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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.424/2011

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14th September, 2011

GIAN CHAND GUPTA (THROUGH LRS)

..... Appellant

Through: Mr. Anupam Srivastava,
Advocate.

VERSUS

COIR BOARD

..... Respondent

Through: Mr. Sugreev Dubey,
Advocate for the
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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.**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court, and by which judgment the trial Court dismissed the suit for possession and mesne profits filed on behalf of the appellant/landlord.

2. It was not disputed before the trial Court and also before me that the respondent is a tenant, the rate of rent is Rs.4,675/- per month and that a notice dated 27.11.2006 was served under Section 106 of

the Transfer of Property Act, 1882 terminating the tenancy of the respondent No.1. What is very emphatically and passionately argued is that the appellant is not the owner of the premises and therefore the trial Court rightly dismissed the suit.

3. The case of the appellant/plaintiff before the trial Court was that the rights in the premises were purchased by the appellant/plaintiff (who died during the pendency of the suit and was substituted by his legal heir Sh. Sudhir Kumar Gupta) under an agreement to sell dated 22.7.2003 and whereafter the defendant No.1/respondent No.1/tenant attorned in favour of the appellant/plaintiff. After attornment since 2003 right till the tenancy was terminated by a notice dated 27.11.2006, rent was paid by the respondent no.1 to the plaintiff.

4. The trial Court has held that the appellant cannot be said to be the owner because agreement to sell does not confer ownership rights in the property and therefore the suit was dismissed. Relevant observations of the trial Court are contained in para 12 of the impugned judgment and which reads as under:-

“12. In his affidavit Ex.PW-1/A, PW-1 has stated that defendant No.1 used to give monthly rent of Rs.4675/- to late Sh. GC Gupta and defendant No.1 used to give acknowledgement receipts for the rent. He has proved one of the original acknowledgement receipts as Ex.PW-1/2. Ex.PW-1/2 is the forwarding letter dated 17-11-2006 sent by defendant no.1 to the deceased plaintiff Sh. Gian Chand Gupta alongwith a demand draft dated 26-10-06 for Rs.4675/- towards rent for the month of November. The case of the defendants is that the deceased plaintiff had misrepresented the fact and claimed himself to be the owner of the suit property by way of sale deed. In his affidavit Ex.DW-1/1, DW1 has stated that the plaintiff and his legal heir had only

been collecting rent from defendant No.1 and defendant No.1 never objected to giving the rent as the same is under the Ministry of Micro, Small and Medium Enterprises and that defendant No.2 is the principal defendant who never acknowledged the plaintiff and his LR as the owner of the suit property. In his cross-examination, PW-1/2 has admitted that vide document Ex.PW-1/2 defendant no.1 admitted sending of rent to the plaintiff. DW-1 has also proved the rent receipts as Ex.DW-1/2 to Ex.DW-1/4 which clearly show that the deceased plaintiff had issued rent receipts in respect of the suit property in the years 1992 and 1993. However, in my considered opinion, mere attornment of the deceased plaintiff by defendant no.1 or by both the defendants and the payment of rent in respect of the suit property to him does not by itself show that the deceased plaintiff had been collecting the rent as the owner landlord of the suit property. In my further considered opinion, the two terms, namely, "landlord" and "owner" have different meanings. Any one who is authorized to collect rent on behalf of the owner can be a landlord and the landlord can necessarily be not the owner of the property while the owner can act in dual capacity, that is to say, as a landlord as well as the owner of the property. Therefore, in my considered opinion, when the case of the deceased plaintiff himself is that he had become the owner of the suit property by virtue of agreement to sell dated 22-7-03, the mere fact that he had been collecting rent of the suit property from the defendants had attorned him as the landlord did not and does not prove that the deceased plaintiff was the owner of the suit property for the purposes of recovering the possession of suit property from the defendants. Therefore, in my judgment, the plaintiff has failed to prove that he is the owner of the suit property."

(Emphasis supplied)

5. In my opinion, the trial Court has clearly fallen into an error of law on two counts. Firstly, since the admitted position is that the respondent No.1/tenant has been regularly paying rent to the appellant/plaintiff, therefore then as per Section 115 of the Evidence Act, 1872, the respondent No.1 is estopped from challenging the title of the appellant. Therefore, the appellant was surely entitled to reliefs of

possession and mesne profits against respondent No.1, who admittedly is a tenant. Secondly, there is a difference between a landlord and an owner. An owner can definitely be a landlord however every landlord need not be an owner. This however does not mean that a landlord is not entitled to deal with the tenanted property. The very fact that a person is a landlord means that he is authorized to deal with the tenant with respect to the tenanted premises. Obviously, this would mean taking possession from the tenant, unless of course it transpires that there is an objection by the actual owner (as different from landlord) and the said owner is objecting to the collection of rent or taking of possession of the tenanted premises by the landlord. In the present case, no one except the appellant has come forward to claim any rights in the property in opposition to the rights which were claimed by the appellant in the suit. Therefore there is:- (i) a relationship of landlord and tenant between the parties, (ii) the rate of rent is more than Rs.3,500/- per month (as per the finding of fact which is arrived at by the trial Court in para 13 of the impugned judgment) and thus the tenancy is outside the protection of Delhi Rent Control Act, 1958 and (iii) the legal notice terminating the tenancy under Section 106 of the Transfer of Property Act, 1882 is duly served upon the respondent No.1/tenant and the notice and the proof of the service thereof have been exhibited before the trial Court as Ex.PW1/3 to Ex.PW1/6 (the findings with respect to which has also been given in favour of the appellant/plaintiff in para 14 of the impugned judgment and decree),

and which are sufficient for the suit for possession and mesne profits to be decreed.

