

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.257/2014**

Decided on : 4th March, 2015

RAKESH KUMAR SHARMA Appellant
Through: Mr. Sanjay Rathi, Advocate.

Versus

MEENA BHATIA & ORS Respondents
Through: Mr. G.D. Gupta & Mr. Ajay Gulati,
Advocates.

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 22.7.2014 passed by the first appellate court in case titled *Rakesh Kumar Sharma vs. Meena Bhatia & Ors.* in R.C.A. No.26/2014 which had upheld the judgment and the decree dated 16.5.2014 passed by the learned Civil Judge (Central) in Suit No.94/2011 titled *Meena Bhatia & Ors. vs. Rakesh Kumar Sharma*.

2. Before dealing with the submissions made by the learned counsel for the appellant/defendant, it may be pertinent here to give brief background of the case. One Shiv Shanker Rustagi, predecessor-in-

interest of the present respondents filed a suit for possession and recovery of damages/mesne profits for use and occupation as well as for permanent injunction in the year 2011 against the present appellant/defendant, Rakesh Kumar Sharma. The case which was setup by the respondents/plaintiffs in the plaint was that one Ram Dayal, father of the present appellant, was a tenant in respect of two *baithaks* on the ground floor of the property bearing No.5770, Jogiwara, Nai Sarak, Delhi. Apart from this, he was permitted to use the *latrine*, bathroom and open courtyard being the common amenities to Ram Dayal as well as other tenants in the premises in question. It was alleged that Ram Dayal's tenancy was terminated vide notice dated 8.2.1993 and Ram Dayal had expired on 15.6.2005. It was alleged that on account of termination of tenancy of Ram Dayal and by operation of law, under Section 2 (l) of the Delhi Rent Control Act, his widow Bharpai Devi inherited the tenancy rights of Ram Dayal as she was living with her husband Ram Dayal and was financially independent on him. Bharpai Devi also became statutory tenant as a notice of termination of her tenancy was also issued to her on 5.3.2008 on the ground of non-payment of rent. Bharpai Devi is also alleged to have died on 28.1.2011. Since no legal heir of Bharpai Devi

was living with her, consequently, it was alleged that the present appellant, Rakesh Kumar Sharma, inherited the tenancy only for a limited purpose and for a limited period of one year.

3. In the first week of May, 2011, the present appellant was directed to vacate the premises which he flatly refused where after notice was issued to him on 10.5.2011 calling upon him to pay the damages and also handover the possession which ultimately resulted in filing of the suit against Rakesh Kumar Sharma.

4. The suit was contested by the appellant/defendant. He raised objections with regard to non-joinder of necessary parties inasmuch as it was alleged that there were other legal heirs of Bharpai Devi but they have not been impleaded as a party. The jurisdiction of the civil court was also assailed on account of Section 50 of the Delhi Rent Control Act. On merits also, it was stated that all the legal heirs had inherited the tenancy rights not for limited period but for unlimited period and they are covered under the protection of the Rent Act.

5. On the pleadings of the parties, following issues were framed :-

“1. Whether the tenancy of Sh. Pandit Ram Dayal was validly terminated by plaintiff? OPP

2. *Whether the jurisdiction of civil court is barred by U/s 50 of Delhi Rent Control Act? OPP*
3. *Whether the plaintiff is entitled for a decree of possession as prayed for? OPP*
4. *Whether the plaintiff is entitled for decree of damages/mesne profit as prayed, if yes, at what rate and for what period? OPP*
5. *Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP*
6. *Relief.”*

6. Both the parties adduced their respective evidence and the trial court returned a finding on issue Nos.1 to 3 in favour of the respondents/plaintiffs, being the successor-in-interest of Shiv Shekhar Rustagi, the deceased plaintiff. The appellant/defendant feeling aggrieved assailed the order of the learned Civil Judge before the court of learned Additional District Judge which appeal was also dismissed on 22.7.2014 and the judgment and the decree passed by the Civil Judge was affirmed.

7. Still not feeling satisfied, the appellant has filed the present appeal. I have heard the learned counsel for the appellant. The main contention of the learned counsel for the appellant is that no notice of termination is necessary under the Delhi Rent Control Act for the purpose of seeking

eviction of the tenant. It has accordingly been contended that the notice dated 8.2.1993 which was issued by Shiv Shanker Rustagi, the predecessor-in-interest of the respondents, was not required to be issued to Ram Dayal, predecessor-in-interest of the present appellant.

8. In order to canvass his submissions, the learned counsel for the appellant has relied upon the judgment of the Apex Court in *V. Dhanapal Chettiar vs. Yesodai Ammal*; AIR 1979 SC 1745 wherein it has been specifically observed that in order to get a decree or an order of eviction against a tenant under any State Rent Act, a notice under Section 106 of the Transfer of Property Act, 1882, is not *sine qua non*. Accordingly, it was contended that the notice in question dated 8.2.1993 could not have been issued and was not required to be issued for initiating action against Ram Dayal and for that matter, against his successor-in-interest, namely, the present appellant.

