

26

\$~

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

+ **CS(OS) 1416/2011 & I.A. 9398/2011**

KRISHAN LALL & ANR Plaintiffs
Through: Ms. Pooja M. Saigal, Advocate with
Mr. Rahul Sharma and Mr. Vivek
Singhal, Advocates.

versus

BHAWANI SHANKAR SHARMA Defendant
Through: None.

% Date of Decision: 17th January, 2013.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present suit has been filed with the following prayers:-

“a) pass a decree in favour of the Plaintiffs and against the defendant for the recovery of possession of the leased premises being First Floor No. A-246, New Friends Colony, New Delhi-25.

b) pass a decree for a sum of Rs. 3,25,000 (Rupees Three Lakh Twenty Five Thousand Only) in favour of the Plaintiffs and against the defendant being arrears of rent which have accrued on the property for the period from September, 2010 to March, 2011 alongwith interest @18% per annum till realization thereof.

c) to pass a decree towards mesne profits in favour of the Plaintiffs and against the defendant @ 3,000 per day calculated from 01st April, 2011 till handing over of possession for being in illegal occupancy of the Plaintiff's property bearing No.A-246, First Floor, New Friends Colony, New Delhi-25.

d) Award costs of present proceedings in favour of the Plaintiffs and against the defendant.

e) Such other further orders as this Hon'ble Court deem fit and property in the circumstances of the present case."

2. Summons issued by this Court to the defendant at the address mentioned in the plaint was returned unserved. Thereafter, defendant was served by substituted service by effecting publication in "Statesman" Delhi Edition and "Times of India" Jaipur Rajasthan Edition. However, as there was no appearance on behalf of the defendant, he was proceeded ex parte vide order dated 01st October, 2012.

3. The plaintiffs have filed their evidence by way of affidavits dated 16th November, 2012 marked as Ex.PW1/A and Ex.PW2/A. The supplementary affidavit by way of evidence has been filed on 15th January, 2013 and the same is on record.

4. The relevant facts of the present case are that plaintiffs are joint co-owners of property bearing No. A-246, New Friends Colony, New Delhi having acquired ownership rights vide Conveyance Deed dated 03rd May,

1994 executed by DDA in favour of the plaintiffs. The original Conveyance Deed has been marked as Ex.PW1/4.

5. Plaintiff No.1 and 2 have stated on oath in their evidence by way of affidavits that they had agreed to give the First Floor of the premises bearing No. A-246, New Friends Colony, New Delhi, on Lease for eleven months w.e.f. from 15th July, 2010 to 15th June, 2011 to the Defendant, Mr.Bhawani Shankar Sharma at a monthly rent of Rs. 50,000/- per month for the purposes of use as his residence.

6. Plaintiff No.1 in his supplementary affidavit of evidence dated 15th January, 2013 has explained on oath that at the time of entering into Lease, the Plaintiffs and the Defendant had agreed to execute two documents, one was to be an eleven month's Lease Deed and another, a Hire Agreement recording the terms and conditions for hiring the furniture and fixture at the tenanted premises. It has been averred that only the Hire agreement was executed at the time of taking over possession by the Defendant and the execution of Lease Deed was kept pending. The Hire Agreement dated 15th July, 2010 in original has been placed on record and has been marked as Ex.PW1/5.

7. Plaintiffs No.1 and 2 have stated on oath that apart from the rent for the month of July 2010 and August, 2010, a sum of Rs. 50,000/- equivalent to one month's rent was also given as Security Deposit by the defendant to the plaintiffs.

8. Plaintiff No.1 has stated on oath that the tenanted premises were locked by the tenant and have been lying locked since October, 2010 and the defendant has not returned ever.

9. Plaintiff No.1 has stated that two cheques of the value of Rs. 25,000/- each, i.e. Cheque No. 015185 and Cheque No. 015182 issued under the signatures of one Ms. Monika Sharma, were handed over by the defendant to the plaintiffs towards rent for September, 2010. Defendant had represented that Ms. Monika Sharma was his wife and acting on his representations, plaintiffs had accepted the cheques. However, the said cheques were dishonoured on presentation. The said cheques in original have been placed on record and marked as Ex. PW1/6 and Ex. PW 1/7.

10. Plaintiff No.1 has stated that another cheque of Rs. 50,000/- (Cheque No. 221507) issued by one Abheshwar Builders and Developers Limited, under signatures of the tenant as a Director was handed over to the plaintiffs by the defendant in the month of January, 2011 towards payment of rent for October, 2010 however the same was also dishonoured on presentation. Defendant had represented that the said company was his own and acting on his representations, the Plaintiffs had accepted the cheques. The proceedings under Section 138 and 142 under the Negotiable Instruments Act have been filed by the plaintiffs against the Defendant in respect of the dishonoured cheques. The said cheque No. 221507 issued by Abheshwar Builders and Developers Limited has been marked as Ex. PW1/8.

11. Plaintiffs have placed on record the original office copy of the legal notice dated 15th March, 2011 issued to the defendant regarding the

termination of lease and calling upon the defendant to vacate the premises by 31st March, 2011 and also to handover the vacant, physical possession of the premises on the said date. Plaintiffs had vide the said legal notice called upon to make payment of arrears of rent and also to pay mesne profits @ Rs. 3000 (Rupees Three Thousand) per day of continued unlawful occupation by 31st March, 2011. The office copy in original of the said Legal Notice has been marked as Ex. PW1/10 and the postal receipt of dispatch has been marked as Ex. PW1/11.

12. Since the evidence of the plaintiffs has neither been rebutted nor controverted, this Court is of the view that plaintiffs have proved their case along with all the documents referred to hereinabove.

13. Consequently, the termination of oral Lease and Hire Agreement stands proved and it is held that defendant is in default of payment of rent since September 2010 and an amount of Rs. 3,25,000/- (Rupees Three Lakh Twenty Five Thousand Only) at Rs. 50,000/- (Rupees Fifty Thousand Only) per month is due and payable for the period from September 2010 till March 2011 . The lease having been terminated with effect from 31st March, 2011, the occupation of the said premises by the Defendant is held illegal and unauthorized, but as the plaintiff has led no evidence with regard to mesne profit, the relief of mesne profits is denied.

14. Consequently, a decree is passed in favour of the plaintiffs and against the defendant for recovery of possession of leased premises being A-246, First Floor, New Friends Colony, New Delhi-110025 as well as a money decree for Rs.3,25,000/- in favour of the plaintiffs and against the defendant

being arrears of rent which has accrued on the property for the period from September, 2010 to March, 2011 along with interest @ 18% per annum till realisation thereof.

15. The Registry is directed to draw up the decree sheet accordingly.

MANMOHAN, J

JANUARY 17, 2013

js