondent, PW2 and PW3 is concerned, the same is unmerited. I agree with the following conclusion of the learned Trial Court that minor discrepancy in the testimony of PW2 and PW3 in paragraph 55 as under is minor, but has no bearing on the case set up by the respondent:

“55. Defendant no. 1 chose to remain silent despite receiving the aforesaid notice wherein Smt Pushpa Kapoor had clearly stated that he was a tenant and he should attorn to the plaintiff now. It is worthwhile to note here



that the defendant knew that this was the only letter/document in his knowledge where it was documented that defendant no. 1 was a tenant of Smt Pushpa Kapoor. Had he been in the occupation of suit shop as an unauthorized occupant and was claiming himself to be the owner by way of adverse possession, he ought to have rebutted the contents of the notice and should have put forth his case. Choosing to remain silent cannot at all be interpreted to be in his favour. Smt Pushpa Kapoor has deposed that she inducted defendant no. 1 as a licensee in the year 2000 as she could not openly rent out the shop to anyone owing to the property dispute amongst the family. It is a matter of record that no document has been produced in order to show that defendant no 1 was inducted as a licensee. Therefore, the evidence and pleadings of the parties have to be referred in order to assess the same. The stand of the defendant since the beginning was that he was in open and hostile possession of the suit shop w.e.f. 15.01.2000. The own stand of the defendants which is a joint written statement of the defendants shows that they also say that they came into the possession of the suit shop in the year 2000 which fortifies the version of PW-2 that defendant no. 1 was inducted as a licensee in the year 2000. The testimony of PW-2 inspires confidence as she had narrated the entire sequence of facts explaining why she was compelled to allow the defendant no. 1 to enter into suit shop as licensee. She had explained that there was a dispute with other siblings of her deceased husband and she had a threat of being dispossessed by other LRs of Sh. Bansi Lai. In order to save the suit shop from the other LRs, she found it as a best option to induct defendant no. 1 to carry on his business at the suit shop and thereafter when the matter was settled in the year 2010 and property was mutated in the year 2012 she had asked the defendant to vacate the suit shop but with the intervention of PW-3 Mr. Charchal Dawar, she agreed to let out the suit shop at a monthly rent of Rs. 1,50,000/- , though there is no rent agreement or any rent receipt to prove the same. The deposition of PW-2 is probable as she has been able to establish that



there was a property dispute in the family. The plaintiff has produced the best evidence available with him in order to prove the facts pleaded by him, Ld counsel for defendants though has argued that there is some discrepancy in the testimony of PW-2 & PW-3 with respect to certain facts, however, it is to be kept in mind that the testimony of these witnesses were recorded during the Covid-19 Pandemic wherein witnesses had the threat of contacting the deadly disease while coming to the court and specially the lady being more than 70 years old could not have been expected to depose more clearly as she did, in the witness box. There are certain minor discrepancies in the statement of PW-2 & PW-3 on some points but they do not even touch the basic case pleaded by plaintiff. Both the witnesses have confirmed that meeting had taken place at the residence of Smt Pushpa Kapoor, defendant no. 1 agreed to pay Rs. 1,50,000/- per month as rent and there was no rent agreement. It is also to be borne in mind that neither PW-2 nor PW-3 had any interest in the case at the time when they came to depose in the court. I do not find any kind of discrepancy in the testimony of these witnesses, to an extent that it should be discredited. A minor discrepancy which has been pointed out by the counsel for defendant are of no relevance as it is a civil suit and civil suits are decided on the basis of scales of preponderance of probabilities. Plaintiff has supported his case with the testimony of his predecessor in interest who was the most important witness and was the best evidence available with him. She had undergone test of cross examination very beautifully and had testified to the hilt.....”

29. The above shall also answer the plea of Mr. Gupta that neither the respondent nor his predecessor-in-interest i.e. PW2, Pushpa Kapoor were able to produce any document nor to show that the appellants were licensees of PW2, Pushpa Kapoor or that they became tenant w.e.f. February 01, 2013.

30. Additionally, I must state that the case of the respondent, who



was the plaintiff before the Trial Court was based on the registered sale deed dated September 9, 2015 purchasing the suit property. Having become the owner of the suit property and the appellants being the (undisputed / admitted) tenant(s) and tenancy not being a statutory one, it must follow that, the respondent was within his right to seek the possession of the same along with rent / arrears of rent.

31. The plea of Mr. Gupta that the notice of termination of tenancy was not given to appellant No.2 by Pushpa Kapoor is also unsustainable in view of the finding of the Trial Court in paragraph 47 which I reproduce hereunder:

“47. Therefore, it is clear that there is no anomaly in the pleadings. The consistent statement of plaintiff is that only defendant no. 1 was inducted in the suit shop by Smt Pushpa Kapoor and not defendant no. 2. In any case defendant no. 2 was married to defendant no. 1 later on. Its just that she is running the suit shop with her husband. So the objection of the defendants counsel that defendant no. 2 was not given notice by Smt Pushpa Kapoor is inconsequential.”

32. It is also a matter of record that notice dated January 07, 2016 of the respondent was addressed to both the appellants wherein he has asked the appellants to vacate the suit property and pay him the arrears of rent. So, the suit was rightly filed against the appellants.

