

CIVIL PROCEDURE CODE, 1908 – SECTION 11, ORDER 6
RULE 17 –SUIT FOR POSSESSION

158 (2009) DELHI LAW TIMES 493

DELHI HIGH COURT

V.B. Gupta, J.

GOPAL KISHAN & ANR---- Appellants

Versus

NIRMALA DAVI & ORS. Respondents

RFA App. No. 264/1996 and C.M. No. 8172 of 2005- decided on 2.04.2009

- (i) Civil procedure code, 1908 – section 11, order 6 rule 17 –suit for possession –amendment of plaint from mandatory injunction into suit for possession and means profits-application for adducing additional documents –delay and laches - suit barred by principles or res-judicata- as parties were closely related to each other and on account of difficulties of appellants to occupy portion of suit property consisting of two rooms with permission to use open space and backyard as licensee under her, free of license fee-that appellant alleged to have started harassing her and in order to pressurize her, filed suit for injunction restraining her from evicting them from property in question-since appellants were harassing her, she revoked license of appellants and served legal notice asking them to vacate premises within 15 days-appellants failed to comply with directions of notice and in spite of revocation of license, did not vacate suit premises and become unauthorized occupants –Issues regarding ownership and license framed in present suit as well as in earlier suit for perpetual injunction are same- judgment and decree dated 10.04.1998 in S. no. 960/1969 has become final between parties and confirmed in appeal by judgment and decree dated 21.7.1986, additional District Judge-second appeal failed by appellants dismissed by this court on 28.01.1987 as also SLP dismissed by supreme Court on 8.8.1994-issues in serial No. 919/1970 are directly and substantially same, under these circumstances issue decided in favour of ND(deceased) by civil judge in S. No. 960/1969 operates as res judicata qua S. No. 610/1970- no infirmity or ambiguity in impugned judgment-when there is delay of more than 11 years in filing application for adducing additional evidence, no ground is made out for allowing

this application –since Appellants are in unauthorized possession of property in question, being license and their license having come to an end, in year 1970, they are directed to vacate premises in question and hand over possession to respondents, within month from today failing which they shall be liable to pay occupation charges @ Rs. 5,000/p.m. till date they vacate premises in question.

- (ii) Cost- when litigation protracted needlessly by unsuccessful litigant, he should be burdened with heavy costs- General rule is that successful party is entitled to costs, unless he is guilty of misconduct, negligence or omission. (Para No.59)

Results: Ordered Accordingly.