

\$~17.

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

+ **Date of Decision: 24.08.2015**

% **RSA 74/2015**

SHRI BRIJ MOHAN THR LRS

..... Appellant

Through: Mr. Mayank Upadhyay, Advocate

versus

SHRI MAM CHAND & ANR

..... Respondent

Through: Mr. Sumit Rajput, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree passed by the learned ADJ (W), Tis Hazari, Delhi in RCA No.32/2011 preferred by the appellant/defendant, against the judgment and decree dated 10.12.2014 passed by the learned Civil Judge-05(W), Tis Hazari in Suit No.682/2010 filed by the respondent/plaintiff against the appellant/defendant. The First Appellate Court has dismissed the appellants first appeal and affirmed the judgment and decree passed by the Trial Court. The Trial Court allowed the application filed by the plaintiffs under Order 12 Rule 6 CPC, thereby decreeing the suit for possession in respect of the suit property in favour of the plaintiffs and against the

defendant.

2. The admitted facts are that the father of the plaintiffs had leased to the defendant and one Sh. Ishwar Singh an open piece of land admeasuring 2 bighas 11 biswas in village Khanpur, New Delhi vide registered lease deed dated 14.01.1950, which expired by flux of time on 11.01.1970. The lease was not renewed thereafter.

3. The case of the plaintiff was that a portion of 300 sq yds out of the aforesaid land was occupied by the defendant even after expiry of the lease agreement and that the defendant had attorned to the plaintiff as landlord after the demise of the parents of the plaintiff. The plaintiff claimed that the defendant was paying rent @ Rs.86.40 per month, but the rent had not been paid for more than three years ending 13.05.2006. A notice dated 12.04.2006 was served on the defendant terminating the monthly lease, and asking him to deliver vacant and peaceful possession of the suit land admeasuring 300 sq yds by the close of 13.05.2006. However, since the possession was not delivered, the suit was preferred to seek recovery of possession of the suit property along with recovery of the amount of Rs.259.90 being the rent for three years ending 13.05.2006 and Rs.4,000/- towards damages/mesne profits.

4. The defendant/appellant filed his written statement. Since the suit for possession has been decreed on the basis of admission, it is essential to take note of the case of the defendant, as set out in the written statement.

5. The first preliminary objection was that the notice of termination was not legal, since the same did not terminate the lease from the end of

the tenancy month. An objection was raised to the maintainability of the suit by placing reliance on section 7 of the Delhi (Urban Areas) Tenants Act, 1961. The defendant also invoked section 114 of the Transfer of Property Act by stating that the defendant is ready and willing to pay all arrears of rent w.e.f. 01.01.1994 to 31.12.2006 and Rs.86.40p p.a. amounting to Rs.1123.20.

6. The defendant also claimed that the suit is not maintainable in the light of clause 3 and 14 of the lease deed dated 14.01.1950 inasmuch, as, the defendant is entitled to renew the lease after the expiry of every 20 years on the same terms and conditions by increasing the rent at the rate of paisa one per rupee, and can continue in possession of the house built on the land.

7. The defendant/appellant claimed that the notice dated 12.04.2006 pertained only to an area admeasuring 300 sq yds, and not to the entire area of 2 bighas and 11 biswas, which had been leased out to the defendant and Sh. Ishwar Singh. Thus, the suit was not maintainable for partial ejectment. The defendant also pleaded that the suit was bad for non joinder of a necessary party viz. Sh. Ishwar Singh, who was also a co-lessee and there were other several sub-lessees of the defendant. The defendant also pleaded that the suit is barred under section 18 of the Slum Areas (Clearance and Improvement) Act, 1956. On merits, the defendant did not deny the creation of the lease in respect of 2 bighas and 11 biswas land, as aforesaid, vide registered lease deed dated 14.01.1950.

8. In para-3 of the written statement, the defendant, inter alia, stated "*It is however not denied that the defendant is now in possession of property*

bearing Municipal Number 2176, forming part of Village Khampur”. In para-4 of the written statement, the defendant, inter alia, stated “since 1950, house of the defendant is existing on the land in question”. In para-5 of the written statement, the defendant, inter alia, stated “the defendant had paid rent in respect of land measuring 300 sq yds for the period from 01.01.1993 to 31.12.1993 to the plaintiffs and thereafter because of disputes in the family of the plaintiffs, nobody turned up to receive the rent”.

9. On the basis of the aforesaid admissions made by the defendant, the plaintiff moved an application under Order 12 Rule 6 CPC on the premise that the defendant had admitted the relationship of landlord and tenant between the plaintiff and the defendant; the defendant had admitted the receipt of the legal notice under section 106 of the Transfer of Property Act, and; that the defendant continued to be in possession of the suit property despite service of notice of termination.

