

UNREPORTED

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

% DATE OF DECISION: 21.04.2010

+ RFA 345/2008 and CM No.12992/2009 (u/O XLI R 27 CPC)

SURESH KUMAR SETHI Appellant
Through: Mr. J.K. Jain, Advocate

versus

ASHOK NAGPAL Respondent
Through: Respondent is ex parte vide order
dated 01.12.2009

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T (ORAL)
21.04.2010

: REVA KHETRAPAL, J.

1. Admit.
2. With the consent of the counsel for the appellant, the appeal is taken up for final hearing.
3. This appeal is directed against the order dated 2nd June, 2008 passed by the learned trial court dismissing the suit of the plaintiff (the appellant herein). The facts necessary for the disposal of the appeal are

that the appellant had filed the suit for recovery, arrears of rent and mesne profits/damages against the respondent claiming himself to be the owner/landlord of property bearing No.G-17-C, NDSE-II, New Delhi. It is alleged in the plaint that the appellant had inducted the respondent as tenant in respect of the aforesaid premises for commercial purposes at a monthly rental of Rs.10,000/-, exclusive of electricity and water charges. The dominant use of the property as per the Master Plan was, however, for residential purposes. It is further alleged that the respondent was irregular in the payment of rent and had not paid the rent since June, 2004. The last payment of rent was made by the respondent for the month of June, 2004 vide cheque dated 20.12.2005 drawn on Indian Overseas Bank, Connaught Place, New Delhi bearing cheque No.6755264, but on presentation the said cheque was returned unpaid, for which a legal notice dated 17.05.2007 was issued. It is further averred in the plaint that the respondent subsequently issued a few cheques from the account of his son, bearing cheque No.019776 dated 25.04.2007, cheque No.019777 dated 26.04.2007, cheque No.019778 dated 27.04.2007 and cheque No.019779 dated 24.04.2007, all for Rs.11,000/- and drawn on the ICICI Bank Ltd., South Extension Branch-II, New Delhi, which were also returned unpaid with the remarks "Refer to Drawer".

4. It is alleged that the premises in question are outside the purview of the Delhi Rent Control Act as the rent of the premises is more than Rs.3,500/- per month and as such, the statutory protection of the Delhi

Rent Control Act is not available to the respondent. Since the provisions of the Delhi Rent Control Act are not applicable, the appellant vide legal notice dated 17.05.2007 called upon the respondent to liquidate the liability, claiming an amount of Rs.3,60,000/- upto 31.05.2007. It is further alleged that despite receipt of the said notice, the respondent failed to liquidate the liability qua the appellant and the appellant was constrained to terminate the tenancy of the respondent by giving a notice under Section 106 of the Transfer of Property Act, but the respondent continues to be in unauthorized occupation of the premises with effect from 01.08.2007. As such, the appellant is entitled to recover the possession of the premises, besides the arrears of rent from 01.06.2004 upto 31.07.2005 in the sum of Rs.3,80,000/- and is also entitled to recover damages @ Rs.1,00,000/- per month for the premises after the expiry of the period of notice, i.e., with effect from 01.08.2007. The appellant has also prayed for a permanent injunction restraining the respondent from creating any third party interest in respect of the premises.

5. The summons of the suit were duly served upon the respondent by publication, but as the respondent did not choose to appear ex parte orders were passed against him on 11.01.2008. Thereafter, ex parte evidence was adduced by the appellant by tendering his affidavit Exhibit P-A corroborating the facts and allegations as contained in the plaint and the documentary evidence Exhibit PW-1/1 to Exhibit PW-1/8.

6. By the impugned judgment, the suit was dismissed by the learned trial court on the ground that the appellant has not placed on record any document on the basis of which she can be said to be the landlord of the suit property qua the respondent and also on the ground that though the appellant has asserted that the respondent is a tenant of the suit property under him, but the appellant has not placed on record any rent agreement or rent receipt to prove that any tenancy, as alleged by the appellant, was in existence. The learned trial court also recorded that the cheque bearing No.675264 dated 20th December, 2005 for Rs.10,000/- allegedly issued by the respondent in favour of the appellant does not show that this cheque was issued by the respondent for the payment of rent to the appellant. It was further held that from the service of the alleged notice dated 17.05.2007, no adverse inference could be drawn against the respondent. Accordingly, it was held that the appellant has failed to prove on record that the appellant was either the owner or landlord of the suit property and that the appellant has also failed to prove on record that the respondent was a tenant under him in respect of the suit property or to show that the property can fetch Rs.1,00,000/- per month as rent.