6. Learned counsel for the respondent No.1 sought to argue that the appellant is a mere rent collector and therefore he is not entitled to possession of the suit premises. The term 'Rent Collector' can be only used to mean either only a servant of an owner or landlord of a premises and not a person who collects the rent in his own right. In the present case, it is not disputed that the appellant was collecting rent in his own right with respect to suit premises and which was so being paid by the respondent no.1. In fact, no doubt remains on this aspect of the respondent No.1 accepting the appellant as the landlord of the premises inasmuch as before the trial Court the appellant proved the letter dated 9.10.2006 issued by the respondent No.1 to the plaintiff/Sh. Gian Chand Gupta, which has been exhibited as Ex.PW1/8, and which clearly admits the appellant to be the landlord of the premises. For the sake of convenience, I would like to reproduce this letter as under:-

"CB/SRNP/JAMRUDPUR/2006-07/LEASED/226 09-10-2006

To,

Shri Gian Chand Gupta Ji,
Land Lord, 89-A,
Jamrudpur-New Delhi.

Sub:- Renewal of Lease Deed Agreement-Jamrudpur Godown-reg.

Dear Sir,

As per the direction of Coir Board, Head Office, I am forwarding herewith a copy of the approved draft lease deed agreement for the period w.e.f. **01-09-2004 to 31-08-2009.** A letter received from Coir Board Head Office along with this Lease deed agreement form, is also attached herewith for ready reference.

It is therefore requested to your good self that kindly get the Lease Deed full-filled and returned it to us duly executed so that we may process the same for the payment of your dues, on the basis of the Agreement.

With regards,

Encl. As above.

Yours sincerely,

M A N A G E R"

7. Accordingly, the argument of the respondent No.1 is wholly devoid of merit not only by virtue of Section 115 of the Evidence Act, 1872 but also by its own action in regularly paying the rent to the original plaintiff in his own right and also recognizing the appellant as the landlord of the premises vide Ex.PW1/8. I therefore reject this argument as raised on behalf of the respondent No.1 that the plaintiff was only a rent collector.

8. Another argument which was sought to be argued by the counsel for the respondent No.1 was that the trial Court had no pecuniary jurisdiction. I find that once again this argument is without substance because no such issue that the trial Court has no pecuniary jurisdiction was at all raised before the Court below. An issue of lack of pecuniary jurisdiction of a Court has to be raised at or before the stage of framing of issues and if not raised is to be waived by virtue of Section 21 CPC, 1908. Accordingly, I reject this argument of the respondent No.1.

9. Since the suit for possession was dismissed, the trial Court has not granted any mesne profits to the appellant after termination of the tenancy. The appellant has however received the admitted rent which was otherwise payable with respect to the suit premises. A landlord is entitled to mesne profits during the pendency of the suit and which mesne profits are to be awarded by taking into account the rent with respect to similar premises in the area. No such evidence has been led on behalf of the appellant, however, considering the fact that the suit premises are situated in a commercial area in New Delhi, I deem it fit that the appellant/landlord is entitled to compounded increase of 10% per year from the date of the termination of the tenancy i.e. 1.1.2007. The courts have been taking judicial notice of increase of rent in urban cities such as Delhi and one such judgment is of a Division Bench of this court in the case of **S.Kumar Vs. G.R.Kathpalia, 1999 RLR 114**. Accordingly, a decree for this difference from the admitted amount paid and the enhanced amount of mesne profits being the 10% compounded increase each year is therefore passed in favour of the appellant and against the respondent No.1.

10. The present litigation is a very unfortunate litigation where respondent No.1 which is an entity under the Union of India, Ministry of Industry is obdurately contesting this litigation. The appellant/landlord has been put to harassment and expenses not only in the trial Court but also by contesting, and that too without any basis, in this appeal.

Accordingly, I find that the present is a fit case where in terms of Volume V of the Punjab & Haryana High Court Rules and Orders (as applicable to Delhi) Chapter VI Part 1 Rule 15 read with para 37 of the judgment of a Division Bench of three Judges of the Supreme Court in the case of ***Salem Advocate Bar Association Vs. Union of India (2005)6 SCC 344*** that actual costs of the appeal should be imposed upon respondent No.1. In fact, at the commencement of the arguments, I put it to the counsel for the respondent No.1 as to whether respondent No.1 was seriously contesting the appeal and the counsel for the respondent No.1 on instructions states that respondent No.1 is seriously contesting the appeal. The matter was taken after pass over and then argued. Accordingly, let the appellant file in this Court an affidavit with respect to the litigation expenses incurred by it for this appeal including fees paid to its lawyers. The affidavit will be accompanied by the certificate of the lawyers of having received the fees for this appeal and be filed in four weeks.

11. The appeal is therefore allowed with costs, and which costs will be the costs as stated in the affidavit of the respondent alongwith Court fees which has been paid with respect to this appeal. The appellant/plaintiff is granted decree for possession of the suit premises being 875 sq. feet shown in red colour in the site plan Ex.PW1/1 of the property bearing No.89A/1, Zamrudpur Village, New Delhi. The appellant is also granted mesne profits at the rate of rent of 10% increase compounded every year as compared to the actual rate of rent

which was paid. It is clarified that since the actual amount of charges of Rs.4,675/- per month has already been paid to the appellant and therefore the money decree will only be for the further difference for the amount i.e. only the increased amount of mesne profits. Decree sheet be prepared. Trial Court record be sent back.

SEPTEMBER 14, 2011
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VALMIKI J. MEHTA, J.