

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FAO(OS) No.567/2009 and CM No.16685/2009
SEEMA BANSAL Appellant
Through: Mr. Ashish Dholakia &
Mr. Adarsh Priyadarshan,
Advs.

versus

\$ CHITRA GARG Respondent
^ Through: Mr. Arun Mohan, Sr. Adv.
with Mr. Arvind Bhatt, Adv.

Date of Hearing : November 20, 2009

% Date of Decision : December 23, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR
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

VIKRAMAJIT SEN, J.

1. The Appellant by way of the present Appeal impugns the Order dated 09.09.2009 whereby the learned Single Judge was pleased to dismiss the Preliminary Objection as to the jurisdiction of this Court raised by the Defendant/ Appellant by way of IA No. 2028/1997 which the learned Single Judge has dismissed with costs.

2. At the fulcrum of the dispute is the suit property bearing No. R-96, Greater Kailash-I New Delhi, which was given on lease

by late Col. Harjeet Singh to one Mr. Pires, Sole Proprietor of Mr. Pires' Private School. The letting was for a period of 3 years with effect from 1.10.1971. On 27.09.1974, a fresh lease was executed by late Col. Harjeet Singh, this time with Mr. Pires' Private School through its partner Mr. Maurice Wilford Pires at a monthly rent of Rupees 1,800/-. Eviction Petition No. 96/1978 was filed by the said Col. Harjeet Singh on the ground of bona-fide requirement. After demise of Mr. Pires, the Defendant was allowed to defend the petition before Rent Controller. The said Eviction Petition was dismissed by the learned Rent Controller vide Judgment dated 3.12.1985 on the ground that the purpose of the letting was not residential. In 1986, another Eviction Petition was filed by the heirs of Col. Harjeet on the ground that the Respondent had, without the written consent of the Owner/Landlord, sublet, assigned and parted with possession of the leased premises to Respondent (Defendant in the Suit). While a third eviction petition was also pending before the Rent Controller, the Petitioners sold the premises to Mrs. Chitra Garg, the Plaintiff herein, by a registered Sale Deed dated 19.02.1992. A Suit was then brought by her on 10.11.1993, bearing CS (OS) No. 2565 of 1993, for possession and mesne profits against the Defendant/Appellant. In the said suit, the Defendant, vide IA No. 2028/97, raised an objection to the

jurisdiction of the Civil Court in light of the bar on jurisdiction of the Civil Court under Section 50 of Delhi Rent Control Act, 1958 as the said premises were said to be governed by the Delhi Rent Control Act, 1958 ('DRC Act' for short).

3. The case of the Plaintiff in the present suit is that the Defendant No.2, that is, Mrs. Seema Bansal was an employee of Pires' Private School who later self styled herself as Principal. It is further averred that the Defendant entered into the possession of the property as a trespasser and that she had been alleging herself to be a tenant by virtue of being the partner of Pires' Private School.

4. In their Written Statement, the Defendants, *inter alia*, pleaded that Defendant No.2 had become the owner of the property by adverse possession in October, 1989. According to her pleadings her adverse possession commenced from October, 1977, that is, from the time of expiry of the second Lease Deed. In her Statement recorded on 15th May, 1995 under Order X of Code of Civil Procedure, 1908 ('CPC' for short), the Defendant No. 2(Appellant before us) admitted that she had been depositing the rent of the property in the Court and that she had not paid any House Tax of the property. She has also stated that though her possession of the property was that of a tenant, she was the owner by adverse possession. On a query from the

Court, she categorically stated that “my claim is only on adverse possession”.

5. Subsequently, Issues were framed by the Court and applications were filed by both the sides; Order XII Rule 6 of the CPC application by the Plaintiff and Order VII Rule 11 of the CPC by the Defendant. Another application, bearing IA No.12804/2000, was also filed by the Defendant to amend her Written Statement. After hearing the arguments on the issue of jurisdiction in light of the bar under Section 50 of DRC Act, the learned Single Judge held that the Defendants (Appellants before us) were not entitled to contest the jurisdiction of the Civil Court to entertain the suits on the basis of the bar under Section 50 of DRC Act.

6. The learned Counsel for the Appellant has urged before the Trial Court, as well as before us, that the Defendants had entered into the possession as tenants being one of the Partners of Pires’ Private School and their possession as tenant has been accepted by the Owner. It is thus argued that once the Appellant entered upon the possession of the demised premises in the capacity of a tenant, she would be protected by the provisions of the DRC Act and the claim based on adverse possession will not oust the jurisdiction of Rent Controller before whom the eviction petitions were pending.

