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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on:- 3rd May, 2024
Date of Decision:-3rd July, 2024

+ **CS(COMM) 125/2023, I.As. 9443/2020, 9444/2020, 20903/2022 & 3760/2023**
AJAY GUPTA & ANR. Plaintiff

Through: Ms. Sonali Chopra and Ms. Shristhi
Boobna, Advs. (M. 8294279930)

versus

M/S GREENWAYS Defendant
Through: Mr. Praveen Kumar, Adv. (M.
9999099325)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.

I.A. 20903/2022 & CS(COMM) 125/2023

2. The present application has been filed on behalf of the Plaintiffs under Order 12 Rule 6 seeking possession of the property in question *i.e.*, open courtyard admeasuring 15x6 ft. located at E-20, Connaught Place, New Delhi– 110001 in favour of the Plaintiffs and injunction against the Defendant.

BACKGROUND FACTS:

3. This is a suit for decree of possession and other reliefs, filed by the Plaintiffs - Ajay Gupta and Sanjay Gupta, in respect of the open courtyard space admeasuring 15x6 ft. located at E-20, Connaught Place, New Delhi– 110001(hereinafter ‘*suit property*’).



4. The present suit involves the Plaintiffs, who are the sons of late Mr. Y.N. Gupta, and the Defendant, who is a permissive user of the suit premises. The Defendant was inducted as a tenant in the front and rear portions of the property in the years 1968 and 1980 respectively, and has been running a shop under the name GREENWAYS. The Plaintiffs' father had permitted the Defendant to use an open space at the rear of the tenanted shops, admeasuring 15x6 ft. to keep the generator set on a license fee for ₹3,000/- per month since the year 2000. The said space was used by the Defendant to place air conditioning equipment and a generator for power backup for the retail store. After Mr. Gupta – the owner, passed away on 12th January, 2019, the Defendant continued to use the open courtyard space in the suit property.

5. The Defendant was paying license fee of ₹3,000/- per month till March, 2017 however, thereafter, the Defendant stopped paying the license fee. Therefore, the present suit has been filed seeking a decree of possession, injunction and *mesne* profits in respect of the suit property.

6. As per the plaint, on 19th June, 2020, the Plaintiffs revoked the Defendant's license to use the suit property and has thereafter sought possession. Summons were issued on 16th October, 2020 and the Defendants were restrained from creating any third- party rights or alienating the open courtyard space admeasuring 15x6 ft. used for keeping the gen-set in the following terms:

“6. Grievance of the plaintiffs is that after the plaintiffs cordoned off that area by a temporary structure with the result both the defendant's and the plaintiffs' generator sets could be placed, the defendant has now put his own lock on that area and is not permitting the plaintiffs or their tenants or their nominees to put his generator. When the plaintiffs issued a notice for revoking the



permission to use the open courtyard and remove the genset asking the defendant to vacate in the month of June, 2020, the defendant sent a cheque for the period w.e.f. April, 2017 till June, 2020 claiming that the open space was on rent and hence the plaintiffs have not deposited the said cheque.

*7. Considering the averments in the plaint as also the documents filed therewith, **this Court finds that the plaintiffs have made out a prima facie case in their favour and in case no ex-parte ad-interim injunction is granted the plaintiffs will suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiffs. Consequently, till the next date of hearing, the defendant is restrained from creating any third party rights or alienating the open courtyard space admeasuring 15x6 ft. which was permitted to be used by the defendant for keeping the gen-set to any third party.***

*8. **Directions in respect of the keys to the open space will be considered on the next date of hearing in the presence of the defendant.***

9. Compliance under Order XXXIX Rule 3 CPC be made within one week.”

7. Thereafter, the matter was referred to mediation on 12th March, 2021, however the same was closed as “not-settled” as per the mediation report dated 22nd June, 2021. Further, an attempt was again made in the year 2023, to resolve the dispute, but the same remained unresolved.

8. **I.A. 3760/2023** was filed by the Defendant under Order VII Rule 11, CPC, 1908, seeking rejection of the Plaint on the ground that the suit is barred under section 50 of the Delhi Rent Control Act, 1958, as also that the subject matter of the dispute is a ‘commercial dispute’. Vide order dated 24th



February, 2023 the Court directed the present suit to be re-numbered as a Commercial Suit in the following terms:

“5. I have considered the submissions of the learned counsels for the parties on the above two issues raised by the learned senior counsel for the defendant/applicant.

*6. In view of the submissions made by the learned counsel for the plaintiffs that the present suit may be treated as a Commercial Suit, and relying upon the Judgment of this Court in Rachit Malhotra v. One97 Communications Limited, 2018 SCC OnLine Del 12410, followed in Apnagar Builders Pvt. Ltd. (supra), in my opinion, **the plaint cannot be rejected only because it has been filed as an Ordinary Suit. The suit can always be re-numbered as a commercial suit, which is an administrative exercise, and the plaintiffs can be directed to make up the deficiencies that would arise on the suit being treated as a Commercial Suit.***

7. As far as the objection of Section 12A of the Act is concerned, it is first to be noted that the judgment of the Supreme Court in Patil Automation Private. Limited, and Others . v. Rakheja Engineers Private. Limited 2022 SCC OnLine SC 1028 has been expressly stated to be prospective in nature. The present suit has been filed prior thereto.

8. Even otherwise, as held by the Division Bench of this Court in Chandra Kishore Chaurasia (supra), a suit which contemplates urgent interim relief is excluded from the rigors of Section 12A (1) of the Commercial Courts Act. The plaintiffs seeking to institute a suit praying for urgent interim reliefs is not required to exhaust the remedy of pre-institution mediation. There is no provision under Section 12A of the Act, which requires the plaintiffs to file an application seeking exemption from pre-institution mediation where the suit involves urgent interim relief. It has further been held that the question whether a suit involves any urgent



interim relief is to be determined solely on the basis of the pleadings and reliefs sought by the plaintiffs. If plaintiffs seek any urgent interim relief, the suit cannot be dismissed on the grounds that the plaintiff has not exhausted the remedy of pre-institution mediation. The Court may or may not grant an urgent interim relief, but this is not relevant to determine whether the plaintiff was to first exhaust the remedy of pre-institution mediation. The question whether the suit involves any urgent interim relief is not contingent on whether the Court accedes to the plaintiffs' request for urgent interim relief.

9. In the present case, the plaintiffs did pray for urgent ad-interim injunction. Whether the plaintiffs ought to have filed an application seeking interim relief in spite of the defendant having already stated that it would not create any third-party rights, is to be left for the judgment of the plaintiffs and the merit of such application is to be considered by the Court. However, once such an application has been filed, it cannot be said that the plaintiffs are not entitled to the exemption from instituting pre-suit mediation. In fact, this Court had granted an ad-interim ex-parte injunction in favour of the plaintiffs.

10. I, therefore, find no merit in the above two objections raised by the defendant to have the plaint rejected under Order VII Rule 11 CPC.

11. However, before proceeding with the other objections of the defendant no.1, the Registry is directed to re-number the present suit as a Commercial Suit. The plaintiffs are also directed to make up the deficiencies in the suit to make it in conformity with the requirement of a Commercial Suit, within a period of one week from today.”



SUBMISSIONS:

9. Ms. Sonali Chopra, Id. Counsel appearing on behalf of the Plaintiff submits as under:

- i. that there is no rent receipt which has been produced by the Defendant and only a letter is the basis of the claim of the tenancy.
- ii. that insofar as the property which is under the possession of the Defendant is concerned, the front portion is under a protected tenancy, however for the rear portion of the tenancy, a decree has already been passed which is subject matter of an appeal. The Defendant has not satisfied the Court that there is any tenancy and the Defendant can at best be a permissive user.
- iii. that no occupation charges have been paid from April 2017 till June 2020 by the Defendant. It is for the first time on 16th June, 2020 after the Plaintiff had orally informed the Defendant that the permissive user is being withdrawn, that the letter dated 16th June, 2020 was issued by the Defendant. The Plaintiff then issued a letter dated 19th June, 2020 by way of a legal notice.

