

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

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Date of decision: 18th September, 2013

+ RFA No.26/2013, CM No.687/2013 (for stay), CM No.2467/2013 (u/S 151 CPC) & CM No.3832/2013 (for cross-objection).

CHEMONS INDIA PVT. LTD.

..... Appellant

Through: Mr. D.N. Goburdhon and Mr. Aayush Chandra, Advs.

Versus

VIJAY SINGH SANDHU

..... Respondent

Through: Ms. Amrit Kaur Oberai with Ms. Neha Mishra & Ms. Jessica Gill, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree (dated 9th October, 2012 of the Court of Addl. District Judge-06 (West District), Tis Hazari Courts in Civil Suit No.312/2012 filed by the respondent/plaintiff) (i) of ejectment of the appellant/defendant from the entire first floor of building No.1, Basant Lok, Vasant Vihar, New Delhi; (ii) recovery from the appellant/defendant of arrears of rent amounting to Rs.2,12,850/- for the period from 1st August, 1994 to 30th June, 1995 along with simple interest at 15% per annum; (iii) for recovery from the appellant/defendant of *mesne* profits/damages for use and occupation at Rs.40,000/- per month w.e.f. 1st July, 1995 till the delivery of possession of the premises together with interest at 15% per annum on arrears thereof from the end of each month and till the date of payment. The

appellant/defendant has been permitted to adjust from the amount so payable by him the amounts paid to the respondent/plaintiff during the pendency of the suit.

2. Notice of the appeal was issued and the Trial Court record requisitioned; however rather than imposing any condition of deposit/payment on the appellant/defendant for stay of execution of the decree, with the consent of the counsels the appeal was set down for hearing finally.

3. The counsels have been heard and the Trial Court record perused.

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

- (a). that the premises aforesaid were let out to the appellant/defendant by his father Lt. Col. G.M.S. Sandhu vide Lease Deed dated 16th August, 1990 at the rent of Rs.15,000/- per month for a period of four years commencing from 1st March, 1990;
- (b). that though the said Lease Deed provided that the same could be extended at the option of the appellant/lessee, but on execution of a fresh Lease Deed;
- (c). that his father Lt. Col. G.M.S. Sandhu was holding the property in which the premises are situated as *karta* of his HUF and pursuant to an oral partition between the members of the HUF as recorded in the Memorandum of Partition dated 24th March, 1991, the premises in the tenancy of the appellant/defendant

vested exclusively in the respondent/plaintiff and the appellant/defendant was informed of the same;

- (d). that though on expiry of the term of the lease on 28th February, 1994 the appellant/defendant increased the rent w.e.f. 1st March, 1994 to Rs.18,000/- per month but no fresh Lease Deed was executed and the appellant/defendant became a tenant from month to month in the premises;
- (e). that upon the demise of Lt. Col. G.M.S. Sandhu on 14th August, 1994 the appellant/defendant was directed to deposit the rent in the bank account of the respondent/plaintiff and though no claim to the said rent was made by any of the other heirs of Lt. Col. G.M.S. Sandhu or family members, the appellant/defendant failed to pay rent inspite of numerous requests and reminders;
- (f). that ultimately vide Legal Notice dated 8th March, 1995 demand for arrears of rent was made and the tenancy of the appellant/defendant was determined;
- (g). that the appellant/defendant neither paid the arrears of rent nor vacated the premises.

Accordingly, the suit for recovery of arrears of rent, ejectment and *mesne* profits/damages for use and occupation @ Rs.50,000/- per month was filed.

