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C.A.No. 4668 OF 1997

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ITEM NO. 111

COURT NO. 6

SECTION IV

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4668 OF 1997@@  
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Prem Singh and Ors. ... Appellant (s)

Vs.

Daya Chand (Dead) by Lrs. ... Respondent (s)

( With office report )  
With SLP (C) Nos. 8413-8414/98@@  
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Date: 02-05-2001 This/These matter(s) was/were called  
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE  
HON'BLE MR. JUSTICE S.N. VARIAVA

For appellant (s) Mr. SM Sarin, adv.  
Mr. PN Puri, adv.

For respondent (s) Mr. Manoj Swarup, adv.  
Ms. Lalita Kohli, adv.  
for M/s. Manoj Swarup and Co.

UPON hearing counsel, the Court made the following  
O R D E R

Delay condoned.

Exemption allowed.

Leave granted.

Civil Appeal Nos.3538-3539/2001 @  
S.L.P.(C) No. 8413-14/98 are dismissed and Civil  
Appeal No. 4668/97 is allowed. There shall  
be no order as to costs.

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(Alka Dudeja)  
Court Master

(S. Krishnan)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4668 OF 1997

Prem Singh and others .. Appellants

-vs-

Daya Chand (dead) by LRs .. Respondents

(with C.A. Nos. 3538-3539/2001 @ SLP@ Nos. 8413-8414/1998)

O R D E R

Leave granted.

Civil Appeal No. 4668/1997 has been preferred by the defendants whereas Civil Appeal Nos. 3538-3539/2001 arising out of Special Leave Petitions have been preferred by the plaintiffs.

The plaintiffs brought a suit for ejection of the defendant-appellants from the premises situate in Pipli Khera, Tehsil and District Sonapat, Haryana, and also for a decree of arrears of rent. It was alleged in the plaint that the premises in dispute belonged to the plaintiffs and defendants were tenants on a rent @ Rs. 500/- per month with effect from 18th May, 1983. It was also alleged that the defendants-appellants have failed to make payment of rent after 30th April, 1984 and, therefore, the suit. The defendants-appellants filed a written statement wherein it was asserted that the defendants have purchased the suit property from the plaintiff on 18th May, 1983 on a consideration money of Rs. 40,000/-. However, since the said document was not registered, it was pleaded that it was an agreement for sale and, therefore, on application of the principle enshrined under Section 53A of the Transfer of Property Act, the defendants cannot be dispossessed from the premises in dispute. The trial court was of the view that the plaintiff has failed to prove the contract of tenancy and further the defendants, by virtue of Section 53A, are entitled to retain possession and as such no decree of eviction can be awarded to the plaintiffs. The plaintiffs thereafter filed an appeal before the first appellate court. The first appellate court affirmed the view of the trial court that the plaintiffs have failed to prove the contract of tenancy. It has also affirmed the finding that a sum of Rs. 40,000/- was paid to the plaintiffs. However, the first appellate court was of the view that there was material contradiction in the statements of defendants-appellants witnesses and discrepancies in two documents Ex. D-1 and Ex. P-3A and, therefore, the defendants-appellants had failed to prove the agreement of sale. It was on this view the first appellate court allowed the appeal and decreed the suit. However, the court directed the plaintiffs to refund a sum of Rs. 40,000/- to the defendants. The defendants thereafter preferred an appeal before the High Court, which was dismissed. The High Court, while dismissing the appeal, was of the view that the plaintiffs had failed to prove the contract of tenancy between the plaintiffs and the defendants and even if there was no contract of tenancy between the parties, the plaintiffs, being the owner of the house, was entitled to file a suit for recovery of possession of the house against the defendants. It is against the said judgment, the defendants have preferred this appeal.

Learned counsel, appearing on behalf of the appellants urged that in view of the concurrent findings of fact recorded by all the three courts that the plaintiffs have failed to prove the contract of tenancy, the suit for eviction of the appellants ought to have been dismissed. We find substance in the argument. The suit was brought by the plaintiffs merely on the basis of the contract of tenancy. The averment made in the plaint was that the plaintiffs are the owner and the defendants are the tenants and since the tenants have failed to pay arrears of rent, they are liable for ejection. All the three courts have come to the conclusion that there was no contract of tenancy between the parties and the defendants were not tenants. Merely because the plaintiffs could bring a separate suit for recovery of possession was no ground to decree the suit based on the contract of tenancy. Thus, this appeal deserves to be allowed on this short ground alone.

Civil Appeal Nos. 3538-3539/2001:

Learned counsel appearing for the appellants urged that the first appellate court as well as the High Court having found that Ex. D-1 was not proved, no order for refund of Rs. 40,000/- to the defendants could be passed by the court below. This argument has no substance. It is not disputed that all the courts below have recorded a concurrent finding of fact that the plaintiffs on 18.5.1983 received a sum of Rs. 40,000/- from the defendants and, further, the plaintiffs have not denied the signature on the receipt (Ex. D-1). There is no other material to support the finding of the first appellate court and the High Court that Ex. D-1 has not been proved. The reasoning given by the courts below that Ex. D-1 was not proved because there was material contradiction in the statement of the defendant-appellants witnesses and discrepancy in the two documents Ex. D-1 and Ex. P-3A is fallacious. We are not deposed to go further into this matter as the connected appeal is being allowed. For the aforesaid reasons, the civil appeals deserve to be dismissed.

In view of above, Civil Appeal No. 4668/1997 is allowed. The judgments under challenge are set aside. The suit shall stand dismissed. Civil Appeal Nos. 3538-3539/2001 are dismissed. There shall be no order as to costs.

& & & & & & & & & & & & ..J.  
(V. N. Khare)

..& & & & & & & & & & & & ..J.  
(S. N. Variava)

New Delhi;  
May 02, 2001

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