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the Act where registration once granted continues automatically, provided the assessee furnishes the requisite declaration in Form-12 within time. For this reason, the judgment of the Calcutta High Court would not be applicable to the facts of the present case.

(6) For the reasons recorded above, the writ petition is allowed and the order of the Income-tax officer to the extent it treats the petitioner firm as an unregistered firm for the relevant assessment year quashed, so also the order of the Commissioner. It shall, however, be open to the Income-tax Officer to proceed in the matter in accordance with law. Parties to bear their own costs.

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J.S.T.

Before : A. L. Bahri, J.

DR. RAVINDER KUMAR SHARMA,—Petitioner.

versus

SHRI OM PARKASH,—Respondent.

Regular Second Appeal No. 505 of 1991

14th October, 1992.

*Code of Civil Procedure, 1908—Section 100—Whether document creates licence or tenancy—Depends upon interpretation of documents—Would be a question of law which can be raised in Regular Second Appeal.*

(Para 6 and 16)

*Held, that where the decision of the Courts below is based on appreciation of evidence, oral as well as documentary, and such a conclusion is on facts, the same cannot be questioned in the second appeal. However, as to whether a document creates a licence or a tenancy, would be a question of law, which could be question in the Regular Second Appeal.*

*Transfer of Property Act, 1882—Section 105—Whether lease or licence—Control over shop remained with plaintiff—Defendant handed keys of shop to plaintiff's mother and collected the same in the morning—Some goods belonging to plaintiff and his mother also lying in shop—Defendant also produced several receipts describing amount as licence fee—Case of licence and not of lease as there is no creation of any interest in property or tenancy in favour of defendant.*

*Held, that these two facts, one regarding taking over the key in the morning and returning in the evening, secondly existence of the goods of the plaintiff and his mother in portion of the shop in dispute,*

are also to be taken into consideration while considering other evidence and the licence deeds to determine the right of the parties. It is required to be recorded in this case that it was a case of licence and not creation of any interest in the property or tenancy in favour of the defendant.

REGULAR SECOND APPEAL from the Order of the Court of Shri M. L. Singhal, Addl. District Judge, Ludhiana, dated 6th August, 1990, affirming that of Shri M. L. Malhotra, P.C.S., Addl. Senior Sub Judge, Ludhiana, dated 12th November, 1988 partly decreeing the suit of the plaintiff for the recovery of Rs. 4,180 with proportionate costs.

#### CLAIM

Suit for possession of Shop No. 2 forming Part of property Unit No. B XIX 732, Shown in Red in the plan attached with the plaint and bounded as under :—

North : Rishi Daya Nand Road,

South : Residence of Smt. Manohar Wati,

East : Shop No. 1 with Shri J. P. Jain,

West : Shop No. 3 with Shri Madan Lal, situated on Rishi Dayanand Road, Ludhiana and for the recovery of Rs. 14,400 on account of compensation for use and occupation of the shop for the period 1st January, 1980 to 31st December, 1982 at the rate of Rs. 400 per month, on the basis of oral and documentary evidence.

#### CLAIM IN APPEAL

For reversal of the Order of both the Courts below.

M. L. Sarin, Sr. Advocate with Alka Sarin & Vikas Suri, Advocates, for the appellants.

R. P. Bali, Advocate, for the Respondent.

#### JUDGMENT

A. L. Bahri, J.

This Second appeal is by plaintiff Ravinder Kumar Sharma against the judgment and decree of the Additional District Judge, Ludhiana, dated August 6, 1990, dismissing the appeal filed against the judgment and decree of the trial Court dated November 12, 1988. The suit was brought for possession of shop No. 2, forming part of