5. The appellant/defendant contested the suit by filing a written statement pleading:-

- (i). that the respondent/plaintiff was neither the owner nor the landlord;
- (ii). that the landlord under the Lease Deed dated 16th August, 1990 had a duty to execute a fresh Lease Deed w.e.f. 1st March, 1994 and which had not been done though the appellant/defendant as per the Agreement had enhanced the rent;
- (iii). that the respondent/plaintiff claiming to be the landlord was not entitled to file the suit without first executing the fresh Lease Deed;
- (iv). that the other legal heirs of Lt. Col. G.M.S. Sandhu were necessary and property parties to the suit;
- (v). that there could be no partition as claimed by the respondent/plaintiff without a registered instrument;
- (vi). that Lt. Col. G.M.S. Sandhu even after the alleged partition was accepting the rent in his own right and not on behalf of the respondent/plaintiff;
- (vii). that Lt. Col. G.M.S. Sandhu had signed the Lease Deed in his individual capacity and not as *karta* of HUF;
- (viii). that Lt. Col. G.M.S. Sandhu in his lifetime never informed the appellant/defendant of any partition;
- (ix). that the respondent/defendant had filed a separate suit for specific performance for registration of the Lease Deed w.e.f. 1st March, 1994;

- (x). without the appellant/defendant being supplied legal documents of title of the respondent/plaintiff, the appellant/defendant could not be compelled to pay the rent to the respondent/plaintiff;
- (xi). that a reply dated 20th March, 1996 had been given to the Notice dated 8th March, 1995;
- (xii). that the Notice dated 8th March, 1995 was not valid; and,
- (xiii). that the letting value of the premises was not Rs.50,000/- per month.

6. The respondent/plaintiff filed a replication *inter alia* pleading that the suit filed by the appellant/defendant against the respondent/plaintiff, his mother and his two brothers for specific performance of the alleged Agreement of renewal of lease was dismissed vide judgment dated 25th January, 2001 and the said judgment had become final between the parties. Else, the contents of the written statement were denied and the case in the plaint reiterated.

7. On the pleadings aforesaid of the parties, the following issues were framed on 6th March, 1996:-

- “1) Whether the plaintiff is entitled to a decree of possession of the suit property as prayed for? OPP
- 2) Whether the plaintiff is entitled to a decree in the sum of Rs.2,12,850/- if so, the rate of interest which the plaintiff is entitled? OPP
- 3) Whether the plaintiff is not the owner/landlord of the suit property if so, its effect? OPD
- 4) Whether the plaintiff was under an obligation to create a fresh lease deed dated 1.3.1994 and its effect? OPD

- 5) *Whether the suit is bad for misjoinder of the necessary parties? OPD*
- 6) *Whether the tenancy of the defendant has not been legally and validly terminated? OPD*
- 7) *Relief.”*

8. The appellant/defendant stopped appearing after the framing of issues aforesaid and was proceeded against *ex parte* and an *ex parte* judgment and decree dated 4th October, 1997 of ejectment of the appellant/defendant and for recovery of arrears of rent was passed and an enquiry into *mesne* profits ordered. The appellant/defendant thereafter applied for setting aside of the *ex parte* decree and evidence and which application on concession of the respondent/plaintiff was allowed subject to the appellant/defendant paying arrears of use and occupation charges @ Rs.18,000/- per month and the *ex parte* judgment and decree was set aside and the suit put to trial. The respondent/plaintiff besides himself examined two other witnesses. The appellant/defendant examined its Managing Director Mr. Chetan Seth and one other witness.

9. The learned Addl. District Judge has in the impugned judgment found/observed/held:-

- (I). that the appellant/defendant had admitted that it was inducted as a tenant in the premises by Lt. Col. G.M.S. Sandhu father of the respondent/plaintiff vide registered Lease Deed;
- (II). it was also an admitted fact that the respondent/plaintiff was one of the legal heirs of Lt. Col. G.M.S. Sandhu and thus the co-owner of the property;

- (III). that a Memorandum of Partition which is drawn after partition has already taken place is not compulsorily registerable; as per the Memorandum of Partition proved, the respondent/plaintiff alone was the owner/landlord of the premises;
- (IV). that even if there was no partition between the legal heirs of the original lessor Lt. Col. G.M.S. Sandhu, there was no bar to the respondent/plaintiff filing the suit without impleading the other legal heirs; reliance in this regard was placed on ***Kanta Udheram Jagasia Vs. C.K.S. Rao*** AIR 1998 SC 569;
- (V). that the respondent/plaintiff was thus owner/landlord and entitled to maintain the suit without impleading the other legal heirs of Lt. Col. G.M.S. Sandhu;
- (VI). that the clause in the registered Lease Deed regarding renewal of lease was as under:-

