

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 04.10.2010
% Judgment Delivered on: 06.10.2010

+ **RSA No.8/2000**

**PRAHLAD RAI SHARMA (deceased)
THROUGH L.Rs.**

.....Appellant

Through: Mr.B.S.Mann, Advocate

Versus

**ALL INDIA SHWETAMBER STHANKWASI
JAIN CONFERENCE (REGD.)**

.....Respondent

Through: None.

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.

1. This appeal has impugned the judgment and decree dated 2.11.1999 vide which the judgment and decree of the trial judge dated 24.5.1995 was reversed; as a consequence the suit of the plaintiff i.e. of All India Shwetamber Sthankwasi Jain Conference was decreed.
2. Plaintiff is a duly registered society under the Societies Registration Act, 1860. Suit was filed through its Secretary, Sh.C.G.Saklecha. Plaintiff is stated to be the owner of the building known as Jain Bhawan situated at 12, Shaheed Bhagat Singh Marg, New Delhi. Defendant was allowed to occupy one furnished room i.e. room No.12, Jain Bhawan on a monthly license fee of Rs.100/- exclusive of water and electricity charges. He had been paying a sum of Rs.20/- on account of electricity and water charges.

Defendant had failed to pay the license fee w.e.f. 1.1.1978. He had

also not paid the electricity and water charges from that date. On 24.4.1979 the plaintiff called upon the defendant to pay the arrears; he did not do so; license was terminated with effect from 1.5.1979. Defendant had become an unauthorized occupant. Suit for possession and recovery of Rs.3000/- on account of arrears of license fee as also water and electricity charges and future damages was claimed.

3. Defendant contested the suit; his contention was that the suit was not maintainable as the defendant is a tenant in respect of one room with an adjoining kitchen and a common latrine/bathroom.

4. Trial judge framed seven issues. The status of the defendant qua the suit property was the relevant point for determination. Two witnesses had been examined on behalf of the plaintiff. Defendant had examined three witnesses in his support. The documentary evidence proved by the plaintiff were the receipts Ex.PW1/1 to Ex.PW1/3 as also the entries in account books i.e. Ex.PW1/5 to Ex.PW1/7. The defendant had brought on record Ex.DW/1/1, a letter dated 1.12.1973 sent by Anand Raj Surana, the then General Secretary of the Society to substantiate his submission that he had been inducted into the suit property as a tenant.

5. The trial judge in view of oral and documentary evidence on record held that the defendant is a tenant; there is a relationship of landlord-tenant between the parties and the plaintiff is not entitled to any relief as the jurisdiction of the civil court is barred. Suit was dismissed.

6. The impugned judgment had reversed the finding of the trial judge. The defendant was held to be a mere licensee; the plaintiff

was entitled to a decree of possession as also of mesne profits at the rate of Rs.250/- per month with effect from 1.5.1979 upto the date of recovery of possession.

7. This is a second appeal. The substantial question of law had been formulated on 15.2.2000; it reads as follows:

“Whether the lower appellate court is right in reversing the judgment of the trial court and has not considered the relevant documents or oral evidence adduced by the parties?”

8. The oral evidence adduced before the trial court were two witnesses of the plaintiff and the three witnesses examined on behalf of the defendant. The documents examined were Ex.PW1/1 to Ex.PW1/7 and Ex.DW1/1 to Ex.DW1/3. Ex.PW1/1 to Ex.PW1/3 were the receipts issued by the plaintiff in favour of the defendant. Ex.PW1/1 is a receipt dated 28.9.1977 showing that license fee of Rs.720/- inclusive of electricity charges had been paid with effect from 1.2.1977 to 31.7.1977; Ex.PW1/2 is dated 2.2.1978 showing that license fee of Rs.120 has been paid with effect from 1.8.1977 to 31.8.1977; Ex.PW1/3 is dated 21.3.1978 showing that license fee of Rs.480 has been paid with effect from 1.9.1977 to 31.12.1977. Ex.PW1/5 to Ex.PW-1/7, the entries in the Books of Account of the plaintiff company maintained by it in the regular course of its business also corroborated this stand of the plaintiff; these entries were not disputed; they had been proved through the version of PW-1; no cross-examination was effected on this score that these entries are forged or incorrect. The defendant had produced one letter Ex.DW1/1 dated 1.12.1973. This letter has been examined in an in-depth detail in the impugned judgment. This document reads as follows:

1.12.1973

Sh.Prahlad Rai Sharma,
Room No.12,
12, Shaheed Bhagat Singh Marg,
New Delhi – 110001.
Dear Sir,

AN IRREVOCABLE TENANCY AGREEMENT.

