

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

% *Judgment Reserved on: 10.02.2011*
Judgment Delivered on: 14.02.2011

+ **RSA No.39/2005 & CM No.1847/2005**

SHRI NARAYAN SHAMNANI Appellant
Through: Mr.Chetan Sharma,Sr.
Advocate with Mr.Sanjeev
Narula, Ms.Astha Sharma and
Mr.Sunil Dalal Advocates.

Versus

SHRI RAJENDER PRASAD & ORS. Respondents
Through: Mr.A.P.Aggarwal, 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 18.11.2004 which had reversed the finding of the trial judge dated 25.1.2002. Vide the judgment and decree dated 25.1.2002 the suit filed by the two plaintiffs Rajender Prasad (S/o Sambhu Dayal) and Ram Chandra (S/o Manohar Lal) seeking possession of the suit property (property bearing No.6430, Lady Harding Road, New Delhi) had been dismissed. The impugned judgment had reversed this finding. The suit of the plaintiff had stood decreed.

2. The factual matrix as revealed is that a partnership firm M/s Shambhu Dayal Manohar Lal comprising of three partners namely Shambhu Dayal, Manohar Lal and Banwari Lal had taken on rent the aforementioned suit property at monthly rental of Rs.55/-. Property

was then owned by Baba Vikram Singh. Shambhu Dayal died leaving behind his legal representative i.e. his son Rajender Prasad (plaintiff no.1). Manohar Lal, the second partner also died leaving behind his legal representative i.e. his son Ram Chandra (plaintiff no.2). The present suit had been filed by the aforementioned two persons. Admittedly, at the time of the filing of the suit which was on 18.8.1998 Banwari Lal, the third partner, was alive; he was not joined as a plaintiff. The contention of the plaintiffs in the present suit was that on 13.7.1998 plaintiff no.1 had gone to the suit premises to get his shutter repaired and to replace old locks with new locks as the old locks had become rusted. On 17.7.1998 when he had gone to the shop to open the shutter he found that the shutter was already opened; defendant no.1 attacked him; matter was reported to the police; defendant no.1 had already put his locks over the shutter. Contention of the plaintiffs is that the defendant no.1 had illegally trespassed in the suit property and taken forcible possession in this intervening period of 13.7.1998 to 17.7.1998. Suit for possession had accordingly be filed.

3. Defendants had denied these submissions. It was denied that forcible possession of the suit property had been taken. It was contended that defendant no.1 had purchased this property from Baba Vikram Singh in September-October 1990 and he is the owner of the suit property. Banwari Lal, the sole surviving partner has surrendered his rights in the suit property to the Baba Vikram Singh. The defendant at the time of the purchase of the property had been given physical possession of the suit property.

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

“1.Whether plaintiff is entitled to the recovery of possession as
prayed for ?OPP
2.Relief.”

5. Oral and documentary evidence led before the trial court. The trial judge was of the view that in terms of Section 42 of Indian Partnership Act, 1932 (hereinafter referred to as ‘the Act’) on the death of one partner unless there was a contract to the contrary, the partnership stood dissolved. Trial Court had noted that the conduct of the parties had not in any manner suggested that there was any contract to the contrary; on the death of the two partners namely Shambhu Dayal and Manohar Lal the partnership stood dissolved. Further since the property had been tenanted out to the partnership firm, the non-joining of Banwari Lal who was the sole surviving partner was fatal to the suit. Trial judge had returned a finding that Banwari Lal had in fact surrendered the tenancy rights to the erstwhile owner Baba Vikram Singh from whom defendant no.1 vide valid document of purchase had purchased this property on 10.10.1990. Court returned a finding that the plaintiffs had no locus standing to file the present suit; suit was dismissed.

6. This finding was reversed by the appellate Court. It concluded that the legal heirs of the deceased partners i.e. the son of Shambhu Dayal and Manohar Lal had inherited the tenancy rights from their deceased fathers and the present suit filed by them was maintainable. Non-joining of Banwari Lal did not affect the merits of the case. The court had returned a finding that the rent had been paid by the firm up to September 1990 and this was evident from the rent receipt Exs.PW-1/2 to Ex.PW-1/6. The Court on the re-appreciation of the oral and documentary evidence also returned a finding that Banwari Lal had not surrendered the suit

property to Baba Vikram Singh.

7. Appeal has been admitted.

8. Substantial question of law was formulated on 30.9.2010 which reads as follows:

“Whether the suit in the present form was maintainable when admittedly the property had been leased out to the partnership firm and two of the said partners namely Shambhu Dayal and Manohar Lal had expired; the suit filed by Rajender Prasad and Ram Chander Gupta, their respective sons, in the absence of third partner Banwari Lal who was yet alive and if so, its effect?”

9. On behalf of the appellant vehement arguments have been urged on the ground that the suit was not maintainable; tenancy was admittedly of the partnership firm and after the death of the first partner, in terms of Section 42 of the Act, the partnership stood dissolved. Learned counsel for the appellant has placed reliance upon (2010) 2 SCC 407 Mohammad Laiquiddin Vs. Kamla Devi Mishra. It is pointed out that a partnership is not heritable status; this is a matter of contract; on the death of one partner in the absence of acceptance by the other partners it cannot be said that the partnership stands revived. Admittedly there was no written contract. The plaintiffs i.e. the two sons of the two deceased partner could not have filed a suit in the absence of Banwari Lal who was the sole surviving partner; the mere averment that he was old and could not be joined as a plaintiff was not reason enough not to join him in the proceedings. It is pointed out that from the year 1983 to 1990 the partnership had become defunct. Admittedly after 1990 no rent had been paid even to Baba Vikram Singh. In October 1990, the suit property had been purchased by defendant no.1 from Baba Vikram Singh and documents including agreement to sell, power of attorney, will had

been executed in favour of defendant no.1 by the erstwhile owner. Suit filed was not maintainable in the present form.

