

(2011) 01 DEL CK 0100

In the Delhi High Court

Case No : Regular First Appeal No. 51 of 2011

Chander Prabha

APPELLANT

Vs

General Talkies Ltd. and Another

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0100

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Anil Sharma, Abhishek Aggarwal, Nitesh Jain and Manohar Malik, for the Appellant; Madan Lal Sharma and Varun Nishal for R 1, B.D. Kaushik and Deepak Thakur for R 2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The present appeal is a clear reflection that human greed has no limits. The present appeal is also one of the litigations in the chain of litigation initiated by the Appellant which are nothing less than a sheer abuse of the process of law. I would go to the extent of putting that this litigation borders on contempt because of the severe misuse of the process of courts. Why are these strong observations being made by me would be clear from narration of the facts which are given hereinafter.

I may also state that during the course of arguments, when a picture emerged with regard to the abuse of the process of law by the Appellant, I had observed that in these type of litigations, actual costs should be the norm as held by a decision of a Division Bench of three judges of the Supreme Court in para 37 in the case reported as Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . The counsel for the Appellant sought a pass over for taking instructions from the Appellant and thereafter when the matter was again taken up on the second call, the counsel for the Appellant states that he had instructions from the Appellant to press the appeal.

2. In sum and substance the case as laid forth by the Appellant in the suit, which has been dismissed by the impugned judgment and decree as being barred by Order 2 Rule 2 and Order 23 Rule 1 of the Code of Civil Procedure, 1908 (CPC), was that the Appellant was a tenant in a portion of the right hand corner portion of Jubilee Cinema situated at Dr. H.C. Sen Road, Chandni Chowk, Delhi. The Appellant/Plaintiff claimed tenancy in the premises w.e.f. 1.4.1989 i.e. immediately after the death of her husband on 31.3.1989. The husband of the Appellant was a manager of the cinema and the cinema owners therefore for the due performance of his duties had given a place of residence in the cinema complex to the late husband of the Appellant Sh. Virender Singh Chauhan. The Appellant was living in this premises along with her late husband Sh. Virender Singh Chauhan and also her two sons namely Sh. Narender Singh Chauhan and Mr. R.S. Chauhan. After the death of Sh. Virender Singh Chauhan, the son Sh. Narender Singh Chauhan was appointed as a manager of the cinema in place of his father and the late husband of the Appellant and thus was allowed to stay in the subject premises as his father had also stayed. The contention of the Appellant before the trial court was that receipts were issued for tenancy at the rate of Rs. 500 per month only from 1.4.1991 to 28.2.1992 and no receipts were issued before this period though (tenancy allegedly commenced on 1.4.1989) or after this period. It is relevant to note that the receipts which have been issued of tenancy in favour of the Appellant are said to have been issued by none other than the son of the Appellant Sh. Narender Singh Chauhan, meaning thereby, the rent receipt issued in favour of the Appellant is of her own son and who has not been made a party to the present suit.

3. The further facts of the case are that the son of the Appellant Sh. N.S. Chauhan received a sum of Rs. 5 lacs from one M/s Parivar Properties Pvt. Ltd. which is the company being represented through its director Sh. Devi Das Garg, Respondent No. 2 in this Court and also the Defendant No. 2 in the trial court. The amount of Rs. 5 lacs was received by Sh. N.S. Chauhan from M/s Pariwar Properties Pvt. Ltd. on 12.5.2000 in consideration of vacating of the premises and M/s Pariwar Properties Pvt. Ltd. was to thereafter re-build a new complex in place of the old premises. Admittedly, as on date, the entire old premises being the Jubilee Cinema has already been completely demolished. The Appellant/Plaintiff is therefore claiming tenancy right with respect to a property which as on date does not exist. Also, the landlord of the property has not been made as a party to the present suit, though M/s Jubilee Cinema/General Talkies Ltd. itself was only a tenant in the premises and the said tenant handed over possession to M/s Pariwar Properties Pvt. Ltd. with the consent of and agreement with the landlord of the property. The Appellant filed an earlier suit for injunction on 13.5.2000 i.e., one day after her son received a sum of Rs. 5 lacs for vacating the property and in which suit for injunction, the stand of the Appellant was that she had gone out of station in April, 2000 and when she returned in May, 2000, it transpired that her son Sh. N.S. Chauhan had locked her out of the property. It was also categorically stated in the plaint that the son Sh. N.S. Chauhan had

removed the goods of the Appellant from the property i.e, admitting her dispossession. The Appellant in the earlier suit on the basis of her claim of tenancy rights, and the fact that she was in effect dispossessed from the property because the son Sh. N.S. Chauhan had removed her goods and put his locks on the property, prayed for the relief of injunction against her son who was sued as Defendant No. 1 and Jubilee Cinema/General Talkies Ltd. as Defendant No. 2 from further parting with possession of the suit property and also to restrain the said Defendants from illegally evicting the Plaintiff from the suit property without due process of law.

