

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

Date of Decision: 30.08.2012

**+ RSA 110/2012**

**SATISH KUMAR** ..... Appellant

Through : Mr. G.P. Thareja, Adv.

versus

**GURDYAL MAKKAR @ PUNJAB SINGH** ..... Respondent

Through : Mr. Sandeep Sharma, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

**VEENA BIRBAL, J.**

1. By way of this Regular Second Appeal under Section 100 of CPC, the appellant has challenged two concurrent findings i.e. one dated 16.05.2012 passed by the learned Addl. District Judge, Karkardooma Courts, Delhi in RCA No. 26/2011 and the other dated 21.02.2011 passed by the learned Civil Judge, Delhi in CS No. 334/2009.

2. The facts leading to the filing of the present appeal are as under:-

The respondent herein i.e. plaintiff before the learned Civil Judge, Delhi had filed a suit praying for mandatory injunction to direct the appellant/defendant to hand over the possession of suit property to him.

The respondent/plaintiff had also prayed for decree of permanent injunction to restrain the appellant/defendant from creating any third party interest in the suit property. The prayer was also made for passing a decree for a sum of Rs.2,10,000/- being the arrears of licence fee. It was averred in the aforesaid suit that the respondent/plaintiff is the owner of six sheds bearing premises No. 609 to 614, A-Block, Gharoli Farm, Delhi i.e., suit property and was running a dairy farm there upto August, 2000. Thereafter, due to some personal difficulties, respondent/plaintiff had permitted the appellant/defendant to retain the suit premises as a licensee w.e.f. 01.09.2000 upto 31.08.2002 on a licence fee of Rs. 7,000/- p.m. It was further averred that the parties had agreed that the licence would stand terminated automatically on 31.08.2002. It was alleged that the appellant/defendant had paid the licence fee upto January, 2002 and thereafter he did not make the payment. It was further averred that when respondent/plaintiff was running the business from the suit property, no water or electricity connection was taken by him. On 01.09.2002, the appellant/defendant was called upon by the respondent/plaintiff to pay Rs. 49,000/- towards arrears of licence fee w.e.f. February, 2002 till August, 2002 and to hand over the vacant possession of the suit property to him. However, the appellant/defendant refused to vacate the suit property. The appellant/defendant had also filed several cases against respondent/plaintiff claiming himself to be the tenant in the suit property. It was alleged that in the year 2003, the appellant/defendant was also caught indulging in the theft of electricity by BSES and a case was also registered against him. As the appellant/defendant did not vacate the suit property, the respondent/plaintiff had filed a suit against him making the

aforesaid prayers.

3. The aforesaid suit was contested by the appellant/defendant by filing a written statement. The stand of appellant/defendant is that he is a tenant in that suit property on a monthly rent of Rs. 2,500/- p.m. w.e.f. August, 1997 and not a licensee as is alleged. He had further averred that w.e.f. November, 2002 the respondent/plaintiff had refused to accept the rent. The appellant/defendant had further averred that he had also sent a money order in favour of Deepak Makkar @ Deepa towards rent for 7 months i.e., from November, 2002 to May, 2003 but the same was refused by respondent/plaintiff.

4. On the pleadings of the parties, issues were framed and thereafter parties led evidence. Respondent/plaintiff examined himself as PW1, his son Deepak Makkar @ Deepa as PW2, Harish Pal as PW3, Karanveer Singh as PW4. Appellant/defendant examined himself as DW1 and closed his evidence.

5. After hearing the parties, the learned trial court held that the appellant/defendant was only a licensee in the suit property and accordingly decreed the suit by directing the appellant/defendant to hand over the possession of the suit property to the respondent/plaintiff and also passed a decree of arrears of Rs. 2,10,000/- towards licence fee along with interest @ 6% per annum. A decree of permanent injunction restraining the appellant/defendant from creating third party interest was also passed.

6. The judgment/decreed passed by the learned Civil Judge was challenged by the appellant/defendant before the learned Addl. District Judge by filing an appeal i.e. RCA No.26/2011. The learned lower appellate court considered the contentions of the parties as well as analyzed the evidence on record and dismissed the appeal vide impugned judgment/decreed dated 16.05.2012.

7. Aggrieved with the same, the present second appeal is filed.

8. Learned counsel for appellant has contended that finding of both the courts below that the appellant/defendant was a licensee in the suit property is a perverse finding. It is contended that the courts below have not taken into consideration the notice dated 12.11.2002 sent by the respondent/plaintiff to appellant/defendant wherein it is stated that the appellant/defendant was inducted as a licensee w.e.f. 01.09.1999 for a period of two years whereas the case of the respondent/plaintiff as set up in the plaint is that the appellant/defendant was inducted as a licensee w.e.f. 1.9.2000. It is further contended that the courts below did not consider the documents of appellant i.e. Ex. PW1/D-1 to Ex.PW1/D-4. It is contended that the said documents establish that the appellant/defendant is a tenant in the suit property.