7. The Respondent/Plaintiff, however, has taken a diagonally opposite stand wherein it is argued that on investigation it was discovered that Mr. Pires who was the original tenant had long abandoned the premises and the Defendant was not a co-tenant but a mere trespasser and thus the Controller would not possess any jurisdiction; and that a civil suit for possession against the said Defendant was the only and proper remedy left. The Respondent has further dwelt on the fact that there is a sharp cleavage in the argument of the Defendants earlier before the Rent Controller and the Written Statement in the Civil Suit, and that which is now sought to be taken. It has been pointed out that after the Plaintiff had instituted a suit in this Court, an application for substitution as landlord was moved in the proceedings before the Rent Controller. The said substitution application was opposed by the Defendant on a plea that since the Plaintiff had in his suit before the Civil Court pleaded that the tenant had abandoned the premises and the Defendant is merely a trespasser therein, the petition before the Rent Controller will not survive and thus be liable to be dismissed. The learned Rent Controller, vide order dated 17th May 1996, held that the plaintiff could not be permitted to continue the petition for eviction on ground of subletting. The learned Senior Counsel for the Respondent further points out the pleadings of

the Defendant made in the Written Statement where the Defendant has not even vaguely raised the plea of being a tenant and has, to the contrary, maintained the stand of being the owner by adverse possession. Learned Senior Counsel has also taken us through the pleadings of the Defendant before the Hon'ble Supreme Court in her Special Leave Petition bearing No. SLP (Civil) 10552/96 arising from the same suit where she has stuck to her position of being the owner. Thus, it is sought to be argued that the defendant cannot approbate and reprobate to preclude the Plaintiff from claiming relief before the Rent Controller as well as the Civil Court by taking shifting stands.

8. As we have noted at the commencement of these presents, the learned Single Judge has rejected the Preliminary Objection. However, the following Issues have been framed:-

1. Whether the suit property has been properly valued for purpose of Court Fees?
2. Whether the suit is barred by time?
3. Whether the plaintiff is owner of the property? If not, to what effect?
4. Whether the defendant No.2 has become owner by adverse possession?
5. Whether plaintiff is entitled to claim mesne profits or damages for use and occupation of the premises by the defendant? If so, at what rate and for what period?

6. Whether the Plaintiff is entitled to recover possession?

7. Relief.

9. It is also significant to note that the learned Single Judge has recorded the sundry applications which are pending, namely, (a) IA No.4932/1998 of the plaintiff for a decree for possession on admissions under Order XII Rule 6 of the CPC; (b) IA No.10486/1998 of the defendant, also under Order VII Rule 11 of the CPC *inter alia* on the ground of the suit being barred by time as well as under Section 50 of the Rent Act and Section 9 of the CPC; (c) IA No.10487/1998 also of the defendant under Order VII Rule 11 of the CPC, again on the ground of the suit being barred by Section 50 of the Rent Act; (d) IA No.12804/2000 of the defendant for amendment of the plaint to take a plea in the written statement of the suit being barred under Section 50 of the Rent Act; (e) IA No.1472/2001 of the defendant, again for amendment of the Written Statement.

10. We find no error in the impugned Order. The questions which are now being agitated before us would be finally and fully decided in the Suit whenever is led on the Issues that have been struck. No case is made-out for the dismissal of the Suit at this stage. Moreover, it is clear by the pendency of several applications detailed above that the efforts of the Appellant are to stall the Trial. It is the Plaintiff and not the Defendant who is

usually vexed and troubled by the pendency of the Suit. Valuable and scarce time of the Court is exhausted in appeals such as the present one. Having recorded the statement of the Appellant under Order X of the CPC, the learned Single Judge had arrived at the conclusion which is neither legally incorrect nor perverse. In his statement under Order X, the Appellant had clarified that "my claim is only on adverse possession".

11. Since the impugned Order is passed on a Preliminary Objection of the Defendant to the jurisdiction of the Court and the contentious issue will be gone in depth in trial by the learned Single Judge after recording of the evidence, we refrain ourselves from making any detailed observation on the merits of the case in this Appeal.

12. In these circumstances, we fail to appreciate any reasoning by which the Suit was liable to be dismissed. The Appeal is dismissed with costs of Rupees 30,000/-. Pending application also stands dismissed.

13. Trial Court record be sent back.

(VIKRAMAJIT SEN)
JUDGE

December 23, 2009
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(SUNIL GAUR)
JUDGE