*“4(ii) The term and condition of this lease is extendable at the option of the lessee for such period or periods of time not exceeding 4 years each as may be specified by the lessee in the notice of extension except the term relating to the rent which will be calculated as under:
At the time of each extension the rent will be increased by twenty percent and the parties will execute a fresh Lease deed.”*

- (VII). that as per the aforesaid clause the Lease Deed could have been extended only by enhancing the rent by 20% and execution of a fresh Lease Deed;

- (VIII). that though the rent had been enhanced but no fresh Lease Deed was executed;
- (IX). that the claim of the appellant/defendant for renewal of the lease stood dismissed vide judgment in the suit for specific performance filed by the appellant/defendant and which issue was *res judicata*;
- (X). that the service of the notice of determination of tenancy was not disputed and the appellant/defendant had failed to discharge the onus that the notice was not valid;
- (XI). that the respondent/plaintiff was thus entitled to the relief of ejectment of the appellant/defendant;
- (XII). that the witness PW2 produced by the respondent/plaintiff had proved that the second floor of 46, Basant Lok, New Delhi was let out to United India Insurance Co. at a rent of Rs.70 per sq. ft. per month w.e.f. 1st March, 2000 to 28th February, 2003;
- (XIII). that the witness PW3 produced by the respondent/plaintiff had proved that the first floor of 5, Community Centre, Vasant Lok, Vasant Vihar, New Delhi had been let out at Rs.1,12,000/- per month to be enhanced by 10% every year;
- (XIV). that the testimonies of the aforesaid two witnesses had remained unrebutted;
- (XV). that judicial notice could also be taken of increase in rent of commercial premises in metropolitan cities;

- (XIV). that in comparison the appellant/defendant had been paying only Rs.18,000/- per month for an area of 1568 sq. ft.; and,
- (XV). accordingly *mesne* profits/damages for use and occupation @ Rs.40,000/- per month were awarded.

10. The counsel for the appellant/defendant has argued:-

- (a). that as per the clause aforesaid of the registered Lease Deed the appellant/defendant was entitled to renewal of the Lease Deed every four years on increase in rent;
- (b). that the dismissal of the suit filed by the appellant/defendant for specific performance of the aforesaid Agreement was on technicalities and not on merits;
- (c). that the respondent/plaintiff is only one of the heirs of Lt. Col. G.M.S. Sandhu who had let out the premises to the appellant/defendant;
- (d). though the appellant/defendant claimed to be owner/landlord under a partition effected amongst the family members but the Partition Deed is not registered;
- (e). that a co-sharer could not file a suit for ejectment of a tenant without impleading the other co-sharers;
- (f). that though the respondent/plaintiff in the plaint had sought an enquiry under Order 20 Rule 12 of the CPC into *mesne* profits but instead a decree for recovery of *mesne* profits @

Rs.40,000/- per month had been passed and which could not have been done;

- (g). that the verification of the plaint was defective;
- (h). that the learned Addl. District Judge has erred in relying on Ex. PW1/X1 being a registered Memorandum of Family Settlement between the respondent/plaintiff and his mother and brothers to hold that the respondent/plaintiff was the exclusive owner/landlord of the premises in the tenancy of the appellant/defendant when the same was executed much after the institution of the suit and which affirms that as on the date of the institution of the suit the respondent/plaintiff had no right to claim possession, ejectment or *mesne* profits or even rent;
- (i). that the same also falsifies the basis on which the suit had been filed;
- (j). that there is no pleading of the said Memorandum of Family Settlement;
- (k). reliance is placed on (i) ***Siddik Mahomed Shah Vs. Mt. Saran*** AIR 1930 Privy Council 57 (1); (ii) ***Moran Mar Basselios Catholicos Vs. Thukalan Paulo Avira*** AIR 1959 SC 31; and, (iii) ***Prataprai N. Kothari Vs. John Braganza*** (1999) 4 SCC 403 to contend that no evidence beyond pleadings can be looked into;
- (l) that the respondent/plaintiff had played a fraud by pleading that the property was owned by a HUF and partition of the HUF;

