

**(2011) 06 DEL CK 0074**

**Delhi High Court**

**Case No:** Regular Second Appeal No. 135 of 2010 and CM No. 12250 of 2010

Shri Krishan Mohan and Others

APPELLANT

Vs

Mandodri Devi and Others

RESPONDENT

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**Date of Decision:** June 1, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 2
- Delhi Rent Control Act, 1958 - Section 50
- Evidence Act, 1872 - Section 45

**Hon'ble Judges:** Indermeet Kaur, J

**Bench:** Single Bench

**Advocate:** Mala Goel and Yashpal Singh, for the Appellant; V.B. Andley Rajinder Mathur and Priyank Sharma, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 17.04.2010 which had reversed the finding of the trial judge dated 29.08.2009. Vide judgment and decree dated 29.08.2009, the suit filed by the Plaintiff seeking possession of the suit property (property depicted in red colour in the site plan Ex. P-2 being 4 servant quarters in property No. 4, University Road, Delhi) had been decreed; damages at the rate of Rs. 300/- per month along with the interest at 18% per annum had also been awarded. Impugned judgment had reversed this finding; suit of the Plaintiff stood dismissed.

2. Krishan Mohan after the death of D.R. Gupta claimed himself to be the karta of the joint Hindu family; property No. 4, University Road, Delhi belonged to the family. This property comprised of various servant quarters; four servant quarters (as depicted in the site plan Ex. P-2) are the subject matter of the present suit. Late D.R. Gupta was the Managing Director of M/s Motor & General Finance Limited (MGF).

The Defendant Sh. Yad Ram being an employee of the MGF was retained as a driver and in that capacity he was permitted to occupy these four servant quarters along with his family. In 1969, Sh. Yad Ram, suffered a heart attack; he was asked by the Plaintiff to produce a fitness certificate recording his fitness to drive the vehicle which he failed to do; he abandoned the services of the Plaintiff and absented himself from the duty. Late Sh. D.R. Gupta had allowed Shri. Yad Ram to continue to stay in the suit property till the time he was able to shift to an alternate accommodation. Sh. Yad Ram died on 19.01.1972; he, however, did not vacate the suit property. His widow and sons continued to remain in the property. Despite the demise of Sh. Yad Ram, because of the fact that he was serving late Sh. D.R. Gupta as a driver, his family was allowed to remain in the suit property. On 26.04.1973, legal notice was served upon the Defendants calling upon them to vacate the suit property. Electricity and water charges were also claimed. However, to no avail. Reply to the legal notice had been sent on 15.05.1973 where for the first time, defense was taken by the Defendants that they were tenants in the suit property. Present suit was filed.

3. In the written statement contention of the Defendants was that they are tenants and governed by relationship of the landlord and tenant. The present civil suit was not maintainable; there was a bar under the Delhi Rent Control Act (hereinafter referred to as DRC Act). On merits, it was denied that Sh. Yad Ram was attached as a driver to late Sh. D.R. Gupta. It was contended that Sh. Yad Ram was occupying this property in his independent capacity as a tenant on a monthly rent of Rs. 15/-.

4. On the pleadings of the parties, following issues were framed:

i. Whether the suit is bad for non-joinder of necessary parties? OPP.

ii. Whether the Plaintiff has the locus standi to institute the present suit? OPP.

iii. Whether the suit is hit by Section 50 of Delhi Rent Control Act? OPP.

iv. Whether the suit property was allotted to deceased Yad Ram during the course of his employment in the manner pleaded in para 3 of the written statement? OPP.

v. If Issue No. (iv) is held in affirmative, what is the effect of death of deceased Yad Ram on the suit property? OPP.

vi. Whether the Defendants are tenants in the suit property? OPD vii. If the Plaintiff is entitled to the possession of suit property from the Defendant? OPP viii. Whether the Plaintiff is entitled to any mesne profits from the Defendant? If so, at what rate and what amount? OPP.

ix. Whether the suit is properly valued for the purpose of court fees and jurisdiction? OPP

x. Relief.

5. Oral and documentary evidence was led.

6. Trial judge had disbelieved Ex. D-1 to Ex.D-3 which was a letter and 2 rent receipts purported to have been issued by Sh. J.N. Gupta (son of Sh. D.R. Gupta); court was of the view that they are fabricated. Defendant had failed to establish that he was a tenant in the suit property. Suit stood decreed.

7. The appellate court had reversed this finding. The first appellate court was of the view that the Defendant is a tenant; Ex. D-1 to Ex.D-3 had been relied upon. Defendant being a tenant in the suit property, a civil suit was not maintainable. Suit was dismissed.

