

R-279

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

% *Judgment reserved on : 13.05.2011*
Judgment delivered on: 20.05.2011

+ **R.S.A.Nos. 290/2007 & 291/2007**

CHIRANJI LAL RAMJI DASS & ORS. Appellants

Through: Mr.Sudhir Nandrajog,
Sr. Advocate Mr. Rakesh
Kumar Garg, Advocate.

Versus

PYARE LAL SHARMA (THROUGH HIS L.R.'S) Respondent

Through: Mr. G.K. Srivastava, Mr. Dalip
Singh and Ms. Kiran Babu,
Advocates.

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 21.8.2007 which has endorsed the finding of the trial judge dated 27.9.2004 whereby the suit filed by the plaintiffs M/s Chiranji Lal Ramji Dass & Ors. seeking mandatory and permanent injunction to the effect that the defendant be directed to vacate the suit

property (i.e. the property bearing no.5579, Naya Bazar, First Floor, Delhi) with an additional prayer of permanent injunction had been dismissed. The impugned judgment had endorsed this finding of the trial judge. However findings on issue nos.4 and 8 had been set aside; defendant was held to be a tenant in the suit property at a monthly rental of ₹64/-; the suit was held to be barred under Section 50 of the Delhi Rent Control Act (hereinafter referred to as 'the DRCA'); plaintiffs had failed to prove their locus standi to file the present suit. Suit stood dismissed.

2 The factual matrix is as follows:

- i. The father of the plaintiff no.2 namely Har Narain was a tenant of M/s Shadi Ram Bal Mukand qua the suit property. He has died on 07.2.1979.
- ii. In 1952 Har Narain and his five sons had started a partnership business at premises No.535-36, behind Lahari Gate Police Station under the name and style of 'M/s Chiranji Lal Ramji Dass'.
- iii. A branch of the same firm under the name and style of 'M/s Om Prakash Gauri Shanker' was also operating from the same place.

iv. Defendant was working as a Munim in the said firm. Har Narain was residing in the suit premises; later on he shifted to 535-36, behind Lahori Gate Police Station and the suit premises became vacant.

v. Plaintiff no.1 (partnership firm) had allowed his employees/Mumim to use the suit premises as licencees since 1960.

vi. Defendant was permitted residence in the suit premises along with other employees. This arrangement continued up to 1982.

vii. Har Narain expired on 07.2.1979. The partnership firm was reconstituted; five sons of Har Narain and Jayant Goyal (son of the plaintiff no.2) became partners in the said firm.

viii. In 1982 'M/s Om Prakash Gauri Shanker' became the branch of the aforementioned firm of the plaintiff no.1.

viii. Defendant requested plaintiff no.2 for permission to use said premises as a licensee which permission was accorded to him.

ix. Defendant ceased to be in service of the firm in 1986. In spite of requests to the defendant to vacate the suit property he did not do so.

x. In fact the defendant was making unnecessary demands upon the plaintiff to vacate the suit property.

xi. Present suit was accordingly filed.

In the written statements the contentions raised in the plaint were denied. Contention of the defendant was that he was a lawful tenant and the premises had been taken on rent in the year 1952 from Har Narain at monthly rental of ₹64/-. A sum of ₹2000/- had also been given by the defendant to Har Narain (as pagri); defendant has since been carrying on business in the said premises. The premises is owned by Smt.Kulsumbi; she had let out the premises to M/s Shadi Lal Bal Mukund who had further sublet the premises to Har Narain; Har Narain had sublet these premises in early 1952 to the defendant. Defendant had been paying rent regularly and the last paid rent was up to 31.10.1993.

On the pleadings of the parties the following seven issues were framed:-

1. Whether the present suit in the form of mandatory injunction is not maintainable at all? OPD
2. Whether the plaintiff has no locus standi to file the present suit as he is neither landlord nor owner of the suit property? OPD
3. Whether the defendant is an unauthorized occupant of the premises in dispute? OPP
4. Whether the defendant is a tenant of the plaintiff in respect of the premises in dispute? OPD
5. Whether the suit is valued properly for the purposes of court fees and jurisdiction? OPP
6. Whether the plaintiff is entitled to the relief as prayed for in the present suit? OPP
7. Relief.

