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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 400/2001

22nd February, 2011

Dinesh Raj Gupta

..... Appellant

Through: None.

VERSUS

Mahender Singh & Ors.

..... Respondent

Through: 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. This matter is on the 'Regular Board' of this Court since 3.1.2011. Today, this matter is effective item No.9 on the 'Regular Board'. It is 2.45 P.M. and no one has chosen to appear for the parties. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of the present regular first appeal under Section 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 27.4.2001 whereby the suit of the appellant/plaintiff for recovery of rent-cum-damages was dismissed. The claim of the appellant/plaintiff was based on the ground that the tenant Sh. Daya Nand (who died during the pendency of the suit and was represented by his legal heirs being the sons and the widow) made illegal construction in the suit property bearing No. E-35, Guru Nanak Road,
RFA No. 400/2001

Adarsh Nagar, Delhi i.e., tin sheds were converted to regular construction, and as a result of which, firstly the property tax increased on account of increase in rateable value to Rs.3,240/- and thereby increasing the property tax calculated at rent of Rs.300 per month and thereafter further to Rs.7,780/- w.e.f. 1.4.1983 increasing the property tax to Rs.780 per month of rent. Future damages accordingly were also claimed and therefore the following amounts were claimed.

“ i) Since 1.4.1975 to 31.3.83

@ Rs.300/- P.M. Minus Rs.50/-

Paid..... Rs.24,000.00.

ii) Since 1.4.83 to 29.2.1988

@ Rs.780/- P.M. minus Rs.50/-

paid or payable in respect of

tenanted premises..... Rs.43,070.00

Rs.67,070/-“

3. By the impugned judgment the trial court has dismissed the suit on the ground that property tax had actually not increased but only proposed to be increased and that the appellant/plaintiff never paid the enhanced property tax. The trial court has also dismissed part of the claim as barred by limitation i.e the claim for the period of three years prior to the filing of the suit. The relevant portion of the impugned judgment and decree reads as under:-

“15. Taking the plea for rent/damages, the plaintiff has miserably failed to prove how he is entitled to Rs.300/- per month and Rs.780/- per month. The plaintiff has placed on record a

copy of the receipt in respect of a payment for Rs.1,810/- which he claims is towards house rent for the period 1.4.75 to 15.12.83, however, he has not placed on record the assessment order whereby the rateable value of the property in question was ascertained on the basis of rental value which was taken to be Rs.300/- per month for this period. Similarly, he has placed on record Ex.P7 which is only a notice under Section 126 of the DMC Act for a proposal to revise the rateable value. There is no order of assessment filed on the record for both the periods. In cross-examination he has further testified that he had not got any notice proposing the rateable value of Rs.3,240/- nor was he aware as to when the rateable value was fixed at Rs.3,240/-. He admitted that there was no order of assessment fixing the rateable value at Rs.3,240/- w.e.f. 1.4.75. He again admitted that Ex.P7 was only a notice under Section 126 of the DMC Act and not the order. He further admitted as correct that no order in respect of any enhancement in the rateable value had been passed till date. He also admitted as correct that he had not paid the tax on the basis of the proposed rateable value.

16. The plaintiff has further failed to establish the very basis for his claim i.e. the tax assessment at a rental value of Rs.300/- p.m. and subsequently at Rs.780/- p.m. In respect of the first there is no assessment order and no notice. In the second, though there is a notice, there is no order assessing the tax at the rateable value of Rs.7,840/-. There is no proof therefore, that the MCD had fixed the rental value of the suit property at Rs.300/- per month initially and thereafter at the rate of Rs.780/- per month. When the agreed rent has been Rs.50/- per month as admitted and as held in the Eviction Petition under Section 14(1)(a) DRC Act copy of which had been placed on record as Ex.P-4, contractual liability of the defendant was only to pay Rs.50/- per month towards rent which admittedly, he and now the present defendants are paying. The enhancement claimed by the plaintiff to Rs.300/- per month and thereafter to Rs.780/- per month is outside the contractual obligation and was based on an alleged RV fixed by the MCD taking the rental value of the property at these rates. The plaintiff has failed to prove that in fact the MCD had so determined the tax liability. The plaintiff has failed to prove how he is entitled for rent at these rates. He is, therefore, not entitled to claim rent at these rates."

(Emphasis added)

4. The trial court has rightly arrived at a finding that therefore no enhanced rent was payable on account of increase of property tax because in fact in reality neither enhancement in the rate of property tax was not proved by filing of assessment orders and nor in fact actual enhanced house tax was paid. The trial court has also held that the suit was filed on 23.3.1988 and therefore the claim except from 1.4.1983 to 29.2.1988 was barred by time. The relevant portion of the impugned judgment is para 9 and which para reads as under:-

“9. A perusal of the plaint would reveal that the plaintiff has sought recovery of rent at the rate of Rs.300/- per month excluding the amount paid of Rs.50/- per month since 1.4.75 to 31.3.83 and thereafter at the rate of Rs.780/- per month excluding Rs.50/- paid per month w.e.f. 1.4.83 to 29.2.88. The present suit was instituted on 23.3.88, therefore, the claim from 1.4.75 to 31.3.83 is clearly barred by time. The plaintiff cannot seek recovery of any amount leaving alone Rs.300/- per month for this period.”

5. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this court. Surely, enhanced rent on the basis of higher property tax could only have been claimed when in fact an assessment order increasing the rateable value was passed and the appellant would have paid enhanced property tax on that basis and which is not so in the facts of the present case. The appeal being devoid of merit, is dismissed leaving the parties to bear their own costs.

FEBRUARY 22, 2011
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VALMIKI J. MEHTA, J.