



2024:DHC:10085



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 162/2023, CM APPLs. 45095/2023 & 41151/2024**

Between: -

SH. BADRUDDIN

S/O SH. WALI MOHAMMAD

SHOP NO. 10 (PRIVATE), KHASRA NO.26,

VILLAGE SAIDULAJAIB, OPP. SAKET,

MEHRAULI BADARPUR ROAD,

NEW DELHI-110030

.....APPELLANT

(Through: Mr. Gaurav Bharadwaj, Ms. Garima Bharadwaj and Mr. Naveen Saraswat, Advs.)

AND

1. SH. MANJEET SINGH BAL

S/O LATE SH. JASWANT SINGH BAL

2. SH. SANJAY SINGH BAL

S/O LATE SH. JASWANT SINGH BAL

3. SMT. BIMLA DEVI

W/O SH. JASWANT SINGH BAL

4. SMT SEEMA LAMBA

W/O SH. DINESH LAMBA

D/O LATE SH. JASWANT SINGH BAL

ALL RESIDENTS OF:

KHASRA NO.34,

VILLAGE SAIDULAJAIB,

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By: PURUSHAINDRA
KUMAR KAURAV



2024:DHC:10085



OPP. D-BLOCK, SAKET MEHRAULI,
BADARPUR ROAD, NEW DELHI-110030

.....RESPONDENTS

(Through:Mr.Viraj Dattar, Sr.Adv with Mr.Brijender S.Dhull, Adv.)

+ **RSA 163/2023, CM APPLs. 45104/2023 & 41938/2024**

Between: -

SH. SHAHABUDDIN

THROUGH HIS SPA

SH. SHAHID SAIFI

S/O SH. SHAHABUDDIN

RIO HOUSE NO. 18/2, 3RD FLOOR,

BATLA HOUSE, OKHLA,

NEW DELHI-110025

.....APPELLANT

(Through:Mr.Gaurav Bharadwaj, Ms.Garima Bharadwaj and Mr.Naveen Saraswat, Advs.)

AND

1. SH. UTTAM SINGH BAL

NOW DECEASED AND REPRESENTED BY

I. SMT. SUSHMA BAL

W/O LATE SH. UTTAM SINGH BAL

II. SH. DEPENDRA BAL

S/O OF LATE SH. UTTAM SINGH BAL

III. SH. RAVINDRA SINGH BAL

S/O OF LATE SH. UTTAM SINGH BAL

ALL RESIDENTS OF:

HOUSE NO. F-42-A,

VILLAGE SAID-UL-AJAB

(OPP. D BLOCK, SAKET)

MAIN ROAD, POST OFFICE,

MEHRAULI,

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KUMAR KAURAV



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NEW DELHI-110030

2. SH. PRITAM SINGH BAL
S/O SH. MAHABIR SINGH BAL
R/O HOUSE NO. F-42
VILLAGE SAID-UL-AJAB,
MAIN M.B. ROAD,
MEHRAULI, NEW DELHI-1 10030

.....RESPONDENTS

(Through:Mr.Viraj Dattar, Sr.Adv with Mr.Brijender S.Dhull, Adv.)

+ **RSA 165/2023, CM APPLs. 45159/2023 & 41957/2024**

Between: -

SH. SAIN SINGH
S/O LATE SH. HOSHIAR SINGH
R/O H-40, AMBEKAR NAGAR,
NEW DELI- I-I 10062
MOBILE NO: 9211424920

.....APPELLANT

(Through:Mr.Gaurav Bharadwaj, Ms.Garima Bharadwaj and Mr.Naveen Saraswat, Advs.)