10. On behalf of the Defendant, Id. Counsel has made the following submissions:

- i. that there is no license which has been shown by the Plaintiff. Moreover, the plaint proceeds on the presumption that the Plaintiff and two brothers are the only legal heirs and two sons of Late Mr. Y.N. Gupta - however, there is another daughter-Mrs. Anjeli Vaid who is claiming partition of this very suit property. The suit itself is not validly instituted as no consent was sought from the sister. In fact, reference is made to the application filed by the sister under Order I Rule 10 CPC *i.e.*, **I.A.**



10275/2020 where she categorically makes an averment that she was not informed of the filing of the present suit.

- ii. that the consent of the sister cannot be presumed and if the institution is invalid, subsequent consent by the sister does not regularize the institution of the suit. Reliance is placed upon on a decision of learned Single Judge of this Court in ***Ranbir Yadav vs. Life Insurance Corporation of India, 2018 SCC On Line Del 11287.***
- iii. initially an objection was raised by the Defendant that on the date of filing of the suit all the co-owners have not given consent. The suit was filed on 10th October, 2020 on which date the filing was *non-est filing* as Plaintiff No.3-sister of the Plaintiffs, was not a party. In fact Plaintiff No.3 has filed a suit for partition prior to the institution of this suit seeking her share from her brothers. The brothers in fact, rely upon an alleged WILL dated 28th January, 2016 to claim complete title to the property. Thus there is a clear dispute between the parties and in view thereof, the suit itself is not maintainable. In addition to ***Ranbir Yadav vs. Life Insurance Corporation of India (supra)***, he also relies upon ***Navin Chander Anand vs. Union Bank of India & Ors., 2018 SCC On Line Del 9902.***
- iv. The second submission on behalf of the Defendant is that the suit is not properly valued. As per the suit valuation, the stand of the Plaintiff is that the value of the suit property is Rs.2,05,00,000/-. The said valuation is an incorrect valuation as the same has been done only to approach this Court. In fact in terms of Section 7(11) of the Court Fees Act,1870, in the case of a landlord and a tenant the valuation has to be



on the basis of rent and not on the basis of the market value of the property.

- v. Further it is submitted that whether the Defendant is a tenant or not is itself a factual issue which would require trial and the issues are yet to be framed. He submits that the letter dated 16th June, 2020 sent, by the Defendant where the Defendant takes a position that he is a tenant, deserves to be looked into.
- vi. On the contrary, the Plaintiff's letter dated 9th June, 2020 addressed the issue as revoking license and withdrawal of permission to occupy a portion of 15ft. x 6ft. in the suit premises after issuance of the Defendant's letter.
- vii. On the proposition that the valuation of the suit is to be on the basis of the valuation of the relief and not on the value of the property, learned counsel relies upon *Kamleshwar Kishore Singh vs. Paras Nath Singh & Others (2002) 1 SCC 304*.
- viii. Further Id. Counsel relies on *Bharat Bhushan Gupta vs. Pratap Narain Verma and Another (2022) 8 SCC 333*, to argue that if the suit is valued on the market value of the property it will render the Court Fee Act haywire.
- ix. The last submission of the Id. Counsel for the Defendant is that the subject property is a building in terms of the Delhi Rent Control Act. Reliance is placed on Section 2(i) which defines the word 'premises' as included even grounds. The definition of building is very wide to include a space which is an open ground without any construction as well. The courtyard is not an open land and is covered by walls on all three sides. Thus, the same would constitute 'building' under the Delhi



Rent Control Act. The judgments relied upon are *Edward Keventers (Successors) Pvt. Ltd. vs. Union of India, etc.* paragraph 19, as per which it is argued that any structure enclosing the space with walls, with or without roof designed for the purposes of shelter, storage, trade etc., can be considered as a building. Reliance is also placed on *A. Satyanarayan Shah vs. M. Yadgiri (2003) 1 SCC 138*, to argue that the Court observed therein that a roofless structure falls under the definition of building.

11. Ld. Counsel for the Plaintiff in rejoinder has made the following submissions:

- i. that on the issue of co-owner not being impleaded, she submits that the sister has been impleaded as Plaintiff No.3 and she never had any objection against the institution of this suit against the Defendant. Reliance is placed on the decision in *Khanna Jewellers & Ors. v. Kapil Tandon & Ors. 278(2021) DLT 333* which deals with the judgment in *Ranbir Yadav v. Life Insurance Corporation of India*. Paragraph 25, 26, 30 to 34 and 41 are relied upon.
- ii. On the issue of overvaluation, it is the submission of ld. Counsel that the valuation of the property in such a case would be in terms of Section 7(5)(e) of the Court Fees Act, 1870 and the basis of the valuation would have to be the market value of the property. In any event, she submits that the valuation of a suit cannot be based upon a defence to be raised by the Defendant. Reliance is placed upon *Sushma Tehlan Dalal v. Shivraj Singh Tehlan, 2011:DHC:1339*, paragraph 12 to argue that that if a partition is with respect to one



portion of the suit property and the other co-owner possess other part of it, then it will be deemed to be in joint possession and subject matter of partition and would fall under the ambit of Article 7 (iv) of the Court-Fees Act. The decision in *Renu Nagar v. Anup Singh Khosla and Ors.* 2009 SCC On Line Def 46, is also relied upon on the proposition that the suit should be valued according to the market value of the property, after the termination of license.

- iii. On the last issue as to whether the present premises would constitute a building under the DRC Act, 1958 ld. counsel submits that the premises concerned is roofless. It was given for putting out a generator. It was let out separately and not with any building. The decision in *A. Satyanarayan Shah v. M Yadgiri*, (2003) 1 SCC 138 relies upon the Black's Law Dictionary 5th Edition, however, in *Sanjay Gupta v. Sunil Kumar Gupta* MANU/DE/4041/2018 the Court has distinguished *A. Satyanarayan Shah* (*supra*) and has relied upon Black's Law Dictionary 8th Edition, to the effect that if a premises does not have a walls or a roof or a permanent structure then the same would not be constituting a building. Reliance is also placed upon *Surender Kumar v. Hari Singh (Deceased) Thr. LRS & Ors.*; *RSA No. 288/2015 DHC* which in turn relies upon *Gobind Sahai v. Narain Dass Ors.*, *ILR (1972) 1 DELHI* to argue that a roofless structure would ordinarily not constitute a building. Reliance is also placed upon *Kamla Devi. v. Laxmi Devi*, *AIR 2000 SC 1640*.



12. In sur-rejoinder, Id. Counsel for the Defendant seeks to distinguish the judgments cited by the Plaintiff in the following manner:

- i. In *Khanna Jewellers (supra)* according to Id. Counsel the co-owners were mentioned in the plaint, however, in the present case, the Plaintiffs have merely filed suit as the owners on the basis of a Will. There was no mention made in the plaint of the sister at all.
- ii. Insofar *Renu Nagar (supra)* is concerned, it is the admitted case of a license and, therefore, the valuation was upheld.
- iii. In *Sushma Tehlan Dalal (supra)*, the application was under Order VII Rule 11 CPC, wherein the defence need not be seen, however, this proposition cannot apply when a decree is being sought by the Plaintiff on the ground that no issue exists for adjudication. In the present case, the question clearly arises as to whether the premises is a building or not or whether the premises are given on tenancy or on a license basis.
- iv. Id. Counsel submits that the premises in question is a courtyard and, therefore, any premises described as courtyard has to be apportionment to a building and, therefore, within the definition of a “building” under Section 2(i) of the Rent Control Act, 1958. Thus, the present suit would be barred under Section 50 of the DRC Act, 1958.
- v. Lastly, it is submitted by Id. Counsel that in in *Surender Kumar (supra)*, the observation of the Bench is that a roof structure would ordinarily not constitute a building, however, this is with a caveat that it could be established that the same could be used for a building without a roof such as an open air restaurant or a swimming pool. This



proof can only be adduced at the stage of trial and not at the stage of an application under Order XII Rule 6 CPC.

