

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR POSSESSION

CS(OS) 2439/2001

DATE OF RESERVE: September 25, 2008

DATE OF DECISION: November 27, 2008

ARYA ORPHANGE Plaintiff
Through: Mr. H.L. Tikku, Sr. Advocate with
Mr. Nitinjya Chaudhary and Mr. J. Sumit,
Advocates

versus

MR. ALFRED G. WUERFEL FC+ Defendant
Through: Mr. Sanjeev Sharma and Mr. Rajnish
Vats, Advocates

JUDGMENT

: REVA KHETRAPAL, J.

1. The present suit instituted by the plaintiff against the defendant on 27.11.2001 is for possession, recovery of mesne profits and permanent injunction.

2. The relevant facts as they emerge from a reading of the plaint are as follows. The plaintiff institution known as 'Arya Orphanage' is a society registered under the Societies Registration Act, 1860, which owns, inter alia, a big complex at 1488, Pataudi House, Darya Ganj, New Delhi and another complex having an area of about 10 acres known as 'Des Raj Campus' in East of Kailash, New Delhi. The institutions working under the control of the plaintiff or associated with it cater to the care, upbringing and education

of more than 1100 orphan/destitute boys and girls, providing free boarding and lodging to them.

3. The property bearing No.13, Barakhamba Road, situate on Plot No.31, Block No.148, New Delhi (hereinafter referred to as the suit property) belonged to one Lala Narain Dutta, who was its owner and perpetual lessee, the lease having been granted by the Government of India on 31.05.1932. Lala Narain Dutta died on 07.11.1950, leaving behind his widow, his only son Shri Krishan Dutta and three daughters. Shri Krishan Dutta, soon after the death of his father, asserting himself to be the absolute owner of the said property, vide his letter dated 06.05.1952, got his name mutated as such owner in the record of the LandDO as also in the record of the New Delhi Municipal Committee. Shri Krishan Dutta along with his mother and his wife Mrs. Rani Dutta continued to live in the said property till he breathed his last on 24.09.1976.

4. Shri Krishan Dutta and Smt. Rani Dutta had no issue. Shri Krishan Dutta executed a will on 07.06.1976 bequeathing the suit property to the plaintiff, but granting life interest in the same to his wife Smt. Rani Dutta along with all income therefrom. After the death of Shri Krishan Dutta on 24.09.1976, Smt. Rani Dutta on or about 15.12.1977 filed an application for letters of Administration in the Court of the learned District Judge, Delhi under Section 276 of the Indian Succession Act, 1925, which was registered as Probate Case No.232/1977. By an order passed on 24.08.1978 by the learned District Judge, Delhi, letters of Administration with will annexed were issued in favour of Smt. Rani Dutta on her complying with various legal formalities, and eventually the letters of Administration were granted to her on 08.11.1978.

5. After Smt. Rani Dutta came to acquire life interest in the suit property, she inducted the defendant as a licensee in two portions of the said property, as shown in the site plan annexed with the plaint. One of the said portions was given to the defendant at a licence fee of Rs.1,500/- per month, while the other was given at a licence fee of Rs.2,000/- per month. The defendant, on 30.11.1992, gave two separate undertakings in respect of the aforesaid two portions, stating, inter alia, that he had been inducted as a licensee by Smt. Rani Dutta; that he was paying a licence fee every month to Smt. Rani Dutta but had no independent right, title or interest in the premises in his occupation; that his occupation was purely permissive, which permission was derived from Smt. Rani Dutta; that he was given to understand by Smt.

Rani Dutta that the plaintiff was the owner of the said property and that the said property stood mutated in the records of the LandDO and the NDMC in the name of the plaintiff; and that he was giving the undertakings of his own free will and accord that after one year of the death of Smt. Rani Dutta, he would handover peaceful vacant possession of the portions in his occupation in the said property to the Secretary of the plaintiff. He also undertook that in the meanwhile, he would not induct any other person, either as a tenant or as a licensee or in any other capacity in the portion in his occupation.

6. Smt. Rani Dutta eventually breathed her last on 06.10.1993. After her death, the plaintiff served a registered A.D. notice dated 31.12.1993 on the defendant wherein it was stated that on the death of Smt. Rani Dutta on 06.10.1993, the licence granted to the defendant to stay in the suit property had automatically come to an end. The two undertakings given by the defendant were also referred to, and it was stated that the Managing Committee of the plaintiff in its meeting held on 20.11.1993 had resolved not to renew the licence of the defendant in respect of the suit property in his possession. The defendant was called upon to handover vacant possession to the Secretary of the plaintiff at the earliest, but in any case by 06.10.1994, i.e., on the expiration of the one year period after the death of Smt. Rani Dutta referred to in the undertakings of the defendant.

