

S. Ajit Singh Vs. Ramswaroopi Devi

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SooperKanoon Citation : sooperkanoon.com/702300

Court : Delhi

Decided On : Mar-06-1996

Reported in : 1996IIAD(Delhi)309; 63(1996)DLT599; 1996(37)DRJ330; 1996RLR299

Judge : Usha Mehra, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 2

Appeal No. : Regular Second Appeal No. 202 of 1982

Appellant : S. Ajit Singh

Respondent : Ramswaroopi Devi

Advocate for Def. : Mr. R. L. Kohli

Advocate for Pet/Ap. : S. Bisaria and; R.L. Kohli, Advs

Judgement :

Usha Mehra, J.

(1) The question for determination is whether the civil Court had the jurisdiction to try the suit for possession or was the suit barred under Section 50 of the Delhi Rent Control Act (in short the D.R.C. Act). To determine the same we have to first ascertain whether the appellant was inducted as a tenant on a vacant piece of

land or of a tin shed which would constitute 'premises' within, the meaning of Section 2(i) of Drc Act. In case of former, the suit would be the remedy and in case of later the remedy would be under the D.R.C. Act.

(2) IT. must be understood at the outset that for the purpose of determining whether the tenancy was of a premises or not one must keep in mind as to what was actually let out at the initial stage. To my mind, that would be the determining factor. Supreme Court in. the case of Prabhat Mig Society v. Banwari Lal 37 (1989) Dlt 439 SC(1) called out the factors which would determine as to when a property becomes premises in order to make D.R.C. Act applicable.

(3) In order to answer the question raised above, we have to have brief facts which are relevant for the determination of that question. The appellant (defendant before the Trial Court) was inducted as a tenant by the respondent herein (plaintiff before the Trial Court). It was alleged in the plaint that the appellant was inducted as a tenant on the plot of land being Municipal No. 1/25748 situated at Church Road, Bhogal on a monthly rent of Rs. 40. He started motor repairing workshop on the said plot after raising unauthorised structure of a tin shed on the said plot. His tenancy was, therefore, terminated through a notice dated 15th February, 1979. He was called upon to vacate the said plot by the end of March, 1979, but the appellant failed to do so, hence the suit by the respondent landlord for possession against the appellant.

(4) This suit was contested by the appellant, inter alia, on the grounds that the property in respect of which suit was filed falls ill the definition of premises hence Civil Court had no jurisdiction. The premises consists of a tin shed. and the land. was appurtenant thereto. Appellant became tenant of the respondent by operation of law after she purchased the premises from the previous owner. The appellant never committed any default in payment of rent in respect of this tin shed. in the said tin shed the appellant, had been carrying on motor repairing work. The rent receipts in token of having received the rent were also issued. Besides the rent receipts. rent deed was also got executed thereby permitting the appellant to carry on the business of motor repair. The appellant obtained license for running this business from the M.C.D. of Delhi from time to time. He also obtained water

connection for the installation of the machines in the said tin shed. He denied that the tin shed was constructed by him unauthorisedly. He challenged the legality of the notice of termination. Objection to jurisdiction was taken because of the bar created by the provisions of Section 50 of D.R.C. Act. Moreover, suit was not properly valued for the purpose of court fee and jurisdiction.

(5) On the pleadings of the parties, following issues were framed:-

1. Whether the defendant is a tenant under the plaintiff of a plot of land as mentioned in para I of the plaint 2. Whether the jurisdiction of this Court to try the suit is barred under Section 50 of D.R.C. Act 3. Relief.

(6) The Trial Court after considering the contentions of the parties decided issue No. 2 against the appellant thereby holding that the Civil Court had the jurisdiction. That: property let out was not premises hence suit not barred by the provisions of Section 50 of D.R.C. Act. Accordingly, the Trial Court passed the decree for possession with costs.

(7) The appellant assailed that judgment and decree in appeal. The Additional District Judge upheld the finding of the learned Trial Court and dismissed the appeal vide order dated 6th August, 1982.