ANALYSIS & DISCUSSION

13. The Court has heard the Id. Counsel for the parties and is presently considering an application under Order XII Rule 6 CPC *i.e.*, ***I.A.20903/2022*** and the question is whether the suit is liable to be decreed on the basis of the admitted position revealed in the pleadings.

14. The stand of the Plaintiffs in the plaint is that the premises in question is an open courtyard admeasuring approximately 40 Feet x 12 Feet, is not denied in the written statement. In paragraph 2 of the written statement, the Defendant describes the same as a roofless structure but claims that the premises would be covered under the Delhi Rent Control Act, 1958 (*hereinafter DRC "Act"*). The Defendant also admits in paragraph 4 that it was inducted as a tenant in the open courtyard but claims that the courtyard is part of the building where Shop Nos. E-15, E-16 & E-17 are located.

15. On the nature of the premises, in the opinion of this Court, the images speak for themselves. The photographs of the suit property *i.e.*, the courtyard where the equipment/gen-set are kept, are extracted herein below:



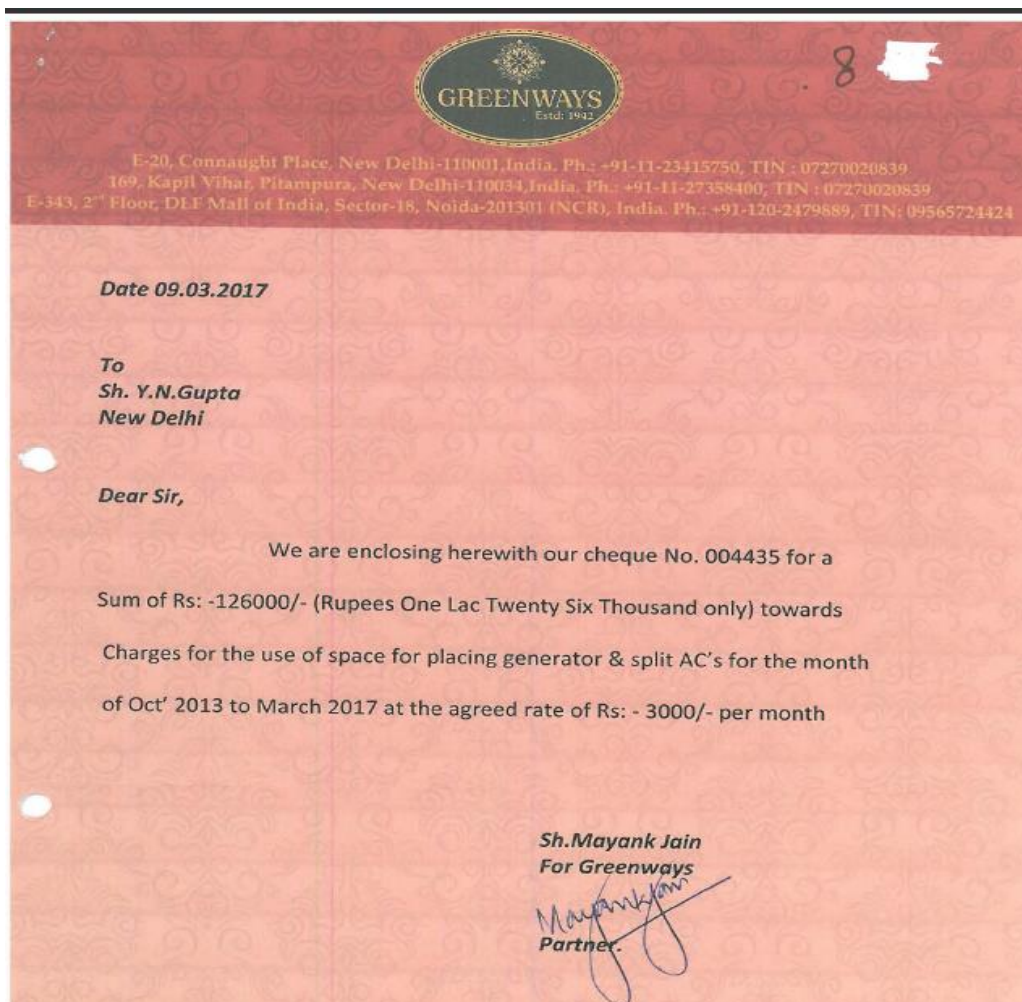
2024 :DHC :4913





16. A perusal of the photographs would show that this is a courtyard area where certain gen-sets and units attached to the split air conditioners have been put. It is not exclusive to the Defendant. The lock on the premises with a tin gate is also in the nature of a semi covering which the Defendant appears to have recently installed around the time of filing of the suit.

17. A perusal of the letters at pages 8 to 29 of the Documents folder issued while tendering occupation charges, would make it clear as to what is the nature of the premises. The text used in these letters while tendering the occupation charges is quite standardized and the sample text of the letter is set out below:-





18. There are various such letters wherein an amount of Rs.3,000/- per month has been tendered by Defendant to the Plaintiffs' father. On a query by the Court to the Id. Counsel during arguments, it was specifically admitted by Id. Counsel that these documents are not in dispute. A perusal of the above letter would show that the terminology used is "*charges for the use of space for placing of generator and split AC*". This standard terminology is found to be used, even in letters dating back to the year 2002 onwards. These documents being admitted documents, the legal issues raised by the Defendant would have to be considered in the light of these documents.

19. The issues which have been raised by the Defendants are:-

- i) that the suit property falls within the ambit of premises defined under Section 2(i) of the DRC Act;
- ii) the Defendant's tenancy is a protected tenancy;
- iii) that the suit is not maintainable due to non-impleadment of the sister;
- iv) that the suit is not properly valued.

20. In order to decide these issues, the Defendant and Plaintiffs have referred to various decisions. However, one main feature that deserves to be noticed is that in none of the letters which are placed on record, there is any mention of the word "rent" only the word "charges" are used. Irrespective of the terminology, the understanding of both parties, therefore, was clearly that these are permissive user charges or occupation charges. So, to term the Defendant as a tenant would itself be incorrect as there is no tenancy agreement, neither there are any terms of lease which are agreed upon. At best, the Defendant is a permissive user on a month to month basis who is paying Rs.3,000/- as occupation charges. The amount being paid is Rs.3,000/- and



the Defendant's submission, therefore, as to whether the area constitutes premises needs to be considered.

21. The definition of premises under section 2(i) of the DRC Act, 1958 is as under:-

2 (i) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes,--
(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;
(ii) any furniture supplied by the landlord for use in such building or part of the building; but does not include a room in a hotel or lodging house;

This definition of 'premises' has been considered in several decisions:-

22. **Koti Saroj Anamma and Another v. Jonnalagada Malleshwara Rao, (1995) 3 Supreme Court Cases 347.**

In this case the Supreme Court was considering whether a shed which was adjunct to the main leased property, would fall under the definition of building. The Court observed that the zinc sheet shed covering the machinery will not fall in the ambit of the definition of building and can neither be called a house or even a hut. It was let out along with the Saw Mill land and machinery and the shed was only an accessory thereto. The dominant purpose was of leasing out the saw mill machinery, and therefore the premises would continue to be a commercial premises under Andhra Pradesh Building Lease and Eviction Control Act 1960. The relevant portion of the judgment is set out below:

" 7.Looking to this evidence, it is clear that the shed, which has a zinc sheet roof, was erected only to protect the saw mill machinery. What was leased out to the respondent was substantially the saw mill machinery for the purpose of carrying on timber/saw mill business.



