

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

% *Judgment reserved on : 03.02.2011*
Judgment delivered on : 07.02.2011

+ **R.S.A.No.146/2004 & CMs No.7992/2004 & 15002/2006**

CHAND KRISHAN BHALLA Appellant
Through: Mr. S. K. Bhalla, Advocate.

Versus

HARPAL SINGH Respondent
Through: Mr. M.L. Bhargava, 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.

1 This appeal has impugned the judgment and decree dated 04.05.2004 which had endorsed the findings of the trial Judge dated 24.02.2000 whereby the suit of the plaintiff Chand Krishan Bhalla seeking recovery of possession and damages of the suit property i.e property bearing No. 10213-17, Manak Pura, Karol Bagh, New Delhi had been dismissed.

2 The case of the plaintiff that he was the owner of the suit property in terms of a sale certificate dated 28.09.1967. The plaintiff had earlier filed suit No. 682/1982 against Surinder Singh, father of the defendants. In the course of those proceedings, Surinder Singh expired; his wife was also expired in January, 1987. After the death of Surinder Singh and his wife, the tenancy no longer devolved on any other legal representative. In fact the plaintiff had no knowledge about

the death of Surinder Singh throughout the proceedings as it was not disclosed by the defendants. Surinder Singh had claimed tenancy rights in respect of the one room on the first floors and a khokha/tin store on the second floor. The plaintiff requested the defendants to surrender the vacant possession of the suit property w.e.f. January, 1987 as also to pay damages; they failed to adhere to this request, suit was accordingly filed.

3 In the written statement, it was contended that the premises had been let out to Surinder Singh for residential-cum-commercial purposes. After the death of Surinder Singh, tenancy rights were inherited by their legal heirs in terms of Delhi Rent Control Act (hereinafter referred to as 'DRCA'); suit was barred u/s 5 of the said Act. In the written statement, it was contended that notice for termination of tenancy of Surinder Singh was never given to him; notice dated 03.06.1983 is a false and fabricated document; it was contended that even after the amendment of the earlier suit i.e. Suit No. 682/1982 which was permitted on 23.07.1983, alleged factum of the notice dated 03.06.1983 was never mentioned; had this notice been given, it would have been pleaded in the amended plaint. In fact in the earlier suit, Surinder Singh had appeared as a witness and although he was cross-examined on 05.11.1986, he was never confronted with this alleged notice dated 03.06.1983. All this clearly shows that this notice is a fabricated document.

4 In the replication, this contention was denied; it was submitted that the notice dated 03.06.1983 was duly served upon Surinder Singh validly terminating his tenancy.

5 On the pleadings of the parties, the following nine issues were framed; they read as under:-

1. *Whether the contractual tenancy of late Sh. Surinder Singh was terminated during his life time? OPP*
2. *Whether there is any cause of action in favour of the plaintiff? OPP*
3. *Whether the suit is bad for non-joinder of married daughters of late Sh. Surinder Singh? OPD*
4. *Whether the suit is barred u/o 2 Rule 2 CPC as mentioned in preliminary objections No. 5? OPD.*
5. *Whether the suit premises was let out for residential cum commercial purposes? OPD*
6. *Whether the plaintiff is entitled to the damages as claimed in the plaintiff, if so at what rate and period? OPP*
7. *Whether the plaintiff is entitled for the interest @ 18% per annum as claimed? OPP.*
8. *Whether the suit has been properly valued for the purposes of court fees & jurisdiction? OPD*
9. *Relief.*

6 The contentious issue is Issue No. 1. The notice dated 03.06.1983 is Ex. PW-1/7 and postal receipt is Ex. PW-1/8. The contention of the appellant/ plaintiff is that this notice had been served upon Surinder Singh vide registered A.D. prepaid and properly addressed; presumption under Section 27 of the General Clauses Act, 1897 and section 14 (1) (e) of the Indian Evidence Act, 1873 has to be drawn in favour of the plaintiff/ appellant. For this proposition, reliance has been placed upon (1987) 2 SCC 555 Ram Sarup Gupta Vs. Bishun Narian Inter College & Others. It is pointed out that a mere

denial by the defendants that the notice has not been received by
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them is not sufficient to rebut this presumption which has arisen in favour of the plaintiff; for this proposition reliance has been placed upon 1980 (2) AIR SC 543 Shri Madan Lal Sethi Vs. Shri Amar Singh Bhalla. It is pointed out that other circumstances must be shown by the defendants to show that the notice had never reached the addressee. Reliance has also been placed upon AIR 1989 SC 630 M/s Madan & Co. Vs. Wazir Jaivir Chand as also upon AIR 1933 Calcutta 260 Secy. of State Vs. Madhu Sudan Mukherjee & others. It is submitted that although it is correct that this notice dated 03.06.1983 was never pleaded in the present plaint yet it found mention in the replication; it is a settled position of law that replication is a part of pleadings. To support this submission, reliance has been placed upon 1994 RLR 126 Keshav Metal Works Vs Jitender K. Verma as also (1987) 2 SCC 555 Ram Sarup Gupta Vs. Bishun Narian Inter College & Others. It is submitted that the plaint does not have to expressly aver each and every fact, this question of notice is even otherwise a matter of evidence and did not have to be specifically pleaded in the plaint.

