

UNREPORTED

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 1842/2003

DATE OF RESERVE: August 19, 2008

DATE OF DECISION: September 2, 2008

SHRI MOHD. SHAMIM & ANR. Plaintiffs

Through: Mr. Pravir K. Jain, Advocate for the
plaintiff No.1

Mr. Shyamdev, Advocate for the plaintiff
No.2

versus

SHAHNAWAZ KHAN & ANR. EC+ Defendants

Through: Mr. S.D. Ansari, Advocate

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

: **REVA KHETRAPAL, J.**

1. The plaintiffs No.1 and 2 pray for a decree for possession in their favour and against the defendants in respect of the suit premises, i.e., the shop

No.1733 and premises No.1735, Kucha Dakhni Rai, Pataudi House, Darya Ganj, Delhi comprising of one shop on the ground floor and a two room set on the first floor and open shed/terrace on the second floor, more specifically shown in the site plan enclosed with the plaint. The plaintiffs also pray for a decree for permanent injunction restraining the defendants from alienating/disposing of or creating any third party right in the Printing Press, make "Heidelberg S.O.R.D.", size 24-1/4 x 36 along with accessories, lying in the aforesaid premises.

2. The facts succinctly states are as follows. The plaintiff No.1 is a lawful tenant in respect of Shop No.1733 and the plaintiff No.2 is a lawful tenant in respect of premises No.1735, both situate in Kucha Dakhni Rai, Pataudi House, Darya Ganj, Delhi, as delineated above. The said premises belong to the Ministry of Rehabilitation, Government of India, who are the owner-landlord in respect thereof. Prior to the year 1984, the plaintiff No.1, the plaintiff No.2 and the defendant No.2, who are real brothers (the defendant No.2 being the eldest brother), were carrying on a partnership business under the name and style of M/s. Popular Metal Industries. With the decline of the said business by the passage of time, the plaintiff No.1, in or about 1984, started his own printing business under the name and style of M/s. Famous Offset Press at Farash Khana, Delhi. The following year, that is, in or about the year 1985, the plaintiffs took on rent the aforesaid shops from the Ministry

of Rehabilitation, Government of India and started running printing business under the name and style of M/s. Frontier Electric Offset Press therein. So far as the business of M/s. Popular Metal Industries was concerned, the defendant No.2 continued to run the same to the exclusion of the plaintiffs. The plaintiff No.1, as already stated, started to run his printing business from the premises at Farash Khana as also the premises in question, and purchased a Printing Press, make "Heidelberg S.O.R.D.", size 24-1/4 x 36 along with accessories, which was installed in the premises in or about the year 1986. The plaintiff No.2, for personal reasons, decided not to join the plaintiff No.1 in printing business and started looking after the business of another firm, M/s. Popular Wool at Sadar Bazar, Delhi. The defendant No.1, who is the son of the defendant No.2 and the nephew of the plaintiffs No.1 and 2, was a college dropout and not being interested in further studies, he, on the request of the defendant No.2 was sought to assimilated in the printing business of the plaintiff No.1 and joined the plaintiff No.1 in catering to the bulk printing orders being procured by the plaintiff No.1 at Farash Khana, Delhi, as also the premises in question.

3. In the last week of August, 2003, the plaintiffs came to know that the defendants No.1 and 2, in collusion and connivance with each other, had been trying to sell/dispose of the printing machine and accessories, lying in the premises in question and were also trying to part with the whole or part of the said premises by accepting a huge amount as pagree/premium, to some third

party. The plaintiffs having come to know about the illegal designs of the defendants, approached the defendants at the premises in question, when it transpired that some of the important files/records of the plaintiffs, including the records pertaining to the tenancy of the suit premises in question, had already been removed by the defendants from the said premises.

4. Since the defendants kept on avoiding to meet the plaintiffs, on one pretext or the other, the plaintiff No.1 was left with no other alternative but to file a complaint dated 2nd September, 2003 with the concerned Police Station. Thereafter, the defendants had a meeting with the plaintiffs and after some discussion agreed to leave the suit premises and to hand over possession of the same to the plaintiffs, along with the aforesaid printing machines, on or before 5th September, 2003. However, instead of doing so, the defendants started issuing threats to the plaintiffs and in the circumstances, the plaintiffs got sent a legal notice dated 8th September, 2003 to the defendants by Speed Post, Registered A.D. as also by U.P.C., revoking the permission/licence granted to the defendants in respect of the aforesaid premises with immediate effect, and calling upon the defendants to hand over vacant and peaceful possession of the premises, along with the printing machine immediately, on or before 13.09.2003. The defendants having failed to comply with the terms of the notice, the present suit was instituted by the plaintiffs against the defendants.

