

S-6B

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

% *Date of Judgment: 12.11.2010*

+ **RSA No.7/2009**

DEVKI NANDAN GOEL Appellant
Through: Mr. Satish Kumar Verma & Mr. R.K.
Pandey, Advocates

Versus

MAHAVIR PRASAD & ANR. Respondents
Through: Mr. Sudhanshu Tomar, Advocate

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 19.11.2008 which has endorsed the finding of the Trial Judge dated 17.10.2006 thereby decreeing the suit of the plaintiff on admission.
2. The appellant before this Court was the defendant before the Trial Judge. Plaintiff Mahavir Prasad had filed the suit for possession and mesne profits against the defendant Devki Nandan Goel. The pleadings of the parties including the written statement of the defendant were adverted to by the Trial Judge. This was pursuant to an application filed by the plaintiff under Order 12 Rule 6 of the Code of Civil Procedure (hereinafter referred to as the 'Code'). The plaintiff had prayed for a decree for possession in view of the admissions made by the defendants.

3. The Trial Judge had decreed the suit of the plaintiff. Findings returned inter alia read as follows:-

“Admittedly, the relationship of landlord and tenant exists between plaintiff No. 2 and defendant, rate of rent is admitted and service of legal notice is admitted and the question remains to be decided as to whether the property in dispute falls in the area where the DRC Act is applicable or not and validity of notice and extent of tenancy of termination and in this connection it has been argued on behalf of defendant that the plaintiff No. 1 has no right, title or interest in suit property and it has been further argued that during the course of evidence it has been admitted by the plaintiff No. 1 that one of the wall of property in question is adjacent to Badarpur village and I have perused the cross of PW 1 dated 17.01.2005 and PW 1 specifically denied that suit property falls in the revenue estate of Badarpur and notification aforesaid makes it clear that revenue village Badarpur has been urbanized but there is no mention of village Molar Band and on the other hand, contention of Ld. Counsel for plaintiff is well founded that defendants herein themselves have shown their address in their suits filed for the relief of injunction and in their petition for depositing the rent before Ld. SCJ as village Molarband and this fact has not been denied by defendant in the entire reply to the applications or in the written submissions and it is true that the certificate issued in favour of the defendants for the purposes of electricity connection address of the defendant is shown as Molarband, Jaitpur Road, Badarpur, New Delhi but to my mind that does not mean that the property falls in Badarpur instead of Molarband this fact is clear from the cross-examination of PW 1 wherein suggestion given on behalf of defendant to the plaintiff No. 1/PW1, PW 1 has testified that “it is incorrect to suggest that documents such as GPA, Agreement to sell etc. which are Ex. PW-2 (Colly) does not pertain to the property B-8, Molarband, post office Badarpur, Jaitpur Road, New Delhi-110044 and thus, even the aforesaid suggestion makes it clear that Badarpur Village is shown as post office to the revenue village of Molarband and thus above discussion makes it clear that on the face of it, it has been shown that suit property is situated in revenue village of Molar Band and the objection taken by defendant is only for the sake of objection having no merits that the property is situated in Badarpur Village.

In view of the aforesaid discussion, it is that since the property is not situated in Badarpur Village but is situated in Molarband Village and said fact has been established from documents filed by defendant himself vs. Certified Copy of plaint of the previously instituted suit, petition under Section 31 of the Punjab Indebtness Act and even the receipt which was put in the cross and has been mark as Ex. PW1/D1 wherein the address of suit property has been shown as Molarband and this to my mind, the notice by plaintiff is valid one as there is no tenancy in writing on the yearly basis and thus, tenancy can be termed as month to month tenancy which can be terminated after giving the fifteen days notice which in fact the present case has been given and have been admitted by the defendant and so far as extent of tenancy is concerned the allegations regarding the measurement in the plaint in the present suit is clearly the same as has been measured by the present defendant in their suit and thus, it cannot be said that there is no clause in the legal notice and there is unambiguous admission on behalf of defendant, rate of rent and service

of legal notice and otherwise from documents filed on behalf of parties that suit property is situated in Molarband village.

In the light of aforesaid discussion, this court is of the opinion that applications filed on behalf of plaintiff is well founded and having merits, hence application in hand is allowed and in consequence thereof, suit of plaintiff is partly decreed for decree of possession as per site plan. Decree sheet be prepared accordingly."

