

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

% *Judgment reserved on : 23.05.2011*
Judgment delivered on :25.05.2011

+ **R.S.A.No. 104/2009**

GAJANAND MITTAL

Through: Mr.Sanjeev Soni, Advocate. Appellant

Versus

ASHOK KUMAR (DECEASED) THROUGH LRS

Through: None Respondent

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 19.03.2009 which has reversed the findings of the trial Judge dated 19.03.2005. Vide judgment and decree dated 19.03.2005, the suit filed by the plaintiff Ashok Kumar seeking recovery of ₹1,35,000/- qua the suit property (i.e.plot No.36, measuring 80 square yards in Khasra No. 25/11, Shiv Ram Park Extension

forming part of village Kamruddin Nagar, Nangloi, Delhi had been dismissed. The impugned judgment had reversed this finding; appeal filed by the plaintiff had been accepted; the Court had noted that the plaintiff had become the owner of the suit property vide valid documents of title, general power of attorney, Will, affidavit dated 11.06.1997; the defendant was a mere licensee; he was liable to be ejected; damages/mesne profits @ ₹2,000/- per month had also been awarded in his favour.

2 The plaintiff claimed himself to be the owner of the suit property. He had inducted the defendant as a tenant at monthly rent of ₹5,000/-; this was vide agreement dated 09.06.1997. Tenancy was terminated vide notice dated 02.08.1999; defendant was asked to deliver the possession of the property by 10.09.1999; the defendant has also not paid rent w.e.f. 11.06.1987 @ ₹5,000/- per month which was calculated @ ₹1,35,000/- up to 10.09.1999; mesne profits had also been claimed. Suit was accordingly filed.

3 In the written statement the defence set up was that the defendant owed a sum of ₹48,410/- to one Mr. Naresh Kumar; Naresh Kumar had demanded the original documents of the suit property from him in lieu of this loan; defendant had handed over the original title papers of the suit property to Naresh Kumar; the

averments in the plaint had been denied; it was further contended that Naresh Kumar is in collusion with the plaintiff; present suit has been filed falsely against the him.

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

“1 Whether there exists no relationship of landlord and tenant between the parties as alleged? OPD

2 Whether the suit is not maintainable in view of preliminary objections no. 2,3 & 4 of written statement? OPD

3 Whether the tenancy of the Defendant has been duly terminated? OPP

4 Whether the Plaintiff is entitled to possession of the suit premises? OPP

5 Whether the plaintiff is entitled for recovery of rent as claimed in the suit? OPP

6 Whether the plaintiff is entitled for damages / mesne profits? If so, at what rate and for which period? OPP

7 Whether the plaintiff is entitled for interest? If so, at what rate and for which period? OPP

8 Relief.”

5 Oral and documentary evidence was led. The trial court was of the view that Ex.PW-1/6 which is the rent agreement dated 09.06.1997 had created a relationship of landlord and tenant between the plaintiff and the defendant; his tenancy had been validly terminated vide legal notice Ex.PW-1/7 dated 02.08.1999. However, the documentary evidence of the plaintiff i.e. Ex.PW-1/2 (receipt), Ex. PW-1/3 (Will) and Ex. PW-2/1 (GPA) dated 09.06.1997 have not been adequately proved; the plaintiff not

being the owner of the suit property was not entitled to the relief. Suit had been dismissed.

6 This finding had been reversed in appeal. The impugned judgment was of the view that the documents Ex. PW-1/2 (receipt), Ex.PW-1/3 (Will), Ex.PW-1/4 (agreement to sell) and Ex.PW-1/5 (affidavit) coupled with the general power of attorney (Ex.PW-2/1) endorsed transfer of interest in favour of the plaintiff qua the suit property; rent agreement Ex.PW-1/6 was also believed; these were valid documents executed by the defendant in favour of the plaintiff; further the defendant was a licensee in the suit property as the plaintiff had permitted him to stay in the suit land on humanitarian grounds; suit of the plaintiff stood decreed. Mesne profits/damages had also been granted.

7 This is a second appeal. It has been admitted and on 09.08.2010, the following substantial question of law was formulated:-

“Whether there was no relationship of landlord and tenant between the appellant and deceased respondent (now represented through his LR) and if so its effect?”

8 On behalf of the appellant, it has been urged that the judgment of the trial court suffers from a perversity; the case of the plaintiff himself was that the defendant was a tenant; this is

evident from the plaint; the impugned judgment returning a finding that the defendant was a licensee is clearly a perversity; the impugned judgment calls for an interference on this ground alone. It is pointed out that there was no relationship of landlord and tenant between the parties; the trial Judge had rightly noted that the documents Ex.PW-1/2 to Ex. PW-1/5 had not been properly proved.

9 None has appeared on behalf of the respondent although he has been served.

10 The trial Judge had framed eight issues. Issue no. 1 had been decided in favour of the plaintiff. The trial Judge had returned a finding that there exists a relationship of landlord and tenant between the parties; while disposing of issue no. 3 it was noted that the Ex. PW-1/7 dated 02.08.1999 had been served upon the defendant terminating his tenancy; tenancy of the defendant had been validly terminated; however, the suit had been dismissed for the reason that the other documentary evidence i.e. Ex. PW-1/5 & Ex. PW-2.1 had not been proved in accordance with law. Testimony of PW-1 is relevant on this count. He had proved the aforementioned documents i.e. Ex.PW-1/2 to Ex. PW-1/5. PW-2 had produced the summoned record from the office of Sub-Registrar; the certified copy of the general power of attorney had been

