

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

% *Judgment Reserved on: 21.03.2011*
Judgment Delivered on: 24.03.2011

+ **RSA No. 268/2005 & CM Appl No. 12829/2005**

SH. PAVINDER PAL SINGH & ANR. Appellants

Through: Mr. Ravi Bhushan, Advocate.

Versus

SH. RANJIT SINGH SONI Respondent

Through: Mr. Parvinder Singh, 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 11.05.2005 which had reversed the finding of the trial judge dated 24.08.1992. Vide judgment and decree dated 24.08.1992, the suit of the plaintiff Sh.Pavinder Pal Singh seeking possession and damages/mesne profits qua the suit property bearing no. 10023 in Block No. XV. Gali No. 2, Multani Dhanda, Paharganj, New Delhi-110055 had been decreed. Vide the impugned judgment dated 11.05.2005, this finding of the trial judge was reversed; suit of the plaintiff had been dismissed.

2. The case of the plaintiffs as set out in the plaint is that their father Late. Sh. Tirlochan Singh Sahni had been allotted the

aforenoted suit property comprising of two rooms, a kitchen, store and a terrace by the Ministry of Rehabilitation of Govt. of India. Rate of rent was ₹ 5.50/- per month. The plaintiffs along with their father were residing therein. After the death of their father, they became tenants by operation of law. The Ministry of Rehabilitation transferred this property to the Municipal Corporation of Delhi (MCD); the Slum Department of the MCD was transferred to the Delhi Development Authority (DDA); DDA through this Slum Department started receiving rent from the father of the plaintiffs and after his death, from the plaintiffs. Plaintiffs had also applied for mutation of this property. Defendant is the maternal uncle of the plaintiff. He requested for permission to stay in the suit property as a licensee which was accordingly accorded to him. No rent was being charged from the defendant. Defendant was a licensee; he had no right or interest in the suit property; he had only been granted permissive user. Defendant, in spite of request to plaintiff, had refused to hand-over the suit property to the plaintiffs. Plaintiffs had earlier also been constrained to file a suit for permanent injunction. On 06.06.1984, plaintiffs cancelled the license of the defendant; defendant had become an unauthorized occupant. He was also liable to pay damages/mesne profits at the rate of ₹ 100/- per month. Present suit was filed.

3. In the written statement, the defence set up by the defendant was that plaintiff had no locus standi to file the present suit; the ownership and management of the suit property vests with the DDA, Slum Department, defendant was not an occupant of the suit property in his own independent right; DDA had accepted him as

an occupant and he was regularly paying occupancy charges to the DDA. A sum of ₹ 3,604.70 ps had been paid vide receipt dated 06.09.84. The authorized and accepted possession of the defendant could not be disturbed.

4. On the pleadings of the parties, following issues were framed:-

- “i) Whether the plaintiff is tenant in the suit property?*
- ii) Whether the plaintiff allowed the defendant to live in the suit property as a licensee?*
- iii) Whether the suit is bad for non-joinder of necessary party i.e. DDA?*
- iv) Whether the suit is not properly valued for the purpose of Court Fee and jurisdiction?*
- v) Whether the defendant is residing in the suit property in his own right?*
- vi) Whether the plaintiff is entitled to the relief of possession and damages? If yes, then damages at what rate?*
- vii) Relief.”*

5. In the earlier suit filed by the plaintiff which was a suit for permanent injunction.

The following issues were framed:-

- 1. Whether the plaintiffs allowed defendant to live in the suit property as a licensee?*
- 2. Whether the defendant is occupying the suit property in his own right?*
- 3. Whether the plaintiff is entitled to the relief of injunction?*
- 4. Relief.*

6. Both the said suits had been consolidated. Oral and documentary evidence was led. Plaintiff had produced the allotment letter Ex. PW 1 /4 and rent receipts Ex. PW 1 / 13 to substantiate the allotment in his name as also the fact that he was paying rent of the suit premises. The site plan was proved as Ex. PW 1/1. Four witnesses were examined in defence. The defendant

had made payment to the DDA vide receipt Ex. DW 1/1 and DW RSA No. 268/2005

1/2. On the basis of this oral and documentary evidence, both the suits of the plaintiff had stood decreed.

9. The impugned judgment had reversed this finding. It held that the plaintiffs had not been able to prove the case; per contra preponderance of probabilities was in favour of the defendant; they were in occupation of the suit property since 1961 in their own independent right. Suits of the plaintiffs were accordingly dismissed.

10. This is a second appeal. It has been admitted and on 21.03.2011, the following substantial question of law was framed which reads as follows:-

“Whether the finding in the impugned judgment dated 11.05.2005 reversing the finding of the trial judge dated 24.08.1992 thereby dismissing the suit of the plaintiff is a perverse finding and if so, its effect?”

