

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

+ RC.S.A. 30/2002

Decided on 28.10.2010

SARDAR JOGINDER SINGH Appellant
Through: Mr.N.S.Jain, Adv.

versus

SURJIT SINGH & ORS. Respondents
Through: Mohd. Abid, Adv.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J (oral)**

C.M.135/2002

The application is allowed and the memo of parties is amended accordingly. Amended memo of parties filed at page No.78 of the paper book is taken on record.

RC.S.A. 30/2002

1. This appeal has been filed by the appellant who claims to be the legal heir of Late Sh. Gurbax Singh, owner of Shop No.60, Gaffar Market, Karol Bagh, New Delhi, who claims to have let out an almirah shop fixed on the wall of shop No.60 Gaffar Market, Karol Bagh to one Gopal Kishan Wahi in September, 1966, and after the vacation of the same, on 01.09.1972 to let out the same to Sh. Mehar Singh at a monthly rent of ₹80/-. Relying upon the counter foils placed on record and rent deed alleged to have executed by Sh. Mehar Singh it was pleaded that Sh. Mehar Singh in his life time sub-let, assigned or otherwise parted with the possession of the suit property and after his death, the second respondent was in occupation thereof and, therefore, the possession of the suit property was parted with by the tenant without the permission of the landlord. It was also pleaded that Sh.

Surjit Singh, who is the son of Sh. Mehar Singh sub-let the property to Sh. Sardul Singh, respondent No.2 which fact came to the notice of the landlord in January, 1982 who served notice dated 25.04.1982 in this regard. Later on, he filed eviction petition under Section 14(1)(a) & (b) of the DRC Act on 01.02.1984. The suit was contested by the second respondent who denied that the first respondent was ever a tenant in the suit property and claimed direct tenancy having been inducted in the suit property w.e.f. January, 1973 @ ₹25/- per month besides ₹10/- per month as electricity charges. It was further pleaded that he was carrying on his business in the premises bearing No.83-A, Gaffar Market, Karol Bagh, New Delhi but due to removal of counters in emergency used to store the goods in the suit premises. It was submitted that earlier, the suit was filed by the second respondent against the appellant for injunction wherein appellant made a statement not to evict him without following due process of law.

2. After recording evidence of the parties which comprised of the statement made by AW1 i.e. the appellant, Sh. Kasturi Lal, AW2 who was examined to prove rent agreement Exhibit A-1 executed in favour of Sh. Gopal Kishan Wahi, Sh. Sat Pal, Clerk of L&DO, AW-4, Sh. O.N. Khanna and AW-8, Sh. Jagat Singh who are stated to be witnesses of agreement Mark 'B' alleged to have executed by Sh. Mehar Singh in favour of the landlord and other witnesses from MCD on the one hand and Smt. Balbir Kaur who appeared as RW-1 and Sh. Gurbax Singh, RW-2 on behalf of the respondent, the additional rent controller dismissed the eviction petition vide judgment dated 27.10.1999 in the aforesaid judgment. The Additional Rent Controller came to a conclusion that the suit premises was never let out by the appellant to late Sh. Mehar Singh father of the first respondent and that in fact the premises were let out to the second respondent. The relevant observations made by the ARC in this regard are reproduced hereunder:

14. The petitioner claims that rent deed with the said Mehar Singh was entered into on 22nd of July, 1976 which is mark 'B'. In the first paragraph of this rent deed Sh. Mehar Singh has been mentioned as party No.1 whereas Joginder Singh the petitioner has been mentioned as party No.2. A bare perusal of this rent deed clearly goes to show that Shop No.60 is different from the almirah shop which is situated