7. Aggrieved by the judgment of the learned trial Judge, the present appeal was preferred by the appellant upon which notice was issued to the respondent, who was again served by publication and proceeded ex parte on December 01, 2009.

8. On 22.01.2010, the application of the appellant under Order XLI Rule 27 CPC seeking permission for adducing additional evidence to

prove that the appellant is the registered owner of the property by virtue of a sale deed executed in his favour was allowed. The additional evidence adduced by the appellant is reproduced hereunder:-

“AWI STATEMENT OF SHRI SURESH KUMAR SETHI S/O LATE SHRI R.L. SETHI AGED ABOUT 65 YEARS R/O G-17-C, NDSC PART-II, NEW DELHI ON S.A.

I am the appellant in the instant case. In terms of Hon'ble Court's order dated 22 January, 2010 allowing additional evidence to be adduced in the matter I have filed my affidavit by way of evidence which is marked as MARK A-1. My signatures appear on this affidavit at points encircled "X" and "Y" on page 5. I have also appended my signatures on each page of the affidavit at points encircled Y-1, Y-2, Y-3 & Y-4.

In my affidavit by way of evidence I have referred to certain documents which have been filed alongwith this affidavit. The documents referred by me in the affidavit are marked as EX.PW-1/A to PW-1/G.”

9. I have gone through the additional evidence adduced by the appellant, including the original sale deed dated 30.03.2000 (Ex.PW-1/A) vide Document No.6548, Additional Book no.1, Volume 1971, pages 16 to 21, dated 10.07.2000, which sale deed, in my opinion, conclusively proves that the appellant is the owner of premises bearing No.G-17-C, NDSE-II, New Delhi. I have also gone through the original rent agreement executed between the appellant and the respondent Shri Ashok Nagpal, which has been proved by the appellant on record as Exhibit PW-1/B, which shows that on 01.10.2002, the respondent Shri Ashok Nagpal, proprietor of M/s. Deepu Exports took on rent the Northern Side of the ground floor of the aforesaid property on rent @

Rs.5,000/- per month. The respondent aforesaid also agreed to pay Rs.5,000/- to the appellant's wife, Smt. Kamla Sethi as rent, and to that effect executed another rent agreement on the same date, i.e., on 01.10.2002, which is exhibited as Exhibit PW-1/C. Thus, the respondent Ashok Nagpal was to pay Rs.10,000/- per month as rental charges of the suit premises.

10. There are also on record the original house tax receipts filed by the appellant (two in number) to show that the appellant was paying house tax of the suit property to the MCD, which are exhibited as Exhibit PW-1/D, the original water bill in the name of the appellant as Exhibit PW-1/E and the electricity bill in the name of the appellant in respect of the suit property as Exhibit PW-1/F.

11. On scrutinizing the additional evidence filed by the appellant, which is uncontroverted and unchallenged on record, there does not appear to be any reason to disbelieve the same. In my considered opinion, the appellant has placed sufficient evidence on record to prove that he is the owner of the suit property bearing No.G-17-C, NDSE-II, New Delhi and that the aforesaid premises were leased out to the respondent at a monthly rental of Rs.10,000/- per month. The appellant has also proved on record the service of the alleged legal notice dated 14.07.2007 under Section 106 of the Transfer of Property Act.

12. In the aforesaid circumstances, there appears to be no impediment to the grant of the relief prayed for by the appellant. The judgment of the learned trial court dated 2nd June, 2008 is therefore set aside. The

appellant is held entitled to the recovery of the possession of the Northern side of the Ground Floor of property bearing No.G-17-C, NDSE-II, New Delhi and the suit filed by the appellant-plaintiff, being Suit No.220/2007 titled “Suresh Kumar Sethi Vs. Ashok Nagpal” is decreed accordingly. A decree in favour of the appellant and against the respondent is also passed for arrears of rent @ Rs.10,000/- for the period 01.06.2004 till the actual delivery of possession together with interest @ 18% p.a. from the date of filing of the suit till the date of actual payment. A decree of permanent injunction is also passed restraining the respondent, his family members, attorneys, successors etc. from creating third party interest in respect of the suit premises duly shown in red colour in the plan annexed with the plaint.

RFA 345/2008 and CM No.12992/2009 stand disposed of accordingly.

**REVA KHETRAPAL
(JUDGE)**

APRIL 21, 2010
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