

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RSA 5/2016**

Reserved on: 16.05.2016
Date of decision: 18.05.2016

VIJAYAN

..... Appellant

Through: Mr. Ruchir Batra, Advocate.

versus

HARINDER KAUR

..... Respondent

Through: Mr. Avtar Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The present second appeal on behalf of the appellant is directed against the judgment and order dated 21.12.2014 passed in Civil Suit No.491/2014, preferred by respondent/plaintiff, Harinder Kaur, seeking recovery of possession and damages of Rs.54,000/- against the appellant/defendant which was decreed as also against the judgment dated 20.12.2014 passed in RCA No.3/2015 by the Additional District Judge, South District, Saket Courts Complex, New Delhi whereby the judgment of the Trial Court has been upheld and affirmed.

2. The respondent/plaintiff claimed herself to be the registered owner of a house bearing No.195-A, Gautam Nagar, New Delhi, which stood transferred in her name by a registered gift deed dated

20.04.2006 by her mother Smt.Surinder Kaur who has been living with her for a long time.

3. The case of the respondent/plaintiff is that the appellant/defendant illegally entered the suit premises and occupied one room and did not vacate the premises despite notice to him. A civil suit, therefore, was filed for recovery of the possession of the room which was in unauthorized occupation of the appellant/defendant as well as for the damages.

4. The appellant/defendant contested the aforesaid suit on various issues including non maintainability of the suit and lack of jurisdiction of the Civil Court to try the case.

5. The case of the appellant/defendant before both the Courts below has been that he has been residing in a part of the suit premises since 1983 as a tenant of one Amar Singh (father of the respondent/plaintiff) on a monthly rental of Rs.200/- which was inclusive of water and electricity charges. There was no written agreement regarding tenancy but by virtue of an oral concession, it was agreed upon by the landlord (Amar Singh) that if separate electric connection would be taken by the appellant/defendant, the monthly rental would be reduced to Rs.100/-. The electric connection was taken in his name by the appellant/defendant but the lesser rent as agreed upon by Amar Singh was not acceptable to him. On being threatened of being dispossessed, way back in the year 1994, appellant/defendant had preferred a suit for permanent and mandatory injunction (Suit No.411/1994; new number 679/2000) against aforesaid Amar Singh in which there was an admission by Amar

Singh that the appellant/defendant herein was his tenant and that he (Amar Singh) would not dispossess him without the due process of law.

6. It has been submitted on behalf of the appellant/defendant that the aforesaid fact which was brought on record before the Trial Court was never adverted to by the Trial Court and the same was ignored by the First Appellate Court as well. It was, therefore, urged by the appellant/defendant that the suit preferred by the respondent/plaintiff was based on totally false and concocted pleas and the only purpose was to file a suit for possession before the Civil Judge who did not have the jurisdiction to deal with the issue. There never existed any landlord-tenant relationship between the appellant and the respondent and the gift deed dated 20.04.2006 (that is how the suit property was transferred in the name of respondent/plaintiff) did not give any right, title or interest to the respondent/plaintiff in the suit property. The other major objection which was taken by the appellant/defendant before the Trial Court was that the suit was barred by law of limitation as the suit had been filed on 27.03.2010 i.e. after many years of the appellant/defendant coming in possession of the suit premises as a tenant.

7. On the basis of the pleadings of the parties, the Trial Court vide order dated 18.02.2011 framed the following issues:-

1. *Whether the suit of the plaintiff is barred under Delhi Rent Control Act? OPD*
2. *Whether the plaintiff has no locus standi to file the suit? OPD*

3. *Whether the suit of the plaintiff is not properly valued for the purpose of Court fee? OPD*
4. *Whether the plaintiff is entitled to a decree of possession? OPP*
5. *Whether the plaintiff is entitled to a decree of damages? OPP*
6. *Relief, if any."*

8. The respondent/plaintiff, Harinder Kaur, tendered her evidence by way of affidavit reiterating the claim made by her in the plaint. In her affidavit, she has stated that the suit property was transferred in her name and she along with her husband found the appellant/defendant to be in unauthorized occupation of a room in the house. She had also lodged a complaint with Hauz Khas police station vide DD No.25 dated 21.12.2009 regarding the appellant having trespassed the suit premises.

9. In her cross examination she has stated that she did not reside in the suit property. Her parents did not stay together and her mother resided with her ever since she joined service at Chandigarh. The parents of the respondent/plaintiff did not have a cordial relationship. The suggestion given to her that Sh.Amar Singh, her father, was taking care of the suit property since beginning was denied.

