
(1981) 01 DEL CK 0007
In the Delhi High Court
Case No : Second Appeal No. 25 of 1975

Bipin Behari Tawakley

APPELLANT

Vs

Kishori Lal Mehra and Others

RESPONDENT

Date of Decision : 23-01-1981

Acts Referred:

Citation : (1981) 2 DRJ 60

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : Kanwal Narain, B.B. Tawaklay, Madan Bhatia and S.P. Manga, for the Appellant;

Judgement

Sultan Singh, J.

(1) This is an appeal on behalf of the landlord u/s 39 of the Delhi Rent Control Act, 1958 (hereinafter called "the Act") directed against the judgment and order dated 8th October, 1974 of the Rent Control Tribunal dismissing his application for eviction of the respondents on the grounds mentioned in clauses (b) and (e) of the proviso to sub-section (1) of section 14 of the Act. The Additional Controller by his judgment and order dated 12th April, 1972 had passed an order of eviction u/s 14(I)(e) of the Act in favor of the appellant but had refused eviction of the respondents u/s 14(I)(b) of the Act.

(2) The eviction application pertains to portions of first floor and second floor of the property at plot No. 43, Darya Ganj, Delhi. The Delhi Improvement Trust (now succeeded by the Delhi Development Authority under Act 61 of 1957) granted on 22nd September, 1940 lease of plots No. 43 and 44, Darya Ganj, Delhi to the appellant and his brothers for a period of 90 years in terms of the lease deed dated 22nd November, 1940 for the erection of a residential house (Ex. AW. 1/3). The appellants and his brothers, however, transferred their leasehold rights in plot No. 44, Darya Ganj, Delhi to Shri Ram Narayan in whose favor the Delhi Development Authority executed the lease deed with respect to

the said plot No. 44 on 19th March, 1963 (Ex. AW. 1/2). A fresh lease deed with respect to plot No. 43 for a period of 90 years from 22nd September, 1940 was executed on 29th October, 1966 between the Delhi Development Authority and the appellant along with his brothers (Ex. AW. I/I). The terms and conditions of the lease deed dated 22nd November, 1940 and 29th October, 1966 in favor of the appellant and his brothers are identical. It appears that a residential building was constructed on the said plot No. 43, Darya Ganj, Delhi. The appellant's father Shri Brij Behari Tawakley, who was a lawyer, let out the suit premises in 1953 to Kishori Lal Mehra, Advocate, respondent No. 1. There was an oral partition by way of family settlement between the appellant and his brothers in 1961. The suit property under the tenancy of respondent No. 1 was allotted to the appellant. Respondent No. I by a letter dated 28th April, 1961 (Ex. AW. 2/2) was informed that the suit property had been allotted to the appellant. Respondent No. 1 attorney to the appellant and has since then been paying rent of the suit property to the appellant.

(3) The appellant through his counsel Shri Mohan Lal Chhibber sent a notice dated 28th September, 1967 to respondent No. I terminating his tenancy. The said notice was admittedly duly served upon him He was required to hand over the vacant possession of the premises up to 13th November, 1967. Finding no response from respondent No. I, the appellant on 18th December, 1967 filed the eviction application, out of which this second appeal has arisen, under clauses (b) and (e) of the proviso to sub-section (1) of section 14 of the Act. The appellant alleges that the premises were let for residential purposes to respondent No. 1, that he is the owner thereof, that he requires the premises for the residence of himself and family members dependent upon him and that he has no other suitable and sufficient accommodation. The appellant further alleges that respondent No. 1 sublet, assigned or otherwise parted with the possession of a part of the suit premises without obtaining his consent in writing to Shanti Lal (respondent No. 2).

(4) The respondents, needless to say, contested the eviction proceedings. The Additional Controller after recording evidence held that the tenancy was validly determined; the appellant was owner of the suit premises by virtue of the family settlement in 1961; the premises were let for residence to respondent No. 1 who had used the premises for residence and office from the inception of the tenancy ; the appellant bona fide requires the suit premises for his residence; he has no other reasonably suitable residential accommodation. An regards the ground of eviction under clause (b), the Additional Controller held that respondent No. 2 was nephew of respondent No. I and the appellant had failed to prove the ground of sub-letting covered by section 14(I)(b) of the Act. The Additional Controller, as already stated, passed an order of eviction u/s 14(I)(e) of the Act against the respondents.