9. The submissions made have been considered.

10. It is admitted position that there is no written agreement between the parties as to whether the suit property was given on rent or on licence. To prove their respective stands, the respondent/plaintiff has relied upon oral evidence of himself as well as of three other witnesses i.e., Deepak Makkar @ Deepa, PW-2, Harish Pal, PW-3 and Karan Veer Singh, PW-4. On the other hand, the appellant/defendant has relied upon his deposition and certain documents which have been confronted to the respondent/plaintiff. The respondent/plaintiff has tendered his evidence by way of affidavit Ex. PW1/A. In affidavit Ex. PW1/A, respondent/plaintiff has stated his case on oath. He has categorically stated that earlier he was carrying out dairy business from the suit property and then he had permitted appellant/defendant to carry out business of dairy farming as licensee w.e.f. 01.09.2000 till 31.08.2002. He has deposed that he used to take Rs. 7,000/- p.m. from the appellant/defendant in cash in the presence of his son Sh. Deepak Makkar @ Deepa, PW-2. The appellant/defendant has admitted that the respondent/plaintiff was in the dairy farming and was maintaining some of his buffaloes in the suit premises. The appellant/defendant has also admitted in the cross-examination that the respondent/plaintiff as well as his son used to visit the suit property. He has also stated that respondent/plaintiff used to visit the suit property daily and also used to have food, tea, etc., along with him for the full day. He has also stated in his cross-examination that the discussion with him being allowed to run the dairy from the suit property was held in his house and in the said discussion appellant/plaintiff, his son Deepak Makkar @ Deepa PW2 and his children i.e. appellant's/defendant's children were present. Both

the courts below have noticed that apart from the appellant/defendant, none of his family member has come to corroborate his version that he was a tenant in the suit property. He has also admitted in the cross-examination that in the Gharoli dairy farms there was no question of payment of rent in the year 2001 and 2002. On the basis of evidence of the parties including the admission of the appellant/defendant, the learned Civil Judge has held that the appellant/defendant was a licensee in the suit property. The relevant finding of the learned Civil Judge are reproduced as under:-

“Besides it, DW1 himself has admitted before this court that the plaintiff was also running the dairy business from the same property and he was having day to day visit to the suit property and even was staying. Further it has been deposed that same owner of the property were not running their dairies and used to allow person to look after the property and to use the same for dairy purposes. Even the electricity connection was not provided to the dairy and the business of the plaintiff was left by him due to his old age, but still the property was not in exclusive possession of the defendant. Even during the cross examination PW-1 has voluntarily deposed that he was allowed in the presence of Sh. Deepak Makkar and his family members to carry on the dairy business and this fact makes it clear that the defendant was allowed by the plaintiff to use the property on license basis. The plaintiff has also terminated the licence of the defendant and asked him to vacate the suit property in the month of October 2002 orally and also got issued a legal notice which has been admitted by the defendant. After the deposition of DW-1 and PWs, it is clear that the element of lease was never in existence in the relationship of the plaintiff and defendant and the defendant was never allowed to use the premises exclusive from the

possession as of plaintiff and the plaintiff was having every interference in the possession of the defendant. Initially the defendant was allowed to remain in possession with the premises of the plaintiff and the intention of the parties was clear that relationship entered between the parties was only licence and not the lease. During the period, the plaintiff left the business dairy but he used to visit the suit property but the defendant trespassed into the possession of the plaintiff in remaining portion and the license of the defendant was terminated by the plaintiff, despite this fact, this subsequent possession of the defendant cannot change the nature of the permission granted by the plaintiff to the defendant to use the premises which was already withdrawn by the legal notice.”

11. In the first appeal, the learned Addl. District Judge has also examined the evidence led by both the parties at length and has upheld the finding of the learned Civil Judge that the appellant/defendant was only a licensee and not a tenant as was alleged by him. The learned Addl. District Judge has also noted various admissions made by the appellant/defendant in his cross-examination in coming to conclusion that appellant/defendant was only a licensee in the suit property. The relevant finding of the learned Addl. District Judge is reproduced below:-