7. According to the plaint, after the service of the notice dated 31.12.1993, and, at any rate, after 06.10.1994 (by which date the defendant had himself undertaken to vacate the premises in suit vide his undertakings dated 30.11.1992), the defendant must be treated as an unauthorised occupant of the premises in his possession and thus liable to pay damages at the market rate for use and occupation thereof. The plaintiff asserts that the property in the possession of the defendant can easily fetch a rent of at least Rs.20,000/- per month, which is much less than what has been and is the prevalent market rent in the locality and, accordingly, the plaintiff is entitled to claim damages at Rs.7,20,000/- for the period from 01.11.1998 to 31.10.2001, which is the amount of damages for the last three years only. The plaintiff accordingly prays for a decree for possession in respect of the property in the possession of the defendant, a decree for Rs.7,20,000/- towards damages for its use and occupation, and a decree for future mesne profits and damages from the date of the filing of the suit till the delivery of the possession to the plaintiff.

8. The defendant, in his written statement, contends that the suit is wholly misconceived and, in any case, the plaintiff has no locus standi to file the suit. The defendant further contends that the allegations in the plaint about the defendant being the licensee of the two separate portions in question are false. The defendant claims to be inducted into both the independent tenancies as a tenant thereof against the rent of Rs.2,000/- and Rs.1,500/- per month for each of the tenancies in question, which, he states, he has been depositing in the Court of the Additional Rent Controller, Delhi after the death of Smt. Rani Dutta, who died on 06.10.1993. The rent of each of the said two tenancies being less than Rs.3,500/- per month, the defendant claims to be protected by the provisions of the Delhi Rent Control Act, which he asserts bar the jurisdiction of this Court to try and entertain the present suit in respect of the said tenancies. The suit, according to him, deserves to be dismissed on this short ground alone. Even otherwise, it is contended by the defendant that the suit is liable to be dismissed for the non-joinder of necessary parties as all the legal heirs of late Lala Narain Dutta, who are the co-owners of the property in question, have not been impleaded as parties in the present suit.

9. The plaintiff filed replication to the written statement of the defendant, controverting the pleas taken in the written statement, and reiterating and reaffirming the averments made in the plaint.

10. On the aforesaid pleadings of the parties, issues were framed by this Court on 11.07.2003. All the parties were permitted to lead evidence by way of affidavits and the witnesses to be cross-examined thereafter. The affidavits of two witnesses, PW1 Shri Viresh Pratap Chaudhary and PW2 Shri Sanjiv Bhagat, were filed on behalf of the plaintiff. Both the said witnesses were cross-examined before the Local Commissioner and their detailed cross-examination forms part of the record. The defendant filed his own affidavit by way of evidence and was cross-examined at length, but from his cross-examination it emerged clearly that the defendant had more or less lost his memory and even that his statements on account of his old age, he being 98 years of age, had lost coherence.

11. Having gone through the record and heard the learned counsel for the plaintiff Mr. H.L. Tikku as well as the learned counsel for the defendant Mr. Sanjeev Sharma, my findings on the issues are being rendered. For the sake of convenience, it is proposed to deal with the Issue Nos.2 and 3 together,

Issue Nos.1, 6, 7, 8 and 9 together and thereafter to deal with Issue No.4, Issue No.5, Issue No.10 and Issue No.11 separately.

Issue Nos.2 and 3

12. Issue Nos.2 and 3, which are being taken up together, are: “2) Whether the plaintiff had no locus standi to file the present suit” OPD 3) Whether the suit is bad for non joinder of the legal heirs of Late Lala Narain Dutt” OPD”

13. To recapitulate, the case of the plaintiff, in sum and substance, is that late Lala Narain Dutta was the owner and perpetual lessee of the said property, the lease having been granted in his favour by the Government of India on 31.05.1932. Lala Narain Dutta having died on 07.11.1950, his son Shri Krishan Dutta became the owner and perpetual lessee of the said property and exercised all rights incidental to ownership. Shri Krishan Dutta, in the first instance, got his name mutated as owner in the records of the LandDO as also in the records of the New Delhi Municipal Committee, now known as New Delhi Municipal Council. Thereafter, he executed a will dated 07.06.1976. By virtue of that will, he bequeathed the property at 13, Barakhamba Road, New Delhi (the suit property) to the plaintiff, but gave life interest in the said property to his wife, Smt. Rani Dutta, providing that so long as she was alive, she would have the right to live in that property and all income accruing therefrom would be hers, and after her death or if she so wished during her life time, the possession of the said property be taken over by the plaintiff, to do with it what it liked.

14. It also emerges from the plaint Shri Krishan Dutta was paying the annual licence money to the LandDO and the property tax to the NDMC since the death of his father and till his own death on 24.09.1976. After his death, Letters of Administration were obtained by his wife Smt. Rani Dutta in respect of his will. The leasehold rights of the said property were also substituted by the LandDO in the name of the plaintiff, on the application made to the LandDO in this respect by Smt. Rani Dutta herself, on the same terms and conditions as laid down in the lease deed executed on 31.05.1932, and the properties stood substituted in the books of that office in the name of the plaintiff. Smt. Rani Dutta breathed her last on 06.10.1993. On her death, the plaintiff became the absolute owner of the said property. Accordingly, the plaintiff contends that the plaintiff is fully competent and has locus standi to file the present suit.

