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

+ **Date of Decision: 12.10.2015**

% **RSA 363/2015 & C.M. Nos.23110-11/2015**

SOBHIT RAI

..... Appellant

Through: Mr. Murari Kumar, Advocate

versus

CHANDAN JHA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 01.09.2015 passed in RCA No.34/2014 by the First Appellate Court, namely, ADJ (Central-07), Tis Hazari Courts, Delhi, whereby the first appeal preferred by the appellant/defendant - to assail the judgment and decree dated 10.10.2014 passed in Suit No.552/2013 by the Trial Court, namely, the Civil Judge (Central-12), Tis Hazari Courts, Delhi partially decreeing the suit of the respondent/plaintiff, has been dismissed.

2. The respondent/plaintiff had preferred the said suit to seek the relief of possession, damages, permanent and mandatory injunction. The case of the respondent/plaintiff was that he was a tenant of the appellant/defendant in respect of one room on the ground floor along with common latrine,

bathroom and passage in property house no.248, Gali No.7, Surender Colony, Part-I, Jharoda, Mazra Burari, Delhi-84 on a monthly rent of Rs.1200/- including electricity and water charges. The said property was shown in red and yellow colour in the site plan with the plaint.

3. The case of the plaintiff was that in the month of August 2013, he went to his native village, leaving behind his two sons, namely, Munna and Kamlesh Kumar Jha at the suit premises. On 01.09.2013, the plaintiff with his associates broke open the locks of the suit premises and removed the articles of the plaintiff including a suit case containing Rs.50,000/-, jewellery, clothes, bedding, utensils etc. The son of the plaintiff returned from work in the evening and upon seeing the state of affairs, he called the police on no.100, who restored the possession of the suit premises to plaintiff's son, but again on 03.09.2013, the defendant broke open the door of the suit premises. The matter was again reported to the police, but this time no action was taken by the police. Hence, the present suit was preferred.

4. The defendant filed his written statement denying that the plaintiff was ever a tenant of the defendant at any point of time. The defendant claimed that the plaintiff was a stranger to the defendant as there was no relationship of landlord and tenant between them. The defendant claimed that the plaintiff had never been in possession of the suit premises.

5. On the pleadings of the parties, the Trial Court framed the following issues on 08.01.2014:

- i) Whether the plaintiff is entitled to the possession, damages as prayed for? OPP

ii) Whether the plaintiff is entitled to the decree of permanent and mandatory injunction as prayed for? OPD

iii) Relief

6. The plaintiff examined his son Kamlesh Kumar Jha as PW-1 and himself as PW-2. He also examined SI Ram Bir Singh from P.S. Burari as PW-3 to prove his FIR No.360/13 under section 380/448/411 IPC Ex. PW1/A. On the other hand, the defendant examined himself as DW-1.

7. On the basis of the evidence led, the Trial Court decreed the suit for possession on the premise that the plaintiff had established the relationship of landlord and tenant between the defendant and the plaintiff. However, the claim for damages was rejected since the plaintiff had not been able to establish the same. The relief of permanent and mandatory injunction to restrain the defendants from creating any third party interest in respect of the other portions of the suit property was declined. Consequently, the defendant was directed to restore possession of the suit property to the plaintiff, namely, the portion shown in red and yellow colour in the site plaintiff as Ex. PW-2/1.

8. The First Appellate Court has dismissed the first appeal while returning concurrent findings of fact in favour of the respondent/plaintiff.

9. The submission of counsel for the appellant is that the plaintiff had not been able to establish by leading any cogent evidence the factum of the plaintiff being a tenant of the defendant/appellant in the suit property.

10. It is well settled that where there are concurrent findings of fact returned by the Trial Court and the First Appellate Court, unless the

appellant is able to show that the said findings are perverse, or not based on any evidence, or founded upon extraneous matters and considerations, this Court in second appeal would not interfere with such concurrent findings if they are premised on appreciation of evidence, and the approach of the courts below cannot be faulted.

11. In the present case, not only the plaintiff was able to establish his case— that he was a tenant in the suit property by leading positive evidence, the evidence of the appellant/defendant, and the manner in which the appellant proceeded to cross examine the plaintiffs witnesses itself clearly brought out the fact that the plaintiff, indeed, was a tenant of the defendant. While on the one hand, the defendant claimed that the plaintiff was a complete stranger to the defendant, on the other hand the cross examination of the plaintiffs witnesses by the defendant itself established the factum of the plaintiff and his sons being in possession of the suit property.