I, on behalf of A.I.S.S. Jain Conference, hereby agree to continue an irrevocable tenancy Agreement with you (Prahlad Rai Sharma) in connection with to let a residential house situated in Jain Bhawan, 12 Shaheed Bhagat Singh Marg, New Delhi and bearing room No.12, Ground floor, independent bathroom Latrine and open verandah of tin shed which has been in your possession since 1st Dec.1973 at a monthly rent of Rs.80/- + 20/- light and water charges (Total Rs.100/- Rs.one hundred only. including light and water charges.

I hereby undertake to carry out the annual repairs and white washing of the house, to pay house tax etc. if any in respect of. Further I have no objection if you use the said portion for your professional/business purposes or use it as your guest house. We shall not have any objection if you allow to reside your family members and relatives/friends in the said portion.

Sd./-
(ANAND RAJ SURANA)
General Secretary & Managing
Trustee A.I.S.S.Jain Conference.

Witness:

Sd./-
Inder Chand Karnawat

9. The impugned judgment had recorded a finding on this document. The relevant extract of which inter alia reads as follows:

“7. A bare perusal of this document speaks volumes of the legality of this document. By this document, defendant has been made a permanent lessee in the property by Mr. Surana as if Mr. Surana was owner of the property in his personal capacity. Mr. Surana has even undertaken to carry out the annual repairs, whitewash, to pay house tax in respect of this room and has even allowed the use of the room for professional and business purpose and to use as guest house by the defendant. All this goes to show that Mr. Surana parted with the property of the society without any authority and without any legal document. This document seems to have been procured by defendant on the basis of his some personal service done to Mr. Surana otherwise no secretary of a society shall sell of the society in such a manner.

8. Any lease for period of more than one year is required to be registered under the Transfer of Property Act and where a perpetual lease is created, it amounts to transfer of ownership and necessary documents of the transfer of the property are to be executed. This document is therefore, a waste piece of paper and cannot be read in evidence but this document can be read to show to what extent manipulation can be done. Defendant has placed on record Ex. DW 1/3 which is a certificate issued to him on 03.02.78. It shows that defendant had taken active part in the works of the plaintiff society. This certificate is also issued by A.R. Surana. There is another letter of

December, 1977 which is ex. DW 1/2, which shows that Mr. Surana had appointed defendant as honorary Caretaker of Jain Bhawan.

9. On the other hand, the plaintiff's evidence is clear and categorical. Plaintiff has been issuing receipts of the amount received and these receipts show that the amount was being received as licence fee and not as rent. The Plaintiff also produced on record the accounts of the Society which are ex. PW 1/5 and PW1/6. These accounts of the society show that whatever amount was being received from the different rooms of the Jain Bhawan that was being shown as licence fee. Jain Bhawan was being shown as Guest House of the plaintiff society. The trial court had ignored this evidence and has not believed the statement of PW1 that the defendant was a licensee on the ground that DW1 was not present at the time of giving the premises. Plaintiff is a society. Its members and workers are not supposed to be there throughout the life of the society, while the life of society is interminable unless it is dissolved by the members, the life of a man is terminable and the man keeps on changing jobs. It is true that the PW 1 was not present at the time of giving room to the defendant but the records of the society speak for this. There is no allegation made by the defendant that these records are fabricated records. It is now settled law that exclusive possession of a premises is not a test of tenancy of the premises. It is the intention of the parties which is important. If the intention of the parties was to create a licence even if there is exclusive possession of a room for the guest house or a room in the hotel, the occupation cannot be termed as a tenancy and the occupant as a tenant. It is undisputed fact that Jain Bhawan is a building having different rooms as is evident from Ex. PW 1/5 and PW 1/6. It is also not denied by the defendant in the pleadings that he was given a furnished room. His contention that he was given a kitchen also cannot be believed. If a person starts cooking in the open space available outside the room, that does not mean that he has been handed over kitchen. Since the defendant had been living in the premises for a long, it was but natural for him to make arrangements for cooking of his food and he converted some of the unoccupied space as kitchen. I consider that the trial court committed an error in omitting to see the nature of the building."