Thereafter in terms of the orders of the High Court further issues were framed which are issues no. 8 to 11; they read as follows:

8. Whether the suit is barred U/s 50 of the DRC Act? OPD
9. Whether the plaint is signed and verified by the competent person? OPP
10. Whether the suit is bad for non-joinder of necessary parties and is also bad for misjoinder of plaintiff no.1 as party? OPD
11. Whether the suit is barred by limitation? OPD

3 Oral and documentary was led. Trial judge was of the view that the plaintiff has failed to prove its case; except his bald oral statement there was no other statement to substantiate his claim; issues no.4 and 8 were decided against the defendant. Trial judge was of the view that the defendant is a licensee; he is not a

tenant; there was no bar of Section 50 of the DRCA. Since the plaintiff has failed to prove his case the suit was dismissed.

4 In appeal this judgment was modified. The impugned judgment had endorsed the finding of the trial judge on the dismissal of the suit; however the cross appeals filed by the defendant led to modification on the findings on issues no.4 and 8; the impugned judgment had noted that the defendant was a tenant in the suit premises; bar of Section 50 of the DRCA was operational; the suit of the plaintiff was even otherwise not maintainable.

5 This is a second appeal. It has been admitted and on 10.3.2011 the following substantial question of law was formulated:

Whether the findings in the impugned judgment dated 21.8.2007 are perverse? If so, its effect?

6 On behalf of the appellant, it has been urged that the impugned judgment reversing the finding of the trial Judge and holding the defendant to be a tenant in the suit property is a perversity; the impugned judgment had not taken into account that not a single document had been produced by defendant in

support of his tenancy. The trial Judge had correctly appreciated this contention while disposing of issue No. 4 & 8. It is pointed out that the case of the plaintiff/appellant was that after the death of their father Har Narain (admittedly a tenant in the suit premises), the present plaintiff along with other legal heirs had become co-tenants in the suit property; a co-tenant can file a suit for eviction of a licensee; there is no bar; finding of the trial court on this score while dealing with issues No. 9 & 10 is an illegality; the impugned judgment had not gone into this controversy. To support his submission that a co-tenant can without the joinder of other co-tenants, maintain a suit, reliance has been placed upon 40 (1990) DLT 82 Mahavir Prashad Vs. Sukhdev Mongia & Anr. It is submitted that this argument of the appellant is in the alternate; the alternate argument being that the plaintiff No. 1 was a partnership firm of whom plaintiff No.2 was a partner; this partnership had come into existence in 1986; the premises licensed to the defendant was an asset of the erstwhile partnership firm i.e. 'M/s Chiranji Lal Ramji Dass' (plaintiff No.1) and the assets of this firm had devolved upon the new firm. It has lastly been submitted that the finding in the impugned judgment that the license has not been revoked for which reason the plaintiff has been non-suited is an illegality; it is pointed out that

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filing of a suit itself is a deemed revocation of the license. For this proposition reliance has been placed upon 1998 (6) AD (Delhi) Om Parkash Kuthiala Vs. Sharad Rohtagi.

7 Arguments have been countered. It is pointed out that the appellant is blowing hot and cold; he is not sure about his stand; at one point he states that he is filing the present suit in his capacity as a partner wherein in the second breath his case is that he has filed this suit as a co-tenant. Attention has been drawn to the application under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 filed by Kamla Prakash (legal representative and widow of plaintiff No.2) wherein she has in para 4 she has stated that Vinod Kumar Sharma and Suresh Kumar Sharma (sons of Pyare Lal Sharma, the present defendant) are sub-tenants in the suit premises. It is pointed out that this has taken away the foundation of the case of the plaintiff as in this application the appellant has in fact admitted that the defendant is a tenant; his averment in the plaint that the defendant is a licensee is thus washed out completely. Even otherwise, the two concurrent findings of fact call for no interference.

8 Arguments have been heard and record has been perused.

9 The trial Judge had dismissed the suit of the plaintiff.

However, while disposing issues No. 4 & 8 it had returned a clear

and categorical finding that the defendant is a licensee in the suit premises; he is not a tenant. The finding returned by the trial Judge reads as follows:-

“34 In his examination in chief the defendant/DW-1 has stated that he had paid rent up to September/October, 1993, however no rent receipt was ever issued. Here it is pertinent to mention that Sh. Har Narain died in the year 1979 and after that to whom the rent was paid; has no where been made clear. Further in the cross-examination in the PW-2 Sh. Om Prakash (Rebuttal) on dated 18.08.2003 a suggestion was given to the witness that he has refused to accept/taking rent in respect of the suit property. However no details regarding the date, month or even the year find any placed either in the plaint or otherwise. Moreover, as per defendant/DW’s own version/statement; he has paid rent up to September/October 1993, but failed to show/prove; as to whom it was paid. If it is to be assumed that after the death of Sh. Har Narain in 1979 it was paid to Sh. Om Prakash s/o Sh. Har Narain, when did he start refusing/denying to accept the same, is missing throughout. Same is the case regarding the dates of any such tendering of rent, and the dates of refusal to accepts the same; by Sh Om Prakash.