15. On the aspect of non-joinder of the legal heirs of late Lala Narain Dutta, the plaintiff has averred in the plaint itself that one of the sisters of late Shri Krishan Dutta, namely, Smt. Sumitra Sahai, had filed a suit, being Suit No.785/1994, in this Court on or about 18.03.1994 claiming that she was one of the co-owners of the said property and that late Shri Krishan Dutta, at best, had only 1/4th share in the said property. The plaintiff herein was impleaded as the defendant No.1 in that suit. The said suit filed by Smt. Sumitra Sahai was dismissed by this Court as withdrawn by order dated 14.12.1998. The plaintiff avers that there has been no other litigation whatsoever initiated against the plaintiff by any party claiming any interest in the suit property, and, as a matter of fact, right since the death of his father, Shri Krishan Dutta had exercised all rights incidental to ownership in respect of the suit property and continued to do so till his death on 24.09.1976, without the slightest murmur or protest from any quarter whatsoever. Thus, there is no doubt whatsoever that the plaintiff alone is the rightful owner of the suit property and is entitled to exercise all rights incidental to ownership in respect thereof. The defendant's contention that the suit is bad for non-joinder of the legal heirs of late Lala Narain Dutta is, therefore, wholly misplaced.

16. The burden of proving both Issue Nos.2 and 3 was on the defendant. Apart from his bald statement in his affidavit by way of evidence, no other evidence was led by the defendant to prove that the plaintiff was not the owner of the suit property, including the portion licenced to the defendant. Further, no evidence was led by the defendant to show any right, title or interest in the suit property in favour of any of the alleged legal heirs of late Lala Narain Dutta, other than his son Shri Krishan Dutta. The plaintiff, on the other hand, apart from the oral evidence of PW1 Shri Viresh Pratap Chaudhry, reiterating and reaffirming the averments made in the plaint, has proved the following documents on record to show that the plaintiff is the absolute owner of the suit property:- S.No. Description of documents
Exhibit (i) Certified copy of the registration of the plaintiff as a Society under the Societies Registration Act, 1860. PW1/1 (ii) Certified copy of the letter dated 06.05.1952 sent by the LandDO to Shri Krishan Dutta, intimating that the property at 13 Barakhamba Road stands mutated in the records of the LandDO. PW1/3 (iii) Certified copy of the petition along with its annexures in Probate Case No.232/1977 titled Smt. Rani Dutta vs. State for grant of Letters of Administration to Smt. Rani Dutta with the will dated 07.06.1976 by Shri Krishan Dutta annexed as Annexure-C. PW1/5 (iv) Copy of the joint written statement dated 17.02.1978 filed by Smt. Vidya Wati,

Smt. Kaushalya Devi Dhawan and Smt. Sumitra Sahai (all sisters of late Shri Krishan Dutta) in the said probate case. In the said written statement, it was prayed that Letters of Administration with the will annexed be granted to Smt. Rani Dutta and they had no objection to the same. PW1/6 (v) Certified copy of the order dated 24.08.1978 passed by the then District Judge, Delhi in the aforesaid probate case granting Letters of Administration with the will annexed in favour of Smt. Rani Dutta. PW1/7 (vi) Copies of Letters of Administration granted to Smt. Rani Dutta along with the will Exhibit PW-1 annexed to it. PW1/8 (vii) Letter dated 31st March, 1982 sent by the LandDO to Smt. Rani Dutta, intimating that leasehold rights of the suit property had now been substituted in the name of the plaintiff on the same terms and conditions as laid down in the lease deed executed on 31.05.1932. It was further stated that the said property stands substituted in the books of that office in the name of the plaintiff Arya Orphanage. PW1/11 (viii) Letter dated 12.11.1987 sent by the NDMC to the Secretary of the plaintiff, intimating that the suit property had been mutated in the name of the plaintiff in the House-tax register maintained by NDMC. PW1/12 (ix) Certified copy of the amended plaint in Suit No.785/1994 titled Mrs. Sumitra Sahai vs. Arya Orphanage and Ors. instituted in the High Court of Delhi. PW1/15 (x) Certified copy of the order dated 14.12.1998 passed by the Delhi High Court in the above suit, dismissing the suit as withdrawn. PW1/21 (xi) Copy of letter dated 15.03.2000 from the office of the LandDO of Government of India, addressed to the plaintiff, demanding a sum of Rs.40,688/- towards ground rent, etc. in respect of the suit property. PW1/24 (xii) Receipt dated 30.03.2000 issued by the LandDO, Government of India acknowledging the receipt of cheque towards ground rent in respect of the said property. PW1/25 (xiii) Letter dated 07.08.2002 issued by the NDMC to the plaintiff towards property tax; also containing receipt dated 28.02.2002 for a sum of Rs.4,480/- in respect of the said demand.

PW1/31

17. In view of the aforesaid oral and documentary evidence brought on record by the plaintiff, it stands established beyond doubt that the plaintiff is the owner of the suit property by virtue of the Letters of Administration issued in Probate Case No.232/1977 in favour of Smt. Rani Dutta and the mutation of the suit property at her behest in the name of the plaintiff. The filing of the suit by Smt. Sumitra Sahai, impleading the plaintiff herein as the defendant No.1, and its subsequent dismissal by this Court also stand established. The necessary corollary is that the plaintiff alone has the locus

standi to file the present suit and the legal heirs of late Lala Narain Dutta were not required to be impleaded as parties in the suit.

