

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

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Date of decision: 16th September, 2013

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RFA No.438/2013

SH. RAM KUMAR

.....Appellant

Through: Mr. G.S. Raghav and Mr. Pankaj
Kumar, Advs.

Versus

SH. S.K. GULATI

..... Respondent

Through: Mr. Sanjeev Sindhwani, Sr. Adv. with
Mr. Siddhart Aggarwal, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

Caveat No.810/2013.

1. The counsel for the caveator appears. The caveat stands discharged.

CM No.14445/2013 (for exemption).

2. Allowed, subject to just exceptions.

3. The application stands disposed of.

RFA No.438/2013 & CM No.14444/2013 (for stay).

4. This appeal impugns the judgment and decree dated 8th August, 2013 of ejectment of the appellant from shop No.103-B, 1st Floor, Meghdoot Building, 94 Nehru Place, New Delhi earlier in the tenancy of the

appellant/defendant and for recovery of *mesne* profits/damages for use and occupation from the appellant/defendant.

5. The counsel for the appellant/defendant on enquiry states that copies of the entire relevant Trial Court record have been filed along with the Memorandum of Appeal. With the consent of the counsels the appeal has been heard finally.

6. The counsel for the appellant/defendant has argued that the respondent/plaintiff is not entitled to a decree for ejectment because (i) the respondent/plaintiff is not the owner of shop No.103-B supra in the tenancy of the appellant/defendant; (ii) the respondent/plaintiff is not the landlord of the shop in the tenancy of the appellant/defendant; and, (iii) the tenancy of the appellant/defendant has not been determined.

7. Even though the aspect of termination of tenancy ordinarily ought to be discussed after the aspect of existence of relationship of landlord-tenant but considering the way the argument thereon has turned, I am taking up the aspect of determination of tenancy first.

8. The counsel for the appellant/defendant has argued that the Addl. District Judge has on the aspect of determination of tenancy relied on ***Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha (HUF)*** 2011

(183) DLT 712 laying down that service of summons of the suit is sufficient service of the notice upon the defendant of the landlord not wanting to continue with the defendant as a tenant.

9. Upon attention of the counsel for the appellant/defendant being invited to the fact that *Jeevan Diesels & Electricals Ltd.* supra is based on the judgment of the Supreme Court in *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)* (2008) 2 SCC 728, also followed by the Division Bench of this Court in *Sri Ram Pistons & Rings Ltd. Vs. C.B. Agarwal HUF* MANU/DE/2381/2008, the counsel for the appellant/defendant though not controverting the said position contends that *Nopany Investments (P) Ltd.* is a judgment of a two Judge Bench of the Hon'ble Supreme Court and though has noticed the earlier judgment of the seven Judge Bench of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal* (1979) 4 SCC 214 but in so far as holds so is contrary to *V. Dhanapal Chettiar*. Attention is invited to paras 5 & 6 of *V. Dhanapal Chettiar* to contend that the same lays down that until and unless the lease is determined, the lessee is entitled to continue in possession. It is argued that the law as laid down in *Nopany Investments (P) Ltd.* to the effect that no determination of tenancy prior to the institution of the suit is necessary, is contrary to the judgment of the

Constitution Bench in *V. Dhanapal Chettiar* and this Court should follow *V. Dhanapal Chettiar* and not *Nopany Investments (P) Ltd.* Else, it is not disputed that Supreme Court in *Nopany Investments (P) Ltd.* has held that filing of an eviction suit under the general law itself is a notice to quit on the tenant and that no notice to quit under Section 106 of the Transfer of Property Act, 1882 was necessary in order to enable the respondent in that case to get a decree for eviction against the appellant.

10. The question, for determination of which a Bench of seven Judges was constituted in *V. Dhanapal Chettiar*, was whether in order to get a decree of eviction against a tenant under any State Rent Control Act it was necessary to give a notice under Section 106 of the Transfer of Property Act. The said question was answered by holding that no notice to quit under Section 106 of the Transfer of Property Act was necessary to enable the landlord to get an order of eviction under the State Rent Control Act. While holding so, the Supreme Court observed:-

“that the action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or decree for eviction; until then, under the extended definition of the word

‘tenant’ under the various State Rent Acts the tenant continues to be a tenant even though the contractual tenancy has been determined by giving a valid notice under Section 106 of the Transfer of Property Act The giving of the notice, therefore, is a mere surplusage and unlike the law under the Transfer of Property Act it does not entitle the landlord to evict the tenant”