*The shed was merely erected to shelter the machinery. The dominant purpose of the lease was to lease out the saw mill machinery. In order that the lease should be covered by the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the lease should be of a building as defined in Section 2(iii). It should, therefore, be a lease of any house or a hut or a part of a house or a hut let for residential or non-residential purposes. **It would include gardens, grounds, garages and outhouses appurtenant to such a house or a hut. In the present case, however, the lease is not of any house or a hut or part of a house or a hut. The lease is of saw mill machinery which is covered by a zinc sheet shed. The dominant purpose of the lease is to lease out the machinery. The shed is only an adjunct. It is also pointed out that a covering over the machinery in the shape of a structure consisting of zinc sheets supported on poles can hardly be called a house or even a hut. In any case, looking to the dominant purpose of the lease, the two courts below have rightly come to the conclusion that the lease is not covered by the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.***

*8. The respondent relied upon a decision of a Full Bench of the Andhra Pradesh High Court in the case of Mohd. Jaffer Ali v. S. Rajeswara Rao [(1971) 1 Andh WR 194 : AIR 1971 AP 156 : (1971) 1 Andh LT 217]. In that case, there was a lease of the cinema theatre. The Court held that the lease was essentially a demise of the building with accessories like furniture and machinery, the dominant purpose of the demise was to lease the cinema theatre building and hence, the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 apply to such a lease. **In the present case, the dominant purpose is clearly to lease out the saw mill machinery. A zinc sheet shed which has been erected merely to cover the machinery cannot be a predominant reason for the lease. The High Court,***



therefore, was not right in coming to the conclusion that the lease was governed by the provisions of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

23. **Ajit Singh V. Ram Saroopi Devi, RSA No. 202/82, 1996 SCC OnLine Del 214.**

In this case, the Delhi High Court while considering Section 2(i) of the DRC Act held that garden, ground or outhouses independently cannot be called premises. The Court observed that when the property was let out it was merely an open plot surrounded by a boundary wall, the existence of a tin shed came later on and therefore the term used is “open land with tin shed”. Hence, the tenancy was of an open land and the same will not fall within the purview of building neither the tin shed appurtenant to the open land will be considered as premises. The Court further relied upon the decision of *Koti Saroj Anamma (supra)* and observed that only the building which is given on rent would constitute premises and any such area which is appurtenant to the building would not amount to premises. The relevant portion is set out below:

“15. Reading of this Section show that garden, grounds or out houses independently cannot be a premises. It is only the building which when given on rent would constitute premises. Appurtenant to the building would not amount to premises. It is so held by the Supreme Court.

16. In almost identical facts Supreme Court in the case of Koti Saroj Anamma v. Jonnalagada Malleswara Rao, 1995 (2) Scale page 445, observed that shed being only an accessory to the main lease it would not come within



*the purview of Rent Control Act. It was only an adjunct. Such a shed meant to cover the Saw Mill machinery can hardly be called a house or even a hut. Hence dominant purpose of the lease was to let out vacant site with Saw Mill Machinery. The facts of that case were the landlord let out land together with Saw Mill and accessories attached to the Saw Mill covered by Zinc Doria Rakulu shed was leased out to the respondent. The Trial Court concluded that in mere fact that the machinery was housed in a zinc sheet shed will not make the lease that of a non-residential building within the meaning of Section 2 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The Appellate Court in appeal upheld this decision. Relying on the observations of the Supreme Court in this case Mr. Kohli contended that in the case in hand also the dominant purpose of the lease was vacant piece of land the shed could not be a predominant purpose of the lease. That is the reason in the rent receipts also despite that land was let though these receipts do mention about the shed. But the said shed was not there at the inception of the lease or at the time of inducting the appellant as tenant. No documentary evidence has been produced to show that shed existed at the time of inducting the appellant as tenant. **This Court in the case of Sobha Singh v. Sant Dass 35 (1988) DLT page 341 held that where on a leased plot of land temporary structure was raised, removable or termination of tenancy, the plot of land does not become premises as defined in Section 2(i) of D.R.C. Act and suit for possession will have to be tried by Civil Court and not by the Rent Controller. The observation of this Court in Sobha Singh case (supra) on all force apply to the facts of this case. From the documentary evidence placed on record it becomes clear that the lease was of vacant land and shed was***



only appurtenant thereto hence the dominant purpose was open plot and not the shed. In the case of Prabhat MIG Society v. Banwari Lal, 37 (1989) DLT 437 Supreme Court observed on the analogy of the principles of various decisions that what the Rent Control Act contemplates is a building let out qua buildings, may be with appurtenant land, but not a land let out for use as land merely because there may be a small building on it. The relevant question is what was the dominant subject matter of the allotment - the land or the building - and this is a question which can only be decided in the respondent's favour (not necessary to consider this as we are satisfied that the property allotted to the society in respect of which it was tenant initially under the Custodian and later under the plaintiff was only a plot of land). In that case the tenant society raised a temporary structure and installed some machines in it. The society was a tenant under the Custodian, who sold the plot by auction to the plaintiff. There was chequered history of litigation involving contradictory pleas by the society. Part of the super structure was evacue and some portion consisted of temporary shed. It was in these facts the Supreme Court made the above observations. Aptly these observations apply to the facts in hand. The tin shed could not have been there on 4th January, 1957 when this plot was sold to the respondent by Mr. Nandu Mal Jain vide Ex.AW.1/1. Shri Shiv Dayal is signatory to the same. Ex.D.1 to D.33 indicate open plot leased out with tin shed. There it can be inferred that tin shed was only appurtenant to the open land and the open land was the pre-dominant purpose of lease. In the case of Moti Lal v. Yunus Ali, 1972 RCR page 475 the Madhya Pradesh High Court held that the inclusion of the word "hut" in the rent receipt cannot change the terms of the



lease. Terms of tenancy cannot be built on rent receipts. It was for the appellant to have proved that tenancy was of shed and land was only appurtenant thereto which, to my mind, he miserably failed to prove. In the case of Krishna Psumba v. Dattaraja, AIR 1966 SC 1024 it has been held that the subject matter of the letting for which rent was payable by the tenant was “open land with a Khatta”. It was further held that Khatta is not a building. The dominant purpose of letting was open land. Similarly, in the present case even the rent receipts produced and relied by the appellant show that “open land with tin shed” was let out. Tin shed cannot be called building. The reading of these receipts show that subject matter for letting was open land and tin shed was only an adjunct. Allahabad High Court in the case of Abdul Soni v. Mohd. Noor, AIR 1966 Allahabad page 39 held that construction of Chhappar and latrine is neither accommodation nor part of building. On parity of reasonings the tin shed in the case in hand cannot be called a building or part of building. It was not intended to let out separately for use as a residence or for commercial use or for any other purpose. This tin shed was not appertaining to any such building or part of building. In fact it was not separately let out for either commercial purpose or for any other purpose. This open plot was let out which according to rent receipts Ex.D.1 to D.33 had a tin shed. Mere mention of tin shed to open land does not mean tin shed was let out for being used for commercial purposes. In the case of Sobha Singh (supra) this Court relying on the decision reported in 1979 (2) RCR 314 observed that:

“the landlord purchasing the property already occupied by the tenant becomes a landlord by operation of law on the same terms and conditions as the original lease. The mere fact that the respondent/plaintiff has purchased the



property knowing very well that there existed structure constructed by the appellant on the said plot does not mean that he had agreed to any change in the terms and conditions of the tenancy. The relationship of landlord and tenant came into existence by operation of law, on the same terms and conditions on which the tenant was holding the property under the Custodian. So the only conclusion possible is that the appellant always remained tenant in the plot and did not become tenant in any premises.”

*17. It was incumbent on the appellant to have proved what was let to him when he was inducted as tenant in 1956 which he has miserably failed to prove. On the contrary respondent vide the registered sale deed Ex.AW-1/1 dated 4th January, 1957 proved that as on January, 1957 it was only a piece of open land surrounded by boundary wall. There was no tin shed existing. The appellant neither got the existence of the tin shed proved by summoning the landlord Mr. Nandu Mal Jain nor produced the rent deed which he stated was executed. **Therefore, the inference can be drawn that the “open land” was let out to him by the erstwhile landlord and between the time the property was sold and purchased by the respondent tin shed came into existence. That is the reason in the rent receipts Ex.D.,1 to D.33 the word used are “open land with tin shed”** i.e. when the rent receipt Ex.D.1 was issued for the months from 1st November, 1957 to March, 1972, there existed tin shed. That shows when respondent purchased the property and became owner/landlord by operation of law the tenancy was to be governed by the same terms and conditions on the basis of which appellant was inducted as tenant by Shiv Dayal or Mr. Nandu Mal Jain as the case may be. Except Ex.DW-1/1*



no other rent receipt produced. Ex.DW-1/1 I have already said cannot be relied upon.

