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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 04.03.2025

+ **RC.REV. 257/2024**

KUMARI GAYATRI TRIPATHI

.....Petitioner

Through: Mr. Abhishek Kumar and Mr. Sachin
Bansal, Advs.

versus

TRUST MANDIR SHRI RAMCHANDERJI (REGD.).....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM Appl.12916/2025[For disposal of CM Appl.54714/2024]

1. This is an Application filed on behalf of the Petitioner/tenant seeking disposal of CM Appl. 54714/2024.
2. Learned Counsel for the Petitioner/tenant submits that in view of the fact that no interim protection has been granted to the Petitioner/tenant, pursuant to the execution proceedings initiated by the Respondent/landlord, a Bailiff has been appointed by the learned Executing Court.
 - 2.1 Learned Counsel for the Petitioner/tenant further submits that the present Application was served on the learned Counsel for the Respondent/landlord on 28.02.2025 by email, despite which there is no appearance on behalf of the Respondent/landlord.
3. In view of what is stated in the Application, the same is allowed.



4. CM Appl.54714/2024 is taken up for hearing and disposal today.
5. The Application stands disposed of.

CM Appl.54714/2024/Stay

6. This is an Application filed on behalf of the Petitioner/tenant seeking stay on the operation of the order dated 13.03.2024 passed by the learned Trial Court.
7. Learned Counsel for the Petitioner/tenant makes two submissions. In the first instance, he submits that the Respondent/landlord is not the owner of the premises i.e., ground floor of property no. 4312, Gali Bhairo Wali, Jogiwara, Nai Sarak, Delhi – 110006 more fully shown in red colour in the site plan attached with the Eviction Petition [hereinafter referred to as “subject premises”] and that the Petitioner/tenant is the owner. Secondly, he submits that the Petition is barred by the provisions of res judicata under Section 11 of the Code of Civil Procedure, 1908 (CPC).
8. A Coordinate Bench of this Court had occasion to examine the Impugned Order on 18.09.2024. Thereafter, this Court had also examined the Impugned Order on 08.10.2024 and on 12.11.2024, when a detailed order was passed. Thereafter, various requests for adjournment were made by the parties, as is clear from the record.
9. Neither the Coordinate Bench nor this Court deemed it apposite to pass an order for interim protection in favour of the Petitioner/tenant. The reason for that is also clear from the order dated 12.11.2024. The relevant extract is set out below:

“1. Learned Counsel for the Respondent/landlord submits that the only issue that has been raised by the Petitioner/tenant in the Petition is that the Petitioner/tenant claims to be the owner of the subject premises. He further



submits that so far as concerns the issue of bona fide requirement and the alternate suitable accommodation, the same is not disputed by the Petitioner/tenant.

2. Learned Counsel for the Respondent/landlord further submits that the issue of ownership has been dealt with by the Impugned Order. He submits that the issue of ownership has already been the subject matter of litigation between the parties in various proceedings filed before the learned Trial Court. He seeks to rely upon a judgment dated 18.10.2016 passed by the learned Trial Court in Civil Suit No. 94011/16 captioned Ms. Gayatri Tripathi & Anr. v. Sh. S.K. Verma & Anr., wherein it dismissed the suit by plaintiff/petitioner for declaration of ownership of Property bearing No.4312, Gali Bhairon Wali, Nai Sadak, 110006, which is the subject matter of the present Petition.

3. Learned Counsel for the Respondent/landlord further submits that it is settled law that the issue of title cannot be decided in these proceedings and in any event it already stands settled by earlier judicial pronouncements.

4. Learned Counsel for the Petitioner/tenant contends that the Respondent/landlord has not been successful in the inter se litigation between the parties. He seeks to rely upon final order/judgment dated 29.10.2009 in the matter of Trust Mandir Shri Ramchanderji v. Kumari Gayatri Tripathi & Anr. passed by the learned Civil Judge in Suit No. 215/08. He requests for some time to place on record the certified copy of this order.

5. Learned Counsel for the Petitioner/tenant requests for some time to take instructions and comply with the order dated 08.10.2024.”