AND

1. SH. UTTAM SINGH BAL
NOW DECEASED AND REPRESENTED BY

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W/O LATE SH. UTTAM SINGH BAL

II. SH. DEPENDRA BAL
S/O OF LATE SH. UTTAM SINGH BAL

III. SH. RAVINDRA SINGH BAL
S/O OF LATE SH. UTTAM SINGH BAL

ALL RESIDENTS OF:
HOUSE NO. F-42-A,



2024:DHC:10085



VILLAGE SAID-UL-AJAB
(OPP. D BLOCK, SAKET)
MAIN ROAD, POST OFFICE,
MEHRAULI,
NEW DELHI-110030

2. SH. PRITAM SINGH BAL
S/O SH. MAHABIR SINGH BAL
R/O HOUSE NO. F-42,
VILLAGE SAID-UL-AJAB,
MAIN M.B. ROAD,
MEHRAULI, NEW DELHI-1 10030

.....RESPONDENTS

(Through:Mr.Viraj Dattar, Sr.Adv with Mr.Brijender S.Dhull, Adv.)

+ **RSA 179/2023, CM APPLs. 48424/2023 & 41969/2024**

Between: -

1. SH. MONTU BATRA
S/O LATE SH. RAGHUBIR SINGH
R/O JG 15, KHIRKI EXTENSION
MALVIYA NAGAR, NEW DELHI

2. SMT.SIMRAN BINDA
D/O LATE SH.RAGHUBIR SINGH
R/O 80/24B (G.F.), MALVIYA NAGAR,
NEW DELHI

3. SMT.NAVPREET KAUR ALAG
D/O LATE SH.RAGHUBIR SINGH
R/O NJL 64B (F.F.), MALVIYA NAGAR,
NEW DELHI

.....APPELLANTS

(Through:Mr.Gaurav Bharadwaj, Ms.Garima Bharadwaj, and Mr.Naveen Saraswat, Advs.)

AND



2024:DHC:10085



1. SH. UTTAM SINGH BAL
NOW DECEASED AND REPRESENTED BY

I. SMT. SUSHMA BAL
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S/O OF LATE SH. UTTAM SINGH BAL

III. SH. RAVINDRA SINGH BAL
S/O OF LATE SH. UTTAM SINGH BAL

ALL RESIDENTS OF:
HOUSE NO. F-42-A,
VILLAGE SAID-UL-AJAB
(OPP. D BLOCK, SAKET)
MAIN ROAD, POST OFFICE,
MEHRAULI,
NEW DELHI-110030

2. SH. PRITAM SINGH BAL
S/O SH. MAHABIR SINGH BAL
R/O HOUSE NO. F-42
VILLAGE SAID-UL-AJAB,
MAIN M.B. ROAD,
MEHRAULI, NEW DELHI-1 10030

.....RESPONDENTS

(Through: Mr. Viraj Dattar, Sr. Adv with Mr. Brijender S. Dhull, Adv.)

+ **RSA 180/2023 & CM APPL. 48426/2023**

Between: -

1. SH. GURDEEP SINGH
S/O SH. HARMOHINDER SINGH
R/O 162, POCKET B DDA FLATS,
SUKHDEV VIHAR, NEW DELHI-110025

2. SH. BIRENDER SINGH
S/O LATE SH. SARDAR SINGH

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KUMAR KAURAV



2024:DHC:10085



R/O L-30, THIRD FLOOR,
MALVIYA NAGAR, NEW DELHI-110017

.....APPELLANTS

(Through: Mr. Gaurav Bharadwaj, Ms. Garima Bharadwaj and Mr. Naveen Saraswat, Advs.)

AND

1. SH. UTTAM SINGH BAL
NOW DECEASED AND REPRESENTED BY

I. SMT. SUSHMA BAL
W/O LATE SH. UTTAM SINGH BAL

II. SH. DEPENDRA BAL
S/O OF LATE SH. UTTAM SINGH BAL

III. SH. RAVINDRA SINGH BAL
S/O OF LATE SH. UTTAM SINGH BAL

ALL RESIDENTS OF:
HOUSE NO. F-42-A,
VILLAGE SAID-UL-AJAB
(OPP. D BLOCK, SAKET)
MAIN ROAD, POST OFFICE,
MEHRAULI,
NEW DELHI-110030

2. SH. PRITAM SINGH BAL
S/O SH. MAHABIR SINGH BAL
R/O HOUSE NO. F-42
VILLAGE SAID-UL-AJAB,
MAIN M.B. ROAD,
MEHRAULI, NEW DELHI-1 10030

.....RESPONDENTS

(Through: Mr. Viraj Dattar, Sr. Adv with Mr. Brijender S. Dhull, Adv.)