18. Issue Nos.2 and 3 are accordingly answered in favour of the plaintiff and against the defendant.

Issue Nos.1, 6, 7, 8 and 9

19. The facts concerning the aforesaid issues being common, it is deemed expedient to deal with these issues together. These issues are:- “1) Whether the suit is barred by the provision of Section 50 of the Delhi Rent Control Act” OPD 6) Whether Mrs. Rani Dutta had inducted the defendant as a tenant in the suit premises as claimed by the defendant in his written statement” OPD 7) Whether Mrs. Rani Dutta had only a life interest in the suit property. If so its effect” OPP 8) Whether the defendant is in unauthorised possession of the premises for the reason which have been given in paragraphs 28 and 37 of the plaint” OPP 9) Whether the plaintiff is entitled to recover the possession of the premises from the defendant” OPP”

20. As stated above, the case of the plaintiff is that the defendant was inducted as a licensee in the property in suit by Smt. Rani Dutta on the demise of her husband Shri Krishan Dutta. The defendant denies his status of licensee and claims to have been inducted as a tenant. The onus of proving whether Smt. Rani Dutta had inducted the defendant as a tenant in the suit premises as claimed by the defendant in his written statement (issue No.6) was upon the defendant. The defendant has not produced any documentary evidence to suggest that he was inducted as a tenant. In answer to a specific question to him in cross-examination as to whether he had any receipts with him for the amount claimed by him to be the rent for the premises, he answered that he had some documents but did not remember where they were.

21. The plaintiff, on the other hand, led oral as well as documentary evidence to prove that the defendant was inducted as a licensee in the suit property and not as a tenant by Smt. Rani Dutta, who had only a life interest in the suit property, and to further show that the defendant had given undertakings of his own free will and accord that within one year of the death of Smt. Rani Dutta, he would handover the peaceful and vacant possession of the property in suit to the Secretary of the plaintiff and, in the

meanwhile, would not induct any other person either as a tenant or in any other capacity in the suit property.

22. PW1 Shri Viresh Pratap Chaudhry, in his cross-examination, also categorically stated that since Smt. Rani Dutta knew that she had only life interest in the suit property, she told him that she had not inducted anybody as a tenant, but had given the property to the defendant as a licensee. PW1 further stated, in his cross-examination, that the defendant himself had informed him that he was a licensee of Smt. Rani Dutta. The defendant, who appeared in the witness-box as DW1, did not refute either of the aforesaid two statements made by PW1 in his cross-examination.

23. The documentary evidence on record also affirms that the defendant was a licensee of Smt. Rani Dutta, and became an unauthorised occupant of the premises in question upon her death and, at any rate, on the expiry of the period mentioned in his undertakings. This is borne out by the letter dated 10.10.1992 sent by Smt. Rani Dutta to the Secretary of the plaintiff (Exhibit PW-1/13A), enclosing therewith a list of various occupants of the suit property excluding herself (Exhibit PW-1/13). It is specifically stated in the aforesaid letter by Smt. Rani Dutta that none of the occupants have any right, title or interest therein and that they were living therein as licensees and that their possession was wholly permissive. The defendant's name figures in the list enclosed with the said letter at Serial Nos.3 and 4.

24. The two undertakings given by the defendant, both dated 30th November, 1992, in respect of the two portions of the suit property licenced to the defendant, further show that the defendant was a mere licensee of late Smt. Rani Dutta (Exhibit P-1 and P-2). As already stated, in each of the said undertakings, the defendant stated, inter alia, that Mrs. Rani Dutta, who had a life interest in the suit property, had inducted the defendant as a licensee a few years ago and that his occupation was purely permissive and that within one year of the death of Smt. Rani Dutta, he would handover peaceful and vacant possession of the property in suit to the Secretary of the plaintiff, and, in the meanwhile, he would not induct any other person either as a tenant or as a licensee or in any other capacity in the suit property. The first undertakings exhibited as Exhibit P-1 reads as follows:- “UNDERTAKING Exhibit P-1 This undertaking is given on this the 30th day of November, 1992 by Mr. Alfred Wuerfel, S/o Shri Joseph Wuerfel presently residing in a portion of 13, Barakhamba Road, New Delhi-110001. 1. WHEREAS in the property situate at 13, Barakhamba Road, New Delhi, hereinafter referred to

