(2011) 07 AHC CK 0336

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 4196 of 2007

Smt. Pushpa Devi and Others		APPELLANT
	Vs	
Addl. District Judge, Allahabad and Another		RESPONDENT

Date of Decision: July 5, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 5
- Evidence Act, 1872 - Section 49
- Provincial Small Cause Courts Act, 1887 - Section 25
- Registration Act, 1908 - Section 17, 49
- Transfer of Property Act, 1882 - Section 106, 107, 111(4), 114, 17(1)

Citation: (2011) 7 ADJ 640

Hon'ble Judges: Shishir Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Shishir Kumar, J.

The present writ petition has been filed for quashing the judgment and order dated 20.12.2006 (Annexure 4 to the writ petition) passed by Respondent No. 1 in SCC Revision No. 4 of 2006.

2. The brief facts, as stated in the writ petition, are that the Petitioners who are landlord, filed Suit No. 7 of 1997 before the Small Causes Court for recovery of arrears of rent and eviction against the tenant- Respondent alleging that he was tenant of Shop No. B-2, Mahdauri Colony, Allahabad at the rate of of Rs. 600/- per month from June, 1996 and he has not paid the rent for which a notice was given determining his tenancy. The first assessment of the disputed shop took place on 1.4.1987 and therefore, the provisions of Act No. XIII of 1972 does not apply to the shop in dispute. The tenant-Respondent filed a written statement on 28.11.2004

stating therein that he has paid the rent for the month of June and July 1996 to the deceased husband of the landlady, Sri Laxmi Narain husband of the Petitioner did not give any receipt. The rent for August, 1996 was sent through money-order which was returned and thereafter from June 1996 to October, 1996, rent was again sent by money-order which was again returned. The construction of the shop in dispute is an old one and provisions of Act No. XIII of 1972 applied over the same. The tenancy between the parties is based on contract and till there is any violation of the terms of the contract, the tenancy cannot be terminated. Further averment has been made that the tenant has earned goodwill from the shop in dispute and has invested sufficient amount and has also deposited Rs. 8700/- u/s 20 (4) of Act No. XIII of 1972. In case the provisions of Act No. XIII of 1972 are not found applicable to the property, then deposit of rent made by tenant-Respondent may be accepted to be deposited u/s 114 of Transfer of Property Act.

3. On the basis of evidence adduced by the parties and on the basis of documentary evidence the trial Court framed various issues. One of the main issues was whether provisions of Act No. XIII of 1972 will apply to the shop in dispute? Further whether the rent note A-30 is legally admissible in the evidence and its terms are binding over the parties? Further whether Defendant has defaulted in payment of rent or not and whether the Defendant-tenant can be given the benefit of Section 114 of the Transfer of Property Act as well as whether the tenant is liable to be evicted from the shop in dispute?

4. Learned trial Court has decided Issue No. 1 holding that the shop in dispute was first accessed on 1.4.1987, therefore, on the date of filing the suit, the period of ten years has not expired i.e. on 8.1.1997 when the suit was filed, therefore, the provisions of Act No. XIII of 1972 will not be applicable. As regards Issue No. 2, the trial Court has decided that since the rent deed was for a period exceeding eleven months, therefore, it would require to be registered as per Section 17 of the Registration Act and as it is an unregistered document, it is neither admissible in evidence nor its terms are binding upon the parties. As regards, Issue No. 3, the trial Court has held that the tenant-Respondent has sent the rent through money-order and it was not accepted by the landlord, therefore, it cannot be held that he has defaulted in making the payment of rent. Issue No. 4 was decided against the tenant holding that benefit of Section 114 of the Transfer of Property Act cannot be given to the tenant because the basis of tenancy was a rent deed which has not been found admissible in evidence. As regards Issue No. 5, it was decided in favour of the landlord holding that the lease deed or rent deed Ext. 30 was since not registered, therefore, it was notadmissible in evidence and argument was rendered u/s 111 (4) of Transfer of Property Act, therefore, Section 114 of Transfer of Property Act will not be applicable in the present case. The trial Court decreed the suit vide its judgment and order dated 8.12.2005.