behind it and it is the almirah shop which is the premises in question with which we are concerned in the present case. Counterfoils of rent receipts allegedly issued to Sardar Mehar Singh by the petitioner have been proved on record as Ex.A2 to A40. The present eviction petition was filed on 14.07.1983 where as the said agreement mark 'B' and the counterfoils A2 to A40 were filed on 12.2.87 i.e. when evidence of AW-1 the petitioner was not being recorded. So these documents were filed about four years after filing of the eviction petition on 11.07.83 at the time of instituting the original eviction petition. Petitioner had also filed a signed copy of rent deed dated 22.7.76 allegedly entered into between the petitioner and the said Sh. Mehar Singh which was marked by me as Ex.P1 at the time of writing the judgment for the purpose of identification. Mark 'B' appears to be the original whereas Ex.P1 appears to be its copy. I have myself compared the signatures appearing on both these documents. In the normal course of business both of them should have been signed at the same time. It clearly appears that signatures of the first party are in different inks. Clearly signatures of name and address of O.N.Khanna one of the attesting witnesses also appear to have been written by means of different pens. So they appear to be fabricated.

15. O.N.Khanna one of the attesting witnesses of Mark 'B' and Ex.P1 was partly examined as AW-4 but after his part examination in chief recorded on 13.7.88, he never appeared thereafter and therefore his part testimony has to be discarded from the zone of consideration. The other attesting witness of this document has been examined as PW-8 Jagat Singh who admittedly had very deep relations with the petitioner and the said Mehar Singh. No independent witness had been examined by the petitioner to prove the alleged tenancy of the said Mehar Singh in the premises in question.

16. As per admission of PW-8 Jagat Singh terms of tenancy were not settled in his presence. As already stated that the other attesting witness has not been examined and the said Sh.Mehar Singh the alleged tenant has also expired. Therefore, I am not willing to act upon the testimony of the petitioner alone that the said Sh.Mehar Singh had been inducted as a tenant on 01.10.1972.

17. It stands admitted by PW-8 Jagat Singh in his cross examination that the said Mehar Singh already had a shop in Kucha Natwar, Chandni Chowk where he had been carrying on his wholesale business of cloth. It also stands admitted that after the death of Sh.Mehar Singh his son respondent No.1 has been carrying on the said business. AW-1 Joginder Singh in his cross examination admits that

apart from the said Shop, Mehar Singh also had a shop in Radhi Katra.

18. AW-1 has testified that the premises in question had been taken on rent for the purposes of store. This is contradictory to Mark 'B' and Ex.P1 wherein it has been mentioned that Sh.Mehar Singh could use the premises either as a godown or show room. On the other had according to PW-8 Jagat Singh the said Sh. Mehar Singh had been carrying on the business of readymade garments in the premises in question. In fact PW-8 Jagat Singh claims that he must have purchased Kurtas from the said shop of Mehar Singh. So, this demolishes the case of the petitioner that the premises in question had been let out to Sh.Mehar Singh for use of a store.

19. It is improbable that a person of the stature of Sh. Mehar Singh who already had to shops in prime location of Delhi would take present almirah shop on rent for doing the retail business of sale of Kurtas.

20. So all the aforesaid facts persuade me to believe that the stand of the petitioner that the premises in question had been let out by him to Sh. Mehr Singh w.e.f. 1st October, 1972 is false and does not inspire confidence.

21. Falsity of petitioner's case can be looked at from another angle. In the eviction petition petitioner claims that he had filed counterfoils duly signed by respondent No.1 and his father alongwith the petition. The said counterfoils have been proved on record as Ex.A2 to A40. Admittedly, none of these counterfoils bear signatures of respondent No.1. So this is contradictory to petitioner's own assertion and appear to be false.

