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IN THE HIGH COURT OF DELHI

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RFA 445/2005

ASHOK KUMAR BISWAS

..... Appellant

through: Mr.J.M. Bari with Mr. Ashok Jaswal
and Mr. K.S. Kadam, Advocates

VERSUS

SHYAM DASS BANERJEE & ORS.

..... Respondents

through:Nemo

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DATE OF DECISION:
15.9.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog
Hon'ble Mr.Justice J.R. Midha

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. (Oral)

1. The appellant, a practicing lawyer filed a suit seeking recovery of goods, books as also compensation by way of damages alleging that the respondent No.1 had usurped his goods being, two tables, one revolving chair, two ordinary chairs, one wall fan, one typewriter, one black and

white television, one steel book shelf, two steel racks, one bicycle, two sitting settees, one almirah, one jute carpet and two curtains.

2. It was pleaded in the plaint that the appellant was on the look out for an office space and that defendant No.1, who was running a shop bearing No.2A at Chittaranjan Park Market No.3, allowed the appellant to use the shop which was stated to be an encroachment on DDA land. Appellant stated that he took possession of the premises on 12.5.1991 and since the premises was in a shamble he spent money to make the same habitable and shifted his moveable articles in the said shop.

3. The appellant pleaded that the rent payable per month was Rs.200/- which was subsequently raised to Rs.400/- and that he paid Rs.5,000/- to the defendant No.1 on 12.5.1991.

4. It was pleaded that being constructed on land belonging to DDA the said authority sought to demolish the shop. That defendant No.1 along with some other persons whose properties were likewise targeted for demolition by DDA filed WP(C)No.3426/1987 titled "D.K. Mukherjee & Ors. Vs. DDA". Demolition was stayed by this Court. That appellant requested defendant No.1 to execute documents recording that if DDA gave possession of an alternative site to

him, defendant No.1 would permit appellant to use the same as a tenant.

5. It was pleaded in the plaint that in the year 1993 serious disputes arose between the plaintiff and his father forcing him to shift away from Chittaranjan Park and that since 1st July, 1994 the room taken on rent remained locked. In para 9 of the plaint it was pleaded that on 7.8.1994, defendant No.1 threatened to take forcible possession of the shop requiring the appellant to lodge a complaint with the Police on 7.8.1994. In para 16 of the plaint, appellant pleaded that on 7.2.2000 when he went to the shop, he found his belongings had disappeared.

6. On the aforesaid averments the suit was filed on 6.2.2003. Return of moveables was prayed for. Damages by way of recompense for money spent on the shop for renovation was claimed.

7. Vide impugned judgment and decree dated 24.2.2005, holding that the suit was barred by limitation, the same has been dismissed.

8. The basis of the decision is Ex. PW-1/B, the complaint lodged by the appellant with the local Police on 8.2.2000 in which the appellant informed the Police that since 1994 he was not using the shop for running his office. The learned Trial Judge has opined that therefrom, a reasonable inference could be drawn that the appellant was not in

possession of the premises since 1994 and that assuming that the goods of the appellant were misappropriated, the said event took place in the year 1994 and hence the suit filed in the year 2003 was barred by limitation.

9. Learned Trial Judge has further noted that on 7.8.1994, Ex. PW-1/C, when the complaint was made to the local Police against defendant No.1, the appellant clearly stated that on 7.8.1994 he was threatened with dispossession. The conclusion drawn by the learned Trial Judge is that even said letter probabalizes that the appellant ceased to be in possession of the disputes property as on 7.8.1994.

10. With reference to Ex. PW-1/D, a letter dated 19.10.1994, written by the appellant to the Vice chairman, DDA in which appellant sought an alternative accommodation in lieu of the shop in question and Ex. PW-1/E being a legal notice dated 23.11.1994 served by the appellant on the Vice Chairman, DDA in which a claim for alternative site was made on the assertion that the appellant had paid valuable consideration to respondent No.1 while acquiring possession of the subject property, learned Trial Judge has held that these documents evidence a serious dispute pertaining to not only possession but even right to an alternative accommodation from DDA in lieu of the site and that in all probability the appellant lost the possession in 1994.

11. So holding, learned Trial Judge has held that not only was the suit relatable to the plea of return of moveable property barred by limitation but even in respect of the claim for damages for unlawful dispossession was barred by limitation for the reason, dispossession if any, took place in the year 1994.

12. Learned counsel for the appellant at the hearing today could hardly advance the case of the appellant save and except to re-urge the pleas which have already been dealt with by the learned Trial Judge. Learned counsel urged that the learned Trial Judge has not returned a categorical finding as to when was the possession surrendered or otherwise taken over and hence it cannot be said that the appellant lost possession of the premises and the goods in the year 1994.

13. In our opinion the issue has to be resolved with reference to the normal course of human conduct and the preponderance of probabilities on the competing versions. Ex. PW-1/C, Ex. PW-1/D, Ex. PW-1/E are all written in the year 1994. The same show a competing claim for possession of the shop in question inter-se the appellant and defendant No.1. It be noted that the shop was an unauthorized construction on land belonging to DDA and DDA was taking over possession of the site; there was some scheme to rehabilitate the existing occupants by offering a permanent

shop at a market place to be constructed by DDA. On being cross-examined, appellant admitted that litigation was pending in the Delhi High Court between D.D.A. and unauthorized occupants who had constructed shops by trespassing onto land belonging to DDA. The appellant further admitted that he had filed a suit against defendant No.1 and DDA which was pending before a Civil Judge, Delhi claiming a right to be allotted the regular shop under the policy of rehabilitation framed by DDA. In his deposition appellant stated that he last used the shop for running his office in the year 1994.

14. If the evidence is probalized with reference to the pleadings of the appellant, relevant part whereof has been extracted by us in the preceding paras of our judgment, it stands out that the dispute qua possession of the shop surfaced in the year 1994. The appellant who had a residence at Chittaranjan Park, as pleaded by him in the plaint, shifted to a different colony in the year 1994. Thus, regard being had to the common course of natural events, human conduct and private business it would not be wrong to presume the existence of the fact that the appellant lost possession, probably voluntarily surrendered the same, in the year 1994.

15. Thus, the suit filed in the year 2003 claiming damages and recovery of goods was clearly barred by limitation.

16. Before concluding we may note that the appellant is a lawyer and professes a profession which is a calling. His conduct of taking on rent a small shop which was an unauthorized construction of DDA land and thereafter harassing the respondent No.1 has to be frowned upon.

17. It appears to be a case of the appellant trying to grab the regular shop which has to be allotted by DDA to defendant No.1 under a policy framed by DDA to rehabilitate the unauthorized occupants who would be evicted from the site where the shop in question was constructed by defendant No.1; adjoining sites being under unauthorized occupants of other persons.

18. We find no merit in the appeal.

19. The appeal is dismissed with costs.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

September 15, 2008
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