

(1989) 01 DEL CK 0001

In the Delhi High Court

Case No : Regular Second Appeal No. 47 of 1973 and Civil Miscellaneous Appeal No. 1497 of 1987

J. Hakim Purshotam Lal

APPELLANT

Vs

Goverdhan Lal and Others

RESPONDENT

Date of Decision : 05-01-1989

Acts Referred:

Citation : (1989) 38 DLT 287 : (1989) 17 DRJ 138

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : I.S. Mathur, S.K. Gupta, R.L. Tandon, A.K. Tandon and C.L. Dhawan, for the Appellant;

Judgement

P.K. Bahri, J

(1) This second appeal has been brought against judgment and decree dated October 13, 1972, of Additional District Judge by which he dismissed the appeal filed against judgment and decree dated February 15, 1967, of Shri RK. Singhal, Sub-Judge 1st Class, Delhi dismissing the suit brought by Hakim Purshotam Lal appellant (since deceased) for possession in respect of one kothari located in building bearing municipal No. XII/28-36 (New) and 16-50 (Old), situated in Main Bazar, Subzi Mandi, Delhi, depicted in red colour in the plan filed Along with the plaint.

(2) This kothari was attached by the Sub-Divisional Magistrate in proceedings u/s 145 of the Code of Criminal Procedure. The question as to which of the parties was in possession of the kothari was referred to the civil court for report and Shri Rk Singhal, Sub-Judge, had after recording the evidence given a report dated April 28, 1965. to the effect that at the relevant time defendant-respondent No. I Goverdhan Lal has been in possession of the said kothuri. Hakim Purshotam Lal had instituted initially the suit on May 18, 1965, for declaration to the effect that the plaintiff was in possession of the kothari in question as a tenant under the Custodian Evacuee Property and for injunction restraining the defendant from

taking possession of that kothari in pursuance of the order which might be passed in his favor by the Sub Divisional Magistrate u/s 145 of the Code of Criminal Procedure, and the Sub-Divisional Magistrate be directed to give possession of the kothari to the plaintiff-appellant. It so happened that possession of the said kothari was delivered to respondent No. I by the Sub-Divisional Magistrate on May 31, 1965. The plaintiff-appellant thereafter amended the suit in order to seek the relief of possession of the said kothari. I may mention that during the pendency of the appeal the sale appellant-Hakim Purshotam Lal had died and C.M. No. 742/88 was moved for bringing on record the legal representatives of the deceased- appellant which application was not opposed and I had allowed the said application and directed substitution of legal heirs of the deceased appellant. The amended cause title has been filed during the course of agreements in the appeal on merits.

(3) Jamnu Mal was joined as one of the defendants in the suit. He has also died during the pendency of the appeal and his legal representatives have been already substituted in his place. At any rate. Jamnu Mal in the written statement did not claim any rights in the property in question.

(4) The building in question admittedly was a composite property as defined in Evacuee interest (Separation) Act and was under the administration and management of the Custodian. It was averred in the plaint that Hakim Purshotam Lal has been in occupation of the said kothari in dispute at the rental of Rs. 5 per mensem as tenant of the Custodian Since 1949 and has been using the said kothari as godown and somewhere in April 1959 he allowed Jamnu Mal to use the said kothari as licensee without payment of any charges because of his having friendly relations with him. The whole of the building including the said kothari was put to sale by public auction by the competent officer and highest bid of Rs. 60,000 of defendant No. 1 was accepted. However, the plaintiff put up the plea that in fact. he and Praduman Singh defendant No. 1 had some agreement under which the share in the property was to come to the plaintiff on paying his share of the consideration of the property. Hakim Purshotam Lal had instituted a civil suit claiming the share in the property as owner and challenging the sale deed issued in favor of defendant No. 1 but without success. It is averred in the plaint that defendant No. 1 had served a notice dated November 5, 1959, on the plaintiff demanding arrears of rent @ Rs. 11 per mensem in respect of shop No. XII/29, located in that very building uptill October 31, 1959 and @ Rs. 40 per mensem for the subsequent period. It was mentioned as a foot-note in that notice that Hakim Purshotam Lal was also in possession of a kothari as a tenant which he had sublet to some other person. It is alleged in the plaint that Jamnu Mal also was being threatened by defendant No. 1 for taking legal action against him and Jamnu Mal, after about one year of the receipt of notice, handed over the possession of the kothari to Hakim Purshotam Lal on October 25, 1961, vide receipt executed by Jamnu Mal in favor of the plaintiff. It was pleaded that defendant No. I had taken forcible possession of the said kothari on November 10, 1961. Besides challenging the findings given by civil court on reference

