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SHRI NAZAKAT ALI

Versus

RAHMAT ILLAHI

Through: Mr.I.P.Singh, Advocate.

HON'BLE MS. JUSTICE INDERMEET KAUR

- INDERMEET KAUR, J.** (Oral)

RSA No.134/2009

delivery of possession; in case the defendant failed to hand over the possession of the suit property to the plaintiff within 30 days then the entire amount shall also carry interest @ 18% per annum from 02.4.2008.

2. This is a second appeal. It is yet at the stage of its maintainability. It is pointed out that the judgments of two courts below suffer from perversity as decree for possession could not have been granted in favour of the plaintiff in view of the specific averments made by the plaintiff that this property had been allotted to the plaintiff under Section 3 of the Government Grants Act 1895; the plaintiff himself was a mere licence having a limited right and interest in the property; he could not seek possession from the defendant. This has raised a substantial question of law and has remained unanswered by the two courts below.

3. The substantial question of law have been embodied on pages 55 & 56 of the paper book; they read as follows:

“i. Whether the suit filed by the plaintiff before the Trial court was at all maintainable in view of the bar of Section 2 & 3 of the Government Grants Act, 1895 and there being no maintainable cause of action against the appellant by the respondent/plaintiff who was a mere licensee with no right, title or interest to the suit property and was out of possession as a licensee at the time the suit was filed?

ii. Whether the respondent/plaintiff could be allowed to defeat the provisions of Government Grants Act, 1895, on the basis of which the order of the Government of India dated 11.06.1984 (Ex.DW2/B), was issued and the impugned judgment both violated the said order and the right of the appellant to obtained lease hold right in respect of the suit property bearing No.Y-39, Janta Flat DDA, Ranjit Nagar?

iii. Whether the impugned judgment/decreed of the Trial and First Appellate Court was against public policy of rehabilitation of slum dwellers and further the impugned judgment/decreed could be

passed in the absence of the true owner of the suit property i.e. the Slum & J.J. Department acting on behalf of the Government of India under the Government Grants Act, 1895?

iv. Whether the respondent/plaintiff misrepresented to the courts below that after allotting property No.Y-39, Janta Flat DDA, a lease deed was executed in his favour by the DDA and he became the owner of the suit property thereby playing a fraud of the Court?

v. Whether the respondent/plaintiff could be treated as a licensee of flat No.Y-39, Ranjit Nagar in view of the statement that he was allotted the flat in lieu of property No.4028, Gali Khan Khana, Jama Masjid but abandoned the licence after sometime and returned to his original property No.4028, Gali Khan Khana thereby loosing his locus standi to file any suit against the appellant who in the meantime became eligible for grant of lease hold right of the suit property by virtue of the order dated 11.06.1984?"

4. Arguments have been urged on this point alone.

5. The respondent has countered the submission. It is pointed out that the provisions of Section 116 of the Indian Evidence Act are attracted and this was rightly held in the impugned judgment; it is not a case of the defendant that he was not the licensee of the plaintiff.

6. The case of the plaintiff as is apparent from the record is that he is the owner of the house No.Y-39, Ground Floor, LIG, DDA Flats, Ranjeet Nagar, New Delhi. Defendant is his brother-in-law; he is in occupation of the suit premises as a licensee. Defendant was residing in Meerut but due to illness of his wife he was advised to come Delhi when the plaintiff permitted him to occupy the suit property as a licensee. Plaintiff was living in House No.4028, Gali Khan Khana, Jama Masjid, Delhi; he requested the defendant to vacate the suit property but to no avail. Present suit was accordingly filed.

7. In the written statement the defence of the defendant was

that the plaintiff was allotted the suit property on a licence fee basis under the Government Grants Act 1895; he himself being a licensee could not create a licence in favour of the defendant. The suit was liable to be dismissed.

8. Trial judge framed four issues; they read as follows:

1. Whether the suit is bad for non-joinder of the necessary parties i.e. Slum & J.J.Department? OPD
2. Whether the plaintiff is entitled for a decree of possession of the sit property, as prayed? OPP
3. Whether the plaintiff is entitled for the damages, as prayed? OPP
4. Relief.