property unit No. B-XIX-732, situated at Rishi Dayanand Road, Ludhiana, and for recovery of Rs. 14,400 as compensation for use and occupation for the period January 1, 1980, to December 31, 1982, at the rate of Rs. 400 per mensem. Smt. Manohar Wati, mother of the plaintiff, was originally owner of the shop in dispute. She also owned three other shops. She gifted these shops to the plaintiff on December 29, 1975. In this manner, the plaintiff became owner of three shops Nos. 1, 2 and 3 of the aforesaid property unit. Manohar Wati had allowed defendant Om Parkash to use portion of shop No. 2 as licensee since May, 1969, for carrying on business of drycleaning. The actual possession and control of the shop remained with Manohar Wati. Initially the licence-fee was fixed at Rs. 110 per mensem. A licence-deed was executed between Manohar Wati and Om Parkash on May 1, 1969. Even after execution of the gift-deed aforesaid, Om Parkash defendant was permitted to use portion of the shop No. 2 as licensee on the licence-fee of Rs. 110 per month. A licence-deed was executed on January 1, 1976. Again, in April, 1979, Om Parkash was allowed user of the entire shop No. 2 for a period of eleven months on payment of licence-fee of Rs. 400 per month. A fresh licence-deed was executed. Several terms and conditions of the licence were mentioned in the plaint. Since the dispute occurred on account of non-payment of licence-fee, the present suit was filed.

(2) The suit was contested by defendant Om Parkash, *inter alia*, alleging that in fact from the very beginning there was a tenancy. He was in actual possession and control of the shop. He denied actual control of the shop with Manohar Wati. According to him, Rs. 110 per month was the rent fixed. He had placed a show-case for hanging drycleaned clothes, big tables for pressing clothes and a hydro-machine for drycleaning the clothes in the shop. He claimed that he was in possession of the entire shop. He denied having executed the licence-deeds aforesaid. He also denied execution of the gift-deed in favour of the plaintiff by his mother, Manohar Wati, on the ground that possession could not be delivered under the gift as the defendant was in actual possession. It was the Rent Controller alone, who had the jurisdiction in the matter. Uptil December, 1970, the defendant had been paying rent regularly against receipts. Even after execution of the alleged gift-deed, Manohar Wati continued getting rent against receipts. The plaintiff was living with his mother, having a joint mess and residence and they were residing alongwith Amrit Lal, husband of Manohar Wati. An assertion was made with respect to the occupants of the adjoining shops. They were also alleged to be tenants. There was no question of any increase in rent from Rs. 110 to Rs. 400 per month.

(3) The following issues were framed by the trial Court :—

- (1) Whether the plaintiff is entitled to Rs. 14,400 on account of compensation for use and occupation of the shop ? OPP
- (2) Whether Manohar Wati executed a gift-deed dated 29th December, 1975 in favour of the plaintiff regarding the property in dispute ? OPP
- (3) Whether the civil court has no jurisdiction to try the suit ?  
OPD
- (4) Whether licence-deed dated 1st May, 1969 was executed ?  
OPP
- (5) Relief.

(4) Under issue No. 1, it was held that the plaintiff was only entitled to a sum of Rs. 4,180 as arrears of rent due from November, 1979, to December 31, 1982. Under issue No. 2, it was held that Manohar Wati executed gift-deed in favour of the plaintiff with respect to the property in dispute. Under issue No. 3, the civil court was held to have jurisdiction to try the suit with regard to the relief of arrears of rent. Under issue No. 4, it was held that the licence-deed dated May 1, 1969, was executed. However, factually it created lease and only a label of licence was given. In the result, the suit was partly decreed for recovery of Rs. 4,180 with costs. On appeal, the Additional District Judge affirmed the findings of the trial Court and dismissed the appeal.