(5) On appeal by Kishori Lal Mehra, Advocate (respondent No. 1) the Rent Control Tribunal by judgment and order dated 8th October, 1974 held that the

premises were let for residential and non-residential purposes but confirmed the findings of the Additional Controller on other material points. Consequently, the Tribunal dismissed the application for eviction. Hence this second appeal. During the pendency of this second appeal, Shanti Lal, respondent No. 2, alleged sub-tenant, died on 19th February, 1977. His widow, daughter and son were substituted vide order dated 10th April, 1978. Kishori Lal Mehra, tenant-respondent No. 1, also died on 17th January, 1979. His widow Smt. Sewa Devi and daughter Kamla Seth were substituted as his legal representatives vide order dated 18th October,

(6) The learned counsel for the appellant contends that on the death of the tenant Kishori Lal Mehra, respondent No. 1, on 17th January, 1979, his heirs i.e. widow and daughter do not inherit tenancy rights and are not entitled to claim protection under the Act. He submits that in any case, widow of respondent No. 1 was not financially dependent on her husband- tenant on the date of his death and hence she is not entitled to claim tenancy rights or protection under the Act after the expiry of one year from the date of death of her husband. The question for decision, Therefore, is whe the It he heirs of respondent No. 1 inherit tenancy rights and are entitled to protection against eviction under the Act. Admittedly, the tenancy of respondent No. 1 was duly terminated by means of a notice of eviction dated 20th September, 1967 (Ex. AW. 2/5). In Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, , it has been held, "A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly, though in law not accurately, called "a statutory tenant". Such a person is not a tenant at all : he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal : it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute" . It appears that the appellant-landlord's right to continue with the present appeal to obtain possession of the suit premises did survive to him under Order 22 rule 4 read with rule 11 of the CPC (hereinafter called "the Code"). Sub-rules 1 and 2 of rule 4 of Order 22 of the Code road as under:

"PROCEDUREin case of death of one of several defendants or of sole defendant:
4(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendants or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. .
(2) Any person so made a party may make any defense appropriate to his character as legal representative of the deceased defendant."

(7) The heirs and legal representatives of the deceased, namely, the widow and

daughter of the deceased respondent No. 1 as already observed were substituted on record. Under sub-rule (2) of rule 4 of Order 22 of the Code, the widow and daughter of the deceased respondent No. 1 are entitled to make any defense appropriate to their character as legal representatives of the deceased respondent. In Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, it is observed, "The heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased.....The contention based on the ground of bona fide requirement by the landlord was personal to the statutory tenant and on his death the same is not open to his legal representatives unless there is anything in the provision of the Act which makes the legal representatives statutory tenants to the same extent as the deceased". The Full Bench of this court in Kedar Nath and Another Vs. Mohani Devi and Others, held that after the termination of contractual tenancy by service of notice to quit, the landlord applies for the eviction of the tenant on the ground mentioned in clauses to Section 14(1) proviso, and ending eviction proceedings, the tenant dies and his legal representatives are brought on record, the proceedings can continue and eviction order can be passed against the legal representatives. It is further held, "the legal representatives may put forward contentions as are appropriate to their representative character but not the contentions which were personal to the deceased tenant". Thus, it has to be seen whether the tenancy rights in the present case after the death of respondent No. 1 devolved on his heirs. This has to be found out within the four corners of the Delhi Rent Control Act, 1958. The word "tenant" under the said Act as amended by Act 18 of 1976 has been defined u/s 2(1) as follows :

"(1): "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be payable, and includes- i) a sub-tenant; ii) any person continuing in possession after the termination of his tenancy; and iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's- a) spouse, b) son or daughter, or, where there are both son and daughter, both of them, c) parents, d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include- (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976 ; (B) any person to whom a license, as defined by section 25 of the Indian Easements Act, 1882, has been granted. Explanation I :-The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows : a) firstly, his surviving spouse ; b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily

live with the deceased person as a member of his family up to the date of his death ; c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death and d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death. Explanation II:-If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year ; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished. Explanation Iii :- For the removal of doubts, it is hereby declared that,- a) where, by reason of Explanation Ii, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be; b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs."

(8) Thusafter the death of respondent No. 1 whose tenancy was admittedly terminated, tenancy rights would devolve only on his widow and not on his daughter, provided it is held that she had been ordinarily living in the premises with respondent No. 1 as a member of his family up to the date of his death and that she was financially dependent upon him on the date of his death. Further the right to continue in possession of the widow of respondent No. 1 shall be personal to her and shall not on her death devolve on any other heir of respondent No. 1. In the presence of the widow, the daughter does not inherit any right. It is in evidence that the widow had been living in the premises in suit with her husband respondent No. 1 as a member of his family up to the date of his death. She continues to live in the premises even after his death. The main contention between the parties, however, is whether she was not financially dependent on the deceased on the date of his death, if so, she acquires the right under the Act for a limited period of one year and if she was financially dependent on the deceased, she acquires the right of a statutory tenant. The question for determination now, Therefore, is whether Smt. Sewa Devi, widow of the deceased respondent No. 1, was financially dependent upon him on the date of his death, i.e. 17th January, 1979. The heirs of respondent No. 1 vide order

dated 5th August, 1980 were directed to file affidavits in support of their claim as a tenant within the meaning of Section 2(1) of the Act. The appellant was also directed to file counter affidavits.