I may also note at this stage that a clever drafting of the suit cannot take away from the fact that the Appellant/Plaintiff even in the earlier suit clearly admitted that she was not in possession of the property and which becomes clear not only from the averments in the plaint but also from the relief clause in which injunction was prayed restraining the Defendants No. 1 and 2 in the said suit from further parting with possession, and which relief of injunction against further parting with possession could only have been claimed once the Appellant/Plaintiff in the said suit admitted that she was dispossessed from the property.

4. In the earlier suit for injunction the application for interim injunction filed by the Appellant was dismissed by the Civil Judge. The appeal against the said order was dismissed by the court of the Sr. Civil Judge, Delhi and against which order, the Appellant/Plaintiff filed a civil revision in this Court and which civil revision was also dismissed by this Court by its order dated 20.11.2001. The observations made by this Court for dismissing the claim for injunction of the Appellant/Plaintiff are relevant and are therefore reproduced as under:

At this stage the court has to decide whether the Petitioner has been able to make out a prima facie case in favour of grant of interlocutory injunction order. The case of the Petitioner is that she was accepted as tenant by Respondent No. 2 after the death of her husband in 1989 and rent @ Rs. 500/- p.m. had been regularly paid to Respondent No. 2. It is her case that rent receipts were issued in her favour only for the period from April, 1991 to February, 1992 even though she continued to pay rent to Respondent No. 2 to date but Respondent No. 2 had not issued any receipt. It has not been denied that the few rent receipts which she had produced in support of payment of rent are signed by none other than own son, Respondent No. 1, who was working as Manager with Respondent No. 2. It is not her case that Respondent No. 1 had authority from Respondent No. 2 to collect the rent from the tenant of the building or that he had right to let out the premises of the Respondent. At the same time she has admitted that her husband late Mr. V.S. Chauhan was the Manager in Jubilee Cinema and by virtue of this employment was given the premises for residence. It is admitted that she had been residing with her husband and the children in this premises. It has also not been disputed by her that after the death of Mr. V.S. Chauhan her sons were appointed as Managers and they continued to reside in the premises. The younger son of the Petitioner, however, shifted from the residence in 1996, but

Respondent No. 1 who was working as Manager in the cinema hall, was residing in the premises. He had the telephone in her name in the premises and also a ration card there. The Petitioner was living with her son. It has not been denied. The Petitioner has alleged that after she was inducted as tenant on monthly rent of Rs. 500/- she had been paying rent to the Respondent, regularly but actually had been issued rent receipt from April, 1991 to February, 1992. It is not understood as to why Respondent No. 2 stopped issuing the rent receipts and why she continues to make the payment of rent not for a few months but for over 8 or 9 years without getting even a single receipt. She has not been able to produce any document which is signed by any person authorized by Respondent No. 2 company accepting her tenant in the premises. Respondent No. 1 was working as Manager of cinema hall. It is the case of Respondent No. 2 that the proceedings for his ejection under the provisions of Indian Companies Act was taken after the employment of Respondent No. 1 was terminated. It was further not disputed any more that Respondent No. 1 after accepting Rs. 5.00 lacs from Respondent No. 3, the purchaser of the building, executed documents which showed that he had surrendered the possession of the premises. The Petitioner in the application had alleged that Respondent No. 1 and 2 were trying to deliver the possession of the premises to Respondent No. 3 but the documents show that the possession has already been surrendered. It also appears from the averments made by the Petitioner in the plaint that Respondent No. 1 had removed her goods and belongings from the premises and had vacated the premises and had put his lock over it. Respondent No. 1 was not residing in the premises after vacating it. She herself was also not living in the premises. She has alleged that her second son had acquired some premises near Yamuna Vihar where she had been residing during her absence the premises was vacated. Therefore, it is Petitioner's own case that she was not in physical possession of the premises. The report of the Local Commissioner showed that he has found a lock of the Petitioner on the door with the lock of the other Respondents. He did not report that other lock was of Respondent No. 1. Therefore, his report that the Petitioner is also in possession was on the basis that the lock of the Petitioner was also on the chain of the door. However, the allegations made in the petition clearly show that the Petitioner did not have any goods or belonging in the premises. Even local commissioner had found only a sofa set and a refrigerator inside and nothing else. As such, the Petitioner was not in physical possession of the premises. She cannot said to be in physical possession/occupation of the premises simply because a lock over the lock of the Respondents has also been put by her before the Local Commissioner visited the premises.