(5) The question involved in the present case is as to whether the defendant was a licensee or a tenant in the shop in dispute. This question depends upon the interpretation of the relevant documents, i.e. licence-deeds, and of course the evidence produced by the parties in this case. Learned counsel for the respondent has argued that since both the Courts below have given a finding that such deeds though described as licence-deeds, in fact created tenancy rights, it would be a case of finding of fact recorded by the Courts below not open to challenge in the second appeal in view of section 100 of the Code of Civil Procedure. In support of this contention, reliance has been placed on the decision of the Supreme Court in *Deity Pattabhira-maswamy v. S. Hanumantha and others* (1), whereas it was held as under :—

“The provisions of Section 100 are clear and unambiguous. There is no jurisdiction to entertain a second appeal on ground of erroneous finding of fact, however, gross the

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(1) A.I.R. 1959 Supreme Court 57.

error may seem to be. Nor does the fact that the finding of the first appellate Court is based upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of the fact given by the first appellate Court based upon an appreciation of the relevant evidence."

The contention of learned counsel for the respondent cannot be accepted. The ratio of the decision of the Supreme Court, referred to above, cannot be applied to the case in hand.

Where the decision of the Courts below is based on appreciation of evidence, oral as well as documentary, and such a conclusion is on facts the same cannot be question in the second appeal. However, as to whether a document creates a licence or a tenancy, would be a question of law, which could be question in the Regular Second Appeal. In this respect, reference may be made to the decision of this Court in *Kidar Nath v. Swami Parshad and Ors.* (2). In para 6 of the judgment, it was observed as under:—

"The interpretation of documents of title or those documents which constitute the direct foundation of rights is a question of law and not of fact. Hence whether such a document created the relationship of landlord and tenant or of licensor and licensee is a question of law and a decision thereon can be interfered with in second appeal."

Subsequently the matter was considered by the Supreme Court in *Capt. B. V. D'Souza v. Antonio Fausto Fernandes* (3), dealing with the question of creation of lease or licence, to ascertain the nature of possession by interpreting the deed, it was observed in para 2 of the judgment :—

"The findings of the Courts below were not those of fact so as to be binding on the High Court under Section 100 CPC. The case had to be decided on the nature of possession of the appellant which is dependent on a correct interpretation of the document."

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(2) A.I.R. 1978 P. & H. 204.

(3) 1989 3 S.C. Cases 574.

(6) Clear cut distinction has been brought out by the Supreme Court in several decisions with respect to the lease and the license and the test laid down for determining the same. In *Associated Hotels of India Ltd. v. R. N. Kapoor* (4), the following proposition were found to have been settled, indicating marked distinction between the lease and license :—

- “(1) To ascertain whether a document creates a licence or lease the substance of the document must be preferred to the form;
- (2) the real test is the intention of the parties whether they intended to create a lease or a licence;
- (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is licence; and
- (4) if under the document a party gets exclusive possession of the property, *prima-facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.”

The matter was again considered by the Supreme Court in *Mrs. M. N. Clubwala and another v. Fida Hussain Saheb and others* (5). In para 12 of the judgment, it was observed as under :—

“Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence; however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties. Similarly where the terms of the document are not clear, the surrounding circumstances and the conduct of the parties have to be borne in mind for ascertaining the real relationship between the parties. The fact that the pre-mises are in exclusive possession of a person would not

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(4) A.I.R. 1959 S.C. 1262.

(5) A.I.R. 1965 S.C. 610.

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make him a leasee. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere licence but as a lease."

In *B. M. Lall v. M/s Dunlop Rubber Company (India) Ltd. and another* (6), similar view as taken as in *Associated Hotels' case*, referred to above.

(7) In *Qudrat Ullah v. Municipal Board*, (7), again distinction was drawn between lease and licence, as under :—

"Whether a deed is a lease or a licence depends on the intention of the parties. If an interest in immovable property entitling the transferor to enjoyment is created it is a lease, if permission to use land without right to exclusive possession is alone granted, it is a licence."

