

DR. RANBIR SINGH

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v.

ASHARFI LAL

SEPTEBER 21, 1995

[KULDIP SINGH AND FAIZAN UDDIN, JJ.]

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Civil Procedure Code, 1908—Ss.100(1) & (2)—Second appeal—Reappreciation of evidence and substituting its own conclusion by High Court—Held : Normally not within jurisdiction of High Court—Unless it could formulate substantial question of law.

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Rajasthan Premises (Control of Rent & Eviction) Act, 1950—Section 3 (iii) & (iv)—‘Landlord’ & ‘Tenant’—Proof of relationship between Property sold by legally adopted son—duly informed by purchaser to tenant—Enhanced rent paid to the purchaser—In notice of eviction fact of adoption mentioned—Not denied by tenant in his reply—Circumstances established privity of contract between landlord and tenant.

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Eviction Suit—Based on privity of contract of tenancy—Proof of title—Held : Not germane though may be gone into, to decide relationship of tenant and landlord.

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The widow of ex-Maharaja of Dholpur adopted her daughter’s son ‘H’ vide an adoption deed. The Govt. recognised him, the successor to the ‘Gaddi’ and appointed the widow as his adoptive mother, legal and natural guardian.

The property in dispute (private property of Maharaja) let on rent by his widow, was sold to the appellant by ‘H’ after having inherited the same by virtue of adoption deed.

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The appellant immediately brought the factum of purchase to the notice of the respondent and the respondent started paying enhanced rate. After some time, when the respondent defaulted, appellant served notice, terminating his tenancy in which the factum of adoption was specifically mentioned, and in reply to the notice the same was not denied.

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A suit for eviction was filed by the appellant. The pleadings were reiterated by his evidence and P.W. 2 clarified privity of contract by

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A deposing that the respondent had agreed to pay the rent to appellant at enhanced rate, the Trial Court decreed the suit on the ground of denial of title and *bonafide* need.

B In the first appeal by the respondent, the court remanded the case to the Trial Court for finding on the question as to who will face greater hardship. The Trial Court held the question in favour of the appellant. On the basis of finding of Trial Court, the Ist Appellate Court dismissed the appeal.

C The Respondent filed a second appeal to the High Court which allowed the appeal holding that 'H' acquired no title over the property so as to entitle him to transfer the same, as the widow of the late Maharaja was the sole owner of the private property of late Maharaja by virtue of Hindu Women's Right to Property Act, 1937. It further held that recognition of rulership by the Govt. does not amount to recognition of any right to private property of the ruler.

D In appeal to Supreme Court, the Appellant contended that in an eviction suit proof of title is not germane but relationship between the landlord and tenant is to be proved; and that on the basis of adoption deed 'H' also become successor to the private property of late Maharaja.

E The respondent contended that recognition by Govt. did not make 'H' successor to the private property and that attaining ownership to the suit property by 'H' could not be established.

Allowing the appeal, this Court

F HELD : 1.1. The question of title of the property is not germane for decision of the eviction suit. 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 suit is very much limited in which a question of title cannot be gone into because the suit of 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 determining the main question

G about the relationship between the litigating parties. [855-F-G]

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1.2. It is established from the fact and circumstances of the case, that the defendant had accepted himself to be a tenant of the plaintiff on a monthly rent of Rs.40 and thus there was a privity of contract of tenancy between the plaintiff and the defendant after due attornment. Thus, it has been sufficiently established that the plaintiff is the landlord within the meaning of clause (iii) of section 3 of the Rajasthan Premises Control of Rent & Eviction) Act, 1950 and defendant is tenant within the meaning of clause (vii) of section 3. [858-D]

LIC v. Indian Automobiles & Co., [1990] 4 SCC 288, referred to.