(9) Smt. Sewa Devi, widow of respondent No. 1, filed her affidavit dated 20th August, 1980. She deposes that she is an illiterate lady, she has been dependent upon and lived and resided with her husband, she neither had the capacity nor has been in any service or engaged in any business nor had any independent source of income and that throughout she has been financially dependent upon her husband till the time of his death. She also deposes that her husband from his own funds purchased a plot of land (particulars not mentioned but got the sale deed registered in her name and that the plot was subsequently sold. She also states she holds ornamental jewellery weighing 10 Tolas of Gold as her "Isiridhan". The appellant-landlord in his affidavit dated 29th August, 1980 in reply to the affidavit of the widow of respondent No. 1 contests the facts deposed by her. He says that the widow has deliberately concealed relevant information from this court, that the affidavit filed by her is fraud played on this court as material facts have been suppressed and concealed, and he further says, "Smt. Sewa Devi is the Sole Proprietor of a business known and styled as M/s. Ostrich Trading Company having its office at 1815, Bhagirath Palace, Chandni Chowk, Delhi. According to the information gathered by me, I say that for the year 1977-78 income about Rs. 45,000.00 was shown as taxable income by the said M/s. Ostrich Trading Company of which Smt. Sewa Devi is the Sole Proprietor. For the subsequent years, income between Rs. 8000.00 and Rs. 9000.00 has been shown by the said trading company of which Smt. Sewa Devi is the Sole Proprietor. Thus it is absolutely false on the part of Smt. Sewa Devi to say that she is an illiterate lady dependent on her late husband Shri Kishori Lal Mehra and that she has not been engaged in any business or she did not have any independent source of income". The appellant in his affidavit further deposes that she is a member of the New Friends Cooperative House Building Society Ltd, New Delhi, her membership being 869 owning a plot of land bearing No. C-704 in New Friends Colony, New Delhi, measuring about 500 sq. yards of the value between Rs. 4 and 5 lacs, that the account of M/s. Ostrich Trading Company in State Bank of Patiala, Darya Ganj, Delhi is being operated by Smt. Sewa Devi and that she is a lady of means and very well off. The widow of respondent No. 1 further filed affidavit dated 16th September, 1980. She denies that any material facts have been suppressed or concealed, she says that she is not the Proprietor of M/s. Ostrich Trading Company, that she had been operating a bank account and has been signing the documents in respect of the said business M/s. Ostrich Trading Company since after the death of Shanti Lal Mehra, respondent No. 2, which occurred on 19th February, 1977, that she continued to do so till 1st April, 1980, that she never drew any benefit from the said business, that the said business belonged to Shanti Lal Mehra, respondent No. 2, and after his death the business could not have belonged to her and that she acted only as a trustee custodian for the properties of and for the welfare of the heirs of Shanti Lal Mehra, respondent

No. 2. As regards plot of land in New Friends Colony, New Delhi, she admits that she is the owner of the said plot of land. She, however, denies that the value of the said plot is between Rs. 4 and 5 lacs as alleged by the appellant, but she does not disclose the value of the plot. In another affidavit dated 11th December, 1980 Smt. Sewa Devi, widow of respondent No. 1, deposes that she has not been owner of any other plot of land in Delhi or elsewhere, that plot No. C-704, New Friends Colony, New Delhi, were sold but no formal sale deed could be executed so far as the same can be done only after the permission to sell is granted by the Delhi Development Authority. She admits that she continues to be a member of the New Friends Co-operative House Building Society because the execution of the formal sale deed can be done only after the permission to self is granted. The widow of respondent No. 1 has also filed an affidavit dated 16th September, 1980 of Smt. Krishna Mehra, widow of respondent No. 2. She supports the case of Smt. Sewa Devi. She has also filed photostat copies of the assessment orders of M/s. Ostrich Trading Company besides other documents. The photostat copies of the Income Tax records of M/s. Ostrich Trading Co. disclosed that Smt. Sewa Devi, widow of respondent No. 1, was the Proprietor for the assessment years 1978-79 and 1979-80 relevant to the accounting period 1-4-1977 to 31-3-1979. These orders show that the firm M/s. Ostrich Trading Company owned by Smt. Sewa Devi made a profit of Rs. 4,635.00 for the assessment year 1978-79 and Rs. 8,570.00 for the assessment year 1979-80. The Income Tax return or assessment order for the assessment year 1980-81 has not been filed though admittedly she continued to be the Proprietor of the said firm up to 1st April, 1980. But it is stated by the learned counsel for the widow of respondent No. 1 that there was a profit of Rs. 7,585.00 for the assessment year 1980-81, i.e. the accounting year ending 31st March, 1980. I thus police that Smt. Sewa Devi was the Proprietor of the business Ostrich Trading Company from 1-4-1977 to 31-3-1980 and that she has been making profit. The assessment orders are in favor of Smt, Sewa Devi as Proprietor and not as a trustee or custodian of anybody. No material has been placed on record to show that the plot of the value of Rs. 4 to 5 lacs, has been sold. Respondent No. 1 died on 17th January, 1979 and on that date Smt. Sewa Devi was carrying on business although the story now set up is that she was only the trustee or custodian of the hers of Shri Shanti Lal Mehra, respondent No. 2. It is further stated by the widow of respondent No. 2 in her affadavit dated 16th September, 1980 that Smt. Sewa Devi made a gift of Rs. 20,000.00 in favor of Master Aman Mehra, son of respondent No. 2, by way of transferring the capital in the firm Ostrich Trading Company and that a sum of Rs. 720.00 was paid as gift tax. A photostat copy of this receipt is dated 25th April, 1980 and is in favor of Smt. Sewa Devi. It shows that she had paid gift tax. In other words, it means that on 25th April, 1980 she was possessed of Rs. 20,000.00 , which she gifted to the son of respondent No. 2. The balance sheets of Ostrich Trading Company have not been filed. Income Tax returns, balance sheets or assessment orders pertaining to respondent No. 1 have also not been filed by his widow to determine whether she was dependent upon her husband. It was necessary for

