

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 145/2007**

% *Judgment reserved on: July, 10, 2009*
Judgment delivered on: November, 11, 2009

ISHWAR DEVI THRU L.R'S Appellants
Through : Mr. S.K. Bhalla, Advocate

Versus

TILAK RAJ GUPTA Respondent
Through : Mr. D.S. Adel, Advocate

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J.

1. Appellants have filed this second appeal under Section 100 Code of Civil Procedure (CPC) challenging the judgment and decree of the appellate court dated 3.3.2007 whereby the appeal filed by the appellants against the judgment and

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decree of the trial court dated 10.11.2005 was dismissed.

2. In brief, the facts of the case are that, Property No.25-AB, measuring 227 Sq.Yds., Ramesh Nagar, New Delhi was allotted to Shri Gurbachan Singh by the Ministry of Rehabilitation and a Perpetual Lease Deed was executed in his favour on 31.10.1964. Gurbachan Singh sold half of this property being quarter No.25-A, Ramesh Nagar to Smt. Ishwari Devi (predecessor-in-interest of the appellants) by way of a Special Power of Attorney, General Power of Attorney, Agreement to Sell, Will, Receipt, Affidavit dated 6.8.1973 and handed over the physical/symbolic possession of the property to her. Respondent Tilak Raj Gupta was in occupation of the shop forming part of the property No.25-A since before purchase of the property by Ishwari Devi. Respondent paid rent to the appellants for sometime and since 5.3.1990, he stopped paying the rent and claimed himself to be the owner of the said shop having purchased the same from one Mansa Ram by way of Agreement to Sell dated

16.6.1967. Since respondent stopped payment of rent and claimed himself to be the owner, the appellants filed the suit for possession, recovery of arrears of rent/damages and for permanent injunction. He also disputed the ownership rights of the appellants and alleged that he was inducted as tenant by Mansa Ram on 13.7.1965.

3. The trial court did not accept the pleas of either of the parties and dismissed the suit. The appellate court for different reasons did not find any merit in the appeal and dismissed the same vide impugned judgment and decree.
4. Following substantial questions of law were formulated by this court vide order dated 20th July, 2007:-

"1. Whether there is relationship of landlord and tenant between the appellant and respondent, if so its effect?

2. Whether the tenant is entitled to the relief claimed in the suit?"

Question of Law-1

5. Neither the trial court nor the appellate court considered the oral evidence of the parties to conclude that there was utter confusion in the identification of the property and also that Ishwari Devi predecessor-in-interest of the appellants was not the lawful owner of the property in suit.
6. It is submitted by Mr. S.K. Bhalla, learned counsel for the appellants that in the second appeal also, the court has every power to assess the oral evidence of the parties, if it finds that, in the first appeal relevant evidence has been ignored and the findings are perverse. He has referred to :-

(i) ***'Damadei Lal etc. v. Paras Ram etc., 1976 Rajdhani Law Reporter (SC) 634';***

(ii) ***'S.Bhagwant Singh & Anr. v. Jagan Nath & Ors., (1976) 12 DLT 150'.***

7. Proposition of law as pointed out above by the

learned counsel for the appellants is not disputed. This court in the second appeal has every power of interfere, if the oral evidence on record has been omitted from consideration.

8. To ascertain whether there is relationship of landlord and tenant between the parties, this court has to assess the oral evidence as well, it being a mixed question of law and facts, especially when, neither the trial court nor the Appellate Court took into consideration the oral evidence of the parties recorded during the trial of the case.
9. It is not disputed that Gurbachan Singh was the allottee and lessee of the property Qr.No.25-AB, Ramesh Nagar. He is alleged to have sold Quarter No.25-A to Ishwari Devi by executing General Power of Attorney, Agreement to Sell, Will, Receipt, Affidavit dated 6.8.1973. Special Power of Attorney is not in favour of Ishwari Devi, but, is in favour of Mohan Lal son of Ishwari Devi. Admittedly, Gurbachan Singh failed to obtain No Objection Certificate (NOC) or permission from L&DO to

transfer quarter No.25-A, Ramesh Nagar in favour of Ishwari Devi and the property till date stands in the name of Gurbachan Singh in the records of the concerned department. Therefore, she could not be termed as owner of the property in suit. She could only claim protection being in possession of the property by virtue of Section 53-A of the Transfer of Property Act.

10. As per the case of the appellants themselves, respondent was in possession of one of the shops forming part of quarter No.25-A before the property was purchased by Ishwari Devi from Gurbachan Singh. According to the appellants, he was a tenant of Gurbachan Singh and after purchase of the property by Ishwari Devi, he became tenant of Ishwari Devi. Respondent disputed that he was inducted as a tenant by Gurbachan Singh. Rather, he claimed that he was inducted as a tenant by Mansa Ram.
11. Gurbachan Singh has been examined as PW-1 by the appellants. He in his examination-in-chief has

deposed that he knew Tilak Raj but, he used to meet him very rarely. He did not let out any portion of the suit premises to Tilak Raj at any point of time. He did not know with whose permission Tilak Raj was in occupation of the suit property. He deposed that he had never seen the portion in occupation of Tilak Raj.

