



2024 : DHC : 744



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

% Judgment reserved on: 21.12.2023
Judgment pronounced on: 02.02.2024

+ CM(M) 1489/2018 & CM APPL.51031/2018 &
CM APPL. 13555/2023

DHEERAJ JAIN & ORS Petitioners

versus

SAVITRI DEVI & ORS. Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Pradeep Dewan, Sr. Advocate with
Ms. Anupam Dhingra, Advocate.

For the Respondents : Mr. Anil K Bhasin, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. This is a petition under Article 227 of the Constitution of India challenging the impugned judgement dated 12.11.2018 in RCT No. 30310/16 titled "*Sh. Dheeraj Jain & Ors vs. Smt. Savitri Devi & Ors.*" and judgement dated 07.03.2015 in Eviction Petition bearing E No. 1096/2006 titled "*Savitri Devi & Ors vs. Mr. Kamal Kumar & Ors*".

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2. Shorn of all the unnecessary details, the relevant facts are extracted as under as culled out from the Eviction Petition:

"1. Mahant Narsingh Dass was stated to be the Owner of Property bearing No. 2/29-32, Bagh Diwar, Fatehpuri, Delhi-06.

2. Mahant Narsingh Dass expired on 19.05.1964 leaving behind a Registered Will dated 15.05.1964:-

i) By the said Registered Will dated 15.05.1964, the said Property devolved upon Sh. Harnarayan & Budh Ram.

3. The Probate of the said Will was granted in favour of Sh. Har Narayan by the Court of Sh. G.C.Suri, the then Ld. District Judge vide Order dated 04.11.1968:-

i) Sh. Budh Ram challenged the Order by FAO No. 4/69 which was decided in his favour:-

i) Sh. Budh Ram during the pendency of the FAO No. 4/69 executed a Compromise Deed with Sh. Harnarayan on 29.07.1974 for Rs. 17000/-, thereby relinquishing his rights under the Will in favour of Sh. Harnarayan BUT did not withdraw the FAO.

ii) Against the Order of FAO, LPA No, 2/76 was filed by Sh. Harnarayan against Sh. Budh Ram through Sh. Khemta Ram as his LRs on the basis of a Will in his favour by Sh. Budh Ram:-

i) The said Order of Sh. G.C.Suri was upheld by the Division Bench of the Hon'ble High Court in LPA No. 2/1976;

ii) vide said Order dated 29.05.1991:-

a) The DB in Para No. 35 & 47 of Order dated 29.5.1991 of LPA took note of Compromise dated 29.7.1974 between Budh Ram &

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Harnarayan whereby Budh Ram relinquished his rights in favour of Sh. Harnarayan.

4. A Suit for Declaration bearing No. 700/2001 was filed by the present Petitioners against Sh. Khemta Ram for the relief that they be declared as the exclusive Owner of the present Suit Property:-

i) The said Suit was decided by the Court of Sh. Talwant Singh, the then Ld. ADJ, vide Order dated 13.02.2002;

ii) The said Court considered all the aspects viz:-

i) the grant of probate in favour of Sh. Harnarayan by the Hon'ble High Court in LPA No. 2/76 vide Order dated 29.05.1991 as well as;

ii) the factum of relinquishment of the right by Sh. Budh Ram devolved upon him under the Will of Sh. Narsingh Dass, by virtue of Compromise dated 29.07.1974 which is referred to as Ex. P-3 by the Hon'ble High Court In Para No. 35 and 47 of the LPA Order dated 29.05.1991 and;

iii) Accordingly by virtue of decision of issue No. 2 and 3 appearing at Page No. 6 and 7 of the said Order came to the conclusion that the present Petitioner are the exclusive Owner of the present Suit Property and Sh. Budh Ram, the Predecessor in interest of Sh. Khemta Ram by entering into Compromise dated 29.07.1974 had transferred and assigned all his rights in favour of the present Petitioners or their Predecessor and accordingly, decreed the Suit In favour of the present Petitioner.

5. Smt. Darshna Rani was inducted as Tenant by Sh. Harnarayan in a shop in the Property in question:-



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a) *Smt. Darshna Rani during the continuation of her Tenancy created a Sub Tenancy in favour of Respondent No. 4 to 6:-*

i) *As Smt. Darshna Rani had not obtained any permission from the Landlord Sh. Harnaryan for the creation of Sub-Tenancy in favour of Respondent No. 4 to 6, she entered into a fictitious Partnership with the Respondent No. 4 and 5 vide Partnership Deed dated 03.07.1987;*

ii) *By virtue of the said Partnership Deed dated 03.07.1987, not even a single right has been given to Smt. Darshna Devi except a 5% profit;*

iii) *By virtue of the said Partnership Deed it has been subscribed that even on dissolution of the Partnership Firm, the Tenancy right will remain with the Partnership Firm.”*

Hence, the present Petition.”

ARGUMENTS ON BEHALF OF THE PETITIONERS:-

3. Mr. Pradeep Dewan, learned Senior Counsel appears for the petitioners and submits that the challenge in the present petition is against the impugned judgement of learned Rent Controller Tribunal (hereinafter referred to as “RCT”) (First Appellate Court) and Additional Rent Controller (hereinafter referred to as “ARC”), whereby the eviction was upheld under section 14(1)(b) of Delhi Rent Control Act, 1958 (hereinafter referred to as “DRC Act”) on the ground of unauthorized sub-letting and also on the premise that the petitioners were the unauthorized sub-tenants of Smt. Darshana Rani @ Darshana Kumari.



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4. Mr. Dewan, learned Senior Counsel submits that it is an undisputed fact that one Mahant Narsingh Dass had, by his Will dated 15.05.1964, bequeathed half share each in the subject suit property to Chela Har Narain and Chela Budh Ram.

5. Learned Senior Counsel submits that so far as Chela Har Narain is concerned, he filed a probate case seeking Letters of Administration in respect of the bequeathed property. Learned Senior Counsel further submits that the said grant of Letters of Administration was challenged by Chela Budh Ram and in appeal the Letters of Administration were annulled by the order dated 30.10.1975 in FAO No. 4/1969 passed by this Court.

6. Learned Senior Counsel submits that so far as the share of Chela Budh Ram to the extent of 50% of the property bequeathed by Mahant Narsingh Dass is concerned, by virtue of his own Will dated 27.08.1972, Chela Budh Ram had bequeathed his share in the subject suit property to Late Khemta Ram. Learned Senior Counsel submits that there is no dispute to that extent.

7. During the pendency of the FAO No.4/1969, Chela Budh Ram had died and Late Khemta Ram was brought on record on the basis of Will executed by Chela Budh Ram. Learned Senior Counsel submits that Late Khemta Ram also filed a probate petition in respect of the Will executed by deceased Chela Budh Ram before the District Judge, Delhi who granted probate in favour of Late Khemta Ram.



8. Learned Senior Counsel refers to page 84 of paper book, which is purportedly the Relinquishment Deed styled as Compromise Deed alleged to have been executed by Chela Budh Ram in favour of Chela Har Narain relinquishing his share of 50% in favour of Chela Har Narain. Learned Senior Counsel submits that the said document, was filed alongwith the application under Order XXIII Rule 3 of Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) before this Court in FAO No. 4/1969 to project as if Chela Budh Ram had given up his share in the subject suit property in favour of Chela Har Narain.

9. Learned Senior Counsel submits that a look at the said purported Compromise Deed/Relinquishment Deed brings to fore the fact that it is on a plain paper, unstamped and unregistered. Learned Senior Counsel submits that relinquishment, as per the settled law, has to be by way of a registered document. Since the said document is lacking in all material particulars, the same is, in his submissions, inadmissible in law.

10. Learned Senior Counsel also submits that intriguingly, by the time the application under Order XXIII Rule 3 of CPC, was filed by Chela Har Narain on 09.12.1974, Chela Budh Ram had already expired. However, an affidavit stated to have been executed by Chela Budh Ram dated 29.07.1974 was filed alongwith the aforesaid application. In fact, the intervening death of Chela Budh Ram even before the filing of the said application has been admitted by Chela Har Narain in the said application itself. It is stated therein that Chela Budh Ram died sometime in the month



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of August 1974 whereas the application under Order XXIII Rule 3 CPC was filed in the month of December 1974.

