

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

+ **CM(M) 1012/2014 & CM 18703/2014 (stay)**

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Reserved on: 23rd March, 2015
Decided on: 13th April, 2015

TASLEEM

..... Petitioner

Through Mr. S.K. Bhaduri, Ms. Kirti Parmar,
Advts.

versus

JAGDISH CHANDER

..... Respondent

Through Mr. Ghanshyam Mishra, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 1st October, 2014 whereby Jagdish Chander was permitted to lead additional evidence by the Appellate Court on the issue of ownership of the suit property, Tasleem prefers the present petition.

2. A brief exposition of facts is that Jagdish Chander the respondent/plaintiff herein filed a suit for possession and damages against Tasleem, the defendant/petitioner herein in respect of suit property No.6612, Neemwala Chock, Nabi Karim, New Delhi stating that Tasleem was inducted as a tenant by father of Jagdish in a single room shop on the ground floor and a room over it on a monthly rent of ₹1600/- and ₹500/- respectively exclusive of all other charges. After the death of father of Jagdish his

mother used to collect the rent. Tasleem is a persistent defaulter and keeps on postponing the payment of rent on one pretext or another. Jagdish being one of the co-owner of the Suit property being the legal heir and successor of late Lachhman Das was thus competent to demand the rent. A demand notice was sent on 6th November, 2001 which was duly served, however in the reply Tasleem denied the landlord-tenant relationship. Tasleem stated that he was the absolute owner of the property by virtue of certain documents executed by Smt. Basanti Devi in his favour for a sum of ₹30,000/-. Thus Jagdish instituted the suit. The said suit was dismissed by the learned Trial Court on 25th January, 2010 on the ground that Tasleem has been able to prove on record that there is no relationship of landlord tenant between Jagdish and Tasleem. In the appeal filed by Jagdish the learned Additional District Judge remanded back the matter to the learned Trial Court to be decided again in the light of the observations made by the learned ADJ. The relevant portions of Paras 10 & 11 of the judgment of learned ADJ are as under:

“10. In the light of the aforesaid discussion, I am of the firm opinion that there was no valid transfer of the suit property in favour of M/s. Gaus & Company or the defendant by Smt. Basanti Devi. The suit was also otherwise bad for non-joinder of necessary parties i.e. two brothers Shri Sri Nath and Shri Raghbir and sister Smt. Meena of the plaintiff, who admittedly were also the co-owners in the suit property.

11. In view of the foregoing discussion, the appeal is partly accepted. The judgment/decreed dated 25.01.2010 passed by the learned Trial Court is set aside. The matter is remanded back to learned Trial Court to be decided again in the light of the observations made in the judgment and in accordance with law.”

3. A review application filed by Jagdish was also dismissed by the learned ADJ vide order dated 5th July, 2012. Before the learned Senior Civil Judge Jagdish moved an application under Order 1 Rule 10 CPC seeking to implead the co-owners which was disallowed vide order dated 2nd September, 2013 for the reason that the order remanding back the case did not direct to implead the other co-owners/ LRs of late Shri Laxman Dass as a parties. After dismissal of the application under Order 1 Rule 10 CPC, the suit was again dismissed by the learned Senior Civil Judge on 29th October, 2013. Though all the issues were decided in favour of Jagdish, however as the other legal heirs who were the co-owners in the suit property were not impleaded it was held that Jagdish could not prove that he was entitled for the relief of decree of possession as prayed for as he has not been able to prove the ownership.

4. In the appeal filed against Order dated 29th October, 2013 an application under Order 41 Rule 27 CPC was filed wherein Jagdish sought to prove his ownership/entitlement to the suit property through documents. It was stated that the documents had come into the hand of Jagdish only 15 days ago, after the death of his brother namely Sri Nath who was in possession of the same and only when the trunk of Sri Nath was searched by Jagdish. In this application the impugned order was passed by the learned Appellate Court permitting Jagdish to file additional documents.

5. Learned counsel for Tasleem relying upon decisions in Jaipur Development Authority Vs. Smt. Kailashwati Devi (1997) 7 SCC 297 and Union of India Vs. Ibrahim Uddin & Anr. (2012) 8 SCC 148 states that at

this belated stage Jagdish cannot be permitted to lead additional evidence whereas learned counsel for Jagdish Chander relies upon Radhey Shyam & Anr. Vs. Chhabi Nath & Ors. 2015 (3) SCALE 88 to contend that there is no illegality in the impugned order.

6. Order XLI Rule 27 CPC provides as under:-

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.”

7. The Supreme Court in Jayaramdas & Sons Vs. Mirza Rafatullah Baig & Ors. JT (2004) 10 SCC 507 held-

“8. It is true that additional evidence, whether oral or documentary, is not to be admitted in appellate court unless a case for admission thereof is made out by reference to clause (a) or (aa) of sub-rule (1) of Rule 27 or unless the appellate court requires such evidence to enable it to pronounce judgment or for any other substantial cause within the meaning of clause (b). A perusal of the documents brought to our notice by the learned counsel for the appellants and their comparison with the documents already available on record, clearly goes to show that the two are at variance and the effect of such variance determined either way would have a material bearing on the crucial issue arising for decision between the parties.”

8. In the present case Jagdish Chand claimed that the documents had come to his hand only 15 days ago after the death of his brother namely Sri Nath, who was in possession of the same and when his trunk was searched by Jagdish Chand. The document not being in possession of Jagdish Chand, he could not have produced the same earlier and at the first available opportunity he sought leave to produce the same.

9. I find no infirmity in the impugned order warranting interference by this Court. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 13, 2015
‘ga’