22. Petitioner has proved on record demand notice Ex.A-41. It is dated 25.04.1982. It is addressed to respondent No.1. As per petitioner's own sworn testimony before this Court he learnt about the sub-letting in the case in hand in January, 1981. He specifically claims that respondent No.1 never opened this shop and worked there. It may be kept in mind that respondent No.1 was the real brother-in-law of the petitioner. Keeping in view such a delicate relationship, some bitterness must have occurred in their relations. It is hard to digest that in the back drop such a fact situation respondent No.1 would still receive Ex.A41 if tendered to him personally by the petitioner. I will believe delivery of Ex.A41 to respondent No.1 because it is a documentary evidence. Receipt of this document falsifies the oral deposition of the petitioner that respondent No.1 had been tenant after the death of his father Sh.Mehar Singh and that he had sub-let the premises in question to respondent No.2"

3. It may be observed here that in view of the aforesaid and there being no evidence led by the appellant to prove the handwriting of Mehar Singh on the alleged rent deed, the Court came to a conclusion that there was no relationship of the deceased/landlord and Mehar Singh. ARC further observed as under:

“23. Respondent No.2 on the other hand claims that he is a tenant in respect of the premises in question on a monthly rent of ₹25/- under the petitioner w.e.f. January, 1973. Admittedly respondent No.2 has not filed any rent agreement or rent receipt to support his defence. I have already held that documents mark ‘B’, Ex.P1 and the counterfoils Ex.A2 to A40 are not genuine. As per petitioner’s own admission he did not issue any rent receipt even to Sh.G.B.Wahi the previous tenant. On behalf of respondent No.2 letter Ex.RW1/9 dated 9.1.1982. In this document the applicant claims that he had been working in the shop in question for the last about nine years. So it relates back to the year 1973. Ex.RW1/3 is photocopy of an affidavit filed by respondent No.2 in DESU for obtaining an electricity connection. In this document also Sardul Singh has claimed that he has been a lawful occupant of the premises in question since March, 1973. Ex.RW1/8, is DD No.16A dated 18.1.1982. It was lodged by respondent No.2 with the police wherein he has clearly stated that he had been a tenant for the last 9/10 years in the shop in question under the petitioner. Genuineness and authenticity of these documents has not been challenged and, therefore, there is no reason as to why they should not be believed to be true.”

4. On the basis of the aforesaid observations, the ARC also returned a finding that it was the second respondent who was inducted as the direct tenant in the suit premises.

5. The findings returned by the ARC were then also upheld by the Additional Rent Control Tribunal (ARCT) vide judgment delivered on 03.08.2002 in RCA No.854/1999. Some relevant observations made by the ARCT which supports the findings of facts by ARC are reproduced hereunder:

..... I questioned the Id. Counsel for the appellant Sh. Narang Adv. whether at the relevant time there were other tenants in the property. It is answered by Sh.Narang that there were other tenants in the property. Admittedly, respondent No.1(since deceased) is the father-in-law of the petitioner. Appellant had brought on record the counter foils of the receipts allegedly signed by deceased Mehar Singh which are Ex.A2 to A40. I checked the receipts. In seriatim

receipts are in the name of Mehar Singh from Ex.A2 to A40. All the receipts in seriatim cannot be in name of one person. If there are other tenants in the property. Those tenants must also have been issued the receipts. Regular and property maintenance of the record demands that there should be counterfoils of the receipts issued to the other tenants of the property also in between. The receipts Ex.A2 to A40 are in seriatim. They cannot be relied upon. Appellant placed reliance upon the inspection report of the Municipal Corporation. Appellant then placed reliance upon the rent deed which is mark 'B'. This deed has been executed in July, 1976. This deed has not been executed when the premises has been allegedly let to said Mehar Singh. Receipts which have been produced by the appellant are upto June, 76. This document is of July, 1976 and after this document there is no receipt. This document describes the recital clause as follows:-

"Whereas the party II is the owner of shop No.60, Ghaffar Market, Karol Bagh, New Delhi and he has constructed one almirah fitted with shutters and bounded as under:-

.....

And whereas the said shop No.60 had been under the tenancy of Shri Gopal Kishan Wahi s/o Shri Raj Kishan Wahi of 701, Katra Neel Chandni Chowk, Delhi. The said Shir Gopal Kishan Wahi has vacated this almirah and handed over its vacant possession to part II in September, 1972 (the owner/landlord).

