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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.128/2004

Decided on : 7TH APRIL, 2015

MOHD. AHMED(DECD.) THR. LR'S Appellant
Through: Ms.Deepika V. Marwaha, Adv.

Versus

SETH GHANSHYAM DASS(DECD.) THR. LR'S Respondent
Through: Mr.Kirti Uppal, Sr.Adv. with Mr.Kaushal
Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 20.04.2004 passed by the learned ADJ in RCA No.58/1990 by virtue of which the judgment dated 16.01.1988 passed by the learned trial court was set aside and the suit of the respondent/plaintiff was decreed so far as the possession is concerned. The learned counsel for the appellant has submitted that substantial questions of law are arising in the appeal which deserve to be considered by this court.

2. Before dealing with the so called substantial questions of law which are purported to be arising from the present appeal, it may be pertinent to mention that though the appeal was filed in the year 2004, however, despite the matter remaining pending before this court for more than a decade, no substantial question of law has been formulated till date as a consequence of which the court felt that instead of formulating firstly substantial questions of law and then hearing the appeal itself, it would be just and proper to hear the learned counsel for the appellant not only on the so called questions of law but merits of the same if there is any involved and also decide the appeal in the light of the same.

3. It is in this background that it may be pertinent here to give brief factual matrix leading to the filing of the appeal.

4. The admitted facts are that one Smt.Fatima Bi was the original owner of plot No.737, Ward No.6, which was measuring 600 square feet having two trees one of neem and other of banyan with a gate. Smt.Fatima Bi had inducted Mohd.Ahmed and Mohd.Ishaq as tenants. Sh.Kedar Nath, the predecessor in interest of the respondent, had purchased the suit plot in a court auction somewhere in the year 1950-51. Seth.Kedar Nath filed Suit No.189/51 for ejectment against Mohd.Ahmed

and Mohd.Ishaq. However, during the pendency of the suit itself, Seth Kedar Nath died on 06.05.1956. Sh.Ghanshyam Dass was substituted as the legal heir in place of Sh.Kedar Nath. During the pendency of the said suit, a compromise dated 08.06.1956 was entered into between the parties in the suit and accordingly the suit was decreed. Vide the said compromise, Mohd.Usman s/o Mohd. Ahmed was also made a tenant to avoid any objection by him in future. The tenancy was for a period of five years from 01.06.1956 to 31.05.1961 in terms of the lease deed which was duly registered vide Entry No.3142 in Book No.II, Volume 342 at page 332 to 338 of the Sub Registrar. The vital terms and conditions of this lease deed were as under:

“That a piece of land measuring approximately 600 sq yards bearing Municipal No. 737, Ward No.6, situated in Gali Saudagaran, Ballimaran Bazaar, City, Delhi bounded as under: the second party is the owner in possession thereof.

The tenant Mohammed Ahmed for self and attorney and the attorney of the other tenant, Rashid Khan, have taken the aforesaid property on rent for business purposes at a monthly property on rent for business purposes at a monthly rent of Rs. 105/- along with the house tax. However, electricity charges are exclusive of the rent. The tenancy commences with effect from the month of June 1st, 1956 for a fixed period of 5 years up to 31-5-1961 on the terms and conditions noted below for a

period of 5 years on rent and I, the second party – owner / landlord accepted to rent out to the first party and we both agree that we shall abide by the terms and conditions noted below for the agreed upon :-

5. That we, the tenants above named of the first party have constructed the tin shed in the tenanted for our own use out of our own funds and material etc. And any further construction we shall do in future that shall constitute our own property and on the expiry of the tenanted period, we shall remove the same and the owner /landlord of the second party shall have no concern, claim or interest of any nature therein.

6. That on the expiry of the limited period of tenancy we the tenants of the first party shall vacate the tenanted premises and shall hand over actual vacant peaceful possession thereof to the owner/landlord of second party against proper receipt of handing over and taking over of possession and also rent receipt failing which we shall be liable for damages, costs etc. Till we vacate and hand over vacant possession of the tenanted premises to the owner/ landlord of the first party.”

5. After the expiry of five years as the suit property was not vacated, Sh.Ghanshyam Dass filed three suits in the year 1968-1969. The suit No.102/83 was for possession while as the remaining two suits bearing No.100 and 101 of 1983 were for recovery of arrears of rent and damages.

6. All the three suits were consolidated vide different orders, one of which happened dated 22.04.1969 and after consolidation fourteen issues were framed. The suits were decided by the learned Civil Judge vide a common order dated 16.01.1988 decreeing the suit so far as the recovery of arrears of rent and damages is concerned. However, the suit for ejectment was dismissed. While dismissing the suit for ejectment, the learned trial judge recorded the finding on issue Nos.6 & 8 stating that the property which was let out to the appellant/tenant was not a plot of land but was premises within the definition of Section 2(i) of the Delhi Rent Control Act, 1958.