(8) It is against the impugned judgment and decree passed by the Trial Court and by the First Appellate Court that the present appeal has been preferred by the appellant. This Court vide its order dated 22nd September, 1994 dismissed the second appeal. The appellant preferred a special leave petition which was listed as SLP(C) No. 19056/94. The Apex Court while accepting the SLP vide order dated 3rd April, 1995 remanded the case to be tried afresh. The judgment of 22nd September, 1994 was not sustained because the Apex Court felt that while disposing of the second appeal the Court mainly relied on the statement of the appellant under Order 10 Rule 2 Civil Procedure Code. The said statement was found to be tampered with by the Supreme Court hence observed that tampered statement ought not to have been the basis for deciding the appeal. While remanding the case it has been observed by the Apex Court that the said statement under Order 10 Rule 2 Civil Procedure Code should be ignored. It is in

this backdrop we have to analyze the facts and determine the question of jurisdiction.

(9) The main thrust of Mr. S. K. Bisaria's argument had been that the tenancy was with regard to the tin shed and the vacant land was appurtenant to the same. Hence the tenancy being of a 'premises' suit was barred. To prove that tenancy was of the premises he placed reliance on the rent receipts issued by the respondent present landlord as well as by the erstwhile landlord. The first available rent receipt is of the year 1956 issued by the landlord Shiv Dayal. Mr. Mandu Mal was the landlord and owner of this premises. He was minor hence his father Shri Shiv Dayal was looking after the property. It is the case of the appellant that Shri Shiv Dayal inducted the appellant as tenant and had issued receipt Ex. D.W. I/I. In order to prove that the tin shed was let out as tenancy for running the business of motor repair by the appellant, Mr. Bisaria placed reliance on the permission granted by the authority for the installation of electricity connection. license issued by the M.C.D. for carrying on the business of Motor repair. Letter received by the Mcd in 1957 for the regularisation of the structure namely tin shed, and the assessment of the house tax by the Mcd dated 7th April, 1958 of this premises. Relying on these documents Mr. Bisaria contended that these documents clearly falsify the case of the respondent that the structure was raised by the appellant. In fact these documents coupled with the rent receipts issued by Shri Shiv Dayal dated 11th February, 1956 Ex. Dw 1/1 amply prove beyond any reasonable doubt that tin shed was in existence prior to appellant taking this premises on rent. It was in fact tin shed which was let out to the appellant for running the business. The Trial Court as well as the first Appellate Court Mr. Bisaria contended erroneously disbelieved Ex. DW-I/I and ignored the documentary evidence namely rent receipts Ex. D-I to D-33, House tax receipt Ex. DW-114, license under the Shop & Establishment Act issued in favor of the appellant pertaining to this premises Ex. DW-1/ 5, Mcd license Ex. DW-117, letter written to Electricity Board Ex. DW-112. According to Mr. Bisaria in the rent receipts Ex. D-I to D-33, the respondent landlady had been showing the let out portion as open plot with tin shed constructed thereon. This by itself establishes that the tenancy was not of a vacant piece of land but of the tin shed with the vacant land appurtenant thereto. Hence this would amount to premises as defined under Section 2(i) of the D.R.C. Act.