11. Learned Senior Counsel submits that no orders on the aforesaid application under Order XXIII Rule 3 CPC had ever been passed in FAO No. 4/1969.

12. Learned Senior Counsel submits that the application under Order XXIII Rule 3 CPC was filed before this Court on behalf of a dead person whose affidavit was placed on record. Learned Senior Counsel submits that the respondents have taken contradictory and mutually destructive stands, in that, in the Eviction Petition, at one place it was submitted that Smt. Darshana Kumari was inducted as tenant by Mahant Narsingh Dass whereas in another portion the said Smt. Darshana Kumari was stated to be the tenant under Chela Har Narain purporting that he is the owner/ landlord of the subject suit property.

13. Learned Senior Counsel submits that the petitioners asserted before the learned ARC as also before the learned RCT that they were inducted as partners with Smt. Darshana Kumari and that is how they came in possession of the subject suit property. Learned Senior Counsel submits that there are a catena of judgements supporting the stand that *bonafide* induction into partnership with the original tenant would not constitute sub-letting and would not fall within the mischief of section 14(1)(b) of the DRC Act.



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14. In fact, learned Senior Counsel submits that the factum of entering into a partnership agreement with Smt. Darshana Kumari, was established by respondents Nos. 1 to 4 themselves, in that, it was the respondents Nos. 1 to 4 themselves who had filed the copy of partnership deed entered between petitioners on one hand and Smt. Darshana Kumari on the other. Learned Senior Counsel submits that so far as Smt. Darshana Kumari is concerned, whether she was inducted by Chela Har Narain or by Mehant Narsingh Dass, it is immaterial since her tenancy in the subject suit property is not disputed and in fact asserted by the respondents themselves. On that basis, learned Senior Counsel submits that the relationship of landlord and tenant insofar as Smt. Darshana Kumari is concerned, is undisputed.

15. Learned Senior Counsel draws attention of this Court to page 190 of the paper book, which is the invitation card of the petitioners while they were commencing their business in the subject suit property under the name and style of Mahabir Trading Company. Mr. Dewan, learned Senior Counsel submits that surprisingly the said invitation card was also filed by the respondents themselves and was never objected to as not being a genuine document. On that basis, learned Senior Counsel submits that the said invitation card read alongwith partnership deed would, as a consequence, also establish that there was no sub tenancy between Smt. Darshana Kumari and the petitioners and that they were partners.

16. On the aforesaid basis, learned Senior Counsel brings attention of this Court to para-8 of the impugned judgement where the learned RCT has

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drawn wrong conclusions on merit, based on inadmissible evidence. In that, learned RCT took into consideration the purported Compromise Deed/Relinquishment Deed, assuming that by said Relinquishment Deed, Chela Budh Ram had relinquished his 50% share in the subject suit property in favour of Chela Har Narain. On that premise, the learned RCT had wrongly concluded that Chela Har Narain was the owner of the entire bequeathed property.

17. He further submits that the learned RCT also took into consideration the challenge laid by Chela Har Narain to the order dated 30.10.1975 passed in FAO No. 4/1969 before the learned Division Bench of this Court in LPA No. 2/1976, the learned Division Bench of this Court upheld the Letters of Administration dated 04.11.1968 in favour of Chela Har Narain *vide* its order dated 29.05.1991. On that basis, the learned Division Bench had concluded that Chela Har Narain had become absolute owner of the property left by Mahant Narsingh Dass.

18. Learned Senior Counsel submits that learned RCT made an error in finding of fact as also in law, in that, neither the Compromise Deed/Relinquishment Deed was a document admissible in evidence nor was the application under Order XXIII Rule 3 CPC filed in accordance with law nor was there any order accepting the said application on the record of FAO 4/1969. Learned Senior Counsel submits that overlooking the absolutely inadmissible document as also overlooking the absence of any order on application under Order XXIII Rule 3, CPC the Court below



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committed an error in assuming that Chela Har Narain had become owner of the entire subject suit property.

19. Mr. Dewan, learned Senior Counsel submits that the application under Order XXIII Rule 3 CPC dated 09.12.1974 filed by Chela Har Narain in FAO No. 4/1969 to record compromise dated 29.07.1974 by virtue of which Chela Budh Ram had allegedly relinquished his share in the subject suit property inherited by virtue of will of Mahant Narsingh Dass, was signed only by Chela Har Narain and had the supporting affidavit of Chela Budh Ram dated 29.07.1974. He further submits that apparently the said application not pressed before this Court and no orders were passed thereon. Ultimately, FAO No. 4/1969 filed by Chela Budh Ram was allowed on merits *vide* judgement dated 30.10.1975, the learned Division Bench in LPA No. 2/1976 reversed the order passed in FAO No. 4/1969 and restored the judgement passed by the District Judge dated 04.11.1968. The learned Division Bench of this Court did not even consider the application under Order XXIII Rule 3 CPC. The proceedings in LPA No. 2/1976 were probate proceedings in which no adjudication regarding title could be made. Resultantly, Chela Har Narain (deceased through LRs) and Chela Budh Ram had become the co-owners of the subject suit property in equal share.

20. Mr. Dewan, learned Senior Counsel further refers to para 8 of the impugned judgement dated 12.11.2018 to show that the learned RCT had referred to the Compromise Deed/Relinquishment Deed dated 29.07.1974 as a agreement dated 11.08.1964. The Compromise Deed/Relinquishment



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Deed dated 29.07.1974 and the agreement dated 11.08.1964 between Chela Har Narain and Chela Budh Ram are different documents. Learned Senior Counsel draws attention of this Court to para 9 of the impugned judgement dated 12.11.2018 wherein the learned RCT has referred to the judgement dated 13.02.2002 of the Suit of Declaration bearing No. 700/2001 whereby it was held that in view of the decision in Suit No. 1165/1990 passed by learned ADJ G.S. Jugti dated 18.12.1997, no dispute is left as to the LRs of Chela Har Narain are the owners in possession of the subject suit property and that Chela Budh Ram had transferred and assigned all his rights in the subject suit property in favour of Chela Har Narain by virtue of the Compromise Deed/Relinquishment Deed executed by him supported by affidavit of Chela Budh Ram admitting the Will dated 15.05.1964 executed by Mahant Narsingh Dass for consideration which was duly paid to Chela Budh Ram and hence Chela Budh Ram could not transfer any right in the subject suit property. He further submits that the Suit No. 1165/1990 is just a representative suit and the issue in that suit was only limited to whether Mahant Narsingh Dass was competent to execute the Will dated 15.05.1964 and this is not bore out from para 9 of the reading of the impugned judgement dated 12.11.2018. He further submits that in the judgement dated 18.12.1997, it was claimed that the subject suit property called Chotta Ram Dwara at Bagh Diwar, Delhi having municipal No. 29 to 32, Ram Dwara, Delhi was dedicated for the benefit of Sanahi Kharapa Sect and its followers for the benefit of the sect and the Chelas for imparting religious tenets. The said Ram Dwara was not an individual

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property of any Mahant and any Mahant could only act as its custodian and Pujari. Thus, the last Mahant of Ram Dwara i.e. Mahant Narsingh Dass had got the subject suit property from his Guru Mahant Purshottam Dass, in the line of descendant Mahants and not as a individual property. Therefore, the Will dated 15.05.1964 is void and illegal document, *inter alia*, as he was not competent to do under law, customs and usages of the Sect. However, the said suit was dismissed. Resultantly, it can be inferred that Mahant Narsingh Dass was competent to execute the Will dated 15.05.1964.