5. The tenant-Respondent preferred a revision and vide its judgment and order dated 20.12.2006 Respondent No. 1 allowed the revision and dismissed the suit of the Plaintiff-landlord i.e. Petitioner.

6. The Learned Counsel has submitted that revisional Court has erred in reversing the finding of fact recorded by the trial Court by re-appraising the evidence by recording a different finding of fact and dismissed the suit of the Plaintiff-Petitioner which was not legally justified. The finding of the revisional Court that although the photo copy of the first assessment of the shop in dispute was filed in evidence by the Plaintiff, which was held not admissible by the trial Court but the trial Court has relied on the said document holding that first assessment was made on 1.4.1987. Since the trial Court has held that though the photo copy of the assessment has been filed but the averment of the plaint that the shop in dispute was first assessed on 1.4.1987 has not been denied by the tenant, therefore, the finding has been recorded to that effect by the trial Court. The revisional Court has misread the oral evidence of PW-1 and has drawn undue inference from the same which held that the first assessment is of 1.4.1987 and note of assessment was filed as Paper No. 63-C. The Finding by the revisional Court to this effect that the rent deed Ext.A-30 was admissible in evidence is legally perverse and not sustainable in law. The tenant is entitled to the benefit of Section 20 (4) of Act No. XIII of 1972 and Section 114 of the Transfer of Property Act. The finding to his effect is unsustainable in law as held by Respondent No. 1.

7. Sri A.D. Saunders, Learned Counsel for the Petitioner has submitted that from the allegations made in the plaint it was specifically averred on the basis of the copy filed that first assessment was of 1.4.1987 and as the suit was filed on 8.1.997, therefore, Act No. XIII of 1972 was not applicable. The trial Court took a note that in Para 8 of the plaint, the Plaintiff-Petitioner has clearly mentioned that the first assessment of the building has been made on 1.4.1987.

8. In the written statement Defendant has not denied the said averment and therefore, in view of Order 8 Rule 5 of the Code of Civil Procedure, the allegation made in the plaint stood admitted by the Defendant. The trial Court also took a note of Section 2 second proviso to Sub-Clause-2 which has been amended by Act No. XVII of 1985 brought into effect from 26.4.1985. In this amendment exception of the Act was extended to a building completed on or before 26.4.1985. The period of exemption from the Act would be forty years. The trial Court also rejected the photo-copy of the first assessment being made. Further reliance has been based upon a statement of P.W. 2 verifying the tenancy commenced from 1.4.1987. On behalf of the Respondents, no evidence has been adduced which led to that any other tenant prior to 1987 was there. A notice was served upon the tenant u/s 106 of the Transfer of Property Act in which it was stated that first assessment was made on 1.4.1987, therefore, Act No. XIII of 1972 will not be applicable. In reply to the notice it was not denied that the first assessment was not of 1.4.1987. Section 2 (2)

Explanation (A) is a deeming clause. Admittedly, the tenancy came into effect on 1.4.1987 and it would be deemed that the construction of the building would have been completed on that date, therefore, it was amply clear that building has not completed ten years on the date of filing the suit, hence the provision of Act No. XIII of 1972 will not be applicable. He has placed reliance upon the various judgments in Smt. Riyaj Fatma v. Special Judge/ Additional District Judge Bijnor and Ors. 2005 ACJ 1418 ; Smt. Sudha Rani Garg Vs. Sri Jagdish Kumar (Dead) and Others, Bibhu Nath v. Krishna Purwar, 1981 ARC 639; Shri Mundri Lal Vs. Smt. Sushila Rani and Another, and Hanumant Lal Tripathi v. Additional District Judge, Shahjahanpur and Anr. 2003 (1) ARC 395. The trial Court has given a specific finding that Act No. XIII of 1972 is not applicable. As regards the unregistered rent deed produced by the tenant, it was stated that tenant would deposit a sum of Rs. 8,000/- which would be treated as six months rents and for a period of ten years there would be no increase in the rent and after a period of ten years, the rent would be increased by Rs. 1,000/- . The rent deed indicated that tenancy was for more than one year and trial Court has taken a view that as the rent deed was for tenancy of period for more than one year, therefore, it required registration u/s 17 (1) (d) of the Act. Further a finding has been recorded by the trial Court that in view of Section 107 of the Transfer of Property Act lease of immoveable property from year to year or for a term exceeding one year can only be made by a registered instrument. In such circumstances, the trial Court has held that it could not be read in evidence on account of its being unregistered document. As regards the deposit of the amount, it has been held that the tenant has not defaulted in making the payment. As regards the finding on Issues No. 4 and 5, the trial Court has held that rent deed being an unregistered document, no benefit is available to the tenant. Further as ten years have not been completed, therefore, Act No. XIII of 1972 is not applicable. But the revisional Court re-appraised the evidence and recorded its own finding on the issues framed by the trial Court. The revisional Court has taken a view that though the trial Court has rejected the copy of the first assessment in spite of the pleadings, it has held that provisions of Act No. XIII of 1972 will not be applicable. The revisional Court has lost sight of the fact that Section 2 (2) Explanation (1) (a) was a deeming clause and depend upon several factors. Further allegation made in the plaint is that as there was no denial of the fact overlooked by the revisional Court, the revisional Court has not taken into consideration the provisions of Order 8, Rule 5 of CPC and has set aside the finding recorded by the trial Court holding therein that Act No. XIII of 1972 is applicable on the basis of oral evidence made by the witnesses.