5. The plaintiffs allege that even during the pendency of the present suit

and after the passing of interim orders dated October 20, 2003 by this Court restraining the defendants from transferring, alienating or creating third party interest in the premises, i.e., Shop No.1733 and premises No.1735, Kucha Dakhni Rai, Pataudi House, Darya Ganj, Delhi as well as the machines installed therein, the defendants made another attempt to remove the printing machine and to part with the possession of the premises, but could not succeed on account of the timely intervention of the local police and the Court order.

6. Summons of the suit were duly served on the defendant No.1 and the defendant No.2. The defendant No.1 chose not to appear and was accordingly proceeded ex parte on 5th November, 2004. So far as the defendant No.2 is concerned, the defendant No.2 did not file his written statement within the statutory period and having failed to make out any bonafide ground for condonation of delay, his right to file written statement was closed vide order dated 28th April, 2006 and the matter was ordered to be listed for recording of the evidence of the plaintiffs.

7. In the course of their evidence, the plaintiffs examined four witnesses, i.e., PW1 Mohd. Shamim (the plaintiff No.1), PW2 Mohd. Laiq (the plaintiff No.2), PW3 Shri Dharam Pal, Assistant Sub Inspector, Police Station Chandni Mahal, Darya Ganj, New Delhi and PW4 Shri Nagender Shah, UDC, Land and Building Department. The plaintiffs' witnesses proved the following documents on record :-

- (i) Site plan of the suit premises – Exhibit PW1/1.
- (ii) Declaration under Section 4/5 of the Press and Registration of Books Act, 1867 as amended by Act V of 1890 dated 19th December, 1986 in favour of the plaintiff No.1 – Exhibit PW1/2.
- (iii) Photostat copy of rent receipt No.15243 dated 23.11.1990 in favour of the plaintiff No.1, photostat copy of rent receipt No.15244 dated 23.11.1990 in favour of the plaintiff No.2, original rent receipt No.22658 dated 19.01.2004 in favour of the plaintiff No.1, original rent receipt No.22659 dated 19.01.2004 in favour of the plaintiff No.2, original rent receipt No.22675 dated 11.03.2004 in favour of the plaintiff No.1 and original rent receipt No.22676 dated 11.03.2004 in favour of the plaintiff No.2 – Exhibit PW1/3 (Colly.).
- (iv) Copy of the police complaint dated 02.09.2003 filed by the plaintiff No.1 before the SHO, Police Station Chandni Mahal, Darya Ganj, Delhi – Exhibit PW1/4.
- (v) Office copy of the legal notice dated 08.09.2003 sent by the counsel for the plaintiffs No.1 and 2 to the defendants No.1 and 2 – Exhibit PW1/5.
- (vi) Original Speed Post Receipts in respect of the aforesaid legal notice – Exhibit PW1/6 (Colly.).

- (vii) Original U.P.C. Receipts in respect of the aforesaid legal notice – Exhibit PW1/7.
- (viii) Original A.D. cards in respect of the aforesaid legal notice – Exhibit PW1/8 and Exhibit PW1/9.
- (ix) Photocopy of Serial No.53 at page 113 of the original demand collection register for the year 1984–85 – Exhibit PW4/1.
- (x) Photocopy of Serial No.69 at page 115 of the original rent demand collection register for the year 1984–85 – Exhibit PW4/2.

8. Since the defendant No.1 was proceeded ex parte and the right of the defendant No.2 to file written statement was closed, no evidence was adduced on behalf of the defendants. The defendants were, however, given the right to cross-examine the plaintiffs' witnesses, to which cross-examination I shall presently advert. But before doing so, reference may be made to a few intervening facts.

9. During the pendency of the proceedings, the plaintiff No.2 and the defendant No.2 arrived at an understanding/settlement with regard to Shop No.1735, under the tenancy of the plaintiff No.2. An application, being IA No.10881/2007 was accordingly filed on behalf of the plaintiff No.2 and the defendant No.2 under Order XXIII Rule 1 read with Section 151 CPC praying that in view of the terms of the Agreement-cum-Family Settlement entered into

between the plaintiff No.2 and the defendant No.2, the suit of the plaintiff No.2 qua the defendant No.2 and his son, the defendant No.1, be permitted to be withdrawn. The said application was supported by the affidavit of the plaintiff No.2. The Agreement-cum-Family Settlement was enclosed, a bare glance at which shows that the plaintiff No.2 and the defendant No.2 (father of the defendant No.1), inter alia, arrived at the following settlement:-

