

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

+ RSA No. 203/2011

Judgment delivered on: 25th November, 2011

M.P. Dang Appellant
Through Mr. Virendra Singh, Adv.

versus

Rekha Thakur Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

KAILASH GAMBHIR, J.

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1. By this Regular Second Appeal filed under Section 100 of the Code of Civil Procedure 1908 the appellant seeks to challenge the judgment and decree dated 1.10.11 passed by the First Appellate Court in RCA No. 59/11 and judgment and decree dated 25.4.11 passed by the CCJ in Suit No. 434/07.

2. Arguing for the appellant Mr. Virendra Singh, counsel submits that both the judgments and decrees passed by the Courts below are perverse and illegal and contrary to the facts and the legal issues involved. Counsel further submits that both the Courts below committed material irregularity in ignoring the fact that notice under

Section 106 of the Transfer of Property Act was sent by the respondent on a wrong address i.e. shop No. 3, Rajpur Market Mahalaxmi Enclave, near Shiv Vihar, Pulliya, Karawal Nagar, Shahdara Delhi while as per own stand of the respondent in the legal notice and the documents placed on record shop let out in favour of the appellant was shop No. 10 and not shop No. 3. Counsel further submits that even the money orders sent by the appellant wherein clearly the address of the suit premises was mentioned as shop No. 10 and not shop No. 3 and, therefore, also the respondent could not have sent the legal notice terminating the tenancy of the appellant at shop No. 3. Counsel also submits that even the rent receipts issued by the respondent also bears same shop No. 10 and, therefore, there was a deliberate attempt on the part of the respondent to have sent the notice at the wrong address. Counsel thus submits that once the appellant had not received the notice and the termination notice did not relate to the tenanted premises in question, therefore, without terminating the tenancy of the appellant, the respondent could not have filed a suit for possession against the appellant.

3. I have heard learned counsel for the appellant at considerable length and given my thoughtful consideration to the pleas raised.

4. In the Regular Second Appeal this Court has to feel satisfied that substantial question of law has been raised by the appellant. Counsel for the appellant has addressed arguments on the question of facts, which have already been finally determined by both the Courts below. The appellant has not denied the fact that he was a tenant of only one shop and number of said shop is presently described as shop No. 3 Rajpur Market Mahalaxmi Enclave, near Shiv Vihar, Pulliya, Karawal Nagar, Shahdara Delhi and not shop No. 10. Counsel for the appellant has also not denied the fact that the same shop earlier was referred to as shop No. 10. This plea of wrong description of the shop was strongly urged by the appellant before the First Appellate Court also and this would be evident from para 8 of the impugned judgment of the first Appellate Court, which is reproduced as under:-

“8. Ld. Counsel for the appellant has argued basically on the point which he has mentioned in the written statement before Ld. Trial Court and grounds taken by the appellant in the appeal and has argued that the legal notice was never served upon the defendant. The said notice was not posted at the correct address of the defendant. The shop number under the tenancy of the defendant is shop number 10 from the very beginning and the notice postulates the address on which the notice has been sent as shop no.3. The Ld. Trial Court drawn the presumption

wrongly by holding that the notice has been served properly upon the appellant.”

5. The answer to the said plea has been given by the learned First Appellate Court after carrying on a detailed discussion in para 11 of the impugned judgment, which is reproduced as under:-

11. Ld. Counsel for the respondent on the other hand has argued that the appeal of the appellant is without any merits and he has argued that the plaintiff has filed by the present suit for possession as well as for recovery of arrears of rent against the defendant in December 2003, and the plaintiff mentioned in para no.1 of the plaint that the plaintiff is the owner/landlady of the immoveable property/shop bearing no.3, Rajput Market, Mahalaxmi Enclave, Near Shiv Vihar Puliya, Karawal Nagar, Shahdara, Delhi and the defendant in para no.1 of the written statement on merits has not denied this fact at all rather defendant in the written statement i.e. in para no.1 of reply on merits stated that the contents of para no.1 of the plaint are admitted and it relates to the rate of rent, as well as time of expiry of tenancy. It is further argued that the defendant nowhere has denied that the tenanted property was having shop no.10 and not number 3 as is being alleged. He has further argued that in support of the written statement defendant has filed an affidavit in which he mentioned his address as tenant of shop no.3, Rajput Market and therefore, from this fact it is clear that the defendant was tenant in shop no.3 and was not in shop number 10 as is being alleged. He has further argued that as per the site plan, the defendant is a tenant under shop no.3 and not under shop no.10 and therefore, the notice was rightly served upon him and there is no valid ground in support of this contention when he argued that he was tenant under shop no.10. He further confirmed that the notice was duly served upon the defendant. He has further argued that not only in the written statement rather in cross examination also the defendant admitted that he is a

tenant in the property in question from last 10-12 years. Therefore, he never disputed that he is tenant with respect to shop no.10. He further argued that the notice has been duly proved to be served upon the defendant as the plaintiff has not examined herself alone rather she has also examined Sh. Mohan Shyam Patva, the postman from the concerned area and he has specifically deposed that he visited the address mentioned therein and did not make the delivery to the addressee and only gave the information to the addressee on the second day and deposited the same in the registration delivery branch of the Gokal Puri Post Office. He also delivered UPC letters to the addressee which is already Ex.PW1/4 and in the cross examination, his testimony could not be impeached and he made a statement voluntarily that he delivered only those letters/posts which are given to him by his postmaster. He further deposed that he did not deliver the registered post to the employees, manager and other person on the seat if the owner of the shops/office is not present. Therefore, service of the notice has been duly proved by way of evidence.

6. As would be seen from the above service of the notice was duly proved by the respondent by summoning postman from the post office and his testimony remained unimpeached and unrebutted. The said postman also proved delivery of UPC letter to the appellant, which was proved on record as Exhibit PW 1/4. The plea of the counsel for the appellant that notice was wrongly sent at shop No. 3, although as per own case of the respondent the appellant was a tenant in respect of shop No. 10, is devoid of any merit as the appellant has not disputed the fact that he is a tenant only in respect of one shop and presently

the number of said shop is shop No. 3 and said shop was earlier being described as shop No. 10. This finding of the fact has already attained finality and this Court do not find any illegality or perversity in the said finding of fact arrived at by both the Courts below. No substantial question of law arise in the present Second Appeal. There is no merit in the present appeal and the same is hereby dismissed.

NOVEMBER 25, 2011
rkr

KAILASH GAMBHIR,J