

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

% *Judgment Reserved on: 25.11.2010*
Judgment Delivered on: 29.11.2010

+ **RSA No.195/2001**

SWARAN SEHGAL (since deceased) & ORS.

.....Appellants
Through: Mr.C.P.Vig, Advocate.

Versus

MEENAKSHI GUPTA

.....Respondent
Through: Ms.Aruna Mehta & Mr.Sanjeev
Mehta, Advocates.

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 second appeal has impugned the judgment dated 06.08.2001 vide which the suit of the plaintiff, Meenakshi Gupta, had been decreed for a sum of Rs. 62,100/- with costs. The cross objections filed by the respondents had been dismissed. Trial Judge had held that the plaintiff is entitled to recover a sum of Rs.1000/- per month for a period of three years less 22 days. This finding had been modified in the impugned judgment. Impugned judgment had held that Kishori Lal Sehgal is the tenant of the plaintiff Meenakshi Gupta; he is liable to pay rent at the rate of Rs.1500/- per month.

2. Briefly stated the factual matrix of the case is as under:-

(i). Plaintiff, Meenakshi Gupta, was the owner of a MIG flat bearing No.9, IIInd floor in Apna Ghar Cooperative Group Housing Society opposite Chander Lok Enclave, New Delhi, which she had rented out to the defendants at a monthly rent of Rs. 1500/- excluding electricity and water charges. This was with effect from 01.08.1987. Defendant no. 1 paid rent up to 30.11.1989. He was in arrears of rent w.e.f. 01.12.1989. Legal notice dated 18.04.1992 was served upon the defendant calling upon him to pay the arrears of rent along with interest. Defendant did not pay the said amount. An alternate plea had been set up that in case defendant no.1 is held not to be the tenant, his son Naresh Sehgal arrayed as defendant no.2 is the tenant. Suit was filed.

(ii). The defendant contended that the plaintiff had been receiving rent from defendant no. 2 against a receipt; defendant no. 2 was the tenant. There was no relationship of landlord and tenant between the plaintiff and the defendant no. 1; rate of rent was settled at Rs. 1000/- per month.

(iii). Trial Judge framed eight issues which interalia read as follows:-

- “1. What amount is due from the defendant no.1 to the plaintiff towards arrears of rent? OPP
2. To what rate of interest, if any, the plaintiff is entitled to recover from the defendant? OPP
3. Whether the defendant no.1 is tenant under the plaintiff? OPP
4. What is the rate of rent between the parties? OP Parties
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the plaintiff's claim is barred by time? OPD
7. Whether the suit is bad for misjoinder of parties? If so, who is the unnecessary party?” OPD
8. Relief?

(iv). Plaintiff had examined three witnesses. Defendant in turn had examined three witnesses. Trial Judge held that Defendant no. 1 was not the tenant of the plaintiff and defendant no. 2 was the tenant. Thus defendant no. 1 is not liable; rate of rent was Rs.1000/-. Plaintiff was held entitled to arrears of rent @ Rs. 1000/- per month w.e.f. 01.12.1989 to 30.11.1992. This judgment was impugned before the First Appellate Court.

(v). The First Appellant Court re-examined the oral and the documentary evidence. Admittedly, no rent agreement had been executed between the parties. The rent receipts proved by defendant no. 2 exhibit DW 1/1, DW 1/2 and DW 1/3 were considered. Plaintiff had denied her signatures on the said receipts. They were disbelieved. The impugned judgment held that defendant no. 1 Kishori Lal Sehgal is the tenant of the plaintiff and is liable to pay the arrears in the sum of Rs. 62,100/- to the plaintiff along with interests.

3. This is a second appeal. It was admitted on 15.1.2002. On 29.10.2010, following substantial question of law was formulated which inter alia reads as follows:

“Whether the impugned judgment dated 06.08.2001 is perverse as the suit in the present form was not maintainable?”