her to have filed a statement of her assets as well as the statement of the assets held by her husband on the date of his death, i.e. 17th January, 1979. It is stated by the widow of respondent No. 1 that her husband Kishori Lal Mehra continued his practice as an Advocate till the date of his death. It is admitted at bar that respondent No. 1 was blind for few years before death. She must be in possession of records showing the income of her husband at the relevant time. Her income, as already stated, has been disclosed for the three assessment years. In order to determine whether she was dependent upon her, husband or her husband was dependent on her business she ought to have filed the balance sheets and Income Tax assessment orders pertaining to her husband for comparison. She has withheld the same. She does not disclose the assets of her husband also. From the facts on record, it appears that she continues to be the owner of Plot No. C-704 in New Friends Colony, New Delhi, measuring 500 sq. yards of the value of Rs. 4 laes. She has been the Proprietor of the business Ostrich Trading Co. since 1st April, 1977; that she made profits in her business and the amount of profit was sufficient for her maintenance; that she was not financially dependent upon her husband on the date of his death, i.e. 17th January, 1979. Her income for the accounting year ending 31st March, 1979 as per assessment order was Rs. 8,570.00 and she had made a gift of Rs. 20,000.00 in April, 1980 in favor of the son of respondent No. 2. The affidavits of Smt. Sewa Devi and Smt. Krishna Mehra, widows of respondent Nos. 1 and 2, do not inspire any confidence for the story now put forward by them to the effect that Smt. Sewa Devi was a trustee/custodian of the said business. As already stated, the assessment records filed by the widow of respondent No. 2 show that Smt. Sewa Devi was the Proprietor of the said business from 1st April, 1977 onwards-

(10) It is contended by the learned counsel for the widow of respondent No. 1 that the affidavit filed by the appellant is not in accordance with law as it is not properly verified. Counsel for the appellant also states that the affidavit of Smt. Sewa Devi dated 20th August, 1975, is no affidavit in law as she has concealed the facts in her knowledge relating to the said plot of land in New Friends Colony, New Delhi, and that the verification is contrary to the rules of this court. The verification of the affidavit of Smt. Seva Devi dated 20th August, 1980 reads as under :

"I, Sewa Devi, the above named deponent do hereby verify that the contents of my affidavit in paras .1 to 11 are true and correct to my knowledge and nothing stated therein is either false or wrong. Verified at Delhi on the 20th day of August, 1980". Rules and Orders of Punjab High Court Vol. IV Chapter 12B rule 15 as applicable to this Court provides the form of verification of affidavit. It reads as under: "I-Form of verification of oath or affirmation. Oath "I, solemnly swear that this my declaration is true, that it conceals nothing, and that no part of it is false-so help me God" Affirmation I solemnly affirm that this my declaration is true, that it conceals nothing, and that no part of it is false." The rule thus prescribes for the deponent to verify that the affidavit conceals nothing.

Smt. Sewa Devi in her affidavit has failed to do so and the learned counsel for the appellant submits that she has done it intentionally because she did not disclose about the business of M/s. Ostrich Trading Company carried on by her as Proprietor. The affidavit of the appellant dated 29th August, 1980 contains the following verification : "I, Bipin Behari Tawakley, do hereby verify that the statements contained in the above affidavit are true to my personal knowledge and from information gathered by me from various sources. That I have given all material facts in the said affidavit and nothing has been concealed there from. Verified at New Delhi on the 29th day of August, 1980".