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+ **RSA 37/2024, CM APPLs. 11714/2024 & 11716/2024**

Between: -

SH. GIAN PARKASH
(NOW DECEASED THROUGH THE LR'S)

1. SH. RAVINDER SINGH
S/O LATE SH. GIAN PARKASH

2. SMT. DARSHNA DEVI
W /O LATE SH. GIAN PARKASH

3. SH. NARINDER SINGH
S/O LATE GIAN PARKASH

4. SH. BHUPINDER SINGH
S/O LATE SH. GIAN PARKASH

ALL R/O 328/204,
VILLAGE SAIDULAJAIB,
MEHRAULI, NEW DELHI-110030

.....APPELLANTS

(Through: Mr. Dhruv Madan with Mr. Saurabh Sharma and Mr. Dharmendra, Advs.)

AND

1. SH. MANJEET SINGH BAL
S/O LATE SH. JASWANT SINGH BAL

2. SH. SANJAY SINGH BAL
S/O LATE SH. JASWANT SINGH BAL

3. SMT. BIMLA DEVI
W/O LATE SH. JASWANT SINGH BAL

4. SMT. SEEMA LAMBA
W/O SH. DINESH LAMBA
D/O LATE SH. JASWANT SINGH BAL

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KUMAR KAURAV



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ALL RESIDENTS OF:
KHASRA NO. 34, VILLAGE SAID-ULAJAIB,
OPP. D BLOCK SAKET, SAKET, M.B. ROAD, NEW
DELHI-110030RESPONDENTS

(Through:Mr.Viraj Dattar, Sr.Adv with Mr.Brijender S.Dhull, Adv.)

+ **RSA 39/2024, CM APPLs. 11740/2024 & 11742/2024**

Between: -

SH. MADAN LAL@ GOPAL
S/O LATE SH. BHAGWAN DAS
R/O SHOP N0.4, KHASRA NO. 26
SAIDULAJAIB COLONY EXTN.
NEW DELHI-110030APPELLANT

(Through:Mr. Dhruv Madan with Mr. Saurabh Sharma and Mr.
Dharmendra, Advs.)

AND

1. SH. MANJEET SINGH BAL
S/O LATE SH. JASWANT SINGH BAL

2. SH. SANJAY SINGH BAL
S/O LATE SH. JASWANT SINGH BAL

3. SMT. BIMLA DEVI
W/O LATE SH. JASWANT SINGH BAL

4. SMT. SEEMA LAMBA
W/O SH. DINESH LAMBA
D/O LATE SH. JASWANT SINGH BAL

ALL RESIDENTS OF:
KHASRA NO. 34, VILLAGE SAID-ULAJAIB,
OPP. D BLOCK SAKET, SAKET, M.B. ROAD, NEW
DELHI-110030RESPONDENTS



2024:DHC:10085



(Through:Mr.Viraj Dattar, Sr.Adv with Mr.Brijender S.Dhull, Adv.)

+ **RSA 40/2024, CM APPLs. 11936/2024 & 11938/2024**

Between: -

SH. MUKHTIAR ALI KHAN
S/OR.SKHAN
R/O C-2, JOHRI FARMS
NOOR JAHAN EXTENTION
NEW DELHI-110025

.....APPELLANT

(Through:Mr. Dhruv Madan with Mr. Saurabh Sharma and Mr.
Dharmendra, Advs.)

AND

1. SMT. DURGAWATI
W/O LATE SH. SURENDER SINGH

2. SH. ATUL KUMAR
S/O LATE SH.SURENDER SINGH

3. SH. ANUJ KUMAR
S/O LATE SH. SURENDER SINGH

ALL RESIDENTS OF:
D-93, 1 ST FLOOR
FREEDOM FIGHTER COLONY,
NEW SARAI NEW DELHI

.....RESPONDENTS

(Through:Mr.Viraj Dattar, Sr.Adv with Mr.Brijender S.Dhull, Adv.)