35 Consideration i.e. premium or rent, is the essential element of ‘lease’ as per section 105 of T.P. Act. However the defendant has failed to prove any such payment of rent. Moreover his own stand regarding the rate of rent is a fluctuating one which given rise to suspicion against his stand. In the written statement in para 3 of preliminary objection the rate of rent is shown as ₹34/- per month whereas in the amended written statement (as filed on dated 19.05.1994) it becomes ₹64/- per month. Again in the examined in chief of the defendant/DW-1 it is stated to be ₹60/- per month. Moreover, he has stated that no paid of sum of ₹2,000/- to the landlord Sh. Har Narain as ‘pugree’. No other evidence (either documentary or oral) has come on record file except the mere assertion to that effect. In the 50’s such a sum was a huge amount; specially for a person working on a monthly salary of less than ₹100/- P.M.

36 Hence, in the light of the above findings it is clear that the defendant has failed to establish that he is/was tenant in the premises in dispute. The

issue is accordingly decided against the defendant and in favour of the plaintiffs.”

10 This finding had been upset in appeal. The impugned judgment had noted that the defendant is a tenant @ ₹64/- per month. It had further noted that the defendant has not adduced any documentary evidence to support his submission that he is a tenant. The contention of the defendant was that he is a tenant in the suit premise since October, 1951; he had taken the premises on rent from Har Narain (predecessor in interest of the plaintiff); rate of rent was ₹64/- per month; in his cross-examination he had admitted that he was drawing a salary of ₹80/- per month. It has also come on record that Har Narain (predecessor in interest of the plaintiff) was himself a tenant in the suit premises @ ₹73.37/- per month. This has been specifically averred in para 1 of the plaint. There is no denial in the corresponding para of the written statement. In this scenario when Har Narain had himself taken this premises on rent @ ₹73.37/- per month, it would be difficult to imagine that he had sub-let them to the defendant @ ₹64/- per month; moreover the salary of the defendant was only ₹80/- per month; it is again inconceivable that out of a salary of ₹80/- per month, he would be

paying ₹64/- per month as a rental. These facts were correctly appreciated and noted by the trial Judge. It is also difficult to conceive that a cheque amount of ₹2,000/- (in 1951) has been as a 'pagri' amount when the plaintiff was having a paltry monthly income of ₹80/- per month; moreover DW-1 was also not clear about the details of payment of rent, when and how it was made, in the initial written statement the rate of rent was ₹34.40/- per month; written statement was amended to enhance the rent to ₹64/- per month. It is also not in dispute that the defendant was an employee of 'Om Prakash Gauri Shankar' the sister concern of 'Chiranjilal Ramji Das'; and these premises were being shared by the defendant along with other munims/employees of the firm which arrangement continued up to 1982; his status as a licensee stood established. The distinction between a lease and a licence has to be gathered from the intent of the parties; admittedly in this case there is no document in writing; on either count it is the conduct of the parties and their relationship in this intervening period which is determinative of this issue i.e. whether the parties had intended to create a lease or a licence. The factual scenario as noted hereinabove had been correctly appreciated by the trial Judge to hold that the defendant was a licensee. The impugned

judgment holding otherwise is an illegality.

11 The trial Judge had non-suited the plaintiff on issues no. 9 & 10 as well. It had returned a finding that the suit has been filed by the plaintiff in his capacity as a partner of the firm; it has not been verified by a proper person. While disposing issue No. 10, it had noted that the tenancy rights in the disputed property after the death of Har Narain had fallen to the share of other legal heirs as well; they had not been joined in the proceedings; suit was bad for non-joinder of the parties.

12 The findings on issues No. 9 & 10 had not been dealt with in the impugned judgment. The arguments and counter arguments on this point has been aforenoted. This Court is of the view that the findings on issues No.9 & 10 contradict one other. While dealing with issue No.9, the Court has returned a finding that the present suit has been filed by Har Narain in his capacity as partner of plaintiff No.1; it has not been verified by a proper person. While disposing of issue no.10, the Court has gone on assumption as if the suit had been filed by a co-tenant; that is why it has returned a finding that since such the other legal heirs i.e. the other brothers and sisters had not relinquished their tenancy rights in favour of the plaintiff, there appears to be a non-joinder

of necessary parties for which reason this issue was decided
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against the plaintiff. Both these findings are contradictory and contrary to one other. As already aforenoted, the impugned judgment has not dealt with either of these issues.

