

Union of India (Uoi) and anr. Vs. Parvati Devi and ors.

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Court : Rajasthan

Decided On : Mar-12-2004

Reported in : RLW2004(3)Raj1828; 2004(3)WLC145

Judge : A.C. Goyal, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1); Code of Civil Procedure (CPC) - Order 41, Rule 27

Appeal No. : S.B. Civil First Appeal No. 188 of 1997

Appellant : Union of India (Uoi) and anr.

Respondent : Parvati Devi and ors.

Advocate for Def. : Alok Sharma and; Indrajeet Singh, Adv.

Advocate for Pet/Ap. : Ratan Kaushik, Adv.

Disposition : Appeal dismissed

Judgement :

A.C. Goyal, J.

1. This is the civil first appeal by the defendant-tenants (hereinafter referred to as the 'defendants') against the judgment and decree of eviction dated 4.3.1997 passed by the learned Additional Distt. Judge No. 6, Jaipur City, Jaipur.

2. The relevant facts in brief are that the plaintiff- respondents No. 1 to 3 filed a civil suit for arrears of rent and eviction on 2.12.1987 with the averments that the suit house known as 'Sansar Villa' situated at M.I. Road, Jaipur was let out by the original landlord D.N. Sen at monthly rent of Rs. 230/-. The tenancy commenced with effect from 1.1.1954. D.N. Sen expired in September, 1967. The defendants started paying rent to Raghuveer Sen son of D.N. Sen. The monthly-rent was enhanced to Rs. 270/-w.e.f. 1.11.1962. Raghuveer Sen had filed a civil suit No. 101/80. During the pendency of that civil suit, monthly rent was paid at the rate of Rs. 500/-. Hence, the suit was got dismissed in default on 15.7.1983.

3. Thereafter, the suit house was purchased by the plaintiffs in portions vide registered sale deeds dated 14.6.1982 and registered exchange deeds dated 28.7.1987 and thus, the plaintiffs became the landlords of the defendants. The defendants were informed vide notice dated 13.9.1984 and vide notice Under Section 80 CPC dated 7.9.1987 which were received by the defendants but the defendants neither paid any rent nor vacated the suit house. The eviction of the defendants from the suit property has been sought on the grounds of reasonable and bonafide requirement of the plaintiffs; change in use of the premises; sub-letting, material alterations; default in payment of rent, with a further prayer of fixation of standard rent at the rate of Rs. 675/- per month.

4. Rajendra Singh, co-owner in the suit house was impleaded as defendant No. 3 as he was out of the country at the time when the suit was instituted.

5. Vide written statement, the defendants while admitting tenancy denied all the grounds of eviction averred by the plaintiffs. It was pleaded that the monthly rent at the rate of Rs. 500/- was provisionally determined under Section 7 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (in short 'the Act'). Since the civil suit filed by Raghuveer Sen was dismissed in default, the defendants are not bound to pay rent at the rate of Rs. 500/- per month. It was also pleaded that 2115 Sq. Yards area is in the tenancy of the defendants while only the area measuring 1628 Sq. Yards was given to the plaintiffs vide registered sale deeds and exchange deeds and thus the suit for a portion of the rented premises is not maintainable. Amended pleadings were also placed on record

from time to time.

6. On the basis of the pleadings of the parties, the following Issues were framed:

1- D;k izfroknhx.k ds ikl dqy 2115 oxZxt Hkwfedk ifjlj fdjk;s ij gS vkSj oknhx.k dks 1628 oxZxt Hkwfe vUrfjr gqbZ gS]blh dkj.k fdjk;snkj dk foHkktu ugha gks ldrk vkSj okn pyus ;ksX; ugha gS A

2- D;k j?kqohj ISu us iwoZ dk okn vne gkftjhesa [kkfjr djok fy;k blfy, ifjlj dk fdjk;k 500@&:- r; ughaa fd;k x;k vkSj blnj ls fdjk;k vnk djus ds izfroknhx.k ikcUn ugha gS

3- D;k oknhx.k dks oknxzlr ifjlj esa gksVyyksftax cksMZl ds :i esa pykus gsrq ifjlj dh ;qfDr;qfDr ,oa ln~Hkkfod vko';drk g SA

4- d D;k oknxzLrifjlj [kkyh ugha gksus lsoknhx.k dks ceqdkcys izfroknhx.k vf/kd dfBukbZ gksxh A