21. Mr. Dewan, learned Senior Counsel submits that the Compromise Deed/ Relinquishment Deed dated 29.07.1974 was made on a plain paper. The requisite stamp duty was not paid thereon nor the same was registered as required under section 17 of the Registration Act, 1908. It is submitted that the said document cannot operate to transfer any right, title and interest in immovable property of the value of Rs. 100 or above unless the same is registered. The document is required to be compulsorily registered as there was no family relationship between Chela Budh Ram and Chela Har Narain. The said document is inadmissible in law and the same cannot operate as a transfer of interest in an immovable property. In law, the Court could not, on the basis of the said declaration hold that Chela Budh Ram had relinquished his 50% share in the subject suit property in favour of Chela Har Narain without it being registered in accordance with law. On this, learned Senior Counsel relies on the judgement of Calcutta High Court in *Secy. of State vs. Krishna Prosad Roy Chaudhuri* reported as **1935 SCC OnLine Cal 227** and submits that in order to show that a party has

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contracted himself out of his rights and surrendered what he had already acquired with reference to the property the value of which exceeds Rs. 100/-, the transaction must be evidenced by a registered document having regard to provisions of section 17 of the Registration Act, 1908.

22. Learned Senior Counsel further submits that vide *exparte* judgment dated 13.02.2002 passed by the learned ADJ in Suit No. 700/2001, the said suit was decreed in favour of Chela Har Narain. It was held that, in view of the judgement of the learned Division Bench of this Court in LPA No. 2/1976 and the judgement dated 18.12.1997 in Suit No. 1165/1990 passed by the Court of learned ADJ, there was no dispute left that Chela Har Narain, succeeded by the contesting respondents, was the owner in possession of the subject suit property and that the predecessor of Late Khemta Ram had compromised with the original plaintiff/ Chela Har Narain and had transferred all his rights and interest in the subject suit property in favour of the original plaintiffs vide Exhibit. P-4 and P-5 i.e. the Compromise Deed/Relinquishment Deed and affidavit filed in FAO No. 4/1969. It was further held that it could not be disputed that Chela Har Narain had become the sole owner of the subject suit property and Late Khemta Ram had no right to dispossess the original plaintiff from the subject suit property.

23. Learned Senior Counsel submits that the judgement dated 13.02.2002 in Suit No. 700/2001 passed by the learned ADJ is against the facts of the case besides being against law. The said judgement has been passed *sub-silentio* and is *per-incuriam* as it was passed in ignorance of the



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provisions of section 17 of the Registration Act, 1908. The said judgement cannot operate as *res-judicata* or as an estoppel against the parties. The heavy reliance placed by the learned RCT in the impugned judgement is an error of law.

24. Mr. Dewan, learned Senior Counsel refers to the judgement of the Supreme Court in ***Vijay Narayan Thatte & Ors vs. State of Maharashtra & Ors***, reported as (2009) 9 SCC 92, wherein the Supreme Court has held that the judgement which is *per incuriam* i.e. against the statutory provisions or *sub-silentio*, i.e., in ignorance of some legal provisions would not operate as *res-judicata*. The relevant paragraphs are extracted hereunder.

25. Learned Senior Counsel submits that the respondents in the Eviction Petition admitted that the petitioners had entered into a partnership deed dated 03.07.1987 with the alleged tenant Smt. Darshana Kumari. It has nowhere been alleged that the partnership deed is a sham document created to camouflage the alleged sub-letting. Rather, AW-4/ Shri Vikas Sharma who is the main witness of the respondents, has in his affidavit admitted the execution of partnership between the petitioners and Smt. Darshana Kumari. He further asserts that the allegation that there is no partnership as Smt. Darshana Kumari is having only 5% share in the partnership, is beyond the pleadings and no evidence beyond pleadings can be looked into. Further, merely because Smt. Darshana Kumari had 5% interest would not make a genuine deed of partnership into a sham document.



26. He further submits that the learned RCT has criticized the petitioners for not producing the partnership deed between the petitioners and Smt. Darshana Kumari and concluded that the petitioners have deliberately withheld it. The said approach was uncalled for inasmuch as the contesting respondents had themselves produced a copy of the partnership deed which they had admittedly obtained from Smt. Darshana Kumari which was marked and properly exhibited too.

27. Learned Senior Counsel submits that in order to prove the direct tenancy of the petitioners under Late Khemta Ram, the petitioners produced four rent receipts bearing the signatures and thumb impressions of Late Khemta Ram. He submits that the document was thus proved as required under section 60 of the Indian Evidence Act, 1872. The findings of the impugned judgement that the said receipts were not proved as per law as the executor Late Khemta Ram was not examined are perverse being against the provisions of section 60 of the Evidence Act, 1872. Late Khemta Ram did not enter the witness box as he refused to enter the witness box. Learned Senior Counsel relied on the judgement of the learned Division Bench of this Court in ***Hazari Lal & Ors vs. Giasi Ram & Ors***, reported as **1971 SCC OnLine Del 96** and submits that section 14(1)(b) of DRC Act uses three expressions, namely, “*Sub-let*”, “*assigned*” and “*otherwise parted with the possession*” of the whole or any of the subject suit property without obtaining the consent in writing of the landlord. These three expressions deal with three different concepts and apply to different circumstances. In sub-letting there should exist the



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relationship of landlord and tenant as between the tenant and his sub-tenant and all the incidents of letting or tenancy have to be found, namely, the transfer of an interest in the estate, payment of rent and the right to possession against the tenant in respect of the subject suit property sub-let. Learned Senior Counsel also relied on the judgement of the Supreme Court in ***United Bank of India vs. Cooks and Kelvey Properties (P) Limited***, reported as **(1994) 5 SCC 9** and submits that the meaning of transfer of a right to enjoy the property for consideration envisaged under section 105 of the Transfer of Property Act, 1882, postulates that a tenant who transfers or assigns his right in the tenancy or any part thereof in whole or in part held by him without the previous consent in writing, creates a sub-tenancy.

28. Learned Senior Counsel further submits that the induction of the petitioners No. 1 and 2 in the subject suit property was known to the respondents from day one, as they have themselves placed on record the invitation card for the opening ceremony of business by the petitioners at the subject suit property on 06.07.1987. The impugned Eviction Petition is dated 14.12.2004, filed more than 17 years after the petitioners came into the subject suit property. He further submits that, the respondents are debarred from filing the impugned Eviction Petition by the principles of laches, waiver and acquiescence.

29. Learned Senior Counsel refers to the judgement of the Co-ordinate Bench of this Court in ***Hriday Bhushan Doomra vs. Jeevan Industries Pvt. Ltd.***, reported as **2007 SCC OnLine Del 243** and submits that though a finding of fact, more so when there is a concurrent finding of fact by



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lower courts cannot be questioned by re-appreciating the evidence, however, if it can be shown that a material evidence has been ignore or that wrong conclusions have been drawn from admitted evidence, it would be permissible for this Court to exercise its jurisdiction under Article 227 of the Constitution of India.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:-

30. Mr. Anil K. Bhasin, learned counsel appearing for the respondents submits that the property involved in the present matter is 2/29-32, Bagh Diwar, Fatehpuri, Delhi - 06. The suit filed was for the part of the property situated in the ground floor i.e, 2/30 of the subject suit property. The subject suit property falls in slum area, for filing an Eviction Petition except on the ground of *bonafide* requirement one has to obtain prior permission from the Competent Authority under Section 9 of the Slums Areas (Improvement and Clearance) Act, 1956. The proceedings for obtaining the permission were started in the year 1998 and it continued till 2004. On 27.10.2004, the permission was granted through a petition no. CA 936/1998. He further submits that originally the Slum Petition was filed by Chela Har Narain against Smt. Darshana Kumari. During the pendency of the slum proceedings both Chela Har Narain and Smt. Darshana Kumari had expired and on behalf of them their legal representatives were brought on record. He submits that during the pendency of the slum proceedings, an application under Order I Rule 10, CPC was moved by Late Khemta Ram with the prayer that he be impleaded as one of the parties in the slum proceedings, having an interest



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in respective of the property. He further submits that at one point of time, the slum proceeding was dismissed for non-prosecution. An application was moved on behalf of Smt. Darshana Kumari or on behalf of applicant Late Khemta Ram, and the said application was signed by the petitioner No. 1/Dheeraj kumar Jain and also the petitioner No. 1 filed an affidavit as a *paikor* on behalf of Late Khemta Ram. Eventually after contesting, application under Order I Rule 10, CPC was dismissed. He submits that after one and a half months the impugned Eviction Petition was filed in the year 2004.

31. Learned counsel submits that the Eviction Petition was filed on the allegation that Smt. Darshana Kumari during her lifetime had parted with or sublet the entire subject suit property to the petitioners.