4. On behalf of the appellant it has been urged that the finding of the appellate court is illegal and arbitrary. The impugned judgment had decreed the suit in favour of the plaintiff without any interest; thereafter on an application under Section 152 of the Code of Civil Procedure (hereinafter referred as ‘the Code’), interest had been awarded which the court was not legally entitled to do. This has raised a substantial question of law. It is pointed

out that the alternate pleas taken by the plaintiff in her plaint were inconsistent; she was blowing hot and cold; she has given two classes of tenant; she was not sure as to whether Kishori Lal Sehgal was her tenant at the rate of Rs.1500/- per month or his son Naresh Sehgal was her tenant at the rate of Rs.1000/- per month. Not only were the names of the two tenants different and distinct but the rate of rent was also different; such inconsistent pleas are wholly unsustainable; they should not have been answered; this has also raised a substantial question of law. It is pointed out that the possession letter dated 14.7.1987 upon which the impugned judgment has placed reliance was a photocopy of a document which was not proved in accordance with law; it was objected to by the appellant; the impugned judgment has relied upon this document which it could not do. This was a misreading of the evidence and calls for an interference. Reliance has been placed upon a judgment of the Apex Court reported in (2006) SCCR 541 Hero Vinoth (Minor) vs. Seshammal as also another judgment of the Apex Court reported in 2009 RLR 39 (SC) Narendra Gopal Vidyarthi vs. Rajat Vidyarthi to substantiate the submission that misreading of evidence by the Court below raises a substantial question of law calling for interference by the second appellate court.

5. Arguments have been countered. It is pointed out that the first appellate court had decreed the suit of the plaintiff on 6.8.2001; this was without interest; subsequently on an application preferred by the plaintiff under the provisions of Section 151 & 152 of the Code, the order was modified and interest at the rate of Rs.1500/- was awarded in favour of the plaintiff; this was after

notice to the appellant/defendant. This order of 8.10.2001 was passed in the presence of both the parties. It is pointed out that the possession letter dated 14.7.1987 has been proved as per the law of evidence and no objection having been raised to such a mode of proof at that time, it cannot now be raised. There has been no misreading of evidence. It is submitted that alternate pleas are permitted to be taken by a party and there is no such bar. For this proposition, reliance has been placed upon a judgment of the Apex Court reported in AIR (38) 1951 SC 177 Firm Srinivas Ram Kumar vs. Mahabir Prasad & Ors., 1996 RLR 77 (DB) Jai Kishan Mehta vs. Ram Prashad as also another judgment of this court reported in 1974 RLR 491 Kartar Singh vs. Sir Subha Singh & Sons. Reliance has also been placed upon 73 (1998) DLR 680 (SC) Umesh Verma vs. Jai Devi Bhandari & Anr. wherein in an eviction petition the Apex Court had held that where the landlord petitioner had joined two persons as respondents, one of whom according to the petitioner was the tenant and the other claimed himself to be the tenant; in such a case the title as to who the real tenant was loses its relevance.

6. Perusal of the record shows that parties are facing a long drawn-out inter se litigation between themselves. Plaintiff Meenakshi Gupta is admittedly the landlord. She had filed an eviction petition against Kishori Lal Sehgal which eviction petition is pending before the Rent Controller as on date. In this eviction petition the contention of Kishori Lal Sehgal was that he is not a tenant of Meenakshi Gupta; his son Naresh Sehgal is a tenant at the rate of Rs.1000/- per month. This was the averment of the appellant in the application for leave to defend which he had filed

before the Rent Controller (certified copy of the same has been placed on record). It is thus clear that the contention of the defendant Kishori Lal Sehgal was that the tenant of Meenakshi Gupta was his son Naresh Sehgal. It was in these circumstances that an alternate plea had been set up by the plaintiff and while reiterating that she was claiming arrears of rent at the rate of Rs.1500/- per month from her tenant Kishori Lal Sehgal, she had set up an alternate plea that in case the Court is of the view that Kishori Lal Sehgal is not her tenant; the second alternate plea that Naresh Sehgal be treated as her tenant at the admitted rate of Rs.1000/-. It was in these circumstances that these alternate pleas had been set up and taken by the plaintiff in her plaint.

7. Trial judge had framed the aforementioned eight issues. Issue no.3 was disposed of along with issue no.1. While dealing with these issues trial judge was of the view that defendant no.1 i.e. Kishori Lal Sehgal is not the tenant of the plaintiff. The trial judge was of the view that in view of the admission of the defendant and the rent receipts Ex.DW1/1 to Ex.DW1/3 relied upon and issued to him; rate of rent had been established at the rate of Rs.1000/- per month being paid by Naresh Sehgal to the plaintiff. Suit was decreed for the said amount.