made in proceedings u/s 145 of the Code of Criminal Procedure, the plaintiff-Hakim Purshotam Lal claimed that being a tenant of the said kothari and he having not at any time surrendered his tenancy rights was entitled to get possession of the said kothari, Jamnu Mal in his written statement had supported the case of the plaintiff. It is only defendant-respondent No. 1 who had contested the suit. It was pleaded that the suit was not correctly valued for the purposes of court fee and jurisdiction. It was controverted that the plaintiff has been the tenant in the premises in question at any time. It was also pleaded that after the possession was restored to him defendant No. 1 had inducted one Kishan Lal Sachdeva in possession of the kothari as a tenant and thus, he is a necessary party to this suit. On merits, it was pleaded that one Sardar was allottee of this kothari under the Custodian and Hakim Purshotam Lal had taken illegal possession of the kothari from that Sardar and he had manoeuvred to obtain certain receipts from the Custodian showing him as the licensee in that kothari and thereafter he had parted with the possession of the kothari in favor of Jamnu Mal for some illegal consideration. It was controverted that Jamnu Mal was given possession of the kothari in dispute as a licensee by the plaintiff. It was pleaded that Jamnu Mal, who had no legal right to the possession of the said kothari, had surrendered the possession of the kothari to defendant No. 1. The admission made in the notice served by defendant No. 1 on the plaintiff with regard to the plaintiff being mentioned as a tenant of the kothari by him was sought to be explained by mentioning that the said admission was made due to wrong information given to him by the rent collector of the Custodian. It was pleaded that in fact, the plaintiff never responded to that notice and he in his reply dated December 4, 1959, remained completely silent about the said kothari and thereafter the plaintiff had told him that he had no concern with the said kothari and he should deal with Jamnu Mal who was in possession of the said kothari. It is mentioned that he had served a notice dated September 7, 1960, on Jamnu Mal requiring him to pay Rs. 50 per mensem as damages for the use and occupation of the said kothari or to surrender the said kothari. It is in response to that notice that Jamnu Mal of his own accord surrendered possession of the said kothari in September-October 1960. It has been controverted by him that Hakim Purshotam Lal has been a tenant in the kothari in question at any time.

(5) In replication the pleas taken by respondent No. 1 were controverted while the pleas taken in the plaint were reiterated. The following issues were framed by the trial Court :

(1) Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? ...OPD

(2) Whether the suit is maintainable in view of the judgment of Shri R.K. Singhal dated April 28, 1965 ? ...OPP

(3) Whether the plaintiff does not disclose any cause of action? ...OPD

(4)Whether the plaintiff is not a tenant of defendant No. I of the kothari in question? ...OPD

(5)Whether Kishan Lal is necessary party ? .. OPD

(6)Whether Jamnu Mal was a licensee under the plaintiff and delivered possession of the kothari in question to the plaintiff on October 25,1961 ?

(7)Whether the defendant is estopped from alleging that the plaintiff is not a tenant in case issue No. 4 is proved ?

(8)Relief.