9. Further finding recorded by the revisional Court to that effect that Section 114 of the Transfer of Property Act and Section 20 (4) of Act No. XIII of 1972 as tenant has deposited the rent stating therein that in case the Act is not applicable, then the deposit be treated to be deposit u/s 114 of the Transfer of Property Act. Such conditional deposit is not permissible in law. The finding to this effect by the revisional Court that rent deed granted month to month tenancy therefore, it was

not required to be registered is not correct. Learned Counsel for the Petitioner has relied upon the judgments in Jugal Kishore v. Additional District Judge and Ors. 2010 (78) ALR 316 and submitted that the deposit made u/s 20 (4) of Act No. XIII of 1972 is of no benefit as the Act itself is not applicable. The consolidated amount without disclosing the break-up as such the cost of the suit, counsel fee, and damages cannot be considered to be a good deposit. Relying upon the judgment of Bhagwan Swarup (Dead) thorugh Lrs. v. Hamida Khatoon (Dead) and Ors. 2009 (75) ALR 1, Petitioners submit that the power of the revisional Court is very limited and has got no power to re-appraise the evidence or to reverse the finding of fact arrived at by the trial Court. In case, the revisional Court was of the opinion that certain documents have not been properly considered, the matter should have been remanded back to the trial Court. In not doing so, the revisional Court has committed an error apparent on the face of record. Reliance has been placed upon two judgments namely Ram Swaroop Rai v. Smt. Lilawati, 1980 ARC 466 and Mohd. Aslam v. Om Prakash Dwivedi, 2006 (5) ADJ 221.

10. In such circumstances, the Petitioner submits that as the revisional Court in view of the settled principle of law, has committed an error apparent on the face of record, therefore, the judgment passed by the revisional Court is liable to be set aside.

11. On the other hand, Sri P.C. Jain, Learned Counsel for the Respondent-tenant has submitted that in Para 10 of the plaint a pleading was there that the building was constructed in the year 1987 and its first assessment came into effect with effect from 1.4.1987. As regards the burden proving the exemption from the operation from the Rent Control Act is upon the landlord as held in Sohan Veer Singh v. Smt. Rehti Devi and Ors. 2009 (3) ARC 174. Relevant para is 17 which is quoted below:

17. In these cases it has been held that the burden lies upon the landlord to prove the date of construction in the light of Section 2(2)of the U.P. Act No. 13 of 1972. The landlord who claims such exemption had to prove that the construction of the building is within 10 years of the suit, as held in the case of Ram Saroop (supra). The said decision has been followed in the case of Suresh Kumar Jain (supra) and Smt. Vijay Lakshmi Jain (supra).