And whereas in the end of September, 1972 on the request of party I, the part II, agreed to give the almirah in question on rent to party I, with effect from 1st Oct.1972. The tenancy was oral and no rent deed was executed by party I in favour of party II, though rent receipts were regularly issued by party II to party I from the date of tenancy till 30th June, 1976.

Due to change of circumstances, the party II insists that a regular rent deed be executed by part I in favour of party II. Because of the near relationship and because of the fact that Shri Mehar Singh, party II has become old and is heart patient, the party I considers it right to execute this rent deed in favour of party II so that there may be no future dispute between the parties and their successors. The party I hereby and their successors. The party I hereby executes this deed in favour of party II on the terms and conditions stated hereinafter.

.....

It is the option of the tenant/party I to use the almirah either as godown or as a show-room and may also effect sale of commodities there.

10. The aforesaid language of the deed when it writes the words in the recital clause, “agreed to give” suggest that this document has not been prepared at the time it purports to. If the shop was already let to Mehar Singh deceased from 1972, there could not be in the document to words, “agreed to give”. The words could have been, ‘was let’ or such like words which may denote that the possession of the premises in question was already with Mehar Singh deceased as a tenant; The languante used directs against the genuineness of the document. There is another circumstance that the receipts were issued to deceased Mehar Singh from 1972 onwards as claimed by the appellant. According to the appellant such receipts bear the signatures of Mehar Singh deceased. If such receipts were genuine the same were the best evidence with the landlord admitting the tenancy by the tenant. Then what was the necessity of getting this document executed giving the reason that there were change of circumstances. What were the change in circumstances is unexplained even on the record of the case. Thus, no reliance can be placed upon this document. On merits, even otherwise this document has not been proved in accordance with law and as such tenancy it was only marked. Thus, neither the document marked “B’ can be held to be genuine nor the receipts Ex.A2 to A40.

11. The only evidence which remains now is testimony of the appellant. I have gone through the testimony of the appellant. Considering the relationship between the appellant and Mehar Singh deceased, such oral testimony of the appellant cannot shift the onus on the respondent. Thus, this evidence is not sufficient to meet the standard of proof required to shift the onus on the respondent particularly when the respondent alongwith his witnesses deposed that Ujagar Singh was the representative of the appellant who used to collect the rent on behalf of the appellant. The collection of rent by Ujagar Singh has not been questioned in the cross-examination of the witnesses of the respondent. Ujagar Singh has not been produced by the appellant. Thus, the appellant has absolutely failed to establish that any tenancy was created in favour of deceased Mehar Singh.

12. Ld. Counsel for the appellant submitted that with regard to the proof of document mark ‘B’ that such agreements are not compulsory required to be attested, the document was proved by witnesses AW1 and AW8. In this regard Sec.32 of the Indian Evidence Act was also attracted. Once I find that the document is not genuine this argument is irrelevant.

13. Ld. Counsel for the appellant then submitted that there cannot be any occasion to let out the premises to the

respondent at a monthly rental of ₹25/- when earlier the premises were in possession of Gopal Kishan Wahi at a monthly rent more than ₹70/-. It was also submitted that merely because deceased Mehar Singh was carrying on business at Kucha Natwan does not debar him from having the record premises, the premises in question. These arguments too are irrelevant particularly when the tenancy in favour of Mehar Singh deceased has not been established. Appellant is to stand on his legs and establish the case that there was a tenancy in favour of Mehar Singh. Once the positive averments have not been established the Court need not look into the negative aspect if there is a tenancy in favour of respondent at a monthly rental of ₹25/-. No importance is given to this argument as the appellant has failed to establish the positive claim made by the appellant.”

6. In view of the concurrent findings of the fact as returned by the ARC and ARCT there appears to be no reason to interfere by this Court in this appeal filed under Section 39 of the DRC Act which can only be entertained when any substantial question of law is involved.