reliance is placed on ***Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat*** (2008) 12 SCC 353 and on ***S.P. Chengalvaraya Naidu Vs. Jagannath*** (1994) 1 SCC 1 on the said aspect;

- (m). that the tenancy of the appellant/defendant after the demise of Lt. Col. G.M.S. Sandhu could not be split. Reliance in this regard is placed on (i) ***Habibunnisa Begum Vs. G. Doraikannu Chettiar*** (2000) 1 SCC 74; (ii) ***Niranjana Dass Vs. Trilok Chand*** 1995 Supp (3) SCC 196; (iii) ***Sk. Sattar Mohd. Choudhary Vs. Dundappa Amabadas Bukate*** (1996) 6 SCC 373; (iv) ***Kanakarathanammal Vs. Loganatha Mudaliar*** AIR 1965 SC 271; and, (v) ***Nanlal Girdharlal Vs. Gulamnabi Jamalbhai Motorwala*** AIR 1973 Gujarat 131;
- (n). that the learned Addl. District Judge ought not to have recorded evidence on the aspect of *mesne* profits as the claim of the respondent/plaintiff was only for enquiry. Reliance in this regard is placed on (i) ***Sobhagya Advertising Service Vs. Saraswati Devi*** 168 (2010) DLT 652; (ii) ***D.N. Kalia Vs. R.N. Kalia*** 178 (2011) DLT 294; (iii) ***Gurudas Kundu Choudhury Vs. Kumar Hemendra Kumar Roy*** AIR 1929 Privy Council 300; (iv) ***Harry Kempson Gray Vs. Bhagu Mian*** AIR 1930 Privy Council 82; (v) ***Rattan Lal Vs. Girdhari Lal*** AIR 1972 Delhi 11; and, (vi). ***Fateh Chand Vs. Balkishan Dass*** AIR 1963 SC 1405; and,

- (o). that the decree awards interest even on the amounts which have already been paid.

11. Per contra, the counsel for the respondent/plaintiff has contended that:-

- (i). property was shown by Lt. Col. G.M.S. Sandhu as well as respondent as belonging to the HUF in the records maintained by the Army as well as in the Income Tax Returns;
- (ii). that the other legal heirs of Lt. Col. G.M.S. Sandhu who were also impleaded by the appellant/defendant in the suit filed for specific performance of the Agreement of Renewal of Lease, in their written statement had affirmed that the respondent/plaintiff alone was the owner/landlord of the premises in the tenancy of the appellant/defendant;
- (iii). that the Memorandum dated 24th March, 1991 of partition was with respect to this property only and the Memorandum of Family Settlement dated 11th February, 2004 Ex. PW1/XI was necessitated to settle the other properties also;
- (iv). reliance is placed on ***Bhagwati Prasad Vs. Chandramaul*** AIR 1966 SC 735 in support of the award by the impugned judgment and decree of the *mesne* profits.

12. Before dealing with the contentions of the counsel for the appellant / defendant, I may highlight that it is not in dispute, (i) that the occupation of the appellant of the premises was as a tenant; (ii) that the rent of the premises being in excess of ₹3,500/- per month the appellant does not enjoy

the protection from eviction under the Delhi Rent Control Act, 1958. I may also notice that the Supreme Court in *Nopany Investments (P) Ltd. Vs. Santokh Singh* (2008) 2 SCC 728 followed by the Division Bench of this Court in *Sri Ram Pistons & Rings Ltd. Vs. C.B. Agarwal HUF* MANU/DE/2381/2008, has held that the service of summons of a suit for ejectment on a tenant is by itself a determination of tenancy, even if there be any flaw in the determination of tenancy prior to the institution of the suit. It is also not in dispute that there is no registered Lease Deed in force entitling the appellant / defendant to continue in possession of the premises.

