

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

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Date of decision: 16th December, 2013

+ RFA No.569/2013 & CMs No.19418/2013 (for condonation of 85 days delay in filing the appeal) & 19417/2013 (for stay)

PRAVEEN KUMAR

..... Appellant

Through: Mr. Shiv Dhupia, Adv.

Versus

SURINDER MAHAJAN

..... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment the decree dated 28.05.2013 (of the Court of Additional District Judge (ADJ), Tis Hazari Court, Delhi in suit No.580/2012 filed by the respondent) of recovery of possession from the appellant of Janta Flat bearing No.A-4/16, 3rd Floor, DDA Flats, Paschim Vihar, New Delhi together with a decree for recovery from the appellant of Rs.14,200/- towards arrears of rent with interest and a decree for recovery of *mesne profits* / damages for use and occupation at the rate of Rs.4,500/- per month with effect from 01.12.2008 till the delivery of possession.

2. The appeal came up first before this Court on 06.12.2013 when inspite of hearing the counsel for the appellant at sufficient length, no merit was found in the appeal; the counsel for the appellant had then sought adjournment for today. While so granting adjournment, the Trial Court record was also requisitioned and has been received. The counsel for the appellant has today reiterated the same arguments and not stated anything new. The Trial Court record has been perused.

3. The respondent / plaintiff instituted the suit from which this appeal arises, pleading:

- (a) that the respondent / plaintiff is the owner of the flat aforesaid;
- (b) that the appellant / defendant was inducted as a tenant in the said flat by the previous owner at a rent of Rs.3,550/- per month exclusive of water and electricity charges for a period of eleven months only;
- (c) that upon the respondent / plaintiff purchasing the property, the appellant / defendant was informed of the same and asked to pay rent to the respondent / plaintiff and to on

vacation of the premises deliver possession to the respondent / plaintiff;

- (d) that the appellant / defendant however failed to vacate the premises and also stopped paying the rent; and,
- (e) accordingly, a legal notice dated 27.11.2008 of termination of tenancy was got served on the appellant / defendant.

Accordingly, the suit aforesaid for the reliefs of ejectment, recovery of arrears of rent and *mesne profits* was filed.

4. The appellant / defendant contested the suit, by filing the written statement, on the grounds:

- (i) that neither the respondent / plaintiff nor the persons from whom the respondent / plaintiff claimed to have purchased the flat were the owners thereof;
- (ii) that the actual and lawful owner of the flat was one Mr. Avtar Singh who had let out the said flat to the appellant / defendant at a rent of Rs.1,850/- per month excluding

electricity and water charges and the appellant / defendant had been paying rent to the said Mr. Avtar Singh;

- (iii) that the said Mr. Avtar Singh had taken a friendly loan of Rs.2,00,000/- from the appellant / defendant and instead of returning the same started threatening the appellant / defendant with dispossession from the said flat;
- (iv) that the appellant / defendant filed a suit for permanent injunction in the Court of Civil Judge, Delhi where the said Mr. Avtar Singh was restrained from forcibly dispossessing the appellant / defendant from the said flat;
- (v) that the said Sh. Avtar Singh also got disconnected the electricity to the said flat and another suit for mandatory injunction had been filed by the appellant / defendant against the said Sh. Avtar Singh for restoration of electricity supply;
- (vi) that the documents of purchase of the flat relied by the respondent / plaintiff were not registered; and,

(vii) that the appellant / defendant had not entered into any rent agreement at the rate of Rs.3,550/- per month with Smt. Sonia Verma and Smt. Tejender Kaur from whom the respondent / plaintiff claimed to have acquired the flat.

5. Needless to state, replication was filed by the respondent / plaintiff controverting the defence and reiterating his case. It was also pleaded that the documents of acquisition of the flat in favour of the respondent / plaintiff were duly registered.

6. On the pleadings of the parties, the following issues were framed in the suit on 28.10.2009:

- “1. Whether plaintiff has locus standi to file the suit? OPP*
- 2. Whether the defendant is a tenant under plaintiff as per valid & genuine rent agreement dated 08.10.2007? OPP*
- 3. Whether plaintiff is entitled for a decree of possession, as prayed for? OPP*
- 4. Whether plaintiff is entitled for any arrears of rent, if so, for which period? OPP*

5. *Whether plaintiff is entitled for any interest on arrears, if so, at what rate and for which period? OPP*
6. *Whether plaintiff is entitled for any damages / mesne profits, if so, at what rate and period? OPP*
7. *Relief.”*

7. The respondent / plaintiff examined four witnesses including the previous owner of the flat who were claimed to have inducted the appellant / defendant as a tenant in the flat and who had transferred the flat to the respondent / plaintiff and the witness to the rent agreement executed between the previous owner and the appellant / defendant. The appellant / defendant examined himself only in his defence.