(11) It is contended by the learned counsel for the respondents that this affidavit is contrary to Order 19 rule 3 of the Code on the ground that it does not state how much of the statement is a statement of his knowledge and how much of it is a statement of his belief. Whatever may be the form of verification it is clear that the widow of respondent No. 1 is the owner of the said plot in New Friends Colony although her allegation is that she has agreed to sell the same and that she has received the consideration for it. No transfer deed has been executed so far admittedly. As regards the business of M/s. Ostrich Trading Company photostat copies of assessment orders and other records have been filed by respondent No. 2 showing Smt. Sewa Devi, respondent No. 1, as the Proprietor of the said business during the relevant period, especially on the date of death of her husband. There is thus sufficient material to hold that Smt. Sewa Devi, widow of respondent No. 1, was not financially dependent upon her husband on the date of his death. It, Therefore, appears to me that Smt. Sewa Devi, widow of respondent No. 1, is not a tenant within the meaning of Section 2(1) of the Act. The daughter of respondent No. 1 has not been residing in the premises and is not entitled to inherit in the presence of Smt. Sewa Devi. The heirs of respondent No. 1 are not entitled to inherit tenancy rights, They are not tenants under the Act and are not entitled to any protection against eviction. As already stated, respondent No. 1 was statutory tenant and as no tenancy rights have descended upon his legal representatives under the Act it is unnecessary to go into the question whether any ground of eviction is available to the appellant against the respondents. I, Therefore, hold that the appellant is entitled to an order of eviction against the heirs of the two respondents.

(12) Learned counsel for the appellant, however, submits that even if it is assumed that Smt. Sewa Devi is a tenant within the meaning of Section 2(1) of the Act the appellant is entitled to an order of eviction under clauses (b) and (e) of the proviso to sub-section (1) of Section 14 of the Act. Learned counsel for the respondents on the other hand contends that there is no substantial question of law in the appeal and that the appellant is not entitled to an order of eviction on any ground.

(13) The Additional Controller and the Tribunal have held that respondent No. 2 was the nephew of respondent No. 1 and the appellant has failed to prove the ground of sub-letting as mentioned in Section 14(l)(b) of the Act. Learned

counsel for the appellant submits that on the basis of the pleadings alone an order of eviction on this ground should be passed against the respondents. Respondent No. 1 in his written statement states that respondent No. 2 was never a sub-tenant nor is he now a sub-tenant. Respondent No. 2 states that he has been residing in the premises in his own right and in the alternative, he says he is a member of the family of respondent No. 1. It is admitted by the appellant that respondent No. 2 was the nephew of respondent No. 1. No ground has been made out by the learned counsel for the appellant to interfere with finding of the Additional Controller and the Tribunal. "The pleadings of the respondents do not amount to any admission of the ground of eviction as mentioned in Section 14(I) (b) of the Act. The appellant is, Therefore, not entitled to any order of eviction u/s 14(I)(b) of the Act.

(14) As regards the ground of eviction u/s 14(I)(e) of the Act, the learned counsel for the respondents contends that the appellant is not the owner of the premises. The Additional Controller and the Tribunal have held that there was a family settlement in 1961 and that the suit premises under the tenancy of respondent No. 1 were allotted to the appellant. No other property was allotted to the appellant. As already stated, respondent No. 1 was inducted as a tenant by the father of the appellant in 1953 and after the family settlement in 1961 the appellant became the landlord of respondent No. 1. The lease deeds dated 22nd November, 1940 Ex.A.W.1/3 and 29th October, 1966 Ex. A.W. 1/1 are in favor of the appellant and his brothers. The learned counsel contends that there was no family settlement as there is no registered document, and for this purpose he relies upon the letter dated 28th April, 1961 written by the father of the appellant to respondent No. 1 (Ex. A.W. 2/2). It reads-as under :

"MYdear Mehra Sahib, I am thankful to you for your cheque for Rs. 500.00 as rent for two months ending 14th April, 1961. This is just to inform you that by a registered deed I have renounced all my rights, title and interest in the house Roop Kunj, Delhi and the portion of the house in your occupation has been allotted to Bipin Behati Tawakley. I Therefore request you that in future you will please make out the cheque in the name of Bipin Behari Tawakley instead of it being issued in my favor. Yours faithfully sd/- B.B. Tawakley To ... Shri Kishori Lal Mehra."

(15) Learned counsel for the respondents submits that the registered deed referred to in this letter has not been placed on record. It is correct, but it does not mean that the appellant is not owner of the suit premises. The two lease deeds referred to above are in favor of the appellant and his brothers and not in favor of their father who wrote this letter dated 28th April, 1961. It may be that he might have executed some Release Deed renouncing his rights, if any, in the suit property. The appellant's father was the landlord and, Therefore, he wrote this letter to respondent No. 1 informing him that the portion of the house in his occupation had been allotted to the appellant and- that he should pay the rent in future to the appellant and not to him. This letter does not show that the