(6) Issue Nos. 1, 2, 3 & 5 were decided in favor of the plaintiff and findings of those issues are not challenged by respondent No. 1 at any stage or by his counsel before me during the course of arguments. In issues 4 & 6 the trial Court held that it is not proved and that the plaintiff has been the tenant in the kothari in question at any time and that Jamnu Mal was the licensee of the plaintiff. So, it decided these issues against the plaintiff. Issue No. 7 was also held against the plaintiff and as a result, the suit was dismissed with costs.

(7) Before the first appellate court the findings given by the trial Court in issues 1,3 &5 were not assailed by defendant No. 1 and the plaintiff also did not assail the findings on issues 6 & 7. The only plea urged before the first appellate court was that the finding of the trial Court in issue No. 4 was wrong and it must be held that the appellant-plaintiff was a tenant in the kothari in question and thus, was entitled to have the possession of the said kothari. The appellate court affirmed the finding of the trial Court on this issue as well and dismissed the appeal leaving the parties to bear their costs in, the appeal.

(8) Mr. Ishwar Sahai, the learned counsel for the appellant, has assailed the findings of both the courts on issue No. 4 and had also urged that the challenge to the finding of the trial court in respect of issue No: 7 was not given up before the first appellate court and he has urged that this court should hold that in fact, respondent No. 1 was estopped from denying that the plaintiff-appellant was a tenant in the kothari in question.

(9) The first point to be decided in this appeal is whether the concurrent findings given by the Lower Courts holding that the plaintiff-appellant had failed to prove that he has been the tenant in the kothari in question are liable to be set aside by this Court in second appeal or not ? Unless and until the finding is shown to be vitiated by ignoring any material evidence on the record or the findings arrived at by misinterpreting some evidence, normally the question whether a person is a tenant in the premises in question is a question of fact and the concurrent findings of the Lower Courts are not liable to be questioned in the second appeal.

(10) EX. D3 is the letter issued in form "M" under Rule H-E(3)(a) by the Competent Officer issued to respondent No. 1 on his having purchased the

property in question with effect from August 30, 1958, requiring him to recover the rent as fixed by the Custodian from the occupants whose names were given at the back of the form. The name of Hakim Purshotam Lal appears as one of the occupants but it is not indicated in this letter as to in which portion Purshotam Lal was occupant. Admittedly, Purshotam Lal had been accepted as a tenant by respondent No. 1 in respect of the shop located in the same building. So, nothing would inurn on the basis of this particular letter to show whether Purshotam Lal was in fact, a tenant in the kothari in question or not. Ex. P11 is the order passed by the authorities on January 24, 1950, which shows that Chokha Ram admittedly Purshotam Lal's father was an occupant paying Rs. 4/1 (rupees four and one anna) per month as the charges presumably in respect of the kothari in question. He is also shown occupant in possession of a shop at the rate of Rs. 11 per month and he is mentioned as allottee of the said shop. This particular document does not show that Chokha Ram had been accepted as allottee of kothari in question. He is not accepted at least as tenant of the said shop as per this document. Ex. P12 is the copy of letter dated March 7, 1950, written by Hakim Chokha Ram to the Assistant Custodian mentioning that in the shop No. 18 allotted to him in the year 1948 vide allotment No. DCB/A/74/2734 dated July 28, 1948, he has been running his business accompanied by his eldest son Purshotam Lal and in fact, he mentioned that he was himself an old person unable to run the business himself, so he requested that the shop may kindly be transferred in the name of Chokha Ram Purshotatam Lal and his other sons leave no objection and the rent would be paid by Hakim Purshotam Lal. No specific order appears to have been made on this request. However, there is no dispute between the parties that the appellant-Purshotam Lal had been the tenant in shop No. 18 under the Custodian and he had been accepted as a tenant by respondent No. 1 as he accepted rent from him. This particular document does not make; any reference to the kothari in question. Ex. P8 is the document which came into existence on August 18, 1964, much after the sale of the property had been made in favor of respondent No. 1. Hence, nothing said in this document would be of any help to the parties on the issue in question. Chokha Ram had been shown as occupant at the rate of Rs. 5 per month in this letter and Purshotam Lal had been shown as occupant @ Rs. 12 per month in the shop. Ex. P9 is dated April 21, 1964, depicting the same facts. Ex. P 12 is the copy of order passed by Sarup Singh, Assistant Custodian, which makes reference to Chokha Ram as allotted of the shop at the rental of Rs. 11 per month and Chokha Ram in occupation as refugee in Godown @ Rs. 5 per month. I have gone through this particular document carefully and find that Chokhu Ram had not been accepted as tenant in that godown although it has been directed that he may be charged Rs. 5 per month as he is in occupation as a refugee. These are the only relevant documents proved before the trial Court. In none of these documents Purshotam Lal had been shown to be in occupation of the godown in question. He had not been shown in occupation of the godown as a tenant. Then, there are certain receipts proved in the case which only show that charges had been paid but all these receipts have the endorsement that the payments are being accepted