as 'the said property', Smt. Rani Dutta, who has a life interest therein, inducted me as a licensee in a portion of the said property a few years ago and that portion is more particularly described in the schedule below; 2. AND WHEREAS I am paying a licence fee of Rs.1500/- p.m. to Smt. Rani Dutta but I have no independent right, title or interest in the premises in my occupation and my occupation is purely permissive which permission is derived from Smt. Rani Dutta; 3. AND WHEREAS I am given to understand by Smt. Rani Dutta that Arya Orphanage, Pataudi House, Darya Ganj, New Delhi is the owner of the said property and the said property stands mutated in the record of L.N.D.O. and N.D.M.C. in the name of the said Arya Orphanage; Now I give this undertaking of my own free WILL and accord that within one year after the death of Smt. Rani Dutta, I shall hand over peaceful, vacant possession of the portion in my occupation in the said property to the Secretary, Arya Orphanage, Pataudi House, Darya Ganj, New Delhi-110002 and I also undertake that I shall not in the meanwhile induct any other person, either as a tenant or as a licensee or in any other capacity in the portion in my occupation. SCHEDULE 3 room, 1 kitchen, covered verandha, 1 bath-cum-toilet situate on the 1st floor on the Eastern side of the premises and facing Barakhamba Road. Signed by me this the 30th day of November, 1992. sd/- (Alfred Wuerfel)" The second undertaking exhibited as Exhibit P-2 is in similar terms with necessary modifications in respect of the licence fee and the specifications of the portion of the suit property licenced to the defendant.

25. It deserves to be mentioned at this juncture that in respect of the two undertakings given by the defendant, the plea taken by the defendant in the written statement is that the same were obtained by misrepresentation and by playing fraud upon him. Significantly, however, in response to the plaintiff's letter dated 31st December, 1993 (Exhibit P-8) calling upon the defendant to vacate the licenced premises latest by 06.10.1994 in terms of his undertakings, the defendant in his reply dated 14.04.1994 (Exhibit P-5) made no assertion that any of the two undertakings had been obtained from him by any misrepresentation or fraud, nor he asserted that he was not bound by the said two undertakings. Not only this, no plea was taken by him to contend that he had been enjoying the status of a tenant, and in fact the only plea taken was that he was not bound by the undertakings since Shri Krishan Dutta had only 1/4th undivided share in the said property and the undertakings, therefore, had no relevance. Significantly also, both the undertakings given by the defendant were admitted by him in the course of admission/denial of documents on 11.03.2003 before the Joint Registrar and

thereupon were exhibited as Exhibit P-1 and Exhibit P-2. What clinches the issue is that the defendant in the course of his cross- examination, after reading the aforesaid two undertakings (Exhibit P-1 and Exhibit P-2), stated that the statements made in the two undertakings were correct. This admission of the defendant completely demolishes the plea taken by the defendant in his written statement that the undertakings were obtained by misrepresentation and/or by playing fraud upon him.

26. In the above context, reference may be made to a three Judge Bench judgment of the Supreme Court in *Bharat Singh and Ors. vs. Mst. Bhagirathi* reported in AIR 1966 SC 405 and in particular to paragraph 19 of the said judgment, which reads as under:- “(19) Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Ss. 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under S. 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence.”

27. In *Hanuman Dutt Bajpai vs. Budha Singh* reported in 68 (1997) DLT 414, which was a case in which the facts were identical to the facts in the present case, and the question involved was whether the respondent was a licensee or a tenant, a learned Single Judge of this Court relying upon an undertaking given by the respondent to the appellant and holding that the respondent was in occupation of the disputed property as a licensee, observed as follows:- “8. The case of the respondent is that he was in possession of the disputed property as a tenant. The burden is undoubtedly upon the respondent to establish the said relationship between him and the appellant. The law of evidence enjoins upon the party to prove the fact which he relies on and in that sense, an obligation is cast upon the party and if he fails to discharge that obligation, adverse consequences will follow and will have to face the repercussions of the same.....”

28. Applying the ratio of the aforesaid decision, the irresistible conclusion is that the defendant was under an obligation to establish his case that he was a tenant of Smt. Rani Dutta and he having failed to discharge the said onus placed upon him of proving that he was inducted as a tenant in the suit premises, must be held to be a licensee in view of the undertakings furnished by him to Smt. Rani Dutta and admitted by him to be correct in the course of his cross-examination before this Court.

29. Issue Nos.1 and 6 are accordingly answered in favour of the plaintiff and against the defendant.

30. As regards Issue Nos.7, 8 and 9, the letters of Administration granted to Smt. Rani Dutta in respect of the will of late Shri Krishan Dutta (Exhibit PW-1/8) clearly show that Smt. Rani Dutta was given only life interest in the suit property and thereafter the plaintiff was to be its absolute owner. The substitution of the name of the plaintiff, at the instance of Smt. Rani Dutta, by the LandDO by its letter dated 31.03.1982 (Exhibit P-1/11) and also by the NDMC by its letter dated 12.11.1987 (Exhibit P-1/12), leave no manner of doubt that Smt. Rani Dutta had only a life interest in the suit property. No evidence to the contrary has been brought on record by the defendant and hence it stands conclusively established that Smt. Rani Dutta had only a life interest in the suit property. As regards the effect thereof, it cannot be lost sight of that a person whether by lease, licence or otherwise cannot confer a better title on another than that enjoyed by him. Reference in this context may be made to the first decision on this point in Mahabir Gope vs. Harbans Narain Singh AIR 1952 SC 205, wherein it was held as under:- “The general rule is that a person cannot by transfer or otherwise confer a better title on another than he himself has.”