8. The learned ADJ, in the impugned judgment, has found/ observed / held :

- (A) though the appellant / defendant claimed Sh. Avtar Singh to be the owner of the flat but had neither examined Sh. Avtar Singh nor placed any documentary evidence to show his ownership of the flat;

- (B) that though in the sale documents in favour of the respondent / plaintiff the floor of the flat was stated to be as first instead of third but the number of the flat was the same i.e. A-4/16 in which the appellant / defendant claimed to be the tenant and thus the mention of the floor on which the flat was situated as first in the said sale documents in favour of the respondent / plaintiff was obviously a typographical error;
- (C) that the appellant / defendant had failed to place on record any agreement or receipt to substantiate his claim of having advanced Rs.2,00,000/- to Sh. Avtar Singh;
- (D) that the appellant / defendant had also not placed any document on record to show that he was paying rent at Rs.1,850/- per month to the said Sh. Avtar Singh;
- (E) the respondent / plaintiff had proved the rent agreement vide which the previous owner had let out the said flat to the appellant / defendant by examining the previous owner and the witnesses to the said rent agreement;

- (F) that the respondent / plaintiff had also proved that the request for verification of the appellant / defendant as a tenant, was by Sh. Ajay Kumar Verma who is the husband of the one of the previous owners Smt. Sonia Verma;
- (G) though the appellant / defendant in his evidence had denied his signatures on the rent agreement but had been unable to show any document of having been inducted into the flat at a rent of Rs.1,850/- per month by Sh. Avtar Singh; and,
- (H) that the appellant / defendant in his cross examination admitted that he was not paying rent in respect of the flat to anyone.

Accordingly, the suit was decreed as aforesaid.

9. The counsel for the appellant / defendant has argued that the documents by which the respondent / plaintiff claims to have acquired the flat are a registered Agreement to Sell and General Power of Attorney in his favour and which do not confer any title.

10. Undoubtedly so. However this suit was filed by the respondent / plaintiff as landlord against the appellant / defendant stated to be in occupation of the flat as a tenant. In such a suit, the plaintiff is not required to be the absolute owner. What is required is only a title as a landlord. The said title is amply borne out from Smt. Sonia Verma and Smt. Tejender Kaur who have agreed to sell the flat to the respondent / plaintiff having in part performance thereof put the respondent / plaintiff into possession thereof and having empowered the respondent / plaintiff to do various acts, deeds and things with respect thereto.

11. I have in *Sanjay Singh Vs. M/s Corporate Warranties Pvt. Ltd.* MANU/DE/3099/2013 had a occasion to deal in detail with the said aspect by reference to a number of judgments including of the Supreme Court and need is thus not felt to elaborate further on the matter.

12. It may only be highlighted that the appellant / defendant is not setting up any title as owner in the said flat in himself. He admittedly is a tenant. His only defence is that he is tenant under Sh. Avtar Singh and not under the respondent / plaintiff. The appellant / defendant has failed

to prove being a tenant under Sh. Avtar Singh. The respondent / plaintiff in such a suit is not required to be the absolute owner of the property.

13. The counsel for the appellant / defendant has also contended that the suit for permanent injunction filed by him against Sh. Avtar Singh has been decreed by the Court of the Civil Judge. A copy of the judgment and decree dated 04.06.2010 of the Court of Civil Judge (Central)-04 in suit No.312/2009 in this regard is handed over.

14. However a perusal of the same shows that the defendant Sh. Avtar Singh had not even chosen to appear in the said suit and the judgment and decree of permanent injunction restraining Sh. Avtar Singh from forcibly dispossessing the appellant / defendant from the flat save by due process of law is an *ex parte* one.

15. If there was any truth in the defence of the appellant / defendant of being a tenant in the flat under Sh. Avtar Singh, the defendant would have definitely informed Sh. Avtar Singh of the claim being made by the respondent / plaintiff against him with respect to the said flat and the said Sh. Avtar Singh would have come before the Court to assert his right in the flat. I have perused the order sheet, no application, neither by the

appellant / defendant for impleading Sh. Avtar Singh nor by Sh. Avtar Singh for impleadment in the suit from which this appeal arises is found to have been filed.

16. No error is found in the reasoning given by the learned ADJ.
17. No other argument has been raised by the counsel for the appellant.
18. There is no merit in this appeal which is dismissed.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 16, 2013
'gsr'..