[k & D;k oknxzLr ifjlj ls izfroknx.k dkvkaf'kd fu'dklu IEHko gS ftlls nksuksa i{kksa dks gh dfBukbZ ugha gksxh A

5- D;k oknxzLr ifjlj dks fdjk;snkj 'krksZ dsfoijhr xksnke o jgk;'k ds dke esa yukuk 'kq: dj fn;k gS vkSj ifjlj ftl mn~ns'; dsfy;s fdjk;s ij yh mDr mn~ns'; ds dke esa ugha vk jgh gS A

6- D;k fooknxzLr ifjlj dh okni= ds in la- 10 dsvuqlkj dke esa ysdj izfroknhx.k us ifjlj dks mi fdjk;s ij fjekdZ vFkok vU; izdkjls viuk dCtk R;kxk gS A

7- D;k izfroknhx.k us oknxzLr ifjlj esa lkjHkwrfjorZu oknhx.k oknhx.k dh vuqefr ds fcuk fy;s gS A

8- D;k izfroknhx.k us fdjk;k vnk;xh esa Ng ekg;k bls vf/kd vof/k dh pwd dh gS A

9- D;k oknhx.k ekud dj;k fu/kkZfjr djus ds vf/kdkjh gS A

10- vuqrks'k D;k gks A

7. Evidence was recorded and vide impugned judgment and decree dated 4.3.1997, Issues No. 1, 3 to 7 were decided in favour of the plaintiff-landlords. With

regard to Issue No. 8 it was held that the defendants though committed default in payment of rent but being the first default, decree of eviction on this ground could not be passed. Issue No. 2 was decided in favour of the defendants but Issue No. 9 with regard to fixation of standard rent was decided in favour of the plaintiffs that the defendants would pay standard rent at the rate of Rs. 675/- per month from the date of filing the present suit. Consequently, the decree of eviction was passed in favour of the plaintiffs and defendant No. 3.

8. Learned counsel for the defendant-appellants has challenged the findings of the trial court on all the issues decided in favour of the plaintiff-landlords and defendant No. 3.

9. Issue No. 1 is with regard to the question of splitting the tenancy. Having considered the evidence, trial court came to the conclusion that according to the statement of DW-1 S.C. Gupta, the area of 2115 Sq. Yards was let out to the defendants and the area given to the plaintiffs vide registered sale deed and exchange deed is only 1628 Sq. Yards, but DW-1 S.C. Gupta having admitted that the lease deed executed on 26.12.1953 and the lease deed executed in June, 1963 were in his possession, the same were not produced in court. DW-1 S.C. Gupta pleaded ignorance about any site plan annexed to the lease deeds and the area, if any, mentioned in the lease deeds and thus, the defendants failed to prove the difference in the area let out and the area purchased by the plaintiffs as pleaded in the written statement. On the one hand, on the basis of oral testimony of PW-1 Lajpat Rai and Ex.3 to Ex.14 registered sale deeds as well as registered exchange deeds executed in favour of the plaintiffs as well as co-owner Rajendra Singh defendant No. 3, it was found proved that the total area covered by the sale deeds and exchange deed comes to 2268.45 Sq. Yards. In the result, the trial court held and rightly so that no case of splitting the tenancy is made out.

10. Learned counsel for the defendants contended that since the defendant Rajendra Singh was not impleaded as a plaintiff, the area sold or given in exchange to Rajendra Singh should not have been taken into consideration and thus, the case of splitting tenancy was made out,

11. Learned counsel for the plaintiffs placing reliance on Pal Singh v. Sunder Singh, (1989) 1 SCC 444 and Ram Gopal v. Sukhdev Raj Rudra, (2001) 9 SCC 201 contended and rightly so that the application for eviction filed by one co-landlord is maintainable and failure to implead other co-owners in eviction suit is not a ground to say that the suit is not maintainable. Apart from this well settled legal position, a perusal of the order sheet recorded by the trial court on 31.8.1996 goes to show that on objection raised on behalf of the defendants that Rajendra Singh is a necessary party, the trial court ordered to implead Rajendra Singh as plaintiff No. 4. However, in the amended plaint, Rajendra Singh was arrayed as defendant No. 3. Hence, the decision on Issue No. 1 does not call for any interference.

