

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

% *Date of Judgment: 06.4.2011*

+ **RSA No.12/2007**

CHHIDI RAM Appellant
Through: Ms.Sunita Harish, Advocate.

Versus

RAMJAS FOUNDATION Respondent.
Through: Mr.Sunil Mittal, 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 and judgment dated 25.9.2006 which had endorsed the finding of the trial judge dated 01.12.1995 whereby the suit filed by the plaintiff Ramjsas Foundation seeking possession and recovery of damages qua the suit property i.e. Jhuggi No.F-35, Sari Rohilla, anand Parbat, New Delhi (hereinafter referred to as 'the suit property') had been decreed in faovur of the plaintiff.

2. The case of the plaintiff as is evident from the plaint is that the plaintiff is the owner of the suit property. The defendant was a licensee therein. License deed dated 31.12.1979 (Ex.,PW-1/6) had been executed between the parties. Defendant is unauthorisedly occupying the suit property. In para 5 of the plaint, it has been

specifically averred that the licence of the defendant was terminated on 07.3.1985 vide a written notice. In spite of the said termination the defendant had failed to vacate the suit property.

3. In the written statement, it was denied that the licence has been terminated in terms of the aforementioned notice. It was stated that up to date licence fee had been paid by the defendant; no cause of action has arisen in favour of the plaintiff.

4. On the pleadings of the parties seven issues were framed; they read as follows:

1. Whether plaintiff has any locus standi to file the present suit against the defendant? OPP
2. Whether the suit has been signed, verified and file on behalf of the plaintiff by a duly authorized and competent person? OPP
3. Whether defendant was licensee of the plaintiff society in respect of Jhuggi No.35, Sario Rohilla, Anand Parbat and his licence was terminated vide notice 7.3.85, if so, to what effect? OPP
4. Whether the defendant has encroached upon the land in front of the plaintiff's jhuggi without the consent of the pltff if so, to what effect? OPP
5. Whether plaintiff is entitled to claim, damages from the defendant for the illegal use and occupation of the encroached them as shown red in the site plan attached, if so, at what rate and for what period? OPP
6. Whether plaintiff is entitled to the relief of possession as claimed? OPP
7. Relief.

5. On the basis of oral and documentary evidence led by the parties, the suit of the plaintiff was decreed, which finding was affirmed by the first appeallate court.

6. This is a second appeal. It has been admitted and on 24.8.2009 the following substantial question of laws were framed:

1. Whether the licence of a licensee can be terminated without giving him a notice in terms contained in the licence deed? If so its effects?
2. Whether the licence of a licensee can be revoked on filing of a suit without terminating the licence by way of a written notice?

7. On behalf of the appellant, it has been submitted that Clause 5 of the licence deed Ex. PW-1/6 states that after the termination of the licence if the licensee fails to vacate the property, he will be charged damages at the rate mentioned therein. Attention has also been drawn to para 5 of the plaint where it has been averred that the licence of the defendant had been terminated vide written notice dated 7.3.1985. It is pointed out by learned counsel for appellant that both the two finding court have returned a positive finding against the plaintiff on this score. Both the courts have held that the notice dated 7.3.1985 was in fact never served upon the defendant. The licence deed (Ex.PW-1/6) clearly states that the licence will be terminated meaning thereby that it has to be by a written document as is also averred in para 5 of the plaint. This fact having been disbelieved by both the two courts below, it is clear that the licence has not been validly terminated; defendant cannot be evicted. Finding in the impugned judgment is a perversity; it calls for an interference.

8 Arguments have been refuted.

9 Record has been perused. The finding in the impugned judgment qua this controversy is interalia extracted as follows:

“It is fact that the appellant/defendant had denied notice Ex. PW-1/10 and the respondent/plaintiff had not proved postal receipt qua legal notice and the onus was upon the respondent/plaintiff to establish that the legal notice was sent by registered post or A.D Card was acknowledged on the part of the appellant. Apparently the respondent/plaintiff failed to prove the legal notice deed Ex.PW-1/10 in respect of the termination of licence. Is there consequences prejudice to the respondent/plaintiff? There is no legal requirement of notice for termination of licence prior to filing of the suit; secondly, filing of the suit amounts of advance notice of termination of licence, therefore, I hold that for additional reasons discussed, the issue No. 3 was decided properly/rightly by the Trial Court.”

10 Issue no.3 is relevant in the controversy in dispute. Both the

fact finding courts below have held that the notice dated 07.3.1985 (Ex.PW-1/10) had not been served by the plaintiff upon the defendant. The impugned judgment had however endorsed the finding of the trial judge on this count that a licence is created at the will of the licensor; no separate notice is required to terminate the licence; filing of a suit by the plaintiff is itself a revocation of the licence of the defendant by the plaintiff.

11 The argument of the learned counsel for the appellant is devoid of any force. Ex.PW-1/6 does not make mention of any written notice which is required to be sent by the plaintiff to the defendant before terminating his licence. This is nowhere mentioned in Ex.PW-1/6. It is clear that the plaintiff had sent notice dated 7.5.1985 (Ex.PW-1/10) to the defendant by of a abundant pre-caution. Even assuming that this notice was not served upon the defendant, filing of the suit was itself a notice terminating the licence of the defendant.

12 A licence has been defined under Section 52 of the Indian Easement Act, 1882. It is revocable under Section 60 of the said Act. The contention of the appellant that the plaintiff had made a permanent structure upon the suit property after the licence had been granted to him and in terms of Section 60(b) the licence cannot now be revoked which is another limb of his argument is also an argument devoid of any force. This was not even pleaded before the courts below. It was never a part of his written statement. It cannot now be raised in second appeal. Moreover, Clause 2(3) of Ex.PW-1/6 clearly states that the licensee will not erect any further superstructure on the said land. This argument now propounded would thus even otherwise negative the case of

the appellant. Revocation of a licence can be either express or implied; the deeming clause is contained in Section 62 of the said Act. The filing of a suit; seeking possession from the licensee amounts to an express revocation of the licence. Contention of the defendant before this court that he had raised a superstructure of permanent character was also against the terms of the licence contained in Ex.PW-1/6; for which the provisions of Section 60 (b) are attracted. The result of the aforementioned discussion is that the finding in the impugned judgment calls for no interference. It is in no manner perverse.

13 There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

APRIL 6, 2011
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