11. It would thus be seen the question, whether filing of an eviction suit under the general law itself is a notice to quit on the tenant, as answered in affirmative in *Nopany Investments (P) Ltd.* did not arise for consideration in *V. Dhanapal Chettiar*. It is a settled principle of law that a judgment is a precedent on what is for decision therein and what it decides and not on what can be inferred therefrom. (See *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd.* (2003) 2 SCC 111, *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate* (2005) 2 SCC 489 and *Inderpreet Singh Kahlon Vs. State of Punjab* AIR 2006 SC 2571)

12. I am therefore unable to find any case of inconsistency in the two judgments, as is argued.

13. Moreover it is not the case of the appellant/defendant that he has a registered contract for continuing as a tenant in the premises. In the absence thereof, the tenancy of the appellant/defendant would be a month to month tenancy, terminable by 15 days notice. The purpose of such a notice of

determination of tenancy is to inform the tenant that the landlord does not desire to continue with the tenancy and to give time to the tenant to vacate the premises and deliver possession thereof. The suit from which this appeal arises was filed in or about October, 2008 and has finally been decreed after nearly five years on 8th August, 2013. The appellant/defendant immediately on service of summons of the suit, which may have happened in October/November, 2008, had notice that the landlord was not wanting to continue with him as a tenant. The appellant/defendant has had more than sufficient notice of such intent and desire of the landlord i.e. of nearly five years instead of 15 days only as required by law and cannot after five years be heard to say that he has not had notice. Service of notice is after all means to an end and when the Courts find that the tenant during the long pendency of the suit has had enough notice, it would be travesty of justice to non-suit a landlord after so many years on the ground of service of notice of determination of tenancy having not been proved. Notice, in such a situation, in my view becomes a surplusage. The only effect of non-proof of notice in such a case can be to disentitle the landlord from *mesne* profits/damages for use and occupation at a rate higher than the last paid rent for the period till the service of the summons of the suit, and no other. In the present case the

mesne profits/damages for use and occupation have been awarded at the rate of last paid rent only and thus that question also does not arise.

14. Be that as it may, the learned Addl. District Judge in the present case has not based the finding on the aspect of determination of tenancy on ***Jeevan Diesels & Electricals Ltd.*** alone. The judgment and decree have been made after recording of evidence and on the basis of which evidence a finding of fact of service on the appellant/defendant by registered post AD of a notice of determination of tenancy has been rendered. The AD card of delivery of the said notice on the appellant/defendant bearing the signatures of one Shri Rakesh was returned to the Advocate for the respondent/plaintiff who had issued the said notice. It has come during the cross examination of the appellant/defendant that Shri Rakesh is the brother of the appellant/defendant. The only plea of the appellant/defendant and which has not been accepted by the learned Addl. District Judge is that the said Shri Rakesh had no authority to receive the postal articles in the name of the appellant/defendant.

15. I have as such enquired from the counsel for the appellant/defendant as to what is wrong with the aforesaid factual finding. The rules of the Post Office allow delivery of registered postal articles on adult family members.

Once the notice has been delivered at the premises of the appellant/defendant and has been received by the brother of the appellant/defendant, the same is due service of notice.

16. The counsel for the appellant/defendant candidly admits that he has no argument to challenge the aforesaid factual finding and his only argument is of the notice given by the respondent/plaintiff being defective for the reason of the respondent/plaintiff being not the landlord.

17. Once that is so and a notice of determination of tenancy is admitted to have been served on the appellant/defendant, the challenge on the ground of inconsistency between *Nopany Investments (P) Ltd.* and *V. Dhanapal Chettiar* even otherwise disappears.

