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HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. No.12/2015 & C.M. No.1749/2015

Decided on : 3rd December, 2015

GAURAV JAIN

..... Petitioner

Through: Mr. Rajeev Saxena, Advocates.

Versus

MANISH KUMAR GARG & ORS.

..... Respondents

Through: Mr. Ankit Jain & Mr. Sarvesh Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner, Gaurav Jain against the order dated 11.9.2014 in CS No.277/2008 titled *Manish Kumar Garg vs. Gaurav Jain & Others* by virtue of which the suit of the respondent/plaintiff under Section 6 of the Specific Relief Act was decreed.

2. In the revision petition, for the sake of convenience and clarity, the names of the parties shall be mentioned in response to their original status in the suit.

3. Briefly stated the facts of the case are that Manish Kumar Garg filed a suit bearing No.277/2008 under Section 6 of the Specific Relief Act seeking possession of property bearing No.2217-2218, ground floor, Dr. H.C. Saint Fountain, Chandni Chowk measuring 70 square yards. Initially, the suit was filed by him only against three defendants, namely, Gaurav Jain, Praful Mohan and Malti Mohan. Brijesh Jain and Pradeep Jain were added as parties to the suit later on as they were claiming to be the tenants having been inducted in the suit property by Gaurav Jain. The plaintiff, Manish Kumar Garg, had setup a case that he was running the business of electrical goods under the name and style of 'Garg Associates' from premises No.1935/205, Fountain Electric Market, Bhagirath Place, Delhi-110006. Earlier to this, he had taken shop No.2098 on rent for carrying out his commercial activities which was registered in Sales-Tax Department also. In the year 2005, he had to vacate the said shop and thereafter Manish Kumar Garg approached M/s. Anand Properties for having some commercial shop in Bhagirath Place and he was shown the shop in question in the month of March, 2005. Defendant No.1, Gaurav Jain, was represented to be the owner of the shop who had purchased it from Abha Jain vide registered sale deed dated

24.2.2005. A meeting was arranged by Anand Properties between Gaurav Jain and Arun Jain on behalf of defendant No.1. An agreement to sell dated 8.3.2005 was prepared between the plaintiff and the defendant No.1 by virtue of which the defendant No.1 had agreed to sell the shop in question to the plaintiff, Manish Kumar Garg for a total sum of Rs.11 lacs. A sum of Rs.1,50,000/- was stated to have been paid to Gaurav Jain and the agreement was signed and physical possession of the shop in question was also handed over to Manish Kumar Garg in the presence of the property dealer. From 8.3.2005, the suit property continued to be in possession of the plaintiff, Manish Kumar Garg till 25.6.2005. The sale deed was agreed to be executed on 31.5.2005 on which date, the balance payment of the remaining sale consideration was to be made to Gaurav Jain. It is alleged that for making the balance payment to Gaurav Jain, Manish Kumar Garg had requested defendant No.1, Gaurav Jain, to show the complete chain of documents giving rise to his title which he had failed to do so but before this could be done, on 25.6.2005 itself, the defendant No.1, Gaurav Jain, with the help of some goons, put his own lock on the suit premises and thus, divested the plaintiff of his possession. But before doing so, a photocopy of the agreement/sale deed dated

24.2.2005 was also given to the plaintiff. The plaintiff, Manoj Kumar Garg, on account of having been divested of the possession, had approached the mercantile association to have the matter sorted out and retrieve the possession which was of no help to him. This resulted in ultimately filing of a criminal complaint before the Metropolitan Magistrate for his forcible dispossession and also resulted in filing of the suit for specific performance against Gaurav Jain and others.

4. The defendant No.1, Gaurav Jain, contested the matter and denied that possession was ever given to the plaintiff, Manish Kumar Garg although the factum of agreement to sell having been signed by him was admitted. It was admitted by Gaurav Jain that he had received a sum of Rs.1,50,000/- towards part of the sale consideration; however, he has stated that the agreement to sell itself was cancelled by Gaurav Jain and the aforesaid amount of Rs.1,50,000/- was returned to the plaintiff in cash but this transaction could not be gone through by the plaintiff, Manish Kumar Garg as the bank had refused to sanction him the loan. He further stated that the suit premises were originally let out to defendant Nos.2 and 3 and at the time when the written statement was filed, the possession

of the suit property was with defendant Nos.4 and 5, who were inducted as tenant in the year 2004 itself.

5. So far as defendant Nos.2 and 3 are concerned, they were proceeded *ex parte* and they did not file any written statement. Defendant Nos.4 and 5 took the plea that they were the tenants and in possession of the suit property on a monthly rent of Rs.400/- since December, 2004. It was also alleged by them that on 3.6.2005, the plaintiff, Manish Kumar Garg approached the defendant and offered a sum of Rs.2,20,000/- for vacating the tenanted premises which they did not agree and thus, defendant No.1, Gaurav Jain and defendant Nos.4 and 5 contested the matter.

