

\$~63.

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

+ **Date of Decision: 04.08.2015**

% **RSA 288/2015 & C.M. Nos.13833-34/2015**

SURENDER KUMAR

..... Appellant

Through: Mr. Pradeep Diwan, Sr. Adv. with
Mr. Ujjwal Jha and Anupam Dhingra,
Advocates.

versus

HARI SINGH (DECEASED) THR LRS & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment dated 23.04.2015 passed by the Ld.ADJ-03, Patiala House Courts, New Delhi in RCA No. 40/14, whereby the First Appellate Court has dismissed the appeal filed by the appellant/defendant to assail the decree passed by learned Civil Judge-10 (Central), Tis Hazari Courts, Delhi, i.e. the Trial Court, whereby the Trial Court had decreed the suit for recovery of possession, damages and mesne profits in favor of the plaintiff/ respondent vide judgment dated 20.11.2014.

2. The original plaintiffs, who were real brothers, inherited a plot of land measuring 295 sq. yards being part of Khasra No. 632/462/176, Nangal Raya, New Delhi and bearing municipal number WZ-1646D (hereinafter referred to as the suit property) from their father Late Tara Chand. Late Tara Chand by an oral agreement let out the suit plot to the original defendant/predecessor-in-interest of the appellant, with the permission to raise construction on the said plot of land for his residence on a monthly rent of Rs.200/-. The original defendant raised construction and started residing therein with his family.

3. The plaintiffs claimed that the defendant paid rent upto 31.07.2002, and was in arrears to the tune of Rs.2,200/-. Consequently, legal notice dated 26.04.2003 was got issued to the defendant, and sent by registered A.D post and U.P.C demanding arrears of rent, and terminating tenancy by 30.06.2003. The defendant sent a reply dated 29.05.2003, stating that payment upto November 2002 had been made and cheque of Rs.1,200/- was enclosed along with the reply. The plaintiffs did not encash the cheque as it did not pertain to the entire arrears. Since the defendant was claimed to be an unauthorized occupant of the suit plot, as he had not vacated the same despite legal notice, therefore, the plaintiffs filed the present suit seeking the reliefs of ejectment/ possession, arrears of rent of Rs.2,200/-, mesne profits of Rs.450/- per month from 01.07.2003 onwards, and costs.

4. The defendant contested the suit by filing his written statement. The defendant, primarily, raised the issue that the tenancy was protected under the Delhi Rent Control Act, 1958 (the Act). On the basis of the pleadings,

the learned Trial Court vide order dated 24.11.2003 framed the following issues:-

- i. Whether the present suit is barred under Section 50 of the Delhi Rent Control Act?
- ii. Whether the present suit is maintainable or bad for non-joinder or misjoinder of necessary parties?
- iii. Whether the present suit is not maintainable and barred by the principle of waiver/estoppels and acquiescence and by special enactment?
- iv. Whether the Plaintiffs are entitled to the recovery of possession/ejectment as prayed?
- v. Whether the plaintiffs are entitled to the recovery of damages/mesne profit as prayed if so at what rate?
- vi. Whether the plaintiffs are entitled to any interest on arrears of rent, if so at what rate and for what period?
- vii. Relief

5. The parties led their respective evidence. Ex.PW-1/1 is the Rent Deed executed between the parties. The Rent Deed (Ex.PW-1/1) described the tenanted premises as “one piece gher”. In the cross-examination of PW-1/ plaintiff No.2, the defendant himself suggested that the tenanted premises consisted of vacant land with a boundary wall and an electricity connection. The defendant/DW-1, in his cross-examination, admitted the suggestion that he was given a vacant plot covered with boundary wall and no construction was existing on the plot at the time of letting out of the same to him. The

Trial Court referred to the definition of the expression 'premises' contained in Section 2(i) of the Act and concluded that the suit premises was not covered by the Act.

6. Reliance was also placed on the judgment of this Court in ***Ram Prakash v. Amril Kaur***, 20 (1981) DLT 145, wherein this Court has held that for the purpose of determining subject matter jurisdiction, what has to be seen is the nature of the property – as it existed at the time of letting, and it was not relevant if the tenant had put up any construction on the plot subsequently, even if it were with the consent of the landlord. Consequently, the objection of the defendant premised on Section 50 of the Act was rejected.

7. The objection of the defendant that the other co-owners had not been joined as party plaintiffs, was rejected since even a single co-owner/landlord could maintain an action against the tenant. The Trial Court returned findings on all issues in favour of the plaintiff and, consequently, decreed the suit. The plaintiff was held entitled to mesne profit @ Rs.2,000/- per month from the date of filing of suit till physical vacant possession thereof has been handed over to the plaintiff. The plaintiff was also granted interest @ 18% per annum on future mesne profits. The plaintiffs were also awarded arrears of rent for the period 01.08.2002 to 01.07.2003 @ Rs.200/- per month, i.e. Rs.2,200/-, however, without any interest.

