

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.4384 OF 2008
(Arising out of SLP(C)No.845 of 2007)**

OM PRAKASH **.....APPELLANT(S)**

VERSUS

MANGI LAL **....RESPONDENT(S)**

O R D E R

Leave granted.

This appeal is directed against the judgment and decree dated 4th December, 2006 passed in Civil Second Appeal No.384 of 2005 by the High Court of Rajasthan at Jodhpur, by which the High Court had dismissed the Second Appeal filed by the appellant and affirmed the judgment and decree of the courts below decreeing the suit for eviction. The only ground that was agitated by the learned counsel for the appellant was that the High Court had failed to consider that the eviction decree was passed without coming to a positive finding of relationship of landlord and tenant between the parties.

After going through the impugned judgment of the High Court, we find that the appellant had not seriously pressed the Second Appeal before it. The appellant only asked for reasonable time to vacate the premises in question. We note that the three courts below concurrently found that there was relationship of landlord and tenant and also found that the respondent was entitled to a decree of eviction on the ground of nuisance and denial of the title by the appellant. Such being the position, we find no reason to interfere with the concurrent findings of facts which are not available for attack before us. Accordingly, the appeal is dismissed. There will be no order as to

costs. Interim order, if any, stands vacated.

It is an admitted position that the appellant is running a tea shop in the premises in question and in view of the order of the High Court he has already enjoyed one and half year, which had expired in the year 2006. Even then, in view of the fact that he is running a tea shop in the premises in question, we direct that the appellant shall vacate the premises in question on or before 31st July, 2009 subject to filing of usual undertaking in this Court within four weeks from this date.

.....J.
(TARUN CHATTERJEE)

.....J.
(AFTAB ALAM)

NEW DELHI;
JULY 15, 2008.