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Reserved on: 28.11.2024
Pronounced on: 24.12.2024

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KUMAR RAURAV



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JUDGMENT

The instant appeals involve almost similar facts and raise similar questions for consideration and therefore, are being decided *vide* a common judgment. For the sake of brevity, the facts are extracted from the appeal bearing *RSA No. 162/2023*.

2. This appeal has impugned the judgment and decree dated 09.06.2023, passed by the Court of Additional District Judge-05, South District, Saket Courts, New Delhi in an appeal bearing no.12/2021, whereby, an appeal preferred by the appellant/defendant came to be dismissed, affirming the judgment and decree passed by the Court of Senior Civil Judge in *CS SCJ 83779/16*.

3. The respondents/plaintiffs being legal heirs of the late *Mr. Jaswant Singh Bal*, filed a civil suit for recovery of possession by way of eviction of the appellant/defendant, stating therein that the appellant/defendant was the tenant of the predecessor of the respondents/plaintiffs in respect of shop No.10 (Private), Khasra no.27, Village Saidulajab, opposite Saket, Mehrauli Badarpur Road, New Delhi, built upon land forming part of Khasra no.27, measuring about 10'-8" X 9'-6', situated in the revenue estate of village Saidulajab, opposite Saket, New Delhi, bounded on East with Shop of *Mr. Pritam Singh* and *Mr. Uttam Singh*, on West with Shop of *Mr.S.S.Bal*, on North with Mehrauli Badarpur Road and on South with Khasra No.26, owned by *Mr. Jeevan Prakash*. It is to be placed on record that the connected appeals also relate to the same Khasra, except for the difference in shop numbers.



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4. Before the Trial Court, it was the case of respondents/plaintiffs that originally, the rent was fixed at Rs.450/- per annum; however, later on, it was enhanced from time to time, and lastly, the rent became Rs.1000/- per month.

5. It was contended by the respondents/plaintiffs that the appellant/defendant became a tenant under the same terms and conditions, effective from 07.09.2010, the date on which the respondents/plaintiffs were declared the owners of the property pursuant to the decree of partition passed by this Court in the case titled *Smt. Bimla Devi vs. Sh. Jaswant Singh & Ors and Sh. Uttam Singh & Ors* in suit bearing no. 75/2003. It was also the case of the respondents/plaintiffs that the appellant/defendant defaulted in payment of rent from 01.04.2002 and had failed to pay the same despite repeated demands. The respondent/plaintiffs further stated that despite they had terminated the tenancy of the appellant/defendant *vide* notice dated 25.10.2011, the suit property was not vacated, compelling them to institute a civil suit for recovery of possession/eviction and recovery of Rs.1,05,140/- of arrears of rent, mesne profits along with interest.

6. The civil suit was contested by the appellant/defendant; however, the Trial Court decreed the same in favour of the respondents/plaintiffs. The judgment and decree passed by the Trial Court came to be challenged by the appellant/defendant before the first Appellate Court, and *vide* the impugned judgment and decree, the first Appellate Court also dismissed the appeal. The appellant/defendant, therefore, has filed the instant appeal.

7. *Mr. Gaurav Bharadwaj*, learned counsel appearing on behalf of the appellant/defendant submits that both the Courts below have miserably failed to appreciate that the burden of proof lies upon the



respondents/plaintiffs to establish that they were the owner of the shops in question, falling within Khasra no.27 and in absence of establishing their ownership, the suit ought not to have been decreed. Learned counsel also submitted that in the years 1986, 1987, and 1988, the Government, through Award No. 149 of 1986-87 and Award No. 13 of 1987-88, acquired land including Khasra No. 27 of Village Saidulajaib. Of the total land measuring 1 Bigha 10 Biswa in Khasra No. 27, 8 Biswa, according to him, was notified in the notifications dated 02.11.1980 and 25.11.1980 and the remaining portion of Khasra No. 27, measuring 1 Bigha 2 Biswa, was acquired through the notification of 1959.

8. According to learned counsel, the entire Khasra no.27 has been acquired, and therefore, the shops that are in occupation of the appellant/defendant are the ones that are situated over Khasra no.26. Furthermore, it is averred by the learned counsel that the respondents/plaintiffs could not conclusively establish the ownership of the shop in question.

