

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

+ **R.S.A. NO.16 OF 2012**

Decided on : 28th January , 2013

MOHD AKRAM ALIAS PAPPU & ANR. Appellants
Through: Mr. B.P. Sharma, Advocate.

Versus

BILKISH BEGUM Respondent
Through: Mr. S.K. Khatri, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellants against the judgment dated 17.12.2011 passed by Sh. S.S. Malhotra, learned ADJ, Karkardooma Courts in RCA No.80/11.

2. Briefly stated the facts of the case are that the respondent, Bilkish Begum, filed a suit for possession, mesne profits and damages against the appellants herein in respect of premises No.B-227, Ground Floor, Gali No.3, Mandawali Fazalpur, Delhi-110092 consisting of one room measuring 10" x 15" and kitchen 5" x 10" more particularly shown in red in the site plan. The respondent had also prayed for recovery of user

charges/mesne profits from the appellants @ ₹2,500/- per month with effect from 1.8.2008 till the end of February, 2009 and for damages/mesne profits @ ₹4,000/- per month with effect from 1.3.2009 till the handing over of the possession.

3. The case which was setup by the respondent was that the appellants were licensee in respect of the aforesaid premises and despite the notice having been issued, they had not vacated the premises and, therefore, she filed a suit for possession and mesne profits/damages. The appellants herein contested the claim of the respondent and took the plea that they are the tenants under the respondents in respect of the suit premises and the rent was ₹800/- per month which was later on reduced to ₹500/- as the security amount of ₹50,000/- was paid. They further took the plea that even otherwise, the rent of the suit premises as mentioned in plaint is ₹2,500/- per month which is less than ₹3,500/- and, therefore, they are protected by the Delhi Rent Control Act. The learned trial court framed the following issues on the basis of the pleadings of the parties :

- “1. Whether this court has no jurisdiction to try the present suit and the present suit is not maintainable in its present form? OPD

2. Whether the plaintiff is entitled to recovery of possession as prayed for? OPP
3. Whether the plaintiff is entitled to decree of mesne profits/damages, if yes, at what rate and for what period?
OPP
4. Relief.”

4. After appreciating the evidence produced by the respective sides, the trial court decided all the issues in favour of the respondent. The trial court returned a finding that the appellants were licensees in respect of the suit premises. The reason for holding so was that the appellant was shown to be a tenant in premises No.B-225, Gali No.3, Mandawali Fazalpur, Delhi-110092 and repeatedly filed his Income-Tax Returns from the said residential address for the year 2006-2007 and 2007-2008. As against this, the appellants had claimed themselves to be the tenant in respect of the suit premises No.B-227, Ground Floor, Gali No.3, Mandawali Fazalpur, Delhi-110092 since January, 2004. The court came to the conclusion that if the appellants were setting up a case that they were a tenant in respect of the suit premises with effect from January, 2004 then how the documents were proved showing them to be a tenant in respect of another property.

5. In addition to this, the plea of the appellants that they had advanced a sum of ₹50,000/- by way of security to the respondent whereupon the rent was reduced to a sum of ₹500/- was also not believed and the court returned a definite finding that the appellants were licensees and their licenses having been terminated by the respondent, they were liable to be vacated and hand over the possession of the premises to the respondent. So far as the mesne profits are concerned, the court fixed the mesne profits @ ₹800/- per month.

6. Feeling aggrieved by the said judgment and decree, the appellants preferred the first appeal before the court of the learned Additional District Judge. The findings of fact returned by the trial court on all the issues have been confirmed by the appellate court. Still not being satisfied, the appellant has chosen to file the present second appeal.

7. I have heard the learned counsel for the appellants at length. It has been contended by the learned counsel that this appeal involves substantial question of law. In this regard, he has drawn the attention of the court to the questions of law purported to have been framed by him and reflected in the appeal. I have gone through the said questions of law

which have been framed in the appeal. In these questions, the learned counsel for the appellant essentially is challenging the ownership of the respondent-landlord in respect of the property in question. It has also been stated that the property in question belongs to DDA and, therefore, eviction would only be done by the DDA under the Public Premises Act.

8. I have carefully considered the submissions. So far as the question of title of the respondent-landlord is concerned, a tenant or a licensee is estopped from challenging the title of the landlord or the licensor. Section 116 of the Evidence Act makes a reference to this. The said Section reads as under :

“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 the 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 licence 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 licence was given.”

9. Apart from the aforesaid Section, there is a definite issue with regard to the factum as to whether the respondent is entitled to possession

of the suit property or not. A clear finding has been returned by the two courts below that the respondent is entitled to recover the possession as the appellants herein were the tenant. Every landlord/licensor need not be the owner while as the owner will necessarily be the landlord and the licensor. Since there is a definite finding in this regard, therefore, this issue cannot be raised by the appellants. It does not involve any question of law. This is a question of fact and cannot be gone into.

10. In my considered opinion, no question of law is involved in the appeal much less to say any substantial question of law. The appellants, by virtue of the present appeal, only want to perpetuate their possession in respect of the suit property.

11. I do not find any merit in the submission that substantial question of law is arising from the appeal. I am also not satisfied that the appeal is involving any question to that effect. For these reasons, the appeal itself is dismissed as without merit.

V.K. SHALI, J.

JANUARY 28, 2013
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