8 This is a second appeal. It has been admitted and on 22.12.2010, the following issue was framed:

Whether the findings in the impugned judgment dated 17.04.2010 on the construction of the documents Exs. D-1, D-2 and D-3 are perverse? If so, its effect?

9. On behalf of the Appellant, it has been urged that documents Ex.D-1 to D-3 are clearly forged and fabricated; it is pointed out that these documents had seen the light of the day for the first time when they were confronted to PW-2 in his cross-examination; it is pointed out that these documents did not find mention in the reply filed by the Defendant (dated 15.05.1973) where although Defendant had taken up the plea that his father Yad Ram was a tenant in the suit premises yet he had failed to disclose what is the rate of rent or since when his deceased father was the tenant. It is pointed out that evidence which is contrary to the pleadings cannot be read. To support this proposition, reliance has been placed upon the judgment reported in [Rajendra Singh Yadav Vs. Chandra Sen and Others](#), Reliance on the aforementioned documents in the impugned judgment is clearly a perversity; finding in the impugned judgment calls for an interference.

10. Arguments have been rebutted. Attention has been drawn to Order 6 Rule 2 of the CPC (hereinafter referred as the "Code"). It is pointed out that pleadings have to be specific and evidence does not form a part of the pleadings. It is pointed out that the finding in the impugned judgment calls for no interference.

11. The trial Judge had decreed the suit of the Plaintiff. The trial Judge had repelled the documents Ex.D-1 to D-3. Ex. D-1 is a letter dated 23.07.1973 purported to have been written by J.N. Gupta (PW-2) to Mandodri Devi (widow of Yad Ram) wherein it is recorded that after consultation with the family Mandodri Devi had been accepted as a tenant and the rent of Rs. 15/- per month should be tendered by her; Ex.D-2 is a receipt dated 25.07.1973 signed by PW-2 purporting to have been received an amount of Rs. 465/- for 31 months; Ex.D-3 is also a receipt dated 02.08.1977 issued by PW-2 receiving rent for the preceding 36 months @ Rs. 15/- per month from Mandodri Devi.

12. The tenor of Ex. D-1 appears to be suspicious. This is a communication purported to have been addressed by PW-2 (son of the Managing Director of the Plaintiff company) writing to the widow of his driver and addressing her as Respected Smt Mandodri Devi...

It has thereafter been signed by J.N. Gupta after thanking her & has noted as:

Yours faithfully,

Sd/-

(J.N. Gupta)

13. The submission of learned Counsel for the Appellant that the son of the Managing Director of the employer company even presuming was communicating with the widow of his driver would not be addressing the communication in the manner in which it has been done. There is force in this submission. The surrounding circumstances also throw suspicion on this document. Admittedly Yad Ram had been employed with the MGF Company of whom D.R. Gupta was the Managing Director; Yad Ram's services were personal to D.R. Gupta, being his driver; D.R. Gupta was a resident of 4, University Road, New Delhi; the aforementioned servant quarters had been given to Yad Ram and his family to occupy them in that capacity. Yad Ram was an employee of the Plaintiff company since 21.11.1941. He had died in 1972. Being an old employee his family was permitted to occupy the suit premises till 26.04.1973 (Ex P-3) when notice had been sent to his widow asking them to vacate the suit premises along with damages failing which a civil suit will be initiated against them. In the reply dated 15.05.1973 (Ex.P-4), the Defendants had set up a plea of tenancy stating therein that Yad Ram was a tenant in the aforementioned premises and after his death, the premises were being occupied by them in their capacity as tenants; it was further clarified by a statement that the Defendants have never avoided or denied to make the payment or other charges. Admittedly no rent had ever been tendered by the Defendant on any date either prior to this letter and or even later. In a subsequent letter dated 19.08.1974 addressed by the Defendants to the Plaintiff company no such plea of tenancy had been advocated; contention of Defendants in this letter was that Yad Ram had expired and after his death a sum of Rs. 24,149/- was due and payable from the company which amount was recoverable. The present suit was filed in the year 1982. Written statement had been filed on 11.10.1983; even in the written statement no details of the alleged tenancy had been given i.e. the date from which Yad Ram had become a tenant or the rate of rent. The documents Ex.D-1 to Ex.D-3 had been filed on 03.02.1984 i.e. at the time of framing of issues; although there was no specific bar for tendering documents upto the date of framing of issues (in view of the unamended Code); the said documents surfaced for the first time when they were confronted to PW-2 in his cross-examination.

