

(2019) 08 DEL CK 0114

In the Delhi High Court

Case No : Regular Second Appeal No. 149 Of 2016

Parveen Singh & Anr

APPELLANT

Vs

Amir Singh (Deceased) Thr His Lr & Anr

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Transfer Of Property Act, 1882 — Section 53A
Delhi Rent Control Act, 1958 — Section 43(3), 50
Indian Contract Act, 1872 — Section 202

Citation : (2019) 264 DLT 34

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Richa Kapoor, K.C. Maini

Final Decision : Dismissed

Judgement

Najmi Waziri, J

1. Amir Singh, respondent no.1 (plaintiff) filed a suit claiming to be the exclusive owner of property admeasuring 125 sq. yds. being plot no. 7/2 Khasra No. 932 situated in Ram Nagar Colony in the revenue estate of Village Nawada, Uttam Nagar, New Delhi - 110059, which had come to his share pursuant to a Family Settlement with his brothers in 1975. The Settlement was reduced to writing on 10.08.1993. In the year 1991, he constructed some structure thereon of which one shop was let out to defendant no.2 (appellant no.2) on a monthly rent of Rs. 1,400/-. Over the years, the rent of the suit property was increased to Rs. 2,500/- per month. It is this shop which is in dispute.

2. After June 2000, the tenant Ms. Ram Kaur (appellant no.2) wife of late Mr. Pratap Singh, stopped paying the rent. Amir Singh issued a Legal Notice dated 17.01.2001, posted it on 18.01.2001 by Registered Letter and UPC. It was the plaintiffs' case that instead of responding appropriately to the Legal Notice, the defendant (appellant no.1) started projecting himself as the owner of the said shop, as having purchased it for a consideration of Rs. 3 lacs by way of Power of

Attorney and other supporting papers including a Will, purportedly issued by Roshal Lal, son of Amir Singh. The plaintiff contended that he had never issued any authority to his son Roshan Lal, to execute any such documents, therefore, the documents which were relied upon by the defendants were forged or of no consequence. Hence, the documents were liable to be declared null and void. Plaintiff no.2 - grandson and General Power of Attorney holder of Amir Singh, was so arrayed because the latter had become old and infirm and unable to pursue the case himself. The Attorney claimed to have relevant knowledge and information about the facts of the case. On the contrary, however, the defendants/ appellants had contended that they were the rightful owners of the property; that Amir Singh had executed a document in favour of his son Roshan Lal for a consideration of Rs. 40,000/- in July, 1992 and on that basis the shop (suit property) was let out to Ram Kaur in August, 1992 at a monthly rent of Rs. 700/-.

3. At some stage, Roshan Lal tried to dispossess Ram Kaur from the property, but in a suit for injunction, Roshan Lal had made a statement that he would not dispossess the tenant except by due process of law. A subsequent endeavour of said Roshan Lal to disconnect the electricity connection from the rented premises, was also disposed-off on his statement that he had no objection if the tenant Ram Kaur, got a connection in her own name. Later on the rent was deposited in the court of the Rent Controller because Roshan Lal refused to accept the same.

4. The defendants had claimed that they purchased the 'suit property' on 10.01.1997 from Roshan Lal, particularly in favour of Praveen Kumar, defendant (appellant no.1) for an amount of Rs. 3 lacs; the supporting documents which were executed included a GPA, Will, Agreement, Receipt and Affidavit; they were already in possession of the property. The plaintiffs, however, had denied having knowledge of any such documents or that the same were legally admissible, because no authority or right had been passed-on from Amir Singh, the owner of the property, to his son Roshan Lal, the purported seller of the suit property to the defendants. It was also stated on behalf of the plaintiffs' that Roshan Lal was a liquor addict and under the influence of liquor, he would not even recognize his close relatives.

5. Having considered the facts and the evidence, the learned Trial Court decreed the suit. Upon challenge of the same by the defendants/ appellants, the First Appellate Court upheld the judgment and decree. In effect, there are two concurrent judgments in favour of the plaintiffs/ respondents. Now this appeal seeks to impugn these two judgments on various grounds:

(i) that the prayers sought in the suit were vague;

(ii) that the suit was pre-mature because it was filed on 31.01.2001, although the Legal Notice which preceded it on 17.01.2001 had determined Ms. Ram Kaur's (appellant no.2) tenancy w.e.f. 28.02.2001. In other words, before the

expiry of the said period, the suit could not have been filed.

