

* **HIGH COURT OF DELHI : NEW DELHI**
FAO No. 262/2009 & CM No. 11910/2009

% Judgment reserved on: 08th October, 2009

Judgment delivered on: 14th October, 2009

Shri Madhu Sudan
S/o Sh. Satyanarayan
R/o E-146, 2nd Floor
East of Kailash
New Delhi

Appellant
Through: Mr.Virender Goswami and
Ms.Soni Singh, Advocates.

Versus

Smt. Valsala Jayamani
W/o Sh. A. Jayamani
R/o E-145, Ground Floor
East of Kailash
New Delhi

Respondent.
Through: NEMO

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

1. This appeal has been filed by appellant against order dated 28.3.2009 passed by Additional District Judge, Delhi. Vide impugned order application of respondent under Order XXXIX Rule 10 read with Section 151 of the Code of Civil Procedure (for short as Code) was allowed.

2. Brief facts of this case are that respondent is the owner/landlord of suit property. Appellant was inducted as tenant in this property after having executed lease dated 19.7.2006. The rent payable was Rs.20,000/- per month with effect from June, 2006. It is alleged that appellant paid rent only upto September, 2006. Three cheques issued by appellant with effect from October, 2006 to December, 2006 have been dishonoured and complaint under Section 138 of Negotiable Instruments Act against appellant is pending in the court. Appellant has not paid rent with effect from October, 2006 till April, 2007 and is thus an

unauthorised occupant of the property. It has also been alleged that appellant filed forged receipts which are inadmissible in evidence in terms of Sections 33 and 35 of the Indian Stamp Act.

3. In written statement, appellant admitted execution of lease deed. However, it is stated that appellant executed the agreement in good faith at the request of respondent, as respondent wanted to have certain rebate in tax though parties never intended to have any landlord/tenant relationship. In fact, respondent had agreed to sell the property for sale consideration of Rs.45 lakhs, which was later on increased to Rs.50 lakhs. Appellant also paid advance of Rs.10,30,000/-. Original copies of receipts, however, have been lost and in this regard a report has been lodged. Appellant never admitted the liability to pay rent @ Rs.20,000/- per month.

4. It is contended by learned counsel for the appellant that provisions of Order XXXIX Rule 10 of the

Code are applicable only when a party admits that he holds money or other thing capable of delivery as a trustee for another party. Appellant has not made any such admission. On this point, learned counsel referred a decision of this Court, ***Gujarat Co-operative Milk Marketing vs. M/s Jawahar Mal and Sons and others.*** AIR 2003 Delhi 208 and ***Smt. Lalbiakthangi vs. Shri H. Duna,*** AIR 1995 Gauhati 12.

5. Other contention is that respondent had entered into an agreement to sell the suit property to the appellant. Under these circumstances, there can be no such admission on the part of appellant towards amount payable to the respondent. There is no relationship of landlord and tenant between the parties, so there can be no question of admitted rent. Moreover, appellant has filed a separate suit for specific performance in this Court. Lastly, lease documents being instruments and being insufficient stamped, are liable to be impounded.

6. As per appellant's own averments, he is taking contradictory stand. On the one hand, he admits the execution of lease agreement while, on the other hand, he denies its execution and claims that there was an agreement to sell the property in question. Appellant himself is not sure in his mind as to whether he is a tenant or lessee or owner of the property in question, possession of which he claims by virtue of making part payment towards the sale consideration.

7. Order XXXIX Rule 10 of the Code read as under:

“10. Deposit of money, etc., in Court. Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court. “

8. According to this provision, where rent is payable and liability to pay is admitted, the court can order deposit of arrears of rent in the court.

9. As stated above, appellant is blowing hot and cold in the same breath. Appellant has not placed on record any agreement to sell, to show that by virtue of which, he paid advance of Rs.80,000/- as well as Rs.50,000/- as alleged.

10. Written statement filed by appellant in the trial court makes an interesting reading which clearly shows admission made by him, that he is a lessee in the property in question. Extract of para 4, 5 and 8 of preliminary objections of written statement filed by appellant herein, read as under:

“4. That admittedly the Plaintiff is the Owner of the said flat and the Defendant is in occupation and in possession of the said Flat since June 2005. It is submitted that the Plaintiff alongwith her husband Shri A. Jayamani had approached the Defendant to sell the said flat sometime in June 2005. That after much discussion and negotiations, it was decided that the Plaintiff would sell the said flat for total sale consideration of Rs. 45,00,000/- (Rupees Forty Five Lacs only) to the

Defendant. However, as the defendant did not have the entire Sale Consideration at that point of time, it was agreed that the Defendant would pay Rs.5,00,000/- (Rupees Five Lacs only) immediately and the balance amount within 18-20 months. It was also agreed that in the meanwhile the Defendant would pay interest @ Rs.18,500/- per month to the Plaintiff, till the entire aforesaid sale consideration is paid and the Sale Deed is executed in favour of the Defendant. That the Defendant accordingly paid a sum of Rs.5,00,000/- (Rupees Five Lacs only) to the Plaintiff in June, 2005 as earnest/advance money in the presence of witnesses.

5. It is submitted that the Defendant executed certain agreements in good faith at the request of the Plaintiff, as the Plaintiff wanted certain rebate in tax and also to show to her bankers some papers, though the parties never intended to have any LANDLORD-TENANT relationship. The aforesaid fact is evidence from the fact that none of these documents were registered. The Lease Agreements were executed not only for tax purposes in good faith but also to protect the possession of the said property till such time the Defendant get a sale deed executed in his favour. It is therefore evident that

there was never any intention of the parties to enter into any Lease Agreement with regard to the said flat.