13. As far as the contention of the counsel for the appellant / defendant of the right of the appellant / defendant to renewal of the lease is concerned, the said right stands finally adjudicated by dismissal of the suit filed by the appellant / defendant for specific performance of the said agreement of renewal of lease. It matters not whether the said dismissal was on merits or on technicalities. Once it has been held by a competent Court in a suit between the parties and judgment whereof has attained finality that the appellant is not entitled to specific performance of the agreement claimed by it of renewal of lease year after year or on increase on rent, the appellant cannot again agitate the said claim which already stands rejected in its defence to proceeding for ejectment from the premises.

14. As far as the contention of the counsel for the appellant / defendant, of verification of plaint being defective is concerned, the Supreme Court in *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh* (2006) 1 SCC 75 has held that defects of signing and verification cannot be fatal and are curable. There is thus no merit in the said contention also. Moreover, the appellant /

defendant after contesting the suit for a long span of nearly 20 years cannot now be permitted to take such pleas.

15. The only serious contention urged by the counsel for the appellant / defendant is of the suit for ejectment/arrears of rent/*mesne* profits instituted by the respondent / plaintiff who was only one of the four heirs left by Lt. Col. G.M.S. Sandhu who had let out the property to the appellant / defendant, being not maintainable. The counsel for the appellant / defendant has argued that the judgments of the Supreme Court and this Court in the context of eviction petitions under various Rent Control legislations, holding even one of the landlords to be entitled to institute a petition for eviction of the tenant under the said Rent Control legislations would have no application to a civil suit for ejectment after determination of tenancy under Section 106 of the Transfer of Property Act.

16. The aforesaid contention also of the counsel for the appellant / defendant is not in consonance with the judgment of the Supreme Court in ***India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla*** 2004 (3) SCC 178, applying the same principle to a civil suit also for eviction of tenant. It was held to be well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. The principle was held to be based on the doctrine of agency – one co-owner filing a suit for eviction against the tenant was held to be doing so on his own behalf in his own right and as an agent of other co-owners – the consent of other co-owners was assumed as taken unless it was shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement.

17. A Division Bench of this Court in ***Mercury Travels (India) Ltd. Vs. Shri Mahabir Prasad*** 89 (2001) DLT 440 held that even where there is litigation between the legal heirs of the deceased landlord, the tenant cannot take any advantage thereof and the said litigation does not preclude some of the heirs from filing ejectment suit till the *inter se* litigation is given a quietus. Another Division Bench in ***Smt. Krishna Prakash Vs. Dilip Harel Mitra Chenoy*** AIR 2002 Delhi 81 held that the principle laid down by the Supreme Court in eviction suits filed under various Rent Control legislations can equally be applied in general law in a suit for recovery of possession/ejectment. Similarly in ***Mr. Zulfiquar Ali Khan Vs. J.K. Helene Curtis Ltd.*** AIR 2002 Delhi 425 also it was held that there is hardly a distinction between a suit for eviction and recovery of possession against a tenant after determination of tenancy and a co-owner alone is entitled to determine the tenancy and maintain a suit for eviction of tenant after determination of tenancy.

18. Thus, even if it was to be held that there was no partition in the year 1991 and in which partition the property in the tenancy of the appellant / defendant fell to the exclusive share of the respondent / plaintiff, the respondent / plaintiff was admittedly one of the legal heirs of Lt. Col. G.M.S. Sandhu who admittedly had let out the property to the appellant / defendant and was in such capacity entitled to maintain the suit.

19. On the basis of evidence on record it is sufficiently established that there was indeed a partition of the year 1991 in which the property had exclusively vested in the respondent / plaintiff. The same is duly reflected in the monetary returns filed by the respondent / plaintiff with the army

authorities as well as in the income tax returns and declarations of the respondent / plaintiff and his father.

