

**(2011) 02 DEL CK 0283**

**In the Delhi High Court**

**Case No :** Regular Second Appeal No. 2 of 2001

Shri Bansai Lal (deceased) through L.Rs.

APPELLANT

Vs

Shri Chander Singh

RESPONDENT

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**Date of Decision :** 28-02-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

**Citation :** (2011) 02 DEL CK 0283

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** A.P.S. Ahluwalia and S.S. Ahluwalia, for the Appellant; Sunil Malhotra, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 3.11.2000 which has reversed the finding of the trial judge. The trial judge had decreed the suit of the Plaintiff. Impugned judgment had dismissed it.

2. The case of the Plaintiff is that he is a tenant in the suit property. He had sought a decree of declaration and permanent injunction that he be treated as a tenant and the Defendant be enjoined from dispossessing him. It is not in dispute that earlier the parties had been relegated to eviction proceedings before the Rent Controller. Eviction Petition No. 5/1978 had been filed by Chander Singh against his tenant Krishan Hari where the Plaintiff Bansai Lal was arrayed as a sub tenant. This eviction petition had been decreed and the ouster of the Plaintiff had been ordered on 29.1.1983. In appeal before the Rent Control Tribunal vide judgment and decree dated 15.9.2004 the order dated 29.1.1983 was set aside. It was held that the Delhi Rent Control Act is not applicable to the suit property. Rent Controller is not vested with the jurisdiction to deal with the matter. This was affirmed in second appeal on 15.11.2004.

3. Learned Counsel for the Appellant has drawn attention of this Court to the

impugned judgment. It is pointed out that in para 5 and 9 of the impugned judgment reference has been made to the judgment dated 29.1.1983 which had since admittedly been set aside. The impugned judgment had relied upon the finding 29.1.1983 to dismiss the suit of the Plaintiff. It is pointed out that this is a perversity. It is pointed out that up to para 8 the averments qua the application under Order 41 Rule 27 of the CPC alone had been discussed. Para 9 has not discussed the evidence of the parties. It is thus clear that the impugned judgment has reversed the finding of the trial judge without appreciating the oral and documentary evidence of the parties; a valuable right has thus been lost to the Appellant whose documentary evidence had not been adverted to by the first appeal court. This is borne out from the record.

4. On this score, learned Counsel for the Appellant has placed reliance upon a host of judgments to substantiate his submission that it is the bounden duty of the first appeal court to deal with all contentions raised by the parties both oral and documentary; if it shies from such a duty it amounts to a perversity. In 2010 (10) SCALE 20 B.V. Nagesh v. H.N. Sreenivasa Murthy the manner in which the first appeal has to be deal with the judgment of the trial court has been detailed; it can in no manner be a cryptic order.

5. In view of the aforementioned material which has come on record this is a fit case where the matter should be remanded back for decision by the first appeal court on its merits. Parties are directed to appear before District & Sessions Judge, Tis Hazari, Delhi on 11.3.2011 at 10.30 AM who will assign the matter to the concerned court who shall decide the matter by passing a speaking and reasoned order.