

CASE NO.:
Appeal (civil) 1822 of 1998

PETITIONER:
KAMLA DEVI

Vs.

RESPONDENT:
LAXMI DEVI

DATE OF JUDGMENT: 12/05/2000

BENCH:
S.S.M.Quadri, S.N.Phukan

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

Syed Shah Mohammed Quadri, J.

This appeal raises a short question as to whether the suit plot is premises within the meaning of Section 2(i) of Delhi Rent Control Act, 1958. In this appeal the appellant has challenged the correctness of the judgment of the Delhi High Court dismissing her second appeal (R.S.A.No.105 of 1994) on November 28, 1997. The appellant is the landlady and the respondent is the tenant. The facts giving rise to this appeal are not in controversy. The appellant is the owner of property bearing No.417, Masjid Moth, New Delhi, (consisting of one big room) which was let out by her to the respondent. There is a vacant land of appellant adjacent to the said property of which an open plot of land measuring 9x 7(hereinafter referred to the suit plot) is the subject matter of the suit out of which this appeal arises. The respondent had unauthorisedly constructed a latrine on the suit plot which gave cause to the appellant to file Suit No.79 of 1978 in the Court of Senior Sub-Judge, Ist Class, Delhi, praying for a mandatory injunction directing the respondent to demolish the construction made by her on the suit plot. But the parties settled their dispute and filed a compromise under which the respondent became the tenant of the suit plot on a monthly rent of Rs.5/- and the suit was dismissed as withdrawn on March 27, 1978. By a notice dated December 19, 1983 the appellant terminated the tenancy, created under the said compromise and filed Suit No.691 of 1984 in the Court of Senior Sub-Judge, Delhi, for recovery of possession of the suit plot by evicting the respondent. The suit was contested by the respondent on the sole ground that the suit plot was premises within the meaning of Section 2(i) of the Delhi Rent Control Act, 1958 (for short, the Delhi

Act) and, therefore, the suit was barred under Section 50 of the said Act. On February 12, 1987 the trial court, after considering all the evidence placed before it, held that the suit plot was premises as defined in Section 2(i) of the Delhi Act, therefore, the suit was not maintainable and thus dismissed the suit. The appellant unsuccessfully appealed against the said judgment in R.C.A.No.26 of 1987 in the Court of Senior Civil Judge, Delhi, which was dismissed on September 14, 1994. The appellants second appeal was also dismissed by the High Court by the impugned judgment and hence she is in appeal before this Court by special leave. Mr.Jaspal Singh, learned senior counsel appearing for the appellant, contended that the terms of the compromise would clearly show that what was let out to the respondent was only a plot of land measuring 9 x 7. Even though on that date there was a latrine on the suit plot, yet the subject matter of the tenancy was only plot of land, not structure thereon which admittedly belonged to the respondent. As the appellant had no right, title or interest in the structure, she could not have let out the same but the courts below dismissed the suit of the appellant by wrongly applying Section 50 of the Act. The respondent, though served, was not represented. We, therefore, requested Ms. Meenakshi Arora, Advocate to assist the court as amicus curiae, who readily agreed to do so. We record our appreciation for the assistance rendered by her in presenting the case of the respondent. Ms.Arora argued that on the date of creating the tenancy admittedly there was latrine on the suit plot, so the courts below were right in construing the compromise and holding that the suit plot with structure was let out, which would fall within the meaning of premises in Section 2(i) of the Delhi Act. In the alternative, she argued that the suit plot being land appurtenant to House No.417, which was occupied by the respondent as tenant, the suit was not maintainable. Section 50 of the Delhi Act says that except where the Act so provides, no civil court shall entertain any suit or proceeding in so far as it relates, inter alia, to eviction of any tenant from any premises. It is thus clear that if the suit for eviction of tenant relates to any premises as defined in the Delhi Act, the civil court cannot entertain the same. Therefore, it becomes necessary to determine whether the suit plot is premises within the meaning of the Delhi Act. To determine this aspect, it will be useful to refer to the definition of the terms the landlord, the tenant and the premises as defined in Section 2(e), (1) and (i) respectively of the Delhi Act. Insofar as they are relevant for our purposes, they read as under: 2. Definition - In this Act, unless the context otherwise requires.