10. So far as concerns the *bona fide* need of the Respondent/landlord and the availability of alternate suitable accommodation, the learned Trial Court has found that no challenge has been meted by the Petitioner/tenant. The only challenge that has been raised before this Court and was also made before the learned Trial Court by the Petitioner/tenant, was with respect to the fact that the subject premises does not belong to the Respondent/landlord.

10.1 The learned Trial Court has dealt with this contention in detail and found that the Respondent/trust is the owner of the subject premises and not



the Petitioner/tenant. It has been held that originally, the tenant was one Sh. Vidhyadhar Tripathi and that the Petitioner/tenant (Respondent before the learned Trial Court and Petitioner before this Court) is the daughter of Sh. Vidhyadhar Tripathi. The learned Trial Court gave a finding that once the relationship of the tenant is admitted, the landlord-tenant relationship was established.

11. Learned Counsel for the Petitioner/tenant reiterates the fact that the Petitioner/tenant has purchased the subject premises. He seeks to rely upon the documents in support of this contention which were also available before the learned Trial Court.

11.1 As stated above, the challenge to the title that was made by the Petitioner/tenant has already been the subject of proceedings before a Civil Court in Civil Suit No. 94011/16 captioned *Gayatri Tripathi & Anr. v. Shri S.K. Verma & Anr.* [hereinafter referred to as “Civil Suit”]. The learned Trial Court by the judgment dated 18.10.2016 passed in the Civil Suit, dismissed the suit filed by the Petitioner/tenant.

12. It is no longer res integra that a title dispute cannot be adjudicated in a Petition under the provisions of Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as “DRC Act”] or in a Revision Petition examining an order passed under Section 14(1)(e) of the DRC Act.

13. In the case of *Kanaklata Das v. Naba Kumar Das*¹, the Supreme Court has held that in an Eviction Petition, landlord and tenant are the only necessary parties for the decision of the suit and the question of title to the tenanted premises is not germane for the decision of the Eviction Petition.



The relevant extract is set out below:

“11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

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11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. *Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See Ranbir Singh v. Asharfi Lal [Ranbir Singh v. Asharfi Lal, (1995) 6 SCC 580] .)*

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See Ruma Chakraborty v. Sudha Rani Banerjee [Ruma Chakraborty v. Sudha Rani Banerjee, (2005) 8 SCC 140] .)

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11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See Kasthuri Radhakrishnan v. M. Chinnayan [Kasthuri Radhakrishnan v. M. Chinnayan, (2016) 3 SCC 296 : (2016) 2 SCC (Civ) 331] .)

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13. In our considered opinion, Respondent 1, who claims to be the co-sharer or/and co-owner with the plaintiff-appellants herein of the suit property is

¹ (2018) 2 SCC 352



neither a necessary and nor a proper party in the eviction suit of the appellants against Respondents 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of Respondent 1.”

[Emphasis Supplied]

13.1 In case of *Tribhuvanshankar vs Amrutlal*², the Supreme Court has held that in case where a landlord initiates eviction proceedings against the tenant based on landlord tenant relationship the scope of the proceedings are very limited and the question of title cannot be adjudicated. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has *prima facie* right to receive the rent of the property in question. In order to decide whether denial of landlord’s title by the tenant is *bona fide* the Court may have to go into tenant’s contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant’s denial of title of the landlord is *bona fide* in the circumstances of the case. The relevant extract is set out below:

“28. At this juncture, we may fruitfully refer to the principles stated in Ranbir Singh v. Asharfi Lal [(1995) 6 SCC 580] . In the said case the Court was dealing with the case instituted by the landlord under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had set aside the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. While adverting to the issue of title the Court in Ranbir Singh [(1995) 6 SCC 580] ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for

² (2014) 2 SCC 788



determining the main question about the relationship between the litigating parties.

29. In the said case the learned Judges referred to the authority in *LIC v. India Automobiles & Co.* [(1990) 4 SCC 286] wherein the Court had observed that: (*Ranbir Singh case* [(1995) 6 SCC 580], SCC pp. 585-86, para 9)

“9. ... in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case.”

