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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA Nos.73/2011, 74/2011, 76/2011, 78/2011,
79/2011, 80/2011 & 81/2011**

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3rd February, 2011

1. RFA No.73/2011

MOHD. ATIQ

..... Appellant
Through: Mr. S P Jha and Mr. Vikrant
Bhardwaj, Advocates

VERSUS

AINUDDIN & ORS.

..... Respondents
Through: None

2. RFA No.74/2011

MOHD. USMAN

..... Appellant
Through: Mr. S P Jha and Mr. Vikrant
Bhardwaj, Advocates

VERSUS

AINUDDIN & ORS.

..... Respondents
Through: None

3. RFA No.76/2011

MOHD. IQBAL & ANR.

..... Appellants
Through: Mr. S P Jha and Mr. Vikrant
Bhardwaj, Advocates

VERSUS

AINUDDIN & ORS.

..... Respondents
Through: None

4. RFA No.78/2011

FIROZA BEGUM

Through: Appellant
Mr. S P Jha and Mr. Vikrant
Bhardwaj, Advocates

VERSUS

AINUDDIN & ORS.

Through: Respondents
None

5. RFA No.79/2011

MOHD. YASIN

Through: Appellant
Mr. S P Jha and Mr. Vikrant
Bhardwaj, Advocates

VERSUS

AINUDDIN & ORS.

Through: Respondents
None

6. RFA No.80/2011

MOHD. HASEEN & ORS.

Through: Appellants
Mr. S P Jha and Mr. Vikrant
Bhardwaj, Advocates

VERSUS

AINUDDIN & ORS.

Through: Respondents
None

7. RFA No.81/2011

ABDUL KHALIQ

Through: Appellant
Mr. S P Jha and Mr. Vikrant
Bhardwaj, Advocates

VERSUS

AINUDDIN & ORS.

Through: Respondents
None

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

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

VALMIKI J. MEHTA, J (ORAL)

1. These appeals arise out of a common judgment dated 20.11.2010 of the trial court whereby the inter-pleader suits filed by the appellants were dismissed. The trial court has dismissed the suits on two grounds. The first ground is that in terms of Order 35 Rule 5 of the Code of Civil Procedure, 1908 (CPC), an inter-pleader suit cannot be filed by a tenant against his landlord. The second ground on the basis of which suit has been dismissed is that an inter-pleader suit cannot be collusive in view of Order 35 Rule 1 CPC.
2. The judgment of the trial court is a detailed judgment of 14 pages in which the trial court has narrated the factual controversy between the parties, reproduced the provisions of Order 35 Rule 5 and Rule 1 CPC and also relied upon a decision of this court in the case of ***Jagjit Singh Vs. P K Dutt reported as 1973 Rajdhani Law Reporter 723*** which holds that the provision of Order 35 Rule 5 will not entitle a tenant to sue his landlord. The facts of the case are that the appellants claim to be tenants of the subject land on which they have made constructions. The counsel for the

appellants admits that the tenancy is not claimed under the Delhi Rent Control Act, 1958 because tenancy is only claimed of the vacant land on which constructions were made by the appellants/plaintiffs. Accordingly, the learned counsel for the appellants admits that there is no scope for applicability of the provisions of Delhi Rent Control Act, 1958. Till the year 1990 the appellants/plaintiffs paid rent to the predecessor in interest of the defendant no.1/respondent no.1. From 1990-2005 rent was paid by the appellants to the predecessor in interest of the respondent no.2 besides the respondent no.2. These suits were filed in the year 2007 on the allegations that two persons are claiming ownership rights as a landlord qua the subject land on which the appellants/plaintiffs made constructions, and therefore, the appellants/plaintiffs did not know to whom the rent is payable.

3. The provisions of Order 35 Rule 1 and Order 35 Rule 5 read as under :

“

1. **Plaint in interpleader suit** – In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, state –
 - (a) That the plaintiff's claims no interest in the subject-matter in dispute other than for charges or costs;
 - (b) The claims made by the defendants severally; and
 - (c) That there is no collusion between the plaintiff and any of the defendants.
2.
3.
4.

5. **Agents and tenants may not institute interpleader suits** – Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.”

Trial court in addition to the judgment in the case of **Jagjit Singh** (Supra) has also relied upon a decision of the Punjab and Haryana High Court in the case of **Jugal Kishore and Others Vs. Bhagwan Dass and Others, reported as AIR 1990 Punjab & Haryana High Court 82.**

4. The scope of the applicability of an inter-pleader suit under Order 35 is as per the confines of the various sub-rules as mentioned under Order 35. The requirement of a tenant not disputing his liability to pay his landlord in terms of Order 35 Rule 5 is on the substratum of Section 116 of the Evidence Act, 1872 which estopps a tenant from challenging the title of his landlord. Thus, it is in aid of this Section 116, that Order 35 Rule 5 CPC provides that a tenant cannot file an inter-pleader suit on the ground that there are different landlords of his premises. In the present case admittedly the appellants/plaintiffs have made payments to the respondent no.2 and his predecessors in interest for 15 long years from 1990 to 2005 soon whereafter the inter-pleader suits came to be filed. Therefore, the appellants cannot dispute their liability to pay rent to

the respondent no.2. If there are disputes and differences between two persons, namely, the respondent no.1 and respondent no.2, it is for the respondents inter se to sort out the disputes in a civil court. The interest of plaintiffs in an inter-pleader suit is only to avoid any legal liability upon them (the appellants herein) of eviction or to avoid harassment.