9. He, then, contends that the aforesaid material aspects have been completely overlooked by the Courts below and, therefore, according to him, the appeal raises the following substantial question of law:-

(i) *Whether, the Courts below have wrongly shifted the burden on the appellant/defendant to establish that they are not occupying shops situated over Khasra no.27 and are the owner of the shops which are situated over Khasra no.26?*

10. *Mr. Dhruv Madan*, learned counsel appearing on behalf of the appellants in some of the other connected appeals submitted that if the



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orders passed by this Court in CWP 892-83/2005 are perused, the same would indicate that the area in question stood acquired.

11. *Per Contra, Mr. Viraj Dattar*, learned senior counsel appearing on behalf of the respondents/plaintiffs vehemently opposes the aforesaid submissions and contends that the Courts below have rightly appreciated the evidence and the material available on record and therefore, the instant appeal does not raise any question of law, much less any substantial question of law. According to him, the averment made by the appellant/defendant that the undemolished portion of shop no.10 is situated in Khasra No 26 and not in Khasra No 27 is wholly contrary to his admissions made in written submissions and other testimonies. It is also submitted by the learned senior counsel that it has been categorically admitted by the appellant/defendant that the shop under the tenancy was in Khasra No. 27.

12. Moreover, it is stated that the Demarcation Plan / Report dated 08.09.2016 by the Revenue Department as per direction of Recovery Officer - 1, DRT, Delhi, exhibited as EX PW-6/1, clearly proves that the shops as existing/abutting on main MB Road on the said date of demarcation i.e., on 08.09.2016 were in Khasra no 27 and Khasra no. 26 was behind these shops. It is also stated by the learned counsel that the aforementioned demarcation report has attained finality after the objection filed by the appellant/defendant was dismissed.

13. More importantly, the learned senior counsel appearing for the respondents/plaintiffs asserts that the Trial Court, after thoroughly evaluating both oral and documentary evidence, conclusively determined that the shop in question is located in Khasra No. 27. Furthermore, according to him, the Trial Court also held that the respondents/plaintiffs are



the rightful owners and landlords of the remaining undemolished portion of the shop and the said decision has been affirmed by the first Appellate Court, thereby bringing the matter to finality.

14. I have considered the submissions made by learned counsel for the parties and have perused the record.

15. A perusal of the judgment of the Trial Court would indicate that after the completion of pleadings, the Trial Court framed 12 issues. However, 6 issues were struck off and only the remaining issues were decided. The issues decided by the Trial Court read as under:-

- "1). Whether the plaintiff have no locus to file the present suit ? OPD*
- 2). Whether the plaintiff is entitled to the relief of recovery of possession as prayed for in prayer (a) of the plaint? OPP*
- 3). Whether the plaintiff is entitled to the relief of recovery as prayed for in prayer (a) of the plaint? OPP*
- 4). Whether the plaintiff is entitled to the relief of damages/mesne profits? If so for what period and at what rate ?OPP*
- 5). Whether the plaintiff is entitled to the award of interest? If so for what period and at what rate? OPP*
- 6). Relief, if any?"*

16. A perusal of the evidence by way of affidavit of DW-3, i.e., appellant/defendant would indicate that according to him, Khasra No. 27 comprised a total area of 1 Bigha and 10 Biswas of land. He states that a part of the land, measuring 8 Biswas, was notified under the notifications dated 02.11.1980 and 25.11.1980, whereas, the remaining portion of Khasra No. 27 was acquired through a notification issued in 1959.

17. He further stated that 8 Biswas of Khasra No. 27 had not been acquired, and therefore, civil writ petitions bearing No. CWP 892/2005 and CWP 893/2005 were filed by the Market Association of Village Saidulajaib. He also stated in his affidavit that *vide* final order dated 25.01.2006, this



Court directed the MCD/PWD to construct a road upon Khasra No. 27 and pursuant thereto, the demolition of the structure on Khasra No. 27 was carried out.

18. In his cross-examination, the appellant/defendant admitted that he had not personally taken the shop on rent, but became a tenant through his father. He claims that his father informed him that the shop had been rented by *Mr. Ajeet Singh* and that rent was being `paid by his father prior to the demolition of part of the shop in question.