appellant is not the owner. The two lease deeds referred to above prove the ownership of the appellant and his brothers. The other question is whether there was oral partition in 1961 as alleged by the appellant on the basis of the family settlement. It is in evidence of the appellant and his brothers that there was oral partition and that the premises under the tenancy of respondent No. 1 only were allotted to the appellant in that family settlement besides providing for their mother. In *Kale and Others Vs. Deputy Director of Consolidation and Others*, it has been held that the family arrangement may be oral in which case no registration is necessary. In the instant case there is no writing of the family arrangement. It is alleged to be oral only. No writing is necessary and no registration is necessary. I, Therefore, hold that the Additional Controller and the Tribunal have concurrently and rightly held that there was family settlement in 1961 and that the suit premises were allotted to the appellant. It further appears to me that the dispute regarding family settlement is, an internal matter between the appellant and his brothers and that the respondent No. 1 who was tenant .has no right to challenge the family settlement. The appellant and his brothers admit the oral family settlement of 1961 and they admit that the premises in suit were allotted to the appellant.

(16) The next contention of the learned counsel for the appellant is that the Additional Controller after appreciating the evidence on record rightly held that the premises were let for residential purposes to respondent No. 1 and that there were no compelling reasons for the Tribunal to upset the said finding. He further contends that the Tribunal approached the matter from a wrong standpoint altogether and on the materials on record, it had no justification in reversing the finding of the Additional Controller that the premises were let for residence. Learned counsel for the respondents submits that for what purpose the premises were let is a question of fact and cannot be challenged in second appeal. The finding reached by the first appellate court that the landlord does not bona fide require the premises is a finding of fact and that it cannot ordinarily be interfered by the High Court in second appeal but, if it is shown that in reaching the said finding a mistake of law is committed by the first appellate court or it is based on no evidence or is such as no reasonable man can reach, this court can interfere (See *Mattulal Vs. Radhe Lal*,). In *Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others*, it has been observed as follows :

"THE rule is-and it is nothing more than a rule of practice-that when there is a conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness .which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact.....The duty of the appellate court in such cases is to see whether the evidence taken as a whole can reasonably justify the conclusion which the trial court arrived at or whether there is an element of improbability arising from proved circumstances

which in the opinion of the court outweighs such finding."

(17) In Gopi Tihadi Vs. Gokhei Panda and Another, it has been observed, "If the evidence taken as a whole supports the view taken by the trial court, the appellate court should not, except for very compelling reasons, set aside that finding even if it takes a different view of the evidence." In Trailakyanath Maity and Another Vs. Provabati Santra and Others, it is observed, "The first appellate court, though a final court of facts, will not normally set aside the finding of facts made by the trial court on consideration of evidence unless there are compelling circumstances to do so." In Shakila Banu Vs. Gulam Mustafa, it is held that the opinion of the trial court Judge about credibility of witnesses should not be ordinarily disturbed in appeal and that the appellate court should not reappreciate oral evidence and arrive at finding contrary to those of the trial Judge. It is further observed that if the lower appellate court ignores law relating to review of oral evidence by court of appeal, it commits substantial error so as to render its finding liable to be set aside in second appeal.

(18) It is in the light of the observations set out above that I propose to examine the judgment of the Tribunal in the present case. Brij Behari Tawakley, father of the appellant, who appeared as A.W.2, was initially the landlord of the premises and he let out the same to respondent No. 1 in 1953. It is an admitted case of both the parties that no writing was executed creating the tenancy in favor of respondent No. 1. There is also no other writing between the parties to show the purpose of letting. It is only the oral evidence led by the parties besides the lease deed Ex. A.W. 1/3 dated 27th November, 1940 with regard to the plot of land underneath the premises executed between the appellant along with his brothers and the Delhi Improvement Trust now succeeded by the Delhi Development Authority. The plot of land was leased to the appellant and his brothers for a period of 90 years for the construction of a residential house on the plot in terms of the said lease deed with effect from 22nd September, 1940. One of the terms of the said lease deed is as under :

"II(VI): not to use the said land or buildings that may be erected thereon during the said term for any purpose other than the purpose of residential house without the consent in writing of the Lesser first obtained; provided that the lease shall become void if the land is used for any purpose other than that for which lease is granted not being a purpose subsequently approved by the Lesser".

(19) The father of the appellant as A.W. 2 states that he let out the premises to respondent No. 1 in 1953, that Ishwar Dass Seth, son-in-law of respondent No. 1, came to him and took the premises on rent for respondent No. 1, that the premises were let for residence and that respondent No. 1 has been residing therein. He further states that there was a family settlement in 1961 and the suit premises were allotted in oral partition to the appellant, that a letter dated 28th April, 1961 was written to respondent No. 1 requiring him to pay rent in future to the appellant. In cross-examination he, however, admits that respondent No. 1 has been maintaining his office since the date of his letting. It is an admitted