10. Smt.Surinder Kaur, mother of the respondent/plaintiff appeared before the Trial Court as PW-2. She in her affidavit evidence submitted that the suit property was purchased by her father long time ago. The property which she had inherited from her father was gifted to the respondent/plaintiff, her daughter with whom she resided. The suggestion given to her that some part of the suit property was sold to

one Mr.Shivan Kutti by her husband Amar Singh was vehemently denied.

11. The registered gift deed (Ex.PW-1/1) has been proved by Vimal Kumar (PW-3), Head Clerk in the office of the Sub-Registrar-V, Mehrauli, Delhi. The sale deed in favour of the mother of the respondent/plaintiff has been proved by Satyapal (PW-4), Record Attendant, Department of Delhi Archive, 18/A, Satsang Vihar Marg, Near JNU, New Delhi. The fact of mutation of the property in the name of the appellant has also been proved by Ishwar Chand Sharma (PW-5) who is an Upper Division Clerk in A&C Department, MCD, South Zone.

12. What is noticeable here is that the appellant/defendant, Vijayan, in his evidence by way of affidavit has stated that the respondent/plaintiff is not the registered owner of the suit premises whereas he was a tenant since 1983. However, in his cross examination, he has admitted that while residing in the suit premises as a tenant of Amar Singh, he never checked up any paper/document to ascertain the ownership of Amar Singh with respect to the suit property and that there was no written rent agreement between him and Amar Singh.

13. Mr.Bala Dutt Sharma (DW-2) who also claims himself to be one of the tenants in the suit premises has stated that though the appellant/defendant was one of the tenants in the suit premises but this fact was not told to him by Amar Singh.

14. Learned counsel for the appellant has drawn my attention to the reply of the appellant/defendant to the notice of eviction wherein

appellant/defendant has stated that since no one claimed rent from him as landlord since 1995, he is the de-facto owner of the said premises under the law of adverse possession and no longer a tenant in the premises.

15. The Trial Court, taking into account that only one rent receipt pertaining to the year 1994 was offered by the appellant/defendant for consideration, the contention of the appellant/defendant that he was a tenant in the suit property since 1983 was disbelieved. Apart from this, since there was no written agreement regarding the tenancy, the appellant/defendant, in the estimation of the Trial Court, could not prove that his status was that of a tenant and, therefore, the suit would not be treated as barred, for the rental suggested by the appellant/defendant, under the Delhi Rent Control Act.

16. Since no cloud could be cast over the ownership of the respondent/plaintiff over the suit property, by the defendant, therefore, the Trial Court held that the respondent/plaintiff had the locus standi to prefer a suit for possession.

17. Considering the fact that the appellant/defendant was in illegal occupation of the suit property since 2006 when he was first spotted by the respondent/plaintiff, while on a visit to the suit property, damages at the rate of Rs.1500/- per month for the period ranging from 01.01.2007 to 31.12.2009 was awarded to the respondent/plaintiff.

18. The First Appellate Court, finding that there was no challenge to the finding of the Trial Court on issues Nos.1 to 6 held that the only point of determination would be as to whether the judgment and

decree passed by the Trial Court was liable to be reversed. Since the appellant/defendant could not prove that the gift deed was forged or fabricated, the First Appellate Court allowed the claim of the respondent/plaintiff. The objections of the appellant/defendant regarding the application of the Delhi Rent Control Act over the facts of the case was also repelled in the absence of any notification under Section 1(2) of the Delhi Rent Control Act, specifying in the Schedule whether the provisions of Delhi Rent Control Act applied to the area in question.

19. The First Appellate Court took note of the fact that the appellant/defendant claimed to have owned the property by way of adverse possession as no rent was demanded for the said property since 1995. The Lower Appellate Court held that a tenant could be given protection under the Delhi Rent Control Act regarding his eviction till the existence of the relationship of tenant and landlord and not when it is disputed. Section 14 of the Delhi Rent Control Act gives protection to a tenant who does not claim himself to be the owner of the premises. No sooner the title of the landlord is objected to, the person ceases to remain a tenant in the eyes of law and the protection afforded under the Delhi Rent Control Act does not remain available to him. Similarly, in accordance with the provisions of Section 111(g) of the Transfer of Property Act which provides that a lease of immovable property comes to an end by forfeiture in case of the lessee renouncing his character of a tenant by claiming title in himself, cannot claim any protection as a tenant but becomes a trespasser thereafter.

