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

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Date of Decision: 28.04.2015

+ **CS(OS) 1775/2007**

POONAM KHANNA AND ORS.

.... Plaintiffs

Through: Mr. Sanjeev Anand with Ms. Sonam
Anand, Advs.

Versus

SHRI LAV KUMAR KAUL E+

.....

Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (OPEN COURT)

1. This is a suit seeking possession, declaration and recovery of *mesne* profits.
2. Vide order dated 26th February, 2007, the plaintiffs were permitted to sue as indigent persons. Thereafter, vide order dated 23rd March, 2009, the defendant was proceeded *ex parte*. However, the defendant has filed his Written Statement (WS). The plaintiffs have led *ex parte* evidence vide affidavits dated 4th December, 2009 (PW-1/A) and 28th February, 2014 (PW-1/X1)
3. The plaintiffs claim to be the owners of property bearing No. 21, Aurangzeb Road, New Delhi (for short '*suit property*'). It is stated that the suit property vested with Pradeep Kumar Khanna HUF, which comprised the late Mr. Pradeep Kumar Khanna and the plaintiffs, former is stated to have passed

away on 12.01.2002, therefore the plaintiffs are the only surviving members of the said HUF.

4. The plaint avers that the property was mutated in favour of late Mr. Pradeep Kumar Khanna by a Memorandum dated 27.08.1977 issued by the Land and Development Office, Ministry of Works & Housing, Government of India (Mark 14). The plaintiffs have deposed to this effect in evidence.
5. The plaintiffs submit that in the WS, the defendant has admitted that the suit property vests with Pradeep Kumar Khanna HUF. Paragraphs 1-9 of the plaint recapitulate the history of the suit property, i.e., after the demise of Mr. Pradeep Kumar Khanna, the suit property has devolved upon the other members of the HUF, i.e., the plaintiffs. The defendant in his WS has admitted to the contents of paragraphs 1-9 of the plaint.
6. It is the plaintiffs' case that the defendant is a trespasser and in unauthorized occupation of the suit property. However, in the WS, the defendant has set up a case that there was an agreement between him and late Mr. Pradeep Kumar Khanna, whereby the defendant was to evict Sudan Embassy (erstwhile tenant) from the suit property; however, since the late Mr. Pradeep Kumar Khanna could not pay the defendant the agreed service charges of Rs. 4 crores, therefore, the former put the defendant in possession of the suit property and the defendant was to occupy the suit property till the aforesaid service charges (plus interest) were paid to him.
7. The learned counsel for the plaintiffs submits that the circumstances as claimed by the defendant, which led to him possessing the suit property are contrary to law and opposed to the public policy of India. He submits that the alleged agreement by which the defendant was put in possession of the suit property would be contrary to the provisions of the Delhi Rent Control

Act, 1958 (for short '*DRC Act*'); that under Section 14 thereof, a tenant can be evicted only upon an order made by the Rent Controller or a Court and that too only if the grounds contained therein are attracted such as non-payment of rent, *bona fide* requirement etc.; that the defendant could not have initiated and in fact, did not initiate proceedings under the DRC Act since the same could have been done only at the instance of a landlord/owner. The learned counsel further submits that the defendant would have intended to use other illegal means to evict the erstwhile tenant which is also hit by Section 23 of the Indian Contract Act, 1872. He also submits that although the defendant claims possession of the suit property since 12th May, 1992, however, he has not been able to prove the agreement which he allegedly entered into with late Mr. Pradeep Kumar Khanna or that was put in possession of the suit property by the latter.

8. The learned counsel further submits that defendant's stand in the WS cannot be relied upon by the Court since he has taken contradictory stands before different judicial proceedings. He submits that in paragraph 11 of the WS, the defendant claims that he was introduced to one Mr. Avtar Singh by late Mr. Pradeep Kumar Khanna, whereas in CS(OS) 425/1993 (Ex. PW-1/9), the defendant claimed that one Mr. Avtar Singh, who was known to him, introduced him to late Mr. Pradeep Kumar Khanna. He further submits that under paragraph 11 (K) of the WS, the defendant claims that the service charges of Rs. 4 crores carried along with it interest @ 2%/month for the delay in making payment and under paragraph 11(M), the defendant claims that the suit property was mortgaged with him by late Mr. Pradeep Kumar Khanna as security for the payment of the said service charges, however,

none of these averments have been made the defendant in the earlier suit i.e. CS(OS) 425/1993 (Ex. PW-1/9).

9. The learned counsel draws the attention of this Court to an order in I.A. No. 8147/1998 in CS (OS) 425/1993 (Ex. PW-1/19), whereby the Court had appointed a Receiver to manage the suit property. The defendant (defendant No. 3 therein) was removed from the suit property and it was observed that he was a stranger to the suit property, having no title or interest of any nature and that he had to be removed from the suit property. This Court notices that the said order had also questioned the legal sanctity of the alleged agreement entered into by the defendant with late Mr. Pradeep Kumar Khanna. It was further held that under no law, the defendant could be permitted to retain possession of the suit property.
10. The learned counsel further submits that the defendant wanted to amend his WS in CS (OS) 425/1993 to incorporate the claims of interest and mortgage in the suit property which was rejected by the Court vide order dated 3rd September, 2007 (Ex. PW-1/19); that a Division Bench of this Court vide judgment dated 20th February, 2009 (Ex. PW-1/20) upheld the aforesaid order of appointment of a Receiver; that the SLP against the said order was dismissed by the Supreme Court vide order dated 30th August, 2013 (Ex. PW-1/27). He also submits that PW-1 has not been cross examined; the defendant was proceeded ex-parte; he has not led any evidence; the statements made by PW-1 on affidavit have neither been challenged or controverted therefore they ought to be accepted. Lastly, he submits that the defendant has admitted the ownership of the plaintiffs apropos the suit property and in any case, the plaintiffs have proved their ownership by documentary evidence as aforesaid; that the onus to prove that the defendant

was in lawful possession of the suit property was on him but he has failed to discharge the burden of proof. As a consequence thereof, he submits that the plaintiffs are entitled to a decree of possession and a declaration that the defendant played fraud upon late Mr. Pradeep Kumar Khanna.