8. The appellate court modified the finding of the trial judge. It held that the possession letter is dated 14.7.1987; if possession of this property had been received by the plaintiff only on 14.7.1987 the plea of Naresh Sehgal that he was in possession this property since April, 1987 was negatived. It was held that Kishori Lal Sehgal was the tenant of the plaintiff. The evidence led by the

plaintiff which was her oral version that the rate of rent was Rs.1500/- per month was accepted. It was held that Kishori Lal Sehgal is liable to pay balance arrears of rent to the plaintiff at the rate of Rs.1500/- per month. The impugned judgment had examined the rent receipts Ex.DW1/1 to Ex.DW1/3 which had been denied by the plaintiff; the said documents were discarded. The impugned judgment had also noted the admission of DW1 Naresh Sehgal wherein he had admitted that he had not claimed reimbursement of rent from his Department on the receipt Ex.DW1/1 issued on 15.4.1987. Ex.DW1/1 casted a doubt on the veracity of this witness. The statement of DW2 Kishori Lal Sehgal had also been adverted to. It was held that there was no explanation forthcoming as to how DW2 alleged to be living in a government accommodation had no ration card on that address, no bank account or even a voter address; no gas connection or correspondence had also been received at this address. On a bail bond furnished by Kishori Lal Sehgal in a criminal complaint on 6.3.1991 he had given his address as that of the suit premises. All these cumulative factors had weighed in the mind of the appellate court to draw a conclusion that Kishori Lal Sehgal had never lived in the government accommodation.

9. On the possession letter dated 14.7.1987 the impugned judgment had noted that Ex.P1 (which was statement of Tirath Ram, Secretary of the Apna Ghar Cooperative Group Housing Society in the eviction petition) evidenced that the possession of the flat had been received by the plaintiff only on 14.7.1987. Further Naresh Sehgal (examined as DW1) had himself admitted that the electricity connection in the flat was given on 14.7.1987; if

the electricity was not in the flat prior to 14.7.1987, the contention of Naresh Sehgal that he was living there since April, 1987 further fortified the Court to hold that this was a false stand. It was in this background that the Court had drawn a conclusion that Kishori Lal Sehgal is the tenant in the suit property.

10. In Jai Kishan Mehta's case (supra) the Bench of this court had held that if plaintiff had not been granted his primary relief but is given an alternate relief he is a "person aggrieved" entitling him to file an appeal. In the instant case, the primary relief sought by the plaintiff was that his suit be decreed for arrears of rent at the rate of Rs.1500/- against Kishori Lal Sehgal. He had however been granted the alternate relief. Being aggrieved by this alternate relief he had preferred an appeal which he was entitled to do so. In the judgment of Kartar Singh (supra) it has been held that the provision of Order 7 Rule 7 of the Code entitles a party to set up inconsistent pleas in the alternate if the same are otherwise maintainable. In that case the defendant had put up two pleas about two different rates of rent; he was permitted to do so. In Firm Srinivas Ram Kumar (supra) the Supreme Court has held as follows:

"A plaintiff may rely upon different rights alternatively and there is nothing in the C.P.C. to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. Ordinarily, the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no

question of adducing evidence on these facts would arise when they were expressly admitted by the deft. in his pleadings. In such circumstances, when no injustice can possibly result to the deft., it may not be proper to drive the plaintiff to a separate suit.”

11. The first argument of the learned counsel for the appellant is also without any merit. On an application under Section 151 & 152 of the Code read with Section 26 of the Delhi Rent Control Act, 1958 (hereinafter referred to as ‘the DRCA’), the judgment and decree dated 6.8.2001 which had inadvertently not granted any interest had been modified and interest at the rate of 12% per annum was awarded on the arrears of rent. This was in the presence of both the parties. Section 26 of the DRCA in fact creates a statutory liability on the tenant to pay simple interest at the rate of 15% per annum on arrears of rent and this is immaterial as to whether there is any stipulation in the agreement of tenancy to pay the interest at a lesser or a higher rate.

12. Arguments advanced by the learned counsel for the appellant are clearly without any merit. Substantial question of law is answered accordingly. Appeal is without any merit. It is dismissed.

INDERMEET KAUR, J.

NOVEMBER 29, 2010

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