

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

% *Date of Judgment: 30.09.2010*

+ **RSA No.56/2009**

MUNNA LAL Appellant
Through: Mr. Ajay Malhotra, Advocate

Versus

OM PRAKASH KAPOOR Respondent
Through: Mr.M.Y.Khan, 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 appeal has impugned the judgment and decree dated 6.4.2009 which had endorsed the finding of the trial judge dated 7.1.2008 whereby the suit of the plaintiff Om Prakash Kapoor had been decreed in his favour.

2. Om Prakash Kapoor claimed to be the owner of the suit property bearing no.4773, Mittra Gali, Roshanara Road. He had inducted the defendant/appellant Munna Lal as a licensee in the year 1986. Munna Lal was his employee and was residing at his house at 9/6, Double Storey, Vijay Nagar, Delhi since 1972. His wife was murdered on 18.1.1996. Pursuant thereto the plaintiff on sympathetic consideration permitted the defendant and his four minor children to occupy the first and second floor of his property. The defendant had obtained two rent receipts dated 5.2.1982 and 4.1.1982 for the purpose of getting a telephone and a water

connection installed in the said premises. Thereafter in the year 1983, the defendant started his own independent business. Plaintiff vide legal notice dated 19.4.1991 revoked the license of the defendant. Defendant did not vacate the suit property; he became an unauthorized occupant. Present suit was accordingly filed for possession and recovery of mesne profit/damages.

3. The trial judge framed eight issues. Issue no.1 and Issue no.2 related to the factum of the status of the defendant; as to whether he was a tenant or a licensee. Trial judge held the defendant to be a licensee; the rent receipts Ex.PW-1/D2 and Ex.PW-1/D-3 relied upon by him, execution of which was not disputed, were held to be documents which had been executed by the defendant in favour of the plaintiff only for the purpose to enable him to get a telephone and water connection; they did not establish the title of the defendant as a tenant; the suit of the plaintiff was decreed.

4. This finding of the trial judge was endorsed by the first appellate court.

5. This is a second appeal. The appeal was admitted and substantial question of law was formulated on 20.7.2009 which read as follows:

“Whether rent receipts Ex.PW-1/D2 and Ex.PW-1/D3 create any tenancy rights in favour of the appellant in respect of the suit property? If so, its effect?”

6. At the outset, learned counsel for the respondent has taken a preliminary objection that this substantial question of law as formulated can be answered only by delving into the facts of the case which is not permissible at the second appeal level. It is submitted that the second appellate court can only examine substantial question of law; this power of the court has been

further curtailed after the amendment of 1976; this court is not a third fact finding court. There is no dispute to this proposition. The counter submission is that this substantial question of law as framed is bordered on the legal proposition about the status of the defendant i.e. as to whether he was a tenant or a licensee and this is a matter which does raise a substantial question of law.

7. In view of the fact that the appeal already stands admitted and the substantial question of law was formulated by this court as way back as 20.7.2009 which order has since not been agitated, it has since attained a finality. This court shall proceed to answer this question.

8. Ex.PW-1/D2 is a rent receipt dated 5.2.1982 and Ex.PW-1/D3 is a rent receipt dated 4.1.1982. These rent receipts have been executed by the plaintiff in favour of Munna Lal; the execution of these documents has not been disputed by the plaintiff; plaintiff has not denied this factum. Contention of the plaintiff is that these documents had been executed only to enable the defendant to obtain a telephone and electricity connection. This was after the plaintiff had permitted the defendant to stay in the suit property after the murder of his wife in January, 1986. Before the trial judge four witnesses had been examined on behalf of the plaintiff; on behalf of the defendant he had examined himself. The witnesses before the trial judge had proved the electoral roll for the year 1982 and for the year 1987 i.e. Ex.PW-3/2 and Ex.PW-3/1 evidencing that in the year 1982 and in the year 1987 the defendant Munna Lal was living in Vijay Nagar and his name finds mention in the election office of Kashmiri Gate. The inspection note

of the MCD, Sadar Bazar Ex,PW-4/1 for the year 1985 had evidenced that this property was in occupation of the plaintiff.