12. The Plaintiff-Petitioner has filed a copy of the assessment by the Nagar Nigam wherein the assessment is shown to be effected with effect from 1.4.1987 but only the photo-copy was filed which is in admissible in evidence. As regards the contention that pleadings of the Plaintiff-Petitioner regarding the assessment from 1.4.1987 has not been denied is not correct. The Defendant in the written statement has specifically denied in para 22 that shop is not exempted from Act No. XIII of 1972. No reason has been given regarding not filing of the certified copy of the assessment by the Petitioner. The finding to this effect by the trial Court that there was no specific denial regarding the applicability of the Act is also not correct. In view of Order 8, Rule 5, if certain allegation of fact is to be proved by some

document, then that document has to be proved in view of the case in Kamala Pati Tiwari and another v. Lalita Devi (Smt.) and Ors. 2009 (2) ADJ 505. Relevant para is 16 which is reported below:

16. Under Order 8, Rule 5 of the CPC allegations of fact made in the plaint if not denied may be taken to be admitted. When the allegations of fact made in Paragraph 15-C of the amended plaint was the existence of family settlement dated 15.5.1952 to prove partition in 1952, it was a document which required to be proved or disproved. The pleadings regarding a partition had already been taken in the plaint and was specifically denied by the Defendant in the written statement. Therefore, the submission of Learned Counsel for the Appellants that since there was no denial of the allegations made in Paragraph 15-C of the amended plaint, hence the document dated 15.5.1952 would be admitted under Order 8, Rule 5 CPC cannot be accepted. There is a difference between denial of allegation of fact and proof of documents. When there is no denial of specific allegations made in the plaint, it is deemed to be admitted. But if a document is to be relied upon by the Plaintiffs in support of the allegations of fact it requires to be proved. In the present case, admittedly the document forming the basis of the allegation of partition has not been proved and the allegation of fact made in the plaint regarding partition was specifically denied by the Defendant in his written statement. Consequently the very application of the provisions of Order 8, Rule 5 of the CPC cannot be strictly made in the present case. The allegation of fact made in the plaint regarding partition was specifically denied in the written statement. The parties were co-sharers is admitted and not denied. The document of 1952 was not pleaded in the plaint in the year 1965 although it could be a vital piece of evidence for grant of injunction to the Plaintiff. Allegation of fact for grant of injunction were made in the plaint. The document of 1952 was introduced by an amendment in the plaint as an evidence to prove the allegations of fact The allegations of fact were denied and an issue was framed by the Court. When allegations of fact are specifically denied by the Defendant, they cannot be presumed to be admitted. Once allegations of fact are denied, the Plaintiff can succeed in the suit only if he proves them by evidence. Evidence in support of allegations of fact is to be proved and such evidence or absence of its denial in the written statement is not subject matter of the provisions of order 8. Rule 5 Code of Civil Procedure., when the allegations of fact have been denied by the Defendant Finding has been recorded by both the Courts below and admittedly the document dated 15.5.1952 was not proved in accordance with law. Therefore, the decision in the case of M. Venakataraman Hebbar (supra) has no application on the facts of this case.

13. There was sufficient evidence and pleadings on record to prove that shop in dispute was let out to others before the Defendant occupied the same on 1.4.1987. In para 14 of the written statement a specific averment was made that the shop in dispute has been let out several times to the different tenants before letting out to the Defendants. PW-1 Dinesh Jaiswal has admitted this fact that it was given to the

other tenants prior to the giving this shop to the Respondents. A specific denial was made to the effect that this shop was not new one and it was not let out first time to the Respondents. It was also stated that this shop is constructed in the year 1980-82.

14. Sri Jain, Learned Counsel for the Respondents submits that in view of the provisions of law i.e. Section 2 (2) Explanation 1 is a deemed provision, the date of construction regarding completion of a building, certain ingredients have to be taken. One, report of completion to local authority or recording of completion by local authority or whether building is subject to assessment, the date on which the first assessment came into force. In absence of report, record assessment, the date of occupation will be taken into consideration for the purpose of date of assessment. In the present case, there is no report or record has been pleaded or proved by the landlord. It is admitted to the landlord that the shop in dispute is subject to assessment but no evidence on record to show that what was the date of the said assessment has come into force. There is no dispute to this effect that if there is no proper assessment as mentioned in the provision, the date of occupation could be considered in absence of the report, record or assessment became irrelevant. No documentary evidence or by oral evidence it was proved that first assessment came into force with effect from 1.4.1987. In view of Section 2 of the Act the construction of the building is deemed to have been completed on the date on which the completion thereof is reported or recorded by the local authorities having jurisdiction or the date on which the first assessment came into effect. Similar view has been taken in Mohan Das Nikhra and Anr. v. Smt. Ram Kali Dixit, 2010 (4) ADJ 568. Para 10 is relevant which is quoted hereunder.

