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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.11/2015

Decided on : 13th January, 2015

MOHD. ABRAR

..... Appellant

Through: Mr.Satish Kr. Tripathi, Advocate.

Versus

PREM CHAND @ PREM SINGH.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. The learned counsel for the appellant has obtained instructions and stated that the appellant is not requiring time for vacating the premises. The learned counsel for the appellant yesterday had argued the matter for substantial period of time and the Court was prima facie of the view that no substantial question of law is involved in this matter. The learned counsel for the appellant today has stated that the Court may decide the matter on merits.

2. Before dealing with the submissions made by the learned counsel for the appellant it may be pertinent to give brief facts of the case.

3. The suit for recovery of possession and mesne profits has been filed by the respondent in respect of hall converted into two parts on the ground floor, entire first floor consisting of three halls, latrine and bathroom and the entire second floor consisting of one hall and open terrace more particularly shown in red colour in the site plan annexed to the plaint in property No. C-98/35, Main Road, Chauhan Bangar, Brahampuri, Delhi-110053. It was alleged that the present appellant was inducted as a tenant by Smt. Ram Kali who expired in the year 2006. The appellant was a habitual defaulter in payment of rent. A legal notice was served on the appellant to vacate the premises which he had failed to do and consequently the suit for possession was filed along with rent and damages claimed @ Rs.4,300/- per month w.e.f. 1st April, 2006 till the date of filing the suit. Interest @ 15 per cent was also claimed apart from damages @ Rs.20,000/- per month.

4. The defendant contested the suit on the ground that he was a tenant in respect of suit premises since 1995 in respect of the ground floor of suit property raised by Smt. Ram Kali and her son Narayan Singh. It was stated by the defendant that although he was inducted as a tenant but after the death of Smt. Ram Kali, Mr. Narayan Singh had been accepting the rent from the appellant in the capacity of absolute owner of the suit

property. Smt. Ram Kali had executed a Family General Power of Attorney (Family Settlement) in favour of Mr. Narayan Singh. It was also stated that Mr. Narayan Singh had been issuing rent receipt from April, 2005 till date. There was a Will purported to have been made by Smt. Ram Kali against Mr. Narayan Singh which was also cancelled.

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

(i) Whether this suit is bad for non joinder of legal heirs of Smt. Ram Kali? OPD

(ii) Whether the plaintiff is entitled for the relief of Possession as prayed for by the plaintiff in the plaint? OPP

(iii) Whether the plaintiff is entitled for a decree of Rs.2,66,600/- as prayed for by the plaintiff in the plaint? OPP

(iv) Whether the plaintiff is entitled for the future damages? If so, at what rate and for what period? OPP

(v) Whether the plaintiff is entitled for the damages at the rate of Rs.4,300/- per month w.e.f. 01.04.2006 till the date of filing of this suit? OPP

(vi) Relief, if any.

6. Both the parties adduced their evidence. The learned Trial Court came to the conclusion that so far as suit filed by the respondent is concerned it is maintainable in the capacity of being one of the legal heirs

of Smt. Ram Kali. It was held by the Trial Court that it is not necessary that other legal heirs are required to be made as party to the suit for eviction of a tenant. For holding this view, the learned Trial Court relied upon the judgment of the Hon'ble Supreme Court in **Umbrella Manufacturing Company vs. Bhagabanbei Aggarwal** 2004 (3) SCC and **Chemons India Pvt. Ltd.vs. Vijay Singh Sandhu** 204 2013 DLT 260. On the basis of these facts the Court also observed that Mr. Narayan Singh could not be considered to be an absolute owner of the suit property. The General Power of Attorney, which was relied by the tenant for the purpose of collecting the rent was stated to be of no consequence because that was document of agency which had ceased to exist after the death of Smt. Ram Kali. As regards the cancellation of Will which was purported to have been made to the exclusion of Mr. Narayan Singh, the Court came to the conclusion that even if this cancellation of Will purported to have been made by Smt. Ram Kali, is accepted and even then Mr. Narayan Singh is a beneficiary then he will be beneficiary in the capacity of one of the legal heirs and not as an exclusive owner and since the suit for eviction by one of the co-owners or co-sharers is maintainable, therefore the suit which was filed by the respondent against the present appellant was maintainable. The Court accordingly passed a

decree of eviction against the appellant and no decree for damages have been passed on account of the fact that rent was being collected by Mr. Narayan Singh although arrears of damages were granted.

7. Appellant feeling aggrieved preferred the first appeal on the question of maintainability of the eviction petition in which he was also unsuccessful which has led to the filing of the present regular second appeal. Section 100 of the CPC clearly lays down that the appeal is maintainable only if a substantial question of law is raised in the appeal.

8. I have heard the learned counsel for the appellant yesterday as well as today he has stated that the appeal raises following substantial question of law :-

(A) Whether despite evidence of Narayan Singh, one of the legal heir of erstwhile owner Smt. Ram Kali Devi, in whose favour tenancy is exclusively attorn, can a suit of eviction be maintained by other legal heirs of deceased owner?

(B) Whether tenancy is deemed to be terminated even in a case when one of the legal accept rent after alleged termination of lease as has been done in the present case?

(C) What is effect of a Family General Power of Attorney (Family Settlement) after death of the settler i.e. whether it extinguished or alive?

(D) Whether it is mandatory to examine one of the witness of the Registered Will to proof the same in the Court of Law?

(E) Can in a given case like present one where one of the Legal Heir of the erstwhile Landlord came into witness box as Defendant Witness in opposition of case of the plaintiff, consent of all be presumed to be implied?

(F) Whether it very foundation of filing a suit is found to be failed, can even then suit can be decreed in favour of plaintiff (as has been done in the present case because the sole ground of eviction is non-payment of rent and the same is proofed on record to be false?

9. I have perused all the above formulated questions. None of these questions in my considered opinion were constituting is a question of law much less a substantial question of law.

10. The first question which has been raised is whether the evidence of Mr. Narayan Singh, one of the legal heir of erstwhile owner Smt. Ram Kali Devi, in whose favour tenancy is exclusively attorn, can a suit of eviction be maintained by other legal heirs of deceased owner?

11. The judgment of the Apex Court in **Umbrella Manufacturing Company's case** (supra) and Division Bench judgment of this Court in **Chemons India Pvt. Ltd** (supra) held that the suit for eviction is maintainable by one of the legal heir without making the remaining legal

heirs as a party. This question as to whether the suit was maintainable by Mr. Narayan Singh in the capacity of one of the legal heir of Smt. Ram Kali stands answered in affirmative in favour of Mr. Narayan Singh. In any event, it is not a question of law muchless a substantial question of law. So far as termination of tenancy is concerned, the legal heir, who is the respondent herein has admittedly given a notice to the appellant to vacate the premises, and, therefore, there was no question of tenancy being deemed to be terminated in the light of acceptance of rent by other legal heir. The Power of Attorney which is sought to be relied upon by the appellant comes to an end the moment Smt. Ram Kali died in 2006. So far as the Will is concerned, since the respondent was not claiming ownership on the basis of Will but was claiming right in the property by interstate succession, therefore, non-examination of any of the attesting witnesses with regard to the Will was not an issue. Similarly other issues which have been raised by the appellant are not substantial questions of law.

12. For the reasons mentioned above, I feel that there is no substantial question of law involved in the instant appeal and the same is accordingly dismissed.

CM No. 481/2015

1. The stay application is also dismissed.

V.K. SHALI, J.

JANUARY 13, 2015

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