However, the Court would note that in addition to the decree of declaration, cancellation and possession, the plaintiff had also sought mesne profits and arrears of rent till the pendency of the suit;

(iii) that the Civil Court lacked jurisdiction to try the suit; because the case was admittedly covered under the Delhi Rent Control Act, 1958 (DRC Act); the rent amount in the legal notice as well as in the plaint is Rs. 3,500/- and the suit property is situated in an area which is covered under the DRC Act vide Notification dated 21.04.1962;

(iv) that the claim of the appellants, that they were in rightful possession of the suit property as its owner; through the transfer affected by Roshan Lal, who was its owner, has not been adjudicated upon, and that, appellant no.1 is in rightful possession of the same under section 53A of the Transfer of Property Act, 1882 (TP Act), pursuant to the aforesaid deeds of conveyance i.e. GPA, Agreement to Sell, Receipt and registered Will; it is emphasised by the appellants that the transfer of interest was on the basis of the POA, for consideration.

(v) that the questions of law raised at the appellate stage were neither discussed nor adjudicated upon by the First Appellate Court.

6. The learned counsel for the appellants contends that the appreciation of the records and evidence was erroneous, because it was contingent only upon the plaintiff admitting the documents relied upon by the defendants, albeit the said documents stood proven. The other argument is that the appellant never admitted to Roshan Lal as the landlord and a number of litigations were pending between him and the appellants. But Amir Singh was never in the picture as the landlord. The appellant refers to two rent receipts issued by Roshan Lal in their favour (Page 163 of the paper-book). A suit [Suit No. 110/1993] had been filed by the appellants against Roshan Lal, seeking restraint from dispossession and from disconnection of the utilities such as electricity and water. On 10.03.1993, Roshan Lal stated before the Court that he would not dispossess the appellant without following the due process of law. Not only that, proceedings were subsequently initiated before the Rent Controller under section 43(3) of the DRC Act by the appellants against Roshan Lal, in which orders were passed on 14.09.1993. Rents were deposited in the Court because the landlord, Roshan Lal was refusing to accept the same. Subsequently, the property was purchased from Roshan Lal, the erstwhile landlord/ owner of the property by registered GPA dated 10.01.1997, SPA, Receipt, Will of the same date in support of the Agreement to Sell. The appellants contend that, except for denial by the plaintiff, these documents were never taken into consideration during the adjudication, but in law, they could not be disregarded by the two Courts below.

7. The questions of law raised by the appellants are:

(i) Whether a suit would be maintainable in which conflicting reliefs are sought

i.e. eviction of the tenant, while seeking a declaration that the documents filed by the tenant are null and void?

(ii) When there is admitted tenancy of Rs. 2,100/-, whether the Civil Court would have jurisdiction to adjudicate the same?

(iii) Whether the appellants' alleged right in the suit property by way of the documents of conveyance and physical possession of the suit property under section 53A of the TP Act read with section 202 of the Indian Contract Act, 1872 could be ignored in the adjudication?

(iv) Whether an adverse inference could be drawn when the plaintiff has not stepped into the witness box?

8. The appellant relies upon the following judgments in support of their contentions. Shri Ramesh Chand Vs. Suresh Chand & Anr, RFA No. 358/2000, High Court of Delhi; Karamvir Vs. Maan Singh, RSA No. 27/2014, High Court of Delhi; Shri Surjeet Singh & Anr. Vs. Shri Paramjeet Singh, RSA No. 240-241/2006 & C.M.8875/2006, High Court of Delhi; State of Maharashtra Vs. Pravin Jethalal Kamdar (Dead) By Lrs., (2000) 3 SCC 460; Gorige Ailamma Vs. Utkoori Somaiah and others, Second Appeal Nos. 1385, 1554 and 1665 of 2005, Telangana High Court; State of West Bengal Vs. Subimal Kumar Mondal, AIR 1982 Cal 251; Union of India Vs. Vasavi Coop. Housing Society Ltd., (2014) 2 SCC 269; Bhagwati Prasad v. Chandramaul, AIR 1966 SC 735; Chittoori Subbanna v. Kudappa Subbanna, AIR 1965 SC 1325 and Gopal Krishnaji Ketkar v. Mohamed Haji Latif, AIR 1968 SC 1413.