(8) Before the facts of the present case are adverted to, reference may be made to the decision of this Court in *Daya Wati and others v. Dr. Ravinder Kumar Sharma* (8). As already stated above, plaintiff Ravinder Kumar Sharma became owner of three shops under the gift-deed from his mother Smt. Manohar Wati. Madan Lal was allowed user of one of the shops, whereas Om Parkash defendant, in the present case, was allowed user of shop No. 2. Similar licence-deeds were produced as evidence in the aforesaid case. The Courts below had found Madan Lal to be a licensee. Para 7 of the judgment is quoted below for facility of reference:—

"Reverting to the facts of the case, reference may be made firstly to Exhibit P.7 which is licence-deed dated December 22, 1967. This was executed by Madan Lal in favour of Manohar Wati, mother of the present plaintiff. Apart from describing the parties as licensor and licensee, it refers to use of, portion of shop No. 3 by the licensee. The licensor retained control over the premises in dispute as his articles remained therein and the licensee, in the morning used to collect the key and returned the same in the evening as per evidence produced. Subsequently, in all the licence-deeds same terms and conditions were

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(7) A.I.R. 1974 S.C. 396.

(8) 1991 P.L.J. 462.

repeated regarding user of the portion of shop No. 3 and right of the licensor to enter upon the premises. Those licence-deeds are Exhibits P8 of 1974, P-9 of 1975, P-4 of 1977, P-5 of 1978 executed by Madan Lal in favour of Ravinder Kumar Sharma. Finally, it is exhibit P-6, the licence-deed dated April 16, 1979, which is being interpreted now to determine whether it is a licence-deed or a lease deed. Suffice it to say, it is also on the same lines as the previous licence-deeds. However, specific portions, which are relevant are being noticed. Ravinder Kumar Sharma was described as a licensor and Madan Lal, a licensee. The recital shows that the licensee had approached the licensor to grant him the licence to use portion of shop No. 3, ground-floor of the property unit No. B. XIX. 732. Subsequently, in this deed licensed portion of the property was described as such. Licence-fee was fixed at Rs. 280 per mensem. In default of payment of the licence-fee, the licence was to stand automatically revoked and the licensor had the right to enter upon the property without any previous notice. Clause 7 specifically provided that no right in the property licensed passed to the licensee. The possession of the premises always was to remain with the licensor. It was further specifically provided under Clause 8 that it was expressly agreed that there was no intention of the parties to create a relationship of landlord and tenant but the intention was to create relationship of licensor and licensee. The licensor under clause 10 retained the right to enter upon the property for raising any construction on the property licensed. As held by the Courts below on consideration of the oral evidence produced that Madan Lal used to take the key in the morning and returned the same in the evening and that one almirah containing articles of the licensor continued remaining in the premises in dispute. This is a finding of fact which is not open to challenge in the second appeal. It was after 1979 that the licensor Madan Lal stopped taking key and delivering it daily and the dispute occurred between the parties regarding revocation of the licence on serving of notice etc. It was ultimately in February, 1983 that the suit was filed."

Since in the present case similar licence deeds have been produced and the evidence is also almost similar, it has been argued on behalf



of the appellant that Om Parkash should be held to be a licensee, whereas learned counsel for the respondent has argued that the Courts below have not given any finding in the present case, as was found in the case of Madan Lal, referred to above, that key of the premises used to remain with the licensor and the licensee used to take the same in the morning and return it in the evening and secondly, goods of the licensor were not lying in the shop in dispute. There is no doubt that these two factors were very material to come to a conclusion about the correct interpretation to be given to the alleged licence-deeds, to determine the intention of the parties whether only licence was being created or it was a case of tenancy. It is in that situation that the evidence has been scanned through with the assistance of counsel for both the parties and it is noticed that evidence was brought on the record on these points but the same was not referred to and discussed in the judgments of the Courts below.