10. The issue has to be examined in the background of the fact that the landlord had pleaded that the shop was constructed in 1991, apart from a bald denial by the tenant, no date of construction was mentioned. The landlord had produced certified copy of the map, the notice and certified copy of the assessment order apart from the receipt of payment and on this basis appellate Court retuned a finding that the first assessment of the disputed shop was made in 1991. The Apex Court in several decisions including in the case of Saleem v. District Judge, Muzaffamagar and Ors. 1998 (2) ARC 617 has held that in terms of Sub-section (2) of Section 2 of the Act, construction of a building is deemed to have been completed on the date on which completion thereof is reported or otherwise recorded by the local authority having jurisdiction on the date on which the first assessment comes into effect. After finding that the assessment was made in the year 1991-92, the Court rightly held that was the date of completion of the building. Merely because the assessment order was passed in the year 2000 would not ipso facto mean that it is motivated. The Petitioner has note been able to point out any evidence to show that the assessment order was either fabricated or motivated. Therefore, the argument cannot be accepted.

15. In Sohan Veer Singh v. Smt. Rehti Devi and Ors. 2009 (3) ARC 174, the date of occupation can only be taken when there is no report, record for assessment. Para 9 is relevant. The same is being reproduced hereunder:

9. The aforesaid Explanation has been subject matter of interpretation by the Apex Court. The Apex Court examined the matter in great depth in Om Prakash Gupta v. Dig Vijendra Pal Gupta, 1982 (1) ARC 391 and has held that if there is an assessment, as in the present case it is, it will be the date of first assessment which will be deemed to be the date of completion of the construction. It repelled the argument that if the occupation of the tenant is earlier to the date of the first assessment, the date of occupation of the tenant would be the date of construction. On an interpretation of the aforesaid provision it has been held that the occupation would be taken to be the date of completion of the construction only when there is no report or record of the completion of construction or no assessment there of.

16. The relevant denial was made that building in dispute does not come in the purview of Act No. XIII of 1972. The rent deed is dated 8.3.1987 which provides that letting will be effective from 1.4.1987. It is not a document creating a lease but it is an agreement to let in future. In Tiruvenibai and Another Vs. Lilabai, it has been held "We must therefore hold, that an expression "an agreement to lease" covers only such agreements as created a present demise." This deed can only be relied for a limited purpose that the tenant has made certain advance to the landlord and the said amount is to be adjusted in monthly rent and rent will come Rs. 1000/- for ten years. The finding to this effect recorded by the trial Court that being unregistered document it cannot be read in evidence is not correct. In view of the judgment in Overseas Private Limited v. Bougainvillea Multiplex and Entertainment Centre Pvt. Limited and Anr. 2008 (1) ARC 806, relevant para is 12 which is reproduced below:

12. Secondly, last part of Section 49 of the Registration Act, as above, specifically speaks that" as evidence of any collateral transaction not required to be effected by registered instrument". Therefore, law is crystal clear to that extent. In Mattapalli Chelamayya and Another Vs. Mattapalli Venkataratnam and Another, the Supreme Court held that it should be noted that Section 49 does not say that the document cannot be received in evidence at all. All that it says the document cannot be received as evidence of any transaction affecting such property. If under the Evidence Act the document is receivable in evidence for a collateral purpose, Section 49 is no bar. This construction of the provision, which was accepted for a long time by the high Courts, has been duly recognised by the amending Act 21 of 1929, which added a proviso to the Section. The proviso clearly empowers the Courts to admit any unregistered document as evidence of a collateral transaction not required to be registered. In Satish Chand Makhan and Others Vs. Govardhan Das Byas and Others, , it was held that unregistered lease deed can be admitted in evidence for collateral purpose, invoking proviso to Section 49 of the Registration Act, as terms of lease are not a collateral purpose within its meaning. Rai Chand Jain Vs. Miss

Chandra Kanta Khosla, speaks that it is well settled that unregistered lease executed by both the parties can be looked into for collateral purposes. In Bondar Singh and Others Vs. Nihal Singh and Others, it was held that legal position is clear that a document like the sale-deed, even tough not admissible in evidence, can be looked into for collateral purposes. The Court held that the collateral purpose is to be seen on the nature of the possession of the Plaintiffs over the suit land. The sale-deed in question at least shows that initial possession of the Plaintiffs over the suit land was not illegal or unauthorised. Therefore, the undisputed initial possession herein is the guiding factor about validity of the document.

