

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

+ RSA No.73/2008

Date of Decision: February 25, 2010

DR.P.L.BHALLA Appellant

Through: Mr.M.L. Pahwa,
Advocate.

versus

SH.KRISHAN AL WADHWA Respondent

Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Appellant (plaintiff) filed a suit for recovery of Rs.41,970/- against respondent (defendant). Case of the appellant in brief was that he had inducted respondent as a tenant in respect of one room on the first floor in property bearing No.10875, Jhandewalan Road, Nabi Karim, New Delhi on rent of Rs.1,210/- per month excluding water and electricity charges. Earlier rent was

Rs.350/- per month which was enhanced to Rs.500/- per month in the year 1993 and thereafter it was enhanced to Rs.1,000/-per month. Rent was increased by 10% on the existing rate of rent of Rs.1,000/- after commencement of the amended Delhi Rent Control Act w.e.f. 1st April, 1998 to Rs.1,100/- and thereafter at the rate of Rs.1,210/- per month w.e.f. 1st April, 2001.

2. Respondent was in arrears of rent amounting to Rs.79,170/- in August, 2002. However, appellant claimed rent only for last three years amounting to Rs.41,470/-, which respondent failed to pay despite service of legal demand notice dated 22nd June, 2001. Respondent in his written statement questioned *locus standi* of the appellant to file the suit alleging that he had no right, title or interest in the property in suit and that there was no privity of contract of alleged tenancy between the parties. Respondent also took a plea that the suit property was subject matter of litigation between one Smt.Kanta Nagpal and the plaintiff since 1997 as both of them claimed title and ownership in the same.

3. Trial Court after appreciating evidence of the parties adduced on record, concluded that appellant had failed to prove that he was absolute owner of the property in suit and also that there was

privity of contract of tenancy between the parties. The court accordingly dismissed the suit of appellant.

4. Aggrieved by the said judgment and decree of the Trial Court, appellant filed Regular Civil Appeal being RCA No.53/04 before the Additional District Judge. Having failed in the said appeal, he has filed present appeal before this Court under Section 100 CPC.

5. Learned counsel for the appellant has submitted that Trial Court went wrong when it looked into the status, right, title and interest of the appellant in the suit property without taking into consideration admission of the respondent made by him before the Sales Tax Authorities that he was a tenant in the suit property. The tenant is stopped from challenging the right or title of the appellant being landlord of the suit property by virtue of Section 116 of the Evidence Act. It is also argued that Appellate Court erred in law in not accepting the application of the appellant for additional evidence and in not remanding back the matter to the Trial Court. He has referred to “*Shyam Gopal Bindal & Ors. Vs. Land Acquisition Officer & Anr.*”, I (2010) SLT 18.

6. It is pertinent that in the written statement, respondent

disputed the relationship of landlord and tenant between him and the appellant. Rather he claimed himself to be in possession of the suit premises since 1980 exclusively to the exclusion of the owner to the knowledge of the appellant. Respondent had also alleged that he never tendered any rent to the appellant at any point of time. In the impugned judgment, Appellate Court observed that neither in the plaint nor in the replication, appellant disclosed as to when and how the tenancy was created and when possession of the suit premises was delivered by the appellant to the respondent as his tenant. Appellate Court discussed provisions of Section 105 of Transfer of Property Act, to come to the conclusion that appellant failed to prove relationship of landlord and tenant between him and the respondent.

7. It is noted that appellant in his cross-examination unequivocally admitted that property in question belonged to DDA and DDA neither sold the same to him, nor the said property was leased out by DDA to anyone. Appellant did admit that one Laxman son of Sh.Shiva was in unauthorised occupation of the suit property and Shiva and Laxman had sold the same to him in 1978 without executing any registered document. Trial Court and the Appellate Court, therefore, rightly held that appellant was in unauthorised occupation of the suit property, having allegedly purchased it from

Laxman who had no title in the land to transfer the same in favour of the appellant. The property in suit admittedly belong to DDA. Hence, after the alleged purchase of the property, appellant became unauthorised occupant of the suit property. Trial Court and the Appellate Court did take note of the fact that appellant, being an income-tax payee, did not disclose his alleged rental income from the suit property in his income-tax returns.

8. Under these circumstances, courts below rightly concluded that appellant failed to prove privity of contract of tenancy between him and the respondent. It was for lack of evidence on the part of the appellant that the Appellate Court in impugned order observed that appellant had failed to prove that he had handed over possession of the tenanted premises to respondent in 1980, as claimed.

9. An application was filed by the appellant under Order 41 Rule 27 CPC before the Appellate Court seeking permission to produce additional evidence in the form of statements made by respondent and his son before the Sales Tax Department. The said application was dismissed with the observations that the alleged documents dated 10th July, 1987 revealed that said statements were

not made on oath and were contrary to the plea taken by the appellant before the Trial Court. In the alleged statements, rent is stated to be Rs.200/- per month, whereas according to the appellant, initially rent was Rs.350/- per month. Therefore, claim of the appellant is belied by the contents of these documents. Any statement made by the respondent before Sales Tax Department wherein appellant was not a party has no bearing on the facts and circumstances of this case. This statement can be used by the appellant for confrontation of the respondent during his cross-examination.

10. Hence, under the facts and circumstances of this case, *Shyam Gopal Bindal & Ors. (supra)* is of no assistance to the appellant. In the said case, original plaintiff had died and after his death, legal heirs were impleaded in the array of plaintiffs. The added plaintiffs filed an application under Order 41 Rule 27 CPC in the appeal seeking permission to adduce additional evidence. Observing that the documents were sought to be brought on record by the legal heirs of deceased plaintiff at the earliest opportunity available to them and therefore, it could not be said that appellants had not given any reason as to why the documents had not been produced before the Trial Court. Court had also noted that Trial

Court had dismissed the suit on ground of non-production of evidence in a mechanical manner. In the case in hand, courts below have properly assessed and discussed evidence of the parties adduced on record to conclude that appellant was not entitled to the relief as claimed. Therefore, Appellate Court rightly rejected the application of the appellant.

11. As discussed above, Appellate Court in the impugned order also took into consideration the fact that property belonged to DDA and therefore, rightly observed that appellant had no right to create tenancy of the property belonging to the Government.

12. It is a settled principle of law that appeal must disclose not only that a question of law is involved, but such question of law should be a substantial question of law. Under Section 100 CPC, interference by the Court is permissible only in cases involving substantial questions of law. The High Court would be justified in admitting the second appeal only when a substantial question of law is involved. Reference is made to ***“Narayanan Rajendra & Anr. Vs. Lekshmey Sarojini & Ors., JT 2009 (4) SC 62.***

13. Under these circumstances, when judgment of the Trial Court and that of the Appellate Court is well balanced on

appreciation of oral and documentary evidence and certain admissions made by the appellant in his statement on oath as his own witness, I am of the view that no substantial question of law arises in this appeal. Hence, none can be formulated.

14. In the present appeal, I do not find any substantial question of law involved, which may need adjudication. Hence, appeal, being devoid of merits, is hereby dismissed.

ARUNA SURESH, J.

FEBRUARY 25, 2010
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