7. The respondent/plaintiff, feeling aggrieved by the judgment and decree of dismissal passed by the learned Civil Judge preferred an appeal against the dismissal of the suit for possession No.RCA No.58/1990 which set aside the judgment and decree passed by the trial court and held that what was let out to the appellant/tenant was a vacant plot of land and not the premises as has been held by the learned Civil Judge. For the purpose of recording a finding that a plot of land was let out to the appellant, the learned appellate court referred to the language of the fresh rent agreement executed on 08.08.1956 between the parties voluntarily

wherein it was specifically mentioned that what was being let out was a plot of land although it had taken note of the fact that there were some tin shed which were in existence at the time of the aforesaid letting out in 1956 by way of a compromise and had also noted the fact that in case in future any such tin shed or structure is erected by the appellant/tenant, it shall be property sole and exclusive property of the appellant/tenant in which the respondent/plaintiff would have no right whatsoever and further that at the time of vacation of the premises they will ensure removal of the said structures.

8. The first appellate court in support of his reasoning had also placed reliance on the some judgments of the High Court which are reported as under: i) MCD v. Asa Singh 1974 RLR (Note) 3; 2) Ram Prakash Chawla v. Amrit Kaur 1981 (2) RCR 63; 3) Vinod Nagpal v. Bakshi S. Kuljas Rai 37 (1989) DLT 278; 4) Ajit Singh v. Ram Saroopi Devi 1995 (I) PLR 16; 5) Surinder Kumar Jhamb v. Om Prakash Shokeen 1999 VI AD (Delhi) 579.

9. The present appellant felt aggrieved by this upturning of the decree of dismissal of suit for possession by the first appellate court and passing

a decree for possession against the present appellant & has filed the present regular second appeal. It is in this background that the learned counsel for the appellant has contended that a substantial question of law arises in the present matter. The substantial question of law which has been formulated by the learned counsel for the appellant are as under:

- i) Whether the interpretation given to the lease deed dated 09.06.1956 and the Will of Late Fatima Bi by the lower appellate court is correct?
- ii) Whether the forum for instituting action for recovery against Mohd.Usman for demised premises, would not be determined by the nature of the property at the time of letting, to him in 1956?
- iii) Whether the demised property consisting of tin sheds with electricity connection, in existence prior to 1932 are not covered by the definition of the 'Premises' under the Delhi Rent Control Act, 1958?

The contention in essence has been that this is not in dispute at the time when a fresh lease agreement was executed between the parties on 08.06.1956 which was duly registered with the Sub

Registrar wherein what is let out to the appellant is a vacant plot of land but it is also stated that there were tin sheds in existence from 1932 itself when Mohd. Usman was not a party and, therefore, the tenancy was created or could not be said to have been created in respect of a vacant piece of land. It has also been contended that the same document of rent agreement states what is let out to the appellant is premises and it talks about the availability of electricity connection as well as payment of house tax which corroborates that in 1956 when the premises were let out to the appellant, they had ceased to be a vacant land and if that be so, the suit for ejectment was not maintainable and the proper course of remedy which was open to the respondent/plaintiff was to file a suit for eviction under the Delhi Rent Control Act, 1958 because admittedly the rent of the premises in question was less than Rs.3,500/- per month. It has been contended by the learned counsel for the appellant that the very fact that the civil court did not have the jurisdiction to proceed ahead with the suit for ejectment in itself constitutes a substantial question of law and for this purpose itself, the learned counsel for the appellant has relied upon the judgment in Vinod Nagpal v.

Bakshi S.Kuljas Rai; 37 (1989) DLT 278. It has also been contended by the learned counsel for the appellant that the document of lease deed which was purported to have been executed between the parties wherein what is stated to have been given is a vacant piece of land was actually built up property constituting 'premises'. Therefore, the said document was a sham document and the transaction was sham.

10. The learned counsel for the appellant has also referred to A.Satyanarayan Shah v. M.Yadgiri; (2003) 1 SCC 138 wherein it has been observed that the term 'building' as defined in the Andhra Pradesh Rent Act has to be construed liberally and not narrowly. This is on account of the fact that the legislature intended to include building structure which was built with some claim of permanency and fulfilling the residential or a non residential purpose. It has been contended by the learned counsel that in the instant case, the very fact that the tin sheds were purportedly built in 1932 and continued to be in existence till 1956 when the fresh lease agreement was executed between the parties had some sense of permanency attached to them and, therefore, the agreement

between the parties could not be treated in respect of letting out of vacant portion of land.

11. The learned counsel for the respondent has vehemently contested the submission made by the learned counsel for the appellant. So far as the argument of learned counsel for the appellant with regard to the transaction of letting out being a sham is concerned, it has been contended by the learned senior counsel that the pleadings of the respondent nowhere raise this plea of the transaction between the parties being sham. Before an argument is built by a party before the court, not only there must be an averment in the pleading, but there should be proof about the same also. In any case, it has been contended that this submission made by the learned counsel for the appellant is only an afterthought.