9. The court had examined the oral and documentary evidenced of the parties and held that the plaintiff is entitled to relief. Provisions of Section 116 of the Indian Evidence Act had been adverted to. Para 17 of the judgment of the trial court had noted that even if the property is lease-hold it creates an interest in favour of the plaintiff. Even presuming that the title of the plaintiff is not perfect but it was better than that of the defendant; defendant was estopped from challenging the title of his landlord/licensor. The suit was decreed by the trial judge.

10. In appeal the impugned judgment has affirmed this finding. This was after an appreciation and re-appreciation of the oral and documentary evidence. The returned findings are as follows:

“8 Since entire controversy of the case revolves around issue no. 2. Therefore, I am going to consider, the findings of ld. Trial court for issue no. 2 prior to other issues.

9. Issue no. 2 Whether the plaintiff is entitled for a decree of possession of the suit property as prayed? OPP

During the cross examination, the respondent admitted that the suit property was allotted to him only on lease hold basis. A suggestion was put by the appellant (defendant) to the respondent

(plaintiff) that he allowed the appellant(defendant) to live at the suit property with a view to sale thereof to him and the said suggestion was denied. Now, here, I have to observe at one breath the case put by the appellant (defendant) that respondent (plaintiff) was not owner of suit property and on the other hand he puts suggestion that the respondent (plaintiff) had agreed to sale the suit property to the appellant (defendant). How a person who is not owner of the suit property can enter into any transaction regarding the sale of the suit property and here I have to observe that the appellant (defendant) has taken a contradictory stand i.e. he has taken plea which is mutually destructive.

10. It is not the case of the appellant (defendant) that the respondent (plaintiff) misrepresented him regarding ownership of the suit property. A further suggestion was given by the appellant(defendant) that respondent (plaintiff) was not entitled as per law to hand over the possession of the suit property to anybody and the said suggestion was denied which further made clear that appellant (defendant) was aware about the title of the respondent (plaintiff) qua the suit property and he was never misrepresented by the respondent (plaintiff).

11. Another affidavit of one witness Sh. Mohd. Zahid is also filed by the respondent but this witness did not appear in the witness box. On the same day PE was also closed.

12. Thereafter, appellant (defendant) appeared in witness box to tender his evidence by way of affidavit which is Ex. D1. In para 4 of Ex. D1 it is deposed by the appellant (defendant) that respondent (plaintiff) is brother in law (jija) who had given the suit property to him on rent. He further deposed that he used to pay the rent to the respondent (plaintiff) but who did not issue rent receipt to him and the appellant (defendant) also not pressed for receipt being closed relative. Here, I have to again refer cross examination of PW 1. No such suggestion regarding tenancy or rent receipt is offered by the defendant to PW 1 during his cross examination. On the other hand in Ex. D1 no averment regarding the sale of the suit property by the respondent (plaintiff) to the appellant (defendant) has been deposed. Thus, I am of the view that the appellant (defendant) did not come before the court with clean hand. He has guilty of taking mutually destructive and contradictory pleas. During the trial, he frequently changed his version regarding his status at the suit property. In such circumstances, I have to presume that the appellant is not telling truth before this court.

13. During the cross examination, the appellant (defendant) also admitted that he was tenant at the suit property but such a plea has not been mentioned in the written statement and thus the appellant (defendant) took a plea beyond the pleadings of the written statement filed by him.

14. During the cross examination, the appellant (defendant) admitted that no agreement regarding the sale of the suit property was written. He further admitted that he had never given any notice regarding the execution of sale deed. He further admitted that he could not produce any document regarding his right to continue to occupy the suit property. He further admitted that he had never received any document regarding policy of Govt. of India or MCD regarding the suit property. One sh. Manander Kr. Saran UDC in Slum Department also appeared as defendant witness and nothing has been stated by this witness regarding the contention raised by the appellant (defendant) to the fact that if the appellant has occupied the suit property then right of the respondent to recover the property is extinguished and fresh right of allotment for the appellant accrues for the suit property by Slum and JJ Department.