12. Now, the findings on Issue Nos. 3 and 4(ka) and 4(kha) have to be considered. Section 13(1)(d) of the Act provides that a decree of eviction may be passed when the landlord proves that the premises are required reasonably and bonafide by the landlord. Sub-section (2) of Section 14 of the Act provides that no decree of eviction on the ground set forth in Clause (h) of Sub-section (1) of Section 13 shall be passed if the court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it and where the court is satisfied that no hardship would be caused either to the tenant or the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.

13. It was pleaded by the plaintiffs that they are residents of Sriganganagar and having enmity with the persons of their caste at Sriganganagar, they want to settle at Jaipur; that they want to carry on hostel business at Jaipur and thus, their requirements are reasonable and bonafide. It was also pleaded that the suit building was purchased by the plaintiffs only with the purpose to run a hotel and in case the decree of eviction is not passed, they would suffer more hardship in comparison to the defendants. While denying all these allegations made in the plaint, the defendants took the plea that the disputed premises are located near the Main Telephone Exchange and the technical feasibility of shifting from the disputed

premises is not possible and in case the disputed premises are vacated, the entire telephone communication system of Jaipur would be adversely effected causing inconvenience and hardship to the public at large.

14. PW-1 Lajpat Rai stated that except 15 Bighas of agricultural land, rest of the agricultural land at Sriganganagar was given in exchange to Raghuveer Sen vide four registered exchange deeds and four portions of the disputed premises were given to them in exchange; that his father Maniram was murdered in Sriganganagar and on account of that enmity with the relatives, they have left Sriganganagar to reside at Jaipur; that he and his two brothers are unemployed and all of them want to carry on hotel business in the suit premises which is quite suitable therefor. PW-2 Pyaremohan, PW-3 Sajjan Singh, PW-4 Ramchandra and PW-5 Ashok Vashishtha have supported the version of PW-1 on this point.

15. DW-1 S.C. Gupta, Officer Incharge of this case deposed that the plaintiffs have got alternative accommodation wherein they are residing and in addition, there is open land measuring 5000 Sq. Yards over which a hotel can be raised. It was also stated that the plaintiff Lajpat Rai carries on transport business in the name of Jamindara Travels and the plaintiffs being quite rich did not require the suit premises for any hotel business. DW-2 Nawal Kishore is the Draftsman in the office of the defendant No. 1 and had prepared site plan Ex.A/4. In cross examination, he admitted that he did not make any enquiry and prepared the site plan only on asking by the department. DW-3 C.P. Kaushik and DW-4 Shyam Lal also tried to support the version of DW-1. DW-1 S.C. Gupta admitted in cross examination that the suit premises consists of 30-40 rooms and three halls in bigger size and the area shown from A to F in site plan Ex.15 is on rent with the defendants. DW-2 Nawal Kishore also admitted this fact in cross examination that it is a fabulous building. DW-4 Shyam Lal stated in cross examination that there are in all 30 rooms in the suit premises apart from two halls each of the size of 31 feet 6 inches x 26 feet and open land, Verandah etc.

16. Learned counsel for the defendant-appellants submitted that the possession of the agricultural lands in pursuance of the exchange deeds was not delivered to Raghuveer Sen and litigation between the wife of Raghuveer Sen and the plaintiffs

is pending. It was also submitted that Raghuveer Sen was also impleaded as one of the defendants in four suits filed by his wife and Raghuveer Sen in his written statement pleaded that execution of the various sale deeds was got done by the plaintiffs when he was suffering from Cancer and thus, the ownership claimed by the plaintiffs over suit building is disputed. It was also contended that the respondent No. 3 Rajendra Singh is a doctor, hence, his requirement to run a hotel is unbelievable and defendant No. 3 in a separate suit filed against other tenant has sought eviction on the ground of necessity for running a clinic.

17. An application under Order 41 Rule 27 CPC to take on record the certified copies of the complaints and written statements was also filed on behalf of the defendant-appellants. In reply to this application, it was stated that the plaintiffs are not aware of the four suits filed by the wife of Raghuveer Sen. So far as the fifth suit filed by Deepa Sen against Raghuveer Sen and others is concerned, it does not relate to the property in question and with regard to the property for which the defendant No. 3 Rajendra Singh has filed suit for eviction, is also a separate dwelling unit for a different purpose and thus, all these documents are neither necessary nor required for decision of this appeal. It was also stated that the title over the agricultural land as well as the disputed properties is not in question in the instant case and these documents were within the knowledge of the defendants during the pendency of the suit. It was also stated that the defendants after receiving notice from the plaintiffs started depositing the rent in the account of plaintiff Lajpat Rai, hence question of relationship of landlord and tenant stands admitted.