32. Mr. Bhasin, learned counsel submits that in a petition under section 14(1)(b) of DRC Act, it is not mandatory to array an unauthorized sub tenant as a party as per the said section. He further submits that in order to avoid confusion that the legal representatives of Smt. Darshana Kumari and the petitioners were impleaded in the Eviction Petition. To prove this, learned counsel refers to page. 202 of the paper-book and submits that all the LRs of Smt. Darshana Kumari were impleaded as respondent Nos. 1, 2 & 3, while petitioner Nos. 1 to 3 were impleaded as respondents Nos. 3 to 6 in the Eviction Petition filed on 16.12.2004.

33. Learned counsel for the respondents refers to Section 14(1)(b) of DRC, Act to submit that sub-letting without the consent of the landlord is



an unauthorized act and thus, the requirement of filing an Eviction Petition is satisfied. Section 14(1)(b) of DRC, Act is extracted hereunder:-

“14. Protection of tenant against eviction.-*(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:*

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

xxx

(b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

xxx”

34. Mr. Bhasin, learned counsel submits that the respondents who were the petitioners in the Eviction Petition had categorically asserted that the petitioners herein who were the respondent nos. 4 to 6 in the Eviction Petition were carrying out wholesale cloth business in the subject suit property and as such were unauthorized sub-tenants. He submits that the respondents had also asserted that the subject suit property was originally let out to Smt. Darshana Kumari about 35 years ago. Mr. Bhasin submits that erroneously in the Eviction Petition it was noted that Smt. Darshana Kumari was inducted as tenant by Late Mahant Narsingh Dass, since the said Mahant Narsingh Dass had expired on 19.05.1964. He however submits that in the very same Eviction Petition it was correctly noted in para 14 that it was Chela Har Narain who had inducted Smt. Darshana Kumari as tenant and asserted that there is a *jural* relationship of landlord-



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tenant between Chela Har Narain and Smt. Darshana Kumari. He further submitted that the respondents had categorically asserted that it was the petitioners herein who were running a wholesale cloth business in the name and style of petitioner no. 3 herein, to the total exclusion of the respondent nos. 1 to 3 in the Eviction Petition. (LRs of Smt. Darshana Kumari).

35. Mr. Bhasin, by referring to para 18(b) of page 209 which is a part of Eviction Petition submits that the respondents had referred to in detail the partnership deed dated 03.07.1987 purported to have been executed between Smt. Darshana Kumari and the petitioners to assert that the said partnership deed was a sham document and that actually Smt. Darshana Kumari was completely excluded from the possession of the subject suit property by virtue of the said partnership deed. He referred to various clauses of the partnership deed to urge that the plain reading of the partnership deed clearly indicated that Smt. Darshana Kumari has given up her possession over the subject suit property and the share of partnership to the extent of 5% in favour of Smt. Darshana Kumari itself shows the sham nature of the said document. In fact, the clauses are categoric to the extent, that she would neither have right of access to the books of account or records of the firm nor would she be entitled to interfere in day to day functions of the firm. Smt. Darshana Kumari was not to have any right over the goodwill of the firm. According to Mr. Bhasin, the recitals of the partnership deed reveal its sham nature and the said document is only a camouflage to hide/ conceal to true nature of transaction, which is, parting

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of possession by Smt. Darshana Kumari to petitioners herein unauthorizedly.

36. To buttress the aforesaid factual narration on behalf of the respondents Mr. Bhasin refers to Section 4 and 6 of the Indian Partnership Act, 1932 to submit that the alleged partnership deed and the status of Smt. Darshana Kumari in relation thereto does not fall within the four corners of the provisions of the aforesaid sections. In fact, according to Mr. Bhasin, none of the requisites of a “*Partner*” as ascribed in section 4 and 6 can at all be attributed to Smt. Darshana Kumari and as such it is clear that the petitioners who are unauthorized sub-tenants liable to be evicted under section 14(1)(b) of DRC Act.

37. Learned counsel submits that after having obtained the permission from the Competent Authority (Slum) under the Slum Areas (Improvement and Clearance) Act, 1956, the respondents had filed the Eviction Petition to which a written statement was filed by the petitioners. By referring to the written statement, filed by the petitioners he submits that the petitioners had not only taken up a stand that they are in partnership with Smt. Darshana Kumari, they had further urged that the tenancy rights and possessory rights were surrendered by Smt. Darshana Kumari to Late Khemta Ram on 31.03.1999. Learned counsel submits this was a new twist in their original stand and without any documents filed on record or any evidence to show that Smt. Darshana Kumari had indeed surrendered her tenancy rights to Late Khemta Ram. He refers to Section 111 of the Transfer of Property Act, 1882 particularly sub-section (e) and illustration



(f) to buttress his aforesaid arguments regarding the manner in which a lease of immovable property is to be determined. According to learned counsel, the statement referred to aforesaid was violative of provisions of the Transfer of Properties Act, 1882.

38. Mr. Bhasin, learned counsel further submits that on 03.07.1987, the petitioners came into the possession of the subject suit property and to prove that, invitation card dated 06.07.1987 of the opening ceremony is annexed. He further submits that the subject suit property must have been vacated by Smt. Darshana Kumari for creation of tenancy rights in favour of petitioners if she had surrendered her tenancy rights. If, it was surrendered, then the petitioners have failed to examine this. He refers to section 101 of the Indian Evidence Act, 1872 to submit that the burden of proof is on the petitioners to prove that the tenancy rights have been surrendered by Smt. Darshana Kumari as they asserted this contention.

39. Learned counsel submits that in the written statement it has been averred that Smt. Darshana Kumari surrendered her tenancy rights and right of possession of the subject suit property on 31.03.1999 to Late Khemta Ram. He further submits that there is no dispute that Smt. Darshana Kumari was paying Rs. 40/- per month as rent and on 01.04.1999, the petitioners submits that they were paying Rs. 45/- per month as rent. Whereas, according to learned counsel, during cross examination the petitioner No. 1 stated that he had purchased the subject suit property from Late Khemta Ram, contradicting his stand that a fresh tenancy was created between petitioners with Late Khemta Ram on



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01.04.1999. However, no evidence was placed on record to supplant his stand.

40. Mr. Bhasin, learned counsel next refers to the contradictory and confusing stand taken by the petitioners in their written statement filed in the Eviction Petition. He submits that though the petitioners have asserted entering into a fresh agreement with Late Khemta Ram with effect from 01.04.1999, no document or a letter worth its name has ever been filed by the petitioners. That apart, the only document placed on record are four purported rent receipts alleged to have been issued by Late Khemta Ram. He points out to another statement, in the very same written statement whereby the petitioners now claim that they are in occupation of the subject suit property in their own right as tenants under Late Khemta Ram who is one of the co-owners of the property in the dispute. He vehemently submits that Late Khemta Ram was never examined by the petitioners and as such the aforesaid rent receipts or the stand taken were never proved in accordance with law and are not tangible evidence to show that Late Khemta Ram stepped into the shoes of Smt. Darshana Kumari and that the petitioners became tenants of Late Khemta Ram.

41. Further referring particularly to para 18(A), 18(B) and 18(C) of the written statement, learned counsel submit that the denials contained in the said paragraphs are vague and evasive and as such, are no denial in the eyes of law. He submits that as per the statement in para 17C, the petitioners have admitted that the respondents nos. 1 to 3 therein (respondents 4 to 6 herein) had no interest in the tenancy rights of the shop



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or in the business being run in the name of respondents no. 6 therein (petitioner 3 herein). In fact, the petitioners did not move any application for impleadment before Slum Authority to challenge the maintainability of the Slum Petition filed by the predecessor-in-interest of the respondents.

