

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

+ RFA NO. 503 OF 2007

% Date of Decision: 22nd July, 2009

JAGDISH SINGH ARORA ...Appellant
! Through: Mr. S.C. Singhal, Advocate

Versus

\$ **JASWANT RAI & ORS.** ...Respondents
^ Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Siddhanth
Bambha, Advocate for R-1&2

* **CORAM:**
HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the Judgment?(No)
2. To be referred to the Reporter or not?(Yes)
3. Whether the judgment should be reported in the digest?(Yes)

JUDGMENT

P.K.BHASIN, J:

The appellant has challenged the correctness of the order dated 28th April, 2007 passed by the Court of Additional District Judge whereby the

plaint of his suit for possession against respondents 1 & 2 herein in respect of one shop in Gopi Nath Bazaar, Delhi Cantt has been rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908('CPC' in short).

2. The relevant facts necessary to be noticed for the disposal of this appeal may first be noticed. The appellant, who shall hereinafter be referred to as 'the plaintiff', filed a suit for possession and damages/mesne profits in respect of the suit property against respondents 1 and 2 herein, who are real brothers and were arrayed in the suit as defendants no. 1 & 2 and in this judgment also shall be referred to as the defendants 1 & 2, on the allegations that they were tenants in the suit premises of respondent no.3 Ajay Gupta, who was defendant no.3 in the suit. The plaintiff purchased the suit premises from the said Ajay Gupta vide sale deed dated 15th September, 1995 and then called upon defendants 1 & 2 to start paying rent to him but they did not accede to his request. Thereafter he filed a petition for their eviction in the Court of Rent Controller in which defendants 1 and 2 took the plea that the petition for their eviction before the Rent Controller was not maintainable since there was no relationship of landlord and tenant between the parties and they also denied the title of the plaintiff in respect of the premises under their tenancy. They also took the plea that since defendant no.3 himself was not the owner of the suit premises he could not pass any title to the plaintiff. That eviction petition

was then withdrawn by the plaintiff and thereafter he filed the suit for possession in the Civil Court pleading therein the aforesaid facts and claiming the defendants 1 & 2 to be unauthorized occupants of the suit premises. Damages/mesne profits were also claimed in the suit.

3. Defendants 1 & 2 resisted the suit claim by filing an application under Order VII Rule 11 CPC and it was claimed by them that the plaint should be rejected since as per the averments in the plaint and the documents accompanying the plaint the Civil Court did not possess the jurisdiction to entertain the suit for, possession in respect of the premises in suit since it was admittedly with them on a monthly rent of Rs.100/- only and the Delhi Rent Control Act applied to the premises and only the Rent Controller's Court had the jurisdiction to try the eviction petition in respect of the premises under their tenancy.

4. The learned trial Court allowed the application of the defendants vide order under challenge on the ground that since admittedly the plaintiff had approached the Rent Controller's Court before filing the present suit for possession and damages for the eviction of defendants 1 and 2 from the suit premises treating them as his tenants and admitting the rent to be Rs.100/-p.m. the Civil Court's jurisdiction to entertain the suit for possession was barred under Section 50 of the Delhi Rent Control Act.

This is how the trial Court dealt with the objection of the defendants 1 and 2 in the impugned order:

“15. Falling back to the present case, admittedly what was challenged before the Id. ARC by the present defendants was not their status as tenants but status of the present plaintiff as their landlord. The issue of relationship of landlord and tenant between the parties could have been looked into by the Id. ARC in eviction proceedings itself. Merely by denying title of the plaintiff and that too with the specifically pleaded reason that they were never furnished any documentary evidence of sale of the suit property to the plaintiff, defendants no. 1 & 2 did not cease to be tenants. Even in his application of withdrawal of eviction proceedings the plaintiff did not contemplate approaching the civil court for eviction. Rather, the eviction petition was withdrawn clearly in view of defence that the defendants had been paying rent to the Cantonment Board in terms with orders of Cantonment Executive Officer towards house tax liability on the suit property. In the present notice dated 23/05/05 also, the plaintiff did not challenge status of the defendants as tenants in the suit property and rather called upon them for enhancement of rent by 10%. Till that stage also, plaintiff did not contend that the defendants are unauthorized occupants in the suit property. It is only in the suit for the first time that the plaintiff denied status of the defendants as tenants.

16.