7 Arguments have been countered. It is pointed out that there are concurrent findings of fact against the appellant; this Court can interfere in the impugned judgment only if there is substantial question of law which in this case has not been raised. Reliance has been placed upon AIR 1981 SC 77 Karbalai Begum Vs. Mohd. Sayeed & another as also another judgment of the Apex Court in AIR 1987 SC 409 Sachindra Nath Shah Vs. Santosh Kumar Bhattacharya to support his submission that unless the findings are perverse, no interference is called for by the High Court in second appeal on concurrent

findings of fact. Both the Court below had noted these arguments which have been addressed before this Court and drawn a conclusion against the appellant.

8 This is a second appeal. After its admission on 18.01.2010, the following substantial question of law was formulated. It reads as follows:-

“Whether both the courts below erred in holding that the tenancy of the respondent was not duly terminated in accordance with law?”

9 Perusal of the record shows that the present suit was a suit for recovery of possession and damages. Admittedly in the entire plaint, there is no averment that the tenancy of Surinder Singh, deceased father of the defendants had been terminated by notice dated 03.06.1983 which is the crucial issue now addressed before this Court. It was for the first time in the replication that this notice dated 03.06.1983 found mention by the plaintiff. On the other hand, the defendants in their written statement had averred that the alleged notice dated 03.06.1983 was never served upon their father i.e. upon Surinder Singh. It is a false and fabricated document and the reasons as aforementioned (Supra in the written statement) have emphasized. Two witnesses had been examined on behalf of the plaintiff and one witness had been examined on behalf of the defendants.

10 Suit No. 682/1982 was the first suit which the plaintiff had filed against Surinder Singh. This was on 17.11.1982. The said plaint was amended pursuant to the Court of the Court dated 23.07.1983. The amended plaint Ex. PW-1/1 was taken on record. Admittedly in this amended plaint, the notice dated 06.03.1983 did not find

mention. In fact the various other documents filed in that suit were all after the date of 03.06.1983. Relevant would it be to state that Ex.PW-1/DX1 is the application under Order 22 Rule 4 of the Code of Civil Procedure filed by the plaintiff seeking permission of the Court to bring on record the legal representatives of the deceased Surinder Singh. The contention of the learned counsel for the respondent is that even at this stage also, there was no averment that after the death of Surinder Singh his legal representatives have no right to continue in the suit property as the tenancy rights of Surinder Singh already stood terminated vide notice dated 03.06.1983; no cause of action now arises. This submission is not without any force. Similar is the effect of the other documents i.e. application under Section XXXII of the Code accompanied by the affidavit of the defendant Ex. PW-1/DX3. The defendant in the earlier suit namely Surinder Singh had been cross-examined on 05.11.1986. The said proceedings had been proved as Ex. PW-1/DX8. This was a lengthy cross-examination but perusal of the same shows that there is no reference to the notice dated 06.03.1983 alleging that the tenancy of Surinder Singh had already stood determined in terms thereof. There was no reason whatsoever for not putting this document to Surinder Singh who would have been the best person to answer this query. Perusal of the amended plaint Ex. PW-1/1 in fact shows that there is a reference to a notice dated 04.10.1982 purportedly sent by the plaintiff to the defendant; here again there was no mention of the notice dated 06.03.1983. In the sale deed Ex. DW-1/1, the defendant Surinder Singh had been described as a tenant at serial No. 11.

11 Even presuming that it was not necessary for the appellant/plaintiff to have specifically pleaded in the plaint that the tenancy of Surinder Singh had stood terminated vide Ex. PW-1/7, the second question which arises for decision is as to whether in terms of Ex. PW-1/8 (Postal receipt), a presumption of service can be drawn in favour of the plaintiff and against the defendants. Ex. PW-1/8 has been perused. This is a postal receipt bearing the name of Surinder Singh. Below it ND-1, referring to New Delhi has been mentioned. There is no further details of the address of the addressee. Perusal of Ex. PW-1/8 clearly shows that it has not been properly addressed to the addressee; in fact no address finds mention therein. Question of drawing a presumption under section 27 of the General Clauses Act does not arise. This section specifically postulates that the registered A.D. envelope must be prepaid and properly addressed to the addressee; this is missing. No such presumption thus arises under Section 27 of the said Act. All these factors had weighed in the minds of the courts below to hold that in fact a notice dated 06.03.1983 was a notice which had not legally terminated the tenancy of Surinder Singh in his life time as it had never been served upon him. Both the concurrent findings of the court below had thus rightly held that the plaintiff had failed to show that this notice Ex. PW-1/7 had been served upon Surinder Singh terminating his tenancy. In this factual scenario, judgments relied upon by the learned counsel for the appellant do not come to his aid. This finding calls for no interference.

12 This Court is not a third fact finding Court. This Court has to answer substantial question of law which has been formulated on

18.01.2010. This Court is of the view that both the Court below had not committed any error in holding that the tenancy of the respondents was not duly terminated in accordance with law.

13 The substantial question of law is answered accordingly. Appeal as also pending applications are dismissed.

INDERMEET KAUR, J.

FEBRUARY 07, 2011

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