[Emphasis Supplied]

13.2 A Coordinate Bench in the case of *Ram Chander v. Ram Pyari*³, has held that the title of the party is always decided through civil proceedings and the claim of the ownership over the tenanted premises can be adjudicated by filing of a civil suit and not through eviction proceedings.

“3. The authority of the Supreme Court relied upon by the learned counsel for the petitioner in *Manoj Kumar v. Bihari Lal (Dead) by LRs*, 91 (2001) Delhi Law Times 25(SC) is not at all applicable in the given facts and circumstances of the case **as any person who denies to be a tenant and claim to be the owner of the premises cannot claim to be granted leave to defend eviction petition as eviction proceedings initiated under the Delhi Rent Control Act cannot be converted into a title suit. The title of the party is always decided through civil proceedings. As such claim of the petitioner that he is the owner of the premises and not the tenant could have been vindicated by way of filing civil suit and not in the eviction proceedings.**”

[Emphasis Supplied]

³ 2004 SCC OnLine Del 18



14. Undisputably, the Petitioner/tenant before this Court is the daughter of the said Sh. Vidhyadhar Tripathi who was inducted as a tenant into the subject premises. It is also settled law that the tenant continues to be a tenant in terms of the judgment passed by the Coordinate Benches of this Court. In the case of *M.R. Sahni v. Doris Randhawa*⁴, a Coordinate Bench of this Court has held that *ex facie* once a tenant always remains a tenant unless the status changes by contract or by operation of law:

“12. What are the consequences of a suit for ejectment suffering a dismissal in default? Does the tenant become a tenant in perpetuity? Does he become the owner of the tenanted premises? Does the landlord lose the right to regain possession for all times to come?”

13. Ex facie, once a tenant always remains a tenant unless the status changes by contract or by operation of law.”

[Emphasis Supplied]

15. In the case of *Hari Gopal Manu v. B.S. Ojha*⁵, a Coordinate Bench of this Court has held that a tenant continues to remain so unless there is a change in status by contract or operation of law. It has been consistently held that a tenant or licensee cannot alter the character of their possession without the consent of the landlord.

15.1 In addition, principle of estoppel under Section 116 of the Evidence Act, 1872, prevents a tenant from denying the landlord’s title even after the expiration of the lease unless possession is openly surrendered. The Supreme Court in *Sant Lal Jain v. Avtar Singh*⁶ held that a licensee must surrender possession upon revocation and cannot claim ownership in a suit for recovery of possession. The relevant extract is set out below:

⁴ 2008 SCC OnLine Del 268

⁵ 2016 SCC OnLine Del 985

⁶ (1985) 2 SCC 332



“7. I have recently in *Jagdambey Builders Pvt. Ltd. v. J.S. Vohra* held as under:

...

25. The principle, “once a tenant always a tenant” can also be invoked in this respect. This Court in *M.R. Sawhney v. Doris Randhawa* AIR 2008 Delhi 110 (SLP No. 13820/2008 whereagainst was dismissed on 22nd October, 2010) held “exfacie, once a tenant always remains tenant, unless the status changes by contract or by operation of law”. As far back as in *Abdul Hakim Mia v. Pana Mia Miaji* AIR 1919 Calcutta 293 (DB) also it was held that the lessee cannot alter the character of his possession and that if the plaintiff inducted the tenant into possession, obviously the character of the possession could not be altered, without the consent of the plaintiff. Similarly, in *M. Mujibar Rahaman v. Isub Surati* AIR 1928 Calcutta 546 followed in *Sanapathi Sitharamiah v. Nandarapu Ramaswamy* AIR 1938 Madras 73 it was held that estoppel under Section 116 of the Evidence Act, 1881 continues, even after the expiration of the period of the lease and unless the tenant openly surrenders possession he is estopped from contesting the title of the landlord. The High Court of Punjab & Haryana also in *Gurcharan Singh v. Mukhtiar Singh* 2010 SCC OnLine P&H 4757 held that a tenant in possession of the property cannot set up title by adverse possession in view of Section 116 of the Evidence Act, challenging the title of the owner/landlord of the property in dispute and that the principle of “once a tenant always a tenant” would apply. I may mention that the position of a tenant in this regard is the same as that of a licensee qua which it was held by the Supreme Court in *Sant Lal Jain v. Avtar Singh* (1985) 2 SCC 332:

“the respondent was a licensee and it must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently.”