42. Mr. Bhasin referred to in detail and took this Court elaborately through copious volumes of the evidence as recorded of the witnesses of the petitioners in the Eviction Petition to submit that there were a number of contradictions and improvement and which would demonstrate that the petitioners had entered into a sham transaction with Smt. Darshana Kumari, conveniently changed the landlordship to Late Khemta Ram. He submits that the party cannot be permitted to approbate or reprobate. Mr. Bhasin submits that during the cross-examination of the petitioner no. 1, it was elicited that the partnership deed purportedly executed between Smt. Darshana Kumari and the petitioners was indeed a sham document as also that the petitioners had never met Late Khemta Ram since he was unable to give the details of the residence or whereabouts of Late Khemta Ram. Mr. Bhasin, copiously and meticulously took this Court throughout the detailed cross-examination of petitioner no. 1 in order to support the aforesaid contentions. As a follow up, learned counsel refer to Eviction Order dated 07.03.2015 particularly to para 6, 7, 8, 9 & 10 to demonstrate the contradictions in the cross-examination which were noted by the learned RCT.

43. Learned Counsel refer to para 14, 16, 22 & 23 of the Eviction Order dated 07.03.2015 to submit that, even the learned RCT had disbelieved the



version of the petitioners particularly in regard to the status of Late Khemta Ram and had doubted the credibility of the petitioners version since Late Khemta Ram was never produced in the witness box. Learned counsel submits that since Late Khemta Ram was never produced in Court, any statement/ averment made by the petitioners in regard to status of Late Khemta Ram would be mere hearsay and not admissible in evidence as per law. On that basis, he submits that the stand/version/story of the petitioners regarding Late Khemta Ram has to be completely eschewed from the record and has to be disregarded.

44. Referring to paras 4, 6, 7, 9 & 10 of the impugned judgement dated 12.11.2018, Mr. Bhasin submits that even the learned RCT had meticulously examined the stand taken by the petitioners in their appeal and had, by a detailed examination, rejected each and every issue raised by the petitioners. In fact, the entire stand based on the partnership deed was completely rejected and was considered as a sham transaction created to camouflage the unauthorized sub-tenancy. Learned counsel submits that once both the lower Courts had examined the entire issue threadbare, this Court in exercise of jurisdiction under Article 227 of the Constitution of India, would not sit in the appeal nor re-appreciate evidence over such findings of fact. He submits that since no question of law has been urged or demonstrated, the findings of fact which have become final and binding on the parties, cannot be overturned by this Court.

45. The next contention of Mr. Bhasin, is primarily on the aspect of how Chela Har Narain became the owner of the subject suit property including



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that, which according to the petitioners herein, purported to have been bequeathed to Late Khemta Ram by virtue of a Will dated 27.08.1972 of Chela Budh Ram, another Chela of Mahant Narsingh Dass. According to Mr. Bhasin, on 19.05.1964, one Mahant Narsingh Dass bequeathed his Will in favour of Chela Har Narain and Chela Budh Ram. He further submits that on 11.08.1964, Chela Har Narain and Chela Budh Ram entered into a settlement whereby Chela Budh Ram had admitted to the Will of Mahant Narsingh Dass.

46. Mr. Bhasin further refers to the copy of the judgement dated 04.11.1968 passed by the learned District Judge, Delhi in proceedings for grant of Letters of Administration in favour of Chela Har Narain to submit that the will of Mahant Narsingh Dass was found to be genuine. Learned counsel submits that subsequently Chela Har Narain and Chela Budh Ram executed a Compromise Deed/ Relinquishment Deed dated 29.07.1974 whereby the said Chela Budh Ram had relinquished all his rights, interests and prevalence conferred upon him by virtue of Will dated 15.05.1964 executed by Mahant Narsingh Dass. By referring to this document, Mr. Bhasin asserts that by virtue of the Compromise Deed/ Relinquishment Deed, Chela Har Narain had become the owner of the entire subject suit property to the extent of 100% of the share in the bequeathed property. He submits that simultaneous to the said Compromise Deed/Relinquishment Deed, the Appeal bearing FAO No. 4/ 1969 filed by Chela Budh Ram was undertaken to be withdrawn by Chela Budh Ram.

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47. Mr. Bhasin, learned counsel refers to the application under Order XXIII Rule 3 CPC dated 09.12.1974 filed by Chela Har Narain in FAO No. 4/1969 in pursuance of the Compromise Deed/ Relinquishment Deed. He submits that though the application along with the said Compromise Deed/ Relinquishment Deed supporting affidavit of Chela Budh Ram was filed, no orders on the aforesaid application was passed by the Appellate Court till its disposal. Learned counsel also drew attention of this Court to Affidavit of Chela Budh Ram in support of Compromise Deed/ Relinquishment Deed dated 29.07.1974. He submits that Chela Budh Ram had expired sometime in the month of August 1974.

48. He submits that without passing any order on the application under Order XXIII Rule 3 CPC, the High Court passed its judgement dated 30.10.1975 in FAO 4/1969 holding that the grant of Letters of Administration in respect of Will of Mahant Narsingh Dass was not valid and had overturned the judgement of the learned District Judge. Challenging the same Chela Har Narain filed an appeal bearing LPA No. 2/1976. On 29.05.1991, the LPA No. 2/1976 was decided in favour of Chela Har Narain. Subsequently, Chela Har Narain filed a suit against Late Khemta Ram seeking declaration, declaring him to be the absolute owner of the subject suit property. He submits that the said suit was decided by the learned ADJ *vide* his order dated 13.02.2002 holding that Chela Budh Ram, predecessor of Late Khemta Ram, had relinquished his rights in favour of Chela Har Narain during pendency of FAO and thus Chela Har Narain was the absolute owner of the subject suit property. He further



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submits that then, by way of an application under section 151 CPC, Late Khemta Ram had filed an application under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and side by side he had also filed an appeal bearing RFA No. 582/2002 before this Court, contending that the findings in Civil Suit *vide* judgement dated 13.02.2002 were not final. But the application under Order IX Rule 13 CPC was withdrawn by Late Khemta Ram on 26.02.2016 and the appeal was disposed off on 24.01.2011 as none appeared for the parties.

49. Mr. Bhasin, learned counsel for the respondents submits that in order dated 26.02.2016 in M.No. 68/2014, the statement/answer of Late Khemta Ram, to the question, as to whether Chela Budh Ram had filed any application or taken any action or exercised his rights over the subject suit property from 1991 to 1999, was an emphatic “no”. This answer, according to Mr. Bhasin was tendered since Chela Budh Ram had relinquished his rights.

50. He further submits that Late Khemta Ram filed an appeal bearing RFA No. 582/2002 against the judgement dated 13.02.2002 passed by learned ADJ. The appeal was disposed off on the basis of application seeking withdrawal of the appeal filed by Late Khemta Ram on the statement dated 26.02.2016. He further submits that no order was passed in favour of Late Khemta Ram in any of the proceedings. Learned counsel also submits that a partition suit bearing No. 2278/2000 was filed by Late Khemta Ram against Chela Har Narain, where no interim relief was granted to him.



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51. Mr. Bhasin, learned counsel for the respondents further submits that Late Khemta Ram filed a suit for permanent injunction alongwith the application under Order XXXIX Rule 1 & 2, CPC in 2003 and the same were dismissed. Then he preferred an appeal which was also dismissed. He further submits that in the meanwhile Chela Har Narain expired and executed a Registered Will in favour of Sh. Hari Shankar (LR of Chela Har Narain) and Sh. Hari Shankar filed a probate case with Late Khemta Ram as opposing party. The probate was granted in favour of Sh. Hari Shankar.

52. Learned counsel further refers to the issues framed in Suit No. 1165/1990 by Sh. Mahant Purshottam Dass against Mahant Narsingh Dass [through his LRs Chela Har Narain (through his LR Sh. Hari Shanker)] and Chela Budh Ram (through his LR Late Khemta Ram) to assert his rights as owner of the subject suit property. The contention of Mr. Bhasin, on the aforesaid submission is that neither Chela Budh Ram nor Late Khemta Ram had ever asserted their rights over the subject suit property in a similar manner.