31. The same view was taken in Asa Ram vs. Mst. Ram Kali AIR 1958 SC 183, All India Film Corporation Ltd. vs. Raja Gyan Nath 1969(3) SCC 79, Harihar Prasad Singh vs. Deonarain Prasad 1956 SCR 1, Carona Shoe Co. Ltd. and Anr. vs. K.C. Bhaskaran Nair AIR 1989 SC 1110 and Balkishan and Ors. vs. Baldeo Kumar and Ors. AIR 1953 PandH 297.

32. All the aforesaid decisions were relied upon by a Full Bench of this Court in the case of Puran Chand and Co. vs. Ganeshi Lal Tara Chand and Ors. reported in AIR 1988 DLT 1. In the said case, the Full Bench after referring to the aforesaid decisions held:- “Following these decisions we

hold that the general rule is that every subordinate interest must perish with the superior interest on which it is dependent. A mortgagee in possession may grant a lease but he cannot create a lease of the mortgaged property which may enure beyond the termination of his own interest as a mortgagee unless he has been empowered to do so under the mortgage contract. The relationship of landlord and tenant between the mortgagee in possession and his tenant, comes to an end on redemption unless the relationship is agreed by the mortgagor or a fresh relationship is recreated.”

33. The provision of law behind this well established legal principle is incorporated in Clause (c) of Section 111 of the Transfer of Property Act, 1882, the effect of which is that the lease of an immovable property is determined where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event, by the happening of such event. Since Mrs. Rani Dutta had only life interest in the suit property, the licence created by her in the said property in favour of the defendant automatically perished with the death of Mrs. Rani Dutta. In other words, the right, if any, of the defendant to the possession of the premises licenced to him stood extinguished upon the death of Smt. Rani Dutta. More so, as there is no assertion from the side of the defendant that the plaintiff, at any point of time, recognised the defendant as its licensee/tenant or that the defendant attorned to the plaintiff or was acknowledged by the plaintiff as its licensee.

34. Accordingly, the plaintiff must be held to have discharged the onus placed upon him of proving Issue No.7 in its favour and as a necessary corollary of proving Issues No.8 and 9, as it must be held that the defendant is in unauthorised possession of the premises and the plaintiff is entitled to recover possession thereof. Issues No.7, 8 and 9 are, therefore, decided in favour of the plaintiff and against the defendant.

Issue No.4

35. Issue No.4 reads as under:- “4) Whether the suit is not properly valued for the purpose of court fees and jurisdiction” OPD”

36. The plaintiff, for the relief of possession, valued the suit at Rs.30 lakhs and paid Court fees on the aforesaid amount. The defendant in his written statement stated thus:- “.....The value of each of the tenancy premises of the property in question is more than Rs.1 crore and the

plaintiff be directed to pay the requisite court fees on the alleged relief of possession.” (para 49)

37. In paragraph 40 of the written statement, however, the defendant has adopted a completely contradictory stand as follows:-
“.....in fact, the property No.13, Barakhamba Road, New Delhi is a very old construction and the same is in a very dilapidated condition and the portions in suit in possession of the defendant cannot fetch rental of more than Rs.2,000/- and Rs.1,500/- per month.”

38. The onus of proving this issue was upon the defendant. The defendant did not lead any evidence to show that the property in suit was not properly valued for the purposes of Court fees and jurisdiction for claiming the relief of possession. In the absence of any evidence led by the defendant, in my view, it cannot be said that the suit has not been properly valued by the plaintiff for the relief of possession.

39. Issue No.4 is, therefore, answered in favour of the plaintiff and against the defendant. Issue No.5

40. Issue No.5 reads as under:- “5) Whether the defendant is a tenant in two separate and independent tenancy premises and one suit in respect of two tenancies is not maintainable as alleged by the defendant in paragraphs 1 and 2 of the preliminary objection of the written statement” OPD”

41. This issue was not seriously pressed at the time of arguments. Even otherwise, the provisions of Order II Rule 3 of the Code of Civil Procedure must be held to squarely apply to the facts of the present case and the objection that the plaintiff was required to file two separate suits against the defendant in respect of two different portions of the same property which have been in occupation of the defendant, per se, appears to be wholly misconceived.

42. The learned counsel for the plaintiff, in the context of this issue, has also placed reliance on a judgment of this Court in Chander Parkash Chawla vs. K.K. Kapoor and Ors. reported in 64 (1996) DLT 614. In the said case, an objection was raised by the petitioner that the first floor and the second floor premises were let out by the petitioner separately at different points of time and were covered by two distinct tenancies “ one relating to the first floor and the second relating to the second floor of the premises in dispute. The

cause of action in respect of each tenancy was thus distinct and separate, and one could not be joined with the other in the same proceedings. Relying upon the provisions of Order II Rule 3, a learned Single Judge of this Court held that assuming that the parties had treated the two lettings as separate tenancies, yet there were common questions of law and fact arising between the same parties and in respect of different portions of the same property, and, accordingly there would be nothing illegal in one eviction petition being entertained and tried in respect of the entire premises though different portions were let out at two different times. It was further observed that such an approach is in the interest of justice and has the effect of avoiding multiplicity of proceedings.