7. Learned counsel for the appellant submitted that the substantial question of law means a substantial question of law as between the parties and relied upon the judgments reported as AIR 1927 P.C. 101 and AIR 2001 S.C.965 and the copies thereof are on the record of case file. The appellant further places reliance on the judgment reported in 2002 (9) SCC 516 and AIR 1993 Cal. 144. Further this Court is competent to re-appreciate the facts and interfere with the concurrent findings for which reliance is placed on judgment reported as AIR 1994 SC 532 and 2002 RLR 404 (S.C.). Further also where the findings of the Courts below are perverse then also this Court can interfere and reliance is placed on AIR 1996 Del.156(161) and AIR 2002 S.C. 2057. Besides this for the proposition that the documentary evidence exclude oral evidence and reliance is placed on AIR 1992 Kerl. 115 and proposition counter foil is the best evidence, reliance is placed on 1987(1) RCR 413. The appellant further submits on the proposition of construction of document. He is entitled to agitate both question of law and facts and relies upon AIR 1958 S.C. 512 and AIR 1962 S.C. 314 and similarly on the proposition on interference of sub-letting on the basis of evidence on record, the same being a question of Law and not fact. Reliance is placed on 1985 (2) RCR 314 and 1979 (2) RCR 521.

8. However, the aforesaid submissions made on behalf of the learned counsel for the appellant is of no consequence for the simple reason that while the appellant failed to prove the tenancy in favour of Mehar Singh, evidence led by the second respondent was found to be probable. His submission that the comparison of the documents by the ARC would not furnish appropriate evidence to hold that rent deed Marked 'B' was not executed by Late Sh. Mehar Singh in favour of the appellant stands to ground when there is no evidence led by the appellant. In the case of Smt. Krishnawati Vs. Shri Hans Raj reported as AIR 1974 Supreme Court 280 where the issue with regard to what would be a substantial question of law in the context of Section 39(2) of the DRC Act came for interpretation. The Supreme Court has made the following observations:

7. The learned single Judge thought that two substantial questions of law were involved-one relating to the status of the appellant as the alleged wife of Sohan Singh and the second whether on the facts found, sub-letting was established. Both these questions involved, according to the learned Judge, substantial questions of mixed fact and law.

8. As to the first question whether the appellant was legally married, that was a question on which no finding was necessary in an eviction suit. It was sufficient for the Rent Court to proceed on the finding that the appellant and Sohan Singh were living as husband and wife, whether they were legally married or not. This was specifically pointed out by the Additional Rent Controller in his judgment. As regards the second question, one does not see how it is a mixed question of law and fact. In the determination of a question of fact no application of any principle of law is required in finding either the basic facts or arriving at the ultimate conclusion; in a mixed question of law and fact the ultimate conclusion has to be drawn by applying principles of law to basic findings. See : Meenakshi Mills, Madurai v. The Commissioner of Income-Tax, Madras: [1956]1SCR691 . The basic facts in the present case were (1) the appellant and Sohan Singh were living as husband and wife to the knowledge of the respondent; (2) the appellant took the lease of the shop premises from the respondent in 1959; (3) from the time of the letting a Chemist's business was carried in the shop by Sohan Singh with the occasional help of the appellant. The question to be determined was whether in the above circumstances it was likely that the appellant had sub-let the premises to Sohan Singh. The negative answer given to it by the Rent Courts is merely the factual common sense inference which did not call for the application of any

principle of law. In our view, no question of law-much less a substantial question of law-was involved in the second appeal and the learned Judge was in error in disturbing the concurrent findings of fact of the rent control authorities.

9. The appeal is, therefore, allowed, the order passed by the High Court is set aside and that of the Rent Control Authorities is restored with costs throughout.”

9. In view of the aforesaid, I find no merit in appeal filed by the appellant under Section 39 of the DRC Act, the same is hereby dismissed.

10. No costs.

MOOL CHAND GARG,J

OCTOBER 28, 2010

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