53. Mr. Bhasin, further refers to CM Application No. 13555/2023 filed on 16.03.2023 on behalf of respondents under Rule 23 of DRC read with Order LI Rule 5 and section 151 CPC for *mesne* profits/ compensation for use and occupation of the subject suit property from the date of decree of eviction till the pendency of the petition. He relied on the judgement of the Supreme Court in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*, reported as (2005) 1 SCC 705. He further referred to the reply to the CM Application No. 13555/2023 in which the petitioners stated that the



subject suit property is of irregular shape and is situated in the remote corner touching Bagh Deewar, which area has turned into the complete slum and abode from cart pullers, vagabonds and druggist and the subject suit property has got no commercial value as most of the premises in the area are in a shanty condition. According to Mr. Bhasin, in case this Court comes to a conclusion that the partnership deed itself is a sham document and was a camouflage/veil to conceal the sub-tenancy, the respondents would be entitled in law for *mesne* profits. He prays that this Court may grant adequate *mesne* profit to the extent of Rs. 5000 p.m., the sum admitted by the petitioner no. 1 in his cross-examination in respect of rental value of the subject suit property.

54. Mr. Bhasin, learned counsel appearing for the respondents relies upon the following judgements of the Supreme Court and Co-ordinate Bench of this Court and the same are as under:-

- i) ***Jagan Nath (Deceased) through LRs., vs. Chander Bhan & Ors***, reported as (1988) 3 SCC 57
- ii) ***Mohammedkasam Haji Gulambhai vs. Bakerali Fatehali (D) by LRs.***, reported as (1998) 7 SCC 608
- iii) ***Resham Singh vs. Raghbir Singh & Another***, reported as (1999) 7 SCC 263
- iv) ***Anil Kumar Gupta Through LRs vs. Nisha Sharma***, reported as 2023 SCC OnLine Del 3774

55. Mr. Bhasin, submits that the present petition, in view of the aforesaid facts, may be dismissed with exemplary costs and *mesne* profits as sought



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vide the aforesaid application be granted in favour of the respondents against the petitioners.

REBUTTAL ON BEHALF OF THE PETITIONERS: -

56. Mr. Dewan, learned Senior Counsel for the petitioners refers to the statement of witness AW-4/ Sh. Vikas Sharma appended at page 249 of the paperbook to submit that since witness AW-4/ Sh. Vikas Sharma had not referred to the partnership deed in his entire examination-in-chief, the question of rebutting the same or putting any questions to him does not arise.

57. Learned Senior Counsel further submits that it is undisputed that no tenancy was created between Late Khemta Ram and Sh. Dheeraj Jain and therefore there is no sub-letting of the subject suit property upto 31.03.1999. He further submits that on 01.04.1999 petitioner No. 1 became the tenant of Late Khemta Ram. He further refers to the judgements of the Supreme Court in *Hazari Lal (supra)* and *Cooks and Kelvey Properties P. Ltd., (supra)* to submit that in sub-letting there should exist the relationship of landlord and tenant as between the tenant and his sub-tenant and all the incidents of letting or tenancy have to be found, namely, the transfer of an interest in the estate, payment of rent and the right to possession against the tenant in respect of the premises sub-let.

58. Learned Senior Counsel submits that the contention of the respondents that the partnership deed is a sham document as 5% of share was given to Smt. Darshana Rani in the partnership firm cannot be



accepted and relies upon the judgement of the Supreme Court in ***Helper Girdharbhai vs. Saiyed Mohmad Mirasaheb Kadri & Ors***, reported in (1987) 3 SCC 538 to submit that a tenant entering into a partnership and allowing the firm to carry on business in the demised premises does not amount to sub-letting.

59. Learned Senior Counsel submits that the withdrawal of suit for partition by Late Khemta Ram does not mean that Late Khemta Ram has given up his rights. In fact it was assertion of right over the subject suit property. He then referred to the judgement dated 13.02.2002 passed by the learned Trial Court in the Suit for Declaration to submit that the contention that Late Khemta Ram was not the owner of the suit property is wrong by bringing attention of this Court to Para Nos. 4 and 5 of the same judgement which noted that Chela Har Narain and Chela Budh Ram were owners in equal shares. The same is extracted hereunder:-

“4. Sh. Budhram filed appeal against this judgement vide FAO no. 4/1969 in the High Court of Delhi. Thereafter he entered into another Agreement/compromise dated 29.7.1974 with the plaintiff and he agreed to relinquish all his rights, title and interest in the Will in favour of the plaintiff and he agreed to withdraw his F.A.O..Rupees 17,000/- were paid as consideration against receipt and an affidavit was sworn by Sh. Budhram to this effect. However the F.A.O. was not withdrawn and the same was allowed by Hon’ble Mr. Justice B.C. Mishra on 30.10.1973 and the judgement of Sh. C.G. Suri, Ld. DJ, Delhi was reversed.

5. The plaintiff filed an L.P.A. bearing no. 2/1976 titled Pt. Har Narain V Budhram (deceased) through his heir Sh. Khemta Ram as during the pendency of the F.A.O. Sh. Budhram had died and Sh. Khemta Ram was brought on record on the basis of a Will executed by Sh. Budhram. Sh. Khemta Ram also filed a Probate Petition in respect of the Will deceased Sh. Budhram before the District Judge, Delhi. Probate was granted to



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Sh. Khemta Ram. Plaintiff challenged the said Probate by filing an F.A.O. bearing no. 58/1981 in the High Court of Delhi.”

60. Mr. Dewan, learned Senior Counsel submits that the probate case filed by Sh. Hari Shankar LR of Chela Har Narain did not decide the title of subject suit property. He further submits that the judgement dated 13.02.2002 is *per incuriam*. He submits that in LPA bearing No. 2/1976 it was recorded that Chela Budh Ram and Chela Har Narain under the Will were equal share holders except Chela Budh Ram had to take permission from Chela Har Narain before parting with possession of his portion of the subject suit property. According to the learned Senior Counsel, the parting of possession contrary to the above condition would only be a breach and not an illegality. It may, at best, entitle the respondents to some damages, if at all.

61. Learned Senior Counsel refers to the prayer of the application dated 09.12.1974 under Order XXIII Rule 3 CPC and submits that the LRs of Chela Budh Ram were not brought on record and the application was filed after the death of Chela Budh Ram. He further submits that the affidavit of Chela Budh Ram attested by SDM is not admissible in evidence as it was never proved in the court of law.

ANALYSIS AND CONCLUSION

62. This Court heard the detailed arguments of Mr. Dewan, learned Senior Counsel as also Mr. Bhasin, learned counsel for the respondents, perused the entire record and considered the judgements relied upon by the parties.

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63. It is relevant to mention at the outset that Mr. Bhasin, learned counsel had handed over the bench certain documents which were not part of the records of the learned Trial Court and fairly admitted by him and as such may not be considered by this Court exercising supervisory jurisdiction under Article 227 of the Constitution of India.

64. From the arguments as also after perusing the entire material on record before the learned trial court and the Appellate Court it appears to this Court that under Article 227 of the Constitution, the Court would be circumscribed in the exercise of its powers to issues of law and consideration of only those facts which are necessary and attendant to appreciation of issues of law.

65. The arguments of Mr. Dewan, learned Senior Counsel for the petitioners primarily revolved around the admissibility and probity of the purported Compromise Deed, which according to him, is an unregistered Relinquishment Deed and the effect and consequence of holding such document, either as admissible or inherently inadmissible in law, on the subsequent proceedings before different fora between the parties.

On this aspect, this Court is of the opinion that the said document ought to be considered for its evidentiary value inasmuch as, if this Court comes to the conclusion that the said document itself was inherently inadmissible and holds it as such, the entire edifice upon which the case of the respondents is built, would get obliterated.



66. To appreciate the aforesaid aspect, it would be apposite to extract the said document and affidavit dated 29.07.1974 (Ex. AW2/1; Ex. AW2/2), purported to be a Compromise Deed which is annexed at page 85 of the paperbook is as under:-

"I, Budh Ram Chela Mehant Narsingh Dass age about 55 yrs. Resident of 3556, Main Road, Subjumandi, Delhi was misled by my advisers to enter into a litigation with Brahmchari Har Narain Chela Mehant Narsingh Dass resident of 2/32, Bank Deyar, Delhi and therefore, I filed an Appeal in regard to the beneficiary interests by virtue of Will executed by Mehant Narsingh Dass on 15.5.1964 in regard to property rights to House No. 2/32, Bagh Devar, Delhi etc. But now I have realized the futility of litigation and I do not want the rightful beneficiary Brahmchari Har Narain to be harassed in litigation any more. I have, therefore, of my own free will decided to relinquish all my rights, interests and prevalence conferred upon me by virtue of the said Will in favour of Brahmchari Har Narain Chela Mehant Narsingh Dass resident of 2/32, Bagh Devar, Delhi, who would be the sole beneficiary of the Will from this day.

