

In the Court of Shri Ajay Kumar Malik : Additional Senior Civil Judge of
Central District at Tis Hazari Courts, Delhi

Suit No.97884/2016

CNR No.DLCT030000291991

In the matter of :-

**1. Shri Rattan Singh, son of Shri Mool Chand
Since deceased through LRs**

(i) Shri Gyanendra Kumar (son)

**(ii) Shri Mahesh Inder Kumar (son)
Since deceased through LRs**

- (a) Shri Raj Kumar**
- (b) Shri Sanjay**
- (c) Shri Sanjeev**
- (d) Shri Fagum Kumar**
- (e) Smt. Usha Rani**

**(a) to (d) sons of Shri Mahesh Inder Kumar
(e) is daughter of Shri Mahesh Inder Kumar**

**(iii) Shri Hem Raj (son)
Since deceased through LRs**

- (a) Smt. Hem Lata, w/o Shri Hem Raj**
- (b) Shri Yogesh**
- (c) Shri Sumit**
- (d) Shri Rohit**
- (e) Smt. Jaswanti**

**(b) to (d) sons of Shri Hem Raj
(e) is daughter of Shri Hem Raj**

**(iv) Shri Chunni Lal @ Babe (son)
Since deceased through LRs**

- (a) Smt. Saroj Mala W/o Shri Chunni Lal**
- (b) Shri Umesh**

- WWW.LIVELAW.IN
- (c) Shri Hemant Kumar
 - (d) Shri Madan Mohan
 - (e) Smt. Gayatri
 - (f) Smt. Namita

(b) to (d) sons of Shri Chunni Lal
(e) and (f) are daughters of Shri Chunni Lal

(v) Shri Lekh Raj

(vi) Shri Rajesh

All residents of 16/144-I Block, Hardhayan Singh
Road, Bapa Nagar, Karol Bagh, New Delhi-110005

2. Smt. Pushpa Rani (daughter)
W/o Shri Shiv Dayal

(Since deceased through LRs)

- (a) Shri Shiv Dayal (Husband)
- (b) Shri Rajeev Dayal
- (c) Shri Mukesh Dayal
(since deceased through LRs)

- (i) Smt. Seema (Widow)
- (ii) Minor Daughter Nishtha
- (iii) Minor Son Gavisht

- (d) Shri Manish Dayal
- (e) Shri Raman Dayal (b to e sons of Smt. Pushpa)
- (f) Smt. Poonam (f is daughter of Smt. Pushpa)

All residents of H.No.8389, Arya Nagar,
Paharganj, New Delhi-110055

3. Smt. Gargi Pal, wife of Shri S.K. Pal (daughter)
R/o Flat No.1/4, Ground Floor,
Gangotri Krishna Sthala Co-op.,
Housing Society, Western Express,
Highway Kashmira Bombay (Thane)

- WWW.LIVELAW.IN
4. **Smt. Laxmi (daughter)**
W/o late Shri Ashok Kumar Chaudhary,
R/o H.No.334, Ram Nagar,
Near Hari Singh Gurudwara, P.O. Krishan Nagar,
Delhi - 110051

.....PLAINTIFFS

V E R S U S

Smt. Ram Pyari,
(since deceased through LRs)

(Sons)

- A. Shri Narender Kumar**
B. Shri Yashpal
C. Shri Mohan Kumar

All R/o 16/144, I Block, Hardhyan Singh Road,
Karol Bagh, New Delhi

(Daughter)

- D. Smt. Sukhwati W/o Not Known**
E. Smt. Sharda Ji W/o Not Known
F. Smt. Madhu, W/o Not Known
G. Malti, D/o Jayanti Prasad

All C/o Their Brother Shri Narender Kumar,
All R/o 16/144, I Block, Hardhyan Singh Road,
Karol Bagh, New Delhi

- H. Smt. Poornima,**
W/o Rajesh Kumar,
R/o 13A, Pocket B,
MIG Flats, Dilshad Garden,
Delhi-110095

.....DEFENDANTS

Date of institution	:	10.05.1991
Reserved for Judgment	:	08.11.2021
Date of decision	:	09.11.2021

Suit for Recovery

J U D G M E N T

1. This is a suit for recovery of Rs.13,000/- being damages for use and occupation for the period 1st March, 1989 to 30th April, 1991 along with cost of the suit.