Once it is established that what was let out to the appellant was a premises then the suit is not the remedy. In the notice dated 15th February, 1979 Ex. P.B. respondent had mentioned that the super structure was raised by the appellant in an illegal manner. Mr. Bisaria referring to this notice contended that the premises was purchased by the respondent from the erstwhile owner /landlord in February, 1957. This means that from February, 1957 till 1979 when the notice Ex. P.B. was issued respondent had verified the existence of the tin shed at the site. This admission which can be inferred from the language of Ex. P.B. clearly shows that the allegation of raising unauthorised construction was false. This allegation also stood falsified from the letter issued by M.C.D. dated 4th March, 1957 the Corporation wanted this structure to be regularised. The house tax receipt Ex. DW-I/4 dated 7th April, 1958 also falsify the allegation contained in the notice Ex.P.B. that unauthorised construction was raised in 1979. It was suddenly in February, 1979 that the respondent while terminating the tenancy took the plea of alleged unauthorised construction of a tin shed. This on the face of it is not only wrong but contrary to the admitted facts namely rent receipts Ex. D-I to D-33. In order to support his argument Mr. Bisaria referred to the reply sent by appellant to the notice Ex. P.B. dated 1st March, 1979. In reply notice it was made clear that the shed was in existence prior to the induction of the appellant as a tenant. Tenancy in fact pertained to the tin shed and the land was only appurtenant thereto. Appellant had obtained license under the Shops & Establishment Act way back in 1955 for running this motor repair workshop in the premises in question. This shows tin shed was in existence and let out to the appellant. Hence tenancy was of a premises. Hence suit for possession was not the answer. This tin shed and boundary wall were in existence even before the purchase of this premises by the present respondent. The plea of the respondent is thus based on misrepresentation and false facts. Respondent's case throughout had been that she purchased vacant piece of land in February, 1957. According to her there was no tin shed constructed on it. Whereas the documentary evidence placed on record by the appellant belied this assertion. The stand taken by the respondent in the plaint is contrary to the admitted facts, namely, rent receipts Ex. D-I to D-33, house tax receipt Ex. DW. I/4, M.C.D. license under the Shops & Establishment Act dated 4th April, 1955 and power license dated 24th October, 1953 and the

letter written to the Electricity Board Ex. DW. 112, sanction letter Ex. DW. 113, Registration under Shop & Establishment Act Ex. DW. 1 /5, M.C.D. license Ex. DW. 117. Moreover, the respondent did not examine Mr. Nandu Mal Jain the erstwhile owner of the premises to prove that tin shed was not in existence when he sold this property to the present respondent. Hence adverse presumption ought to have been drawn against the respondent. Mr. Nandu Mal would have been the best person to remove the doubts and also could have admitted or denied the receipt Ex. DW-1 / I executed by his father Shri Shiv Dayal. By alleging that the tin shed was unauthorisedly constructed by the appellant, the respondent has tried to conceal the true facts. Even Smt. Ram Swarupi Devi has not been examined nor the original sale deed has not been proved in accordance with the law. Shri Multan Singh was only an attesting witness. Appearing as witness he admitted that he did not know Urdu. thereforee, according to appellant this witness did not know the contents of the sale deed. hence his signing the documents as an attesting witness is of no consequence in the eyes of law. The. document the contents of which he could not read nor explained to him he could not have signed the same. For these reasons, Mr. Bisaria urged that the Civil Court had no jurisdiction. Even a temporary tin shed would fall in the definition of 'premises' as decided by the Supreme Court in the case of Surya kumar Govind jee v. Krishnammal & others, : [1990]2SCR782 and Harish Chandra & another v. Mohd. Ismail & others, : (1990)4SCC493 wherein it has been held that a tin shed would be a premises. In the instant case also the tin shed Along with the land appurtenant thereto which was let out would constitute a premises. In all other cases cited by the respondent Mr. Bisaria contended the tenancy was of a vacant land or plot only and not of any temporary structure hence respondent cannot take any benefit of these decisions.

(10) Countering the arguments on the question of jurisdiction of Civil Court Mr. R. L. Kohli appearing for the respondent contended that the appellant had taken contradictory stand throughout. In the Written Statement and in particular in para 1 and 2 he asserted that 'he was inducted as a tenant in respect of the premises comprising of sheds constructed on the plot of land.' Where on the rent receipts produced by him and exhibited as Ex. D-I to D-33 the tenancy comprised of 'open plot with tin shed'. On all these 33 rent receipts, it was shown that the tenancy pertained to an open plot with tin shed also there. thereforee, on the basis of these