17. As regards the other finding on Issues No. 3, 4 and 5, it has been held that the tenant has not defaulted in making payment of rent and unless and until it is proved that building is exempted from the purview of the Act, the tenant is protected from ejectment. Section 20 (1) bars the suit for eviction. The trial Court has recorded a finding that there is no default.

18. It is incorrect to say that the revisional Court has re-appreciated the evidence to record a contrary finding. It has only corrected the error committed by the trial Court by misreading and ignoring the evidence on record. Once the trial Court has recorded a finding that municipal assessment was inadmissible in evidence and held that it was first assessed on 1.4.1987, then giving the benefit to the Petitioner-landlord is contrary to the well settled principle of law. The statement of the Plaintiff has been misread by the trial Court. As he has admitted that the house in question was not constructed in 1987, therefore, as the document has been misread by the trial Court, therefore, the revisional Court has recorded a finding correcting the finding recorded by the trial Court on the basis of appreciation of documents, therefore, it cannot be said that the revisional Court has exceeded its jurisdiction by re-appraising the evidence on record and has recorded a clear finding arrived at by the trial Court. In such circumstances, the Respondent submits that the finding recorded by the revisional Court is a finding of fact, needs no interference.

19. I have considered the submissions made on behalf of the parties and perused the record.

20. The suit was filed on 8.1.1997 by the Petitioners alleging that the Respondent is the tenant on a monthly rent of Rs. 600/- per month. He defaulted in payment, therefore, the suit has been filed. The suit was filed on the ground that Act No. XIII of 1972 was not applicable. A photo-copy of the municipal assessment was filed. No certified copy or attested copy was ever filed. No explanation has been given by the Petitioner that why the certified copy of the assessment alleged to be dated 1.4.1987 has been filed. In para 4 of the plaint an averment has been made by the Plaintiff-Petitioner that the shop in dispute has been constructed in 1987 and the first assessment is dated 1.4.1987, therefore, Act No. XIII of 1972 will not be applicable. The allegation to this effect has been denied in the written statement filed on behalf of the Defendant- Respondent and a specific averment has been

made that allegation made in para 4 of the plaint is absolutely wrong and denied. In para 8 of the written statement a specific averment has been made that building is an old one and U.P. Act No. XIII of 1972 is applicable. In para 14 of the written statement, it has specifically been stated that the shop in dispute was let out several times to the different tenants before letting to the Defendant. It was also stated in the written statement that the tenancy for the shop in question was created by an unregistered agreement executed on 8.3.1987 between Laxmi Narain, Plaintiff No. 2 and Defendant fixing rate of rent as Rs. 6007- per month from the execution of the rent deed and Defendant paid Rs. 8000/- in advance to the Plaintiff to be adjusted in rent. The trial Court at one point of time has rejected the assessment being a photocopy and has held that it is not admissible in evidence and after that a finding has been recorded that as the Plaintiff has said that the first assessment of the building was 1.4.1987, therefore, Act will not be applicable. As regards the rent deed, trial Court has rejected the same to be considered in evidence on the ground that it is a lease deed and according to Section 17 of the Registration Act, it needs registration and has ignored the rent deed.