18. I have considered the above submissions. According to the provisions of Order 41 Rule 27 CPC the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary in the appellate court, except where the trial court refuses to admit evidence which ought to have been admitted, or the parties seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not be produced by him at the time when the decree was passed or the appellate court requires any document to be produced to enable it to pronounce judgment, or for any other substantial cause.

19. A perusal of the application under Order 41 Rule 27 CPC goes to show that none of the grounds provided under Rule 27 exists so as to allow this application. In *N. Kamalam (dead) and Anr. v. Ayyasamy and Anr.*, (2001) 7 SCC 503 it was held that the provisions of Rule 27 are not designed to help parties patch up weak points and make up for omissions earlier made and the jurisdiction of the appellate court is restricted to permitting such additional evidence as would enable it to pronounce judgment. A careful perusal of the contents of the application goes to show that this additional evidence is not required to enable this Court to pronounce the judgment, as the question of title between the wife of Raghuveer Sen on the one hand and the plaintiff on the other hand, is not relevant at all to decide the controversy in the instant case. It is significant to say here that DW-1 S.C. Gupta himself admitted that rent of the suit premises is being regularly deposited in the bank account of the plaintiff Lajpat Rai. Thus, the relationship of the plaintiffs as landlord and defendants as tenant has been admitted on behalf of the defendants and thus, the question of title as stated herein above is not relevant.

20. As far as the requirement of the landlord or the landlords or one of the landlords is concerned, the Apex Court in *Joginder Pal v. Naval Kishore Behal*, (2002) 5 SCC 397 held that requirement of a member of the family of landlord can be considered to be the requirement of the landlord for his own use. In view of the decision of the Supreme Court delivered in *Sheikh Noor and Anr. v. Sheikh G.S. Ibrahim (dead) by LRs.*, (2003) 7 SCC 321 the defendant-tenants are not entitled to challenge the validity of the sale deeds and the exchange deeds executed in favour of the plaintiff-landlords by the original landlord. Thus, the application under Order 41 Rule 27 CPC is rejected.

21. With regard to the findings of the trial court, on the question of bonafide and reasonable requirement of the plaintiffs it was contended that father of the plaintiff Lajpat Rai was murdered in the year 1977 and no untoward incident thereafter has taken place in between the plaintiffs and their relatives with whom they have pleaded enmity. It was also pointed out that statement of PW-1 Lajpat Rai that he and his brothers are unemployed is not reliable as his brother Rajendra Singh defendant No. 3 is a doctor and Lajpat Rai admitted in cross examination that he

paid a sum of Rs. 25-30 thousand as income tax during the last assessment year; that statement of PW-1 Lajpat Rai on the point that he has no concern with Jamindara Travels is also not reliable as all the buses belonging to Jamindara Travels are being parked in the open land belonging to the plaintiffs; that the plaintiffs have got alternative residential accommodation along with 5000 Sq. Yards open land over which they can construct a hotel if they really want to carry on hotel business; that there is no evidence to prove that the plaintiffs would settle at Jaipur; that the entire agricultural land at Sriganganagar is still in possession of the plaintiffs and thus, the plaintiffs' requirement is neither reasonable nor bonafide. Per contra, learned counsel for the plaintiffs submitted that the trial court having considered the entire evidence rightly held that requirement of the plaintiffs is both reasonable and bonafide and there is no ground to interfere; that choice of the location lies with the landlords and further choice of kind of business also lies with the landlord. It was also contended that the suit house is more suitable to run a hotel as number of other hotels are situated nearby and it is a fabulous building consisting of about 40 rooms with two big halls and open land and by necessary modifications, additions and alterations, the plaintiffs may run a hotel in the suit property. It was also contended that the plaintiffs cannot be compelled or confined to earn their livelihood only at Sriganganagar as they have every right to carry on their business at Jaipur.

