

\$~21.

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

+

**Date of Decision: 29.07.2015**

% **RSA 283/2015**

**PREM SINGH**

..... Appellant

Through: Mr. N.K. Chahar & Mr. Harish  
Kuletha, Advocates.

versus

**RAM TILAK & ANR**

..... Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (OPEN COURT)**

1. The present second appeal has been preferred to assail the judgment dated 17.04.2015 passed by the learned ADJ-02, Patiala House Courts, New Delhi in RCA No.68/2013. By the impugned judgment, the First Appellate Court reversed the judgment & decree passed by the Trial Court on 25.02.2013 in the suit preferred by the appellant plaintiff being CS No.210/2011 against the respondent defendant.

2. The appellant plaintiff had preferred the aforesaid suit on the basis that he had purchased the suit property from the legal heirs of late Sh. Ishwar, namely Sh. Bhagwan Dass and Smt. Tara on 28.04.2010 by way of a General Power of Attorney, Agreement to Sell, Possession Letter, affidavit,

Receipt & Will, etc. The plaintiff claimed that the ground floor was in possession of the defendants. The plaintiff claimed that the defendants were informed about the purchase of the property by the plaintiff on 01.05.2010 and they were called upon to vacate the same. The plaintiff claimed that the defendants stated that they would vacate the premises. It was claimed that the defendants had stated that they had paid Rs.50,000/- to the previous owner as *Pagdi* and it had been agreed between the defendants and the erstwhile owner that the defendant would not pay any rent and, simultaneously, no interest would be payable to them on the amount of Rs.50,000/- which had been advanced to the erstwhile owner. The plaintiff claimed that upon learning of this arrangement, he expressed his readiness to pay Rs.50,000/- to the defendants on the condition that the defendants would have to pay rent of Rs.3,000/- per month. However, the defendants did not vacate the premises and demanded Rs.2 Lakhs from the plaintiff. The suit was contested by the defendants. The defendants disputed the ownership of the plaintiff. The defendants did not deny the fact that there was an agreement between them and the previous owner that they would not pay any rent to the previous owner and would not charge interest on the amount of Rs.50,000/- advanced by them to the previous owner.

3. The issues were framed by the Trial Court on 04.11.2011. The preliminary issue being: whether the plaintiff is entitled to decree of possession. The parties led their respective evidence. The plaintiff led in evidence the documents on the basis of which he claimed title to the suit property as Ex.PW-1/A to PW-1/F. During his cross-examination, the defendants set up their case that Sh. Bhagwan Dass was receiving Rs.1,500/-

per month as rent and Rs.50,000/- was given as security amount. The defendant also claimed that the suit property falls in slum area.

4. The defendant in his evidence disclosed that the erstwhile owner Sh. Bhagwan Dass had taken a loan of Rs.50,000/- at the time of inception of tenancy, i.e. on 08.05.2003 on the condition that the defendant shall not pay any rent and Sh. Bhagwan Dass will not pay any interest on the loan amount. The defendant also produced the receipt of Rs.50,000/- as Ex.DW-1/1. The defendant also stated that Sh. Bhagwan Dass started charging rent of Rs.1,500/- per month which the defendant had to pay as he had no option. The defendant also led in evidence a copy of the judgment dated 13.04.2010 rendered in Civil Suit No.356/2009 instituted by him against Sh. Bhagwan Dass as Ex.DW-1/2. He also produced two rent receipts of Rs.1,500/- as Ex.DW-1/6 and DW-1/7.

5. The Trial Court disbelieved the said receipts Ex.DW-1/6 and DW-1/7 on the basis that the signatures of Sh. Bhagwan Dass on the said receipts were at variance with the signatures of Sh. Bhagwan Dass in the documents produced by the plaintiff to claim title, namely Ex. PW-1/6 and PW-1/7. The Trial Court also took into account the fact that there was no mention of execution of Ex.DW-1/6 and DW-1/7 in the entire written statement. The factum of the rent being Rs.1,500/- per month was not stated in the written statement and was stated, for the first time, in the evidence of DW-1. On the aforesaid premise, the defence of the defendant was disbelieved that the defendant is a tenant in the suit property @ Rs.1,500/- per month. Consequently, the suit of the plaintiff was decreed.

6. The First Appellate Court while reversing the impugned judgment has taken into consideration the fact that the admitted case of the plaintiff in his plaint is that the defendants were in occupation of the entire ground floor as tenants. In paragraph 3 of the plaint, the averment made by the plaintiff read as follows:

*“3. That the defendants were in the possession of the entire ground floor as tenant.”*

7. So far as the quantum of rent is concerned, the First Appellate Court placed reliance on Ex.DW-1/2 which was the certified copy of the judgment rendered by the Civil Court on 13.04.2010 in Civil Suit No. 356/2009 titled *Ram Tilak Vs. Bhagwan Dass*. The suit had been preferred by the defendant against the erstwhile owner and his landlord Sh.Bhagwan Dass, to seek a permanent injunction so as to restrain the defendant Sh.Bhagwan Dass from interfering in the peaceful occupation/ possession of the plaintiff and not to dispossess the plaintiff forcibly without following due process of law from the suit property. The said suit had been decreed by an ex-parte judgment on 13.04.2010, i.e. even before the appellant plaintiff came into picture on 28.04.2010 (when the documents Ex PW-1/A to Ex PW-1/F were executed). This ex-parte judgment records the pleadings of the plaintiff therein. Paragraph 2 of the said judgment reads as follows:

*“2. In the nutshell, it is the case of the plaintiff that plaintiff has taken on rent, the suit premises on 08.05.2003 from the defendant and is now residing on the ground floor of the suit premises. It has been contended by the plaintiff that the suit premises had been taken on rent by the plaintiff when he lent a loan of Rs.50,000/- to the defendant, on the condition that he shall not pay any rent to the defendant and likewise, the*

*defendant will not pay any interest on the loan amount. It has also been agreed between the parties that the plaintiff can reside in the tenanted premises till the time, defendant return the loan amount of Rs.50,000/- to the plaintiff, and the plaintiff shall vacate the suit premises after receiving the full and final amount of Rs.50,000/-. It is also contended by the plaintiff that after some time of the said agreement, the defendant started charging a monthly rent of Rs.1500/- however, the plaintiff was not supposed to pay any rent to the defendant as per the said agreement but left with no alternative he had to pay the rent of Rs.1500/- per month. Now the plaintiff apprehends his illegal dispossession at the hands of the defendant. Under these circumstances, the plaintiff has filed the aforesaid suit.”*

(Emphasis supplied)

8. The Appellate Court held that Ex.DW-1/2 discloses that the claim of the defendant herein (who was plaintiff in the Civil Suit No.356/2009) was that he was paying a monthly rent of Rs.1,500/- for the suit premises to Sh. Bhagwan Dass. His landlord Bhagwan Dass did not contest this position. Consequently, the First Appellate Court held that the relationship between the parties was that of landlord and tenant, and the defendant respondent was a tenant in the suit premises on a monthly rent of Rs.1,500/-. The first appeal was, accordingly, allowed.

9. The submission of learned counsel for the appellant is that the two receipts sought to be produced by the respondent defendant had been disbelieved by the Trial Court. In the face of the finding, the First Appellate Court could not have proceeded to hold that the rate of rent was Rs.1,500/- per month.

10. I do not find any merit in this submission. A perusal of the impugned judgment of the First Appellate Court shows that the First Appellate Court has not placed any reliance on the two receipts Ex.DW-1/6 and DW-1/7. The First Appellate Court has proceeded to return the finding with regard to the rate of rent entirely based on the judgment in Civil Suit No.356/2009 (Ex.DW-1/2). In the said judgment, which was rendered in the suit preferred by the respondent/ defendant/ tenant against the erstwhile owner Sh. Bhagwan Dass, the Court had culled out the case of the plaintiff, namely the respondent herein, that the rate of rent was Rs.1,500/- per month.

11. It is not necessary for a party to plead his evidence. It is enough if the party pleads his case in substance. In the present case, even the appellant plaintiff had pleaded that the respondent was a tenant in the suit premises. The appellant had failed to disclose the rate of rent. The defendant respondent had not pleaded the rate of rent, but had led in evidence the ex-parte judgment (Ex.DW-1/2) in support of his plea that he was a tenant in the premises. That judgment clearly records the stand of the respondent defendant that the rate of rent was Rs.1,500/- per month. This averment went unchallenged, as Sh. Bhagwan Dass did not contest the suit. The appellant plaintiff having stepped into the shoes of Sh. Bhagwan Dass, is bound by ex-party decree obtained by the respondent tenant against the erstwhile landlord.

12. Learned counsel for the appellant has submitted that the respondent had denied the title of the appellant and, thus, was no longer entitled to claim that he is a tenant in the suit premises. It is submitted that the tenancy stood forfeited. In this regard, reference has been made to a Division Bench

judgment of this Court in *Naeem Ahmed Vs. Yash Pal Malhotra (Deceased) Through LR's and Another*, RFA No. 74/2002 decided on 27.02.2012. In this decision the Division Bench placed reliance on *Kurella Naga Druva Vudya Bhaskara Rao Vs. Galla Jani Kamma alias Nacharamma*, 2008 (11) SCALE 160, and *Abdulla Bin Ali Vs. Galappa*, (1985) 2 SCC 54, wherein it has been held that when the tenant denies the title of the landlord and the tenancy, the suit filed for recovery of possession is not premised on the basis of the relationship of landlord and tenant between the parties, and would lie only in the Civil Court, and not otherwise.

13. In my view, this decision has no application in the facts of the present case. In the present case, the defendant has not denied his status as tenant in the suit premises, but he has denied the title of the plaintiff. A perusal of the written statement shows that he has denied the documents, whereby the plaintiff has sought to claim title to the property. This denial is only to put the appellant plaintiff to strict proof of his title. The defendant respondent did not forego his status as that of a tenant, and did not set up a title in the suit property destroying his status as that of a tenant.

14. For all the aforesaid reasons, I find no merit in this appeal. No substantial question of law arises for consideration of this Court. Dismissed.

15. Dasti.

**VIPIN SANGHI, J.**

**JULY 29, 2015**

*B.S. Rohella*