The husband of the Petitioner was Manager of Jubilee Cinema and after his death his sons were the Managers of the cinema till the cinema was closed. Apart from the rent receipts which bear the signature of Respondent No. 1 and which pertains to the year 1991-1992 no evidence has been produced by the Petitioner to show that any rent was paid by her to Respondent No. 2. On the other hand Respondents No. 2 and 3 have placed on record the documents which show that

under an agreement Respondent No. 1 had surrendered the physical possession of the premises to Respondent No. 3, purchaser of the building on receipt of Rs. 5.00 lacs from him. In view of these facts the rent receipts which are signed by son of the Petitioner i.e. Respondent No. 1 cannot make out a prima facie case of tenancy in favour of the Petitioner. Something more than that is required. There should be an agreement between the parties about the creation of the lease of the premises in favour of the Petitioner. There should be a definite assent to the continuation of the possession by the landlord. Such assent cannot be assumed on mere payment of rent by tenant and its acceptance by the landlord. In the instant case all the circumstances and evidence which have been adduced, apart from the rent receipts produced by the Petitioner, lead to irresistible conclusion that the premises was occupied by the husband of the Petitioner and after his death by the son of the Petitioner as Managers of the Respondent No. 2. Whether they were occupying it as tenant or licensee is not material but the Petitioner was not a tenant in the premises. She has not been able to show that she had only legal right in the premises.

(Emphasis supplied)

5. Having therefore lost out in three courts, the Appellant/Plaintiff knew that there was no point pursuing the litigation and therefore the said earlier suit was withdrawn in about May, 2002. This suit was withdrawn unconditionally and without any liberty to file a fresh case on the same cause of action.

6. The Appellant/Plaintiff however before withdrawal of the earlier suit, filed the present suit in March, 2002 which has been dismissed by the impugned judgment and decree dated 30.9.2010 by holding the preliminary issues of Order 2 Rule 2 and Order 23 Rule 1 against the Appellant. The issues which were treated as preliminary issues were issues No. 1 to 3 and 5 in the suit and which issues read as under:

Issues No. 1,2,3 and 5.

- 1) Whether the suit of the Plaintiff is barred under Order 2 Rule 2 CPC?OPD
- 2) Whether the suit of the Plaintiff is barred under Order 23 CPC in view of the suit earlier filed by the Plaintiff withdrawn without any leave of the court? OPD
- 3) Whether the suit of the Plaintiff is barred u/s 11 CPC?OPD
- 5) Whether the plaint does not disclose any cause of action and the suit of the Plaintiff is liable to be rejected under Order 7 Rule 11 CPC? OPD

It is issues No. 1 and 2 above, which are really the issues which have been decided by the trial court as preliminary issues and which has resulted in dismissal of the suit by the impugned judgment and decree dated 30.9.2010.

7. The trial court has very thoroughly and exhaustively compared the plaint in the earlier suit with the plaint in the present suit, and made the following observations, which merit acceptance:

21. In this case, it is admitted case of the parties that the Plaintiff had filed an earlier suit for permanent injunction before the court of Civil Judge, Delhi. The plaint filed before the court of Civil Judge is compared with the plaint filed before this Court.

22. Up to Para 11 of present plaint and Para 15 of the plaint filed before the Civil Judge, these Paras are almost similar except few changes in the phraseology or words. In para 12 of present plaint onwards, where the Plaintiff stated about the proceedings before the Civil Judge and report of Local Commissioner etc.

23. In para 17 of the plaint filed before the Civil Judge, it is the case of the Plaintiff that Defendant No. 1 i.e. son of the Plaintiff put his lock on the main door of the suit property. In the previous suit, the son of the Plaintiff was Defendant No. 1 whereas in the present suit, son of the Plaintiff has not been impleaded. It is mentioned in Para 11 of the present suit when the Plaintiff has pleaded that son of the Plaintiff and Defendant No. 2 were in collusion with each other. However, again it is observed that son of the Plaintiff has not been impleaded in the present suit. Thus, as per the previous suit filed by the Plaintiff herself, she was out of possession of the suit property due to the acts of her son who was impleaded therein as Defendant No. 1. It was further the case of the Defendant in the earlier suit that she was prevented to enter into the suit property by her son.

