

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

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RSA 55/2010

Date of Decision: March 18, 2010

BRIJ MOHAN RAHEJA Appellant
Through: Mr. Rajeev Kapoor, Adv.

versus

VINOD KUMAR VERMA Respondent
Through: Nemo.

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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? *Yes*
- (3) Whether the judgment should be reported in the Digest ? *Yes*

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Appellant (plaintiff) filed a suit for permanent injunction against the Respondent (defendant) seeking restraint order against him by way of perpetual injunction not to dispossess him from Shop No. UB-16, 19 Kasturba Gandhi Marg, Connaught Place, New Delhi in any manner whatsoever. The Civil Judge vide his judgment and decree dated 20.12.2006

was pleased to dismiss the suit of the appellant. Appellant challenged the judgment and decree of the trial court in appeal vide RCA No.13/2007. Appellate Court while concurring with the findings of the trial court dismissed the appeal vide impugned judgment and decree dated 28.10.2009. Hence, this appeal.

2. In brief, case of the appellant is that he is a tenant in the suit premises on monthly rent of Rs.1,000/- and has been running his business in the name and style of 'Bhagwati Photo Copy Centre' for last number of years and has been regularly paying rent to the Respondent but no receipt was issued in his favour. Respondent disputed the claim of the appellant and submitted that he had rented out the premises to Food Corporation of India Executive Staff Union (Regd. No.1158) vide Lease Agreement dated 25.7.2002 on rent of Rs.2,000/- per month w.e.f. 01.08.2002. He has been receiving rent from the said Union against receipts and last receipt was issued in November, 2003. Thereafter tenant vacated the premises but, appellant who was permitted by the said Union to run the photo copy Centre has refused to vacate the premises.

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3. While dismissing the suit, the trial court noted the admission of the appellant made by him as PW1 that M/s. Deepak Ansal and Sons, HUF were the owners of the suit premises and FCI Executive Staff Union (Regd.) was a tenant in the suit premises on a monthly rent of Rs. 2,000/-. In his statement, appellant also admitted that FCI Executive Staff Union was running its office in the suit shop.
 4. Trial Court also considered the report of the Local Commissioner appointed by it vide order dated 19.01.2001 to verify the factum of possession of the suit shop and concluded that appellant was in possession. His rights qua the suit premises could not be determined. Relevant part of the judgment of the trial court contained in para 14 and 15 read as below:-

“14. The dispute whether plaintiff is tenant or a licensee is to be decided by intention of the parties. There is no any oral agreement between the parties. In order to establish his claim of tenancy plaintiff has put on record NDMC challan and electricity and telephone bills. In my opinion these documents are not sufficient to decide the nature of occupancy of possession of the plaintiff over the suit shop. Plaintiff has admitted that Deepak Ansol and

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Sons HUF is the landlord owner of the suit shop and same has been let out to defendant at monthly rent of Rs.2000/-. Hence I find no occasion to sublet the suit shop to plaintiff at Rs.1000/-. Further plaintiff has been running business of photocopying hence he definitely used to maintain accounts of his business and payment made to defendant on account of rent as alleged. But plaintiff has failed to place on record any record maintained during the course of business. In my opinion withholding such kind of evidence leads to adverse inference in favour of the plaintiff. In my opinion, plaintiff has failed to establish his claim on being tenant. I find to the extent of preponderance of probabilities that the plaintiff was allowed to use and occupy the suit shop by the defendant only as licensee. Despite this plaintiff cannot be left into hand of defendant for alleged forcible dispossession or interference.

15. Now I am going to examine the alleged threat extended on the part of defendant. In affidavit plaintiff has deposed only that defendant wants to dispossess him from suit shop with malafied intentions. This statement of plaintiff is not sufficient to make entitle him for relief of injunction. Plaintiff has failed to substantiate his allegations as leveled in the plaint regarding threat dt. 07.1.04. I find no apprehension of interference in business of plaintiff and his dispossession from suit shop by defendant. Hence plaintiff is not entitle for relief of injunction as claimed. This issue is decided against the plaintiff and in favour of the defendant."

5. Appellate Court gave concurrent findings of facts on assessment of oral evidence as well as other documents placed

on record by the parties. It observed:-

“The perusal of evidence led by the parties before the Ld. Trial Court shows that plaintiff / appellant claimed during his chief examination that he took the suit shop on rent at monthly rent of Rs.1000/- w.e.f. March 2003 and continued to pay the rent to the defendant / respondent without any rent receipt. He could not substantiate the said plea as he admitted during his cross examination that FCI Executive Staff Union is a tenant in the suit shop at monthly rent of Rs.2000/- and he had no document to show that he is tenant in the suit shop or that he paid any rent to the respondent in respect thereof. On the basis of evidence led by the parties, Ld. Trial Court observed in the impugned judgment that the appellant is a licensee in the suit shop. The appellant has not challenged the said part of finding of Ld. Trial Court in the present appeal. The respondent has also taken the stand that the appellant was permitted to use the suit shop and was licensee therein.

The main bone of contention raised on behalf of appellant had been that the appellant could not have been forcibly dispossessed from the suit shop by the respondent and therefore, the part of impugned judgment whereby Ld. Trial Court has held that the appellant failed to prove the cause of action, is unjustified and against the facts on record. On this aspect, it is relevant to notice that appellant took specific plea in para no. 8 of the plaint that the respondent alongwith his associates and bad elements visited the suit shop during evening time of 07.01.2004 and tried to throw away his goods and articles lying in the suit shop but

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could not succeed and they left the suit shop with threat to come again for taking forcible possession thereof. However, the appellant as PW-1 nowhere made any whisper during his entire chief examination by way of affidavit Ex.PW1 that the respondent allegedly visited the suit shop on 07.01.2004 or attempted to dispossess him forcibly on that date or on any other date. It goes without saying that the plaintiff is required to prove cause of action pleaded in the plaint during the course of argument in order to become entitle to the relief sought by him/her. What is interesting to note is that not even a single suggestion has been put from the side of appellant during the cross examination of respondent as DW1 or the other witnesses examined by respondent that the respondent ever visited the suit shop on 07.01.2004 or tried to forcibly dispossess the appellant from the suit shop.

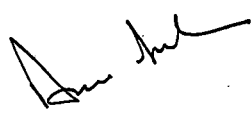
In view of Section 101 to 103 of Indian Evidence Act, the initial burden to prove the aforesaid cause of action, was upon the appellant which he failed to discharge. The only relief claimed by appellant is that the respondent should be restrained from forcibly dispossessing him from the suit shop without following due process of law. The said relief was claimed on the basis of allegation that the respondent tried to take forcible possession and also threatened to do so. In other words, the aforesaid allegations were the basis of seeking the relief of injunction and therefore, the appellant was enjoined upon to prove the said cause of action by leading positive evidence on record....."

6. Thus, it is clear that entire case of the appellant is based on

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facts and no question of law is involved. He sought discretionary relief of perpetual injunction, which the court declined holding that he could not prove that he was a tenant in possession of the premises and also that there was threat of dispossession from the Respondent. It is a settled principle of law that this court in second appeal cannot interfere in the concurrent findings of the courts below unless a substantial question of law is involved. There is no substantial question of law involved in this case and it is a fact based case.

7. Under these circumstances, when no substantial question of law can be formulated as there is none and fact findings of the courts below are concurrent and no perversity in the said findings are shown or pleaded, I find no merits in the appeal, the same is dismissed.


ARUNA SURESH
(JUDGE)

MARCH 18, 2010
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