“In the present case, all four witnesses have clearly deposed that the defendant was inducted for a period of two years as a licensee only at the rate of Rs.7,000/- per month. Defendant in his cross-examination has also stated that plaintiff used to visit the suit premises everyday and collect milk in the evening. He has stated that he was “allowed to run” his dairy from the suit property. He has also stated that other persons who were

owners of the dairies did not look after the same on their own but permitted people to look after of their properties to be used as dairy purpose. No electricity connection was existing in the premises. In the opinion of this Court, the very fact that plaintiff used to be present everyday in the suit premises from morning to evening points towards the conclusion that the defendant was not in exclusive possession of the suit property. Further plaintiff has led evidence and examined four witnesses to support his contention that defendant was inducted as a licensee. Defendant has relied certain documents from another suit between the same parties. All these four documents Ex.PW1/D-1 to Ex.PW1/D-4 have been denied by the plaintiff PW-1 and his son PW-2. None of these documents throw any light on the nature of the occupation of the defendant. A Civil Suit is to be decided on the preponderance of probabilities. In the opinion of this Court, the onus was on the defendant to prove that he was inducted as a tenant and at Rs.2,500/- per month which has not been discharged by the defendant.

In view of the failure of the defendant to discharge onus regarding he being inducted as a licensee, no fault can be found with the findings of the Ld. Trial Court that the defendant was inducted by the plaintiff as a licensee in the suit premises.”

12. Learned counsel for appellant/defendant has submitted that the documents Ex.PW1/D-1 to Ex.PW1/D-4 show that the appellant/defendant was a tenant in the suit property. The documents referred to above have been examined by both the courts below. Ex.PW1/D-1 is a receipt bearing the name of Sh. Satish and is dated 1997 wherein some calculations are there. Ex. PW1/D-2 to Ex. PW1/D-4

contains some figures. They are on piece of papers wherein name of some Sardarji is there. After noticing these documents, learned ADJ has observed that even after going through the same it cannot be deciphered that the appellant/defendant was a tenant in the suit property. The relevant finding is reproduced as under:-

“Defendant confronted the plaintiff with respect to four documents summoned from the suit file of CS No. 923/06 viz. Ex.PW1/D-1 to Ex.PW1/D-4. Plaintiff has stated that he was not aware about the documents. Ex.PW1/D-1 is a copy of a receipt bearing name of Sh. Satish and dated December, 1997. The same is some mathematic calculation. Ex.PW1/D-2 is a copy of piece of paper with a date of 01.05.2002 with “Sardarji” written on it. The same contains certain figures and nothing else. Ex.PW1/D-3 is another copy of a piece of paper with date 01.08.2002 written on it name of “Sardarji Punjab Singh” with certain figures mentioned. Ex.PW1/D-4 is copy of piece of a paper bearing date 01.12.2002 in which “Sardar Punjab Singh” written with certain figures. There is nothing else mentioned on these documents i.e. Ex.PW1/D-1 to Ex.PW1/D-4. Even after going through the same, nothing can be deciphered from these documents to indicate that the defendant was a tenant in the premises.”

13. Learned counsel for the appellant has failed to show how the aforesaid documents help the appellant/defendant in any manner. Further as regards contention of stating date of 1.9.1999 of commencement of licence in legal notice dated 12.11.2002, the learned counsel for respondent/plaintiff who is present on an advance notice, submits that the same is a typographical error. It is pointed out that in the subsequent

portion of aforesaid notice, it is stated that the premises were given for a period of two years with the undertaking that the same would be vacated by appellant/defendant on 30.8.2002, it is submitted that reading the entire notice dated 12.11.2002, it is clear that the suit property was given for 2 years w.e.f. 1.9.2000. Nothing contrary is pointed out by learned counsel for appellant/defendant.

14. It has also been noted by the courts below that the appellant/defendant had filed a petition under Section 27 of the Delhi Rent Control Act for deposit of rent against Deepak Makkar @ Deepa, PW-2, i.e., son of respondent/plaintiff and the said petition was dismissed as it was not against the respondent/plaintiff being the owner of property. If the appellant/defendant was not aware of the actual owner, then how he could claim lease right in the suit property. Further, had appellant/defendant been a tenant as is alleged by him, he would have at least known the name of the person to whom he had to pay the rent. Relying on the judgment of Dnyaneshwar Ranganath Bhandare v. Sadhu Dadu Shettigar reported in (2011) 10 SCC 433, it has been held by the courts below that burden was on the appellant/defendant to show that arrangement was that of tenancy and not a licensee and the appellant/defendant has failed to discharge the burden. Both the courts below have given concurrent finding of facts based on the evidence on record that the appellant/defendant was a licensee in the suit property.

15. A second appeal under Section 100 CPC can be entertained only if there arises a substantial question of law. In view of above discussion, no

substantial question of law arises in the present case which requires consideration of the court. Both the courts below have rightly held that the appellant was a licensee in the suit property and the suit has been rightly decreed in terms of the prayer made in the plaint.

Appeal stands dismissed.

**CM No. 11916/2012 (stay)**

In view of the order on the main appeal, no orders are required on this application.

The same stands disposed of.

**VEENA BIRBAL, J**

**AUGUST 30, 2012**  
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