2. The deed of adoption *prima facie* goes to show that 'H' was adopted as son of late Maharaja. That being so *prima facie*, the Appellant inherited the private properties of the late Maharaja besides being his successor to the gaddi. In these facts and circumstances of the case even if it is accepted that Hindu Law and Hindu Woman's Right to property Act, 1937 were applicable to Dholpur, inheritance of the private properties of Late Maharaja in any case devolved upon 'H'. 'H' therefore, had a right to make a transfer of the suit property to the appellant. Though it is true that his recognition as the ruler to succeed to the gaddi of Dholpur was not associated with any act of recognition of right to private properties. [857-A-B]

Rajendra Singh v. U.O.I. AIR (1970) SC 1946, referred to.

3. The High Court was not justified in reappreciating the evidence and substituting its own conclusions for the well reasoned findings recorded by the courts of fact. The High Court formulated no such question of law on the basis of which it proposed to interfere with the findings of facts. There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, based upon an application of the relevant evidence. [857-F]

Ramachandra v. Ramalingam, AIR (1963) SC 302 and *Bhagwan Das v. Jiley Kaur*, AIR (1991) SC 266, referred to.

4. In this case there is no such evidence or any material produced by the defendant to show that he will not be in a position to get alternative accommodation in the town of Dholpur for his residence. The two courts below on a careful comparison and assessment of the relative advantages and disadvantages of the landlord and the tenant, recorded a clear finding

- A that the hardship of the plaintiff would be greater and the said finding should have been accepted to by the High Court. [858-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7151 of 1993.

- B From the Judgment and Order dated 27.5.92 of the Rajasthan High Court in S.B.C.S.A. No. 90 of 1990.**

Subhag Mal Jain, Vipin Gogia, A.P. Dhamija and S.K. Jain, for the Appellant.

- C V.B. Joshi, V.C. Saxena and N.S. Bisht for the Respondent.**

The Judgment of the Court was delivered by

- D FAIZAN UDDIN, J.** 1. The material facts leading to this appeal are that Maharaja Rana Udaibhan Singhji of the erstwhile State of Dholpur died in the year 1954 leaving behind him his widow Smt. Malvender Kaur and daughter Smt. Urmila Devi. Late Maharaja Udaibhan Singh had no natural male child and according to the appellant the late Maharaja Udaibhan had great attachment with Shri Hemant Singh, the son of his only daughter and during his life time had expressed his wish to adopt Shri Hemant Singh as a son to him and had advised his widow accordingly giving her the authority to adopt Shri Hemant Singh as his son. Consequently, Shri Hemant Singh (s/o. Smt. Urmila Devi, daughter of late Maharaja Rana Udaibhan Singh) was adopted by Smt. Malvender Kaur according to the wishes of her late husband vide Deed of Adoption dated
- E 5.11.1954.** Further case of the appellant is that a High Power Committee was constituted to examine the contentions of various claimants for succession to the gaddi of Dholpur, The said committee consisting of the then Chief Justice of Rajasthan High Court, Maharaja of Bharatpur and Maharaja of Doongarpur recommended the name of Shri Hemant Singh as a ruler of the erstwhile State of Dholpur. The Government of India
- G accepted the recommendation of the said committee and by letter dated 13/14.12.1956 recognised Shri Hemant Singh the adopted son of late Maharaja Udaibhan as successor to the gaddi of Dholpur with effect from 22.10.1954. The Government of India by another letter dated 13.12.1956 addressed to Smt. Malvender Kaur stating that she has been appointed as**
- H the new ruler's adoptive mother to be the natural and legal guardian of**

Shri Hemant Singh who was then minor with instructions to take care of his interest in every way. A

