

**Om Wati Vs. Panchi Devi**

**Om Wati Vs. Panchi Devi**

**SooperKanoon Citation :** [sooperkanoon.com/924883](http://sooperkanoon.com/924883)

**Court :** Delhi

**Decided On :** Dec-14-2011

**Appellant :** Om Wati

**Respondent :** Panchi Devi

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : 14th December, 2011 RFA(OS) 93/2011 OM WATI ..... Appellant Through : Dr.Naipal Singh, Advocate. versus PANCHI DEVI ..... Respondent Through : Ms.Kaadambari with Mr.Sanjeev Sabharwal, Ms.Nimitha Mathews and Ms.Monica Chugh, Advocates. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE S.P.GARG PRADEEP NANDRAJOG J. (Oral).

1. We shall be referring to the parties by their nomenclature in the plaint..

2. Smt.Panchi Devi is the plaintiff and Smt.Om Wati is the defendant..

3. Panchi Devi stated in the plaint that she is the owner of the suit property which she had let out to the defendant in June 2002 and that the last paid agreed rent was `13,000/- p.m. She stated that Om Wati stopped paying rent from the month of May 2010. Tenancy being oral, it was pleaded that as per law the tenancy would be treated to be from month to month and that vide the legal notice dated 03.06.2010 the tenancy was determined and yet inspite thereto possession was not handed over. Alleging that the fair market rent of the subject RFA(OS)

No.93/2011 Page 1 of 7 property would be `1,00,000/- per month, suit was filed praying that plaintiff be put in possession of the subject property and damages towards unauthorized use and occupation be granted..

4. It was stated in the plaint that Om Wati was unauthorizedly claiming that under an oral agreement entered in the month of June 2002 she had agreed to sell the subject property to Om Wati at an agreed consideration of `20,00,000/- (Rupees twenty lakhs only). Plaintiff denied having received any such consideration..

5. Since we have to deal with an issue in appeal pertaining to the pecuniary jurisdiction of this Court, we need to highlight that with respect to the valuation of the suit for purposes of jurisdiction and court fee, following averments were made in para 21 of the plaint:- "That for the purposes of Court fee the present suit for the purpose of possession is valued at `20,50,000/- (Rupees twenty lakhs fifty thousand only) on which a court fee of `22,352/- (Rupees twenty two thousand three hundred and fifty two only) is being paid, the present suit for the purposes of recovery of rent for the period of 01.06.2010 to 20.06.2010, the same is being valued at `8,780/-(Rupees eight thousand seven hundred and eighty only) on which a court fee of `1,053/-(Rupees one thousand fifty three only) is being paid and finally for the purposes of damages and mesne profits, the present suit is being valued at `56,678/- (Rupees fifty six thousand six hundred and seventy eight only) on which a Court fee of `2,978/- is being paid, thus a composite Court fee of `26,383/- (Rupees twenty six thousand three hundred and eighty three only) is being paid on the present suit." RFA(OS) No.93/2011 Page 2 of 7.

6. Prayers are made in the following words:- "PRAYER: It is, therefore, prayed that this Hon'ble Court may be pleased to: (i) Pass a decree of possession in favour of the Plaintiff and against the Defendant in respect of all that property comprised in 3rd Floor, Left Side, 4/22, WEA, Karol Bagh, New Delhi and to direct the Defendant to deliver the possession to the Plaintiff. (ii) Pass a decree of recovery of a sum of `8,780/- (Rupees eight thousand seven hundred and eighty only) (along with interest @ 18% p.a. from the date of amount falling due till the date of payment) in favour of the Plaintiff and against the Defendant in respect of arrears of rent and further pass a decree of payment of damages/mesne profits payable

by the Defendant to the Plaintiff till the handing over of peaceful and vacant possession by the Defendant to the Plaintiff which amounts to `56,678 (Rupees fifty six thousand six hundred and seventy eight only) till the filing of the present suit together with pendent lite and future interest till the date of payment of the amounts; (iii) Allow costs of the suit to the Plaintiff; (iv) Pass such other or further order (s) as may be deemed fit and proper in facts and circumstances of the present case."