13 The averments in the plaint have been perused. The memo of parties and title of suit has also been perused. Plaintiff No.1 is 'Chiranji Lal Ramji Das' and respondent No.2 is Om Prakash. It is relevant to state that plaintiff No. 2 has not described himself as the partner of plaintiff No.1. Plaintiff No.1 has also not been described as partnership firm. The body of the plaint states that Har Narain was a tenant of 'Shadi Ram Bal Mukand'; he died living behind five sons. They carried on business in a partnership under the name and style of 'Chiranji Lal Ramji Das'; 'Chiranji Lal Ramji Das' also had a branch under the name and style of 'Om Prakash Gauri Shankar'; firm of 'Om Prakash Gauri Shankar' had employed munims/employees; the defendant had been allowed to reside in the said premises along with other munims up to 1982; on the death of Har Narain, the firm 'Chiranji Lal Ramji Das' was reconstituted and the five sons of Har Narain became the partners in the said firm. Para 9 of the plaint states that the defendant had requested plaintiff No.2 to continue to remain in the premises which license was permitted to be extended. In para 11 of the plaint it is stated that in 1986 the partnership firm was again

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reconstituted comprising of Om Prakash and his two sons. Cause of action has been described in para 19. In the preliminary objection No. 5 of the written statement it was stated that the suit is bad for non-joinder as the other children of Har Narain has not been joined in the proceedings.

14 The position at law is settled. A co-owner without joining the other co-owners can file a suit for eviction. Such a suit is maintainable. This has been held by the Apex Court in the judgment relied upon by learned counsel for the appellant reported in Mahavir Prashad (Supra) and Pal Singh (Supra). Relying upon the judgment of Kanta Goel Vs. B.P. Pathak & Others (1977) 2 SCC 814, the Supreme Court in Mahavir Prashad (Supra) had returned a finding that a co-owner can maintain an action for eviction even in the absence of other co-owners; it is also not the case of the defendant that the other co-owners had objected to this eviction petition. The defendant is also not disputing the title of his landlord Har Narain; he is even otherwise estopped from doing so under Section 116 of the Indian Evidence Act. Plaintiff No. 2 along with his other brothers and sisters had stepped into the shoes of Har Narain. A suit by plaintiff No. 2 alone without joining his other brothers and sisters was well maintainable. The finding on issue No. 10 as returned by the trial

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Judge is thus not sustainable.

15 The finding of the trial Judge on issue No. 9 is also not sustainable. PW-2 had entered into the witness box and had deposed that his father Har Narain was a tenant in the suit property in his personal capacity. The plaint as already noted (neither in the memo of parties and nor in the verification clause) states that the plaint has been signed by plaintiff No. 2 in his capacity as a partner of plaintiff No. 1. Plaintiff No. 1 has not been described as a firm; plaintiff No. 2 has also not been described as its partner. This was thus essentially a suit by plaintiff No. 2 as a co-landlord of the suit premises; the other co-landlords not being founded did not impinge upon his capacity to maintain the suit. Title of the plaintiff was even otherwise not under challenge; estoppel under Section 116 of the said Act also operates in favour of such a plaintiff.

16 The defendant was staying in the suit premises in his capacity as a licensee. He had been granted permissive user only; this has already been held in the discussion Supra. No notice is required to revoke a license; filing of a suit itself would amount to a revocation of a license.

17 A license has been described under Section 52 of the Easements Act, 1882. Revocation may be expressed or implied.

The filing of the present suit seeking eviction of the defendant amounted to an implied revocation of the license; the intent of licensor to determine and to put an end to the license is clear. This view is supported by the view of a Bench of this Court in Om Prakash Kuthiala (Supra).

18 Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 is contained in Chapter VI of the said Act. It deals with the protection of tenants in slum areas from eviction. Application under Section 19 is an application made to the Competent Authority seeking permission of the said Authority to institute proceedings for eviction against the tenant. Perusal of this application which had purportedly been filed by appellant No. 2 (Kamla Prakash) is an application seeking eviction of the tenant who has been described in para 2 as M/s Om Prakash Gauri Shankar; sub-clause (h) of para 4 has also detailed the address of the tenant; respondent has not been described as the tenant; this argument of the respondent is thus devoid of force.

19 The result of the aforementioned discussion is that the appeal is allowed. The defendant being a licensee in the suit property and his license having been validly revoked, he was liable to be evicted forthwith. The suit of the plaintiff stands decreed.

20 Substantial questions of law are accordingly answered in
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favour of the appellant and against the respondent. Appeal is allowed. Suit is decreed.

MAY 20, 2011
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INDERMEET KAUR, J.