18. The respondent/plaintiff in the plaint, on the aspect of relationship of landlord and tenant, had pleaded:-

- (a). that initially the entire shop No.103 was taken on rent by the appellant/defendant and the respondent/plaintiff jointly at a monthly rent of Rs.20,000/- from Smt. Chander Mohini Jolly and her son Shri Poonam Kumar Jolly;
- (b). that the said shop was later on divided between the appellant/defendant and the respondent/plaintiff and both of

them began to pay rent separately for their respective portions and the rent was increased to Rs.12,000/- per month and the appellant/defendant had so paid the rent till 31st March, 2008;

- (c). that Smt. Chander Mohini Jolly, the allottee/owner of the shop transferred the entire shop to the respondent/plaintiff and informed the appellant/defendant of the same vide letter dated 25th March, 2008 and also asked the appellant/defendant to pay rent to the respondent/plaintiff;
- (d). that the appellant/defendant thus became a tenant under the respondent/plaintiff, liable to pay rent at Rs.12,000/- per month w.e.f. 1st April, 2008 and which he failed to pay; and,
- (e). that the respondent/plaintiff thereafter as aforesaid determined the tenancy.

19. The appellant/defendant in his written statement:-

- (i). denied any relationship of landlord and tenant with the respondent/plaintiff and claimed that he had never attorned to the respondent/plaintiff as he never paid rent to him;
- (ii). challenged the sale of the shop in favour of the respondent/plaintiff;

- (iii). pleaded that Shri K.R. Jolly was the owner of the premises who died leaving behind his widow Smt. Chander Mohini Jolly, five sons including Shri Poonam Kumar Jolly and three daughters; Shri Poonam Kumar Jolly also died leaving behind his widow Smt. Nupur Jolly and two sons;
- (iv). the sons and daughters of Shri K.R. Jolly had not sold the shop to the respondent/plaintiff; and,
- (v). that Smt. Nupur Jolly was the landlady of the appellant/defendant who used to receive rent from him and had so received rent till 17th March, 2008; prior to her, her husband Shri Poonam Kumar Jolly used to receive rent.

20. The respondent/plaintiff in his replication *inter alia* pleaded, that Shri K.R. Jolly had died in the year 1983 while the shop was initially let out to the appellant/defendant and the respondent/plaintiff in the year 1994; that though Smt. Chander Mohini Jolly had let out the shop but on her request the rent was sometimes paid in the name of her son Shri Poonam Kumar Jolly; that Smt. Nupur Jolly never had any right, title or interest in the property and the rent if any paid to Shri Poonam Kumar Jolly or Smt. Nupur

Jolly did not make them landlords as the said payments were as per the directions of Smt. Chander Mohini Jolly.

21. During the pendency of the suit, Smt. Nupur Jolly made an application for being impleaded as a party to the said suit but which application was dismissed vide order dated 20th October, 2009. The counsels inform that neither Smt. Nupur Jolly nor any other heir of Shri K.R. Jolly or Smt. Chander Mohini Jolly has since then asserted any rights as owner/landlord of the part of the shop in the tenancy / occupation of the appellant/defendant.

22. Vide the same order i.e. of 20th October, 2009 the application filed by the respondent/plaintiff under Order 15A of the CPC (as introduced in Delhi) was also allowed and the appellant/defendant was directed to pay arrears of rent and future rent/ occupation charges and it is informed, has so paid.

23. It has been enquired whether Smt. Nupur Jolly or any other member of her family has laid any claim on the said rent.

24. The answer is in the negative.

25. The respondent/plaintiff in his evidence proved an agreement of allotment of the said shop No.103 by the builder of the multi-storied

building in which the said shop is situated in favour of Smt. Chander Mohini Jolly. The said agreement also contains notation of assignment of rights of Smt. Chander Mohini Jolly therein and in shop No.103 in favour of the respondent/plaintiff on 27th March, 2008.

26. The learned Addl. District Judge has on the evidence led held the respondent/plaintiff to have proved a better title qua the property in his favour and held it to have been established that Smt. Chander Mohini Jolly was the owner of the shop and had assigned the same to the respondent/plaintiff and the respondent/plaintiff was thus the landlord. It was also held that the appellant/defendant had failed to examine Smt. Nupur Jolly to prove in what capacity she was accepting the rent from the appellant/defendant. Weightage has also been given to the fact that no challenge to the title of the respondent/plaintiff had been made by any of the heirs of Shri K.R. Jolly.

27. The counsel for the appellant/defendant relies on ***Brahma Nand Puri Vs. Neki Puri*** AIR 1965 SC 1506 to contend that a plaintiff, to succeed in a suit for ejectment, has to establish his title and if does not establish title, must fail.