7. In the written statement cum counter claim filed, Om Wati never disputed the facts pertaining to tenancy as alleged and the determination thereof including the last paid agreed rent. However, she stated that the plaintiff had agreed RFA(OS) No.93/2011 *Page 3 of 7* to sell her the subject property for a sale consideration of `20,00,000/- (Rupees twenty lacks) and that the agreement in question was an oral agreement..

8. Without furnishing any proof of any such sale consideration paid, she pleaded in the written statement that at the request of the plaintiff, defendant's husband had requested defendant's nephew Sh.Manoj to deliver jewelry worth `13,50,000/- (Rupees thirteen lacks fifty thousand only) to the plaintiff which was to be adjusted against the sale consideration. Counter claim was by way of specific performance of the oral agreement to sell..

9. Relevant would it be to highlight that in the written statement cum counter claim filed, no issue pertaining to the pecuniary jurisdiction of this Court was urged. It be also highlighted that earlier claim has been withdrawn..

10. Vide the impugned order dated 11.07.2011, the suit has been decreed insofar as prayer made was for a decree of possession to be passed in favour of the plaintiff and against the defendant..

11. Needless to state the reasoning is that after the tenancy was determined, since a landlord-tenant relationship, rent being `13,000/- p.m. and tenancy being determined was not disputed by the defendant, there would be no triable issue which would arise vis--vis the prayer for possession..

12. The defence of possession being protected under Section 53A of the Transfer of Property Act, 1882 in the context of the alleged oral agreement was negated by the learned Single Judge holding that Section 53A of the Transfer of RFA(OS) No.93/2011 *Page 4 of 7* Property Act would come into play only when there was a written agreement to sell under which possession was handed over and sale consideration paid..

13. With respect to the defence taken, we must hold the same to be a sham and of a kind which no court of justice or equity would countenance. If these kinds of defences are to be permitted to be set up, it would create havoc in the society. Every tenant would start claiming that some relative of his or hers or he himself rendered some services or effected delivery of certain goods which was to be recompensed by way of sale consideration for the sale of the tenanted property..

14. Thus apart from the reasoning of the learned Single Judge we hold additionally that the defence to retain possession is a moonshine defence and has to be ignored..

15. Besides, with the earlier claim by way of seeking specific performance being withdrawn; we see no scope to now protect the possession under an agreement to sell..

16. Learned counsel for the appellant urges only one point in the appeal. The point which he urges is that this Court had no pecuniary jurisdiction to entertain the suit for the reason, where tenancy is determined suit valuation must take its colour for purpose of jurisdiction with reference to last agreed rent paid..

17. We concur with the legal argument advanced, but highlight that the same would relate to the valuation of the suit for purposes of jurisdiction relatable to the plea of possession. Where there is an additional plea for past damages, the same RFA(OS) No.93/2011 *Page 5 of 7* have to be quantified and in that context the jurisdictional value would be the sum total of both..

18. Accepting the argument that as pleaded in para 21 of the plaint, the pleadings qua valuation for purposes of jurisdiction are inchoate, we negate the stand of the

appellant taken in appeal before us for the reason it is settled law that of the three kinds of jurisdiction envisaged by law with respect to civil courts, only a plea pertaining to subject matter jurisdiction can be taken at any stage for the reason the subject matter jurisdiction is treated as inherent to the jurisdiction of a court. Territorial jurisdictions and pecuniary jurisdiction, being not treated as inherent to the jurisdiction of a court, if not urged at the earliest are deemed to have been waived and would not be permitted to be urged in appeal..

19. Finding no merit in the appeal we dismiss the same but making it clear that the appellant would be bound by her statement made and as recorded on 30th August 2011, that she would pay mesne profits/damages to the respondent @ `30,000/- p.m. effective from June 2010 till she vacates the suit property..

20. We note that said undertaking was obtained in view of the fact that notice was issued in that appeal and by way of an interim order, operation of the impugned order was stayed..

21. In the facts and circumstances of the instant appeal we deem it appropriate to leave the parties to bear their own costs. RFA(OS) No.93/2011 *Page 6 of 7* CM Nos.16181/2011 (Stay) and 16182/2011 (directions) Since the appeal has been dismissed, instant applications stand disposed of as infructuous. (PRADEEP NANDRAJOG) JUDGE (S.P.GARG) JUDGE December 14, 2011 sa RFA(OS) No.93/2011 *Page 7 of 7*

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**