5. The trial court in the present case, has given a categorical finding that the inter-pleader suit is a collusive suit and hence barred under Order 35 Rule 1 CPC inasmuch as the respondent no.2 has supported the stand of the appellants and has agreed to what is said by the appellants/plaintiffs and to which respondent no.2 the appellants have paid rent for no less than 15 years. The suits have been held to enable the respondent no.2 to admit the rights of respondent no.2 and which is not the intendment of Order 35 CPC.
6. In my opinion the trial court has committed no error in relying upon Order 35 Rule 5 to hold that the inter-pleader suits cannot be maintained by a tenant against his landlord. The landlord of the appellants for 15 long years was the respondent no.2 and his predecessors in interest and thus the suit cannot be an aid and assistance to the respondent no.2 to get his rights proved, inasmuch as the respondent no.2 has a complete right to file a suit in a civil court to get his title adjudicated. Inter-pleader suit cannot

be filed to assist one of the two landlords.

7. I also fail to understand as to how the appellants/plaintiffs are in any manner prejudiced or harassed so that they were entitled to file the suits under Order 35 CPC. Firstly, there is no prejudice because the appellants themselves admitted, through the statement made by the counsel for the appellants arguing before me today, that the appellants are not tenants under the Delhi Rent Control Act, 1958. The object of filing an inter-pleader suit, by a tenant, who is a tenant under the Delhi Rent Control Act, 1958 is only to avoid his eviction for non-payment of rent under Section 14(1)(a) of the Delhi Rent Control Act, 1958. In the present case, since there cannot be eviction of the appellants/plaintiffs on account of failure to comply with a legal notice sent under Section 14(1)(a) inasmuch as appellants/plaintiffs are not claiming under Delhi Rent Control Act there is no prejudice if they do not deposit the rent in the inter-pleader suit. In any case, liability for eviction for non-payment under section 14(1)(a) of the Delhi Rent Control Act, 1958 is avoided by and otherwise provided by virtue of Section 27 of the said Act which allows the tenant to deposit rent in court so as to avoid the liability on account of default of non-compliance with Section 14(1)(a) by payment within two months of receipt of a legal notice demanding arrears of rent. So far as the prejudice to

the appellants/plaintiffs of harassment by the landlords is concerned, be it respondent no.1 or respondent no.2, is not at all in issue because it is not as if that there are various litigations initiated by the respondents no.1 and 2, claiming rents for separate periods in separate courts, which would have resulted in harassment of the appellants/plaintiffs in contesting various suits for recovery of rent in different courts. In fact admittedly not a single suit for recovery of rent or eviction for failure to pay the rent is pending in any court. In fact under the ordinary civil law with respect to failure to pay rent, there is no automatic eviction because Section 114 of the Transfer of Property Act, 1882 provides relief against forfeiture for non-payment of rent in case the tenant, in a suit filed by landlord for eviction from the tenanted premises in civil court, agrees to pay the arrears of rent together with interest and costs of the suit. Therefore, there is no prejudice to the appellants/plaintiffs of a threat of their eviction from the land of which they claim to be tenants and having made construction thereafter upon the same. In my opinion, on the contrary, the present case is an apt case where the appellants/plaintiffs who are not in any manner harassed by filing of suits for recovery of rent can sit tight and not pay rent to any of the respondents 1 or 2, who have not initiated any suit for recovery of rent against them

inasmuch as from 2005 till three years prior to filing of a suit would be time-barred. Admittedly, the rent in any case in the present case is quite a pittance varying from Rs.35/- to Rs.100/- at the very best. It is probably for this reason that either of the respondents no.1 and 2 have chosen not to file suits for recovery of rent against the appellants/plaintiffs.

8. The learned counsel for the appellants very vehemently argued that since there were disputes and differences between the respondents 1 and 2, both of whom claim to be the landlords, the inter-pleader suits were maintainable. Not only the trial court has dealt with this aspect exhaustively, I have also referred to above the reasons given by the trial court for dismissing the inter-pleader suits on the basis of Order 35 Rules 1 and 5 CPC. I, therefore, I do not find any illegality or perversity in the impugned judgment and decree so as to enable me to interfere with the same. I can only interfere with the impugned judgment and decree, if prejudice is caused to the appellants/plaintiffs by the impugned judgment and decree. I have already noted above that there is absolutely no prejudice to the appellants/plaintiffs as a result of the impugned judgment and decree because neither the appellants/plaintiffs are claiming to be tenants under the Delhi Rent Control Act nor have the respondents no.1 or 2 initiated suits against the appellants for

recovery of rent in a civil court. The trial court has rightly relied upon the decision of this court in the case of **Jagjit Singh** (Supra).

I therefore do not find any merit in the appeals, which are therefore dismissed, leaving the parties to bear their own costs.

CM 2300/2011, 2304/2011, 2311/2011, 2393/2011, 2395/2011, 2397/2011 & 2400/2011 (Exemption)

Allowed subject to all just exceptions.

CMs stand disposed of.

CM 2301/2011, 2305/2011, 2312/2011, 2394/2011, 2396/2011, 2398/2011 & 2401/2011 (Substitution)

This is an application under Order 22 Rule 4 for bringing on record legal heirs of deceased respondent no.2, who is stated to have died after passing of the judgment but before filing of the present appeal. This application is misconceived because the provision of order 22 Rule 4 applies in case of death of person during pendency of the legal proceedings. The appellants need not have therefore filed the application and they were entitled to sue and substitute the legal heirs of respondent no.2 as respondents in this appeal as a matter of right and which in any case they have done by suing them as respondents no.2(a) to (c).

CMs stand disposed of.

February 03, 2011
vld

VALMIKI J. MEHTA, J.