9. This submission made by the learned counsel for the appellant is without any merit. The reason for this is that there is no dispute about the fact that the judgment of the Apex Court in *V. Dhanapal's* case (*supra*) lays down that notice under Section 106 of the Transfer of Property Act, 1882, is not necessary before seeking eviction of a tenant under the Rent

Act. But in the instant case, the eviction of the present appellant is not sought under the Rent Act but it is being sought under the ordinary civil law. For seeking eviction of the present appellant in ordinary civil suit, all that the appellant has given with regard to the notice dated 8.2.1993 purported to have been issued to the predecessor-in-interest, that is, Shiv Shanker Rustagi, is only by way of background. The termination of tenancy of Ram Dayal by virtue of the said notice is immaterial on account of the fact that admittedly Ram Dayal has died in the year 2005 and, therefore, on account of his death, the notice which is sought to be made a subject-matter of the debate in the present appeal is inconsequential. Even if notice of termination had not been given to Ram Dayal still, on account of his death, there would have been inheritance to his tenancy rights. On account of death of Ram Dayal in 2005, his widow Bharpai Devi inherits the tenancy being financially dependent and ordinarily living with him in full major, therefore, the notice is totally inconsequential.

10. Similarly, as a background, the respondents/plaintiffs have given the fact that Bharpai Devi has also died in and around 28.1.2011 and none of the legal heirs were financially dependent on her, nor was as a matter

of fact alleged to have been living with her, therefore, the tenancy which was allegedly warranted by Rakesh Kumar Sharma, the present appellant, was only for a limited period of time, that is, for one year under Section 2 (1) of the Delhi Rent Control Act. It is in this context that the suit for possession had been filed against Rakesh Kumar Sharma after the death and that too after expiry of more than a year.

11. The contention of the learned counsel for the appellant that they had become contractual tenant is without any merit. This is on account of the fact that the contractual tenant is a tenant, who has been put into possession by way of a contract which can be oral or in writing while as admittedly in the instant case, it is not the case of the respondents/plaintiffs or for that matter even the present appellant/defendant that he was in occupation of the premises in question either by an agreement, oral or writing, expressed or implied. All that he contends is that he had inherited the tenancy under Section 2 (1) of the Act by way of defence. The question of inheritance would only raise the status of inheritance either for a limited period or for unlimited period under Section 2 (1). The issue with regard to termination of tenancy of Ram Dayal was decided against the present appellant and similarly, the

issue with regard to jurisdiction of the civil court was also decided against the present appellant and the finding of the civil court was affirmed by the first appellate court, therefore, these issues are issues with regard to the fact which have been concurrently decided against the appellant and they do not raise any substantial question of law.

12. The judgment of *V. Dhanapal's* case (*supra*) is not applicable to the facts of the present case for the simple reason that the said judgment only lays down that when an eviction is sought under the Rent Act, termination of notice of the tenant under Section 106 of the Transfer of Property Act is not required to be given. In the instant case, admittedly, eviction of the present appellant was not sought under the Rent Act. The ejectment of the present appellant was sought under the ordinary civil law on account of the fact that being financially not dependent on Bharpai Devi, his mother, who was a statutory tenant, he had inherited the tenancy rights only for a limited period of one year as fixed under Section 2 (1). Therefore, this plea of the appellant does not raise any substantial question of law.

13. The second submission which has been raised by the learned counsel for the appellant is with regard to non-obtaining of permission of

the competent authority under The Slum Areas (Improvement and Clearance) Act, 1956, as it was alleged that the premises in question is situated in a slum area. For this purpose, the learned counsel has sought to place reliance on a judgment of this court in *Harish Chander Malik vs. Vivek Kumar Gupta & Ors.*; 186 (2012) DLT 697 wherein it has been observed that a court can take judicial notice of the fact where the parties fail to produce evidence. The facts of this case were that a suit for possession and mesne profits was filed in the reported case and the said suit was contested on the ground that no permission from the competent authority was obtained under Section 19 of the Slum Act for initiation of proceedings. Accordingly, an application was filed by the defendant under Order VII Rule 11 CPC, which was allowed.

14. Feeling aggrieved, an application was filed by the person whose eviction was sought. The argument which was put forward while assailing the order of rejection of plaint was that while considering an application under Order VII Rule 11 CPC, what is to be seen is only the averments made in the plaint and not the written statement and since in the said case, there was no mention in the plaint that the premises are situated in a slum area, the order rejecting the plaint could not have been

passed. It was in this context that the court observed that judicial notice of the fact that the premises is situated in a slum area could be taken as the court found itself to be duty bound to hunt for the fact and apply it even if the parties or the counsel fail to produce it. Accordingly, the appeal against the rejection of the plaint was dismissed. In the present case, there is no defence taken by the respondents that the premises is situated in a slum area and before initiating any action under the ordinary civil law, the permission of the competent authority ought to be obtained.

15. One of the basic principles of dealing with an issue during the course of submissions and especially at the stage of appeal is that a fact must not only be pleaded but must be proved by producing evidence. While as in the present case, there is no fact in this regard pleaded by the present appellant in the written statement much less is the proof about the same produced during the course of trial. In addition to this, the question as to whether the premises is situated in a slum area or not is essentially a question of fact and not a question of law. The court is not to make an inquisitorial finding and then decide a question of fact even though no plea in this regard is taken. Therefore, in my considered opinion, this

judgment in *Harish Chander's* case (*supra*) also does not help the appellant in any manner.

16. In totality of circumstances and for the reasons mentioned above, I am of the considered view that the appeal filed by the appellant does not raise any question of law much less any substantial question of law which entails the admission of the matter. Accordingly, the appeal is dismissed.

V.K. SHALI, J.

MARCH 04, 2015
‘AA’