without prejudice and shall in no way affect the status of the contracting parties as to the allotment or legal aspect. So, mere issuance of receipts like Exs. P4, P5 and P6 in the name of Chokha Ram and one in the name of Purshotam Lal would not confer any status of tenant either on Chokha Ram or on Purshotam Lal in respect of the kothari in question.

(11) As for oral evidence is concerned, Public Witness 3 JamnuMal deposed about his having taken possession of the godown from the appellant and his having surrendered possession of the godown to appellant vide receipt Ex. P2. Surprisingly he does not say that while delivering possession of the godown to the appellant he had obtained any receipt from the appellant. Normally, in case this witness has given possession of the godown to the appellant, he should have obtained the receipt and not he should have given the receipt to the appellant. However, nothing turns on the fact whether Public Witness 3 had surrendered possession of the godown to the appellant or to respondent No. 1 Goverdhan Lal. The appellant could succeed in the suit only on the basis of his claim that he has tenancy rights in the said godown. Unless and until the appellant was able to prove that he has a right to have possession of the godown in question, the appellant could not get a decree for possession as claimed by him in the plaint. Oral evidence of the witnesses Public Witness 3, Public Witness 5 and of Purshotam Lal have been discussed in detail by the Lower Courts and they have disbelieved their statements with regard to Jammu Mal having given possession of the godown to the appellant for good reasons and it is not within the scope of second appeal to appraise the oral evidence on these facts and come to a different conclusion. Purshotam Lal-appellant deposed that he was the tenant of the Custodian and the kothari was allotted to him since 1950 but admitted that he was not in possession of any allotment letter. He was not able to produce any documentary evidence to show that he was at any time accepted as a tenant in kothari by the Custodian. Clerk from the office of Custodian was examined as Public Witness 7. He proved the documents Exs. P8 to P10 to which reference has been already made by above and Public Witness 9, also a Clerk from the office of Custodian, proved the documents Ex.P 11 to P13. So, there was no evidence whatsoever brought on record from the records of the Custodian which could show that Purshotam Lal was ever accepted as tenant or even as allottee in the godown in question. It is now admitted before me by counsel for the parties that the property in question was covered by the provisions of Evacuee Interest (Separation) Act and the Rules framed there under. The provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954, were applicable only to the evacuee properties and the Government built properties which former a central pool u/s 12 of the said Act, The property in question admittedly did not vest in the central pool u/s 12 of the said Act. Hence, the provisions of Section 29 of the said Act which confer the status of tenant on lawful occupants complying with certain prerequisites were not applicable to the property in question. Rule 11-E(3) (a) of the Evacuee Interest (Separation) Rules which is applicable to the property in question provides that where the property sold or transferred is in occupation