19. He further acknowledged that his father had also paid rent to *Mr. Jaswant Singh Bal*, i.e., the father of the respondents/plaintiffs. He admits that the remaining portion of the shop, after the demolition, continued to remain in the possession of his father, and upon his father's death, the shop has remained in his possession till date. The relevant extract of his evidence reads as under:-

"...I had come to know from my father that the shop had been taken on rent by him from Sh. Ajit Singh. I know that Sh. Ajit Singh was owner of khasra no.27, Village Saidulazab, Tehsil-Mehrauli. My father was paying rent @ Rs.450/- PM to Sh. Ajit Singh. The rent had been paid by my father prior to the demolition of part of the shop by the Govt. authority. My father had been paying rent in my presence. In my presence that rent has not been paid to Sh. Ajit Singh but my father had paid the rent of the shop to Master Jaswant Singh. I had seen Jaswant Singh. It is correct that Sh.Jaswant Singh was the father of Sh. Manjeet Singh (plaintiff). It is correct that the remaining portion of the shop after demolition remained in possession of my father in the year 2006. My father died in the year 2009. It is correct that after death of my father the shop remained in my possession and is in my possession till date. Last time, my father had paid the rent to Sh. Jaswant Singh at the rate of Rs.4501 - PM but I do not remember for which month it was paid. It is correct that my father had been paying rent to Sh. Ajeet Singh, thereafter to Sh. Jaswant Singh and thereafter to his son including Manjeet Singh (plaintiff). My father had not paid rent to anybody other than the above mentioned person. After demolition of part of the shop in the year 2006 by Govt. Authority neither my father



nor myself had ever paid rental to anybody including the above mentioned persons. No person i.e. either the plaintiff or any person of their family or any other person demanding any rent after the year 2006...”

20. The Trial Court in paragraph no.44 of the judgment has considered the evidence affidavit adduced by the appellant/defendant and has recorded a finding of fact to the effect that the factum of tenancy between the father of the appellant/defendant and predecessor-in-interest of the respondent/plaintiffs is an admitted position. It has been accordingly, concluded that the facts which are admitted need not be proved. The following observations have been made in paragraphs no.44 and 45 :-

"44. DW3 i.e. defendant in his cross-examination, alleged himself to be owner of shop no. 10 and that the same is in Khasra no.26. However, he admitted that he has no document to show that he is the owner. He even stated that shops of other shopkeepers are also in Khasra no.26 and they are the owners and in possession of their respective shops but they do not have any document to show their ownership. On the contrary, he admitted that the said shop was taken on rent by his father from Ajit Singh even prior to his birth @ Rs.450/- as monthly rent. He stated that he was born in 1973. He also admitted that Sh Ajit Singh was the owner of Khasra no.27. He also stated that rent was paid prior to demolition of part of shop by govt authority. He alleged that in his presence rent was paid by his father to Jaswant Singh, thereafter to Manjeet Singh. He even admitted the fact that Sh. Jaswant Singh was father of plaintiffs. He also admitted the fact :hat rent was paid to the said persons only and not to any other person. He admitted the fact that Khasra no. 26 was owned by Chandrawati. He alleged that he purchased 80 sq yards of land of Khasra no.26 in 1980 from Chandrawati but he is not having any document that Chandrawati sold the shop to him. The fact that a demolition action took place and that shutter was put over remaining portion was also admitted. He admitted that no government department or any other person has ever asked him for payment of any rent and has never claimed any right on the shop in question. He said that after the death of his father in 2009, the remaining portion of shop is in his possession. He admitted that he is having no document to show that shop is part of Khasra no.26. As per him, the rental value of shop might be Rs.7,000/-. He admitted the address mentioned in the legal notice Ex.PW1/2 to be correct except the fact that it is not in Khasra no.27 but 26.



45. Thus, from abovesaid facts it is clear that the factum of tenancy between the father of defendant and predecessor-in-interest of the plaintiff is admitted. The fact that plaintiff is the son of Sh. Jaswant Singh and grandson of Sh. Ajit Singh is also not disputed. These admissions on the part of defendant in his cross-examination specifically point towards the fact that the possession of defendant in the property is that of tenant. Thus, the facts which are admitted need not be proved."