20. It is also not as if any of the other heirs of Lt. Col. G.M.S. Sandhu acted in contravention of the said partition of the year 1991. On the contrary, when the appellant / defendant filed the suit for specific performance of the agreement of renewal of lease impleading all the heirs as parties, they disclaimed any right and pleaded the respondent / plaintiff alone to be having rights in the property.

21. The Memorandum of Family Settlement of the year 2004 also is in consonance therewith only. The contention of the counsel for the appellant / defendant of the same being not pleaded has no merit. The same is a 'subsequent event' which can always be looked into in civil proceedings.

22. The argument of the counsel for the appellant/defendant of splitting up of tenancy has no bearing and has been made only to prolong the hearing as the appellant / defendant has succeeded in doing so for the last 20 years. The counsel for the appellant / defendant himself could not answer as to how the tenancy could be said to be split up. Even if it were to be held that Lt. Col. G.M.S. Sandhu on the date of his demise was the sole owner / landlord of the property in the occupation of the appellant / defendant, all his legal heirs became co-owners thereof and the question of splitting up of tenancy did not arise.

23. The argument that the learned Addl. District Judge erred in passing a decree of *mesne* profits when the prayer in the plaint in that regard was only for holding an enquiry into *mesne* profits is also a *mala fide* argument

intended only to somehow prolong the litigation. The respondent/plaintiff as aforesaid examined two witnesses to prove the prevalent letting value of the premises. I have checked the order sheet of the suit of the dates when the said witnesses were examined and cross examined extensively by the counsel for the appellant/defendant. I do not find the appellant/defendant to have raised the objection when the said witnesses were examined to the effect that the evidence on rate of *mesne* profits/damages for use and occupation was not to be recorded at that stage and the same was to be subject matter of enquiry under Order 20 Rule 12 of the CPC at a subsequent stage. The appellant/defendant cannot now be permitted to raise any objection in that regard. Rather the said objection also shows the dilatory tactics practiced by the appellant/defendant. The appellant/defendant first extensively cross examined the witnesses examined by the plaintiff on the aspect of rate of *mesne* profits without any objection and now wants a second round in the regard. Moreover it is not shown what prejudice the appellant/defendant has suffered by evidence as to the rate of *mesne* profits being recorded at the same time i.e. before passing of a decree for ejectment than if such evidence had been recorded subsequently by holding an enquiry under Order 20 Rule 12 of the CPC. Rather the appellant/defendant as aforesaid by allowing the evidence on *mesne* profits to be recorded in the suit itself has delayed the passing of a decree for ejectment. Reference in this regard may also be made to ***R.S. Madanappa Vs. Chandramma*** AIR 1965 SC 1812 and ***Gopalakrishna Pillai Vs. Meenakshi Ayal*** AIR 1967 SC 155 holding Courts to be empowered to pass a decree for future *mesne* profits

even in the absence of a specific prayer to that effect. There is thus no merit in the said contention also

24. No other arguments have been urged.

25. There is thus no merit in the appeal which is dismissed with costs of ₹25,000/- payable by the appellant / defendant to the respondent / plaintiff within 90 days of today.

26. I am pained to see from the order sheet of the Trial Court, the dilatory tactics adopted by the appellant/defendant and owing to which a simple suit for ejectment of tenant after determination of tenancy has remained pending for nearly 20 years. Though I had during the hearing also asked the counsel for the appellant / defendant to address on as to why action should not be taken against the appellant / defendant and its Managing Director who has signed the written statement and who has deposed on its behalf, not only setting up a false defence but for having abused the process of the Court by successfully keeping a suit for mere ejectment pending for nearly 20 years when its claim for continuing in possession of the premises on the basis of right of renewal of lease stood rejected long back, but I refrain from doing so in the hope that good sense will prevail upon the appellant / defendant and its Director and they will not deprive the respondent / plaintiff who is an army officer of the benefits of his property any longer.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 18, 2013

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