of a tenant, allottee or other person entitled to occupy the same, then immediate symbolic possession of the property is to be delivered and sub-clause (b) provides that the person in authorised occupation of any composite property shall be evicted by the purchaser or transferee for a period of two years except on the grounds mentioned in sub-clauses (i), (ii) (a) & (b) and (iii). A reading of this particular rule makes it clear that a protection of two years has been given to all lawful occupants including tenants from being evicted from the premises except on the grounds indicated therein but after the expiry of two years be parties would be obviously governed by the provisions of the Transfer of Property Act or by the provisions of the Delhi Rent Control Act if the occupant of the property is to be deemed to be a tenant under the definition of tenant given in the Delhi Rent Control Act. The mere allottee or lawful occupant of a composite property transferred under the provisions of the aforesaid Act has not been raised to the status of a tenant under the said Rule. In *Smt. Masoom Banoo Vs. Hari Singh and Others*, the same provisions came up for consideration and it was held that an allotment made by the Custodian of Evacuee Property does not create any tangible interest in the allottee. It was further observed that when the land is transferred to a particular person by the Competent Officer under the Evacuee Interest (Separation) Act, 1951, the transferee becomes the owner. In the cited case, a person was allottee of such a property under the Custodian but it was held that as he had not acquired any tangible interest in the said property, his right to remain in possession terminated when the owner chose to eject him.

(12) Counsel for the appellant has cited *Kartar Singh v. Barkat Ram* 1965 Plr 243, in which it has been held that the Custodian, who was managing the entire composite property under the Evacuee Interest (Separation) Act, has full powers to create any valid tenancy and if the property is sold, the purchaser becomes the landlord of occupant in whose favor the tenancy had been created. It is obvious that in case any tenancy had been created in favor of the appellant by the Custodian for the godown in question the appellant was entitled to get possession of the godown being a tenant in the said godown, but in the present case the fact is that the appellant was never accepted as a tenant by the Custodian, so anything said in this judgment would not apply to the appellant. The facts of this case clearly show that a tenancy was created in favor of a particular person in the composite property. However, in the judgment certain observations have appeared which go to suggest that even allottee could not be dispossessed by the purchaser and which are to the following effect :

"IN other words, the intention of Legislature was that these tenants or allottees should not be treated as trespassers, but they were to remain in possession as tenants of the purchasers instead of the Custodian and they would go on paying rent to them. It is not possible to countenance the said observations made in this judgment if they have the effect of laying down the law that even a person who is only allottee of the Custodian is to achieve the status of tenant under the purchaser of said composite property sold under the provisions of the Evacuee Interest (Separation) Rules 1951. Rule 11-E(3) does not confer the status of

tenant on the allottees of the said property. It gives only protection of two years from dispossession, except for certain grounds, to such allottees. The position of a tenant of the Custodian stands on a different footing. It has been argued by the learned counsel for the appellant that a person who falls in arrears of rent is liable to lose the protection of even two years under the aforesaid Rule and the allottee should be also treated to be tenant because it is not indicated in Rule separately that if an allottee falls in arrears of charges due from him, he also has to lose the protection of two years as given in the aforesaid Rule. So, it is argued that the possession of an allottee has to be put on the same footing as the possession of a tenant while construing the provisions of Rule I I-E. If the Legislature wanted to confer the status of a tenant on a mere allottee in the composite property covered by the provisions of the aforesaid Act, the Legislature would have indicated its mind by using the same language as it came to use while conferring the status of tenant on lawful occupants under the provisions of Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. This Rule 11-E(3) came to be incorporated vide notification S R.O. 1154 dated March 18, 1954. The Legislature has not, in its wisdom, though it proper to confer the status of deemed tenant on mere allottees of the composite properties covered by the provisions of the Evacuee Interest (separation) Rules. A perusal of the said Rule I I-E docs not lead to any inference that the status of tenant was sought to be conferred on mere allottees or lawful occupants of the composite property.