9. DW-1 the defendant in his cross-examination has admitted that when his wife was murdered which was on 18.1.1986 he was living at their Vijay Nagar residence. Ex.PW-2/1 the FIR which had been lodged on the complaint of the daughter of the defendant after her mother's murder has also clearly recited that at that time Munna Lal was living at Vijay Nagar. This documentary evidence coupled with the versions of the witnesses of the plaintiff had led the court to believe that Ex.PW-1/D2 and Ex.PW-1/D3 were receipts executed by the plaintiff only to enable the defendant to obtain a telephone and water connection; in 1982 the defendant was living in his Vijay Nagar residence; in 1986 when the defendant was permitted by the plaintiff to occupy the suit property, since this property did not have a telephone and water connection, plaintiff executed these receipts to enable the defendant to obtain the same. This has been dealt with in an in-depth detail by both the fact finding courts below. Both the fact finding courts below had examined the defence of the defendant wherein he had raised a contention that he was a tenant. This has been repelled; defendant was held to be a licensee only. It had also been noted that admittedly there was no written document between the parties.

10. Findings of the trial judge which are relevant are extracted hereinbelow:

"In the present case, there is no written agreement between the parties. Moreover, the defendant at no stage has made reference to any oral agreement also. Thus, it is not disputed that there is no agreement written/oral between the parties to establish the relationship of landlord and tenant. The defendant has placed on record two rent receipts Ex. PW1/D2 and Ex. PW1/D3 issued by the plaintiff in the year 1982. The point for consideration at this stage is whether the two rent receipts confer the status of tenant in favour of the

defendant. The decisive consideration to establish the relationship of landlord and tenant is the intention of the parties which is to be ascertained from all the relevant circumstances under which the tenancy came into existence. It is evident from the abovesaid discussion that the rent receipts Ex. PW1/D2 and Ex.PW1/D3 were issued only to facilitate the installation of telephone connection in the suit premises. The receipts were not issued with the intention to part with the possession of the property. DW 1 has testified that much prior to the installation of the telephone connection, the water connection was also installed in his name in the suit premises. However, the defendant has failed to place on record any document to show that the water connection in the suit premises has been installed in the name of the defendant as admitted in his cross-examination. The admission of the defendant that he is residing in the suit premises since 1980 is also not sustainable as the same is in contradiction of his own testimony and Exs. PW 2/1, PW 3/1, PW 3/2.

It is evident that defendant was only permitted to make use of the first and second floor of the suit property, in the year 1986 after the murder of the wife of the defendant on 18.01.1986. In the FIR, Ex. PW 2/1 the address of the defendant is shown as 9/6, Vijay Nagar, Delhi. It is evident that till 1986, the defendant was residing in the abovesaid address i.e. 9/6, Vijay Nagar, Delhi.

On the basis of the above-said discussion, it is evident that the defendant was only allowed to use the first and second floor of the suit property and at no point of time any right was conferred in favor of the Defendant. The legal possession of the suit premises continued with the plaintiff who is the owner of the property by virtue of sale deed Ex. PW 1/1. It is thus clear that the defendant was merely a permitted user in the premises. The defendant is the licensee of the plaintiff. Hence, the present issues are decided in favour of the plaintiff and against the defendant."

11. The impugned judgment had endorsed this finding. The relevant extract of which read as under:

"Another interesting observation is that the two rent receipts, (Ex.PW1/D2 and Ex.PW1/D3) placed on record by the Defendant/Appellant do not show as to which portion of the suit property was allegedly let out to him. The said rent receipts only mentioned "a part-portion". Had there been any first floor or second floor at the suit property, as claimed by the Defendant/Appellant, the same would have been mentioned in the said alleged rent receipts. It is, therefore, clear that in the year 1981-82, the first and second floors were not constructed and for this reason alone, the alleged rent receipts were issued for specific purpose mentioning a portion of the property. The rent receipts dated 05.02.1982 (Ex.PW1/D2) – shows the period 04.01.1982 to 04.02.1982 and the rent receipts dated 04.01.1982 (Ex.PW1/D3) shows the period 04.12.1981 to 04.01.1982. The alleged period are overlapping by one day. It is, therefore, clear that the alleged rent receipts were not issued in regular course – otherwise the same would have been for the period 04.12.1981 to 03.01.1982 and from 04.01.1982 to 03.02.1982. The rent receipts obviously were issued in back date. It is also interesting to observe that the Defendant/Appellant has nowhere pleaded that there was any oral or written rent agreement or lease agreement between the parties."

12. Both the facts findings courts below had held that the rent receipts Ex.PW-1/D2 and Ex.PW-1/D3 do not in isolation create a tenancy in favour of the defendant; he was a licensee; his license having been revoked by a valid notice and he having failed to vacate the suit property even after that; he was liable to be evicted. The suit was rightly decreed in favour of the plaintiff. The findings of the two courts below call for no interference. There is no merit in the appeal; it is dismissed.

INDERMEET KAUR, J.

SEPTEMBER 30, 2010

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