10. The Trial Court relied on the decision in ***Samir Mukherjee v. Devinder Kumar Bajan & Ors.***, 71(1998) DLT 477 (DB) to hold that in the absence of a registered instrument, the tenancy of the defendant was only from month to month. Reliance placed on section 114 of the Transfer of Property Act was rejected, since the suit had not been premised on the aspect of non payment of rent. It was premised on termination of the monthly tenancy by the plaintiff. The Trial Court also examined the defendant/appellants submission that the notice to quit dated 14.12.2006 was not in accordance with section 106 of the Transfer of Property Act and rejected the same. The tenancy was held to be from month to month, and

hence notice of 15 days was sufficient to terminate the monthly lease. Even otherwise, the filing of the suit itself is sufficient notice to the tenant for vacating the suit property.

11. Reliance placed on Delhi (Urban Areas) Tenancy Relief Act, 1961 and Section 19 of the Slum Areas (Clearance and Improvement) Act, 1956 was rejected, as there were no foundational facts pleaded in respect thereof by the defendant. Consequently, the relief of possession/ejectment was decreed in favour of the plaintiff/respondent.

12. The First Appellate Court by the impugned judgment has concurred with the said findings of fact. Consequently, there are consistent findings of fact returned by both the Trial Court as well as the First Appellate Court. The appellant is, therefore, obliged, at the second appellate stage, to demonstrate that there is a perversity or gross illegality in the said findings returned by the courts below to be able to persuade this court to entertain the present second appeal.

13. The only submission advanced by Counsel for the appellant is that, admittedly, the entire parcel of land admeasuring 2 bighas 11 biswas was leased out by registered sale deed dated 14.01.1950 in favour of the two persons jointly, namely, the appellant/defendants and one Sh. Ishwar Singh. Learned counsel submits that the suit could not have been filed by the plaintiff only against the defendant/appellant, and that Sh. Ishwar Singh was a necessary party to the suit, since he was a co-lessee of the entire 2 bighas 11 biswas land, which includes the suit property. Learned counsel submits that, in fact, the Trial Court had also framed an issue on the aforesaid aspect. However, without going into the said issue, the suit

has been decreed under Order 12 Rule 6 even though mixed questions of fact and law had been raised.

14. I have heard learned counsel for the appellant, perused the judgments of Trial Court and First Appellate Court, and the documents placed on record along with the appeal. The submission raised by the Counsel for the appellant has no merit. From the above extracted averments made by the defendant/appellant himself in his written statement, it is abundantly clear that qua the suit property admeasuring 300 sq yds, the appellant/defendant solely acted as a tenant and is solely in possession thereof. He admitted in para 3 of the written statement that he is in possession of the suit property and since the year 1950, he is residing in the house constructed on the suit property. He also stated that he had paid the rent in respect of the said land admeasuring 300 sq yds for the period 01.01.1993 to 31.12.1993.

15. Thus, it was not necessary for the plaintiff to implead the said Sh. Ishwar Singh as a co-defendant, merely because he was a co-lessee in respect of the entire parcel of land admeasuring 2 bighas 11 biswas. In any event, Sh. Ishwar Singh did not seek impleadment in the suit as a party defendant to stake his claim over the suit property. Apart from raising an objection with regard to non joinder of a necessary party, the appellant/defendant also did not seek to implead the said Sh. Ishwar Singh. The decree passed by the court would bind the defendant/appellant, and since no relief has been sought against Sh. Ishwar Singh, obviously, the same would not affect his rights, if any, in the suit property.

16. So far as reliance placed on Delhi (Urban Areas) Tenants Act, 1961

is concerned, it was necessary for the defendant to plead that the suit property in question was included in a municipality, or in a notified area under the provisions of the Punjab Municipal Act, 1911, or in a cantonment under the provisions of the Cantonment Act, 1954 as on 01.11.1956. This is clear in the light of section 1(2) of the said Act. Pertinently, there is no pleading to this effect in the written statement of the defendant. Therefore, the Trial Court was right in holding that the fundamental facts to invoke the applicability of the said Act are missing in the written statement.

17. The argument premised on The Slum Areas (Clearance and Improvement) Act, 1956 had no basis in the facts of this case, since there is no pleading in the written statement that the land in question falls in the slum area as declared under section 3 of the said Act.

18. In view of the aforesaid discussion, no substantial question of law arises for consideration in this case, and there is no perversity or illegality in the impugned judgment and decree. The appeal stands, accordingly, dismissed.

VIPIN SANGHI, J

AUGUST 24, 2015

sr