Plaintiffs' Case

2. The brief facts of the case as averred in the plaint are that Shri Jayanti Parshad was the brother of the plaintiff. It is stated that the plaintiff allowed his brother to reside in one room on the ground floor of the premises and accordingly he and members of his family started residing in the said portion as Licensee. It is stated that Shri Jayanti Parshad died about 8 years back and thereafter the defendant who is the widow of Shri Jayanti Parshad was allowed by the plaintiff to reside in the said room where the defendant is residing alongwith members of her family as Licensee. It is stated that the defendant is now trying to extend her possession and wants to encroach upon the Varandah and the roof of the premises. The defendant tried to break the lock of the stairs on 21st June, 1989 but could not succeed. It is stated that the defendant is occupying the premises without any license from the plaintiff. It is stated that the plaintiff is entitled to recover damage for use and occupation from 1st March, 1989 till institution of the suit. The plaintiff assess the damages for use and occupation of the premises at Rs.500/- per month. Plaintiff is thus entitled to recover a sum of Rs.13,000/- as damages for use and occupation of the premises since 1st March, 1989 to 30th April, 1991. Hence, the present suit.

Defendant's Case

3. Written statement was filed on behalf of defendant wherein it is contended that the suit is barred under Order 2 Rule 2 CPC inasmuch as the plaintiff had earlier filed a suit for possession in respect of the same premises against the defendant. It is stated that the suit is bad for non-joinder of necessary parties. Shri Jayanti Parshad, the predecessor-in-interest of the defendant, not only left the defendant as his legal heirs but left behind three sons, namely, S/Shri Narender Pal, Yash Pal and Mohan Kumar and 5 daughters, namely, Madhu, Sukhwati, Malti, Sharja @ Daya and Poorinima. It is stated that the plaintiff and his real brother, late Shri Jayanti Parshad, defendant's husband were such two persons who were in occupation of certain land of the Society. It was decided by the Society that if the encroachers vacated the area occupied by them, the Society will allot 50 yards of land to each of the occupant. Thus the present plaintiff and the defendant's husband late Shri Jayanti Parshad became to eligible persons to be allotted 50 sq. yards of land each and all 20 plots of 50 sq. yards each were carved out to be allotted to the members of the Society. It was also decided by the Society that in case the family of a member was a big one, two plots could be allotted to such a family, otherwise each was to be allotted one plot of 50 sq. yards. It is stated that three persons, namely, one Rishal Singh, Karan Singh and the present plaintiff Rattan Singh got two plots each because of their big family. It is stated that the present plaintiff was entitled to get one plot of 50 sq. yards like other members of the Society but he got two plots being the big family which included the husband i.e. the present defendant and her children as well. It is stated that the present plaintiff and the defendant's husband, late Shri Jayanti Parshad having obtained possession of the

land measuring 100 sq. yards in 1958, they raised construction thereon. Each one of the two brothers initially built one room each on the ground floor. One stair case was also built exactly in the middle of the two plots. It is stated that the two brothers i.e. the present plaintiff and the defendant's husband, late Shri Jayanti Parshad started living in their respective rooms in early 1960. With the passage of time, other constructions were raised and two brothers jointly spent the money on the super structures. Thus after the death of Shri Jayanti Parshad, the defendant and her children are the owners of half share i.e. 50 sq. yards of land and superstructure raised thereon. It is stated that the accommodation belonging to the defendant and her children consists of four rooms. However, the plaintiff took possession of three rooms from the defendant on the pretext that additional accommodation was required temporarily for the marriage of sons. He is thus in unauthorized and illegal possession of three rooms belonging to the defendant and her children. It is stated that the defendant is residing in one room in the property in dispute in her own rights and there is no question of any damages being claimed by the plaintiff.