case of both the parties that the tenancy was created by negotiations between A.W. 2 Brij Behari Tawakley and R.W.2 Ishwar Dass Seth, son-in-law of respondent No. 1. In cross-examination of A.W.2 no suggestion was made that the premises were let to respondent No. 1 for use as residence as well as for the office of Vakalat, i.e. lawyer's office. Further no suggestion was also made that the lawyer's office was opened in the premises with the consent of the landlord, i.e. A.W.2. Ishwar Dass Seth as R.W.2 states that the premises were taken for residence and vakalat of respondent No. 1. There is no plea in the written statement of respondent No. 1 either that the premises were taken for purposes of residence and vakalat or that vakalat office was started with the consent of the landlord. R.W. 2 for the first time stated that the premises were taken for vakalat also. In the written statement, the plea is that the premises were taken for residential and non-residential purposes. Non-residential purpose is a very wide purpose. Respondent No. 1 ought to have pleaded specifically that the premises were taken on rent for the purpose of vakalat as stated by his son-in-law as R.W.2. Thus it appears, there was no plea in the written statement that the premises were taken for purposes of vakalat and as such evidence let in regarding user of premises for vakalat cannot be looked into at all. As already stated, no question was put to A.W. 2 Brij Behari Tawakley that the premises were let for use as residence and vakalat by respondent No. 1. The Additional Controller after appreciating the evidence of A.W. 2, Brij Behari Tawakley and R.W. 2 Ishwar Dass Seth, son-in-law of respondent No. 1 came to the conclusion that the premises were let for residential purposes. The Tribunal, however, has disbelieved A.W. 2 and has believed the statement of Ishwar Dass Seth, R.W. 2 for the reasons which are not sustainable in law. It is desirable to reproduce here para 10 of the Tribunal's judgment on this point:

"18. In the present case it is the common case of the parties that the premises in dispute had been let out to the appellant by Shri Brij Behari Tawakley through Shri Ishwar Dass Seth (RW2). The landlord has examined Shri Brij Behari Tawakley as A.W.2 who in his examination-in-chief deposed that in the year 1953 Shri Ishwar Dass Seth, the son-in-law of the appellant, had come to him and that the premises in dispute had been given on rent to the appellant for residential purposes and that since then the appellant had been residing therein. In the cross-examination, however, Shri Brij Behari Tawakley had admitted that the appellant is having his office in the premises in dispute from the very day that he took the same on rent. The fact that the appellant has been having his office in the premises in dispute from the very inception of the tenancy has also been admitted by Shri Madan Behari, the brother of the landlord, in his cross-examination who appeared as A.W. 3, although he stated that sometimes the appellant sleeps there also. This witness pleaded his ignorance about the fact that the room by the side of the room in which the office is maintained by the appellant, is used by the appellant's clerk (Munshi). Shri Vinod Behari appearing as A.W. 4 when asked about the room adjoining the office of the appellant stated that the same opened towards the Mandir side and was not visible from his

portion of the property. This fact, thus cannot be disputed that the appellant has been having his professional office in one of the rooms in the premises in dispute and according to the statement in cross-examination of Shri Madan Behari, his office is situated in the room mark A (in the site plan Ex. A.W. 2/7). Shri Mehra in his statement on oath as R.W. 5 has deposed that he has taken the premises in dispute both for residential and non-residential purposes of his professional practice and has been using the same as such from the very inception of the tenancy. According to him, he had been using room mark A for his office and the room behind the same mark B for use by his Munshi. Shri Ishwar Dass Seth appeared as R.W. 2 and deposed that he had got the premises in dispute for the residence as well as the legal practice of the appellant. Strangely enough, a new case was suggested to this witness in the cross-examination to the effect that he had represented to Shri Brij Behari Tawakley that the appellant wanted the premises in dispute for residence for a period of only 2 to 3 months. This was not the case of the landlord at any stage either in his pleadings or in his evidence, that the premises in dispute had been taken on rent by the appellant for a period of only 2/3 months. It is further the common case of the parties that neither the landlord nor his predecessor-in-interest ever objected to the appellant's having his office in the premises in dispute and using the same for his legal practice and also that the appellant has not kept any other office anywhere. The learned trial court has rejected the statement of Shri Ishwar Dass Seth on the ground that he is the son-in-law of the appellant and as such an interested witness. The fact has been ignored that in the same way Shri Brij Behari Tawakley who is the only material witness for the purpose of letting, is also the father of the landlord and his interest in the landlord cannot be ignored. In my view, the learned trial court was not justified in rejecting the statement of Shri Seth specially when, as noted above, in his cross-examination a new case had been set up by the landlord. The statement of Shri Seth could not, Therefore, be rejected and due weight has to be given to the same. Considering the statement of A.W. 2, the appellant and Shri Seth (R.W. 2) with the fact that the appellant was using the premises both for his residence and for his professional work since the inception of the tenancy without any objection from and on behalf of the landlord, in my view, it cannot be said that the premises had been let out for residence alone, specially when the appellant has not maintained any office anywhere in Delhi except in the premises in dispute from the time he took the premises in dispute on rent. In this view of the matter the premises did not remain under the purview of clause (e) of the proviso to sub-section (1) of Section 14 of the Act, as has been held in Dr. Gopal Das's case".