That the respondent in the said F.A.O. No. 4 of 1969 now pending before the Delhi High Court has also agreed to my terms of compromise, thereby he would not file any suit for damages, etc. against me.

We, therefore, by virtue of this deed came to an agreement whereby I withdraw from the Appeal aforementioned and this compromise would be file by us in the Delhi High Court in FAO No. 4 of 1969 on the actual date of hearing which is expected would be listed very soon.

We append our signatures to this deed of compromise on this 29th day of July, 1974 to evidence our agreement."

The recitals of the said document indicate that Chela Budh Ram appears to have reconciled his differences with Chela Har Narain of his own free will, relinquished all his rights interests and prevalence conferred upon him by virtue of the Will of the Mahant Narsingh Dass in favour of Chela Har Narain. He appears to have also agreed to withdraw the appeal



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filed against Chela Har Narain bearing FAO No. 4/1969. The said document is purported to have been executed on 29.07.1974 and the affidavit Ex. AW2/2 is also purported to have been executed and attested on the same date. It is this document, which is subject matter of Mr. Dewan's legal challenge.

67. It is not disputed that the said document has been executed on a plain paper and which was undoubtedly an unregistered document. The affidavit Ex. AW2/2 also reiterates the material recitals stated in the Compromise Deed/ Relinquishment Deed.

68. There would be two aspects which need to be covered so far as these two documents are concerned alongwith the application under Order XXIII Rule 3 CPC. One - whether the Compromise Deed/ Relinquishment Deed was required to be registered under Section 17 of the Registration Act, 1908; and two - if not, whether the mere filing of the Compromise Deed/ Relinquishment Deed and the affidavit dated 29.07.1974, in support of the application under Order XXIII Rule 3 CPC which itself was purportedly filed on 09.12.1974 admittedly after the death of Chela Budh Ram, would be sufficient to hold the Compromise Deed/ Relinquishment Deed as an admissible document so far as the subsequent proceedings are concerned. This gathers more importance since undoubtedly no orders accepting or rejecting the said Compromise Deed/ Relinquishment Deed were ever passed by this Court in FAO No. 4/ 1969 or even in LPA No. 2/1976 by the learned Division Bench.



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69. This Court would now consider the second aspect at the first instance.

70. The filing of the Compromise Deed/ Relinquishment Deed alongwith the affidavit both dated 29.07.1974 of Chela Budh Ram in support of the application under Order XXIII Rule 3 CPC and that too after the death of Chela Budh Ram would not add any evidentiary value to the said document at all. This is for the reason that the said document was never tested for its genuineness, veracity or authenticity in FAO No. 4/1969 or in LPA No. 2/1976. Undoubtedly, no orders accepting or rejecting the said Compromise Deed/ Relinquishment Deed were ever passed by this Court in FAO No. 4/ 1969 or even in LPA No. 2/1976 by the learned Division Bench. That apart, by the time the said application was filed on 09.12.1974, Chela Budh Ram had admittedly expired sometime in the month of August 1974. This is admitted in para 7 of the said application. Mr. Bhasin, learned counsel for the respondents did not dispute this. It is also not disputed that the said document was neither supported by the statement of the author as on the date of filing of the application or recorded by the Court, since by the time it was placed before the Court, Chela Budh Ram had expired. Thus, the said document remained a piece of paper untested, unverified, unregistered and not even considered by the Court at any point of time during the proceedings under FAO No. 4/ 1969 and LPA No. 2/1976. This factual situation is not rebutted and remains uncontroverted till date.

This Court had pointedly put a query to Mr. Bhasin, learned counsel on the aspect as to whether Compromise Deed/ Relinquishment Deed and



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the affidavit were ever proved in accordance with law in any judicial forum or Court of law. To that, Mr. Bhasin, submitted that the said Compromise Deed/ Relinquishment Deed was infact proved by the respondent in his Suit for Declaration bearing Suit No. 700/2001. He further clarified that the said document was proved by the respondents by producing it before the same Court, by exhibiting it and thereafter by the statement of the respondent himself. To the query of the Court as to whether the author or any formal summoned witness of this Court in FAO No. 4/ 1969 or LPA No. 2/1976, were examined to prove the said Compromise Deed/ Relinquishment Deed and affidavit, Mr. Bhasin admitted that by that time Chela Budh Ram had expired and the respondents did not examine or summon any Court witness in support of the said documents.

71. The manner in which a document stated to have been authored by a person is proved best by examining the author himself or by other corroborative evidence. In the alternative, the said document could have atleast been sought to be proved by production of records and examining any official witness. Admittedly, none of the aforesaid procedures were undertaken by the respondent in his Suit for Declaration. Similarly, even the affidavit Ex. AW 2/2 purported to have been signed and executed by Chela Budh Ram and further purported to have been attested by an SDM, also has similar defects. In that, even in respect of the said affidavit, the SDM concerned, was never produced in the witness box, nor were the records from the concerned SDM's officer brought on record and proved before the Court adjudicating the Suit for Declaration. As such, even the

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affidavit containing the similar recitals was never proved in accordance with law and remained unverified, untested and uncorroborated document. All that there was on record, was the self-serving statement of the respondent himself without anything more. Another relevant aspect would be that the said document being central to the entitlement of Chela Har Narain to the whole property and the very edifice of the Suit for Declaration, the onus of proving the said document by leading proper evidence in that regard was heavily weighing upon him. As observed above, this Court is of the considered opinion that the self serving statement of Chela Har Narain would not serve the purpose.

72. On the overall examination of the second aspect, this Court concludes that the Compromise Deed/ Relinquishment Deed or even the affidavit of Chela Budh Ram never having been proved in accordance with law is a mere piece of paper with no probative or evidentiary value.

73. This Court would now deal with the first aspect, as to whether the Compromise Deed/ Relinquishment Deed was required to be registered under Section 17 of the Registration Act, 1908 as also whether the Compromise Deed/ Relinquishment Deed would be inherently inadmissible document.

74. That so far as the issue of inherent inadmissibility is concerned, this Court has come to a conclusion that the Compromise Deed/ Relinquishment Deed was never proved in accordance with law in the Suit for Declaration, and as such, for the purpose of the Eviction Petition, it



remained a document which was otherwise inherently inadmissible. That apart, Mr. Dewan, learned Senior Counsel laid great stress on the fact that the said Compromise Deed/ Relinquishment Deed suffered from the vice of not being registered under Section 17 of the Registration Act, 1908 and therefore an inherently inadmissible document could not have been taken into consideration either by the Court dealing with the Suit for Declaration or even in the present impugned proceedings.

75. Learned Senior Counsel, had vehemently argued that the Compromise Deed/ Relinquishment Deed is a document which is inherently inadmissible in law and as such could not have been relied upon by either the Court delivering the judgement in the Suit seeking Declaration or by the learned Rent Controller in the subsequent eviction proceedings right uptill the learned RCT. For appreciating the said argument, it would be apposite to extract Section 17 of the Registration Act, 1908 which is as under:-

“17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;



(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

¹*[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]*

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

²*[(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.]*

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition-deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or



(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document³[other than the documents specified in sub-section (1-A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court⁴[except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or

⁵[(x-a) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.

⁶[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]



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(3) *Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.*

It is manifest from the above, that any document of sale in respect of a property which is worth more than Rs. 100 is, mandatorily registerable. This issue has been reiterated and confirmed by the Supreme Court in the recent judgement in ***R. Hemalatha vs. Kashthuri***, reported as (2023) 10 SCC 725. The Supreme Court has also considered ***Suraj Lamps & Industries (P) Ltd. vs. State*** of Haryana, reported as (2009) 7 SCC 363 in ***Shakeel Ahmed vs. Syed Akhlaq Hussain*** reported as 2023 SCC OnLine SC 1526, and clearly held that no right, title or interest in immovable property can be conferred without the registered documents in respect thereto. It also clearly held that traditional documents like agreement to Sell, Will, Power of attorney etc., used by the parties for conveying interest in a property, in the absence of proper registered Sale Deed would be *non-est* in law and would not convey any title whatsoever, except to be used for specific performance. The Supreme Court held that the law in regard to section 17 of the Registration Act, 1908 remained consistent all along and no cut-off date or a prospective date could have been read into such a provision. It is undisputed in the present case that the Compromise Deed/ Relinquishment Deed is not registered under Section 17 of the Registration Act, 1908.