(9) PW-5 Amrit Lal is husband of Manohar Wati. In examination-in-chief he stated that his wife was in actual possession and control of the property in dispute upto January 1, 1976, and the defendant used to hand over the keys of the shops to his wife in the evening and used to collect the same from her in the morning and the same continued even after his son became owner of the shop, till 1979. This part of the statement of this witness was not challenged or questioned during cross-examination. The trend of cross-examination was only on the lines that the defendant used to open and close the shop and that there was only opening on one side of the shop and of the other adjoining shops. Learned counsel for the respondent has argued that this piece of evidence could not be acted upon as there was no specific plea in the plaint that either the plaintiff or his mother used to take key of the shop in dispute and that the defendant used to collect it in the morning and return it in the evening. It is in this context that it has been further argued that no other witness including the plaintiff deposed about it. The solitary statement of Amrit Lal PW-5 in the circumstances of the present case cannot be considered enough to record a finding in that respect. There is no merit in these contentions. The evidence was not required to be pleaded or referred to in the plaint. The control of the shop remained with the plaintiff, was so pleaded and it was so mentioned in the licence-deeds as well. Further more, if statement of one of the witnesses remained unchallenged, it was not necessary for the plaintiff to produce any other witness or to get the same fact corroborated from other witnesses. As already stated above, such an evidence was not only

relevant, rather clincher in determining nature of the document as to whether the same created any interest in favour of the defendant regarding the shop in dispute or had allowed only user thereof. If material fact is ignored by the Courts below in arriving at a finding in this respect, the same would be vitiated.

(10) It was also the case of the plaintiff that some goods belonging to the plaintiff or his mother were lying in the shop in dispute. PW 1 Devinder Kumar deposed that Om Parkash defendant was using portion of the shop temporarily under his mother as a licensee. After making reference to different license-deeds executed by Om Parkash, he stated during cross-examination that he had put his luggage in the shop in dispute, which consisted of three boxes, chairs and tables. These were three-four chairs and three-four boxes. These were kept there just to retain possession of 1/3rd portion. It was after April, 1979 that the entire shop in dispute came under the control of the defendant. He had also prepared list of articles lying in the shop in dispute. This witness was again questioned in this respect that in 1/3rd portion of the shop in dispute, their goods were lying, they had placed some building material and house-hold goods, details of which his mother only could give. However, the same was in the rear portion of the shop. Subsequently, this witness again stated that the defendant was running his business in the front portion of the shop. At a subsequent date again this witness was cross-examined and he stated that he could not tell the measurements of the portion which was earlier with Om Parkash. On the back portion, there were boxes etc. lying in the form of a store, which covered 1/3rd of the shop. DW 3 Om Parkash defendant, when entered into witness-box, did not state anything about the evidence of two witnesses produced by the plaintiff, referred to above, with respect to the key being taken in the morning and returning it in evening and about the goods of the licensor being there in the portion of the shop in dispute. That being the state of evidence, these two facts, one regarding taking over the key in the morning and returning in the evening, secondly existence of the goods of the plaintiff and his mother in portion of the shop in dispute, are also to be taken into consideration while considering other evidence and the license deeds to determine the rights of the parties. As a matter of fact, all other facts are the same as were found to be in the case of Madan Lal, which have been referred to above. There being no other distinction left, similar finding is required to be recorded in this case that it was a case of license and not creation of any interest in the property or tenancy in favour of the defendant. Similar licence-deeds have

been produced in the present case, which were produced in the case of Madan Lal, having similar terms and conditions.