20. From the perusal of the judgments delivered by both the Courts below and the evidence on record what stands established is that the respondent/plaintiff has been able to prove her ownership over the suit property and which fact could not be countered by the appellant/defendant.

21. There is nothing on record to prove the tenancy of the appellant/defendant in the suit premises since 1983. It is true that there never existed any landlord-tenant relationship between the appellant/defendant and the respondent/plaintiff. But this fact merely strengthens the case of the respondent/plaintiff.

22. The deposition of PWs.1 & 2 i.e. the respondent/plaintiff and her mother, clearly demonstrate that the suit property was never let out nor the husband of PW-2, Amar Singh who has since not been heard of, was entrusted with the task of taking care of the suit property.

23. The law as to tenancy being determined by forfeiture by denial of the landlord's title or disclaimer of the tenancy has been adopted in India from English law where the same is practiced as a principle of equity. The provisions are incorporated in clause (g) of Section 111 of Transfer of Property Act, 1882.

111. Determination of lease.—*A lease of immoveable property determines—*

(a) by efflux of the time limited thereby;

(b) where such time is limited conditionally on the happening of some event—by the happening of such event;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same

extends only to, the happening of any event—by the happening of such event;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

24. The tenant cannot be allowed to approbate and reprobate and is estopped by the edict of law to challenge the title of the landlord. In either of the case, i.e., if the appellant/defendant claims himself to have retained the title of the suit premises by virtue of adverse possession or claims to be a tenant in the suit property, what has to be established is whether the landlord has proved his title to the suit property or whether such rent is being paid by the tenant which would attract the application of Rent Control Act of any particular State. If the tenant (appellant/defendant in the present case) chooses to claim his ownership of the suit property, the protection of Rent Control Act

vanishes. In case he claimed to pay rent to the landlord, the quantum of which would or would not attract the beneficent provisions of the Rent Control Act, he would be required to prove the same. The appellant/defendant has done neither and has taken a contradictory stand by claiming to have gained ownership by way of adverse possession at one instance and claiming to be paying a rent of Rs.200/- per month since 1983 for which no evidence has been brought forward except for a solitary rent receipt of 1994.

25. The argument advanced on behalf of the appellant/defendant that both the Courts below did not take into account the admission of Amar Singh in an earlier suit filed by the appellant/defendant of his being the tenant, may appear to be attractive at the first blush but does not have substance for the reason that the suit referred to above was, though, filed by the appellant/defendant but it was not pursued and the suit was dismissed for non prosecution. Thus the admission of Amar Singh about the appellant/defendant being his tenant could not have been taken as a conclusive proof of the tenancy of the appellant/defendant since 1983. The further ground of challenge of the appellant/defendant regarding the gift deed dated 20.04.2006 not giving actual physical possession of the gifted property to the respondent/plaintiff is also untenable. The contention of the appellant/defendant that even the donor did not have the vacant and peaceful physical possession of the gifted property is not acceptable as the ownership of the property has been proved successfully by the respondent/plaintiff.

26. It is not the case of the respondent/plaintiff that the appellant/defendant were in the occupation of the suit property since 1983; rather the consistent case of the respondent/plaintiff has been that on one of her visits to the suit property after the same was gifted to her, she came to learn about the unauthorized occupancy of the appellant/defendant. In that view of the matter, the knowledge about unauthorized occupancy can only be related back to the time when it was first discerned that the appellant/defendant is unauthorisedly living in the suit premises.

27. The First Appellate Court while dealing with the aforesaid issues held as hereunder:-

15. Further, the appellant has challenged this decree on the ground that the learned Trial Court has committed an error in holding that the suit is not barred under the DRC Act and the learned Trial Court has also failed to appreciate that last paid monthly rent of the suit premises is Rs.200/per month, therefore, decree of possession can only be passed on one or more of the grounds specified in the provision to SubSection (1) of Section 14 of DRC Act. The appellant has sought ouster of jurisdiction of Civil Court on the only basis of rate of rent of the suit premises. It is noteworthy here that the defendant has not produced any notification under the proviso to subsection (2) of Section 1 of the Delhi Rent Control Act. It has been held in Mitter Sen Jain v. Shakuntala Devi, (2000) 9 SCC 720 as follows:

Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under the proviso to subsection (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the schedule by a notification, the provisions of

the Delhi Rent Control Act can not be made applicable to that area.”