12. The case of the plaintiff was that of the two sons, one of his sons had died of electrocution while residing in the suit premises. Though the defendant denied the said fact pleaded by the plaintiff, during the cross examination of PW-1, the defendant himself indicates his knowledge with regard to the manner in which the brother of PW-1 died. It has come out in the cross examination of PW-1 *“It is incorrect that my brother died while he was throwing water on the day of Holi and came in contact with the electricity. It is incorrect that my brother died due to electrocution”*. It has also come out in the cross examination of PW-1 that the plaintiff *“prior to he leaving for his village had kept some of his belongings in the suit premises with the understanding as and when he returns he shall take away*

his belongings”. Therefore, on the one hand the defendant claimed to be stranger to the plaintiff, while on the other hand he claimed that the plaintiff had been permitted to keep some of his belongings in the suit premises with the understanding that as and when he returns, he shall take away the same. It was for the defendant/appellant to explain as to under what circumstances the plaintiff – an alleged stranger, was permitted to keep his belongings in the suit premises with the aforesaid understanding. He has failed to offer any explanation, thus leading to an adverse inference against him.

13. The defendant further suggested to PW-1 that he had broken the lock of the premises and misappropriated the belonging of his father. It was also suggested to PW-1 that the plaintiff and his son *“break open the lock of the suit premises and got the defendant implicated in false and fabricated criminal case”*. Pertinently, the defendant never lodged any police complaint against the plaintiff or his son on account of the alleged illegal breaking open of the locks of the suit premises by the plaintiff’s son, i.e. PW-1. On the other hand, a police complaint was lodged by the plaintiff on the premise that the defendant had broken into the suit premises which was under his tenancy. In the cross examination of PW-2, i.e. the plaintiff, the defendant had suggested that when the plaintiff was leaving to his village, he left his *“belongings with the defendant with the understanding as and when I return back, I shall take away my belongings from the suit premises”*.

14. During his cross examination, the appellant/defendant as DW-1, inter alia, admitted that there are 8-10 tenants in the suit premises and that he does not issue rent receipt to any of the tenants. He also admitted that he does not enter into rent agreement with some of the tenants and some of the tenants

are kept without any rent agreement. He volunteered to state those who reside for 2-3 months, with them no rent agreement is executed. When he was asked about the name of the tenant with whom he had entered into a rent agreement, he stated that he had entered into such an agreement only with one tenant, but he did not remember the name of the said tenant as he had expired, and his LRs were residing as tenants. He could not recall the date, month and year of such rent agreement, nor the number of years gone by when the said agreement was entered into. He admitted that *“It is correct that with other tenants I have not executed any rent agreement”*. He admitted that on the ground floor, in one room, there was a tenant called Sushila for the last 2-3 years with whom he did not enter into any agreement and he did not issue any rent receipt to her.

15. Thus, on the basis of the aforesaid evidence, it stood established that the defence of the appellant/defendant in the written statement-that the plaintiff/respondent was a stranger to him, stood completely demolished. His defence that the plaintiff had no concern with the suit property also stood demolished by his own line of cross examination of the plaintiffs witnesses to the effect that the plaintiff was permitted to keep his belongings in the suit premises while he was away to his village. If the respondent/plaintiff was a stranger to the appellant/defendant, there would have been no question of the respondent requesting the appellant to permit him to keep his belongings in the suit premises while he was away, or the appellant allowing him to do so. It also militates against his feigned ignorance of even the identity of the respondent/plaintiff (who was claimed to be a stranger).

16. The appellant also admitted that he had created several tenancies in his property in question without entering into rent agreement or issuing rent receipts. This testimony corroborated the case of the plaintiff that in respect of his tenancy as well, no rent agreement was executed or rent receipt issued by the defendant/appellant. The courts below, therefore, have justified in concluding that the respondent was a tenant of the appellant on preponderance of probabilities – which is the test applicable in the matter of appreciation of evidence to civil cases. Consequently, it cannot be said that the impugned judgment and decree are not founded upon cogent evidence or that the respondent/plaintiff was not able to sufficiently establish his case of being a tenant in the suit premises.

17. I do not find any merit in the present appeal and, therefore, the same is dismissed.

VIPIN SANGHI, J

OCTOBER 12, 2015

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