(20) The Tribunal thus, it seems, reversed the finding regarding purpose of letting on three grounds. Firstly, it is stated that the landlord suggested a new case while cross-examining Ishwar Dass, R.W. 2 Seth, by asking that respondent No. 1 wanted to take the premises on rent for a period of 2/3 months. This suggestion was irrelevant and neither any pleading nor any evidence is necessary to obtain an order of eviction u/s 14(l)(e) of the Act. There was no question for

the landlord to take such a plea in the eviction application as it is not a part of the cause of action. Secondly, the Tribunal observes, that no objection was raised on behalf of the appellant or his predecessor for the running of the office of respondent No. 1 in the premises in dispute and using the same for his legal practice. As already stated, there is no plea in the written statement of respondent No. 1 that the premises were taken for vakalat i.e. for using the same for legal practice. Eviction has not been claimed on the ground of mis-user of the premises within the meaning of Section 14(l)(e) of the Act. It was for the respondent No. 1 to plead that the premises were taken for purposes of Vakalat i.e. legal practice and in any case he ought to have pleaded that the landlord consented to the user of the premises for the said purpose. There is no question of raising any objection on the part of the landlord when there is no plea by the tenant that the landlord consented to the user of the lawyer's office or that the premises were let for use as such. Lastly, the Tribunal has observed that respondent No. 1 has not maintained only office anywhere in Delhi except in the premises in dispute. This observation is neither supported by any plea nor any evidence on behalf of respondent No. 1. Thus, it seems to me that all the three grounds on the basis of which the finding regarding the purpose of letting has been reversed are not sustainable in law. The Additional Controller believed the statement of the landlord A.W. 2 Brij Behari Tawakley when he stated that the premises were let for residence. It seems to me that the evidence on record taken as a whole reasonably supports the conclusion arrived at by the Additional Controller. In the absence of any writing showing the purpose of letting the purpose can be inferred from the nature of the premises, its design, location of the building, dominant use to which it has been put besides other factors. A.W. 2 Brij Behari Tawakley was a lawyer. He was aware of the terms of the lease deed Ex. A.W. 1/3 that the building can be used as residential house alone. When the user of the land over which the property is situated, in terms of the lease deed, is restricted, it may be presumed that the lessee of the land would use the land and building erected thereon in terms of lease otherwise there was always danger of his lease being forfeited. As already stated, the building in suit can be used for residential purposes only. Thus, it can be presumed that the landlord let out the premises to respondent No. 1 for residential purposes. A.W. 2 Brij Behari Tawakley deposed to that effect and without challenge in cross-examination. The only suggestion in cross-examination was that respondent No. 1 has been maintaining his office in the premises since the inception of the tenancy. The Additional Controller after appreciating the evidence and specially the statement of respondent No. 1 has observed that there is no specific room where his clients were entertained by him. Respondent No. 1 states as his own witness that he used to entertain his clients in any of the rooms of the premises in suit. The Tribunal has also relied upon *Dr. Gopal Dass Verma v. Dr. S. K. Bhardwaj and another*, 1963 D.V. 331 and *S. Kartar Singh v. Chaman Lal and others*, 1969 R.C.R. 360. In *Dr. Gopal Dass Verma (Supra)* three rooms out of four rooms were used for running the clinic by the tenant. Further in that case the landlord had demanded in 1942 an increased rent from his tenant. He had demanded the rent

from him as if tenancy all under paragraphs 4 of Part A in the Second Schedule to the Delhi and Ajmer Rent Control Act, 1952 i.e. the premises had not been let only for residence. In *S. Kartar Singh (Supra)* the landlord had written a letter to the tenant that he had no objection to the professional office being maintained along with residence. Thus there was express permission by the landlord to the tenant to have an office in the tenancy premises. These two cases are not at all applicable to the acts of the present case before me. There is no consent of the landlord either written or oral allowing the tenant to have an office of Vakalat in the suit premises. It is not alleged that the landlord ever demanded rent from the tenant treating the premises as non-residential. The predominant purpose as held by the Additional Controller is residential. The building is situated in residential locality. The lease deed between the appellant and the Delh Improvement Trust shows that the building is a residential house. Thus the evidence taken as a whole reasonably justified the conclusion arrived at by the Additional Controller that the premises were let for residence. The Tribunal Therefore fell in error in reversing the finding of the Additional Controller on the question of purpose of letting. There are no compelling reasons for the Tribunal to reverse the said finding. I, Therefore, hold that the premises were let to respondent No. 1 for residential purposes as held by the Additional Controller.

(21) The appeal is, Therefore, accepted setting aside the judgment and order of the Rent Control Tribunal. The judgment and order of the Additional Rent Controller for passing an order of eviction u/s 14(l)(e) of the Act against the respondents is restored, with no order as to costs. To be referred to the reporter.