

R-92

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

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Date of Judgment: 15.11.2010

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RSA No.118/2001

BALBIR SINGH & ORS Appellants
Through: Mr.Suryakant Singla, Advocate.

Versus

BALJIT SINGH & ORS. Respondents
Through: Mr.R.K.Bindal, Advocate for
respondent no.1.
Mr.L.S.Rana, Advocate for
respondent no.2 to4.

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. (Oral)

1. This appeal has impugned the judgment and decree dated 7.4.2001 which had set aside the finding of the Trial Judge dated 18.12.1997. Trial Judge vide judgment and decree dated 18.12.1997 had dismissed the suit of the plaintiff. The appellate Court had allowed the appeal and decreed the suit.

2. The plaintiff Baljit Singh had filed a suit for permanent injunction. His plea was that he is a tenant of defendants no.1 to 3. His tenancy comprised of one room, courtyard and a chabutra in house no.70, Village Khera Khurd, Delhi. Monthly rental was Rs.250/-. On 08.7.1988, defendant no.4 asked the plaintiff to vacate the premises. He was threatened again by defendant no.4 on 14.7.1988. He was forcibly tried to be evicted from the suit

property. Suit for permanent injunction was accordingly filed.

3. A joint written statement had been filed by defendants no.1 to 3. Defendant no.1 was the sister of the plaintiff and defendants no.2 and 3 are her sons. Contention of defendant no.4 who is stated to be the owner and in possession of the property is that this was a collusive suit filed between the plaintiff and defendants no.1 to 3.

4. In the written statement of defendant no.4, it was contended that he was the purchaser of this property vide registered sale deed dated 24.10.1963. A portion of this property had been sold by him. He is in possession of the remaining portion of the property.

5. The Trial Judge had framed four issues. The impugned judgment on the basis of the oral and documentary evidence held that the plaintiff is entitled to a decree of injunction; defendants were restrained from dispossessing the plaintiff from the suit property without due process of law.

6. This is a second appeal. It was admitted and the following substantial question of law had been framed on 24.4.2007:

“1. Whether the respondent is in possession of the case property in the capacity of a tenant?

2. Whether the findings given by the First Appellate Court is correct in view of the Local Commissioner's report filed today and in view of the pleadings?”

7. Thereafter, the report of the local commissioner had been filed. The said report is dated 17.4.2007. The local commissioner had been appointed in terms of the order dated 16.4.2007.

He had been directed “to find out as to who is in actual possession of the premises bearing House No.70, Village and Post Office Khera Khurd, Delhi.”

The local commissioner in his report had stated that when he reached the site at 1.40 PM, he found one Surinder Singh with some persons at the disputed property; the witness stated that Surinder Singh was in possession; statement of one Iqbal was recorded who stated that Baljit claims tenancy over the suit property; statement of two other persons Hari Ram and Azad Singh had also been recorded who stated that Baljit Singh was in possession of the suit property for the last four years. Photographs had also been taken depicting the presence of Surinder Kumar.

8. Counsel for the appellant has urged that this report of the local commissioner advances his submission that the plaintiff Baljit Singh was never in possession of the suit property. It was one Surinder Kumar who is a representative of the appellant.

9. This submission of the learned counsel for the appellant is not borne out in any manner from the report of the local commissioner. No separate statement of Surinder Kumar had been recorded by the local commissioner. This report nowhere states that Surinder Kumar claims to be the representative of the appellant; this report does not in any manner advance this submission of the appellant. In fact, the statement of Iqbal and two other witnesses noted hereinabove had stated that Baljit Singh is in possession of the suit property since the last four years.

10. The impugned judgment had given a categorical finding to this effect. It was in these circumstances that the suit of the plaintiff had been decreed in his favour. After appreciation of the oral and documentary evidence it was held that the plaintiff is in possession of the suit property and he cannot be dispossessed without due process of law; it had noted that even a trespasser is

entitled to protection of law. The contention of the defendant that he was in possession of the suit property had been negated.

11. This Court is sitting in second appeal; it can only interfere if a substantial question of law is raised and not otherwise. The substantial questions of law had been formulated by this Court and reproduced hereinabove. Report of the local commissioner filed thereafter does not in any manner support the stand urged before this Court by the appellant. Local commissioner had in fact endorsed the finding of the impugned judgment that Baljit Singh (in view of the versions of three witnesses examined by him) was in possession of the suit property since the last four years. Findings in the impugned judgment not being perverse cannot be interfered with. There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

NOVEMBER 15, 2010
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