

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

+ **RSA No. 91/2010 & CM Nos. 8510-11/2010**

Date of Decision: May 07, 2010

SHRI SUBHASH CHAND JAIN Appellant
Through: Mr.Mahmood Hasan, Advocate.

Versus

SHRI JAGDISH PRASAD JAIN Respondent
Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper 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 |

J U D G M E N T

ARUNA SURESH, J. (Oral)

RSA No.91/2010

1. Appellant filed a suit for permanent injunction for restraining the respondent from forcibly dispossessing him from one shop in property bearing No.1408, Katra Jhajjar Wala, Chandni Chowk, Delhi under the tenancy of M/s Vishnu Exchange Charitable Trust on a monthly rent of

Rs.27.50 paise alleging himself to be the tenant since 1979 and is running his business of cloth in the said shop, alleging that on 29th December 1998, respondent along with some bad elements had tried to forcibly dispossess him from the said shop.

2. Respondent disputed the claim of the appellant as tenant in possession of the impugned shop. Respondent claimed himself to be an Attorney of Sh.Pherumal Jain, who had purchased the entire property bearing No.1408, Katra Jhajjar Wala, vide Sale Deed dated 30th January, 1996 and averred that as Attorney he had every right to deal with the suit property in the manner he deemed fit and proper. Respondent also alleged that Roshan Lal, father of the appellant was tenant in one shop in the said property and after his death, his legal heirs including his son Mohinder Kumar Jain surrendered and gave vacant possession of the tenanted shop to Shri Pherumal Jain on 28th January, 1996 after taking adequate consideration. Legal heirs of Pherumal Jain also executed a Surrender Deed on 19th February, 1996. As per defence of the respondents, appellant took possession of another shop in the same property which was under the tenancy of Shiv Shankar Bubna, where appellant used to casually sit. In due course of time, he started sitting in the said shop claiming himself to be a tenant in respect of the said shop (property in suit).

3. Trial Court dismissed the suit of the appellant vide its judgment and decree dated 1st April, 2009. Appellant could not succeed in his first appeal being RCA No.9/09, which met the same fate.

4. This is the second appeal filed by the appellant under Section 100 of the Code of Civil Procedure (for short 'CPC').

5. Mr.Mahmood Hasan, counsel appearing on behalf of appellant has submitted that Appellate Court committed an error in law when it did not give its findings while dismissing the first appeal issue wise, as required under Order 20 Rule 4 CPC. He has further argued that even if appellant was in unauthorized possession of the suit property, both the courts below erred in dismissing his suit as he could not have been dispossessed without due process of law and his possession was required to be protected by way of an injunction as prayed for.

6. Under Order 20 Rule 4 CPC, it is required by the first court to pronounce its judgment containing concise statement of the case, the point for remission, the decision thereon and the reasons for such decision. It is by virtue of Order 20 Rule 5 CPC that court is required to state its finding or decision with the reasons on each issue separately in a suit where issues have been framed unless the findings upon any one or more of the issues are sufficient for the decision of the suit. Trial Court did decide the case of the

appellant on all the issues framed by it separately.

7. Appeals are rather governed by provisions of Order 41 CPC. Therefore, the First Appellate Court is required to state points for determination, the decision thereon and the reasons for decision. If these ingredients are not there, the Appellate Court could be considered only to have 'disposed of' the appeal in a formal sense but not 'decided' the same. However, if the Appellate Court has not merely confirmed the findings of Lower Court, but has recorded its own conclusions after consideration of material available on record, Order 41 Rule 31 CPC stands complied with. Failure of formulation of individual points by the First Appellate Court is not detrimental if court has addressed to all the relevant issues that fall for determination. Substantial compliance of the Rule is necessary. If while giving a judgment in appeal, Judge has taken into account substantial compliance of the Rule and first three requirements are satisfied, the whole of judgment cannot be said to have been vitiated only because a proper point for determination is not framed by the Court.

8. True that, First Appellate Court in its impugned order dated 22nd January 2010, did not give its findings on all the issues formulated by the Trial Court separately but has dealt with all the issues in its judgment parawise. Therefore, approach of the First Appellate Court could be

considered as only a mere irregularity and not an illegality as alleged by counsel for the appellant. Court has not only confirmed the judgment of the Trial Court but has also applied its independent mind to the points in dispute and evidence of the parties available on record.

9. In paras 8 and 9 of the impugned judgment, Appellate Court has considered evidence of the witnesses, other documents placed on record or proved in evidence by respective parties and also the findings of the Trial Court. Each and every issue framed by the Trial Court has been dealt with by the Trial Court in the aforesaid two paragraphs.

10. Appellant has placed reliance on a judgment in RSA No.312/2006, titled as '*Smt. Bimla Devi Vs. Shri Ishwar Kumar & Anr.*' decided by this Court on 17th July, 2009 to emphasize that since the Appellate Court has not given its findings issue wise, case should be remanded back to be decided afresh in accordance with Order 41 Rule 31 CPC.

11. In the said case, it was urged on behalf of the appellant that the First Appellate Court, while deciding the appeal has failed to give its findings on every issue and also did not properly appreciate the terms of the Agreement to Sell and gave findings contrary to the documents. Legality of the judgment was also challenged on the threshold of Sections 91 and 92 of

the Evidence Act. It was under those circumstances, it was observed that Appellate Court did not return its findings issue wise and also failed to consider oral as well as the documentary evidence placed on record. Case was remanded back to the Appellate Court for reappreciation of evidence of the parties and pronouncement of its judgment in accordance with Order 41 Rule 31 CPC. In the said case, judgment and decree of the Trial Court was reversed by the First Appellate Court without giving reasons for the decision.

12. In the present case, as discussed above, Appellate Court stated the points for determination, the decision thereon and the reasons for the decision while upholding the judgment of the Trial Court. There are concurrent findings of the courts below and the findings, being fact findings, need not and cannot be interfered with by this Court in the second appeal.

13. As regards, other limb of argument, it can be safely said that a trespasser cannot be given protection by way of an injunction for his wrongs. Appellant in this case, as held by the courts below, did not come to the court with clean hands rather he claimed himself to be the tenant in the suit shop, which he failed to prove. Appellant's father was found to be a tenant in respect of another shop, whose possession was handed over by his

legal heirs after his death to Pherumal Jain, the subsequent purchaser of the property. Undisputedly, fact findings of the courts below cannot be interfered with by this Court.

14. It is pertinent that substantial questions of law, as suggested by the appellant, are in fact his submissions made before the court. Hence, no substantial question of law can be formulated as is required under Section 100 CPC as there is none

15. Appeal, being without any merits, is hereby dismissed.

CM Nos. 8510/2010 (for stay) & 8511/2010 (for exemption)

16. With dismissal of the appeal itself, both these applications have become infructuous and the same are accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

**MAY 07, 2010
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