14. The gamut of the evidence adduced both oral and documentary has to be looked into before the Court can return a finding one way or the other. Ex.D-1 to Ex D-3

were purported to have been executed by J.N. Gupta (PW-2); PW-2 had come into the witness box; he had denied the execution of the aforementioned documents. DW-2 was the handwriting expert who had tendered his report Ex. DW-2/12 wherein after examination of the questioned signatures (Q-1 to Q-3 on Ex. D-1 to Ex. D-3) with the specimen signatures (S-1 to S-5) and the admitted signatures (C-1 to C-5) had returned an opinion in favour of the Defendant; his opinion was that the disputed signatures Q-1 to Q-3 are the genuine signatures of J.N. Gupta. This witness had come into the witness box as DW-2. His cross-examination is relevant. In the opening line of his cross-examination he had admitted that he does not have any degree or diploma from any government university; his father is a photographer and is working with handwriting experts operating from Tis Hazari Courts; he admitted that he always gives a report in favour of a party who engages him; he further volunteered that if he gives a report against the party it will be torn. This evidence of DW-2 had been considered by the trial Court to return a finding that the report of the handwriting expert (which is even otherwise only a relevant fact u/s 45 of the Indian Evidence Act) in view of this categorical admission holds no water. This report had been rightly rejected.

15. Learned Counsel for the Respondent has submitted that even assuming that this report has to be disregarded, trial Judge had not returned any finding as to whether Ex.D-1 to Ex. D-3 were forged or fabricated documents; attention has been drawn to para 23 of the judgment of the trial Judge. The trial Judge had noted therein that documents Ex. D-1 to Ex. D-3 are not worthy of credence as they had not been proved in accordance with law; but the question whether Ex.D-1 to Ex.D-3 are forged or fabricated had not been gone into.

16. Admittedly the plea of the Defendant that his father Yad Ram was a tenant had not been substantiated by any other document; it has also not been pleaded or averred in the written statement as to since when Yad Ram was a tenant; written statement shows that the date of tenancy or the rate of rent has not been given; these averments also do not find mention in the reply filed by the Defendant to the legal notice dated 15.05.1973; therein also the Defendant had given no details since when Yad Ram was a tenant or what was rate of rent.

17. Admittedly Yad Ram was a driver employed with the MGF; D.R. Gupta was the Managing Director of MGF; he was performing the duties of a driver of D.R. Gupta; it also not in dispute that D.R. Gupta was a resident of 4, University Road, New Delhi; in these circumstances, it is difficult to perceive of a situation that a man of a stature owning a property at 4, University Road, New Delhi would have allotted 4 servant quarters in his residential block to his personal driver at a rent of Rs. 15/- per month. That apart if the Defendant was a tenant nothing prevented him from coming forward with all details in the first instance; even on the date of filing of written statement (10.01.1983) these details did not surface; they surfaced for the first time only on 03.02.1984 when Ex. D-1 to Ex. D-3 were confronted to PW-2. The report of

handwriting expert Ex. DW-2/12 as aforementioned had rightly been rejected. Counsel for the Respondent is also not pressing his claim on this report.

18. The further contention of the Respondent is that the relationship of parties had in fact stood established as landlord and lessee and in the absence of documentary evidence the conduct of the parties deciphered their relation to be that of lessor-lessee; for this proposition learned Counsel for the Respondent has placed reliance upon the judgment reported in [Mohan Sons \(Bombay\) Private Ltd. Vs. Lady Sonoo Jamatji Jejeebhoy and Others](#), & [Associated Hotels of India Ltd. Vs. R.N. Kapoor](#), This submission is to be noted only to be rejected. As already aforementioned this defence of the Defendant that he was a lessee stands refuted. Circumstances show that the Defendant had been given permissive user of the suit property only in his capacity as an employee of MGF and his personal attachment as a driver of D.R. Gupta who was a resident of 4, University Road, New Delhi in whose residential block these servant quarters are located; in no manner can it be said that there was any intention to create a lease; judgments relied upon by learned Counsel for the Respondent in M/s Mohan Sons (Bombay) Private Ltd (Supra) and Associated Hotels of India Ltd. (Supra) have no application to the facts of the case. The impugned judgment reversing the finding of Trial Judge without any cogent reason was a perversity. It calls for an interference.

19. Learned Counsel for the Appellant under instructions from her client states that the claim for mesne profits is not been pressed.

20. The substantial question of law is accordingly answered in favour of the Appellant and against the Respondent. Appeal is allowed. Suit is decreed for possession.