

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

% *Date of Judgment : 27th September, 2010*

+ **RSA No.35/2009 & CM No.3242/2009**

GIRWAR SINGH Appellant
Through: Mr.Javed Ahmed and Mr.Eram Khan,
Advocates.

Versus

RAMJAS FOUNDATION Respondents
Through: Mayank Bansal, Advocate.

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 second appeal has impugned the judgment and decree dated 22.10.2008 which had endorsed the judgment and decree of the Trial Court dated 12.12.2005 decreeing the suit of the plaintiff for damages.

2. The plaintiff /respondent i.e. the Ramjas Foundation had filed a suit for recovery of possession and damages of suit property i.e. land measuring 100 sq. yards housing Jhuggi No.A-17, Punjabi Basti, Anand Parbat, Delhi, a part of Khasra No.367 in village Chokri Mubarikabad, Delhi. The defendant was stated to be a licensee in terms of a license deed dated 1.12.1979; license fee was Rs.25/- per month. Defendant had been irregular in making payment of license fee. The license deed was cancelled

vide legal notice dated 4.5.1987. Damages amounting to Rs.375/- as also future damages for use and occupation of the land @ Rs.2/- per sq. yard per month were claimed.

3. Defendant contested the suit. It was stated that the plaintiff is not the owner of the suit property. The license deed dated 1.12.1979 was not denied; it was, however, stated that the same had been got executed from the defendant by wrongly representing that the plaintiff was the owner of the land and as such the license deed is a nullity. It is relevant to state that in the written statement the license deed dated 1.12.1979 had been challenged only for this reason that the plaintiff was not owner of the suit land.

4. The licence deed had been proved before the Trial Court as Ex.PW-1/1; the site plan of the suit property had been proved as Ex.PW-2/7. Issue no.3 was answered against the plaintiff; he was held not to be the owner of the suit property. In the course of the proceedings before the Trial Judge the relief for possession had been given up by the plaintiff. He had confined his claim only to damages/mesne profits. Issue no.5 was accordingly not answered. All the other issues were decided in favour of the plaintiff and against the defendant. The Trial Court endorsed the finding that the execution of the license deed Ex.PW-1/1 had not been specifically denied by the defendant. The relationship of landlord and tenant in terms of Section 116 of the Evidence Act was established. A decree for arrears of license fee in the sum of Rs.375/- along with interest 9% per annum as also a decree for damages at the rate of Rs.2/- per sq. yard qua the suit premises in terms of site plan Ex.PW-2/7 was passed from the date of the

filing of the suit till realization.

5. The first Appellate Court vide the impugned judgment and decree dated 22.10.2008 endorsed this finding.

6. This is a second appeal. The questions of law have been formulated on page 1 and 2 of the memo of appeal. They all border on the proposition that once the relief of possession had been given up by the plaintiff, a claim for damages/mesne profit would not lie. This is also the only argument which has been urged before this Court. Counsel for the appellant has submitted that the Courts below had erred in granting a decree for damages/mesne profits when the main relief i.e. the relief of possession had been given up.

7. In 154(2008) DLT 230 Syndicate Bank Vs. Raj Kumar Tanwar a Bench of this Court while relying upon a judgment S. Santokh Singh & Ors. Vs. Gurbux Singh rendered by a Division Bench of this Court on 16.7.2001 (reported in MANU/DE/0704/2001) had held that a suit for possession and a suit for recovery of mesne profits are based on two distinct causes of action; in that case the Court had held that the provisions of Order 2 Rule 2 Code of Civil Procedure would not apply and a subsequent suit for possession would be maintainable as the earlier suit filed for mesne profits was based on a distinct cause of action. Applying the analogy of the aforesaid judgment, it is clear that the relief of possession is based on a separate cause of action which is distinct and different from the relief of mesne profits. Order II Rule 2 in fact permits a party to intentionally relinquish any portion of his claim.

6. Under Section 116 of the Indian Evidence Act, 1872 the plea

of estoppel accrues in favour of a plaintiff who is admittedly the landlord of the premises for which damages/mesne profits is claimed by him. Ex.PW-1/1 is an admitted document between the parties. Relationship of landlord and tenant stood proved. This provision clearly stipulates that the tenant shall not be permitted to deny, during the continuation of tenancy, the relationship of landlord and tenant; he is estopped from doing so. The Courts below had also rightly applied this principle in favour of the plaintiff. No question of law much less any substantial question of law has arisen in this appeal.

7. The appeal as also pending application is dismissed in limine.

INDERMEET KAUR, J.

SEPTEMBER 27, 2010

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