11. Learned counsel for the appellant has urged that the impugned judgment is perverse; the defendant was a trespasser. The claim of the plaintiff was never that he was an unauthorized occupant; attention has been drawn to the definition of the “unauthorized occupation” as contained in Section 2(g) of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 which reads as follows:-

*“2. **Definitions-** In this Act, unless the context otherwise requires,-*

*.....
(g) “unathourised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of*

transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

It is pointed out that the impugned judgment recording the finding that the defendant was an unauthorized occupant and not a trespasser is an illegality. It is submitted that under Section 115 of the Indian Evidence Act, the principle of estoppel is attracted; the defendant was nothing but a licensee; he could not dispute the title of the plaintiff who was the licensor. The impugned judgment holding that the plaintiff had not asked for mutation and this being the ground for dismissal of the suit is also an illegality as it was not mandatory for the plaintiff to have got mutation effected in his name; he was a legal allottee from the Government. The guidelines and policy of the DDA Ex. DW 4/1 and DW 4/2 would apply only to unauthorized occupants and not to a trespasser; defendant was a trespasser; the said policy/guidelines would have no application to the case of the defendant.

12. Arguments have been countered. It is submitted that the findings in the impugned judgment call for no interference.

13. Record has been perused. It is not in dispute that the parties are closely related. The defendant is the maternal uncle (mama) of the plaintiff. Tirlochan Singh Sahni was the original allottee of this suit premises; he had been allotted an allotment from the Ministry of Rehabilitation at the rent of ₹ 5.50 per month. Plaintiff had permitted the defendant to occupy the accommodation as a licensee. Admittedly, Tirlochan Singh died in 1972. Present suit had been filed in the year 1984. Although the plaintiff had averred

that he has got efforts to get mutation of the suit property in his

name yet no documentary evidence has been filed to substantiate this submission. DW-1, Sh. Ram Sewak Sharma, UDC, Slum Wing, DDA, an official witness from the DDA had admitted that property had not been mutated in the name of the plaintiff. He had on oath stated that as per the summoned record, one Ranjit Singh Soni (defendant) was the licensee and had been shown as an occupant of the aforementioned suit property i.e. of two rooms and kitchen. Further, license of Tirlochan Singh had been cancelled vide order dated 24.08.1984 passed by Dy. Director (Land & Revenue); DW-1 had further deposed that on inspection of site, he found Ranjit Singh Soni in possession of the suit property; damages assessed qua the suit property had also been paid by the defendant; notice under Section 7(ii) and 7 (iii) P.P. Act was given to the defendant to pay the damages; plaintiffs had not been shown either as a licensee or an occupant. In his cross-examination, this witness had admitted that up to 31.03.1977, Tirlochan Singh had paid rent at Rs. 5.50 per month. It is the vehement contention of the learned counsel for the appellant that this statement of DW-1 shows that up to 31.03.1977, it was Tirlochan Singh who was paying the rent qua the suit property and this establishes their possession till 1977. Even as per the case of the plaintiff as is evident from the plaint, the plaintiffs were residing in the suit property till April 1969 and thereafter since their father Tirlochan Singh was a heart patient, they had purchased a house in Rajouri Garden. In 1973, at the request of the defendant, the defendant was permitted to occupy the suit premises. In his cross examination, PW 1 admitted that from 1977 up to 1980, rent was given to the defendant for being deposited in DDA; he admitted that the defendant has got his

driving license issued in 1961 from the suit premises. DW-4, Sh. Raj Pal, Superintendent, Slum Department, DDA had also come into the witness box. He had proved the policy and guidelines of the Department wherein it had been notified that all unauthorized occupants except trespassers would be regularized as licensees.

14. This oral and documentary evidence was re-appreciated by the first appellate court. Impugned judgment had noted that even as per the Ex. DW 4/1 and DW 4/2 even presuming that the defendant was an unauthorized occupant, such unauthorized occupants had been regularized in terms of this aforementioned policy. The submission of the learned counsel for the appellant that the defendant was a trespasser and not an unauthorized occupant and there is a distinction between the two, has no force. As per the plaintiff vide notice dated 06.06.84, the license of the defendant had been terminated; after its termination, the status of the defendant was that of an unauthorized occupant. Testimony of DW-1 had also been rightly adverted to wherein he had proved the summoned record and it had been noted that the allotment of the plaintiff had stood cancelled; defendant was in occupation of the suit premises in 1984; he was paying damages in lieu thereof.

15. The whole case of the plaintiff was hinged upon his allotment which was admittedly initially in the name of his father; however in 1984, this allotment stood cancelled. Defendant had been granted permissive user to occupy this suit property by the plaintiffs. PW-1 had admitted that in April 1969 they had shifted to Rajouri Garden. In this intervening period, the allotment of the plaintiff stood cancelled; user charges/damages were being paid by the defendant

in his own capacity. Plaintiff had no right or title left in the suit property to claim back its possession.

16. The impugned judgment calls for no interference. Substantial question of law answered against the appellant and in favour of the respondent. Appeal has no merit. Appeal as also the pending application is dismissed.

(INDERMEET KAUR)
JUDGE

MARCH 24, 2011
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