21. I am of opinion that in case, the document filed on behalf of the Petitioner was a document which cannot be taken into consideration in evidence being the fact that a photo-copy was filed, then how that can be a basis for granting a relief to the Plaintiff-Petitioner holding therein that Act No. XIII of 1972 will not be applicable only on the basis of the averment made in para 4 of the plaint The trial Court has clearly misread the statement of PW-1 who admitted in the cross-examination that "INKO KIRAYE PAR DIYE JANE KE PAHLE DO KIRAYEDAR". If that was a fact admitted by PW-1, then under what circumstances, it can be held that Act No. XIII of 1972 is not applicable. It is settled in law according to Section 2 (2) Explanation 1 that how the assessment of a new building by the local authority can be treated to be a date of assessment If the matter is reported after completion of building to the local authority, that date can be taken into consideration for the purpose of first assessment or the local authority on the basis of information mentioned a date, then that can be treated to be a date of completion of assessment of a particular building or the date when the building has been assessed first time by the local authority. Sub-Section 2(2) also provides that in the absence of these things the date of occupation if it is proved that can be taken into consideration the first date of assessment. Admittedly, the Petitioner has not filed any document to show therein that what is the date of assessment. Once the trial Court has rejected the photo-copy of the assessment alleged to have been made from 1.4.1987, then the trial Court has no power and jurisdiction to hold that the building is exempted from Act No. XIII of 1972.

22. Further the trial Court has clearly misread the alleged lease deed on the ground that it is not registered. Whether it was open to the trial Court to have placed reliance upon a photo-copy of the document and to ignore a document only on the ground that it is not registered u/s 17 of the Registration Act. The trial Court has

misread treating it as lease deed. Virtually it is an agreement between the parties regarding the rent in future, therefore, in view of the fact the agreement was admissible in evidence.

23. The revisional Court only on interpreting these documents has taken a" view that as the Petitioner has come with a case before the Court that the date of assessment is such, therefore, the building in question is exempted from Act No. XIII of 1972 but in support thereof no documentary evidence was filed which was required according to Section 2 (2) Explanation 1 of the Act. in such situation, the interpretation of that document is to be done by the revisional Court. The revisional Court was of the opinion that the document is not a lease deed, it is an agreement putting certain conditions that in future what will be the rent after ten years and mentioning the advance given to the landlord. In Gopal and ors v. State of U.P. it has been held that while exercising the power u/s 25 of the Judge, Small Cause Court Act by assigning convincing reason to arrive at a different view based on material on record, it has been held that the revisional Court was justified in interfering with the finding of fact arrived at by the trial Court which overlooked the weighty relevant evidence available on record. The relevant para 4 is quoted below:

4. Lastly it was submitted that District Court exercising revisional jurisdiction did not have jurisdiction to interfere with the findings of fact arrived at by the trial Court. This submissions is also liable to be rejected. Firstly, it was revision preferred u/s 25 of the Provincial Small Causes Courts, Act, the jurisdiction whereunder is not so limited as it may be u/s 115 of the Code of Civil Procedure. Secondly, as well have already pointed out the learned District Judge has assigned good and convincing reasons for arriving at a finding different from the one arrived at by the trial Court on the material available on record, the District Judge though exercising revisional jurisdiction was fully justified interfering with findings of fact arrived at by the trial Court which overlooked the weighty relevant material available on record and clinching the issue.

24. As regards the contention of the Appellant regarding applicability of the Order 8 Rule 5 CPC to the effect that allegations made in the plaint, if not denied, may be taken to be admitted. As allegations made in the plaint have not been denied in the written statement, therefore that is to be admitted and as such the document would be treated to be admitted under Order 8 Rule 5 CPC Cannot be accepted. There is difference between denial of the allegation of fact and proof of the document. When there is no denial of the specific allegation made in the plaint, it is deemed to be admitted. But if a document has to be relied upon by the Plaintiff in support of the allegation of fact, was required to be proved. Admittedly the document has not been proved. Further a denial has been made in the written statement. Consequently, the very application of the provision of the Order 8 Rule 5 CPC cannot be strictly made in the present case.

25. In view of the aforesaid fact and circumstances, I am of opinion that the contention of the Petitioners to this effect that the revisional Court has exceeded its jurisdiction in allowing the revision is not correct. The revisional Court has only corrected the errors made by the trial Court by relying upon a document which was wrongly relied upon by holding that Act No. XIII of 1972 is not applicable only on the basis of misteading the averments made in the plaint.

26. In view of the aforesaid fact, I am of opinion that the revisional Court was justified in dismissing the suit by allowing the revision and has corrected the error which was done by the trial Court.

27. The writ petition lacks merit and is hereby dismissed.

28. No order as to costs.