(13) In the present case, however, as discussed above, the appellant was not even allotted the kothari in question by the Custodian at any time. The mere fact that the appellant had, at one point of time, in occupation of the kothari in question, would not make the appellant either a lawful occupant or an allottee or a tenant in the kothari in question. In Kundan Lal Vs. Union of India and Others, while construing the provisions of Rules 30 and 31 of the Displaced Persons (Compensation and Rehabilitation) Rules, it was held that "occupation mentioned in this case is different from "occupation by way of allotment" as defined in Section 2(a) of the Administration of Evacuee Property Act 1950.

(14) Counsel for the respondent has made inference to Kanwar Bhan and Another v. Smt. Soma wanti 1969 Rcr 403. One of the pleas raised by the occupant of a shop in the said case was that he was authorised occupant as he had been paying rent to the Custodian. It was held that mere payment of rent did not change the character of an unauthorised occupant to that of an authorised occupant. In the cited case also, the printed receipts showed the payment of rent with the endorsement appearing thereon that the money was being recovered on account of rent. Still it was held that the occupant was liable to pay charges to the Custodian and such payment would not mean that the occupant had been allotted the premises. In the cited case also, there was no evidence that the Custodian had made allotment as understood u/s 2(j) read with Section 2(a) of the Administration of Evacuee Property Act, 1950. It was held that the acceptance of the payment has to be presumed u/s 10A(3), as u/s

114(1) of the Evidence Act the official acts are presumed to be done regularly. It was also observed in the said judgment that there cannot be any estoppel against the provisions of a statute and secondly an unauthorised act by a Government servant of accepting rent would also not estop the Government from recording the occupant as unauthorised occupant. So, unless and until it is shown from evidence that the appellant has been accepted as a tenant by the Custodian, there is no question of appellant getting any title as a tenant in the godown in question. In the present case, what to show that the appellant was a tenant in the premises in question, the appellant had even failed to prove that he was even accepted as an allottee of the godown in question by the Custodian at any time. As already mentioned that Chokha Ram's name appeared as occupant and the only order was made that he should be charged Rs. 5 per month but that does not mean that even Chokha Ram was at any time accepted as allottee of the godown in question by the Custodian or Competent Officer.

(15) Counsel for the appellant has then contended that the first Appellate Court was not legally right in dismissing the application moved by the appellant under Order Xli Rule 27 of the CPC seeking permission to adduce additional evidence. The appellant wanted to prove on record three circulars issued by the Chief Settlement Commissioner, Ministry of Rehabilitation, Government of India, dated March 19, 1958, March 15, 1960 and February 9, 1962. It is pertinent to mention that the property in question had been sold on August 13, 1958. So, any circulars issued pertaining to the properties governed by the provisions of Evacuee Interest (Separation) Rules would not apply to the property in question which has been sold earlier in point of time. In the circular dated March 19, 1958, it has been mentioned that the work of allotment and transferor houses in the evacuee pool has to be now wound up and in case of Government built houses where persons have been in occupation before April, 1954, their occupation has to be regularised. Then certain directions have been given that if there is entry in the official record proving that a person concerned has been in occupation of the property before December 31, 1957, then steps may be taken for regularising his occupation. This particular circular does not lay down that even if no order of allotment has been made and to tenancy had been created in respect of persons only in occupation even then those occupants have to be treated as tenants or allottees. No order has been obtained by the appellant on the basis of this circular from the authorities concerned conferring on the appellant the status of tenant or of allottee. So, this particular circular would not have helped the case of the appellant. As far as other two circulars are concerned, they are not applicable because they came to be issued much after the property in question had been sold.