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

- “1) Whether the suit is bad for suppression of material facts? OPD*
- 2) Whether the suit is bad for the lack of cause of action? OPD*
- 3) Whether the suit is bad for not being properly valued for the purposes of court fee? OPD*
- 4) Whether the suit is bad for mi-joinder and non-joinder of necessary parties? OPD*
- 5) Whether the suit is bad for want of locus standi? OPD*

6) *Whether the plaintiff is entitled for restoration of possession? OPP*

7) *Relief.”*

7. The plaintiff in support of his case examined himself as PW-1 and proved his affidavit exhibit PW 1/A, the site plan of the property exhibit PW 1/1, registration certificates issued by the Sales Tax Department exhibit PW 1/2 (colly). In addition to this, a notice under Order XII Rule 8 CPC was also given to defendant No.1 for production of the sale deed dated 24.2.2005 which is proved as exhibit PW 1/3, postal receipt exhibit PW 1/4, courier receipt exhibit PW 1/5, copy of the sale deed dated 24.2.2005 exhibit PW 1/6, agreement to sell exhibit as PW 1/7, documents pertaining to delivery of goods exhibit PW 1/9 & 10, delivery challans received by the plaintiff at the suit property as exhibit PW 1/11 to 18, representation to the Delhi Electrical Traders Association exhibit PW 1/19, letter issued by the market association calling for a meeting exhibit PW 1/20, copy of the police complaint exhibit PW 1/21 and reminders thereafter exhibit PW 1/22 & 23 and copy of the complaint preferred before the Metropolitan Magistrate as exhibit PW 1/24 and thus, considerable amount of documents were proved by the plaintiff,

Manish Kumar Garg, in order to support his contention that he was put into possession in pursuance to the agreement to sell by the defendant Gaurav Jain. PW-2, Hari Mohan Sharma, Assistant Ahlmad of the then learned MM, who proved the complaint exhibit PW 1/24. PW-3, Manoj Kumar Garg, is the younger brother of the plaintiff who proved his affidavit exhibit PW 3/A supporting the claim of the plaintiff.

8. The defendant, Gaurav Jain, examined himself as DW-1 and proved his affidavit exhibit DW 1/A. Brijesh Jain, defendant No.4 examined himself as DW-4 and proved his affidavit DW 4/A. He also relied upon the rent receipt exhibit DW 4/1 and various challans exhibit DW 4/2. Atul Jain, the director of Century Distributors Pvt. Ltd., was examined as DW-5, is and had proved copy of the bills exhibit DW 5/1.

9. So far as issue No.2 is concerned, it was decided against the defendants because the onus of proving that the suit lacked cause of action was on the defendant which they failed to prove. The court held that the plaintiff Manish Kumar Garg had the cause of action because he had stated in the cause of action clause that he had been dispossessed from the suit property after having been delivered the possession.

10. Issue Nos.3, 4 and 5 were decided against Gaurav Jain, defendant No.1 because no evidence in proof of these technical issues with regard to misjoinder, valuation of the suit for the purpose of court fees and the *locus standi* of the plaintiff, Manish Kumar Garg was adduced. With regard to issue No.1 also, that is, suppression of material facts, there was no evidence produced by the defendant. Thus, in effect so far as issue Nos.1 to 5 are concerned, they were all decided against defendant No.1, Gaurav Jain inasmuch as either he did not adduce any evidence or the evidence which was produced by him did not establish any proof in this regard.

11. So far as issue No.6 with regard to restoration of possession by the defendant is concerned, on the basis of analysis of evidence, the court came to the finding that pursuant to the agreement to sell dated 8.3.2005, defendant No.1 had put the plaintiff into possession and he continued to remain so till about 25.6.2005 when he was divested off the possession by putting the locks by the defendant. The story of the defendant that the plaintiff was not put in possession by defendant No.1 was not believed as a correct version. The reason for this as given by the learned trial court is that defendant No.1 had admitted the signing of the agreement to sell

dated 8.3.2005 wherein the factum of possession of the suit property having been delivered to the plaintiff is stated. The defendant has also admitted the fact that a sum of Rs.1,50,000/- was received by him towards the part of the sale consideration and the sale deed was to be executed on 31.5.2005 but before the sale deed could be executed, six days prior to that, it seems that defendant No.1, Gaurav Jain, on account of his change of mind or dishonest intention, wanted to divest the plaintiff from the possession by trying to wriggle out of the transaction and thus, put his own lock. It is in this context, that defendant No.1 has concocted a story that amount of Rs.1,50,000/- which was received by him in the presence of the witnesses including the property dealer, who brought about the agreement that the amount was returned to the plaintiff and this amount has also stated to have been returned by cash and not by cheque.

12. The learned trial judge has rightly analyzed the evidence and arrived at the only reasonable conclusion that the plaintiff was in possession of the suit property at the time of being dispossessed as the possession was handed over to him and since he had brought the suit within the statutory period of six months from the date of dispossession, that is, 25.6.2005, he had to be restored back the possession. I do not find

anything illegal, improper or unreasonable in the finding returned by the learned trial court in holding that the plaintiff was admittedly put into possession pursuant to the agreement to sell dated 8.3.2005. This is not only reflected from the testimony of PW-1, Manish Kumar Garg, that is, the plaintiff himself but also gets support and confirmation from the attendant circumstances. These attendant circumstances are the contemporaneous conduct of the plaintiff, Manish Kumar Garg, by proving various documents which show that he had received the delivery of certain goods at the address which is the suit property. The suit property was reflected as the address with the Sales Tax Department etc. and further when the mercantile association of the market failed to resolve the matter, he had invoked the processes of law by filing a criminal complaint against the defendant. All these corroborative facts lead this court to draw an irresistible conclusion that the finding returned by the learned trial court is absolutely in tandem with the evidence produced by the plaintiff, Manish Kumar Garg and no fault can be found with it which may warrant interference by this court in its exercise of power of revision.

13. I have heard Mr. Rajiv Saxena, the learned counsel for the petitioner *in extenso* while considering this revision; however, he has not been able to give any plausible explanation to the aforesaid evidence or the corroborative circumstances in support of the case.

14. For the aforesaid reasons, I feel that the present revision petition is totally misconceived and accordingly, the same is dismissed.

V.K. SHALI, J.

DECEMBER 03, 2015
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