“6. That property No.1735, Kucha Dakhni Rai, Pataudi House, Darya Ganj, New Delhi, is owned by the Department of Rehabilitation, Government of India, which had let out the said property in the name of the Party of the Third Part. However, with the execution of this agreement, the third party has agreed and accepted to surrender and transfer the tenancy rights in the said property in favour of the First Party herein, who shall have and hold the said property in his own individual right, and consequent upon this, he shall be liable to pay all rents, taxes and other dues relating to the said property and civic amenities available therein and shall be entitled to deal with all local authorities in his own and individual capacity as the rightful occupant of the said property; while the Party of the Third Part has specifically agreed and accepted to sign and/or execute any document and authenticate the same through proper authority for purpose of being used and/or filed before any competent local authority if and when required by the Party of the First Part. However, by virtue of this agreement, rights of Mohd. Shamim, if and when held in the property No.1733 and 1735, aforesaid shall not be effected in any manner whatsoever or in any legal proceedings which may be pending already or may be proposed to be filed by Mr. Mohd. Shamim in relation to these properties.”

10. It deserves to be mentioned at this juncture that at the time of hearing,

Mr. Shyamdev, the counsel appearing for the plaintiff No.2 affirmed the Agreement-cum-Family Settlement arrived at between the plaintiff No.2 and the defendant No.2 and did not press for any relief against the defendants.

11. Accordingly, the learned counsel for the plaintiff No.1, Mr. Pravir K. Jain and the learned counsel for the defendants No.1 and 2, Mr. S.D. Ansari, who also affirmed the settlement between the plaintiff No.2 and the defendant No.2, were heard only in respect of the claim of the plaintiff No.1 for the possession of Shop No.1733, under the tenancy of the plaintiff No.1.

12. The learned counsel for the plaintiff No.1, apart from relying upon the evidence of the plaintiff No.1 and the plaintiff No.2, who appeared in the witness box as PW1 and PW2, placed strong reliance upon the Agreement-cum-Family Settlement dated 19th December, 2006 between the defendant No.2 and his wife on the one hand and the plaintiff No.2 and his wife on the other, Clause 6 of which has been reproduced hereinabove, to contend that the admission made by the defendant No.2 in the aforesaid Agreement-cum-Family Settlement, which is duly signed by the defendant No.2 as well as his wife, is in itself sufficient to show that Shop No.1733 and premises No.1735 are owned by the Department of Rehabilitation, Government of India, and had been let out to the plaintiff No.1 and the plaintiff No.2 respectively. Further, reliance was placed by the learned counsel for the plaintiff No.1 on the rent receipts No.15243 dated 23.11.1990, No.22658 dated 19.01.2004 and

No.22675 dated 11.03.2004 in favour of the plaintiff No.1, tendered in evidence by him as Exhibit PW1/3 (Colly.).

13. Reliance was also placed by the learned counsel for the plaintiff No.1 on the testimony of PW4 Shri Nagender Shah, UDC from the Land and Building Department, NCT of Delhi, to prove on record four rent receipts bearing No.22676 dated 11.03.2004, 22659 dated 19.01.2004, 22675 dated 11.03.2004 and 22658 dated 19.01.2004. The said witness categorically stated that the aforesaid rent receipts were issued in his handwriting and that the counter-foils of the said four receipts were a part of the receipt book brought by him. PW4 also proved on record the entries made at Serial No.53 on page 113 and Serial No.69 on page 115 in the name of the plaintiff No.1, Mohd. Shamim and in the name of the plaintiff No.2, Mohd. Laiq by production of the original Rent Demand Collection Register for the year 1984-85. Photostat copies of the aforesaid two register entries were also placed on record by him as Exhibit PW4/1 and Exhibit PW4/2.

14. Per contra, the learned counsel for the defendants placed reliance on the cross-examination of this witness to raise a two-fold contentions. Firstly, it was urged by him that PW4 had admitted in his cross-examination that he did not have any document in the record brought by him to show that the property in question was allotted in the name of the plaintiffs. Secondly, it was contended by him that the entries at Serial No.53 and Serial No.69 were

contained on the last page of the register and hence could not be relied upon.