11. Apropos the issue of damages/mesne profits, the learned counsel submits that the defendant has been in unauthorized occupation of the suit property since 12th May, 1992. However, he submits that the plaintiffs are entitled to recovery of *mesne* profits for a period of three years prior to the institution of the suit, i.e., from 11.05.2001 to 10.05.2004 and from 11.05.2004 to 18.09.2007 when a Receiver was appointed to manage the suit property. He relies upon two judgments¹ of this Court to contend that determination of the market value of a land always has an element of speculation; various considerations go towards valuation of a land; smaller plots and very large plots fetch a lesser value; mid segment plots fetch the highest price; therefore, the Court would be guided by the rule of prudence.

12. Having heard the learned counsel for the plaintiffs and after perusal of the records, this Court is of the view that the plaintiffs are entitled to a decree of possession in their favour. Evidently, the suit property was mutated in favour of late Mr. Pradeep Kumar Khanna. The case of the plaintiffs that the suit property belongs to Pradeep Kumar Khanna HUF and that after the death of Mr. Pradeep Kumar Khanna, it devolved upon the plaintiffs has been admitted by the defendant in paragraphs 1-9 of the WS. Moreover, the evidence led by the plaintiffs in support of their averments in the plaint have gone un rebutted. Furthermore, neither has the defendant led any evidence in

¹ Sushila Kumari v. Rama Stores 2005 (83) DRJ 197; and Ravinder Pal Singh v. Surender Pal Singh ILR (2008) I Delhi 187

support of his averments in the WS nor has he proved the documents relied upon by him. In these circumstances, this Court sees no reason to not believe the averments and evidence led on behalf of the plaintiffs.

13. Apropos the issue of declaration that the agreement allegedly entered into between the defendant and late Mr. Pradeep Kumar Khanna is void, this Court is of the view that the same is indeed, void. As observed in I.A. No. 8147/1998 in CS (OS) 425/1993 (Ex. PW-1/19), “*Rent Control laws seem to have been thrown to the winds*”, there could not have been an agreement purporting to evict the erstwhile tenant. This Court would not dwell upon whether the DRC Act would have been applicable for evicting the erstwhile tenant. However, this Court is of the view that the aforesaid agreement allegedly entered into between late Mr. Pradeep Kumar Khanna and the defendant would have no legal sanctity.
14. With regard to the relief of damages/mesne profits, the plaintiffs have filed sale deeds of eight adjoining properties supported by PW-1’s affidavit which is not rebutted, therefore, the Court would take into consideration the said documents to determine the approximate value of the suit property so as to determine its rental value. In *Sushila Kumari (supra)*, the Court had taken rental value to be ten per cent of the capital value of the property. The L & DO rates for Aurangzeb Road w.e.f 01.04.1998 till 31.03.2000 was Rs.13,860/- per square meter.
15. The Court is of the view that rental returns per year, ordinarily range between 6 to 10% of the capital value of the property. In the circumstances, the Court deems 7% per annum as a reasonable rate of rental depending upon the location, nature of construction, amenities, permitted user, demand and supply scenario, etc. of the property. Considering that the suit property

is located in Lutyen's zone of the capital city and on one of its prestigious boulevards, there would be an abiding demand for such respectable and tony address by tenants in need of it. Diplomatic missions, international agencies and large corporate entities would be some of the prospective users of such properties. There would be no dearth of takers. As no new accommodation would be added on the said street, the available rentable space would be more or less static, thereby making the demand for the available space more pressing. Hence, the annual rent would be revisable at 10% every year. In the circumstances, for the period the plaintiffs were deprived from using the suit property by the defendant till the Receiver took possession of it, the plaintiffs would be entitled to recovery of *mesne* profits as under:

<u>Period</u>	<u>Amount</u>	<u>Description</u>
11.05.2001 to 10.05.2002	Rs. 35,83,918.80	Rs. 13,860 (L&DO Rate) x 3694 sq. m. (Area of the suit property) x 7% (Rental Value as determined hereinabove)
11.05.2002 to 10.05.2003	Rs.39,42,310.68	Increase in rent by 10% of the annual rental i.e. Rs. 35,83,918.80 + the annual rent.
11.05.2003 to 10.05.2004	Rs.43,36,541.75	10% of Rs.39,42,310.68 + annual rent.

11.05.2004 to 10.05.2005	Rs.47,70,195.90	10% of Rs. 43,36,541.75 + annual rent.
11.05.2005 to 10.05.2006	Rs.52,47,215.50	10 % of Rs. 47,70,195.9 + annual rent
11.05.2006 to 10.05.2007	Rs.57,71,937.00	10 % of Rs.52,47,215.5 + annual rent
11.05.2007 to 18.09.2007	Rs.22,57,468.40	At the last calculated rent plus 10% increase for a period of 4 months and 8 days

- 16.The suit is decreed in the aforesaid terms. Let the decree sheet be drawn up accordingly.
- 17.At this stage, the learned counsel for the plaintiffs submits that a Receiver has been appointed for the suit property. In the circumstances, the decree would not be executable till the issue relating to appointment of the Receiver is adjudicated.
- 18.The suit is disposed off in the above terms.

APRIL 28, 2015/vmk/acm

NAJMI WAZIRI, J.