This finding of the Trial Judge was endorsed by the First Appellate Court on 19.11.2008.

4. Counsel for the appellant has urged that the impugned judgment is a perversity; it has decreed the suit of the plaintiff under Order 12 Rule 6 of the CPC when issues had already been framed by the Trial Judge and the evidence was in progress; such an approach is arbitrary and illegal; there was no admission on the part of the appellant/defendant that the suit property falls in Village Molarband; his contention right from the inception was that the suit property falls in Village Badarpur. A decree on admission can be passed only if the admission is unqualified and unambiguous which is clearly not so in the instant case. This finding is perverse; it calls for an interference.

5. Arguments have been countered by the learned counsel for the respondent. It is pointed out that it is the documents of the appellant himself which had led to the decree being passed under the afore-noted provision. It is pointed out that the impugned judgment suffers from no perversity; it had correctly appreciated that it was the documents of the defendant himself which had described his residence as located in Village Molarband; Village Molarband is admittedly outside the purview of the Delhi Rent Control Act; in these circumstances, there being no other defence of the appellant/defendant; the suit for possession was rightly decreed in favour of the plaintiff.

6. This is a second appeal. It has been admitted and the following substantial question of law was framed. It inter alia reads as follows:-

“Whether the Court below was justified in concluding that the bar of Section 50 of the Delhi Rent Control Act does not apply in respect of the suit property?”

7. Under Order 12 Rule 6 of the Code, a judgment may follow on the admissions made by the parties in the “pleadings or otherwise”. These admissions may be oral or in writing. Such a decree can be passed at any stage of the suit either on an application of the party or suo moto by the Court. The admission, however, must be clear, cogent, categorical and unambiguous. This is the test which has to be passed before a decree can follow under Order 12 Rule 6 of the Code.

8. The perusal of the record shows that the plaintiff had filed a suit for possession and mesne profits. He claimed himself to be the owner of the suit property i.e. the shop located in the shopping complex of property bearing No. B-8, Molar Band, Jaitpur Road, New Delhi-110044. Defendant was stated to be the tenant at a monthly rent of Rs.675/- p.m. Tenancy had been terminated vide legal notice dated 22.01.2001 duly served upon the defendant.

The written statement had disputed the claim of the plaintiff; it was stated that the suit premises are located at Badarpur and thus falls within the purview of the Delhi Rent Control Act; it is bad for mis-joinder and non-joinder of parties; tenancy has not been validly terminated. Relationship of landlord and tenant was, however, not disputed. It was admitted that the plaintiff is the landlord of the defendant. Rent of Rs. 675/- was admitted. Receipt of the notice dated 22.01.2001 terminating the tenancy of the

defendant was also admitted; it was however stated that the tenancy could not be terminated. The legality or validity of the notice was otherwise not assailed.

9. The Trial Court had noted that the plaintiff had filed the certified copy of the plaint in a connected suit i.e. suit bearing No. 11/2001, where, the defendant had given his address House No.B-13, Jaitpur Raod, Village Molarband, New Delhi-110044. The receipts filed in the said Court proceedings dated 05.04.2000 and 07.05.1990 as also the Khatoni of the suit property for the years 72-73, 76-77 evidenced that the suit property is located in Khasra No.446 in Village Molarband. The documents of the defendant i.e. the notification for the year showing that the Village Badarpur has been urbanized for the purposes of the applicability of the Delhi Rent Control Act had also been noted.

10. It was these admissions which were made in the pleadings of the parties as also documents filed by the respective parties along with their pleadings (forming a part of the pleadings) that the Trial Judge as also the first Appellate Court held that the relationship of landlord-tenant admittedly existed between the parties; rate of rent was not disputed; service of legal notice was also admitted. The Delhi Rent Control Act would be applicable only if the suit premises falls in Village Badarpur. The documentary evidence adduced clearly negated this contention; it had established that the defendant had in the connected suit proceedings i.e. in Suit No. 11/2001 admitted that he was a resident of B-13, Jaitpur Road, Village Molarband, New Delhi-110044. This being the factual position and the suit property falling within the purview of the

Village Molarband, it was outside the purview of the Delhi Rent Control Act. Necessary corollary was that a decree on these admissions had to follow.

11. There is no perversity or infirmity in these findings of the impugned judgment. It calls for no interference.

12. Appeal is dismissed.

INDERMEET KAUR, J.

NOVEMBER 12, 2010

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