RSA No.104/2009 Page 5 of 10

proved through his testimony as Ex. PW-2/1. Ex.PW-1/2 is the receipt of ₹50,000/- executed by the defendant Gajanand Mittal in favour of the plaintiff; it is dated 09.06.1997. It was attested by Naresh Kumar. Ex.PW-1/3 is the will of the same date; this document also bears the signatures of the defendant; Ex.PW-2/1 is the certified copy of the general power of attorney executed by the defendant in favour of the plaintiff. The impugned judgment had noted that all the aforementioned documents have been proved; the impugned judgment had also noted that Ex.PW-1/6 (rent agreement) is also proved; it had been signed on each and every page by the defendant. The finding qua these documents reads as follows:-

“14) A close look on these documents shows that even if the Defendant had given any blank signed papers, the same could not have been misused as alleged. The Defendant has not claimed that he ever put his signatures on any blank paper with revenue stamp affixed thereon. The manner in which the signatures of Defendant, as executant, appear across the revenue stamp clearly shows that the 'Receipt' (Ex.PW1/2) could not have been made by using already signed blank papers. Further, the Will (Ex.PW1/3) not only bears the signatures of the Defendant as testator on the front but also at its back on two points alongwith his thumb impressions. The signatures are admitted by the Defendant. It is not his case that he had put his signatures at two different points (places) on any blank paper. Moreover, the manner in which the stamps and endorsement of the Sub-Registrar's office appears at the back of the said Will, it is evident that the Defendant himself has knowingly signed / executed the same. This is further corroborated from the fact that a hand-written receipt

for General Power of Attorney which was issued by the Sub-Registrar's office also bears his signatures at point 'A'.

15) The Will (Ex.PW1/3) not only has his photograph affixed but his Identity card number is written in black ink and the photograph bears the seal of Sub Registrar's office. The General Power of Attorney dated 09.06.1997, (a certified copy of which has been proved) shows the signatures of the Defendant at two points, namely, point A and B separated by the seal / stamp and endorsement of the office of Sub-Registrar. The signatures which are accompanied by thumb impressions could not have been put on a blank paper and the same has not been so claimed by the Defendant also. It is crystal clear that the documents, namely, rent agreement Ex.PW1/6, GPA Ex.PW2/1, agreement to sell and purchase Ex.PW1/4 and the affidavit (Ex.PW1/5) to the effect that the Defendant had handed over the possession of the suit property to the Plaintiff, the receipt Ex.PW1/2, the Will Ex.PW1/3, are not forged and fabricated but genuine documents executed by the Defendant only. The Will as well as General Power of Attorney were also got registered by the Defendant in person, in the office of Sub-Registrar Delhi. The contention of ld counsel for the Defendant is devoid of merits, has no force in the eyes of law and hence rejected.”

11 The impugned judgment had noted that the aforementioned documents i.e. Ex.PW-1/2 to Ex. PW-1/5 coupled with the version of the plaintiff that the suit property had been delivered to the plaintiff on the same date created a title in favour of the plaintiff; the impugned judgment had placed reliance upon a judgment of this Court reported in Ajit Narain vs Arti Singh and others, 81(1999) DLT 355. There is no perversity in this finding. It had validly upheld that the aforementioned documents had created interest in the suit property in favour of the plaintiff; these documents had been read coupled with the oral

testimony of the plaintiff who had deposed that the suit property had been delivered to him. Ex. PW-1/6 was also proved; parties were governed by a landlord-tenant relationship.

12 In para 23, the Court had returned a finding that this document is proved; however the further finding that although Ex.PW-1/6 speaks of a relationship of landlord and tenant between the parties yet it had actually created a license by the plaintiff in favour of the defendant was a perversity. While returning a positive fact finding that Ex.PW-1/6 had been executed between the parties, the express terms of the document could not have ignored and substituted for a plea which was neither pleaded nor proved by the plaintiff. It was never the case of the plaintiff that the defendant was a license; his case always was that the defendant was a tenant. Ex.PW-1/6 in fact established this. To this extent, this finding is set aside.

13 Rent being more than ₹3,500/- per month, a civil suit was maintainable.

14 It is also not in dispute that the original title documents of the suit property had since been parted with by the defendant; his defence was that he had given these documents to Naresh Kumar from whom he had taken a loan of ₹48,000/-; Naresh Kumar had

not been summoned by the defendant. The defence of the defendant was bald and make belief; it was not substantiated and rightly held to be so.

15 The impugned judgment had decreed the suit of the plaintiff for possession; mesne profits had been granted @ ₹2,000/- per month; this was inspite of the fact that the claim of the plaintiff was ₹5,000/- per month. In Ex.PW-1/6 rate of rent was ₹5,000/- was mentioned at per month; the rent recoverable could not more than three years prior to the date of filing of the suit; i.e. at the rate of ₹5,000/- per month. The impugned judgment having relied upon Ex. PW-1/6 could not have substituted its own figure of ₹2,000/- for ₹5,000/-; this is again a perversity. Document Ex. PW-1/6 has to be read as per its express terms which had detailed the rent of ₹5,000/- per month.

16 Suit of the plaintiff is accordingly decreed for possession and mesne profits which are recoverable @ ₹5,000/- per month; ₹1,35,000/- is rent which is payable w.e.f. 11.06.1987 to 10.09.1999 and thereafter ₹5,000/- per month till the date of delivery of possession. Interest @ ₹6% per annum is endorsed.

17 With the aforementioned modifications in the impugned judgment substantial question of law is answered against the appellant. The appeal is dismissed.

INDERMEET KAUR, J.

**MAY 25, 2011,
A**