8. The First Appellate Court has dismissed the first appeal of the appellants/ successor-in-interest of the original defendant. A perusal of the impugned judgment shows that the only aspect argued by the appellant was

with regard to the applicability of Section 50 of the Act. The First Appellate Court concurred with the findings of the learned Trial Court that the bar created by Section 50 of the Act did not apply in the present case, as the suit premises did not fall within the expression ‘premises’ as defined in Section 2(i) of the Act. The First Appellate Court placed reliance on the judgment of this Court in **Gobind Sahai V. Narain Dass & Ors.**, ILR (1972) 1 DELHI 55. In **Gobind Sahai** (supra), this Court had observed:

“A) The existence of boundary walls is not decisive of the matter as they may be erected to demarcate the boundaries of the land or to support a shed or a roof or for any other purpose.

B) A roofless structure would ordinarily not constitute a building unless it is established as a fact that the same was capable of being and was intended to be used as such without a roof, for example, an open air restaurant, a swimming pool etc.

C) The erection of superstructures by a tenant after the letting is irrelevant for determination of the question as to whether what had been let out by the landlord constitutes premises.”

9. Even before this Court, the submission of Mr. Pradeep Diwan, learned senior counsel for the appellant is confined to the issue – as to whether the suit was barred under Section 50 of the Act, or not. The submission of Mr. Diwan, learned senior counsel for the appellant is that the Rent Deed (Ex.PW-1/1) stipulated rent of Rs.75/- per month. However, the rent was increased to Rs.200/- per month after the defendant had raised construction. Thus, a fresh tenancy came into existence – which was in respect of the constructed/building premises with appurtenant land. Reliance has been placed by Mr. Diwan on the decisions reported as **Kamla Devi Vs. Laxmi Devi**, (2000) 5 SCC 646, **Sohan Lal Behl Vs. Chhotey Lal**, 72 (1998) DLT

646, *Nandu Mal Vs. Municipal Committee, Simla*, A.I.R. 1925 Lahore 252, *Ramcharan and Anr. Vs. Narsingh Das Gandhi (Dead) and Ors.*, A.I.R 1982 M.P. 40.

10. Section 2(i) of the Act defines the expression ‘premises’ to read as follows:

“(i) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes.-

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house;”

11. A plain reading of the expression ‘premises’ as defined in Section 2(i) of the Act shows that for the premises to fall within the realm of the Act, it is essential that there should be in existence a ‘building’. It is only when there is a ‘building’, that garden, grounds and outhouses, if any, appertaining to such building or part of the building could be considered to be ‘premises’ within the meaning of Section 2(i) of the Act. If there is no ‘building’ in existence at the time of letting out, the tenancy cannot be said to fall within the realm of the Act.

12. The said Rent Deed acknowledges the original plaintiffs as the owners and describes the rented premises as consisting of vacant bounded area with an electricity connection. The said Rent Deed describes the tenant as the First Party, and records that the First Party may raise construction at its own expense for the purpose of residence. The Rent Deed also provides in clause

4 that when the tenant vacates the premises, he shall remove the construction raised by it, and deliver vacant possession of the leased premises against acknowledgement.

13. The stand taken by the defendant in its own written statement in paragraph 5 was that only land was rented out to the defendant, and that the defendant raised the structure thereon from his own funds. Pertinently, no fresh agreement, on the expiry of the initial period of eleven months as stipulated in Ex.PW-1/1, was executed between the landlord and the tenant, and none was produced before the Court.

14. Merely because the rent of the premises was revised from Rs.75/- per month to Rs.200/- per month, the same does not change the nature and scope of the tenancy. The plaintiff was the owner and the landlord only in respect of the vacant land, which was bounded by boundary wall and had an electricity connection. The ownership of the structure raised on the vacant land, though with the permission of the landlord, vested in the defendant, as noticed hereinabove. The plaintiff could not have let out the building to the defendant, which was not owned by him and was owned by the defendant himself. Thus, the revision of rent was only in respect of the area leased out initially.

15. The Courts below have, on appreciation of evidence led before the Trial Court, returned consistent findings that the tenancy was not governed by the Act and the appellant has not been able to point out any infirmity, much less perversity, in the said finding. The Courts below have taken note of the judgments of this Court in ***Ram Prakash*** (supra) and ***Gobind Sahai*** (supra). It is well-settled that the nature of the property at the time of its

letting would determine the issue whether the property is covered by the Act, or not, and it is not relevant that the tenant may have put up construction – even with the consent of the landlord. It makes no difference whether the permission to construct was given by the landlord to the tenant simultaneously at the time of letting, or not. It was not the case of the defendant/ appellant that the open piece of land, when leased out, was intended to be used as such. In fact, the same could be used as a residence after raising construction.