(11) Some more contentions raised during arguments deserve to be noticed : It has been argued on behalf of the respondent that Om Parkash being an illiterate person had no knowledge of the contents of licence-deeds. This contention cannot be accepted. No doubt, after execution of these licence-deeds the same remained in possession of the plaintiff or his mother, however, several receipts have been produced by the defendant himself, which are printed forms describing the amount received by Manohar Wati, as licence-fee. These receipts are Exhibits D-1 to D-12. Out of them, D-10 and D-11 are typed ones. Since these receipts were in possession of the defendant, it is to be accepted that he knew their contents that what he was paying was licence-fee and not rent. He could refute their contents any time. Of course, when dispute arose in 1979, when the license-fee is stated to have been increased to Rs. 400, that Om Parkash started sending the license-fee by money-orders. Even if for subsequent period the license-fee was accepted by Manohar Wati at the rate of Rs. 110 per mensem, will not make any difference. The license-deeds produced in the present case are Exhibit P.2 dated November 1, 1975, executed in favour of Manohar Wati, Exhibit P.3, dated September 9, 1974, again in favour of Manohar Wati, Exhibit P.4, dated May 1, 1969, in favour of Manohar Wati, Exhibit P.5, dated April 16, 1979, in favour of Ravinder Kumar, the present plaintiff, Exhibit P.6, dated March 22, 1978, in favour of Ravinder Kumar plaintiff, Exhibit P.7, dated April 1, 1977, in favour of Ravinder Kumar Sharma, and Exhibit P-8, dated January 1, 1976, in favour of Ravinder Kumar Sharma, Plaintiff. As already stated above, terms and conditions of the license-deeds are the same, gist of which has been quoted from the previous judgment in *Daya Wati's* case, referred to above. Reference may now be made to the decision of Supreme Court in *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala* (9). That was also a case of execution of a license-deed for a period of five years providing license-fee, that ultimately it was held that the document in fact was licence-deed and not a lease-deed. The terms and conditions of the license-deed have been summarised from the judgment, in the head-note, as under :—

“In the instant case the agreement was described as an agreement of ‘leave and licence’. The parties had been described as the ‘licensor’ and the ‘licensee’. The recitals therein

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(9) A.I.R. 1988 S.C. 184.

recite that the licensor was seized and possessed of and was otherwise well entitled as the monthly tenant of the workshop premises situated being the premises in dispute and whereas the licensee had approached the licensor to allow him to occupy and use the said premises for the purpose of carrying out his business of workshop for a period of five years and whereas the licensor had agreed to allow the licensee to use the premises under the said leave and license of the licensor for a period of five years. It was stated that the licensor gave and granted his 'leave and license' to the licensee to use and occupy the said premises for the period of five years. Clause 2 of the said agreement recites that the licensee had agreed to use the premises as above and merely for the purpose of workshop business. It further goes on to state that the "licensee shall not under any circumstances be allowed to use the premises for the residential purposes or any other purpose save and except specified therein". The period of leave and licence was to commence from 1st September, 1965 to 31st August, 1970 and it was further stated that the licensee and the licensor shall not terminate the said agreement earlier save and except on the ground of breach of any of the terms and conditions written therein. The licensor was entitled to terminate the agreement earlier notwithstanding the fact that the period of agreement might not have expired. It further stipulated that the licensee should deposit a sum of Rs. 2,500 for the due performance of the terms and conditions of the agreement. The said deposit was to be kept free of interest and the same was to be refunded to the licensee on the licensee surrendering possession of the said premises by removing himself and his belongings on the expiry of the period of agreement or sooner termination or determination thereof after deducting all the dues, if any, for payment of compensation. It further stipulated that the licensee shall pay to the licensor a monthly compensation of Rs. 225 per month. It was stipulated that the licensee would be entitled to keep the keys of the said premises with him and shall be at liberty to work in the said premises for 20 hours subject to restriction of rules and regulations imposed by the Municipal or any other local authority or authorities. It was further provided that the licensee shall be alone responsible and liable for any breach or contravention of any rule or regulation of the said authorities and he shall

indemnify the licensor thereof. The document further stipulated that the licensee shall be at liberty to construct loft and electric fittings and apparatus and tools and shall be entitled to the ownership thereof and shall be free to carry away such articles and the licensor agreed and undertook that he shall not obstruct the removing of such articles at the time of the delivery of the possession of the said workshop. It was further mentioned in the said agreement that it was agreed by the licensee that if he commits any default of any terms, and conditions or fails to pay the compensation for two months, or if the licensee at any time puts up false or adverse claim of tenancy or sub-tenancy the licensor shall be entitled to terminate the agreement and cancel and revoke and withdraw the *leave and licence* granted earlier and shall be entitled to take possession forthwith of the said premises. It was further stipulated that the licensee shall pay the electric charges in respect of consumption of electricity and the rent of the said premises should be paid by the licensor only. The agreement recited that the licensee shall not allow any other person to use occupy the said premises and shall not do any unlawful or illegal business therein. The agreement further recited that the licensor shall have the full right to enter upon the premises and inspect the same at any time."