76. A perusal of Compromise Deed/ Relinquishment Deed brings to fore that purportedly Chela Budh Ram had accepted the terms of the Will of Mahant Narsingh Dass and had relinquished all his rights and interests

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bequeathed upon him under the said Will in respect of the entire property. Simultaneously he purportedly agreed to withdraw the FAO No. 4/1969. It is not the case of the respondents that Chela Budh Ram and Chela Har Narain were related by blood or by family members. A relinquishment of a share in a property, that too worth more than Rs.100 could be possible, subject to the said document of relinquishment being mandatorily registered under section 17 of the Registration Act, 1908. It is pertinent to note that the learned ADJ adjudicating the Suit for Declaration while passing the judgement 13.02.2002 (Ex. AW 4/12), had in para 4 noted that Chela Budh Ram had entered into an agreement dated 29.07.1974 relinquishing all rights and agreed to withdraw his FAO No. 4/1969 in lieu of having received Rs. 17,000/- as consideration against receipt and supported by an affidavit. It is also equally pertinent to note that the learned RCT in the appeal against the Eviction Decree in the present case also noted the aforesaid fact in para 8 of the present impugned judgement. If that is so, it is axiomatic that the said Compromise Deed/ Relinquishment Deed tantamount to a Deed of Relinquishment and as such compulsorily registerable. Since, undoubtedly the Compromise Deed/ Relinquishment Deed was never registered in accordance with law, it becomes a document inherently inadmissible.

77. As noted above, the Compromise Deed/ Relinquishment Deed was never tested for its authenticity or evidentiary value in any of the courts of law coupled with the fact that the respondents even in the Declaratory Suit, depended entirely on the said document, to predicate his substantive claim



on the entire property and not just bequeathed 50% of property in his favour. As such, it was an insurmountable burden upon the respondent to discharge the same, firstly by registering the said document and secondly, by proving the same in accordance with law before the Court adjudicating the Suit for Declaration. Neither having been done, this Court is of the firm opinion that the Compromise Deed/ Relinquishment Deed is an inherently inadmissible document and as such could not have been treated as evidence for the purpose of relying upon, either in the Suit for Declaration (obiter) or in the Eviction Proceedings.

78. It is clear from the reading of the judgement of the learned ARC as also the impugned judgement of the learned RCT, that the entire edifice of their reasoning and rationale was predicated on the Compromise Deed/ Relinquishment Deed. In view of the above findings, it is held that the said Compromise Deed/ Relinquishment Deed and the findings rendered thereon have to be eschewed from consideration. In that view of the matter, it follows that the impugned order as also the order of the learned ARC have been rendered on inadmissible evidence and as such cannot withstand the scrutiny of law.

79. The judgement relied upon by learned Senior Counsel, in regard to the above is as under:-

Krishna Prosad Roy Chaudhuri (supra)

“13. That cannot be taken away by the insertion of the forfeiture clause which would really mean surrender at the end of the term of the lease of valuable rights which had been acquired by reason of the plaintiffs being the land-holders within the meaning of S. 8. The Subordinate Judge has



also taken that view, and we think, rightly. In this view the question next arises which is the more difficult point in the case with which we have to disagree with the Subordinate Judge as to what is the effect of the acceptance of the lease. Some argument has been advanced on behalf of the appellants that there has not been acceptance of the potta Ex. I as is contemplated by the Regulation. We do not think that we need be troubled by these technicalities as to whether there has been acceptance in conformity with these regulations. The fact remains that as the lease patta Ex. I was in the possession of the plaintiffs it must be presumed that they had full knowledge of the contents of the potta including Cl. (7). It is true that they did not execute a corresponding kabuliat and that becomes a question of no materiality, seeing what we have to determine is whether the plaintiffs have surrendered the rights which they have already acquired as land-holder by the execution by Government of the potta Ex. X which they accepted and which they treated as the foundation of their title. It has been argued on behalf of the plaintiffs that in order to effect such a surrender of their rights a registered document is necessary. This point was not taken in the Court below but it is said that this is a pure question of law which should be allowed to be raised for the first time in appeal to this Court. It is true that this argument suffers from infirmity which attaches to the belated plea taken for the first time in appeal, but at the same time as it is a pure question of law which is not dependent on any disputed facts we might allow this point to be taken. We think that in order to show that a party has contracted himself out of his rights and surrendered what he had already acquired with reference to the property the value of which exceeds Rs. 100 the transaction must be evidenced by a registered document having regard to the provisions of Section 17 of the Registration Act of 1877, which was the Registration Act prevailing at the time. But apart from the question of registration before one can hold that the party has contracted himself out of his rights some express declaration on the part of the party abandoning his rights must be forthcoming. In order to establish the fact that there was abandonment of their rights by the pottah there must be something to show in the most explicit terms that the parties understood when accepting the potta that they were giving up a very valuable right by reason of their being land-holders within the meaning of Ss. 8 and 9 of the Regulation. Besides it seems to us that this agreement, in so far as it incorporates Cl. 7, the forfeiture clause or the one-fifth rule being ultra vires of the statute to that extent is irregular, and as there can be no estoppel against the statute it is permissible for a party to say that they are not bound by a term which is in contravention of the statute. This term of the pottah is separable from the rest. It is well established that if



a deed is void in part only and the rest be severable estoppels may arise from the part which is good. This is an exception to the general rule that where a deed had been executed in contravention of a statute the law of estoppel does not apply. We think therefore that the Subordinate Judge is not right in the view which he has taken that the acceptance of the potta which includes Cl. 7 is tantamount to surrendering their rights as "land-holders."

(emphasis supplied)

It is manifest from the aforesaid judgement, in respect of the Compromise Deed/ Relinquishment Deed clearly held by this Court as being inherently inadmissible, the doctrine of *per incuriam* and *sub-silentio* in respect of the judgment dated 13.02.2002 has to be necessarily upheld and applied. The effect thereof being, that the decree of declaration conferring 100% share in the bequeathed property in favour of Chela Har Narain has to be eschewed from consideration and the reliance of learned RCT on the said judgement would be absolutely misplaced.

80. That apart, the Supreme Court in ***R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple & Anr***, reported as (2003) 8 SCC 752 held that the document which is inherently inadmissible cannot be considered by a court of law for any purpose whatsoever. The relevant extract under:-

"20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not



subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.”

(emphasis supplied)

The above view has been reiterated by the Supreme Court in the latest judgement by referring to ***R.V.E. Venkatachala Gounder(Supra)*** in ***Sonu***



@ *Amar vs. State of Haryana*, reported as (2017) 8 SCC 570 and the same is extracted hereunder:-

“32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.”

(emphasis supplied)

81. From the above conclusions on the point of law, fortified by the judgements of the Supreme Court as referred to above, this Court holds that the document Compromise Deed/ Relinquishment Deed as also the judgment and Decree passed in the Suit for Declaration have to be eschewed from consideration and reliance placed on it by learned ARC and the learned RCT is misplaced.



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82. Now coming to the facts as submitted by Mr. Dewan learned Senior Counsel for petitioners and Mr. Bhasin, learned Counsel for the respondents, this Court is of the opinion that keeping in view the aforesaid decision and conclusion on law, the need to render opinion or observations on facts are not necessary.

83. Resultantly, the impugned order dated 12.11.2018 in RCT No. 30310/16, passed by the learned Rent Control Tribunal is set aside and the matter is remitted to it for a fresh decision based on the above findings on law. If required, the learned Rent Control Tribunal may direct adduction of fresh evidence in respect of any issue, particularly arising from the above observations, either by itself or direct the learned Additional Rent Controller for such purpose.

84. The petition is disposed of in above terms alongwith pending applications with no order as to costs.

TUSHAR RAO GEDELA
(JUDGE)

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