21. Moreover, the Trial Court found that some of the witnesses examined by the appellant/defendant namely *Ravinder Singh*, (DW4) and *Mukhtar Ali Khan* (DW12), reaffirmed the case of the respondents/plaintiffs. DW4 admitted that *Mr. Ajit Singh* was the owner of Khasra no.27 and predecessor in the interest of respondents/plaintiffs, who gave the shop in question to the father of the appellant/defendant on rent. DW4 stated that no award was passed for the 8 Biswas of land in Khasra no.27. DW12 also confirmed that the shop in question is located in Khasra no.27, owned by *Mr. Ajit Singh* and that the respondents/plaintiffs are his grandchildren. He testified that the appellant/defendant is in possession and running the shop in question and further also admitted to the demarcation conducted on 08.09.2016. The Trial Court found that aforementioned admissions did not support the appellant/defendant's case and instead reinforced the claim of respondents/plaintiffs that the suit property is part of Khasra no.27, and there existed a relationship of landlord and tenant between the parties. Paragraphs no.47 to 49 of the Trial Court decision reads as under:-

"47. Moreover, the other defendant's witness i.e DW4 Ravinder Singh also admitted Sh. Ajit Singh to be the owner of Khasra no.27 and taking of shop on rent from him by the predecessor of defendant. He also stated that no award was passed in respect to 8 biswas of land of Khasra no.27. 48. Further, DWI 2 Mukhtar Ali Khan categorically admitted that the suit shop falls in Khasra no.27, which was owned by Ajit Singh. He admitted that plaintiffs are grandchildren of Sh Ajit Singh. He alleged that the defendant is owner of the shop in his possession as he had seen



him sitting in and running the shop. He even admitted the factum of demarcation which took place on 08.09.2016.

49. These admissions on the part of defendant's witnesses, do not support the case of defendant but rather the case of plaintiff, that the suit property is falling in Khasra no.27 and he is the land-lord of the same in which defendant is a tenant."

22. Regarding the contention that the respondents/plaintiffs should establish their case independently and that it should not be based on the weakness of the evidence adduced by the appellant/defendant, it is seen that the respondent/plaintiffs presented various witnesses, including PW2, *Mr. Jeevan Prakash*. This witness testified that the suit property is situated in Khasra No. 27, not Khasra No. 26. During cross-examination, he was confronted with the suggestion that Khasra No. 26 had been acquired by the Government. The aforementioned suggestion was found to be a contradictory plea being taken by the appellant/defendant and accordingly in paragraph no.51 following observations were made by the Trial Court :-

*"51. Plaintiff also got examined PW2 Jeevan Prakash, who alleged himself to be the owner of Khasra no.26. He testified that his mother Smt Chandarwati was the owner of the said khasra no. 26 since 1971 and all the tenants in Khasra no. 26 are his tenant. He reiterated the facts as stated by plaintiff in the plaint that the suit property is falling in Khasra no.27 and not in Khasra no. 26. Interestingly a contrary suggestion was put forward by Ld Counsel for defendant to the said witness suggesting him that Khasra no. 26 was acquired by Government. If that was the case then how defendant had claimed to be the owner of Khasra no.26. He had even suggested that DDA had taken over possession of the said Khasra. **This shows that contradictory pleas were taken by defendant which were self destructive**"*

23. The Trial Court, therefore, has held that the respondent/plaintiffs have been able to discharge the onus on their shoulders to prove the landlord-tenant relationship on the preponderance of probabilities.



24. The Trial Court, while considering the provisions of Section 116 of the Indian Evidence Act, 1872 found that once the relationship of landlord-tenant is admitted, the tenant cannot challenge the title/ownership of the respondent/plaintiffs. The Trial Court also relied upon various judicial precedents to hold that the tenant is estopped from questioning the title of the landlord. The aforesaid finding is based on the principle of equity, which holds that a tenant, having entered into possession due to the landlord's title, cannot later dispute that title after benefiting from the landlord's grant of possession.