43. In yet another case Jamiluddin vs. Shamsuddin reported in AIR 1999 ALLAHABAD 150, a Division Bench of the Allahabad High Court categorically held that sub-rule (1) of Rule 3 of Order II of the Code clearly permits a plaintiff to unite in the same suit more than one cause of action against the same defendant, or the same defendants jointly, and a suit cannot be dismissed for joinder in the same suit of several causes of action against the same defendant, or the same defendants jointly. Thus, for ejection of the same tenant, or the same tenants jointly from two or more tenements, one suit by the landlord is legally permissible and such a suit cannot be dismissed for misjoinder of causes of action.

44. In view of the foregoing, I have no hesitation in holding that the objection that the plaintiff was required to file two separate suits in respect of the two different portions of the same property, licenced to him by the same owner, cannot be sustained. Issue No.5 is accordingly decided against the defendant. Issue No.10

45. Issue No.10 reads as under:- “10) Whether the defendant is liable to pay mesne profits” If so at what rate and for what period” OPP”

46. In view of my findings on Issue Nos.7 to 9 holding that the defendant is an unauthorised occupant in the property licenced to him after 06.10.1994 [by which date the defendant had himself undertaken to vacate the property in suit as per his undertakings (Exhibit P-1 and Exhibit P-2)], the defendant must be held liable to pay mesne profits for the use and occupation of the property unauthorisedly occupied by him.

47. It is settled law that mesne profits, which are to be determined on account of wrongful continuation of occupation after termination of tenancy/licence, should be computed at the rate which the property might have fetched at the relevant time [See UCO Bank vs. Kalicharan 127 (2006) DLT 21 (DB) and another Division Bench decision of this Court in the case of State Bank of Bikaner and Jaipur vs. I.S. Ratta and Ors. 120 (2005) DLT 407]. The defendant is thus liable to pay damages at the market rate for use and occupation of the property in suit. The plaintiff, though became entitled to claim damages with effect from 06.10.1994, has restricted its claim to a period of three years, i.e., from 01.01.1998 to 31.10.2001, in view of the fact that the Limitation Act precludes the plaintiff from claiming mesne profits for a period anterior to the three years immediately preceding the institution of the suit. Additionally, the plaintiff has also claimed mesne profits from the date of the filing of the suit till the handing over of the property in suit to the plaintiff.

48. The learned counsel for the plaintiff contends that the suit property is situate in a posh locality in Delhi and is located at the intersection of Tolstoy Marg and Barakhamba Road. As such, the property in the possession of the defendant could have easily fetched the rent of Rs.20,000/- per month at the relevant time. It is on this basis that damages and mesne profits have been claimed at Rs.1,72,000/- from the defendant, i.e., Rs.20,000/- per month X 36 months.

49. The plaintiff, in order to substantiate his aforesaid claim for mesne profits, adduced the evidence of PW-2 Shri Sanjiv Bhagat, who in his affidavit by way of evidence dated 05.08.2003, deposed that he had been a property dealer, dealing in real estate for the last thirteen years, that during this period he had acted as an agent in hundreds of transactions of sale, purchase and lease of various properties situate in the Delhi and New Delhi areas and was well aware of the market rate prevalent in the various localities of New Delhi. He further stated on oath that at the request of the President of the plaintiff society, he had issued a letter dated 12.01.2002 (Exhibit PW-1/22) in respect of property situate at Barakhamba Road or in its vicinity, quoting the rate of "Rs.35/- to Rs.50/- per sq. ft. per month depending on location and building". However, when he visited the suit property in the third week of September, 2002, he found that the building was not in a dilapidated condition and its rent fetching capacity was enhanced by the fact that it was open from three sides and situate in a prime

locality. He accordingly opined that its various portions could be let out at the rate of Rs.50/- per sq. ft. keeping in view its situation and condition.

50. Per contra, DW-1 the defendant, in his affidavit by way of evidence contended that his only liability was to pay the agreed and contractual rent, that is, Rs.3,500/- per month, and that he cannot be held liable to pay any damages of Rs.7,20,000/- as claimed by the plaintiff or any other amount from 01.11.1998 to 31.10.2001. He stated in his affidavit that he had been depositing the rent from after the death of Smt. Rani Dutta till date under Section 27 of the Delhi Rent Control Act in the Court of the Rent Controller, Delhi and was not liable to pay anything more. But in cross-examination, he stated that he could not remember whether he had been doing so or not. Be that as it may, keeping in view the fact that the possession of the defendant was clearly unauthorised and an unauthorised occupation must lead to the liability of damages, it is deemed expedient to award mesne profits to the plaintiff. Mesne profits have been claimed by the plaintiff at the rate of Rs.20,000/- per month from 01.11.1998 till 31.10.2001, and thereafter at the same rate for the period from 01.11.2001 till the delivery of possession of the property in the suit. On calculation, this works out to approximately Rs.7.70 per sq. ft., since, as per the site plan Exhibit PW-1/4, the area of the two portions licenced to the defendant was more than 2582 sq. ft. If the statement of PW-2 Shri Sanjiv Bhagat is believed to be correct and even Rs.35/- per sq. ft. is taken to be mesne profits towards the use and occupation of the licenced premises, the calculation of mesne profits works out to Rs.90,370/- per month. In the course of hearing arguments, relying upon *Rattan Arya vs. State of Tamil Naidu* AIR 1986 SC 1444 and *D.C. Oswal vs. V.K. Subbiah* AIR 1992 SC 184 “ it was no doubt contended by plaintiff’s counsel that judicial notice may be taken of the manifold increase of rents throughout the country particularly in urban areas, but, in my view, Rs.20,000/- per month for a period of three years from 01.11.1998 till 31.10.2001, and thereafter at the same rate for the period from 01.11.2001 till the delivery of possession of the licenced property, would be fair and equitable to both the parties. Needless to state, however, that if the defendant furnishes the details of the deposits made by him before the Rent Controller, he shall be entitled to the adjustment of the amount deposited by him against the total amount due to the plaintiff for damages and mesne profits as awarded by this Court. Issue No.10 is decided accordingly.