15. Ld. Counsel for the respondent relied upon judgment 'Sant Lal Jain Vs. Avtar Singh' AIR 1985 SC 857 where it was observed in para 8:

'The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from some one else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of the property to the appellant even after the termination of the licence and the institution of the suit...'

Counsel for the respondent further relied upon judgment B.K.Ghosh, Petitioner Vs.R.K.Joysurendra Singh, AIR 1959 Manipur 27 (V 46 C15) where it is observed in para 12 that:

'The defendant raised a plea that the plaintiff was not the owner of the house, and could not therefore bring this suit. But it was not denied by him that he took the house on lease from the plaintiff i.e. it was admitted that the plaintiff was his landlord. Such a person can certainly bring a suit for ejectment and rent or damages for use and occupation.

The estoppel under Section 116 of the Evidence Act would operate against him. The principle has been well-settled

and consistently followed by decisions of courts in England as well as in India.....’

He further relies upon ‘Smt.Sayambari Dassi Vs. Dwijapada Naskar; AIR 1971 Calcutta 435 (V 53 C 95) where in para 2 it is observed:

‘.....The question, therefore, is as to whether a licensee is entitled to get a notice to quit or demand for possession before a suit for his ejectment can be instituted. A licensee has no real interest in the property. He uses the property by the permission of the owner with whom the legal possession continues. It gives the licensee a personal privilege with no interest in the land..... To call upon the owner in every such case to make a demand for possession before suit would be a tax on his generosity, though normally speaking one does demand possession before going in for a costly and time-consuming litigation.....’

16. In view of the observations made here in above, I am of the opinion that the defence of the appellant (defendant) is illusory, without any basis and also contradictory itself. Appellant (defendant) himself admitted the right of the respondent (plaintiff) as allottee of the suit property by Slum and JJ Department. In view of these observations issue no.2 is rightly decided by trial court in favour of the respondent and against the appellant.

17 Issue no.1 whether the suit is bad for non-joinder of necessary parties i.e. Slum & JJ Department? OPD

Regarding issue no.1 I have to observe that in his deposition in Ex.D1 appellant (defendant) is landlord. It is the case of the respondent (plaintiff) that appellant (defendant) is not tenant but merely a licensee. I do not want to further go on contradictory pleas as these are not necessary for the disposal of this issue but I have to refer the observations of Ld.Trial court as observed in para 10 of its judgment.

‘Even if it is presumed that the plaintiff is a leasee of Slum & JJ Department nonetheless, it is not open to the defendant to challenge the same for the reason stated above and also in view of the bar u/s 116 of Evidence Act, which reads as under:-

Section 116- “Estoppel of tenant and of licensee of person in possession- no tenant of immovable property or person claiming through such tenant, shall during the continuance of tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.”

18 Ld.Counsel for appellant relied upon a judgment ‘Anamallai Clum Vs. Govt. of T.N.’ (1997) 3 SCC 169. Facts of this judgment

are not applicable to the present case. This judgment was passed by Hon'ble Supreme Court, in the light of Government Grants Act and the said act was application to a person regarding license granted for Government land. Thus, applicability of the said Act was between the Government land. Thus, applicability of the said Act was between the Government and the concerned person but not extended to the third person. Thus, in the light of the facts of the present case, facts of this judgment are not applicable to the facts of the present case.

19 On the other hand, ld. Counsel for the respondent relies upon a judgment 'Ram Prasad Pandey Vs. Jag Mohan Lal Shukla' AIR 1977 Allahabad 458 where it is observed:

'.....Merely, because a third party seeks to raise some controversy about the plaintiff's title could not entitle a licensee who has been inducted by a licensor to question the title of the licensor. The licensee would be estopped from doing so.....'

In para 30 of 'Lawang Chand Sah and others Vs. Kedar Ram and others' AIR 1984 Patna 116 where it is observed:

"It is well settled that a tenant who has been put into possession cannot deny his landlord's title, however, defective it may be, so long he has not openly restored possession by surrender. The well established principles of Estoppel based upon the principles of equity and good-conscience have always been held to be applicable even in India. In the instant case, on the defendants' own case, the defendants had not put up any title of their own and did not claim to be entitled to the premises in their own right....."