4. Replication was filed by the plaintiff to the written statement of the defendant wherein the contents of the plaint have been reiterated and the contentions of the defendants in their written statement have been denied except the admissions made.

Issues

5. After completion of pleadings, vide order dated 17.11.1992, the following issues were framed by my learned Predecessor for trial :

1. Whether the suit is barred under Order 2 Rule 2 CPC, as alleged in P.O.? OPD

2. Whether the plaintiff has no locus standi to maintain and file the present suit? OPD
3. Whether the suit is bad for non joinder of necessary parties? OPD
4. Whether the suit is liable to be stayed in view of preliminary objection no.2? OPD
5. Whether there was no cause of action to file the present suit? OPD
6. Whether the plaintiff is entitled for the decree of amount as prayed for? OPP
7. Relief

Plaintiff's Evidence

6. After framing of issues, the matter was adjourned for Plaintiff Evidence and after very long time, the plaintiff filed the evidence by way of affidavit in the year 2018. The plaintiff filed the evidence by way of affidavit of Shri Gyanender Kumar, son of late Shri Ratan Singh and evidence by way of affidavit of Shri Raj Kumar, son of Shri Suresh Chand. After lot of opportunities, the plaintiff not got examined the witnesses in Court so very clearly the defendant also never had any opportunity to cross-examine the witnesses. After lot of opportunities to the plaintiff, vide detailed order dated 12.12.2019, the Court closed the right of the plaintiff to lead the evidence.

Defendant's Evidence

7. Defendant's evidence was closed on 12.12.2019 as the defendant opted not to lead any evidence. Thereafter, matter was put for final arguments.

8. Final arguments have been advanced by the counsel for the parties. I have gone through the judicial record. Now I shall give my issue-wise findings.

9. Since the case of the plaintiff is for recovery of Rs.13,000/- being damages for use and occupation for the period 1st March, 1989 to 30th April, 1991 and the plaintiff has claimed only cost of the suit apart from above quantum of damages, so it will be prudent to decide the issue no.6 first.

Issue No. 6 : Whether the plaintiff is entitled for the decree of amount as prayed for? OPP

10. The onus to prove this issues was on the plaintiff. After very long time from framing of issues, the plaintiff filed the evidence by way of affidavit of his two witnesses, namely, Shri Gyanender Kumar and Shri Raj Kumar in the year 2018. After availing lot of opportunities, the plaintiff not got examined any of above witness in the Court, hence the facts asserted in the plaint remained unproved. As none of above witness stepped into the witness box, so the defendant also not got chance to cross-examine the plaintiff's witnesses. No evidence can be taken on record in contravention to principles of natural justice. Non cross-examination of plaintiff witnesses by the defendants, for want of their availability in the witness box, is non compliance of *audi altrum partem* i.e. one of the principles of natural justice. Hence, both the affidavits filed by the plaintiff cannot be read in evidence. In absence of any evidence by the plaintiff, the plaintiff has failed to discharge its onus to prove issue no.6. Hence, the issue no.6 is decided against the plaintiff.

Issue No. 1 : Whether the suit is barred under Order 2 Rule 2 CPC, as alleged in P.O.? OPD WWW.LIVELAW.IN

Issue No. 2 : Whether the plaintiff has no locus standi to maintain and file the present suit? OPD

Issue No. 3 : Whether the suit is bad for non joinder of necessary parties? OPD

Issue No. 4 : Whether the suit is liable to be stayed in view of preliminary objection no.2? OPD

Issue No. 5 : Whether there was no cause of action to file the present suit? OPD

11. The issues no.1 to 5 are being taken up together being interconnected. The onus to prove these issues was on the defendant. After closing of right to lead the evidence by plaintiff, the defendant opted not to lead any defence evidence. Hence, the issues no.1 to 5 are decided against the defendant.

Relief

12. In view of my aforesaid findings on Issue no.6, the suit of the plaintiff is dismissed. No order to costs. Decree sheet be prepared. File be consigned to the record room.

Announced in the Open Court
on 09.11.2021

(Ajay Kumar Malik)
Additional Senior Civil Judge
Central District: Tis Hazari Courts: Delhi