8. It is pertinent to mention herein that apart from the above fact the Plaintiff had to complete certain formalities which were also never intimated to the Defendant having been done till date. It has come to the knowledge of the Defendant that the Plaintiff till date has not transferred the electricity connection in her name, neither has the Plaintiff obtained any completion certificate from the Competent authority which was required to be obtained by the Plaintiff. In fact the Plaintiff only kept on demanding money from the Defendant and kept on taking interest with an assurance that all the formalities would be completed by the Plaintiff at the earliest.”

11. Appellant mischievously and very cleverly in entire written statement, nowhere mentioned as to on which date, respondent approached him to sell the flat. As per appellant's own admissions made in the written statement, respondent is the owner of flat in question and appellant is in occupation and possession of flat since June 2005. But written statement is silent about the legal status of the appellant, as to whether he is lessee, tenant or owner. Appellant wants the Court to

believe that out of sale consideration of Rs.50 Lakhs as alleged by him and by paying just a sum of Rs. 1.30 lakh, appellant claims himself to be owner of the flat in question.

12. As stated above, execution of lease deed has been admitted by the appellant. Once execution of document has been admitted, no oral evidence contrary to that can be referred.

13. Section 91 of the Indian Evidence Act, deal with the exclusion of oral by documentary evidence. This Section, therefore, lays down that when the terms and conditions of a contract have been set out in writing by agreement of parties, the document is intended to be a record of the transaction and therefore, no other evidence shall be given to prove the transaction, except the document itself. Oral evidence is excluded equally when a document does exist.

14. Trial court in the impugned order observed;

"The defendant in the Written Statement has denied all these facts and has claimed that there was no intention of the parties to enter into any lease agreement and parties did not have any landlord-tenant relationship which implies that the lease deed dated 1.7.2005 and 19.7.2006 between the parties are not categorically denied by the defendant rather he has admitted the execution of these lease deeds but has taken the plea that the plaintiff had agreed to sell the said property to the defendant and has also filed the suit for specific performance and permanent injunction in Hon'ble High Court. The defendant has claimed that he has paid about Rs.10,30,000/- out of the total consideration of Rs.50 lacs but in reply to the application, he has pleaded that original copies of the receipts have been lost whereas on behalf of plaintiff, it has been alleged that these receipts have been forged by the defendant and a false plea has been taken by the defendant that the original have been lost and the photocopies relied by the defendant cannot be considered as evidence. The defendant has also taken the plea that lease agreement was signed at the request of the plaintiff that the same was to be used in good faith for tax purpose and also for protection of the property. The lease deed dated 1.7.2005 commenced for a period of 11 months wherein monthly rent was fixed at Rs.18,500/- and the lease deed dated 19.7.2006 is also for 11 months commencing from 1.6.2006

wherein the rent of the premises has been agreed to be Rs.20,000/- per month. There is a mention of the security deposit of Rs.37,000/- and the defendant is admittedly in possession of the suit property and enjoying the same without paying any rent. He claims to have paid Rs.10,30,000/- to the plaintiff but has failed to produce the original receipts and admittedly the suit property has not been sold so far by the plaintiff in his favour. Therefore, the contention of the defendant cannot be believed that only by payment of Rs.10,30,000/- out of a total sale consideration of Rs.50 lacs, the plaintiff could have allowed him to take over the possession of the suit property unless there was lease agreement between the parties and the defendant had agreed to pay the rent accordingly. Since the defendant is enjoying the property without paying any rent, the plea of the defendant that he had paid a sum of Rs.10,30,000/- to the plaintiff as part consideration for sale of property and that he was entitled to use the property without any payment cannot be sustained. Since the defendant is in possession, he is presumed to be lessee and therefore, is bound to pay the agreed rent @Rs.20,000/- per month to the plaintiff upto the lease period and thereafter on termination of lease, is bound to pay the damages/mesne profits."

15. There is no reason to disagree with above findings of the trial court.

16. Judgments referred by learned counsel are not applicable to the facts of the present case, as in the present case there is clear cut admission on the part of appellant that he has executed the lease deed. Since execution of lease deed has not been denied, relationship of landlord and tenant is admittedly there. In the garb of alleged sale agreement, lease deed executed between the parties, cannot be overlooked or given a go bye.

17. Present appeal filed by appellant is most bogus and frivolous one. Appellant is enjoying the property, without paying any rent/occupation charges, since October, 2006 and has also no intention to pay the same. Such unscrupulous person who take property on lease and later on claims ownership of the same and then invent a cock and bull story, just to retain possession of the property, should be dealt with heavy hands. Strong message is required to be sent to such unscrupulous persons who wants to enjoy property of others, without paying even a single penny and deprive

the lawful owner, who had built the same with their hard earned money. Such persons make the legal and rightful owner to run from pillar to post i.e. from one court to another to seek justice that is, to get their legal dues, such as monthly rent and possession. Appellant to a great extent has been successful in frustrating respondent-owner efforts to get her legal due that is, either the rent or possession. Appellant has been taking re-course to one litigation after the other, just to harass the respondent-owner

18. This appeal is nothing but is gross abuse of the process of law. Appellant has no intention either to pay agreed rent or to vacate the premises. Appellant's intention is just to grab the property by any means whatsoever.

19. So, keeping in view the unscrupulous conduct of the appellant, since he wants to hold on to the property, without paying for it, the present appeal is

dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand).

20. Appellant is directed to deposit the cost with trial court, within one month from today, failing which trial court shall recover the same in accordance with law.

CM NO. 11910/2009

21. Dismissed.

22. Copy of this judgment be sent to the trial court.

October 14 , 2009
Ag/bhatti

V.B.GUPTA