24. It was further the case of the Plaintiff in Para 23 of the earlier plaint that her son refused to remove the lock and the Plaintiff thereafter, also put her lock with chain on the door of the suit property. Thus, the Plaintiff after found a lock of her son at the suit property her lock with chain. Admittedly, she lost her possession qua the suit property before she reached at the suit property on 3rd May 2000. In Para 25 of the earlier plaint, where cause of action was pleaded, it was again the case of the Plaintiff that her son had refused to remove the lock from the suit property. Admittedly, the cause of action for possession of the suit property in favour of the Plaintiff was arisen at the time of filing of earlier plaint. However, the Plaintiff did not file the suit for possession and only confined her relief for decree for permanent injunction in the former suit. In Para 13 of the present plaint, it is pleaded by the Plaintiff that cause of action for filing of the suit has arisen on 27.03.2001 when the illegal action of demolition of the suit property was started by the Defendants. Thus in this case, the Plaintiff has not come against her dispossession but for against the demolition of the suit property by the Defendants. 25. In other words, admittedly the Plaintiff was already dispossessed at the time of filing of the previous suit and now she has come when the demolition of the property was started. In Para 29 of the present plaint, it is stated by the Plaintiff that she approached this Court for recovery of possession. Now the question arises, how the Plaintiff is entitled for the relief of recovery of possession. Admittedly, the cause of action for filing of the suit for recovery of possession had arisen when son of the Plaintiff had dispossessed her from the suit property. Plaintiff has not impleaded her son as a party in this case.

In these circumstances, how the Plaintiff is entitled to the claim for possession when she has not chosen to implead a person in this suit who dispossessed her as stated by her in earlier plaint. Moreover, it is not the case of the Plaintiff that she had withdrawn the earlier suit with a liberty to file fresh one wherein her son was also a party.

8. After making the aforesaid observations while comparing the plaints of the two suits, the trial court has referred to various judgments as also the applicable provisions of the Order 2 Rule 2 and Order 23 Rule 1 CPC and has held that the suit was barred as per Order 2 Rule 2 and Order 23 Rule 1 CPC. Paras 25 and 32 to 34 of the impugned judgment are the conclusions of the trial court, and which once again merit acceptance, and the same read as under:

25. In other words, admittedly the Plaintiff was already dispossessed at the time of filing of the previous suit and now she has come when the demolition of the property was started. In Para 29 of the present plaint, it is stated by the Plaintiff that she approached this Court for recovery of possession. Now the question arises, how the Plaintiff is entitled for the relief of recovery of possession. Admittedly, the cause of action for filing of the suit for recovery of possession had arisen when son of the Plaintiff had dispossessed her from the suit property. Plaintiff has not impleaded her son as a party in this case. In these circumstances, how the Plaintiff is entitled to the claim for possession when she has not chosen to implead a person in this suit who dispossessed her as stated by her in earlier plaint. Moreover, it is not the case of the Plaintiff that she had withdrawn the earlier suit with a liberty to file fresh one wherein her son was also a party.

32. The Hon''ble High Court in Civil Revision No. 1265/01 has already held by order dated 20.11.2001 that as per the report of the Ld. Local Commissioner, the Plaintiff was not in possession and as per the allegations made before the Hon''ble High Court clearly show that the Plaintiff did not have goods of belongings in that house. Even otherwise, the report of the said Local Commissioner was discussed in detail in the said order wherein it was held that the Plaintiff was not in possession of the suit property. Moreover, it is the case of the Plaintiff herself that she had lost the possession of the premises when she reached at the suit property on 03.05.2000. Thus in view of the observations made, herein, above and law discussed in this case, suit of the Plaintiff is barred U/o 2 Rule 2 CPC in as much as the relief of possession was available with the Plaintiff at the time of filing of former suit before the Civil Judge but she did not claim this relief in that suit. As per Order 2 Rule 2 of CPC, the Plaintiff had to include the whole of the claim. The cause of action for possession had already arisen at the time of institution of the former suit. But the Plaintiff did not include the said claim. It is also not the case of the Plaintiff that she had moved an application before the Court of Civil Judge, Delhi to include the claim of the possession. Thus the relief of possession might and ought to have been made ground of attack in former suit filed by the Plaintiff. It must be an issue directly