2. Shri Hemant Singh being the adopted son of late Maharaja Udaibhan Singh. The appellant purchased certain property including the property in dispute in this appeal from Shri Hemant Singh by a registered sale-deed dated 10.10.1972. On such sale being made the rent note executed by respondent in favour of Smt. Malvender Kaur was handed over to the appellant by the landlord Shri Hemant Singh. According to the appellant after he purchased the suit property he immediately intimated the same to the respondent who on demand of enhancement of rent, agreed to pay rent at the rate of Rs. 40 P.M. of the suit premises. The respondent had paid rent to him for the month of November and December, 1972 but did not pay any rent thereafter. The appellant, therefore, served a notice dated 6.1.1976 to the respondent terminating the tenancy and demanded vacant possession of the suit premises, specifically mentioning that he was the adopted son of late Maharaja Udaibhan Singh of Dholpur. The respondent in his reply dated 30.1.1976 did not dispute the factum of adoption of Shri Hemant Singh But denied the title of the appellant as also any privity of contract of tenancy with him. B
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3. The appellant filed suit for eviction against the respondent on the grounds of denial of title, *bonafide* necessity of the premises in suit, default in payment of rent and material alterations. The respondent contested the suit by filling the written statement denying all the grounds of eviction alleged by the appellant. The respondent took the stand that he was the tenant of Smt. Malvender Kaur and that Shri Hemant Singh was not legally constituted successor to late Maharaja Udaibhan Singh and as Shri Hemant Singh was the son of the daughter of Maharaja Udaibhan Singh, he inherited no interest in the property. The respondent took the stand that on the death of Shri Udaibhan Singh, his widow Smt. Malvender Kaur became successor. He also denied attornment of tenancy by oral notice or that he agreed to pay rent at Rs. 40 per month to the appellant. E
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4. The Trial Court decreed the appellant's suit on the ground of denial of title and *bonafide* need by recording findings that Shri Hemant Singh was the legal representative and successor of late Shri Udaibhan H

- A Singh and that the plaintiff-appellant had purchased the suit property from Shri Hemant Singh. In appeal preferred by the defendant-respondent, the first appellate Court remanded the case to the Trial Court for recording findings on the question of greater hardship. The Trial Court after recording the evidence of the parties held that greater hardship will be caused to the plaintiff-appellant in case the decree for eviction was not passed.
- B Thereafter the first appellate Court dismissed the appeal preferred by defendant respondent affirming the judgment and decree on the ground of denial of title and *bonafide* need of the appellant. The respondent went up in Second Appeal before the High Court of Rajasthan, Jaipur Bench. The High Court by the impugned judgment dated 27.5.1992 allowed the appeal of the respondent, set aside the judgment and decree passed by the Trial Court and the first appellate Court and dismissed the suit of the plaintiff-appellant by holding that Hindu Law and the Hindu Women's Rights to Property Act of 1937 were applicable to the erstwhile State of Dholpur and as the family of late Udaibhan Singh admittedly was governed by Mitakshra rule and, therefore, Shri Hemant Singh being daughter's son was not entitled to succeed to late Udaibhan Singh since his widow Smt. Malvender Kaur (since deceased) and daughter Smt. Urmila Devi were alive. On these findings the High Court held that Smt. Malvender Kaur became the sole owner of the private properties of late Maharaja Udaibhan Singh and Shri Hemant Singh did not become the owner of the properties and, therefore, he acquired no title over the properties so as to entitle him to transfer the suit property in favour of the plaintiff-appellant herein. The High Court further held that the recognition of Rulership by the President would not amount to recognition of any right to private property of the ruler but such recognition only entitles the ruler to the enjoyment of the Privy Purse contemplated under article 291 of the Constitution and the personal rights, privileges and dignities of the ruler of an Indian State. The High Court held that the decision in the case of *Rajendra Singh v. Union of India*, AIR (1970) SC 1946 is of no help to the appellant on the proposition that Shri Hemant Singh became successor to late Shri Udaibhan Singh in respect of his private properties also. In view of these findings the High Court took the view that the question of denial of title of the plaintiff-appellant did not arise and, therefore, set aside the findings of the two courts below on the question of denial of title. The High Court also set aside the findings of the two courts below with regard to the *bonafide* necessity of the plaintiff-appellant in respect of the suit premises by holding that
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sufficient accommodation is available with the plaintiff- appellant and he had failed to establish that his alleged need is genuine or *bonafide*. On these findings the High Court set aside the judgment and decree of the two courts below and dismissed the suit of the plaintiff-appellant against which this appeal has been directed. A