(e)landlord means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant;

(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;

(1)tenant means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes:

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A combined reading of the definitions of the terms, quoted above, shows that the term premises implies the subject-matter of tenancy in respect of which there is jural relationship of landlord and tenant and in respect of which the quantum of rent is agreed to between them. When, in any case, the question arises whether an open plot of land or a plot of land with structures thereon, was let out, the Court has to determine the same on the facts of that case. In deciding this question, it will be useful to bear in mind that if the plot with structure was let out it will fall within the meaning of the term 'premises' but if open plot without any structure was let out then it does not fall within the meaning of the term premises. It is immaterial whether the tenant raised structures before the creation of the tenancy or after he was let in as a tenant. In either case, the tenant alone will have the proprietary rights in the structure and not the landlord. In the instant case, the structure (latrine) was raised by the respondent unauthorisedly which was the subject-matter of the earlier suit wherein mandatory injunction for demolition of the same was prayed by the appellant. The structure (latrine) admittedly does not belong to the appellant. It belongs to the respondent who can at any time demolish the same and take away the material. While giving the suit plot on rent under the compromise the appellant agreed that instead of demolition it might be used by the respondent. But the appellant did not acquire any right in the structure (latrine) constructed unauthorised by the respondent. Since the basis of the tenancy between the parties is the compromise entered into between them in the earlier suit which was withdrawn on March 27, 1978, it is necessary to refer to the following relevant terms of the compromise: (i) that the defendant has raised the latrine on the open land of 9x 7 in front of the door of house No.417, Masjid Moth, New Delhi.

(ii) that the defendant has agreed to pay Rs.5/- per month to the plaintiff being rent of open land measuring 9x 7 in front of the door of the house No.417, Masjid Moth, New Delhi.

From a perusal of the clauses (i) and (ii), it is clear that though there is a reference to existence of a latrine on the suit plot, yet what was let out was open plot of land measuring 9 x 7 for which the agreed rent was Rs.5/- per month. From the above discussion, it is evident that only the open plot of land measuring 9 x 7 was let out which does not fall within the meaning of the term premises as defined in Section 2(1)(i) of the Delhi Act. In Krishnapasuba Rao, Kundapur, (dead) after him his Lr. & Anr. Vs. Dattatraya Krishnaji Karani [1966 SCJ (1) 601], a

three Judge Bench of this Court considered the question: whether the premises are land or whether they are 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 building on satisfying the court that he required it reasonably and bona fide for construction of a building. On consideration of the definition of the 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. That decision was followed by this Court in A.R. Salay Mohamed Sait, etc. Vs. Jaffer Mohamed Sait's Memorial Dispensary Charity and Ors. [1969 RCR (SC) 322]. There, the lessee constructed building and a shed on the land leased out to him. The question was: whether the land leased out came within the meaning of building in Section 2, clause (2) of the Madras Buildings (Lease and Rent Control) Act, 1960, (for short, the Madras Act)? The defendant contested the suit, inter alia, on the ground that the suit was barred under the provisions of the Madras Act as the civil court had no jurisdiction to entertain the suit for eviction in respect of building covered by the Madras Act. The definition of the term building in Section 2, clause (2) of the Madras Act was in haec verba with the definition in the Delhi 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 form and substance of the transaction; the landlord was aware that there were certain structures on 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. What is, however, next contended for the respondent is that since the respondent had raised the latrine on the suit plot, it will have to be treated as part of the building which was already in occupation of the respondent. We are afraid we cannot accept this submission of the learned amicus curiae. The building which was let out to the respondent is a different premises under a different agreement. The suit plot cannot be treated as part of that building as a separate tenancy was created in respect of the suit plot under the compromise. From the above discussion, it follows that the suit plot does not fall within the meaning of the term premises under the Delhi Act and, therefore, Section 50 of the Act ousting the jurisdiction of the civil court will not be applicable to this case. The suit was, therefore, maintainable. In view of the fact that the defence was found to be untenable, the suit of the appellant (plaintiff) deserves to be decreed. Accordingly, the appeal is allowed and the suit of the appellant is decreed with costs.