33. Insofar as the relief of *mesne* profits granted by the Trial Court is concerned, Mr. Gupta has not made any submission both on the grant of *mesne* profits *per se* and also on the quantum of *mesne* profits awarded. The only ground taken in the appeal with regard to *mesne* profits is ground JJJ wherein the appellants have stated that the Trial Court has erred in granting *mesne* profits against the appellant No.1 at ₹2,55,000/- per month without any plausible reason. The said ground is



unmerited as the Trial Court while granting the said relief has given the following findings:

“60. In order to prove market rate of rent, plaintiff has examined PW-4 Sh Sanjay Goswami from Sub Register Office, Mehrauli who has brought the partition deed with respect to the suit shop, three registered lease agreements pertaining to shop no, 9 which is near the suit shop of 24.10.2008 with respect to 1/3rd undivided share of the basement and ground floor of shop no. 9 and also three lease agreements with respect to same shop no. 9 of 07.07.2015. As per the said lease deed of 2015 Ex PW4/5, Ex PW4/6 and Ex PW4/7 on record. the monthly rent of 1/3rd undivided share of shop no. 9 was Rs. 85,000/-. Therefore, entire shop no. 9 which was let out by way of three separate registered lease deed was let out for a monthly rent of Rs. 2,55,000/- per month. Shop no. 9 undisputingly is in the vicinity of suit shop. The market rent of the contemporary period has been proved on record. Plaintiff has claimed damages from 01.02.2016. There is no reason to disbelieve the testimony of plaintiff's witness. Therefore, mesne profits from defendant no. 1 @ Rs. 2,55,000/- per month is granted w.e.f from 01.02.2016 till date of handing over the possession of suit shop by defendants to plaintiff.”

34. The above reveals that the learned Trial Court has relied upon the monthly rent as being payable in shop No.9 which is in the vicinity of the suit property for granting the relief. There is basis for the Trial Court to grant the *mesne* profits and the same cannot be set aside.

35. A plea that the suit has not been properly valued for the purpose of jurisdiction as well as for the purpose of Court fee is concerned, the Trial Court was of the view that the onus to prove this issue was upon the appellants. However, the defence of the appellants was struck-off. Even otherwise, the Trial Court held that the court fee has been properly filed on the amount of 12 months rent sought for by the respondent. It



was also of the view that the suit has been properly valued for the purpose of jurisdiction and court fee. There is no illegality in such finding.

36. Insofar as the judgments relied upon by Mr. Gupta in support of his submissions are concerned, in ***Biswanath Agarwalla (supra)***, the Supreme Court held that the landlord tenant relationship was not proved. The plaintiff was permitted to amend his original suit and make it a suit on the basis of title by paying *ad-valorem* court fee. This case can be differentiated on facts, as in that case the issue of the appellant therein acquiring title through adverse possession was found to be plausible, however no issue had been framed in that regard, which is not the case in the present appeal. The learned Trial Court had framed an issue, but the appellants failed to lead evidence on this aspect. Hence reliance on this judgement is misplaced.

37. Similarly, in ***Kailash Paliwal (supra)*** the Supreme Court held that the suit seeking possession on the basis of landlord and tenant relationship was disallowed due to the failure of establishing the same. A fresh suit based on title was allowed to be filed. This judgment too does not aid the case of the appellants as an issue was framed on this facet, however in absence of any evidence and in light of the admission of the appellants, being tenants in terms of Ex. PW1/A, Mr. Gupta's reliance on this judgment is of no avail. Reliance has also been placed by Mr. Gupta on the judgment in the case of ***Nazir Mohamed (supra)***, to state that the plaintiff's claim to relief has to be decided on the basis of strength of his case and not on the weakness of the defendant's case; and in a suit for possession, limitation has to be dealt with and if it is barred by limitation, the same need to be dismissed. Mr. Gupta's case is



not bolstered by relying on this judgment, as this judgement is based on a different factual background. Furthermore, there is a categorical finding of the learned Trial Court on the issue of limitation in light of the landlord-tenant relationship that exists between the parties and this Court with reference to the reasoning given above, finds no infirmity with the conclusion of the learned Trial Court.

38. In *Shalu (supra)*, the Court held that the parties are required to present best evidence available with them. If any document is withheld, adverse inference should be taken. The Division Bench of this Court in the said case had dealt with an issue pertaining to maintenance, which is not the issue at hand. Similarly, in *Messrs Bansidhar Ganga Pershad Agency (supra)* on similar lines, the Court while dealing with an issue pertaining to sale of goods held adverse inference has to be drawn, if relevant documents have not been brought on record or withheld by a party. Needless to state, both these judgments are differentiable on facts. Be that as it may, in the instant case the respondent has presented adequate evidence and it is in fact the appellants who have not led evidence. Therefore, the reliance placed by Mr. Gupta on these judgments does not aid his case. In *Kashi Nath (Dead) through Lrs. (supra)*, it is held if the evidence presented before the Court is not in line with pleadings or at variance with it, then the same cannot be looked into. The Supreme Court in that case had dealt with issues arising out of adoption pertaining to personal laws. I am afraid that the judgment as relied upon by Mr. Gupta for the propositions as noted above, have no applicability in the facts of this case as being distinguishable of facts, more so, in view of my conclusion above.

39. No submission has been made by Mr. Gupta on the quantum of



interest granted. The appeal by the appellants is bereft of merit and is dismissed.

40. There is one aspect, which this Court is of the view, need to be highlighted, inasmuch as the learned Trial Court having granted the *mesne* profits w.e.f. February 01, 2016, till the handing over of the possession, but has not directed the respondent to pay the court fee on the *mesne* profits, this Court directs that the respondent is liable to pay the court fee on the *mesne* profits thereon granted by the learned Trial Court and the same shall be paid within a period of six weeks from today.

41. Modified decree shall be prepared.

CM No. 12490/2021 (for stay)

In light of the fact that I have heard the parties finally on merits and dismissed the appeal, this application is also dismissed.

V. KAMESWAR RAO, J

JANUARY 12, 2022 /jg