

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

Date of Reserve: 24th February, 2010

Date of Order: 19th April, 2010

CM(M) No. 689/2003

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19.04.2010

Kedar Nath & Anr.

... Petitioners

Through: Mr. H.C.Sukhija, Advocate &
Mr. Sudhir Sukhija, Advocates

Versus

Pt. Siri Kishan Thru LRs & Ors.

... Respondents

Through: Mr. Vijay Kishan, Advocate &
Mr. Vikram Jetley, Advocate for R-1(d)

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

By present petition the petitioners have assailed an order dated 24th April, 2003 of learned Additional Rent Control Tribunal dismissing appeal of the petitioners against the order of Additional Rent Controller and confirming the eviction order passed by Additional Rent Controller under Section 14(1)(a), 14(1)(b) and 14(1)(j) of Delhi Rent Control Act.

2. The Eviction Petition was preferred by Shri Krishan (deceased) landlord against LRs of late Shri Inder Ram (tenant) and against present petitioners under Section 14(1)(b)(j) of DRC Act on following causes of action:

- (i) *That the respondents have neither paid nor tendered the whole of the arrears of rent due from them and legally recoverable from them inspite of service of notice of demand dated 4.6.1979. The rent has not been paid to the petitioner for the period commencing from 1st October, 69 and a sum of Rs.8025.04 was due to the petitioner from the respondent no.1 to 8 as arrears of rent till the end of May, 1979. A further sum of Rs.899.47 has*

accrued due from them from 1.6.1979 till 30th June, 1980. Thus a total sum of Rs.8924.51 is due from the respondent no.1 to 8 as arrears of rent.

(ii) That Shri Inder Ram predecessor in interest of respondent nos. 1 to 8 had sublet assigned or otherwise parted with possession of the premises to respondent no.9 and 10 about 15 years back without the consent in writing of the petitioner.

(iii) That Shri Inder Ram and the respondent no.1 to 8 have caused or permitted to be caused substantial damage to the premises by demolishing 6 kothries which existed at the spot and by merely fixing 5 tin sheds there as shown in the plan filed along with petition.

3. The Eviction Petition was contested by the present LR's of tenant on the ground that the Rent Controller had no jurisdiction since the premises let out was a plot of land and not a built up premises thus the premises did not fall within the definition of 'premises' as given in provisions of DRC Act; second that there was no sub-letting, assigning or parting with possession to anyone. Shri Inder Ram (deceased) had entered into separate partnerships with Kedar Nath and Mohd. Yasin and on his death the partnerships stood dissolved and tenant had filed a suit for mandatory injunction against Kedar Nath and Mohd. Yasin since they were not sub-tenants. The petitions were contested by alleged sub-tenants Kedar Nath and Mohd. Yasin whose LR's are present petitioners and they had taken stand that there was no relationship of landlord and tenant between Inder Ram and them. They had raised structures on the open land at their own cost and the rights of the landlord if any in the property had extinguished and they had become owners by adverse possession.

4. Evidence was led by both the parties and after considering evidence the learned ARC held that the premises was not a plot of land but it was a constructed premises. Reliance was placed by the learned ARC on the original lease deed executed by the parties duly proved before the learned ARC which showed that the premises was not a plot of land but was having construction over it at the time of letting in 1943. The learned ARC also gave a finding that the possession of the premises was parted with to Kedar Nath and Mohd. Yasin by the tenant and these persons were not in adverse possession. They were in permissive possession

having full control over the premises. The learned ARC also found that eviction ground under Section 14(1)(j) was made out and the petitioners had made alterations/additions and caused substantial change in premises and time was given to the petitioners to bring the premises back to its original shape. The learned ARC in its order elaborately discussed the evidence and considered each and every material proved by the parties.