12. So far as the property in question which is stated to be a plot of land which was let out to the appellant, it is contended that the agreement itself is unambiguous and has to be read in its literal meaning. The question of interpretation does not arise because it admits of no ambiguity. This is evident from the fact that the agreement is very categorical that what has been let out to the

appellant is only a plot of land measuring 600 square yards by a registered document which also takes note of the fact that at the time when such a letting out has taken place, there were some tin sheds in existence. It has also taken note of the fact that in case any such tin shed is constructed by the appellant subsequent thereto, the right, title or interest in the sheds which were in existence or which was to be built subsequent to the agreement thereto, the property in the same would vest with the appellant himself and no property thereunder would pass on to the respondent as well as the tenant will be obligated to remove the same at the time of vacation of the same. Therefore, all these facts make it clear that what was let out to him was only a plot of land and what was to be restored back by him to the respondent was also a plot of land and merely because at some place the agreement uses the word 'premises' or the fact that the appellant is to pay house tax or electricity charges will not change the nature of the premises so as to have the protection under the Delhi Rent Control Act, 1958.

13. I have carefully considered the submission made by the respective side and I have also gone through the record.

14. There is no dispute about the proposition of law laid down in the various judgments which have been relied upon by the respective sides. The judgment which has been relied upon by Ms.Marwaha to the effect that in case a question with regard to the competence of a forum arises in a case that would in itself constitute a substantial question of law does not admit of any ambiguity, but the question which arises for consideration in the instant case is whether any such question of competence about the court which decided the matter arises in the instant case or not. It may also be pertinent here to see as to whether the respondent herein had let out to the appellant a vacant parcel of land or a built up portion which constituted premises. For the purpose of seeing as to whether vacant portion of land was let out to the appellant or not, it may be useful to refer to the definition of the word 'premises' as given in the Delhi Rent Control Act, 1958.

“premises” means any building or part of a building which is, or is intended to be, let separately for use as a residence or for

commercial use or for any other purpose, and includes, -

- i) The garden, grounds and outhouses, if any, appertaining to such building or part of the building;
- ii) Any furniture supplied by the landlord for use in such building or part of the building; but does not include a room in a hotel or lodging house.”

15. Coming back to the facts of the present case, two things are very clear that what was let out by Ms.Fatima Bi to Mohd.Ahmed and Mohd.Ishaq was a plot of land with a gate and two trees and some tin sheds have been erected on the said parcel of land subsequent thereto for the purpose of carrying on their business. It has also come on record that some machinery was also put on the plot of land for the purpose of doing some manufacturing activity which was causing some noise and vibration for which the respondent or his predecessor in interest had initiated an action for injunction. The very fact that the tin sheds were purportedly erected and were in existence at the time when a fresh compromise was arrived at between Ghanshyam Dass and the present appellants resulting in registration of a fresh lease deed for a period of five

years what was intended to be given on rent by the respondent to the appellant was essentially a parcel of land measuring 600 square yards and this was intended to be taken on rent. This is not withstanding the fact there were some tin sheds in existence at that point of time. The very fact that the structure which was in existence was a tin shed signifies the non permanency of the structure meaning thereby that it was erected with the idea of being removed at any given point of time. As against this, in order to protect the interest of the landlord that is the respondent, the appellant with his eyes open has subsequently incorporated condition No.5 in the agreement which reads as under:

5. That we, the tenants above named of the first party have constructed the tin shed in the tenanted for our own use out of our own funds and material etc. And any further construction we shall do in future that shall constitute our own property and on the expiry of the tenanted period, we shall remove the same and the owner /landlord of the second party shall have no concern, claim or interest of any nature therein.

16. A perusal of the aforesaid condition would clearly show and confirm that what was being let out to the appellant was only a

parcel of land and it was specifically mentioned in the said condition that the property in the tin sheds which are in existence erected subsequent thereto shall be vested with the appellant and not with the respondent further at the time of vacation, the structures would be removed meaning thereby, the respondent would be restored back the possession of the parcel of land. Therefore, the nature of premises which was let out by the respondent and taken on rent by the appellant does not get changed by simple user of the term property at some places in the agreement or by taking note of the fact that there is an electricity connection for which the respondent shall be paying the money or that he is to pay the house tax. All these facts do not distract from the nature of the premises which was let out to the appellant. If that be so, then no fault can be found with the holding arrived at by the first appellate court with regard to issue No.6 & 8 upturning the judgment and decree dismissing the suit for possession passed by the trial court and if that be so, it cannot be said that there was any lack of competence on the part of the civil court to entertain the

petition and the respondent ought to have filed a petition for eviction against the appellant in the rent controller's court.

17. In view of the aforesaid reasoning, I feel that the three proposed questions as stated in para 9 above do not arise in the matter. No question of wrong interpretation of the will of late Smt. Fatima Bi by the appellate court arises. Smt. Fatima Bi had sold the property to Seth Kedar Nath who filed a suit for possession and during the pendency of the suit, Sh. Kedar Nath died and Sh. Ghanshyam was substituted as legal representative who entered into a compromise by a written document which is a matter of record. The nature of property being a vacant piece of land, obviously the suit for possession would be in a civil court. So far as the third question is concerned, it has already been observed that the suit property is a vacant land and thus does not constitute premises.

18. The judgment and the decree passed by the first appellate court in my view does not suffer from any material irregularity or illegality so as to warrant entertaining of this regular second

appeal. I accordingly dismiss the appeal leaving the parties to bear their own costs.

V.K. SHALI, J.

APRIL 7, 2015
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