5. At this stage it may be noted that I.A. No. 3 of 1995 has been filed on behalf of the appellant in this Court under order 47 Rule 27 of Civil Procedure Code read with Rules 1 and 6 of the Supreme Court Rules along with the certified true copy of the Deep of Adoption dated 5.11.1954. The application is allowed after consideration and the deep of adoption is taken on record. B C

6. Learned counsel for the plaintiff-appellant vehemently urged that the proof of title is not germane in a suit for eviction between the landlord and tenant but it is the relationship which has to be proved coupled with grounds of eviction provided under the law and, therefore, it is not necessary to make elaborate pleadings with regard to the title in a suit for eviction. He submitted that so far as the question of relationship of landlord and tenant between the appellant and respondent is concerned it has been sufficiently proved by the plaintiff-appellant as held by the Trial Court and affirmed by the first appellate Court and the High Court was, therefore, not justified in going into the question of ownership of the suit property as if it was a suit for establishment of title. The appellant has produced of certified copy of the deed of adoption dated 5.11.1954 which has been taken on record and on that basis submitted that having regard to the evidence on record, oral and documentary, it has been sufficiently established that Shri Hemant Singh was not only recognised as ruler of the erstwhile State of Dholpur but he also became the successor and owner of private properties of late Maharaja Udaibhan Singh and as such the High Court committed a serious error in taking a contrary view. He submitted that the sale of the suit property made by Shri Hemant Singh in favour of the plaintiff-appellant was, therefore, legal and valid by all means and the denial of title of the plaintiff-appellant by the respondent constituted a ground for his eviction under the Law. He further submitted that the High Court committed a serious error in reappreciating the evidence and upsetting the well reasoned judgments and concurrent findings of fact recorded by the two Courts with regard to the *bonafide* necessity of the suit accommodation by the plaintiff-appellant which was not permissible by D E F G H

A virtue of the mandate contained in the provisions of Section 100 of the Code of Civil Procedure.

B 7. As against this learned counsel appearing for the defendant -
respondent submitted that the plaintiff-appellant did not plead as to how
C Late Maharaja Udaibhan Singh and there was no proof that he was
D adopted as a son to Shri Udaibhan Singh and that by mere recognition of
Shri Hemant Singh by the President of India as successor to Late Udaibhan
Singh, it does not make him successor to personal properties of the Late
Maharaja. He submitted that in fact the respondent had obtained the suit
premises on rent from Late Smt. Malvender Kaur, the widow of Late
Maharaja Udaibhan Singh and there was no privity of any contract between
Shri Hemant Singh and the respondent. He also contended that since the
view taken by the Trial Court and the first appellate Court is contrary to
the weight of the evidence on record and perverse and, therefore, the High
Court was fully justified in reappreciating the evidence and recording its
own findings.

8. After giving our anxious and serious consideration to the
aforementioned rival contentions we find considerable force and substance
in the submissions made by learned counsel for the plaintiff-appellant.

E 9. It may be pointed out that it is well settled law that the question
of title of the property is not germane for decision of the eviction suit. In
a case where a plaintiff instituted 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
F 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
G primary question for determining the main question about the relationship
between the litigating parties. In *L.I.C. v. India Automobiles & Co.*, [1990]
4 SCC 288 at para 21, this Court had an occasion to deal with similar
controversy. In the said decision this Court observed that in a suit for
eviction between the landlord and tenant, the Court will take only a *prima*
H *facie* decision on the collateral issue as to whether the applicant was

landlord. If the Court finds existence of relationship of landlord and tenant A
between the parties. It will have to pass a decree in accordance with law.
It has been further observed 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 *bonafide* the Court may B
have to go into tenant a 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 *bonafide* in the circumstances of
the case.