18. For the reasons stated above, **I am of the considered view that the tenancy consisted of “open land” which does not fall within the purview of Section 2(i) of the D.R.C. Act and cannot be called building. Even if for the arguments sake it is presumed that tin shed existed and was appurtenant to the open land, it would not fall in the definition of “premises”.** Hence, the Civil Court was the competent Court to try the suit for possession and not the Court of Rent Controller. This was the only point on which the Supreme Court remanded the case. The question is answered in favour of the respondent. The appeal is accordingly dismissed with costs.”

24. A Id. Division Bench of this Court in ***Surinder Kumar Jhamb v. Om Parkash Shokeen, 1999 (51) DRJ 704 (DB)*** took a similar view. The relevant portion of the said judgement is as under:-

“10.....Even otherwise as per appellant's own showing out of an area of 2 bigha 10 biswas less than 10,000 sq.ft. was the covered area where temporary structure had been raised i.e. one tin shed, one room and a hall. **The built up area being a temporary structure cannot be called premises nor the vacant plot can be adjunct of this temporary structure. It can hardly be called premises. The dominant portion of the property let out as emerged from the evidence was vacant piece of land at best with temporary structure standing on iron pillars. That could be adjunct to the vacant plot.** This temporary structure was raised by the appellant as admitted by him vide Exhibit PW-2/1. It was his requirement of running his business which he was to remove on the expiry of the lease period. **As the construction was raised by the appellant after the property was let hence by no means it could be said that property let out to the appellant was premises as**



defined under Section 2(1) of DRC Act. Thus suit was properly instituted and was not hit by the provisions of Delhi Rent Control Act.

25. In *Kamla Devi v. Laxmi Devi*, AIR 2000 SC 1640, the Supreme Court observed that the form and the substance of the transaction has to be taken into consideration. In the said case, though there were some structures on the land, it was held that what was let out was the land and not the structures. The relevant portion of the said judgement is as under:-

“15. In Krishnapasuba Rao, Kundapur v. Dattatraya Krishnaji Karani [AIR 1966 SC 1024 : (1966) 1 SCJ 601] a three-Judge Bench of this Court considered the question whether the premises are land or whether they are a building or garden, grounds, etc. appurtenant to the building. In that case, as in the present case, the land was given on rent to the tenant who constructed building at his own costs before the execution of the rent note. The question arose under Section 13(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act (for short “the Bombay Act”); if the demised land was “premises” within the meaning of the Bombay Act, the landlord was entitled to recover its possession for construction of the building on satisfying the court that he required it reasonably and bona fide for construction of a building. On consideration of the definition of “premises” which is similar to the definition of the term in the Delhi Act, it was held that it referred to the subject-matter of letting for which rent was payable and in respect of which there was a relationship of landlord and tenant and, therefore, the land alone was the subject-matter of letting and “premises” within the meaning of Section 13(1)(i) of the Bombay Act.

It was held that in determining the question whether the lease was of a vacant land or a building within the meaning of the Madras Act the court must take into account both the form and substance of the



transaction; the landlord was aware that there were certain structures on the land but what was let out was not the structures but the land. Consequently, the appeal of the tenant was dismissed on the ground that the Madras Act was not applicable and the suit was maintainable in the civil court.”

26. In *A Satyanarayan Shah v. M. Yadgiri*, (2003) 1 Supreme Court Cases 138, the question was whether, a wooden structure which is in the nature of a permanent structure standing on the land having walls and roof would constitute a building. The Court observed that the structure needs to have some sort of permanency and should be capable of some use either residential or non-residential, and in any case, the same depends on facts and circumstances of each case. The relevant portion is set out below:

“8. The learned counsel for the appellant has placed reliance on a decision of this Court in *Suryakumar Govindjee v. Krishnammal* [(1990) 4 SCC 343] wherein *pari materia* definition of “building” contained in clause (ii) of Section 2 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, came up for the consideration of this Court wherein the structure was described as “kaichalai”, a Tamil word denoting a structure or a roof put up by hand. This Court held that whatever may be the precise meaning of the term “kaichalai”, it was clearly included in the definition of building. The expression “hut” cannot be restricted only to huts or cottages intended to be lived in. It will also take any shed, hut or other crude or third-class construction consisting of an enclosure made of mud or by poles supporting a tin or asbestos roof that can be put to use for any purpose — residential or non-residential, in the same manner as any other first-class construction. Certain observations made by this Court in *Ashok Kapil v. Sana Ullah* [(1996) 6 SCC 342] are also apposite, wherein the term “building” as defined in



the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 came up for the consideration of this Court. The definition is not similarly worded. However, during the course of its order, this Court quoted with approval Stroud's Judicial Dictionary (Vol. 1, 5th Edn.) stating that "what is a building must always be a question of degree and circumstances". Again citing with approval Victoria City Corpn. v. Bishop of Vancouver Island [(1921) 2 AC 384 : 90 LJPC 213 (PC)] and quoting therefrom this Court approved (at SCC p. 346, para 11) the observation of a celebrated lexicographer that "the ordinary and natural meaning of the word building includes the fabric and the ground on which it stands". Black's Law Dictionary (5th Edn.) was also cited with approval, which gives the meaning of the building as "a structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof". A roofless structure was held to be a building.

*"9. On the authority of the abovesaid decided cases, it can be concluded that the term "building" has to be interpreted liberally and not narrowly. In our opinion, a wooden structure, which is in the nature of a permanent structure standing on the land and which has walls and roof though made of wood, would fall within the definition of building as defined in clause (iii) of Section 2 of the Act. **In the context in which the term "building" has been used and keeping in view the purpose of the Act, the term "building", as defined, ought to be so interpreted as to include therein a structure having some sort of permanency and capable of being used for residential or non-residential purpose.***

10. For two reasons, we are clearly of the opinion that the High Court has erred in disposing of the revision in the manner it has done. Firstly, the High Court was not right in holding the permanent wooden structure standing on the land falling outside the definition of



building. Secondly, whether the wooden structure forming the subject-matter of tenancy premises in the present case, fell within the definition of building or not, was a mixed question of law and fact. That it was not a building within the meaning of Section 2(iii) of the Act and, therefore, the proceedings for eviction therefrom did not lie before the Controller was not the plea taken in the written statement and never even up to this Court when vide order dated 31-7-1998, this Court remanded the matter to the High Court. The plea should not have been allowed to be raised for the first time before the High Court in the revision petition and that too at such a belated stage.”

27. In *Harish Chandra Narula & Anr. v. Shri Purshotam Lal Gupta, 2011 SCC OnLine Del 1185*, the Id. Single Judge of this Court held that since there was only a temporary structure, at the very best, the Defendant cannot be said be a tenant so as to get protection of the DRC Act. In *Surinder Kumar (supra)*, the Id. Single Judge relied upon the decision of the Delhi High Court in *Gobind Sahai v Narain Dass Ors. ILR (1972) 1 Delhi* which held that whether a property is building or not depends on facts and circumstances of each case. The Court further observed that a vacant piece of land, if appurtenant to and forming part of a building, is included within the definition of ‘premises’ while an open and vacant land not so appurtenant cannot constitute a building and is outside the connotation. The relevant portion is as under:-

*“As a result of the analysis of the provisions of the Rent Act and study of the authorities mentioned above, my conclusions on the subject are summarised as follows:
1. Whether or not a property is a building is primarily a question of fact depending upon the circumstances of each case and upon the form and substance of each*



transaction of letting. Still certain guidelines may broadly be adopted.

2. Premises is a building or part of a building which is separately let out for use. A building consists of a piece of land with super-structures which are habitable and are let out for a useful purpose like residence, commercial use or other normal and reasonable purposes.

3. A vacant piece of land, if appertaining to and forming part of a building, is included within the definition of 'premises' while an open and vacant land not so appertaining cannot constitute a building and is outside the connotation.

4. The land bounded by walls and covered by a roof and capable of being used for a useful purpose is normally a building.