22. I have given my thoughtful consideration to the rival submissions. While considering the question of bonafides, it is necessary to keep in mind that mere desire on the part of the landlord is not enough. The desire must be tested objectively and not subjectively and the burden also lies upon the landlord to prove that he genuinely requires the premises. The requirement of the landlord should not only be bonafide but reasonable also. It is also well settled that it is for the landlord to decide how and in what manner he should live and he is the best judge of his requirement and the tenant cannot dictate how the landlord should live or carry on his business without getting the possession of the tenanted premises. When considered the entire evidence of the parties and the submissions made by learned counsel in view of the above legal position, there appears no ground to interfere with the decision of the trial court on this issue of reasonable and bonafide requirement of the plaintiffs. The suit building is quite suitable for running

a hotel as a number of hotels are situated nearby and this place is also situated nearby bus-stand, railway station, some Govt. offices, Govt. hostel, rest house, circuit house etc. No doubt, some alternative accommodation is available with the plaintiffs as shown in the site-plan Ex. A4. Some portions marked OPQR are occupied by the plaintiffs for their residential purpose and remaining portion marked ARST is occupied by their servants and the servants of Jamindara Travels and in open place buses belonging to Jamindara Travels are being parked and thus this alternative accommodation is neither available for hotel business nor suitable for the same and finding of the trial court on this aspect appears to be justified. The submissions of learned counsel for the defendants that P.W. 1 Lajpat Rai stated that they have no source of income and on the other hand he admits that he paid a sum of Rs. 25-30 thousands as income tax during the last assessment year and in case he has no source of income, then it is not proved that the plaintiffs can run any hotel are devoid of merit because the entire evidence of the parties goes to show that the plaintiffs have sources to run hotel. As stated hereinabove, the suit building is a fabulous one and according to the statement of P.W.1 Lajpat Rai it can be used for hotel purposes by necessary modifications etc. It was also stated by him that they would dispose of their 15 beghas agricultural land at Sriganganagar for a sum of Rs. 7-8 lacs. It was also stated by him that a sum of rupees about 15-20 lacs are in deposit with Jamindara Travels and they are earning livelihood by income of the interest. Some contradictions in the statements are not by themselves sufficient to discard the evidence if otherwise found reliable. It is factually correct to say that no untoward incident took place after the murder of the father of the plaintiff Sh. Lajpat Rai-in the year 1977 but on that ground this contention cannot be accepted that the plaintiffs and the defendant No. 3 Rajendra Singh do not want to settle at Jaipur. Assuming that they have got the entire agricultural land in their possession at Sriganganagar including the agricultural land given to Sh. Raghuveer Sen in exchange, it is no ground to say that the plaintiffs have no right to shift to Jaipur to carry on any new business. The plaintiffs and the defendant No. 3 cannot be compelled to live and carry on their agricultural activities or other business activities only at Sriganganagar and not at Jaipur. P.W.1 Lajpat Rai categorically stated before the trial court that Jamindara Travels belongs to his friend and he has no concern with

the transport business of Jamindara Travels. Thus, it is not a case of mere desire of the plaintiff rather they require the suit building and their requirement is well proved to be bonafide as well as reasonable. With regard to comparative hardship, it has already been held that no alternative accommodation is available with the plaintiffs. According to learned counsel for the defendants inspite of publication in the newspapers, the defendants could not get any alternative accommodation on rent to carry on their office and the learned Trial Judge did not consider the technical feasibility of shifting of the tele-communication system operating in the suit premises and the eviction would cause greater hardship to the tenants as well as to the public at large. These submissions made by learned counsel for the defendants are devoid of merit as it cannot be accepted that alternative accommodation on rent at Jaipur though may be at higher rent is not available at all. Shifting would always cause some hardship but it does not amount that it would result into greater hardship to the tenants. It has to be kept in mind that the defendant-appellants are the tenants in the suit premises for a period of more than half century and the mighty Union of India i.e. the defendant-appellant should not say that greater hardship would be caused to the Union of India in comparison to the plaintiff-landlords. With regard to partial eviction it was admitted by both the sides that partial eviction would not serve purpose of either party. Therefore, the decision of the trial court on these three issues does not call for any interference in this appeal.