10. Here it may be pointed out that Rajasthan Premises (Control of C
Rent & Eviction) Act, 1950 was also extended and made applicable to
Dholpur at the relevant time when the present suit was instituted in the
year 1977. Clause (III) of Section 3 of the said Act defines landlord to
mean any person who for the time being is receiving or is entitled to receive
the rent of any premises, whether on his own account or as an agent, D
trustee, guardian or receiver or any other person or who would so receive
or be entitled to receive the rent, if the premises were let to a tenant.
Clause (VII) of Section 3 further defines tenant as the person by whom or
on whose account on behalf rent is, or but for a contract express or implied
would be, payable, for any premises to his landlord including the person E
who is continuing in its possession after the termination of his tenancy
otherwise than by a decree for eviction passed under the provisions of this
Act having regard to the aforementioned facts and circumstantial and the
provisions of law it has to be seen whether the plaintiff has been successful
in establishing that he is the landlord of the suit premises and the defendant
is a tenant thereof.

11. It cannot be disputed that the plaintiff had brought the suit for F
eviction of the respondent-respondent on the basis of tenancy. The plaintiff
clearly pleaded that he purchased the suit premises from Shri Hemant
Singhji Ex-Ruler of Dholpur and successor of Late Maharaja Udaibhan
Singhji on 10-10-1972, which fact was brought to the notice of the defen- G
dant who attorned the tenancy and agreed to pay the rent at the rate of
Rs. 40 per month (vide para - 2 and 3 of the Plaintiff). The defendant paid
the rent for the months of November and December, 1972 but defaulted
thereafter. The plaintiff, therefore, served a notice date 6.1.1976 on the
defendant terminating his tenancy. In the notice it was specifically men-
tioned that Shri Hemant Singh was adopted as a son of Late Maharaja H

- A Udaibhan Singh. The defendant gave a reply dated 30.1.1976 to the
aforementioned notice of the plaintiff but did not dispute the factum of
adoption of Shri Hemant Singh though he denied the title of the plaintiff-
appellant and contract of tenancy. These facts and pleadings are reiterated
by the plaintiff in his evidence also as PW 1. It may be noted that the
defendant admits that he obtained the suit premises from Late Smt.
B Malvender Kaur, the widow of Late Maharaja Udaibhan. The evidence of
Ramesh Chand, PW 2 reveals that the defendant is the tenant of the
plaintiff and that the respondent agreed to pay rent to the plaintiff and the
rate of Rs. 40 per month. There is no rebuttal of this evidence except the
statement of the defendant himself which according to *us* is not trust-wor-
thy as compared to plaintiff's evidence supported by PW 2, from which it
C is established that the defendant had accepted himself to be a tenant of
the plaintiff on a monthly rent of Rs. 40 and thus there was a privity of
contract of tenancy between the plaintiff and the defendant after the
attornment. Thus, it has been sufficiently established that the plaintiff is
the landlord within the meaning of Clause (iii), of Section 3 of the Act, and
D the defendant is tenant within the meaning of Clause (VII) of Section 3.

12. Apart from the facts stated above it may also be noted that the
Government of India by its letter dated 13/14th December, 1956 addressed
to Shri Hemant Singh communicated that President has been pleased be
E recognise his succession to the gaddi of Dholpur with effect from
22.10.1994 and that the same was being punished in the Gazette of India
for general information. By another letter on 13.12.1956 by the Government
of India addressed to late Maharani Malvender Kaur stated that the
President has been pleased to recognise Maharaja Kumar Hemant Singh
F as the ruler of Dholpur in succession to his Late Highness Maharaja
Udaibhan Singh and said Maharani as the new ruler's adoptive mother will
be his natural and legal guardian to take care of the minor ruler's a interest
in every way as Shri Hemant Singh, was then a minor. It was on the basis
of these orders of the President or India that Shri Hemant Singh was
recognised as successor to the Late Maharaja Udaibhan Singh. It is true
G that his recognition as the Ruler to succeed to the gaddi of Dholpur was
not associated with any act of recognition of right to private properties as
held by this Court in *Rajendra Singh v. Union of India*, (supra) in which
Shri Hemant Singh was arrayed as respondent No. 2, being the adopted
son of Late Ruler of Dholpur. But in the present case, as said earlier, the
H plaintiff has filed certified true copy of the deed of adoption dated

