

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

Date of decision: 29th July, 2013.

+ **RFA 303/2013 & CM No.10023/2013 (for stay)**

JAI SUJANTI

..... Appellant

Through: Ms. Savita Aggarwal, Adv.

Versus

SMT SUDARSHAN CHADHA & ANR

..... Respondents

Through: Mr. Lalit Bhasin & Mr. Sanjay
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (of the Court of Additional District Judge (Central)-10 in suit No.1250/2008) dated 15.05.2013, on admissions, of ejectment of the appellant from a portion of property No.A-69, Gulmohar Park, New Delhi; inquiry into *mesne* profits / damages for use and occupation is underway.

2. The appeal came up first before this Court on 08.07.2013 when even though *prima facie* no merit was found therein but being a first appeal, the Trial Court record was requisitioned and notice issued to the respondents.

3. The Trial Court record has been perused and the counsel for the appellant has been heard.

4. The suit filed by the two respondents against the appellant from which this appeal arises was a suit by landlord for ejectment of the tenant. The Trial Court passed the judgment and decree on admissions holding that there was no dispute as to the relationship of landlord and tenant, the rate of rent (and which showed that the tenancy/premises were outside the purview of Delhi Rent Control Act, 1958) and the termination of tenancy. Accordingly, decree for ejectment on admissions has been passed.

5. The counsel for the appellant has argued that there was no admission of relationship of landlord and tenant.

6. It has been enquired from the counsel for the appellant as to whom the appellant had been paying rent of the premises.

7. The counsel for the appellant states that the premises were originally let out to the appellant by Sh. R.P. Chadha, husband of the respondent no.1 and father of the respondent no.2 and after the demise of Sh. R.P. Chadha in January, 2006, the rent is being paid to the respondent no.1 only. It is contended that thus the relationship of landlord and tenant is with the respondent no.1 only and not with the respondent No.2 Smt. Geetu Sahani.

8. The case of the respondents/plaintiffs in their plaint was that Sh. R.P. Chadha had died intestate leaving his widow and only child viz. the

respondent no.2 and thus the suit was filed by both of them even though the rent was being collected by respondent no.1 who is the mother of the respondent no.2.

9. The Transfer of Property Act, 1882 does not define 'landlord'; however the definition of the said term in the Delhi Rent Control Act, 1958 makes, not only the person to whom the rent is being paid but also the person who is entitled to such rent, as the landlord. Even though the premises are not governed by the Delhi Rent Control Act, 1958 but the definition of 'landlord' therein can always be applied to the present case also. Even otherwise, there is no dispute between the two respondents and even if it were to be held that only the respondent no.1 is the landlord, the mere presence of the respondent no.2 and that too with the consent of the respondent no.1 would not come in the way of the order of ejectment. It otherwise also does not lie in the mouth of the tenant to take any such objection.

10. Else, I find the impugned judgment to have extensively dealt with all the aspects and need is not felt to reiterate the same.

11. The counsel for the appellant has also argued that the respondents themselves have pleaded their title to the house as owners after the demise

of Sh. R.P. Chadha and since the appellant/tenant had disputed the same, no decree on admissions could have been passed. It is further contended that the reliance by the Trial Court on *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India* (2007) 7 SCC 120 for invoking Order 12 Rule 6 is erroneous.

12. It is the settled position in law, that in a suit between landlord and tenant, it is only the title as landlord which is relevant and not the title as owner. As far back as in *Sri Ram Pasricha Vs. Jagannath* (1976) 4 SCC 184, it was held that under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant. Recently also, in *State of Andhra Pradesh Vs. D. Raghukul Pershad* (2012) 8 SCC 584 it was held that relief of eviction of a tenant is not based on the title of the landlord to the leased premises and even if an averment to the said effect, of landlord being owner, is made in the plaint, as long as no relief of declaration of title is claimed and only the relief of eviction of tenant on the ground that lease has come to an end is claimed, the Court is not called upon to decide the question of title.

13. As far as reference to *Uttam Singh Duggal & Co. Ltd.* supra is concerned, it may be mentioned that since then the Division Bench of this

Court in *Vijaya Myne Vs. Satya Bhushan Kaura* 142 (2007) DLT 483 (DB) has considerably expanded the scope of Order 12 Rule 6 of the CPC by holding that admissions by inferences can also be drawn.

14. I may even otherwise mention that Order 15 of the CPC also entitles the Court, when finding no question of law or fact to be arising for adjudication, to immediately pass a decree.

15. In the light of the aforesaid facts, no issue arose for adjudication in the present case as far as the relief of ejectment was claimed and no error is thus found in the impugned judgment and decree.

16. The counsel for the appellant at this stage refers to *M/s Amar Agencies Vs. Andhra Pradesh State Handloom Weavers Co-operative Society Ltd.* 82 (1999) DLT 76 but which is not found applicable to the facts of the present case. The suit in that case was filed averring the defendant to be a licensee; the defendant pleaded tenancy and in which context it was held that the said plea of tenancy was required to be adjudicated and decree for possession could not have been passed without trial.

17. At this stage, counsel for the appellant has also referred to *CREF Finance Ltd. Vs. Shanthi Homes Pvt. Ltd. Co., Bangalore* AIR 2006 Karnataka 54 but admissions in which case were not complete and were

such qua which it was held that an opportunity of explanation has to be given. However, in the present case as aforesaid there is a complete admission of the relationship of landlord and tenant and non applicability of the Rent Act. The determination of tenancy as per the judgments of the Apex Court and of the Division Bench of this court discussed in the impugned judgment loses its significance. Reference may also be made to the judgment of the Division Bench of this Court in ***Shri Ram Pistons & Rings Ltd. Vs. C.B. Agarwal (HUF)*** MANU/DE/2381/2008 where the Division Bench has following the Supreme Court held that the notice of determination of tenancy even if disputed loses its significance since filing of the suit itself amounts to determination of tenancy. In the present case, the suit, prior to being adjudicated on admissions on 15.05.2013, had remained pending since the year 2008 and the appellant thus had more than five years notice of the respondents / landlords not wanting to continue with the appellant as the tenant.

18. The counsel for the appellant at this stage under instructions from the appellant states that the appellant withdraws the appeal and does not want to challenge the order of ejectment and only seeks time till 31.01.2014 to vacate the premises.

19. The counsel for the respondents has no objection subject to an undertaking to the said effect being given by appellant.

20. The appellant through counsel undertakes to this Court to hand over vacant peaceful, physical possession of the entire portion to property No.A-69, Gulmohar Park, New Delhi in possession and use of the appellant to the respondent on or before 31.01.2014 and to clear all charges for electricity, water etc. of the said portion prior thereto and to till the date of handing over possession continue to month by month pay the amount at the rate of the last paid rent to the respondents.

21. The aforesaid undertaking of the appellant is accepted and the appellant is ordered to be bound thereby.

22. The appeal is resultantly dismissed as withdrawn.

23. However, subject to the appellant complying with the undertaking, the decree for possession is made inexecutable till 31.01.2014.

24. The Trial Court record be sent back forthwith as the same may be required for inquiry into *mesne* profits.

RAJIV SAHAI ENDLAW, J.

JULY 29, 2013

‘gsr’..