9. The Court would note that each of the above noted issues have been duly considered by both the impugned judgments. Amir Singh had premised his suit on ownership of the property on the strength of a Family Settlement with his brothers; which was subsequently reduced to writing on 10.08.1993. The Halqa Patwari concerned viz. Mr. Manish (DW4) had admitted in his cross-examination that Khasra No. 932 for the year 2000-01 (Ex. DW4/1 and Ex. DW4/2) fell under Ram Nagar colony; it is not an agricultural land and in the Khatoni, one of the names recorded as its bhoomidar is Amir Singh i.e. plaintiff no.1. The defendants own witness had admitted that the said plaintiff was the bhoomidar of the said suit property. He also stated that now the land vests in Gaon Sabha. Be that as it may, the fact whether it was vested in the Gaon Sabha was not the issue being tried in the suit. Evidence of DW4 was only to prove whether Amir Singh was recorded and/or recognized as the bhoomidar of the suit property. The said issue stands duly proven in the affirmative in favour of Amir Singh.

10. The plaintiff was able to prove his right on the suit property by leading positive evidence such as a site plan of plot no. 7/2 (Ex. PW1/2) and a copy of Family Settlement. These documents stand proven. The contention of the appellants that the Family Settlement was actually a partition deed and should have been registered, is untenable for the reason that the nomenclature of the document does not determine its nature. What is essential is to see what the

document purports to be. The impugned order dated 30.03.2016 has examined the issue and rightly found that the Family Settlement only records what was agreed between the parties eighteen years ago and it would not create, assign or otherwise limit the right, title or interest over the property. Hence, in the facts of the present case, it was admissible in evidence. Furthermore, the Court would note that the defendants/ appellants have sought right in the property only on the basis of Amir Singh's right flowing to them through his son Roshan Lal. However, if they dispute the right of Amir Singh, then Roshan Lal could not have possibly transferred any rights to them. Furthermore, the defendants/appellants have specifically admitted to the plaintiffs' Family Settlement, in their Written Statement, as under:

"...ON MERITS

1. That para 1 of the plaint as regard to the ownership of the plot in suit is absolutely false and deceptive and hence denied. Actually the Defendant No.1 is the owner and in possession of the shop No. 10 which stands constructed on the area of 61.6 sqr. yards of Plot no. 7/2, out of Kh. No. 932 as the same was purchased by the Defendant No.1 from Roshan Lal (who was the son of the Plaintiff No. 1 and father of Plaintiff No.2) vide Registered GPA, Agreement and the Affidavit dated 10.1.1997 for Rs. 3,00,000/-. The Receipt of consideration amount of Rs. 3,00,000/- which was executed and duly signed by Roshan Lal. Photocopy of GPA and Agreement are attached herewith. The Family settlement among the co-sharers as a result of which plot came to the share of the Plaintiff is admitted.

2. That Para No. 2 of the Plaint to the extent that Family settlement was made by the co-sharers and due to that Plot No. 7/2 had come to share of the Plaintiff No.1 is admitted....."

(emphasis supplied)

11. Quite clearly, when the defendants have themselves admitted the document through which Amir Singh's right, title and interest in the property gets established, he was not required to prove anything further. In addition, as noted above, the Halqa Patwari (DW 4) too has admitted that Amir Singh was one of the recorded bhoomidar of the property in Khasra No. 932, which included the suit property. The learned Trial Court has also reasoned that an unregistered partition deed could be acted upon for collateral purposes. It has referred to the judgment of the Supreme Court in Tek Bahadur Bhujil vs. Debi Singh Bhujil AIR 1966 SC 292, which held that where a document is drawn up only to serve the purpose of proof or evidence of what has been decided by the parties, the same constitutes a mere memorandum recording of something and would not require a registration or stamping, insofar as it does not form the basis of their rights in any form over the property. Reliance was also placed upon two other judgments: Roshan Singh vs Zile Singh AIR 1988 SC 881 and Madan Lal Kapur vs Subhash Lal Kapur 105 (2003) DLT 987. To the converse, the defendants/ appellants have

laid immense reliance on the fact that all three of their documents transferring rights upon appellant no.1 stood proven, therefore, they were in the property in their own right and the suit ought to have been dismissed. However, they have failed to produce any document which could constitute the vital link whereby the authority, right or interest had been transferred by Amir Singh to his son Roshan Lal, for its onward encumbrance or transfer to any third party, such as the appellants herein. This is the vital missing link in the chain of transfer documents. If Roshan Lal did not have any document or authority of this nature, he could not have possibly transferred any right, title or interest to appellant no.1.