25. Paragraph No. 15 of the impugned judgment by the first Appellate Court also affirms the findings rendered by the Trial Court in the following terms:-

“15.The appellants are premising their defence on the strength of demarcation conducted in the year 2003 and the letter dated 22.5.2006. This documents i.e. letter dated 22.5.2006 is only a request from the concerned official of PWD Ito Tehsildar Subsequent action of the Tehsildar on the request, to conclude/complete the chain showing that this letter was acted upon has not placed on record by appellant nor proved by them. Copy of the order in the writ petition 4046 is placed on record which shows that qua the issue of road widening, demarcation was directed but this order nowhere mentions or direct that the entire Khasra No, 27 is to be demolished or to be procured. The order observed that all the parties had agreed to act in terms of demarcation. It is an admitted position that demolition in Khasra No. 27 has taken place. On this demolition there are competing claims by appellants and respondents. Appellants claim that the entire Khasra No. 27 was demolished, however, respondents claims otherwise. To substantiate their claims, respondents have placed on record demarcation report of 2006 which shows existence of shops in Khasra No. 27. The said demarcation report is stated to have challenged and attained finality. Thus, the respondent have placed on record to show that shops exists in Khasra No, 27 whereas on behalf of appellants no material to strengthen/fortify their plea of shops exists in Khasra No.26 is brought on record. Appellants are drawing strength on the basis of order of Hon'ble High Court of Delhi and the letters written between govt department and demarcation report of 2003 to prove their plea. As

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KUMAR RAURAV



discussed above, the letters whereby appellant, claim that Khasra No. 27 is transferred in full, is only a request and not the letter showing transfer of land in Khasra No.27 (full) as such. In the orders passed by Hon'ble High Court of Delhi there are no directions that how much Khasra No. 27 is toto he included for the purposes of road widening. The defence of appellants that the shop in question is in Khasra No.26 and not in Khasra No.27 gets further dented from the demarcation report of 2016 wherein no shops are stated to be present. Therefore, above discussion shows that appellants have not been able to prove their defence as set up by them. The impugned judgment passed by Ld. Senior Civil Judge is in consonance with the facts of the case, material on record and principle of law are applicable accordingly.”

26. On the conspectus of the aforesaid facts and circumstances, it is thus seen that the Courts below have rendered an unequivocal finding of fact to the effect that the shops in question are situated over Khasra no.27, which were not the subject matter of acquisition and the appellant/defendant was the tenant of the predecessor-in-interest of the respondent/plaintiffs.

27. The findings rendered by the Trial Court are strictly in accordance with the material available on record. The defence that the shop was located partly in Khasra Nos. 26 and 27 was raised at a belated stage, which constitutes an alteration of the original pleadings and introduces an inconsistent defence, violating the principle of consistency in pleadings, as correctly held by the Trial Court.

28. The appellant/defendant having questioned the ownership of the respondents/plaintiffs bore the *onus probandi* to establish that the respondents/plaintiffs lacked *locus* to file the suit. The defence taken by the appellant/defendant that the shops in question were in Khasra no. 26 was required to be corroborated by evidence. The evidence and testimonies adduced by the appellant/defendant instead indicate to the contrary and further strengthen the case of the respondents/plaintiffs, who satisfied the



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Courts below that the suit property in question was in Khasra no. 27 and a landlord-tenant relationship existed amongst the parties.

29. Moreover, the provision under Section 100 Code of Civil Procedure, 1908, is more stringent when the second appeal is filed challenging the concurrent findings of the Courts below. In *Bholaram v. Ameerchand*¹, the High Court set aside the impugned judgment on the ground that the findings were perverse and disregarded the material available on record. However, the Supreme Court while setting aside the High Court judgment held an error in finding fact would not entitle the High Court to interfere in the absence of a clear error of law.

30. Keeping in mind the facts and the material available on record, the Court finds that there are concurrent findings of facts, and the issue raised cannot be said to be a substantial question of law.

31. Accordingly, the appeals fail and are hereby dismissed along with pending applications. No order to costs

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 24, 2024/MJ/MJO

¹ (1981) 2 SCC 414