28. However the suit in the judgment aforesaid was a suit for recovery of possession on the basis of title. The suit from which this appeal arises is not for ejectment of the appellant/defendant or for recovery of possession of the part of the shop from the appellant/defendant on the basis of title but on the basis of relationship of landlord and tenant. 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. In the said view of the matter, the reference by the counsel for the appellant/defendant to *Suraj Lamp & Industries P. Ltd. v. State of Haryana* (2012) 1 SCC 656 also is misconceived. In any case the said judgment, the

counsel for the appellant/defendant also agrees has been expressly made prospective and the transaction in the present case is of a date prior thereto.

29. It is the further contention of the counsel for the appellant/defendant that there is no registered document of title, neither in favour of Smt. Chander Mohini Jolly through whom the respondent/plaintiff claims title as landlord/owner nor from Smt. Chander Mohini Jolly in favour the respondent/plaintiff.

30. The part of the shop in occupation of the appellant/defendant is an 'apartment' within the meaning of the Delhi Apartment Ownership Act, 1986. Section 4 thereof confers on every person to whom any apartment is allotted, sold or transferred by the promoter, exclusive ownership and possession of the apartment so allotted, sold or transferred. The said Act envisages the execution of a 'Deed of Apartment' in favour of the owners of the apartments and transfer of apartments through the Deed of Apartment. Though the said legislation was brought nearly 25 years ago but the process of execution of Deeds of Apartment in favour of allottees, transferees purchasers of such apartments has not commenced and which led to filing of a Public Interest Litigation being W.P.(C) No. 1959/2007 titled ***O.S. Bajpai Vs. the Administrator (Lt. Governor of Delhi)*** in this Court, disposed of

vide judgment dated 28.05.2010 and in which certain other directions were issued vide order dated 13.07.2012. However even the said directions are yet to take shape. In the absence thereof, the apartments continue to be allotted/sold by such documents as exist in favour of the respondent/plaintiff.

31. This is as aforesaid, a litigation between the person claiming to be having rights as owner in an apartment, and the tenant in occupation of the apartment. Once it is found that the person claiming rights in the apartment has rights as per the practice prevalent, even if there may be any imperfections under the law with respect to such title, the said imperfections cannot **vest** the tenant with a benefit against a person claiming such rights in the apartment and such imperfections would not come in the way of such person having rights in the apartment, exercising his rights as landlord thereof.

32. In the present case not only has the agreement with respect to the said shop in favour of Smt. Chander Mohini Jolly and assignment by Smt. Chander Mohini Jolly of rights therein and in the shop No.103 in favour of the respondent/plaintiff been proved but from the factum of none else claiming adversely to the respondent/plaintiff with respect to the said shop

now at least for the last five years also, the title of the respondent/plaintiff as landlord is established.

33. Though the counsel for the appellant/defendant has also referred to paras 147 and 151 of the judgment of the Full Bench of the Calcutta High Court in *Ratanlal Bansilal Vs. Kishorilal Goenka* AIR 1993 Calcutta 144 but neither is the same found applicable to the facts of the present case nor has the counsel, except for citing the same, attempted to show as to how the same is applicable.

34. The counsel for the appellant/defendant has next contended that the respondent/plaintiff is not the landlord because the appellant/defendant has never paid rent to the respondent/plaintiff or dealt with him as landlord.

35. I am afraid the aforesaid contention is also in oblivion of the settled legal position. It has been held in *Nalakath Sainuddin Vs. Koorikadan Sulaiman* (2002) 6 SCC 1, *Mahendra Raghunathdas Gupta Vs. Vishwanath Bhikaji Mogul* (1997) 5 SCC 329 and *Mohar Singh Vs. Devi Charan* (1988) 3 SCC 63 that on transfer of tenanted premises by the landlord, the transferee automatically becomes the landlord of the tenant by operation of law and the coming into being of the relationship of landlord and tenant between the transferee and tenant is not dependent upon any overt

act on the part of the tenant. In the present case, no document of rights if any in the said shop in favour of any other heir of Shri K.R. Jolly is shown and thus payment of rent even if any by the appellant/defendant to any other heir of Shri K.R. Jolly would be of no avail; as aforesaid, it has been established that it was Smt. Chander Mohini Jolly who was the owner of the said shop and who has assigned the same in favour of the respondent/plaintiff and it is thus the respondent/plaintiff alone who will be the landlord.

36. There is thus no merit in this appeal which is dismissed. However the same having been disposed of expeditiously, no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 16, 2013

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