12. The appellants have argued that Amir Singh had all along permitted Roshan Lal to represent to the world at large, that the latter was the legitimate Power of Attorney holder of the owner - Amir Singh, and that is why the rent was collected by Roshan Lal, and tenants were inducted into the suit property through him. It is argued that now after the documents had been executed in their favour by Roshan Lal, Amir Singh cannot resile from the same. The Court would note that there is, however, nothing on record to prove that Amir Singh had ever represented to the world at large or to the appellants in particular that he had given any authority to his son Roshan Lal. Therefore, the aforesaid contention is without basis and is, accordingly, rejected.

13. The litigation between the appellants and Roshan Lal did not, at any stage, involve Amir Singh, therefore, the statements made by Roshan Lal were binding only to him and would not in any way encumber the rights of the admitted owner Amir Singh. The right of Amir Singh, if at all, had been transferred to Roshan Lal on the basis of a Will, would come into effect after the demise of Amir Singh; however, Roshan Lal pre-deceased his father, therefore, such purported Will also would not come into effect. The registered Will purportedly executed by Roshan Lal in favour of Parveen Singh and relied upon by the appellants was not in the knowledge of Amir Singh, and in any case it would come into effect only after the demise of Roshan Lal; therefore, their right and interest in the property had not fructified at the time of filing of the suit. Roshan Lal died in the year 2000 and his evidence was never led in support of the defendants' claim.

14. The learned counsel for the respondent refutes the appellants' aforesaid arguments on the ground that Amir Singh never executed any document in favour of Roshan Lal; that the stamp paper bearing no. 24761, as shown in Ex. DW2/1, shows that it was purchased by Mr.Amir Singh, s/o Mr. Dalip Singh, R/o H. No.1, Village Nawada. The said document was for the purposes of an indemnity bond and not for a GPA. Furthermore, Amir Singh has not signed the register, for purchase of the stamp papers; the signatures of the Stamp Vendor are not appended to the said pages; nor does it mention the name of the Stamp Vendor. It is argued that Roshan Lal could not have transferred a better title than what he had. Since he did not have any right, title or interest from his father, he could not have transferred any interest to the appellants. The Stamp Vendor - Mr.

Khem Chand (DW2) had deposed (Page 257 of the paper-book) to the effect that the indemnity bond is the only document which was sold to Amir Singh, s/o Mr. Dalip Singh, however, the entry just above the said document pertains to Mr. R.N. Sharma s/o Mr. Shiv Sahi whereas entry nos. 24762, 24763 and 24764 could not have been used for the purpose of transfer of any right, title or interest in favour of Roshan Lal by Amir Singh. He argued that, therefore, these documents produced by the appellants could not be admitted as documents of transfer of immovable property. He contends that the Trial Court has dwelt upon these issues at great length as under:

".... Plaintiffs examined PW1 in support of their pleadings. PW1 reasserted the contents of plaint and nothing material came during cross examination of PW1 which can be of any help to the defendants. DW1 also maintained his stand. DW4 though deposed that land vests in Gaon Sabha but at the same time also deposed that recorded bhoomidar of the suit property is plaintiff no.1.

Defendants have relied upon certain documents executed by Sh. Roshan Lal in favour of the defendant no.1. The said documents are General Power of Attorney executed by Sh. Roshan Lal in favour of the defendant no.1. As per hand writing expert i.e. DW7 the signatures on the said General Power of Attorney pertains to Sh. Roshan Lal only. Even if it is taken that General Power of Attorney was duly executed by Sh. Roshan Lal in favour of the defendant no.1, then also defendants have failed to prove as to how Sh. Roshan Lal was authorised to sell the suit property or to deal in any other manner with the suit property. Defendants have relied upon a Will which though proved by DW6 has not been produced in original. Even if it is taken that will was duly executed in favour of the Sh. Roshan Lal by the plaintiff no.1 then also the will is operative after the death of the executant. Therefore, the said Will also cannot confer any right upon Sh. Roshan Lal with regard to the suit property. In view of the above discussion, it is clear that defendants have miserably failed to show that Sh. Roshan Lal had any right or interest in the suit property. A person cannot pass a better title than he himself has. On the other hand, defendants have admitted that originally the suit property vested with the plaintiff no.1 as per family settlement. The said settlement has also been duly proved by the plaintiffs. Hence, I am of the considered opinion that plaintiff no.1 is the owner of the suit property and has locus standi to file the present suit. Present issue is decided in favour of the plaintiffs and against the defendants...."