5. The existence of boundary walls is not decisive of the matter as they may be erected to demarcate the boundaries of the land or to support a shed or a roof or for any other purpose.

6. A roofless structure would ordinarily not constitute a building unless it is established as a fact that the same was capable of being and was intended to be used as such without a roof, for example, an open air restaurant, a swimming pool etc.

7. The erection of superstructures by a tenant after the letting is irrelevant for determination of the question as to whether what had been let out by the landlord constitutes premises."

28. In the above case, a plot of land was given out on rent, which only had a boundary wall and there was no construction on the same. The Id. Trial Court held that the same would not constitute premises for the purpose of protection under the DRC Act. This decision was upheld by the first Appellate Court as also by this Court.



29. In *ELCEE Plastic Industries & Ors. v. Harkishan Dass (Since Deceased) through its Lrs.*, 2017:DHC:5662 a land which had a boundary wall built was again held to be not a premises under the DRC Act. The Court observed that premises under the DRC necessarily has to be a constructed building and merely a built up boundary wall around the land will not make it a premise. The relevant portion of the judgment is extracted below:

*“9.(i) In my opinion, the argument urged on behalf of the appellants/defendants that what is let out to them are premises under the Delhi Rent Control Act is a totally frivolous argument. It is seen that the appellants/defendants/tenants are in a completely dishonest manner contesting the subject suit for possession which was filed way back on 12.10.1993, i.e soon after expiry of the 20 years period of the lease deed in terms of the lease deed entered into between the parties, and today we are in the year 2017 i.e 24 years later. For 24 years, dishonest tenants such as the appellants/defendants have harassed and illegally prevented taking of possession by the respondents/plaintiffs of the suit premises. In my opinion, the argument urged on behalf of the appellants/defendants/tenants is puerile that if there is a boundary wall constructed along with a land than what is let out is premises as the Delhi Rent Control Act because for this reason of construction of boundary wall there comes into existence a premises under the Delhi Rent Control Act. Obviously, this Court expects no differently from dishonest tenants who somehow or the other want to continue in possession of the tenanted premises after expiry of a lease deed and are using the delays of litigations for their benefit. **Merely because the lease deed uses the expression “premises” will not mean that there will exist a premises under the Delhi Rent Control Act because premises under the Delhi Rent Control Act necessarily has to be a constructed***



building. The terms of the lease deed clearly show that what is let out is only land. Merely because a boundary wall is built around the land there will not exist a premises.”

30. A similar view was taken in *Sanjay Gupta v. Sunil Kumar Gupta, 2018 SCC OnLine Del 12266*, where the Court held that a structure without walls and only an open tin shed will not fall under the definition of building. The same was observed in the following terms:-

“10. Hence, a structure with walls specially which is a permanent structure would normally qualify to be a building. In the present case as noted above, the building comprises only an open tin shed and nothing more. It has no walls. It has no permanent structure.

15. What follows from the above is that where an open land is given on rent which may also include some temporary khoka or structure the same would not amount to a premises within the meaning of Section 2 (i) of the Delhi Rent Control Act. The DRC Act would not be applicable to such premises. Open land is not a subject matter of the Delhi Rent Control Act.

18. Hence, in those facts the court came to the conclusion that the tenancy consisted of an open land which does not fall within the purview of section 2(i) of the DRC Act and cannot be called a building. Even if it is presumed that a tin shed existed and it was appertaining to the open land it would not fall within the definition of premises. The Court further concluded that any hut or shed which is only adjacent,”

31. In *Edward Keventers (Successors) Private Limited v. Union of India etc, 1983 SCC OnLine Del 30*, the Court has clearly observed that the question is as to whether a particular structure is a building or not would have to be decided on the facts of each case. The Court went on to observe as under-



*“19. Considering all these citations, it seems to me that **the question whether a structure is a building or not is a question to be answered on the facts of each case.** It can not have a fixed connotation and varies from country to country, from place to place according to the climatic conditions, availability of materials for building purpose and the habits and notions of the people with regard to their residence: Dalchand v. Debi Prasad, AIR 1966 S.C. 1998 (34). And in the facts of this case, I am unable to subscribe to the argument **that the temporary tin shed or construction without foundation and without brick and stone will strictly not be a building. To my mind, the ordinary and usual meaning which is contemplated by the lease deed will be any structure enclosing the space within its walls with or without roof, if the structure is designed for inhabitation or shelter, storage, trade. Manufacture, worship business, teaching and the like.**”*

32. The principles that can be carved out from the above decisions clearly is that a roof may not be required for any property to constitute the premises or a building, however, open spaces cannot constitute premises. Sense of permanency is required for any property to be termed as a “premises” or a “building”. Moreover, it is crucial to consider the condition and structure of the property at the time of leasing. This includes assessing whether any structures existed at the commencement of the tenancy agreement, or if any were erected after the agreement was executed. This consideration is essential for determining what constitutes a “building” and “premises” under the DRC Act. Ultimately, it would depend upon facts and circumstances of each case.

33. In the present case, the parties themselves understood the property to be a ‘space’. The term “space” refers to an open area with no specific boundary or demarcation. The space which was given is admitted *i.e.*, it is



merely 15/6 ft. There is neither any roof nor any covering. It is just an area to keep a gen-set or some equipment related to the Air-conditioning units. Such a space cannot by any stretch of imagination, be argued as constituting a premises or a building. It cannot be used for any other purpose except for the purposes of placing a genset or installing some outdoor units connected to split Air conditioners. It is not even a storage area or a storage space. The property in question, therefore, does not fall within the purview of DRC Act.

34. In addition, the relationship between Plaintiffs and the Defendant was not that of landlord and tenant. As far as this space is concerned, the Defendant is merely a permissive user of the property. As held in *Mohd. Farooq v. Mubassara and Anr., 2014:DHC:997 RSA No. 107/2013*, a permissive user of this nature would not constitute tenant and would only be a licensee. The relevant portion of the said judgment is set out below:-

“2. The only issue which was to be decided was as to whether the appellant/defendant was a licensee or was a tenant as contended by him.

The first appellate court has referred to the fact that neither there was any rent agreement nor any rent receipt relied upon by the appellant/defendant.

The first appellate court also notes conflicting defences raised by the appellant/defendant as to whether rent included electricity and water charges or not, noting that in the pleadings the appellant/defendant pleaded that rent was exclusive of other charges, however, in the evidence he took up a case that rental charges included electricity and water charges. So far as the issue of exclusive possession is concerned, the first appellate court relied upon various judgments of this Court and held that exclusive possession in the facts of the present



case is not such to hold that tenancy rights existed in favour of the appellant/plaintiff. The relevant observations of the first appellate court are contained in paras 12 to 17 of the impugned judgment and which read as under:-

“12....

13. In the case of Prem Pal Singh versus Jugal Kishore Gupta (supra), the plaintiff therein had contended that the defendant was a licensee but the defendant contended that he was a tenant under the plaintiff and that the suit for possession was barred under [section 50](#) of the Delhi Rent Control Act. Issue No.2 framed in the said matter was whether the defendant was a tenant in the suit premises and the suit was barred under [section 50](#) of the Delhi Rent Control Act. The defendant did not produce any rent agreement or rent receipt and the learned Trial Court concluded that the relationship was of licensor and licensee and decided the said issue against the defendant. In appeal the Division Bench of the Hon'ble High Court upheld the finding of the learned Trial Court and held in para 3 as under:

*"3. As noted above, on the second issue the defendant has not led any documentary evidence except his own statement that he was the tenant. He admits that he has no document to show that he was tenant in the premises. Tenancy rights are created by contract under the statute being the Transfer of Property Act and Court has to be satisfied that there in fact a tenancy existed, and when landlord denies the same a mere statement of the tenant may not be enough. Mr. Chopra has also referred to a judgment of the Calcutta High Court in shore note in Satinath Mukherjee V. Satendra Nath Sen alias Aailen Sen. AIR 1991 NOC 55 (Calcutta), **to contend that to prove the tenancy it is not necessary to prove an agreement, That of course, will depend up to the***



facts of each case and the evidence that may be led in a case. In the present case the defendant has been unable to prove that he had been a tenant."
(emphasis added)

14. The judgment in the case of Prem Pal Singh (supra) was followed by the Hon'ble High Court in the cases of Praveen Narang (supra) in which the Hon'ble High Court in para 18 reiterated that a **"mere statement of the defendant that he is a tenant in the suit property without producing any document in support thereof cannot be accepted as sufficient proof of tenancy."** In the case of Mahabir Prasad Jain versus Ganga Singh (supra) the Hon'ble Supreme Court was pleased to hold in para 14 that **"exclusive possession by itself will not give rise to any presumption of tenancy."**

35. For both these reasons the DRC Act would not apply. The suit property does not fall within the definition of 'premises' under Section 2(i) of the DRC Act and the Defendant is also a mere permissive user of the suit property.