rent receipts Ex. D-I to D-33, Mr. Kohli contended that if a structure is appurtenant to a land then that structure would not fall within the definition of premises as defined under Section 2(e) of the D.R.C. Act. Hence, as per appellant's own admission, open land was let out to him though on that open land there was tin shed. To strengthen his arguments that only open land was let out to the appellant, Mr. Kohli drew the attention of this Court to the sale deed Ex. AW. 1/1. The reading of this document clearly indicate that open land with boundary wall which was built on this open land for identification purpose, was sold to the respondent. The recital of this document Ex. AW. 1/1 makes it clear that only open piece of land was sold vide registered sale deed by the erstwhile owner Nandu Mal Jain to the present respondent vide Ex. AW. 1/1 dated 4th January, 1957. So far as Ex. DW. 1/1 the rent receipt alleged to have been issued by Shiv Dayal. Mr. R. L. Kohli rightly contended that the same cannot be relied. There are two reasons for not relying on this document Ex. DW. Hi, firstly in the written statement the appellant took a specific plea that first rent receipt was issued in 1960 whereas Ex. DW. 1/1 is dated 11th February, 1956. Hence this receipt cannot be genuine. It must have been fabricated. Had it been in the possession of the appellant he would not have set up the plea that first rent receipt was issued in 1960? Moreover, in para 2 of the written statement, a specific plea was taken by the appellant that tenancy premises comprised of shed constructed on the plot of land. Whereas Ex. DW. 1/1 indicates that tenancy was with regard to a plot with tin shed constructed thereon. Hence the reading of para 2 of the written statement does not support the contents of Ex. DW. 1/1. This document the appellant fabricated in order to show that tin shed existed even in January, 1955 and on the date Ex. DW.1/1 was issued i.e. 11th February, 1956. Secondly, Ex. DW. 1/ 1 had not been proved properly. It was for the appellant to have summoned Mr. Nandu Mal Jain to prove the handwriting and signature of his father Shiv Dayal on Ex. DW. 1/1. Appellant appearing as his own witness could not identify the signatures of Shiv Dayal on page 3 of Ex. AW.1/1, then how could be identify his signatures on Ex. DW. 1/1. Hence Ex. DW. 1/1I was not proved properly. On Ex. AW. 1 /1 I next to the signature of Mr. Nandu Mal Jain is the signature of Mr. Shiv Dayal underneath which red line appears. Mr. Shiv Dayal at the time of appending his signature on Ex. AW. 1/1 wrote as under 'Shiv Dayal Mal Jain Ba Kalam Khud' translated into

English it will read 'Shiv Dayal Mal Jain pen down his signatures himself'. That being the signature of Shiv Dayal on Ex. AW. 1/1 the appellant. Ajit Singh it had been familiar with the signature of Shiv Dayal ought to have recognised the same as Ex. Public Witness . 1/1 but he could not identify the same. Moreover, to the naked eyes the signature of Shri Shiv Dayal on Ex. AW. I/I and Ex. DW. I /I do not tally.

(11) Now turning to the testimony of the appellant Ajit Singh wherein he stilted that he was the tenant of a shed. The said shed was surrounded by boundary wall and open space was also there. He further testified that his tenancy consisted of shed, and the tenanted portion was let out to him in 1950 whereas Ex. DW. 1/1 pertains to the period of January, 1955. What happened to the rent receipts between 1950 to January, 1955 nothing has been stated. Appellant cited Mr. Nandu Mal as witness in his list of witnesses but did not adduce him. Mr. Kohli urged that adverse inference should be drawn against the appellant for having not produced Mr. Nandu Mal. Had Mr. Nandu Mal been produced he would have proved that Ex. DW. 1/1 was not issued by his father nor it bear the signature of his father. Except Ex. DW. 1/ 1 he could not nrt produce any other receipt issued by Mr. Shiv Dayal. Mr. Kohli, thereforee, drew the attention of this Court to the statement of DW. I Ajit Singh to point out that if he could keep the record from 1948 till date then why not other receipt purported to have been issued by Shri Shiv Dayal were produced. As per counterfoil of rent receipt Ex. P-I to P-4 issued on 11th November, 1975, 8th April, 1976, 26th December, 1976 and 13th December, 1977 respectively the tenanted portion was shown as open plot. This was not objected to by the appellant. Moreover, the appellant did not lead any evidence to prove that the tin shed existed from the date of inception. No rent deed produced though alleged to have been executed. If he was not having the copy of the said rent deed then he ought to have summoned the same from the respondent. But no such steps were taken. Thus from the documents it can be inferred that the dominant purpose for which tenanted portion was let out was open piece of land, otherwise why in the sale deed Ex. AW-I/I the fact of shed was not mentioned by Mr. Nandu Mal. Why in the recital of Ex. AW. 1/1 it is only mentioned that open land with boundary wall was sold. This proves that as on 4th January, 1957 shed was not in existence. The bare reading of the statement of Mr. Ajit Singh .gives an impression that the shed