15. The next and main point argued by the appellants is that the Civil Court had no jurisdiction to try the suit because the rent was Rs. 2,500/- per month and the area was notified under the DRC Act by a Notification dated 21.04.1962, therefore, only the Rent Controller had the jurisdiction to adjudicate upon the lis. Although this argument is ex facie attractive, the pleadings and the facts of the case, can only conclude a rejection of the argument. In their Written Statement, the defendants/ appellants had not raised this issue because they had asserted their right in the property as its owner on the basis of the aforesaid documents.

The learned First Appellate Court had also taken into consideration the fact that vide Legal Notice dated 17.01.2001, the tenancy stood terminated because the tenant Ram Kaur had not paid rent since June, 2000; was to have handed over its possession by 28.02.2001. However, in the interim, the plaintiff got to know that defendant no.1 (appellant no.1) had started claiming to have purchased the suit property for Rs. 3 lacs and asserted retention of it as its owner. This position was asserted by the defendants in their Written Statement. It is in these circumstances, that the suit for possession was filed. Additionally, it has reasoned that even if the case was to have been filed before the Rent Controller, the latter could not have decided the issues raised in the suit, because on one hand the tenancy had been denounced and on the other hand, the right of the defendants was sought to be asserted on the basis of transfer documents. Whether the said documents were legitimate or not could only be decided before the Civil Court, whereas the learned Rent Controller would get jurisdiction only in a matter where the tenancy was admitted. The learned First Appellate Court has reasoned as under:

"... 35. As above said, Counsel for Defendant has relied upon the ratio of judgement reported at (1974) 2 SCR 544, AIR 2003 SC 1475, 1973 RLR 701, 70 (1997) DLT 567. It is to be borne in mind that law made by Parliament applies to all whereas ratio of a case laws (sic) applies to the more or less similar facts/ circumstance/ situation. All these cases, however, are distinguishable on facts. In all these cases, tenant has taken the plea of protected tenancy and of jurisdiction resting with the Rent controller whereas in the present case it is not the case of the Defendants that they (sic Defendant No.2) are tenant or that the court has no jurisdiction as relationship is governed by Rent Control Legislation. On the contrary they denounced tenancy and claimed ownership in Defendant No.1. Plaintiff filed the suit not to claim tenanted premises from tenant but from persons who are holding possession setting up title in himself contrary to that of Plaintiff. It is specifically stated in the plaint that after receipt of Notice Ex. PW1/3 (inadvertently both family settlement and notice has been given same exhibit number), Defendants have started claiming themselves to be owner of the property on the basis of sale document stated to have been executed by Roshan Lal and consequently, Plaintiff filed the suit for declaration/ cancellation and possession and hence the case laws relied upon by the Defendants are not of any help to the Appellant/ Defendants.

36. In case cited as AIR 2007 SC 1077 it was held that decree/ order passed by a Court having no jurisdiction over the subject matter, is nullity and can be challenged in any proceeding. There is no two opinion about the ratio that decree/ order passed by a court having no jurisdiction will be nullity. But in the facts and circumstances as pleaded by the Plaintiff, it is the civil court which has jurisdiction to try the case. Reliance is placed on 1970 PLR 223 titled as Sada Ram and Others v Gajjan, Division Bench of the Hon'ble High Court of Punjab and Haryana held "..... that the denial of the relationship of landlord and tenant by the tenant in his written statement to a suit for ejectment determines a

tenancy forthwith, thus giving the right to the Landlord to the possession of the leased property, when the lease is not for a fixed period or a tenancy at will get determined by such denial or renunciation...."