12. Mohan Lal, son of Iswari Devi as PW-3 in his affidavit did admit that respondent was inducted as a tenant in the shop in question by the previous owner, as told to him by the respondent.
13. There is no evidence to rebut the statement of Gurbachan Singh. There is no evidence on record if Gurbachan Singh had sold the shop in question to Mansa Ram or in what capacity Mansa Ram became owner of the suit property. Be that as it may, the fact remains, Ishwari Devi had purchased the property from Gurbachan Singh and as per the testimony of Gurbachan Singh corroborated by respondent, he was never a tenant of Gurbachan Singh. Therefore, under the circumstances, to say

that respondent became tenant of Ishwari Devi after purchase of Qr.No:25-A would not be the correct appreciation of evidence.

14. It is pertinent that even in the agreement to sell and General Power of Attorney, there is no mention of any name of the tenant who was in occupation of a portion of the property being Qr. No.25-A, Ramesh Nagar i.e. the shop in question. Generally, if the property is occupied by a tenant, his name and rate of rent etc. are specifically mentioned in the documents executed for transfer of the property. Admittedly, no attornment letter was served upon the respondent by Ishwari Devi, or her Special Power of Attorney after purchase of the property. No notice of termination of tenancy was served upon the respondent when he stopped paying the rent to the predecessor-in-interest of the appellants.
15. Respondent has claimed that he is the owner in possession of Shop No.25-A/1 which he purchased from Mansa Ram vide Agreement Ex.D-1. He had taken on rent a small room at the back of this shop

and paid rent and electricity charges for the said room to Ishwari Devi and had surrendered the possession of the said room to Ishwari Devi in 1990, when she needed the same. Therefore, he stopped making payment of rent.

16. Under the circumstances, neither of the parties have been able to identify the property in suit if, it forms part of qr. No.25-A or not. The appellate court has observed that Ishwari Devi had purchased 127 Sq.Yds. of land but, as per the site plan and the photographs placed on record, appellants are shown to be in possession of more land than 127 Sq.Yds. It was for the appellants to prove that the area in their possession included the shop in question only to the extent of 127 Sq.Yds. These findings are based on facts and the documents of the appellants themselves. It is unfortunate that neither of the parties could prove their claim in the shop in dispute.

17. The appellants claimed that only two rent receipts dated 15.2.1982 and 10.2.1990 Ex.PW-3/2 and PW-

3/3 respectively were issued by Ishwari Devi in favour of the respondent, wherein the address of the property in occupation to the respondent has been given as 25-A. There are numerous over writings in the receipt Ex.PW-3/2. However, there is one receipt placed on record which is dated 18.7.1978 Ex.PW-4/3. In this receipt the property number has been described as 25-A/1. It is purported to have been signed by Ishwari Devi. In the application form filed by the respondent for obtaining electricity connection, the address of the property is given as 25-A and the address of the shop is given as 25-A/1. In the inspection report, the premises inspected are shown as Shop No.25-A and the premises where the meter was to be installed have been described as 25-A/1, Ground Floor.

18. From the documents as discussed above, where at some places the property in dispute is described as 25-A and at some places shop is described as 25-A/1, in the absence of proper evidence on record it is concluded that the appellants have failed to prove that respondent is their tenant. Probably,

because of lack of proper evidence, neither the trial court nor the appellate court could specifically conclude if respondent was a tenant of the appellants or was the owner of the suit property. It is pertinent to mention here that, neither the appellants nor the respondent could establish their rights in the property in suit. The title of the appellants is defective whereas, respondent has completely failed to prove that he had purchase this shop from Mansa Ram by way of Agreement Ex.D-1. Agreement D-1 speaks of some loan having taken by Mansa Ram and in the event of not paying the loan within the period of one year, respondent was to become owner of the shop. Therefore, the said agreement though not registered, if looked into for collateral purposes would only be a Mortgage Deed and not a document of transfer of rights in the property in suit in favour of the respondent.

19. It is not out of place to mention here that there is one telephone bill for the period from 1.10.1992 to 22.10.1992 Ex.DW-1/P for the telephone installed in shop No.25-A. This bill is in the name of one Shri

Ramesh Bhal: This documents in itself raised a question regarding the status of the respondent in the shop in dispute, which remained unanswered by the parties.

20. Hence, under the circumstances of the case I conclude that there is no relationship of landlord and tenant between the parties. Mere payment of rent shown to have been paid by two receipts, which the respondent denies having signed by him, in view of the evidence discussed above, would not suffice to create relationship of landlord and tenant between the parties.
21. Learned counsel for the appellants has referred to **(1) 'Rameshwar Lal Sharma vs. Sardar Amrik Singh, 1974 Rajdhani Lal Reporter 269'** and **(2) 'Bhogadi Kannababu & Ors. vs. Vuggiana Pyadamma & Ors., 2006 (1) RCR 535'** to emphasize that a tenant who has been let into possession cannot deny his landlord's title, however, defective it may be, so long as he has not openly restored possession by surrender to his

landlord. Under the facts and circumstances of the case, none of these two judgments come to his rescue.

22. As discussed above, appellants have failed to prove relationship of landlord and tenant between them and the respondent, specially when respondent was not inducted as a tenant by the appellants as he was already in possession of the suit property. As discussed above, who had inducted the respondent as a tenant in the suit property still remains a mystery, which could not be solved by either of the parties during the trial.

Question of Law-2

23. In view of findings on question of law-1, the appellants are not entitled to the relief as claimed in the suit.
24. Hence, I find no merit in the appeal and the same is accordingly dismissed.


(ARUNA SURESH)
JUDGE

NOVEMBER 11, 2009
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