5. In Appeal, the learned ARCT reconsidered the entire evidence and again gave a finding that the premises in question was not a plot of land but was a constructed premises which was let out in 1943 to the tenant. Both the Courts below had also given finding that ground under Section 14(1)(a) was made out, the plea of adverse possession taken by the petitioners was found to be false since the documents proved before the Court below categorically showed that the petitioners themselves had claimed to be tenant in the premises and not as a trespasser. The learned ARCT also dwelled upon issue of limitation raised by the petitioner and came to the conclusion that the limitation was not applicable in this case and ultimately the learned ARCT upheld the order of learned ARC and the learned ARCT held that grounds under Section 14(1)(a), Section 14(1)(b) and Section 14(1)(j) of DRC Act were made out.

6. Since LRs of Inder Ram had not assailed the order of learned ARC and had not filed appeal and had not availed the benefit under Section 14(2) thus, the eviction order under Section 14(1)(a) was confirmed. The present petitioners who had come into possession of the premises through Inder Ram were held liable to be evicted under Section 14(1)(b) of DRC Act. The learned ARCT again gave time to petitioners to restore the premises back to the original shape within three months from the date of the order. However, while disposing of the appeal the learned ARCT also considered the question of equity and gave another 1 ½ years to the petitioners

to wind up their affairs from the premises subject to condition that they would continue to pay Rs.140/- pm. as user charges/damages to the landlord.

7. The order of the learned ARCT has been assailed by the petitioners on various grounds including that the learned ARC and learned ARCT adopted erroneous approach to the matter in controversy resulting into failure of justice and both the Courts below ignored the special circumstances of the case. The Court below misread and mis-considered the oral as well as the documentary evidence and altogether ignored the certified copy of the plaint of a suit filed by Ram Kishan. It is submitted because of ignoring the certified copy of plaint the Court below committed serious jurisdictional error and the Court below mis-considered the various judicial pronouncements.

8. A perusal of orders of the two Courts below shows that after considering each and every piece of evidence and giving due weightage to the evidence following finding of facts were given – i) the premises in question was not a plot, ii) - the rent of the premises was not paid by the tenant despite demand notice, iii) - the petitioners herein came into possession of the premises through the tenant who parted with possession of the premises without consent of landlord. The petitioners had not claimed themselves to be sub-tenant neither proved that they were sub-tenant nor any notice of sub-tenancy was given. Thus, the benefits of a lawful sub-tenant were not available to them, iv) - the petitioners had failed to show that they were in adverse possession, v) - the petitioners had made substantial additions/alterations in the premises.

9. It is settled law that this Court while exercising jurisdiction under Article 227 does not act as a Court of second Appeal. In *Jasbir Singh v. State of Punjab* JT 2006(9) SC 35, the Supreme Court had to say about powers under Article 227 as under:

10. *The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. So also under Article 235 of the Constitution, the High Courts exercise control over all the district courts and courts subordinate thereto on all matters relating to posting, promotion and grant of leave to officers belonging to the judicial service of the State. The power of superintendence conferred on the High Court under Article 227 overall the courts and tribunals throughout the territory of the State is both of administrative and judicial nature and it could be exercised suo motu also. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. The extraordinary power under Article 227 can only be used by the High Courts to ensure that the subordinate courts function within the limits of their authority. The High Court cannot interfere with the judicial functions of a subordinate Judge.*

10. In *Modh. Yunus v. Mohd. Mustaqim* 1984(1) SCR 211, Supreme Court emphasized that power under Article 227 can be exercised only under following circumstances:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior Court or Tribunal functions within the limits of its authority” and not to correct an error apparent on the face of the record, much less an error of law. In this case there was in our opinion, no error of law, much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

11. In *Sadhana Lodh v. National Insurance Co. Ltd. & Anr.* AIR 2003 SC 1561, Supreme Court again spelled out jurisdiction under Article 227 in following terms:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether in inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does

not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision.

12. This position was again emphasized by Supreme Court in Radhey Shyam & Anr. v. Chhabi Nath & Ors. JT 2009 (6) SC 511.

13. Considering the limited jurisdiction of this Court under Article 227 of the Constitution of India, I find that it was not a fit case where this Court should interfere into findings of facts given by the two Courts below, who had elaborately considered and given concurrent finding of facts after considering the legal position as it existed. I find no merits in this petition. The petition is hereby dismissed.

April 19, 2010

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SHIV NARAYAN DHINGRA, J.