

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ RSA 107/2010**

Date of Decision: May 31, 2010

PURSHOTTAM DAS ..... Appellant  
Through: Mr. Sugriva Dubey, Adv.  
  
versus

PRATIK JAIN ..... Respondent  
Through: Nemo.

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**CORAM:**  
**HON'BLE MS. JUSTICE ARUNA SURESH**

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| (1) | Whether reporters of local paper may be allowed to see the judgment? |     |
| (2) | To be referred to the reporter or not?                               | Yes |
| (3) | Whether the judgment should be reported in the Digest ?              | Yes |

**J U D G M E N T**

**ARUNA SURESH, J. (Oral)**

**RSA 107/2010**

1. Plaintiff (Respondent herein) filed a suit for possession and damages against the Defendant (appellant herein) alleging that defendant was kept as a watchman by Rakesh Kumar Jain, the

then owner of property No.1875, Gali No.2, Kailash Nagar, Delhi, who was carrying on the business of building materials in the said premises. Defendant being watchman was given one room measuring 8 x 8 feet on licence by Rakesh Kumar. The property was subsequently purchased by the Plaintiff from Rakesh Kumar vide registered Sale Deed dated 12.5.2005. After purchase of the property, he requested the defendant to vacate the premises and also served him with a legal notice for revocation of licence dated 29.5.2006. However, defendant failed to hand over the vacant possession of the suit property. Hence, a suit for possession and damages @ Rs.5500/- along with interest @ 15% per annum was filed.

2. Trial Court dismissed the suit with the observations that on preponderance of probabilities, Plaintiff had failed to prove that Defendant is a licensee and the defendant in view of the uncontroverted testimony and on preponderance of probabilities proved that he is a tenant in the suit property.
3. Plaintiff challenged the judgment and decree of the Trial Court dated 9.10.2009, in appeal being RCA No.29/2009.

The Appellate Court on the basis of evidence available on record allowed the appeal and set aside the judgment and decree of the Trial Court, holding that defendant was employed to keep watch over the property and was inducted as a licensee in the suit property.

4. Impugned in this appeal is the judgment and decree of the First Appellate court dated 27.03.2010.
5. Mr. Sugriva Dubey, counsel for the appellant has argued that jurisdiction of the Civil Court was barred by virtue of Section 50 of Delhi Rent Control Act (hereinafter referred to as 'DRC Act') as defendant was inducted as a tenant in the suit property. The Appellate Court went wrong in holding that Civil Court had the jurisdiction to entertain the suit.
6. I find no merits in these submissions. After assessment of oral evidence and other documents proved on record by the parties, the First Appellate Court concluded that defendant was a licensee in the suit property. This is a finding on fact which cannot be disturbed by this Court in the second appeal. It is well founded principle of law that First Appellate Court

has every power to assess and re-assess evidence of the parties while deciding the appeal. Since, as per the findings of the Appellate Court, Defendant was provided with a room as a licensee to enable him to perform his duties as a watchman of the entire property, no substantial question of law arises which is to be determined by this court. As it was held that no relationship of landlord and tenant existed between the parties, premises in question are not governed by DRC Act. Therefore, plaintiff rightly filed a suit for possession and damages in the Civil Court.

7. Counsel for the appellant has submitted that suit has not been properly valued for the purposes of court fee and jurisdiction and therefore, substantial questions of law, whether suit can be valued arbitrary on assumptions and whether the suit for possession for immovable property the value can be fixed at Rs.10,000/- for the purposes of possession or it should be market value of the property.
8. In para 8 of the plaint, plaintiff has valued the suit for purposes of court fee and jurisdiction in the following

manner:-

“8. That the suit has been valued for the purposes of jurisdiction on the relief of possession at the rate of Rs.10000/- per month, on which the court fee stamp of Rs.1126/- and for the recovery of the relief of damages of Rs.5500/-, on which the court fee stamp of Rs.686-80p, totaling to the sum of Rs.1812-80p has been paid.”

9. In para 4 of preliminary objections in the written statement, defendant sought dismissal of the suit for want of proper court fee. Defendant never raised any objection to the valuation of the suit for the purposes of court fee and jurisdiction. It is not disclosed as to how proper court fee was not paid. Para 8 of the plaint has been replied in the written statement as follows:-

“8. That para 8 of the plaint is wrong and the same is denied. It is denied that proper court fee has been paid.”

10. It is pertinent that the objection raised by the defendant regarding non-payment of court fee was never pressed by him. His emphasis has been on the jurisdictional aspect of the civil court to entertain the suit for possession. Neither any issue was framed by the Trial Court nor any submission was made during the course of arguments on behalf of the

defendant that suit was undervalued for the purposes of court fee and jurisdiction or that the valuation was not correct.

11. In the appeal as well, no arguments were raised to valuation of the suit for the purposes of court fee and jurisdiction. It is pertinent that Mr. Sugriva Dubey was the counsel for the appellant before the First Appellate Court. After having lost in the first appeal, this appeal may be a camouflage to retain possession of the suit premises and to avoid execution of the decree passed against the appellant. Plaintiff had valued the suit at Rs.10,000/- for the purposes of possession and Rs.5500/- for purposes of mesne profits and paid the requisite court fees.

12. Under these circumstances, when the judgment and decree of the appellate court is passed on assessment of oral as well as documentary evidence and on facts, no substantial question of law arises in this appeal.

13. Hence, appeal being without any merit is hereby dismissed.

**CM Nos.10469/2010 (for stay) & 10470/2010 (for exemption)**

14. Since appeal has been dismissed, both these applications have become infructuous. The same are accordingly disposed of.

**ARUNA SURESH, J.**

**MAY 31, 2010**

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