10. Arguments have been countered. It is pointed out that rent of the suit property had admittedly been paid by the partnership firm up to September 1990 and this is evident from Ex.PW-1/2. The status of the continuance of the firm was thus recognized. There was no evidence before the Court to establish that Banwari Lal had surrendered the tenancy right in favour of Baba Vikram Singh. Attention has been drawn to the agreement to sell executed between Baba Vikram Singh and defendant no.1 wherein para 3 states that the first party had delivered to the second party the constructive and symbolic possession of the property as it is in possession of the tenants/occupants. Admittedly this lease was qua the suit property. It is pointed out that this document clearly established that in October 1990 Baba Vikram Singh had recognized the fact that the tenants were occupying the suit property. It is pointed out that the suit in the present form was maintainable even in the absence of Banwari Lal. For this proposition, reliance has been placed upon AIR 1971 Delhi 219 Kanahiya Lal Balkishan Dass Vs. Labhu Ram; 1980 RLR 84 Usha Bhasin Vs. Competent Authority as also another judgment AIR 1984 SC 1570 M/s Chhotelal Pyarelal Vs. Shikharchand .

11. Record has been perused.

12. Ex.PW-1/2 is a rent receipt dated 22.4.1990. It is a receipt of rent from the firm Shambhu Dayal Manohar Lal in the sum of Rs.660/- @ Rs.55/- per month qua suit shop i.e. 1/4, Bhagat Singh Lane, New Delhi for period 1.10.1989 to 30.9.1990. This documents clearly evidences that in April 1990 the partnership

firm Shambhu Dayal Manohar Lal was recognized; the status of the said firm was in existence. Rent was being paid by the said firm and being received by Baba Vikram Singh. The agreement to sell Ex.DW-1/1 dated 10.10.1990 executed between Baba Vikram Singh (the erstwhile owner) and defendant no.1 also in para 3 clearly stipulates that only constructive possession of the suit property had been handed over to defendant no.1 as it was still in occupation of the tenant. Ex.DW-1/2 is the lease deed executed between Baba Vikram Singh and M/s Mid Air Express (P) Ltd. This was also in October 1990.

13. The impugned judgment had re-appreciated the oral and documentary evidence of the parties. Testimony of PW-1 was adverted to wherein it was noted that no suggestion has been given to this witness that the possession was not with them till the year 1998. The lease deed Ex.DW-1/2 executed between Baba Vikram Singh and M/s Mid Air Express (P) Ltd. mentioned that on the vacation of the shop the same would be given on lease for a further period; meaning thereby that on 10.10.1990 possession was not with Baba Vikram Singh. It is thus clear that up to October 1990 the physical possession of the suit property was not with Baba Vikram Singh. Defendant no.1 (examined as DW-1) had admitted in his cross-examination that he was not delivered the possession of the suit property by Banwari Lal or by any other person. This evidence had weighed in the mind of the first appellate Court to hold that the suit property had never been delivered by Banwari Lal or by any other person to either Baba Vikram Singh or to defendant no.1.

14. The substantial question of law as aforenoted has to be

answered by this Court. Section 42 of the said Act mandates that unless there is a contract to the contrary, on the death of one partner the partnership will stand dissolved. In Kanahiya Lal (supra) a Bench of this Court had recognized the fact that where the premises had been let out to a partnership firm, on the dissolution of the firm the remaining partner became a tenant by operation of law and an application seeking fixation of standard rent was maintainable. In Usha Bhasin (supra) where a partnership firm was a tenant and one of the partners had died, the legal representative of the said deceased partner was entitled to inherit the tenancy provided the tenancy had not been terminated. The observation made in this case which is relevant in this context is extracted as follows:

“When a landlord enters into a contract of tenancy with a firm he takes all the partners of the firm as his tenants and by operation of law the rights of each of them in the event of death is inherited by his legal representatives.”

15. Law is settled. A lease of a premises creates inheritable rights and legal representative of a tenant whose contractual tenancy had not been terminated would continue to remain a tenant of the landlord.

16. In the instant case admittedly, the tenancy which had been created in favour of the firm has not been terminated; this also was not the plea of the defendant/appellant. Even otherwise the recognition of the status of the firm by receiving rent from the firm up to September 1990 has been established. Even in October 1990 as is evident from Ex. DW-1/1 and Ex. DW-1/2 when Baba Vikram Singh sold the suit premises to defendant no.1; it was noted that only constructive possession is being handed over as the suit land

is still in occupation of the tenants. A partnership firm is in fact a compendious name of the partner constituting the firm; they are individually partners and collectively known by the name of firm; each partner acts for all. Section 18 of the said Act stipulates that a partner is the agent of the firm; the implied authority of the partnership firm as an agent of the firm has been encompassed in Section 19. In these circumstances nothing prevented plaintiffs no.1 and 2 to file the present suit even without impleading Banwari Lal.

17. The substantial question of law is answered against the appellant and in favour of the respondent. There is no merit in the appeal. Appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

FEBRUARY 14, 2011
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