Issue No. 5:-Section 13(1) (d) of the Act provides that in case the tenant has created nuisance or has done any act which is in consistent with the purpose for which he was admitted to the tenancy of the premises the decree of eviction may be passed. Admittedly, the suit premises were let-out for office purposes. In para 9 of the plaint it is pleaded that the suit premises are being used for residential and go-down purposes and the said use is in consistent with the purpose for which the defendants were admitted to the tenancy of the premises. In written statement, these allegations were denied. The learned trial Judge placing reliance upon the statement of P.W.1 Lajpat Rai held that the suit building is being used for different purposes i.e. for residence of officers of the Union of India, to carry on the repair works of the telephones, and some portion of it is being used as rest house also. Having gone through the entire evidence, the findings of the trial court on this

issue cannot be justified at all. It is significant to say here that in para 9 of the plaint it is not made clear as to when the tenants started using the tenanted premises for a different use and the same is inconsistent with the office purpose. D.W.1 S.C. Gupta categorically stated that no officer of the defendant's department was allowed to occupy as a tenant although two officers were allowed to reside in the suit premises for a period of about six months to one year on account of special work being carried out in the office and no rent was charged from them. Similar is the statement of D.W.3 Sh, C.P. Kaushik. Thus, there is no evidence to prove that the suit building was used for a purpose which is inconsistent with the purpose for which it was let-out. Even if some of the officers of the defendant's department resided in the suit premises for some time or some repair work was and is carried out, it does not amount to inconsistent use and the dominant use i.e. for office purposes remained unchanged. Hence, decision of the trial court on issue No. 5 is set-aside.

Issue No. 6:-It is pleaded in para 10 of the plaint that the defendants started a workshop and further two Assistant Engineers Shri R.N. Das and Sh. Gupta alongwith their families are residing there and monthly rent @ Rs. 300/- per month is being charged from each and one rest house has already been started and thus it amounts to sub-letting and parting with the possession. Section 13(1)(e) of the Act provides that in case the tenant has assigned, sub-let or otherwise parted with the possession of the whole or any part of the premises without the permission of the landlord, a decree of eviction may be obtained by the landlord. The pleadings and the evidence of the parties on this issue is same as on issue No. 5. Mere doing telephones repair work does not amount to any sub-letting. Further the plaintiffs did not produce any evidence to prove that any rent was charged by the defendants from its two officers by permitting them temporarily to reside in some portions of the suit premises and also there is no evidence to prove that any rest house was established in the suit premises. Temporary stay by the officers of the tenant's department does not amount to sub-letting or parting with the possession of the tenanted premises. It is also significant to say here that neither in the pleadings nor in the evidence it has been made clear as to when and for what period any part of the suit premises was let out as pleaded in para 10 of the plaint, Hence, decision on issue No. 6 is also set aside.

Issue No. 7:-In para 11 of the plaint it is pleaded that the defendants have constructed one room, two guard rooms and one kitchen over the open land in the year 1977 and thus material alteration was made without landlord's permission. These averments were denied in the written statement. P.W.1 Sh. Lajpat Rai deposed before the trial court that the defendants have constructed rooms, 2-3 guard rooms and also have established a cycle-stand by raising 2-3 tin-shed and this new construction has been shown with red colour in site-plan Ex.2 and new construction was made without permission of either Raghuvir Sen or the plaintiffs. Firstly, this statement is not in confirmity with the pleadings and secondly he did not specify as to when this new construction was made. In cross-examination, he pleaded ignorance about the fact that changes were made after obtaining the permission from D.N. Sen the original landlord. D.W.I Sh. S.C. Gupta stated that no addition and alteration was made in the last 30 years and any construction purely of temporary nature, if any was done with the permission from Sh. D.N. Sen. Thus, a careful reading of the entire evidence goes to show that the plaintiffs failed to prove that the defendants have made any such construction as in the opinion of the Court has materially altered the premises or diminished the value thereof. Another important fact is that new construction was made In the year 1977 as per para 11 of the plaint while the plaintiffs became the landlords of some of the portions of the suit premises in the year 1982 and for some portions in the year 1987. Therefore, question of obtaining the permission of the plaintiffs for new constructions, if any did not arise at all and there is no pleading or evidence to show that the defendants did not obtain any permission from the original landlord for the new constructions if any. Therefore, the decision on this issue is also not sustainable.

Issue No. 8 relates to the default in payment of rent. Decision on this issue was not challenged by learned counsel for the appellants. Otherwise also, the decree of eviction has not been passed on the point of making the default in payment of rent being the first default.

Issue No. 9 is with regard to fixation of standard rent. Firstly the findings on this issue have not been challenged at the time of making the submissions. Secondly keeping in view the fact that it is a huge building having 30-40 rooms along with

other accommodation and the date of the tenancy i.e. 1.1.1954, fixation of standard rent @ Rs. 675/- per month from the date of filing of the suit in no way can be said to be unjustified.

23. In the result, this appeal is hereby dismissed with costs.

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