Whether the suit is not maintainable due to non-impleadment of the sister?

36. The second issue raised by the Defendant is that all the co-owners were not made a party in this suit. This is a completely untenable plea as the owner was Late Mr. Y.N. Gupta, who had three children. Two sons were initially the Plaintiffs. Thereafter, an application was filed by Mrs. Anjeli, daughter of Late Shri Y.N. Gupta seeking impleadment in the present suit. This application was allowed on 11th December, 2023 and she was impleaded as Plaintiff No. 3. In the said application, she categorically asserts that she is a necessary party being the daughter of Late Shri Y.N. Gupta. During oral submissions, it is submitted by Id. Counsel for Plaintiff No. 3 that she has supported the eviction of the Defendant.



37. Defendant has relied upon *Shri. Ranbir Yadav v. Life Insurance Corporation of India, 2018 SCC OnLine Del 11287*, to argue that the suit which is not supported by all co-owners is not maintainable. Reliance is also placed upon *Navin Chander Anand v. Union Bank of India & Ors. 2018 SCC OnLine Del 9902* to the effect that one co-owner cannot terminate a tenancy. However, in this very decision, the Court has considered the judgment in *Om Prakash & Anr. v Mishri Lal (2017) 5 SCC 451* and observed as under:-

9. *The argument urged on behalf of the appellant/plaintiff by placing reliance upon the judgment in the case of Om Prakash (supra) is completely misconceived because the judgment of the Supreme Court in the case of Om Prakash (supra) as also the judgments which are referred to in para 32 in the judgment, only lay down the ratio that one co-owner can file a suit for eviction against a tenant if there is no opposition of the other co-owners/co-landlords. This is the settled law because in the proceedings for eviction under various Rent Control Acts, any one co-owner can seek possession of the tenanted premises in case there is no opposition to the sole petitioner/plaintiff taking possession of the tenanted premises from the tenant by the other co-owners/co-landlords of the property. However in the present case the other co-owners, being defendant nos. 2 to 5/respondent nos. 2 to 5, have in fact opposed the termination of tenancy and also of the appellant/plaintiff seeking possession and mesne profits of the tenanted premises through the subject suit. Therefore, what will apply in the facts of the present case will be the ratio of the judgments of the Supreme Court in the cases of Sk. Sattar Sk. Mohd. Choudhari (supra) and Jagdish Dutt (supra) and not the ratio of the judgment in the case of Om Prakash (supra).*



38. Moreover, recently, in *Khanna Jewellers and Ors. v. Kapil Tandon and Ors.*, RC.Rev. 599/2018, 2021:DHC:88 the judgment in *Shri. Ranbir Yadav(supra)* has been clearly distinguished. In *Khanna Jewellers*, the Court rejected the contention that all co-owners should be Plaintiffs and observed as under-

“30. Coming to the contention of the TENANT that the Eviction Petition was not maintainable in the absence of the consent of the other co-owners, the Rent Controller, in the impugned judgment, has noticed that the legal position, that even one of the co-owners/co-landlords can file a suit for eviction of a tenant, has not been disputed by the TENANT. The argument raised was that the filing of the Partition Suit between the co-owners showed that the consent, which is usually presumed amongst co-landlords to file an eviction against a tenant, stood dispelled.

31. The Rent Controller further held that, from the proceedings before the Hon'ble High Court, it was clear that all the parties to the Partition Suit were well aware of the pendency of this Eviction Petition and none had opposed or objected to these eviction proceedings. The Rent Controller has further noticed that Rajiv Tandon, the CO-OWNER, who was impleaded in the Eviction Petition, neither objected to the maintainability of the petition nor contended that the eviction of the TENANT was not desired by him also.

32. The Supreme Court of India in Kanta Goel versus B.P. Pathak, (1977) 2 SCC 814 has held “that a co-owner is as much an owner of the entire property as any sole owner. Therefore, there is no substance in the contention that the absence of the other co-owners disentitled the 1st respondent from suing for eviction”.

33. In Dhannalal versus Kalawatibai, (2002) 6 SCC 16, India Umbrella Manufacturing Co. versus Bhagabandei Agarwalla (dead) by LRs Savitri Agarwalla, (2004) 3



SCC 178 the Supreme Court of India held “that consent of co-owner is assumed, unless it is shown that other co-owner is not agreeable to eject the tenant and the proceedings for ejectment are inspite of the disagreement”.

34. The Supreme Court in Mohinder Prasad Jain versus Manohar Lal Jan (2006) 2 SCC 724 has held that “a suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceedings before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event a co-owner objects thereto, the same may be a relevant fact.”

XXXX

41. The judgment in Ranbir Yadav versus Life Insurance Corporation of India (supra), relied upon by learned senior counsel for the TENANT, is not applicable to the facts of the present case. As noticed above the CO-OWNER has not objected to the eviction of the TENANT. The stand of the CO-OWNER is only that exclusive possession cannot be given to the EVICTION PETITIONERS. Opposing eviction of the TENANT is different from seeking joint or exclusive possession of the tenanted premises, post eviction of the TENANT.”

39. A perusal of this decision would show that it is only when a co-owner objects to the eviction that the plea as raised by the Defendant would be tenable. The Defendant, who does not have any rights in the property cannot be seen to take advantage of disputes between the co-owners to resist the suit or the eviction. There may be a partition suit pending between the brothers and the sister which may include the present suit property as well, but the same would not permit the Defendant to take advantage of such *inter se* disputes between co-owners. The daughter *i.e.*, Plaintiff No.3 does not oppose



the eviction of the Defendant. Thus, the contention of the Defendant is meritless.

Valuation of the suit:

40. The last and final submission of the Defendant is that the suit has been over valued only to maintain it before this Court. Reliance is placed upon the decision of the Id. Supreme Court in *Bharat Bhushan Gupta v. Pratap Narain Verma and Another (2022) 8 SCC 333*, to argue that it is the nature of relief claimed in the plaint which determines the valuation of suit. The relevant observation is set out below:

“24. It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed.”

41. In *Renu Nagar v. Anup Singh Khosla and Ors., 2009 SCC On Line Del 46*, the Court was dealing with a property in Defence Colony and a suit for mandatory injunction seeking removal of the Defendant from the premises was filed. The Court observed that the suit has to be valued as per the market value of the property. The relevant portion of the judgment is extracted below:

“4. The observations of the trial court that the valuation of the suit is mixed question of law and facts in this case is very vague observations. The trial court had not given reasons nor those facts involved in the case affecting the valuation of the suit. The present suit has been filed by



*the plaintiff/respondent seeking mandatory injunction for the petitioner to vacate the premises and hand over the same to the respondent. It is obviously a suit for possession and has to be valued accordingly. The judgment of Division Bench of this Court in Ashok Chaudhary v. Dr. (Mrs.) Inderjit Sandhu, 1998 AD Delhi 917 : 1998 (47) DRJ 575 (DB) was brought to the notice of the trial court. The trial court mentioned this judgment in its order but did not follow the ratio of the judgment. It is categorically stated in this judgment that where a suit is filed by the owner against a licensee after termination of license, the suit has to be valued on the basis of market value of the property. The facts in Ashok Chaudhary's case (supra) were similar to the facts of the present case. In Ashok Chaudhary's case also the licensee was a friend who occupied the premises with promise to vacate on demand but later on he refused to vacate the premises. **This Court observed that the relief of recovery of possession and declaration in a suit for mandatory injunction cannot be considered a surplusage but it was a substantive relief. Therefore, Section 7(v) (e) of the Court Fees Act would be attracted to the substantive relief and the suit has to be valued accordingly i.e. the market value of the property.***