10. This finding calls for no interference. It had correctly noted and appreciated that the Society had proved from Ex.PW-1/1 to Ex.PW1/3 as also Ex.PW1/5 and Ex.PW1/6 that license fee was being tendered by the defendant. Receipts to the said effect were issued. On the other hand, Ex.DW1/1 dated 1.12.1973 was a sham document; it had been issued by Anand Raj Surana, purported to be the General Secretary of the plaintiff society. There was no authority vested with him to declare the appellant as a tenant asking him to pay monthly rent when all along the Society had been receiving license fee from him and issuing receipts to the said effect as also recording the same in its Books of Account. The

active connivance of Anand Raj Surana with the defendant was substantiated by the next two documents Ex.DW1/2 and Ex.DW1/3. Ex.DW1/2 was issued in December, 1977 by Anand Raj Surana appointing the defendant as a Honorary Caretaker; Ex.DW1/3 was a certificated dated 3.2.1978 issued to the defendant recognizing his services to the society. PW-1 in his cross-examination has categorically denied that the defendant was working as a caretaker of the plaintiff. He had brought the record of the company showing that in 1978-79 C.G.Saklecha was the Secretary. Ex.DW1/2 and Ex.DW1/3 written by Anand Raj Surana in the relevant period in his capacity as Secretary were obviously without any authority. It is relevant to note that a suggestion has been given to PW-1 in cross examination that General Power of Attorney dated 27.3.1961 had been executed by the trustees of the plaintiff society in favour of Anand Raj Surana; admittedly, this document is not on record. The finding by the trial judge that they were other tenants also in the same building is also a case of no evidence as nothing of this sought has emanated from the testimony of the witnesses. In fact, PW-2 has clearly stated that Inder Chand Karnawat is living in Room No.33 of the disputed property as a licensee.

11. Test for determining whether document is a lease or license has been laid down by the Supreme Court in various pronouncements. In AIR 2004 SC 2103 C.M.Beena & Anr. vs. P.N.Ramachandra Rao it has been held:

“8. The crucial issue for determination is as to whether there is a lease or licence existing between the parties. Though a deed of licence may have been executed it is open for the parties to the document to show that the relationship which was agreed upon by the parties and was really intended to be brought into existence was that of a landlord and tenant though it was outwardly styled as a deed of licence to act as a camouflage on the Rent Control Legislation. 'Lease' is defined in Section 105 of the Transfer of Property Act 1882 while 'licence' is defined

in Section 52 of the Indian Easements Act 1882. Generally speaking the difference between a 'lease' and 'licence' is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document, if any, executed between the parties and the surrounding circumstances. Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful (See **Associated Hotels of India Ltd.** v. **R.N.Kapoor** : [1960]1SCR368. The decided cases on the point are legion. For our purpose it would suffice to refer to a recent decision of this Court in **Corporation of Calicut** v. **K.Sreenivasan** : [2002]3SCR783 .

9. A few principles are well settled. User of the terms like 'lease' or 'licence', 'lessor' or 'licensor', 'rent' or 'licence fee' are not by themselves decisive of the nature of the right created by the document. An effort should be made to find out whether the deed confers a right to possess exclusively coupled with transfer of a right to enjoy the property what has been parted with is merely a right to use the property while the possession is retained by the owner. The conduct of the parties before and after the creation of relationship is of relevance for finding out their intension."

12. Applying the aforestated test, it is clear that what was given for use to the defendant was only one room on a license basis. Complete control over the premises was with the plaintiff; the defendant had been permitted to use it only for a limited purpose. It was admittedly a furnished room; the electricity and water charges were being paid by the defendant which was a fixed amount i.e. Rs.20/- per month. Ex.PW1/10 the site plan proved in the version of PW-1 shows that one room 10' x 13" had been licensed to the defendant; in the verandah 7'6" & 10' in the portion encircled as A B C D the defendant had started running a kitchen; this is the categorical version of PW1. The bathroom for use was also admittedly common. In these circumstances, the right of exclusive possession of the defendant ousting the control of the plaintiff did not arise. Ex.PW1/5 and Ex.PW1/6 further evidenced that other rooms had also been licensed out in the similar fashion.

The receipts issued by the plaintiff also evidence this as a license fee and so also the same was recorded in the account books of the company.

13. The submission of the learned counsel for the appellant that Ex.DW1/1 although an unregistered document can be looked into for a collateral purpose; for which proposition reliance has been placed upon 37 (1989) DLT 88 Rajesh Wadhwa vs. Dr.Sushma Govil. There is no dispute to this proposition. An unregistered document can also be looked into to determine the character or nature of possession of the warring party. In fact, this document has been examined in an in-depth detail by the defendant and a scrutiny of Ex.DW1/1 coupled with the other documentary evidence adduced by the plaintiff as also the oral versions had led to the finding that the defendant is in fact only a licensee. Plaintiff was correctly entitled to a decree of possession. The impugned judgment calls for no interference.

14. Substantial question of law is answered accordingly. Appeal is dismissed.

INDERMEET KAUR, J.

OCTOBER 06, 2010

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