In para 15 of 'Sri Ram Pasricha Vs. Jagannath and others; AIR 1976 SSC 2335 it is observed:

"There are two reasons for our not being able to accept the above submission. Firstly, the plea pertains to the domain of the frame of the suit as if the suit is bad for non-joinder of other plaintiffs. Such a plea should have been raised, for what it is worth at the earliest opportunity. It was not done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidenct Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law in a suit between landlord and tenant the question of title of the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such"

Thus, I do not find any infirmity in the observations made by Ld.Trial court. I have no hesitation to observe that slum and JJ Department was neither a necessary party nor right of any of the

parties to the suit is affected by on impleadment of Slum and JJ Department. Thus, this issue is rightly decided against the appellant (defendant) and in favour of the respondent (plaintiff) by the ld. trial court.

21. Issue no.3 Whether the plaintiff is entitled for damages as prayed? OPP

In para 10 of Ex.P1, it is deposed by the respondent (plaintiff) that rent value of the suit property was Rs.3,000/- per month and as such as he was entitled to recover Rs.18,000/- by way of damages from the appellant up to the date of the suit. He further claimed pendent lite and future damages @3,000/- per month for the entire period up to the date of delivery of vacant physical possession over the suit property. In his cross examination a vague suggestion was put by the appellant (defendant) to this witness when he was asked that he was not entitled even to claim damages from the appellant and this suggestion was denied.

22. Thus, I am of the view that appellant (defendant) who occupied the suit property is liable for damages as he himself claimed that he was a tenant at the suit property. It is not the case of the appellant (defendant) that during pendency of the entire proceedings he continued to pay the rent to the respondent (plaintiff). But I have to take lenient view in the light of the fact that during the course of arguments it is stated by the appellant (defendant) that he is only a tea vendor and is not having sufficient earnings. On the other hand, I have also to do justice to the respondent who unnecessarily faced litigation for almost nine years. Trial court passed judgment on 02.04.2008 and thereafter, the appellant (defendant) preferred this appeal and again wasted more than one year of the respondent (plaintiff) who is deprived of the enjoyment of the suit property.

23. Thus, taking into consideration the facts and circumstances of the case and to see the interest of justice, I partly modify the findings of the Ld. Trial court on this issue to the effect that the respondent (plaintiff) is entitled for recovery of damages @ 2,000/- per month w.e.f. 02.04.2008 i.e. from the date of pronouncement of judgment by Ld. Trial court up to the date of judgment passed by this court. The respondent (plaintiff) is also entitled for recovery of damages @ Rs.5000/- per month w.e.f. 02.7.2009 till delivery of possession. In case the appellant (defendant) does not hand over the possession of the suit property to the respondent within 30 days from today then the entire amount shall also carry

interest @ 18% per annum from 02.04.2008 till its realization. Thus, this issue is partly decided in favour of the respondent (plaintiff) and against the appellant (defendant).

24. In view of the observations made herein above, the appeal is partly decided in favour of the appellant. Decree sheet be prepared accordingly. Respondent (plaintiff) shall be entitled the cost of litigation throughout.”

11. In no manner can it be said that these findings are perverse. Section 116 of the Indian Evidence Act was rightly attracted. In AIR 1966 SC 629 Atyam Veerraju & Ors. Vs. Pechetti Venkanna & Ors. the Supreme Court relying upon a decision of the Privy Council reported in AIR 1915 PC 96 in the context of the provisions of Section 116 of the Evidence Act had observed as follows:

“A tenant who has been let into possession cannot deny his landlord’s title however, defective it may be so long as he has not openly restored possession by surrender to his landlord.”

12. It was not the case of the defendant that he was not given this premises in his capacity as a licensee. He could not challenge the title of his licensor. Section 116 of the Evidence Act was rightly applied. No argument has been urged before this court on the quantum of the damages. No substantial question of law having arisen, the appeal is dismissed in limine.

INDERMEET KAUR, J.

MARCH, 22, 2011
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