16. In the light of law laid down in Mitter Sain Jain’s case (supra), in absence of any notification under the proviso to Subsection (2) of Section 1 of the Delhi Rent Control Act on behalf of the defendant to prove that the area in which the suit property is situated is specified in the Schedule by a notification, it cannot be held that the provisions of the Delhi Rent Control Act are made applicable to that area.

17. Even otherwise, the defendant had made a complaint dated 25.12.2009 to the SHO, PS Hauz Khas Ex. DW1/4 (colly) wherein he claimed to be the de facto owner of the suit premises. Relevant portion of complaint Ex. DW1/4 (colly) extracted as follows: “

“You are requested to demand proof (court order) of being the landlord from Mr. Avtar Singh and also restrain him and his henchmen from threatening and harming us physically. Please also take necessary legal action viz. arresting him and filing F.I.R. against him in the court for his criminal threats already extended to us constituting the offence of criminal intimidation u/s 506 IPC.

It will not be out of place to mention that since no one has claimed rent from me as landlord since 1995 onwards, i.e. for a period of 14 years or so, I am the defacto owner of the said premises under law of adverse possession and no longer a tenant any more in the above premises. This fact may be taken on record.”

18. From the complaint Ex. DW1/4, it is quite clear that the defendant repudiated the title of the landlord and did not recognize her as landlord or as owner of the

premises and he has also tried to set up his own title in the suit property.

19. It has been held by Hon'ble Delhi High Court in S. Makhan Singh's case (supra) as follows: “

A tenant has been given protection under Delhi Rent Control Act from eviction only where the jural relationship of tenant and landlord was not disputed and the tenant claims himself to be the tenant and not the owner. A perusal of Section 14, which gives protection to a tenant against eviction, clearly shows that this protection is available only to the person who is undisputedly a tenant and does not claim himself to be the owner of the premises. The moment a person refuses the title of the landlord and claims title in himself he ceases to be a tenant in the eyes of law and the protection of Delhi Rent Control Act is not available to him. Section 111 (g) of Transfer of Property Act provides that a lease of immovable properties come to an end by forfeiture in case of lessee renouncing his character as such by setting up a title in a third person or claiming title in himself. Thus, once a lease stands forfeited by operation of law, the person in occupation of the premises cannot take benefit of the legal tenancy. This provision under Section 111 (g) is based on public policy and the principles of estoppel. A person who takes premises on rent from landlord is estopped from challenging his title or right to let out the premises. If he does so he does at his own peril and law does not recognize such a person as legal

tenant in the premises. A lease may come to an end by termination of lease by or by efflux of time. Where the rent is below Rs.3,500/, a landlord cannot recover possession from tenant whose term of lease comes to an end or whose tenancy is terminated by a notice because such a tenant is a protected tenant. The landlord can recover possession only if the case falls within the ambit of Section 14 of DRC Act. Where a tenant repudiates the title of the landlord and does not recognize him as landlord or as a owner of the premises, the protection from eviction under Delhi Rent Control Act is not available to him. Where the tenant does not recognize anyone as landlord or owner and claims ownership in himself he cannot seek protection of Delhi Rent Control Act against the true landlord or owner. The Trial Court therefore rightly held that the petitioner was not entitled to protection under Section 50 of DRC Act.”

20. It has been held by Hon’ble Delhi High Court in Naeem Ahmed’s case (supra) as follows: “

The defendant asserted that he was the owner by adverse possession and denied that he was a cultivating tenant at any point of time. When neither party to the suit claimed that defendant was the cultivating tenant, and as the suit was not for eviction of a cultivating tenant, the mere denial of the title of the plaintiff by the defendant in respect of an agricultural land, would not mean that only the authorities under the Act will have jurisdiction and that plaintiff should sue for eviction under the Act by

approaching the Special Officer. Only a civil suit was the remedy to obtain possession from a trespasser. Therefore, the contention that the suit was not maintainable, is liable to be rejected.”

28. Thus, this Court finds that the respondent/plaintiff has been able to prove the ownership and the right and title over the suit property entitling her to file a suit for possession of premises of which the appellant/defendant was found to be in unauthorised occupancy of. The relief sought by the respondent/plaintiff with respect to the damages and mesne profits at the rate of Rs.1500/- per month, does not in any manner dilute the case of the respondent/plaintiff that the appellant/defendant has been a trespasser in the suit property.

29. Thus, this Court finds no occasion to disturb the concurrent findings of the courts below especially in the absence of any substantial question of law.

30. The second appeal is dismissed but without costs.

CM Appln.404/2016

1. In view of the petition having been dismissed, the application has become infructuous.

2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

MAY 18, 2016

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