16. Learned senior counsel for the appellant then referred to Section 51 of the Transfer of Property Act (TPA) to submit that the appellant/ defendant should have been compensated for the value of the super-structure set up by the defendant under the agreement of the parties. I do not find any merit in this submission of Mr. Diwan for couple of reasons. Firstly, there was no pleading made by the defendant/ appellant in this respect, and no relief was sought by the defendant/ appellant on the basis of Section 51 of the TPA. Moreover, as noticed above, under the Rent Deed (Ex.PW-1/1), it was clearly agreed between the landlord and the tenant that at the time of vacation, the tenant shall remove the structure that he may set up on the tenanted premises, i.e. the bounded vacant land. The defendant was, therefore, conscious of, and well-aware of his limited right to remove his structure upon vacation of the premises, and not to claim any amount from the landlord/ plaintiff for raising the structure in the event of his ejectment.

17. Ld. counsel for the appellant relied on *Kamla Devi* (supra). The facts of this case are that the landlady let out a property, consisting of one big room. Next to the property was some vacant land, also belonging to the

landlady, measuring 9' by 7'. The tenant built a latrine on that small plot of land, without authorization. The landlady filed a suit for injunction, seeking a direction to the tenant to demolish the structure. The parties reached an understanding and filed a compromise application which stated, *inter alia*, that the tenant had constructed the latrine on the vacant land and that she had agreed to pay Rs 5/- per month to the plaintiff (landlady), being rent to an open land measuring 9' by 7' next to the originally rented property. The landlady after 5 years of the compromise filed a suit for ejectment from the open land. The Supreme Court held the same did not constitute a 'premises' under the Act, as the structure on the open land did not belong to the landlady. This judgment, therefore, supports the case of the respondent and not that of the appellant.

18. Similarly, ***Sohan Lal Behl*** (supra) supports the case of the respondent/ plaintiff, and in no way it supports the submission of Mr. Diwan. In this case, the let out premises consisted of an open and bounded piece of land with a tin shed constructed thereon. This Court held that the same did not constitute a 'premises' within the meaning of the Act. In paragraph 6, this Court held as follows:

“6. Whether this averment of the respondent would amount to "Premises"? To understand the same we have to turn to the pleas raised by the respondent in his additional written statement wherein he took the plea that on the land let out to him there was boundary walls and tin shed constructed thereon. The question that arises is, whether existence of boundary walls and tin shed would constitute "premises" within the meaning of Section 2(i) of Delhi Rent Control Act (in short the Act). Section 2(i) of the Act defines "premises" as under:

Section 2(i):

"Premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use and for any other purpose, any includes –

(i) the garden, grounds and out houses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building; but does not include a room in a hotel or lodging house.

Readings of the provisions of Section 2(i) of the Act shows that ground or open land independently cannot be called the premises. It is only when building is given on rent that could constitute premises. Appurtenant of the building would not amount to premises. It has been so held by the Supreme Court in the case of Koti Saroj Anamma and Anr. v. Jonnalagada Malleswara Rao, 1995(2) Scale page 445, wherein it was observed that shed being only an accessory to the main lease it would not come within the purview of Rent Control Act. It was only an adjunct. Such a shed meant to cover the saw mill machinery can hardly be called a house or even a hut. Dominant purpose of the lease as in this case was to let out vacant piece of land. The construction was to be raised by respondent as per his own showing subsequently as per his requirements. Law is settled that if the construction is raised by the landlord then it would amount to building but if the construction is raised by tenant then lease would be of the open land and not of any building. For support reference can be made to the decision of the Supreme Court in the case of Harish Chandra and Anr. v. Mohd. Ismail and Ors., (1990) 4 SCC page 493."

19. **Nandu Mal** (supra) also has no application in the facts of this case since a wooden shed measuring 10 ft. × 8 ft. × 8 ft. roof of tin shedding and used for sleeping purposes at night, let out by landlord, was held to be a

‘building’. The fact situation in the present case is materially different, as noticed hereinabove.

20. Mr. Diwan submitted that the expression ‘accommodation’ is defined in the M.P. Accommodation Control Act, 1961 similarly as the expression ‘premises’ is defined in the Act. He relied upon ***Ram Charan*** (supra), wherein covered cabins have been let out by the landlord to be used for commercial purpose. The cabins were placed on the landlord’s Chabutras. The M.P. High Court held that the same constitute ‘accommodation’ as defined in the M.P. Accommodation Control Act, 1961. Once again, I find this decision of no avail to the appellant since the covered cabins have been let out by the landlord himself and it was not the case of letting of immovable piece of land merely with a boundary wall.

21. Consequently, I do not find any infirmity, much less perversity, in the impugned judgment, which is founded upon consistent findings of fact returned by the Trial Court and the First Appellate Court. No substantial question of law arises for consideration in the present appeal. The same is, accordingly, dismissed.

VIPIN SANGHI, J

AUGUST 04, 2015

B.S. Rohella