and substantially in the said suit. It is not the case of the Plaintiff that she obtained the leave of the court before the withdrawal of the suit. As per the provisions of Order 2 Rule 2 (3) of CPC, the Plaintiff cannot sue for the relief which she has omitted earlier. In the suit filed before this Court, no cause of action specifically stated for relief for possession. It is the case of the Plaintiff that the Defendant had started demolition of the suit property. Demolition of the suit property cannot confer the cause of action in favour of the Plaintiff when she had lost her possession at the time of filing of earlier suit. Thus the suit of the Plaintiff is barred under the provisions of Order 2 Rule 2 of CPC. The Defendants have successfully discharged the burden to prove Issue No. 1 and accordingly Issue No. 1 is decided in favour of the Defendants.

33. It is not the case of the Plaintiff that she had withdrawn the earlier suit with liberty to file fresh one. As it is already held by this Court that the relief of possession had already been arisen in favour of the Plaintiff at the time of filing of former suit. Thus the suit of the Plaintiff is also barred under the provisions of Order 23 CPC.

34. Similarly, as per explanation 4 of Section 11 of CPC, suit of the Plaintiff is also barred in as much as the relief of possession must be made ground of attack of former suit in as much as it was a matter directly and substantially in issue in earlier suit. It is already held by this Court, Plaintiff had already lost the possession of the suit property at the time of filing of earlier suit and therefore, the relief of possession was available with the Plaintiff at the time of institution of earlier suit. Accordingly, Issue No. 2 and 3 are decided in favour of the Defendants as Defendants have successfully discharged the burden to prove these Issues.³⁵ It is the case of the Plaintiff herself that when she reached at her house on 03.05.2000, her son put his lock at main door of the suit premises. His son has not been impleaded as a party in this case. Thus Plaintiff has no cause of action for filing of the present suit against the Defendants in this case. It is not the case of the Plaintiff that earlier of the Defendants had put the locks at the suit premises on 03.05.2000. It was the son of the Plaintiff whose lock was found on 03.05.2000 by the Plaintiff as per averments made by the Plaintiff in the former suit. Thus the Plaintiff has no cause of action against Defendants to file the present suit. Thus the Defendants have discharged the burden to prove this issue. For the reasons best known to the Plaintiff, the Plaintiff has not impleaded her son Sh. Narender Singh Chauhan in this case. Thus the intention of the Plaintiff appears to be malafide. This Court has no option but to observe that the Plaintiff has not come to this Court with clean hands. As per the material record, son of the Plaintiff has already issued a receipt for Rs. 5 Lakhs in favour of Defendant No. 2 and thereafter he executed Deed of Surrender of Occupancy rights in favour of Defendant No. 2. It appears that Plaintiff did not implead her son only with a view to conceal this material fact from this Court. The said fact has also not been mentioned in the plaint filed before this Court. Thus the Plaintiff has not come before the court with clean hands.

35. In view of the observations made herein, above, suit of the Plaintiff is dismissed. There is no order of cost. Interim orders are also vacated. Decree Sheet be prepared accordingly. File be consigned to Record Room.

9. A cause of action is a bundle of rights. It is on the basis of this bundle of rights that the relief is claimed. Merely because different reliefs are claimed in the earlier proceedings and the later proceedings, would not necessarily mean that the causes of action would be different. Relief is a conclusion as arising from a cause of action and ought not to be confused with the cause of action itself. A cause of action entitles a person to various reliefs and the requirement of law is that all such reliefs which flow from the same cause of action must necessarily be claimed in the suit which is filed. If from the cause of action, various reliefs arise, but, certain reliefs are not claimed and the said suit is thereafter withdrawn, the Plaintiff is prohibited by Order 2 Rule 2 CPC from claiming the reliefs which he ought to have claimed in the earlier litigation. A branch of the same doctrine is also contained in Explanation IV to Section 11 CPC which requires that what could have been made as a ground of attack or defence in an earlier suit, if not so done, is deemed to have been decided in the said earlier suit. I say that this is a branch of principle because though this principle appears in the provision of Section 11 of CPC which deals with resjudicata, however the said provision makes the intention of the legislature clear that by clever drafting, litigation should not be unnecessarily multiplied and a party should not be put to unnecessary burden of repeated litigation. Order 2 Rule 1 of the CPC is also to the same effect and it requires that the suit should be so drafted so as to afford a finality of the disputes between the parties. In furtherance of this principle, Order 23 Rule 1 provides that where a party withdraws a suit unconditionally without liberty to approach the court again on the same cause of action, then, civil suit on the same cause of action is barred. The object of this provision of Order 23 Rule 1 is that a person may feel that he or she may not succeed in litigation and therefore such person may simply withdraw that suit and harass the opposite party by filing a fresh litigation by claiming that since there was no decision on merits in the earlier suit, therefore, the decision in the earlier suit cannot operate as resjudicata and therefore the second suit can be maintained. It is to prevent this abuse of process of law that Order 23 Rule 1 clearly provides that unless liberty is sought of the court to file a fresh suit on the same cause of action, a second suit does not lie.