5.11.1954 which *prima facie* goes to show that Shri Hemant Singh was adopted as son of late Maharaja Udaibhan Singh. Not only this, but the appellant in his notice served on the respondent terminating his tenancy specifically stated that he was the adopted son of Late Maharaja Udaibhan of Dholpur, which fact was not refuted by the respondent in his reply thereto. That being so *prima facie* the appellant inherited the private properties of the late Maharaja besides being his successor to the gaddi. In these facts and circumstances even if it is accepted that Hindu Law and Hindu Women's Rights to Property Act, 1937 were applicable to Dholpur, inheritance of the private properties of Late Maharaja in any case, devolved upon Shri Hemant Singh, Shri Hemant Singh therefore, had a right to make a transfer or the suit property to the appellant.

13. Admittedly, the defendant denied the title of the plaintiff in respect of the suit premises, which in the facts and circumstances discussed above, furnished a ground for eviction of the respondent, as such denial of title by the respondent was not *bonafide*. The Trial Court and the first appellate Court on a close analysis of the evidence also recorded a definite finding that the plaintiff's requirement of the suit premises was genuine and *bonafide* but the High Court set aside the same on unreasonable grounds.

14. Sub-section (i) of Section 100 of the Code of Civil Procedure contemplates that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 further provides that when the High Court is satisfied that a substantial question of Law is involved in any case, it shall formulate that question, but it may be pointed out that the High Court formulated on such question of Law on basis of which it proposed to interfere with the findings of facts. It has been the consistent view of this Court that there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, based upon an appreciation of the relevant evidence. There is a plethora of case law in support of this view. To quote a few references may be made to the decision in *Ramachandra v. Ramalingam*, AIR (1963) SC 302 wherein this Court took the view that even if the appreciation of evidence made of the lower appellate Court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or

A defect in the procedure and the High Court cannot interfere with the conclusions of fact recorded by the lower appellate Court. This view has been reiterated by this Court in *Bhagwan Das v. Jiley Kaur*, AIR (1991) SC 266. This being the position, the High Court was not justified in reappreciating the evidence and substituting its own conclusions for the well reasoned findings recorded by the Courts of fact.

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15. As regards the question of comparative hardship the Trial Court and the first appellate Court both on appreciation of evidence have taken a consistent view that the hardship to the plaintiff would be greater than the hardship to the tenant as the need of the landlord is greater than that of the tenant. This also being a finding of fact was not open to challenge in the second appeal before the High Court and the High Court should not have interfered with the said finding also on the principles stated above. In *Bada Begum v. Abdul Ahad Khan*, AIR (1979) SC 272 this Court observed that the tenant has to prove that he will not be able to get any accommodation anywhere in the city or town concerned, before it could be legitimately contended that he had a greater hardship as compared to that of the landlord. In the present case there is no such evidence or any material produced by the defendant to show that he will not be in a position to get alternative accommodation in the town of Dholpur for his residence. The two courts below on a careful comparison and assessment of the relative advantages and disadvantage of the landlord and the tenant recorded a clear finding that the hardship of the plaintiff would be greater and the said finding should have been accepted by the High Court.

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16. For the reasons stated above the appeal succeeds and is hereby allowed. The impugned Judgment and order of the High Court is set aside and the judgment and decree of the Trial Court is restored. We, however, make no order as to costs.

K.K.T.

Appeal allowed.