(16) It has been then argued by the learned counsel for the appellant that respondent No. 1 was estopped from denying the status of the appellant in the kothari in question as a tenant. This particular issue of estoppel was not pressed before the first Appellate Court. Even otherwise there is no merit in this plea. It is true that respondent No. 1 had written a letter to the appellant requiring him

to pay arrears of rent in respect of the kothari in question and has also mentioned therein that the appellant had sublet the kothari and he would take separate action for the same, but admittedly appellant did not react to that letter. The appellant neither tendered any arrears of rent in respect of that kothari nor he made any reference to that kothari in the reply sent by him through a counsel in respect of this notice. Respondent No. 1 obviously made an erroneous admission of fact in that particular notice sent by him to the appellant. It is settled law that an erroneous admission of fact can be withdrawn by a party concerned unless he is estopped from doing so. The question of estoppel could arise if the appellant had acted on that admission made by respondent No. 1 by paying the rent in respect of that kothari to respondent No. 1. Counsel for the appellant has cited *Draupadi Beherani and Another Vs. Sambari Behera and Others*, , I have gone through this judgment and find that it is based on completely different facts. So, it is of no assistance to the appellant to show that respondent No. 1 is estopped from denying the status of tenant in the godown in question.

(17) I may also mention that the scope of second appeal as contemplated in Section 100 of the old CPC is also very limited. A finding of fact, may be it is based on document, remains a finding of fact which is not open to interference in second appeal. (See *Deity Pattabhiramaswamy v S. Hanymayya & Others* Air 1959 Sc 57) Respondent No. 1 had explained the reasons for making erroneous admissions in the notice sent by him to the appellant by mentioning that the allotment letter Ex. D3 mentioned the name of the appellant as tenant without indicating whether he is a tenant in the shop or the godown and he inferred wrongly that the appellant is also the tenant in the godown. The documentary evidence produced on the record clearly shows that the appellant was never a tenant under the Custodian. He was not even allottee under the Custodian. At no point of time he had been even accepted as authorised occupant by the Custodian. So, the admission made by respondent No. 1 in the notice sent by him to the appellant was erroneous. The two courts below have given similar findings of fact on the evidence and I do not see any reason differ with the said findings of fact.

(18) Counsel for the appellant has then made reference to the application moved in this Court for taking notice of subsequent events. It is mentioned in this application that the courts below have given a finding that it was Chokha Ram who was the tenant in the godown in question and since Chokha Ram had died on June 23, 1969, thus, the appellant, who is one of the legal heirs of Chokha Ram, has inherited the tenancy rights from Chokha Ram. Along with other heirs of Chokha Ram and thus, the appellant is entitled to have a decree for possession of the godown in question. The whole of the case of the appellant was based on the plea that he has been inducted as a tenant in the godown in question by the Custodian. There was no case: pleaded that Chokha Ram was the tenant in the kothari in question. So, it is not understood how death of Chokha Ram can be treated as a subsequent event for giving relief to the

appellant on the cases pleaded by him. It is also wrong on the part of the appellant to mention in the application that two courts below have given any finding that Chokha Ram was the tenant in the kothari in question. As discussed above, the documentary evidence led on the record only indicated that Chokha Ram was in occupation of the kothari and Rs.5.00 per month were being charged from Chokha Ram. No evidence has been brought on record to show that Chokha Ram was at any time accepted as tenant in the kothari in question by the competent authorities. There is also no evidence that he was even allotted the kothari in question by the Custodian. So, the appellant cannot succeed in getting relief of possession of kothari on the ground that since Chokha Ram had died, so he, being one of the heirs of Chokha Ram, has become entitled to get possession of the kothari in question. Moreover, the appellant, on the face of the facts mentioned by him in the application, is not the only heir of Chokha Ram. He has not set up the case in the plaint or by amendment of the plaint that he seeks possession of the kothari on behalf of all the other heirs of Chokha Ram.

(19) It is not necessary to mention the case law cited by the learned counsel for the respondent in opposing the application moved by the appellant seeking to bring on record the subsequent events. The application is liable to be dismissed on the short ground that from the evidence led on the record, it was not proved that Chokha Ram was at any time accepted as tenant in the kothari in question by the Custodian or even was recognised as allottee.

(20) So, examined from any angle, this appeal appears to have no merit and I, hereby, dismiss the appeal with costs.