

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

+ **RCR 20/2009 & CM No. 3799/2009**

Reserved on: March 19th, 2009

% Date of Decision: April 01, 2009

SHRI RAMESH AHUJA & ANR. Petitioners
Through: Mr. Som Dutt Sharma,
Advocate with Mr. I.S. Suri,
Advocate

Versus

SHRI RAM NATH JAIN Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the 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

J U D G M E N T

MANMOHAN, J

1. Present civil revision petition has been filed by petitioners/tenants under Section 25B(8) of Delhi Rent Control Act, 1958 seeking to set aside order dated 25th September, 2008 passed by Additional Rent Controller (in short 'ARC') in E No. 879/2007 whereby petitioners' leave to defend application has been dismissed and an eviction order in favour of respondent/landlord has been passed.

2. Learned Counsel for petitioners contended that respondent/landlord is not the owner of premises in question and sale deed relied upon by respondent is a forged and fabricated document. He further stated that ARC had wrongly concluded that respondent was owner of property in question on the basis of a judgment rendered by a Judge of Small Causes Court in Suit No. 810/1991. He submitted that said judgment cannot be relied upon to conclude the ownership issue as a Court of Small Causes has limited jurisdiction. In this context learned Counsel for petitioners relied upon a judgment of Hon'ble Supreme Court in ***Sunder Dass Vs. Ram Prakash*** reported in ***AIR 1977 SC 1201*** wherein it has been held as under:-

"3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any Court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing Court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing Court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all....."

3. He further submitted that ARC could not have relied upon the principle of *res judicata* as decision on question of

jurisdiction was purely a question of law, unrelated to rights of parties to previous suit. In this context, he relied upon a judgment of Hon'ble Supreme Court in ***Mathura Prasad Sarjoo Jaiswal and Ors. Vs. Dossibai N.B. Jeejeebhoy*** reported in ***AIR 1971 SC 2355*** wherein it has been held as under :-

"10. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S.11 Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."

4. In my opinion, judgment of ***Sunder Dass*** (supra) relied upon by counsel for petitioners, is clearly inapplicable to facts of the present case, as it is not petitioners' case that judgment passed by a Court of Small Causes was a nullity for lack of inherent jurisdiction.

5. Undoubtedly, a Court of Small Causes has limited jurisdiction, but in my opinion, on the principles of *res judicata*, finding of Court of Small Causes that respondent was owner of tenanted premises, would disentitle petitioners from raising this plea in their leave to defend application. The finding rendered by Small Causes Court with regard to respondent's ownership of suit premises is reproduced hereinbelow for ready reference :-

"6. From the pleadings of the parties it is admitted case of the parties that Heera Lal was the previous owner and Ram Lal deceased husband of the defendant was the tenant. The defendant herself has not come forward to enter in the witness box. Her son appearing as DW has not stated a word about having become owner by way of adverse possession. It is settled law that once a tenant always a tenant. Succession of tenancy rights is governed by the provisions of Delhi Rent Control Act, 1958 and on the demise of a tenant tenancy rights are inherited by his spouse, son or daughter provided they were living with the deceased on the date of his death, as laid down in sub Sec. (L) of Sec. 2 of the Act. This provision is further subject to explanation (I) and in the order of succession provided therein the tenancy rights devolved firstly upon the surviving spouse and if there is no surviving spouse then upon son or daughter of that deceased. Since the deceased Ram Lal is survived by his wife presently living in the tenanted premises tenancy rights cannot be said to have devolved upon the son or daughter of the deceased. Therefore, other LRs of the deceased are not necessary to be impleaded. It has not been explained as to how DDA is a necessary party. Even if rent of the premises was once attached by the DDA for nonpayment of lease money unless possession is taken the ownership does not comes to end.

7. Regarding ownership of the plaintiff he has proved on record sale deed Ex. PX and PW-1/A and copies of mutations Ex. PW1/B&C. A bare perusal of these sale deeds shows that Heera Lal the previous owner, sold the property to Sh. Ram Kumar and others who in turn later on sold the same to the plaintiff. It was contended by the learned Counsel for the defendant that the Sale Deed has to be properly proved. In this connection PW3 Shri G.R. Chopra, Advocate has identified his signature as well that of executants before the Sub-Registrar and has thus proved the sale deed, from the record brought by clerk of

Sub-Registrar Office, certified copy of which is Ex. PX. Other sale deed Ex. PW-1/A was proved by the plaintiff himself. Copies of mutation placed on record and proved as Ex. PW-1/B & C further show that first property was mutated in the name of Ram Kumar and therein the name of the plaintiff. In my opinion this is sufficient proof of ownership.

8. In his deposition the defendant's son himself stated that if rightful owner claims the rent the defendant is willing to pay the same. Since there is no dispute regarding rate of rent and the period and it stands proved on record that the plaintiff is the rightful owner to recover the rent, I find the plaintiff entitled to claim the same. Suit is thus, liable to be decreed against the defendant....."

6. Admittedly, aforesaid finding has attained finality as the same was never challenged by petitioners' predecessor in interest – through whom petitioners claim tenancy. Moreover, on a perusal of judgment of Court of Small Causes, it is apparent that the same dispute with regard to ownership of tenanted premises was raised in the said proceedings, as is being sought to be done in the present case, and further that finding of Court of Small Causes was in fact a finding of fact and not of law. Even the judgment of **Mathura Prasad Sarjoo Jaiswal** (supra) relied upon by petitioners' Counsel is inapplicable to the present case.

7. It is pertinent to mention that petitioner no. 1 had deposed as a witness in support of his mother – who was the defendant before Court of Small Causes. It is rather unfortunate that judgment of Court of Small Causes was not disclosed by petitioners in their leave to defend application. The

tendency of not making full disclosure in pleadings is unfortunate and largely responsible for delay in the judicial system. Unless this practice of making incomplete disclosure is curbed with a heavy hand, courts will not be able to dispense speedy justice. Consequently, petitioners' conduct of making incomplete disclosure is deprecated and present petition along with application are dismissed with costs of Rs. 15,000/- to be paid to Prime Minister Relief Fund within a period of six weeks from today.

MANMOHAN, J

April 01, 2009

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