17. The proceedings before the Id. ARC would show that denial of status of plaintiff as landlord by the defendants was for the explicit reasons that they were never furnished any documentary evidence of change of hands of the suit property. That in itself, would not take away from the defendants their status as tenants of the suit property. Putting it simply, plaintiff approached the ARC claiming himself to be landlord of the defendants and that claim of plaintiff having been challenged, nothing prevented the plaintiff from proving the same before the Id. ARC. It is also not a situation where plaintiff did not try to do that. As reflected from records, the entire trial before the Id. ARC had been concluded when the eviction petition was withdrawn. Id. Counsel for defendants rightly contends that the eviction petition was wrongly withdrawn from the court of Id. ARC.

18.....Defendants have throughout claimed themselves to be tenants and even plaintiff, throughout till filing of this suit recognized the defendants as tenants in the suit property. Protection of rent control law afforded to the defendants cannot be taken away merely on the grounds that the defendants dispute (that too for want of documentary evidence) status of the plaintiff as a landlord, which the plaintiff ought to have proved before the Id. ARC in eviction proceedings earlier filed.

19. Since, admittedly the monthly rent being paid by the defendants no. 1&2 is Rs. 100/- they are entitled to protection under the Delhi Rent Control Act..... Consequently, jurisdiction of this court to entertain the present suit is barred by virtue of section 50 of the Delhi Rent Control Act and the

plaint is liable to be rejected under the provisions of Order VII Rule 11(d) of the Code of Civil Procedure.”

5. Challenging the correctness of this reasoning of the trial Judge Mr. S.C.Singhal, learned counsel for the appellant submitted that the trial Court has gone much beyond the scope of Order VII CPC while allowing the application of the defendants 1 and 2 and has not adopted the correct approach inasmuch it as has not even considered the averments in the plaint and has confined its attention only to what the plaintiff had claimed before the Rent Controller’s Court. Mr. Singhal argued that as per the averments in the plaint possession of the suit premises was being claimed on the ground that plaintiff was the owner and defendants 1 and 2 were unauthorized occupants of the suit premises and on these averments the Civil Court definitely had the jurisdiction to try the suit and whether the plaintiff would have succeeded finally in getting this relief or not because of his having approached the Rent Controller’s Court for eviction of these defendants before filing the present suit was not to be examined while invoking Order VII Rule 11 CPC.

6. On the other hand, Mr. Sudhir Nandrajog, learned senior counsel for the respondents 1 and 2, submitted that the trial Court has rightly rejected the plaint relying upon the averments in the plaint alone and accompanying documents filed by the plaintiff since those averments clearly ousted the jurisdiction of the Civil Court to entertain the suit for possession in respect of the suit premises to which as per the plaintiff’s

own case in the plaint Delhi Rent Control Act was applicable, Mr. Nandrajog also contended that the denial of relationship of landlord and tenant between the plaintiff and defendants 1 and 2 as well as the title of the plaintiff by these defendants before the Rent Controller's Court which was earlier approached by the plaintiff for their eviction did not confer jurisdiction on the Civil Court to entertain the suit for possession and the Rent Controller only was competent to decide this dispute about relationship between the parties. The submission was that since admittedly these defendants were tenants in the suit premises at a monthly rent of Rs.100/- they can be evicted from there only by the order of the Rent Controller after it is determined whether the plaintiff had become their landlord on the basis of documents relied upon by him in support of his claim that he had purchased that property from defendant no.3 who undisputedly was the landlord of these defendants and it did not matter that the defendants had claimed that defendant no.3 could not legally sell the suit premises to anyone since he himself had no title therein since it belonged to the Cantonment Board. All these questions could be resolved by the Rent Controller. In support of this submission Mr. Nandrajog placed reliance on a judgment of the Supreme Court in "**Om Prakash Gupta vs. Rattan Singh and Anr.**", (1964) 1 SCR 259. He also cited another judgment of the Supreme Court in "**T. Arivandandam vs. T.V. Satyapal and Anr.**", (1977) 4 SCC 467 to support the argument that the plaintiff's case has been rightly rejected by the trial Court being frivolous

having been instituted in a Court having no jurisdiction and to harass the defendants by dragging them to unnecessary litigation in different Courts.

7. In my view, in the facts of this case the application under Order VII Rule 11 CPC moved by defendants 1 and 2 in the trial Court was totally misconceived and the trial Court's decision in allowing the same is also not sustainable at all. Order VII Rule 11 C.P.C. reads as under:

"11. **Rejection of plaint.**--The plaint shall be rejected in the following cases:--

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued by the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, failed to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff."