"... 37. In the present case as has been seen that Plaintiff sent notice dt. 17.01.2001 Ex PW1/3 to Defendant No.2 contending that she had not paid the rent @ 2500 p.a. (sic) since July 2000 and consequently tenancy stood terminated and required that she should hand over the possession by 28.02.2001. It has been pleaded after information of notice, defendant no.1 started claiming to have purchased the shop for Rs. 3,00,000/- from Roshan Lal on the basis documents and possession was retained as owner. In the common written statement both Defendants have maintained the said stand of the Plaintiff as they claimed ownership in the property. Plaintiff suit might have been hit by the Section 50 of DRC Act if he despite such pleading would have claimed tenancy in Defendant No.2. In para 9 and 10 of the Plaint it has been pleaded that Defendant are asserting possession on the basis of sale documents in favour of Defendant No.1 and thus possession amounts to possession of trespasser. Rent Controller gets jurisdiction when the relationship between the parties is that of landlord and tenant or when Plaintiff/Petitioner pleads respondent as tenant and rent is below 3500/- p.m. But here before lis began, as per Plaintiff, Defendants renounced tenancy and therefore Plaintiff moved the civil court as it was civil court which could only grant the appropriate relief in the facts of the present case. In the present case, plaintiff could not have got the entire relief from Rent Controller because before Rent Controller he would have been faced by ownership title of Defendant No.1 and Rent Controller cannot decide title. Situation would have been different, if Defendant No.2 had maintained tenancy may be under Defendant No.1 and only Defendant No.1 had claimed title. Hence, only civil court has got jurisdiction to decide the dispute of the kind pleaded by the parties here...."

16. With respect to the jurisdiction of the Civil Court, it has reasoned that since the plaint itself mentions that the appellant/ tenant had denied the plaintiffs' title and right in the property, the suit was filed against a trespasser.

"...33. Per contra it has been contended by the Counsel for Respondent/ Plaintiff that Defendants have not in their written statement taken shelter under the umbrella of DRC Act. Apart from this, they have claimed ownership in the property and even alternatively not taken plea that their possession is protected under DRC Act. It has been further contended that Defendants has (sic) not taken plea in the written statement that suit is barred under Section 50 of DRC Act and therefore ground not taken before the Trial Court cannot be agitated for the first time in appeal. It has been further contended that once tenant has denounced the title of landlord and has set up title in himself, tenant forfeits his right of tenancy and in such event, civil court has got jurisdiction to grant decree for possession against Defendant. He has relied upon 2015 (4) CCC 583 (P&H).

34. Reading the plaint as a whole as filed by the Plaintiffs, it does not leave any

doubt that civil suit was filed by the Plaintiff as Defendants denounced the character of Defendant No. 2 as tenant and claimed title in Defendant No.1 in respect of the suit property on the basis of sale deed by a person with no authority and therefore it caused a cloud on the title of the Plaintiff No.1. Defendants as said above have also denounced the character of Defendant No.2 as tenant and claimed ownership in Defendant No.1 in their written statement. In these circumstances whether still Plaintiff was required to go to the Rent Controller for remedy.

17. The argument of part performance of the Agreement to Sell under section 53A of the TP Act is being taken for the first time in the Second Appeal; it is impermissible because it is a matter of fact that it should have been raised, issue framed and adjudicated earlier. Referring to the appellants' Written Statement, the learned counsel for the respondents submits, that there is no plea that the appellant had come into possession by operation of section 53A of the TP Act. He refutes the applicability of section 202 of the Indian Contract Act, 1872 in as much as there is nothing on record to show that Amir Singh ever transferred any right, title or interest in the said property to his son. It is argued that although a question of law can be raised even at the appellate stage, it has to be rooted in the pleadings i.e. a substratum or edifice must be set up, so as to infer the question of law, which is sought to be raised at a subsequent stage.

18. What emanates from the above, is that while the appellants claim to be the owner of the property on the basis of the documents, they have not been able to prove how this right flowed to them, when the admitted owner Amir Singh had not transferred any right to Roshan Lal, the purported seller of the rights to the defendants. Therefore, in the absence of any authority from Amir Singh, nothing could have been transferred by Roshan Lal to the defendants. Secondly, the defendants/ appellants had already denounced the tenancy and asserted their right in the property as owners, therefore, there was nothing left to be agitated before the Rent Controller, and argument that the Civil Court had no jurisdiction becomes untenable. In any case, this argument was never raised before the learned Trial Court. Furthermore, the defendants cannot speak in two voices, i.e. on one hand they claim to be the owner of the suit property and simultaneously they claim to be its tenant so as to seek the protection of the DRC Act. Having chosen the first and denounced the tenancy, they are estopped from resiling from it. They have forfeited their right to seek any relief under the DRC Act. Amir Singh's right in the property has been rightly established on its own merit and also admitted by the Halqa Patwari, as mentioned hereinabove.

19. In these circumstances, each of the issues raised in this appeal is answered in the negative. The appeal is without merit and is, accordingly, dismissed.