

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

% **RFA 36 OF 2005**

+ **Date of Decision: 16th March, 2011**

YOGENDER SINGH

.....Appellant

Through: Mr. S. S. Tomar, Advocate

Versus

PREM LATA & ANR.

....Respondents

Through: Ms. Amrit Kaur Oberoi, Advocate

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

The appellant-plaintiff filed this appeal against the judgment and decree dated 9.12.2004 passed in suit no.351/2004 by the learned Additional District Judge whereby the suit for possession in respect of part of property no. A-39 , Badli extension ,village Badli, Delhi -42 as well as for a decree of cancellation of some documents, injunction and *mesne profits* filed by him against the respondents-defendants was dismissed.

2. It was the case of the appellant-plaintiff (hereinafter to be referred to be as the plaintiff) that he was owner of plot no. A-39, Badli Extension, Delhi which was 100 square yards plot and out of 100 square yards he had sold 50 square yards to one Shri Keshu Ram and had raised two storeyed house on the remaining 50 square yards area(hereinafter to be referred as 'the suit property'). Since he was living in another house also the suit property was lying vacant. Respondent no.1 herein was working as a domestic help in his house and since she was in financial distress she had requested him to allow her to live in the suit property temporarily. The plaintiff allowed the respondents, who are mother and son and reference to whom shall now onwards be made as defendants no. 1 and 2 respectively, to occupy the suit property as a licensee only and that too without charging any license fee in December 1997 for a period of two years. However, when in October, 1999 he asked the defendants to vacate the suit property defendant no.1 had sought more time to vacate and they were allowed to continue to live there for some more time. When again possession of the suit property was demanded back from the defendants they refused to do so. Then a legal notice dated 25th September, 2002 was served on defendant no.1. In her reply dated 8th October, 2002 defendant no.1 claimed that the plaintiff had sold the suit property to her on 23rd may, 1997 by executing an agreement to sell, general power of attorney

etc. and thereafter she herself had with her own funds constructed two storeyed house.

3. The plaintiff thereafter filed the suit in the year 2002 against the defendants claiming a decree of possession and mesne profits, declaration that documents of title in respect of the suit property being relied upon by the defendants were null and void and be cancelled, and also for a decree of injunction restraining the defendants from creating any third party interest in the suit property. In the plaint, the plaintiff pleaded that whatever documents of title in the suit property the defendants were relying upon were procured by defendant no.1 from him under the influence of liquor and so were not binding upon him.

4. The defendants filed a common written statement and resisted the suit, *inter alia*, on the grounds that the plaintiff had sold the suit property to defendant no.1 Smt. Prem Lata on 23rd may, 1997 vide agreement to sell, general power of attorney, affidavit, Will etc. It was also claimed by the defendants that defendant no.1 had spent huge amount on construction of the ground and first floor with her funds from time to time. The plaintiff's claim that he had raised two storeyed house was refuted as being false. It was denied that the plaintiff had permitted her to stay in the suit property as a licensee on her request that defendant no.1 was infact even prior to the purchase of the property from the plaintiff in occupation of one

temporary room and a kitchen as a tenant of the plaintiff .The defendants also denied the allegation that property documents were obtained from the plaintiff under the influence of liquor.

5. Aforesaid pleadings of the parties led to the framing of the following issues by the trial Court:-

“1. Whether the plaintiff allowed defendant no.1 to occupy the suit property as licensee? OPP.

2. Whether the defendant secured signatures/thumb impression of plaintiff on various documents when the plaintiff was under the influence of liquor? OPP.

3. Whether the plaint is likely to be rejected for want of cause of action u/o-7, rule -11 CPC? OPD.

4. Whether the plaintiff has no locus-standi as the property has been purchased by the defendant? OPD.

5. Whether the plaintiff has not affixed the court fees as per market value of the suit property? OPD.

6. Whether the defendant raised construction from time to time on the suit property after its purchase? OPD.

7. Whether the plaintiff is entitled for the relief claimed? OPP.

8. Relief .

6. The learned trial Court decided issues no.1 and 2 against the plaintiff. However, issues no. 3, 4 and 6 were decided against the defendants and issue no. 5 relating to the objection about valuation of the plaint was disposed of with the observation that the same had

not been agitated. However, in view of the findings on issues no.1 and 2 going against the plaintiff his suit came to be dismissed. The plaintiff feeling aggrieved by the decision of the trial Court came up in appeal.

7. From the pleadings of the parties and evidence adduced by them during the trial the undisputed position which emerges is that to begin with the defendant no.1 was permitted by the plaintiff to occupy his property. The dispute between the parties was as to in what capacity the defendant no. 1 occupied the property. As per the case of the plaintiff the defendant no. 1 occupied the suit property as a licensee while the defendants had claimed in their written statement that plaintiff had prior to the sale transaction, which according to them had taken place in May, 1997, let out the property to defendant no.1. This dispute regarding the nature of possession of defendant no. 1 before the alleged transaction of sale in respect of the suit property becomes relevant since in the present appeal the findings of the learned trial Court in respect of the execution of various property documents relied upon by the defendants can either be affirmed or reversed. In case the trial Court's decision, which has at present gone against the plaintiff, is affirmed then the question whether the defendant no. 1 had initially occupied the suit property as a licensee or as a tenant would be of no significance as far as this appeal is concerned. However,

in case this Court comes to the conclusion that the property documents relied upon by the defendants were null and void then the question would definitely arise whether the plaintiff is still entitled to get a decree for possession in the present suit against the defendants and the answer to that question would depend upon the decision about the nature of possession of the suit property by defendant no.1 . The learned trial Court, however, did not frame any issue regarding the plea of the defendants that defendant no. 1 was initially inducted into the property as a tenant. That issue, in my view, was a material one and essential for the right decision of the suit on merits. Since there was no issue in this regard framed by the trial Court no evidence appears to have been adduced by defendant no. 1 to establish her defence that she was a tenant and that is why even the trial Court has not said anything about this plea of the defendants.

8. This court, therefore, is of the view that this is a fit case where in exercise of the power conferred upon the Appellate Court under Order XLI Rule 25 of the Code of Civil Procedure should frame an additional issue in respect of the plea of tenancy raised by the defendants and the matter should be remanded back to the trial Court for recording evidence on that issue and giving its findings. Accordingly, the following additional issue, which shall be treated as issue no. 1A, is framed:

1A. Whether defendant no. 1 was inducted in the suit property by the plaintiff as a tenant before 23rd May, 1997? OPD

9. The matter is now remanded back to the trial Court for giving its findings on the said additional issue after giving opportunity to the parties to adduce evidence which however shall be restricted only to this issue. After the additional issue is decided the learned trial Court shall send its findings to this Court. The case shall be taken up by the trial Court on 8th April, 2011 at 2:00 pm and the matter should be disposed off within six months thereafter. Trial Court record be sent back well before the said date.

P.K. BHASIN, J

March 16, 2011
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