15. Both the aforesaid contentions raised on behalf of the defendants, in my view, are wholly without substance, in that, there is no denying the fact that the witness has been able to prove the rent receipts [Exhibit PW1/3 (Colly.)] to show that rent in respect of the suit premises was being paid by the plaintiffs No.1 and 2 (the plaintiff No.1 in respect of shop bearing No.1733 and the plaintiff No.2 in respect of property bearing No.1735). He also stated that the aforesaid rent receipts were in his handwriting and produced counter-foils of the same from the records maintained by the Ministry of Rehabilitation. So far as the contention with regard to the entries in the Rent Demand Register (Exhibit PW4/1 and Exhibit PW4/2) are concerned, the entry at Serial No.53 figures on page No.113 and shows payment of rent by the plaintiff No.1 for Shop No.1733. This entry thus unmistakably shows that shop No.1733 was, as per the Recovery Register of the Government Built Rehabilitation Property, rented to the plaintiff No.1, Mohd. Shamim at the rate mentioned in the said entry on 30th October, 1984 and rent in respect of the same had been received on 1st December, 1984. This entry appears also to have been subsequently cross-checked by the concerned higher official as is evident from the same. Thereafter, entry No.69 appears on page No.115, which shows payment of rent for property No.1735 by the plaintiff No.2. The register does not end there, as specifically stated by the witness in cross-examination, but concludes at page

118, i.e., three pages after entry No.69 in respect of the plaintiff No.2 and five pages after the entry No.53 in respect of the plaintiff No.1. In such a case, for the defendants to contend that the aforesaid entries have been subsequently fabricated is too far-fetched an argument to be of any avail. Even otherwise, in the cross-examination of PW4 Mr. Nagender Shah, not even a suggestion was put to this witness that the aforesaid entries in the Rent Demand Register were subsequently fabricated and, therefore, the said contention sought to be raised at this stage, that too, even without the filing of written statement, is clearly an after thought.

16. What clinches the matter is the admission of the defendant No.2 contained in the agreement arrived at between the plaintiff No.2 and the defendant No.2 dated 19th December, 2006, during the pendency of the present Suit, which is duly signed by the defendant No.2. In no uncertain terms, the said agreement in respect of the rights of the plaintiff No.1 in Clause 6 thereof stipulates:-

“However, by virtue of this agreement, rights of Mohd. Shamim, if and when held in the property No.1733 and 1735, aforesaid shall not be effected in any manner whatsoever or in any legal proceedings which may be pending already or may be proposed to be filed by Mr. Mohd. Shamim in relation to these properties.”

17. In view of the aforesaid discussion, in my considered opinion, the relief prayed for by the plaintiff No.1 deserves to be granted. The defendants No.1

and 2 being closely related to the plaintiffs and apparently have given a permissive licence to the defendant No.2, their nephew, to use the premises are now sought to be driven out of the very same premises by misuse of what was essentially a relationship of trust. Accordingly, a decree for possession is passed in favour of the plaintiff No.1 and against the defendants No.1 and 2 in respect of shop No.1733, Kucha Dakhni Rai, Pataudi House, Darya Ganj, Delhi comprising of one shop on the ground floor, more specifically shown in red colour in the plan annexed with the plaint and exhibited as Exhibit PW1/1. A decree for permanent injunction is also passed in favour of the plaintiff No.1 and against the defendants No.1 and 2, restraining the defendants No.1 and 2 from alienating/disposing of or creating any third party right in the Printing Press, make "Heidelberg S.O.R.D." size 24-1/4 x 36 along with accessories lying in the aforesaid shop No.1733, Kucha Dakhni Rai, Pataudi House, Darya Ganj, Delhi and the defendants No.1 and 2 are further restrained from subletting, assigning or parting with the possession of any part or whole or in any way creating any third party rights in the aforesaid shop No.1733, Kucha Dakhni Rai, Pataudi House, Darya Ganj, Delhi. The plaintiff No.1 shall also be entitled to costs against the defendants No.1 and 2. The Registry is directed to draw up a decree-sheet accordingly.

18. CS(OS) 1842/2003 stands disposed of in the aforesaid terms.

IA Nos.10192/2003 (u/O-39 R-1, 2 and 7 read with Section 151 CPC on behalf of the plaintiffs), 5087/2005 (u/O-8 R-3 read with Section 151 CPC on behalf of the defendant No.2), 3732/2007 (u/s 151 CPC on behalf of the plaintiffs) and 10881/2007 (u/O-23 R-1 read with Section 151 CPC on behalf of the plaintiff No.2)

In view of the orders passed above, nothing further survives to be considered in these applications.

The applications stand disposed of accordingly.

REVA KHETRAPAL, J

SEPTEMBER 2, 2008

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