[Emphasis Supplied]

16. In view of the foregoing and given the undisputed position of the law, this Court finds no infirmity with the Impugned Order passed by the learned Trial Court on the aspect of relationship of landlord-tenant and ownership.



17. The only other plea taken by the Petitioner/tenant is the plea of *res judicata*. Learned Counsel for the Petitioner/tenant relies on paragraph 4 of the leave to defend Application to submit that the Respondent/landlord had filed a suit for declaration of ownership Suit No.215/08 against the Petitioner/tenant in the year 2003, which was dismissed on 29.10.2009. It is contended that since the judgment has attained finality, the Eviction Petition is also barred by Section 11 of the CPC.

17.1 The submission made by the learned Counsel for the Petitioner/tenant is without any merit. The contention of the learned Counsel for the Petitioner/tenant in the leave to defend Application has also been refuted by the Respondent/landlord in the reply to leave to defend Application. The relevant extract is set out below:

“5. That filing of the Petition is a matter of record. *It is denied that principle of res-judicata comes into play against the petitioner as alleged. It is denied that the petitioner played any fraud as alleged. It is the respondent who is playing fraud upon the Court and had also been observed by the Court of Shri Hrun Pratap, the then Civil Judge, Delhi while passing order dated 11.11.2016 is suit titled as Gayatri Tripathi v. S.K. Verma in suit bearing no. 93595/2016.*”

[Emphasis Supplied]

17.2 Section 11 of the CPC reads as follows:

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

17.3 From a reading of the said provision, it is clear that what is barred by the provisions of Section 11 of the CPC is an issue which is substantially and directly the same as what has been decided by the Court previously.



18. Quite clearly, the Respondent/landlord has previously not filed an Eviction Petition under Section 14(1)(e) of the DRC Act against the Petitioner/tenant, thus the provisions of Section 11 of the CPC are not applicable to the facts of this case.

19. The examination by a Court in a Revision Petition is limited and circumspect. The Supreme Court in *Abid-ul-Islam v. Inder Sain Dua*⁷, has held that the jurisdiction of this Court is only revisionary in nature and limited in its scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The legislature has consciously removed the two stages Appeal which existed priorly. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the *Abid-ul-Islam* case is as follows:

“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an

⁷ (2022) 6 SCC 30



error apparent on the face of the record, which would only mean that in the absence of any adjudication *per se*, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

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25. The aforesaid decision has been recently considered and approved by this Court in *Mohd. Inam v. Sanjay Kumar Singhal* [*Mohd. Inam v. Sanjay Kumar Singhal*, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in *Sarla Ahuja v. United India Insurance Co. Ltd.* [*Sarla Ahuja v. United India Insurance Co. Ltd.*, (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the **present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction.** No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, **but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.**’

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.”

[Emphasis supplied]

20. The learned Trial Court has examined the contentions as raised by the Petitioner/tenant and has found that no triable issue has been raised. The examination by this Court does not show anything to the contrary. As stated above, the revisionary jurisdiction of this Court is limited and circumspect.



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All that the Court is required to examine, for interference by this Court, in terms of the judgment of the Supreme Court in *Abid-ul-Islam* case, is whether there is absence of adjudication or any error apparent on the face of the record.

21. From a review of the Impugned Order and above discussions, neither fact is made out. This Court thus, finds no reason to grant any interim protection to the Petitioner/tenant. The Application is accordingly dismissed.

22. During the course of arguments, an option was given to the learned Counsel for the Petitioner/tenant to seek additional time to vacate the subject premises, in view of the fact that the Court was informed by the Petitioner/tenant that a Bailiff was at the subject premises to take possession of the subject premises. The Petitioner/tenant, however, chose not to take this option.

23. The parties will act based on the digitally signed copy of the order.

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24. List on the date already fixed i.e. 10.03.2025.

TARA VITASTA GANJU, J

MARCH 4, 2025/r/g.joshi

Click here to check corrigendum, if any