In the present case the learned trial Court has invoked Clause (d) of Rule 11 for rejecting the plaint. The Court was of the opinion that on the basis of the averments in the plaint itself the civil suit for possession was barred under Section 50 of the Delhi Rent Control Act. However, in my

view this decision of the learned trial Court is not correct. The plaintiff had filed the suit on the categorical averment that he was the owner and the defendants were unauthorised occupants of the shop in dispute. On these averments the plaintiff could approach the Civil Court only for a decree of possession. It is not to be considered at the initial stage whether he would be able to get this relief or not finally in view of the fact that earlier he himself had filed an eviction petition in the Court of Rent Controller claiming defendants 1 and 2 here as his tenants since the maintainability of the suit is one thing and the entitlement of the plaintiff to get the relief prayed for in the suit on the basis of the averments in the plaint is another thing. In this regard a reference can be usefully made to a judgment of the Hon'ble Supreme Court in "**Abdullah Bin Ali & Ors. Vs. Gallappa & Ors.**", 1985 (2) SCC 54 which, in my view, squarely applies to the facts of the present case. In that case an application for recovery of rent in respect of some land was filed by the persons claiming to be the owners-landlords in the Court of the Tehsildar under the Hyderabad Tenancy and Agricultural Land Act against a tenant by the name of Saibanna. That tenant, however, denied the ownership of the applicants before the tehsildar as well as the tenancy. In view of that stand taken by the tenant civil suit for possession and mesne profits treating the said Saibanna as a trespasser was filed. In that suit Saibanna took the plea that Civil Court had no jurisdiction to try the suit since as per the averments in the plaint the plaintiffs were claiming Saibanna to be a tenant and so relief

of possession could be got only from the Revenue Court constituted under Section 32(1) of the Hyderabad Tenancy and Agricultural Land Act and civil suit for possession was barred. The Civil Court decreed that suit. That decision was, however, reversed by the High Court on the ground that Civil Court had no jurisdiction. However, the Hon'ble Supreme Court set aside the finding of the trial Court as well as the High Court that civil suit was not maintainable and while disposing of the appeal the Hon'ble Supreme Court disapproved unreasonable attitude adopted by the defendant in the suit by denying the jurisdiction of the Revenue Court when the landlord filed a petition in the Revenue Court and then by denying the jurisdiction of the Civil Court when the landlord filed the civil suit. It would be appropriate to useful to reproduce the relevant paragraphs of the judgment of the Hon'ble Supreme Court which clearly apply on all fours to the facts of the present case. This is what was observed by the Apex Court:-

4. It has already been pointed out that the plaintiffs-appellants had earlier initiated the proceedings for the recovery of the arrears of rent from the defendants-respondents and had also initiated a separate proceeding for the correction of the tenancy register. In both those proceedings the defendant No. 2 had denied the title of the plaintiffs-appellants and the revenue court directed the plaintiffs to get their redress by filing a suit in the civil court. Accordingly, the plaintiffs-appellants had no objection but to file the suit. Curiously enough this time the defendants took up the stand that the civil court had no jurisdiction to try the suit when in the earlier proceedings before the revenue court too the defendants had raised an objection that the revenue court had no jurisdiction. Thus, the plaintiffs-appellants had been running from pillar to post to get relief on account of the unreasonable attitude taken by the defendants-respondents.

5. **There is no denying the fact that the allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement. On a reading of the**

plaint as a whole it is evident that the plaintiffs-appellants had filed the suit giving rise to the present appeal treating the defendants as trespassers as they denied the title of the plaintiffs-appellants. Now a suit against the trespasser would lie only in the civil court and not in the revenue court. The High Court, however, took the view that the plaintiffs-appellants had not claimed a declaration of title over the disputed plots and all that has been set up by them in the plaint is the relationship of landlord and tenant.

6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. **Indeed, when the defendants denied the title of the plaintiffs and the tenancy the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiffs had alleged that the defendant No. 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.**

7. We are, therefore, of the considered opinion that on the allegations made in the plaint the suit was cognizable by the civil court and that the High Court has erred in law in non-suiting the plaintiffs-appellants on the ground that the civil court had no jurisdiction.”(emphasis supplied)

One could not come across a better precedent than this, facts of which are identical to the facts of the case in hand and so in view of the above-quoted observations of the Supreme Court the impugned order of the learned trial Judge has to be set aside.

8. This appeal is accordingly allowed. The order dated 28th April, 2007 passed by the Additional District Judge, Delhi in suit no. 221/06 is set aside. Consequently, the case is remanded back to the trial Court for trial on merits after giving an opportunity of filing of written statements to the respondents-defendants. The appellant is also awarded costs of this appeal to be borne by respondents no. 1 and 2.

9. The case shall be taken up by the trial Court for further directions on 10th August, 2009 at 2 p.m.

P.K. BHASIN,J

July 22, 2009
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