42. In *Sushma Tehlan Dalal v. Shivraj Singh Tehlan & Ors., 2011:DHC:1339*, the Court categorically holds that the averments in the plaint has to be seen for the purposes of determining the valuation. The relevant portion of the Plaint reads:

“12. In the present case, the plaintiff has specifically alleged that she is in exclusive possession of house No. 2/28, Roop Nagar, Delhi and in joint possession of certain other parts of the aforesaid house. Thus, the plaintiff has undisputedly claimed joint possession with respect to one of the properties in respect of which partition has been sought by her. In my view, in order to



*constitute joint possession, it is not necessary that the plaintiff should claim to be in joint possession of each of the properties in respect of which partition is sought by him/her. If she claims to be in joint possession of even one of the properties either wholly or partly, that would be sufficient to bring the case within the ambit of Article 7(iv) of Court-fees Act, because what is relevant is joint possession of the estate in respect of which partition is sought. The plaintiff is seeking partition not with respect to any one property, but with respect to all the properties which were owned by her late parents. If partition is sought in respect of more than one property and one of the co-owners possesses one property or a part of it and the other co-owners possess the remaining properties, all of them will be deemed to be in joint possession of the properties subject matter of partition. In this regard, the following observations made by this Court in *Sudershan Kumar Seth vs. Pawan Kumar Seth & Ors.* 124 (2005) DLT 305:*

13. It is settled that in order to decide as to what relief has been claimed by the plaintiff, the whole of the plaint has to be read. From the perusal of the plaint if it can be inferred that the plaintiff is in possession of the any of properties to be partitioned, then the court fees shall be payable under Article 17 (6) of Schedule II of the Court fees Act i.e. fixed court fees at the time of institution of the suit but if the conclusion is that the plaintiff is not in possession of any part of the properties then the plaintiff has to pay Court fees under section 7(iv)(b) of the Court fees Act i.e. on the value of plaintiff's share."

The Id. Supreme Court in *Bharat Bhushan Gupta v. Pratap Narain Verma and Another* (2022) 8 SCC 333 has clearly observed that market value would be relevant depending on the nature of the relief claimed.



43. In *Kamleshwar Kishore Singh vs. Paras Nath Singh & Others (2002) 1 SCC 304* the Court observed that the Court Fee has to be paid as per the framed plaint and not how plaint ought to have been framed. The relevant para reads as under:-

“8. It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit. These principles of law were overlooked by the trial court in passing the impugned order which was put in issue before the High Court. We are further of the opinion that



though the revision preferred by the plaintiff was directed against the order dated 1-3-1997, the real question arising before the High Court was to find out whether the suit was properly valued and proper court fee was paid thereon in accordance with law. While doing so if the High Court was required to examine the correctness or otherwise of the order dated 17-12-1996 it should not have felt inhibited from doing so. In the facts of the present case we are clearly of the opinion that the High Court was not justified in dismissing the revision on the ground that the order dated 1-3-1997 was an order correcting a clerical or typing error only.”

44. In the present case, the Plaintiffs do not admit the Defendant to be a tenant but merely a licensee or a permissive user who is occupying some space. Unless there is a complete lack of basis for valuation, the plaint cannot be rejected. The initial space which was allotted was merely for keeping the gen set. The Defendant has, thereafter locked up the premises without permission by installing a tin gate with locks. The Defendant is nothing but an unauthorised occupant and not a protected tenant. The photographs show that the Defendant has illegally taken/ tried to claim possession of the courtyard which was a common space, in an illegal manner. Any space of this nature, especially, located in the prime commercial area of Connaught Place in New Delhi is of immense monetary value. The valuation paragraph of the plaint reads as under:-

“33. That the valuation of the present suit for the purposes of Court Fee and jurisdiction is assessed as under:

a) For the relief of Possession of said portion of the Open Courtyard, the suit is valued at Rs. 2,05,00,000/- (Rupees Two Crores Five Lakhs Only), being the



present market value of the Suit Property, on which the ad-valorem Court fee of Rs. 2,02,424/- has been paid;
b) For the relief of Permanent Injunction, the Suit is valued at the fixed jurisdictional value of Rs. 130, on which the prescribed Court fee has been affixed.
c) For the relief of Damages/Mesne Profits along with interest claimed thereon, the Plaintiffs undertake to pay the Court fee at the time of passing of the Decree.
The Plaintiffs have affixed a total Court Fees of Rs. 2,04,000/- (Rupees Two Lakhs Four Thousand Only).”

45. A perusal of the above would show that the Plaintiffs have valued the property as Rs. 2,05,00,000/- which in the opinion of the Court cannot be termed as a case of forum-shopping. As argued by the Plaintiffs, the market rate of such a space would be relevant in view of Section 7 (5) (e) of the Court-Fees Act, 1870. The Court does not find this to be a case where valuation has been done arbitrarily. The market value of the property would be much above Rs.2 crores, of which judicial notice can be taken. The contention of the Defendant is, accordingly, rejected. The prayers sought in the plaint are as under:-

“i. Pass a Decree of POSSESSION in favour of the Plaintiffs and against the Defendant in respect of said portion of the Open Courtyard i.e. the portion admeasuring approximately 90 Sq. Ft. (15 Feet x 6 Feet), forming part of the Open Courtyard (40 Feet x 12 Feet), situated behind the properties bearing No. E-15, E-16 & E-17 at E-Block, Connaught Place, New Delhi - 110001, as shown in 'Red' colour in the site plan annexed herewith;
ii. Pass a Decree of PERMANENT INJUNCTION in favour of the Plaintiffs and against the Defendant, its agents, servants, nominees, executors, administrators or anybody acting on its behalf thereby restraining them



from sub-letting, parting with possession or inducting any third party or creating any interest in favour of anybody else or from carrying out any construction and/or additions/alterations in the Suit Property, i.e. the said portion of the Open Courtyard, shown in Red Colour in the Site Plan annexed herewith, until handing over of the peaceful vacant possession thereof to the Plaintiffs;

iii. Pass a Decree of MESNE PROFITS/Damages at the rate of Rs. 1,00,000/- (Rupees One Lakh Only) per month in favour of the Plaintiffs and against the Defendant, from the date of institution of the present suit till the date of delivery of vacant peaceful possession of the said portion of the Open Courtyard;”

46. The application *i.e.*, **I.A. 20903/2022** along with the suit is, accordingly, decreed in terms of prayer 1 and 2 of the plaint. Let the possession be handed over by the Defendant to the Plaintiffs of the space which is in its possession within 4 weeks, failing which the Plaintiffs are permitted to seek appointment of a Local Commissioner for taking possession of the suit property. List the suit on 30th July, 2024 for further proceedings.

I.A. 9443/2020

47. The present application has been filed on behalf of the Plaintiffs under Order XXXIX Rules 1 and 2 seeking interim injunction against the Defendant from creating any third-party rights as also any other *inter alia* reliefs in the suit property.

48. In the present application the order dated 16th October, 2020 restraining the Defendant from creating any third-party rights or alienating the suit property is confirmed till possession is handed over by the Defendant to the Plaintiff as directed above.



I.A. 3760/2023

49. This is an application filed on behalf of the Defendant seeking rejection of the plaint. The present application was disposed vide order dated 24th February, 2023, wherein the suit was re-numbered as a Commercial Suit. The said application be not listed further.

I.A. 9444/2020 IN CS(COMM) 125/2023

50. This application has been filed on behalf of the Plaintiffs under Order XV-A seeking deposit of Rs. 1,00,000/- per month by the Defendant during pendency of the present suit. The present application be listed before the roster bench along with the suit.

51. List on 30th July, 2024 for further proceedings.

**PRATHIBA M. SINGH
JUDGE**

JULY 03, 2024

mr/ks