Issue No.11

51. Issue No.11 reads as under:- “10) Whether the plaintiff is entitled to claim interest” If so at what rate, at what amount and for what period” OPP”

52. The plaintiff in the suit has claimed interest on the entire decretal amount at 15% per annum from the date of filing of the suit till realisation. In the context of interest which ought to be awarded to the plaintiff, first a look at the provision of Section 2(12) of the Civil Procedure Code, which defines mesne profits and reads as follows:- “2(12) “mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.”

53. The Supreme Court in Mahant Narayana Dasjee Varu vs. Board of Trustees, Tirumalai Tirupathi Devasthanam reported in AIR 1965 SC 1231 held that interest is an integral part of the mesne profits and, therefore, the same has to be allowed in the computation of mesne profits itself. The following paragraph from the judgment, which is relevant, is extracted hereunder:- “The last of the points urged was that the learned Judges erred in allowing interest upto the date of realisation on the aggregate sum made up of the principal and interest upto the date of the decree, instead of only on the principal sum ascertained as mesne profits. For the purpose of understanding this point it is necessary to explain how interest has been calculated by the learned Judges. Under Section 2(12) of the Civil Procedure Code which contains the definition of “mesne profits”, interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. That proceeds on the theory that the person in wrongful possession appropriating income from the property himself gets the benefit of the interest on such income. In the present case the Devasthanam was entitled to possession from and after June 7, 1933 i.e., when the Act came into force and the Devasthanam Committee was appointed. The Mahant having wrongfully resisted the claim of the Devasthanam to possession without surrendering the property, was admittedly bound to pay mesne profits. This, it may be stated, is not disputed. The question raised are, however, two: (1) When is the aggregation of the principal amount of the mesne profits and the interest thereon to be made for the purpose of the total carrying further interest”, (2) What is the rate of interest to be charged. The learned trial Judge allowed interest at 6 per cent for the calculation of interest which is part of mesne profits. Having calculated mesne profits on this basis he aggregated the amount of mesne profits i.e. income from the

several items of property plus the interest on it up to the date of the plaint i.e. January 10, 1946. On the total sum so ascertained he decreed interest at 6 per cent till the date of his decree i.e. March 28, 1952. He passed a decree for this sum with further interest at 6 per cent till the date of realisation.”

54. The aforesaid dicta laid down by the Supreme Court has been relied upon by a Division Bench of this Court in the case of I.S. Ratta (supra). In paragraph 17 of its judgment, the Division Bench held that the issue was no longer rest integra that interest on mesne profits could be paid.

55. The question, therefore, which arises for consideration is as to what would be the appropriate rate of interest in the instant case. The plaintiff claims interest at the rate of 15% per annum from the date of the filing of the suit till realisation on the premise that the amount being claimed in the suit is towards damages for use and occupation and mesne profits. The Division Bench in its aforesaid decision had deemed it proper to fix the rate of interest payable by the appellant to the respondent towards the arrears of mesne profits from the date of decree till the date of possession at 12% per annum, holding that the interest awarded by the learned trial court as interest on the rent at 16.5% per annum was on the higher side. Keeping in view the totality of the facts and circumstances in the instant case, in my view, the award of 12% interest per annum towards the arrears of mesne profits from the date of the decree till the date of possession would be fair and reasonable to both the parties.

56. To conclude, the plaintiff is held entitled to a decree for recovery of possession of the licenced property as shown in red in the plan (Exhibit PW-1/4). The plaintiff is also held entitled to a sum of Rs.7,20,000/- towards damages for use and occupation of the property in the suit for the period from 01.11.1998 to 31.10.2001 and a decree for future mesne profits and damages from the date of the institution of the suit till the date of delivery of possession at the rate of Rs.20,000/- per month. The defendant shall also be liable to pay interest on the entire decretal amount at 12% per annum from the date of filing of the suit till realisation as also the costs incurred by the plaintiff.

57. CS(OS) 2439/2001 and IA Nos.11040/2001, 1463/2003, 4463/2005 and 2420/2008 stand disposed of accordingly.

Sd/-
REVA KHETRAPAL, J