

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 146/2007**

% *Date of Decision: 23.10.2008*

SHAMA JOLLY & ANR. Appellants
Through: Ms.Anjali Chopra, Adv.

versus

PRAKASH CHANDRA Respondent
Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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?

: **PRADEEP NANDRAJOG, J.**

1. Heard learned counsel for the parties.
2. It is urged by learned counsel for the appellants that the learned Trial Judge has ignored vital evidence pertaining to the involvement of Shakil Ahmed with whom the respondent had entered into an agreement to reconstruct the property and that Shakil Ahmed had inducted the appellants as the tenants of shop bearing No.510/2, 510/3 and 510/9.
3. Alternative submission made is that if the landlord

does not give the rent receipt the tenant could do nothing for the reason the landlord always has an upper hand.

4. Relevant facts are that the respondent filed a suit for possession and mesne profits against the appellants alleging that he was the owner of shops bearing Municipal No.510/15, 510/9, 515/2 and 515/3.

5. He alleged that he had let out only shop No.510/15 to the respondents vide rent deed dated 10.8.1999 for a period of 11 months at a rent of Rs.800/- per month and that the respondents had trespassed into the other three shops. So stating, suit was filed seeking recovery of possession of shop No.510/9, 515/2 and 515/3.

6. In the written statement filed by the tenants, it was admitted that vide rent note dated 10.8.1999, shop No.510/15 was taken on rent by them at a monthly rent of Rs.800/-. Pertaining to shop No.515/9, 515/2 and 510/10 it was averred as under:-

“On 15.1.2000, the defendant No.1 had further taken shop No.515/9 and 515/2 measuring 6' x 6 ½' at a monthly rent of Rs.200/-.

On 5.8.2000 the defendant No.1 took another shop bearing No.510/10 measuring 10' x 12' at a monthly rent of Rs.300/-.”

7. It was further averred in the preliminary objections as under:-

"No writing with respect to the tenancy created and rent received in respect of shop No.515/9, 515/2 and 510/10 was executed or issued by the plaintiff. Since plaintiff used to issue rent receipts for the rent received in respect of shop No.510/15, therefore the defendant No.1 demanded that receipts in respect of the rent paid for the other three shops be also issued. The plaintiff refused to issue the rent receipt for the said three shops during the financial year 2000-01 on the ground that his house tax assessment for the said year had already been made on a relatively low rental value and the issuance of the rent receipts would cause financial loss to the plaintiff. He promised to issue rent receipt from the financial year beginning from 1.4.2001 and onwards."

8. In respect to the averments made in the plaint, in para 1 where the respondent had pleaded that he was the owner of the shop No.510/5, 510/9, 515/2 and 515/3 it was averred as under:-

"1. That it is not denied that the plaintiff is the owner and landlord of the property bearing No.510/15, 515/9, 515/2 & 515/3 (510/10) situated at Ganda Nala Bazar, Gali Imli Wali, Mori Gate, Delhi-110 006. However, it is denied that only shop No.510/15 was let out by the plaintiff to the defendant No.1. It is submitted that shops Nos.515/9 & 515/2 were also taken on rent by the defendant No.1 on 15.1.2000 and shop No.510/510 old number which the plaintiff has now renumbered as 515/3 was taken on rent on 5.8.2000 at a monthly rental of Rs.200/- and Rs.300/- respectively by the defendant No.1 from the plaintiff."

9. Thus, the first plea raised by learned counsel for the appellants that the learned Trial Judge has not considered evidence relatable to the respondent having got the property re-developed through Shakil Ahmed and he inducted them as tenants is of no consequence.

10. Suffice would it be to state that there can be no variance between pleadings and proof. A party can prove what

is pleaded.

11. A feeble attempt has been made to urge that the appellants were inducted as tenants in respect of the three shops in dispute by Shakil Ahmed.

12. Learned counsel for the appellants has not been able to show to us any pleading in the written statement where the appellants have pleaded that under the collaboration agreement Shakil Ahmed became the owner of the three disputed shops and he inducted the appellants as the tenants in the said three shops.

13. On the contrary, pleadings of the appellants in the written statement as reproduced herein above show that the appellants claims to be the tenants under the respondent.

14. It would not be out of place to record that issues were settled between the parties on 13.1.2004. No issue was settled whether the respondent was not the owner of the three shops in dispute. No issue was settled whether the appellants were inducted as tenants in the three shops by Shakil Ahmed.

15. Thus, the first contention urged is without any substance.

16. Pertaining to the second contention urged the evidence considered by the learned Trial Judge may be noted.

17. At the trial, the rent agreement dated 10.8.1999 wherein with effect from 1.8.1999 the respondent let out Shop

No.510/15 to the appellants for a period of 11 months was proved as Ex.PW-1/4. The counter foil of the rent receipts issued by the respondent to the appellant when rent was tendered for shop No.510/15 were proved as Ex.PW-1/5, Ex.PW-1/6, Ex.PW-1/7, Ex.PW-1/8, Ex.PW-1/9 and Ex.PW-1/10. These counter foils are dated 1.8.1999, 28.10.1999, 10.1.2000, 28.2.2000, 20.4.2000 and 30.12.2000.

18. The respondent also proved the counter foils of rent receipt Ex.PW-1/11 and Ex.PW-1/12 in favour of the tenants of the other shops.

19. In fact, the respondent produced the counter foils of the receipt book to show that at no point of time did he ever issued a rent receipt in respect of Shop No.510/9, 515/2 and 515/3.

20. From the aforesaid twin fact i.e. the lease deed executed in respect of Shop No.510/15 and the counter foils of the rent receipts the respondent sought to urge that his conduct consistently showed that whenever he lets out a property he does so under a written lease and issues rent receipts to the tenant as and when the rent is paid. Since there was no lease deed in respect of Shop No.510/9, 515/2 and 515/3 and the counter foil in his rent receipt book an inference was sought to be drawn that the respondent never let out the three shops in question.

21. The appellant could produce no documentary evidence and save and except evidence by examining themselves as their witness and reiterated their version in the written statement could no more.

22. Probablizing the evidence, the learned Trial Judge has held in favour of the respondent.

23. Indeed, the fact that the shop No.510/15 was let out under a written lease shows that the respondent does enter into written lease whenever he lets out his property and this evidence is admissible of his conduct.

24. That the counter foils of the rent receipt book shows that the respondent issues a rent receipt as and when a tenant pays rent, again evidences the conduct of the respondent of giving rent receipt to a tenant who tenders the rent.

25. It is strange that whereas the appellants received the receipts by the landlord and when they tendered the rent for shop No.510/15 they did not insist for one when they allegedly paid rent for shop No.510/9, 515/2 and 515/3. Meaning thereby, there is evidence that no rent was tendered for the said three shops as indeed the same were never let out.

26. It is settled law that where the Trial Judge probablizes the evidence as a reasonable and prudent person would so do and while so doing neither excludes relevant evidence nor includes irrelevant evidence or circumstance, the Appellate

Court would not interfere with a finding of fact recorded by the learned Trial Judge.

27. We find no merits in the plea urged by the appellants that a tenant has no option but to live by the dictates of the landlord. The evidence on record shows that in the instant case the landlord was dictating no terms to the tenant. As and when the tenant would tender rent he was issued a rent receipt and the landlord obtained the signatures of the tenant on the counter foil. Indeed, payment of rent by the appellants only in respect of Shop No.510/15 proves that no other shop was ever let out.

28. No other contention has been urged in the appeal and hence we need not note any further fact relatable to the other issues which were settled between the parties.

29. We find no merits in the appeal. The same is dismissed with costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

OCTOBER 23, 2008
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