was constructed to protect the machineries. Mr. Kohli contended that is the reason as soon as the shed was constructed the appellant received a letter from the N.D.M.C. dated 4th March, 1957 asking him to submit the planter the regularisation of the tin shed. Since the structure was raised by the appellant hence this letter was addressed to him. Since this letter has not been exhibited hence no reliance on the same can be placed.

(12) Reverting to other documents relied by the appellant, it can be said that none of these documents prove that shed was in existence at the time of inception of tenancy and or when this place was purchased by the respondent on 4th January, 1957. Exhibit DW. 1/2 only deals with the providing of power connection for industrial purpose. It nowhere indicate that this power was provided in the shed. Welding and motor repairs could be done in the open plot itself. Similarly, Ex. DW. 1/3 only indicate grinding of additional power load in 1962. Ex. DW. 1/4 is the house tax receipt which is dated 21st February, 1959. Of Course. this indicate that there was tin shed and boundary wall. As a result of the same, rateable value was increased. Earlier house tax notices have not been produced. This revision in house tax was effective from 7th April. 1958 meaning thereby that existing rateable value was enhanced. Mr. Kohli contended that rateable value was enhanced because of the unauthorised shed being constructed by the appellant. Had it not been so the appellant would have produced the house tax notices of earlier period also because as per Mr. Ajit Singh's own admissions he was keeping all the records since 1948. Having not produced earlier record adverse inference should be drawn. I find force in these submissions of Mr. Kohli. So far as Ex, DW. 1/5 and DW. 1/6 are concerned, they do not answer the question involved in this case nor prove the case of the appellant either way. Ex. DW. 1/7 is the electricity bill of October, 1958 this also lead us nowhere. These documents do not prove what was let out. Was it open land or tin shed

(13) Mr. Bisaria's contention that adverse inference should be drawn because respondent because of non-adducing the evidence of Mr. Nandu Mal Jain, to my mind, this contention has no substance. It was not for the respondent to prove the negative. The burden was on the appellant. He ought to have discharged the same by producing Mr. Nandu Mal Jain. In fact Mr. Kohli is right when he

contended that appellant had given Mr. Nandu Mal's name in the list of witnesses and yet not produce him hence adverse inference should be drawn against him. Nor the principle of estoppel as Mr. Bisaria want this Court to apply, would apply in this case on the basis of Ex. D-1 to D-33. These rent receipts show that tenancy was with regard to open plot with tin shed the dominant purpose of letting being open land.

(14) Section 2(i) of the D.R.C. Act defines 'premises' which is reproduced as under :- Section 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.

(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 & another v. Malleswara Rao, 1995(2x4) 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 & 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 Jet 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 zic 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 pro-dominant 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(5) 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. Banwai Lal*. 37(1989) Dlt 437(6) 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 favor (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 evacuee and same 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 Jam 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 Ror 475(7) the Madhya Pradesh High Court held that the inclusion of the word 'hut' in the rent receipt cannot changes 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(8) 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*, : AIR1966 All39 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 torn 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-I 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 in 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-I/I 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-I to D-33 the word used are 'open land with tin shed' i.e. when the rent receipt Ex. D-I 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-I/I 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 appertaining 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 favor of the respondent. The appeal is accordingly dismissed with costs.