10. I may state that the malafides of the Appellant becomes further clear from the fact that ordinarily along with the appeal, the Appellant should have filed a copy of the earlier plaint for comparison by this Court with the present plaint, in order also to appreciate the impugned judgment and decree, but, the Appellant deliberately chose not to file the plaint in the earlier suit. Copy of the plaint in the earlier suit has been handed over to me by the counsel for the Respondent No. 1 and I have therefore taken the same on record being a document which is otherwise filed in the records of the trial court.

11. The learned Counsel for the Appellant vehemently argued that the cause of action in the present suit is different from the cause of action in the earlier suit because the Respondents had started demolition of the suit property and therefore the dispossession of the Appellant took place and consequently, it is against this dispossession, that the suit has been validly filed being a different cause of action than the cause of action in the earlier suit. I am afraid, I am unable to agree with the contention of the learned Counsel for the Appellant. I have already reproduced the relevant paragraphs of the impugned judgment and decree which compare the plaint in the earlier suit with the plaint in the present suit so as to show identity of the same. Further, I have also noted above that in the earlier suit, the Plaintiff/Appellant, and who is also the Plaintiff in the present suit, specifically sought an injunction restraining the further transfer of possession by the Defendants in the subject suit, and obviously, such a relief prayed clearly shows that the Plaintiff was out of possession. Therefore, it is not permissible for the Appellant/Plaintiff to say that the Plaintiff should be taken to be in possession on the date of the earlier suit and consequently, the relief of possession which is now claimed to be treated as a separate cause of action. Let us look at the issue also from another angle. I have already said that clever drafting cannot take away the real substance of a cause of action. Minor difference between two plaints or embellishment of facts in two plaints can exist however, the causes of action are really the essential ingredients which entitle a person to a particular relief. The essential ingredients in the earlier suit were of the claim of a tenancy right and the dispossession and which were also the ingredients in the present suit. Thus in the earlier suit also, the facts which emerged were that the Plaintiff/Appellant was out of possession and which is also the case in the present suit. The causes of action therefore in sum and substance of both the earlier suit and the later suit are really the same. Differences in the reliefs claimed in the two suits cannot mean that causes of action were different, they were essentially the same. The Plaintiff cannot wish it otherwise.

12. This Court sitting as an Appellate Court does not interfere with a judgment of a trial court merely because two views are possible unless and until the view taken by the trial court is clearly illegal or perverse or the same causes injustice. I do not find any illegality or perversity in the view taken by the trial court. In fact, the view taken by the trial court is the only view which could have been taken in the facts and circumstances of the present case. Any other view will result in grave injustice to the Respondents.

13. In view of the above, I do not find any merit in the appeal. In the very first para of this judgment, I have already said that the present appeal is a gross abuse of the process of the courts of the law. I have also narrated the detailed facts of the lack of any tenancy rights in the Appellant and also collusion between the Appellant and her son Sh. N.S. Chauhan for creation of non-existent tenancy right by issuing of rent receipts. I have also noted the observations made by this Court in the earlier litigation pertaining to denial of interim injunction and which civil revision was dismissed as against the Appellant/Plaintiff.

Accordingly, in view of the decision of the Supreme Court in the case of Salem Bar Association (supra), I find that the present is a fit case where the Respondents should file in this Court an affidavit of actual litigation expenses incurred by it for the present litigation. This affidavit of the Respondents be filed stating the costs which have been paid or be otherwise payable to its advocates in terms of an existing commitment for the present appeal. The affidavit must be supported by the certificates of the advocates. Such affidavit be filed within a period of four weeks from today and costs as mentioned in the affidavit shall be the costs awarded in favour of these Respondents and against the Appellant. The costs shall be payable within a period of four weeks after filing of the affidavit by way of costs. The appeal is therefore disposed of as dismissed.