(12) Learned counsel for the appellant referred to licence-deed Exhibit P-2, which is dated November 1, 1975, stamp paper of which was purchased on November 5, 1975. The contention is that bogus licence-deeds were prepared. This contention cannot be accepted. There are several other licence-deeds executed by Om Parkash in favour of Manohar Wati and after the gift-deed, in favour of Ravinder Kumar Sharma, which are in order. The details of these licence-deeds are as follows :—

- (i) Licence-deed Exhibit P-3, dated September 9, 1974, between Manohar Wati and Om Parkash;
- (ii) Leave and License Agreement, Exhibit P-4, dated May 1, 1969, between the aforesaid parties;
- (iii) License-deed, Exhibit P-5, dated April 16, 1979, between Ravinder Kumar Sharma and Om Parkash;

- (iv) License-deed, Exhibit P-6, dated March 22, 1978, between Ravinder Kumar Sharma and Om Parkash;
- (v) License-deed Exhibit P-7, dated April 1, 1977, between Ravinder Kumar Sharma and Om Parkash; and
- (vi) License-deed Exhibit P-8, dated January 1, 1976, between Ravinder Kumar Sharma and Om Parkash.

The broad terms and conditions of these license deeds are similar, which have been reproduced above in the case of Daya Wanti (supra).

(13) For the reasons recorded above, finding of the Courts below that Om Parkash was infact a tenant in the premises in dispute, is reversed, holding that he was merely a licensee, initially on payment of Rs. 110 per month for use and occupation, which was subsequently increased to Rs. 400 per month. Exclusive possession of the shop in dispute was not with him. The control of the shop in dispute remained with the mother of the plaintiff, Manohar Wati, and after the gift-deed with the plaintiff. It was only in 1979 that the dispute occurred when the defendant started claiming exclusive possession, that the suit was filed within time. The contention of counsel for the respondent that infact shop was taken on rent for running business and by mere long user it shall be deemed that the interest in the shop was created by way of tenancy, cannot be accepted. If the intention of the parties from the very beginning was only to create a licence, it would remain so unless at any subsequent stage the parties agree to convert it into a tenancy. No doubt, one of the tests is also about the exclusive possession of the premises, however, that test is not conclusive to hold that the person in occupation is a tenant. The entirety of the circumstances and terms and conditions of the documents (licence-deeds) are to be taken into consideration. As the facts found are similar to those found in the case of Daya Wanti, referred to above, similar conclusion is called for. Reference is also made on behalf of the respondent to the decision of G. R. Majithia, J., in *Braham Raj of Jind v. Smt. Vidawati by LR's* (11). But that was a case on its own facts. As far as proposition of law is concerned, the decision of the Supreme Court in *Associated Hotels' case* was relied upon, as reiterated in *Associated Hotels of India Ltd. v. R. N. Kapoor* (12).

(14) For the reasons recorded above, this appeal is allowed. Judgment and decree of the Courts below are modified. The suit

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(11) 1991 H.R.R. 106.

(12) A.I.R. 1959 S.C. 1262.

of the plaintiff for possession of shop No. 2 shall stand decreed as well as for recovery of Rs. 14,400 on account of compensation for use and occupation of the shop in dispute for the period January 1, 1980 to December 30, 1982, at the rate of Rs. 400 per month. There will be no order as to costs, throughout.

*J.S.T.*