

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

+ **RSA No.202/2016**

% **3rd August, 2016**

SHRI K.C. BHARGAVA

..... Appellant

Through: Mr. Diwan Singh Chauhan,
Advocate.

versus

SANATAN DHARAM SABHA LAKSHMI NARAIN TEMPLE TRUST
(REGD)

.....Respondent

Through: Mr. Sanjay Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.673/2016

1. Counsel appears for the caveator and thus the caveat stands discharged.

C.M. No.27672/2016 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ RSA No.202/2016 and C.M. No.27671/2016 (stay)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the legal heir of the original defendant in the suit impugning the concurrent Judgments of the courts below; of the Trial Court dated 17.4.2012 and the First Appellate Court dated 23.4.2016; by which judgments the courts below have decreed the suit of the respondent/plaintiff/temple trust for possession of the suit premises viz quarter no.9, Birla Mandir, Mandir Marg, New Delhi.

4. The facts of the case are that the respondent/plaintiff/temple trust filed the subject suit pleading that with respect to employees who are employed in the temple, the respondent/plaintiff gave them quarters and the original defendant in the suit on account of his services with the respondent/plaintiff was given the subject quarter without charging any license fee. The original defendant had executed an Undertaking dated 20.4.1966 (Ex.PW1/D) whereby it was agreed by the defendant that he will remain in the quarter only till his services with the temple trust/respondent/plaintiff continued. Defendant retired on 1.4.1995 and therefore the respondent/plaintiff sent a Letter dated 5.6.1996 and the Legal Notice dated 17.6.1996, but, defendant failed to vacate the subject quarter, and hence the present suit for mandatory injunction, possession and mesne profits was filed.

5. Suit was contested by the defendant. As already stated above, defendant died during the pendency of the suit and his legal heir being the present appellant was substituted for the original defendant. As per the written statement filed the suit property being in the ownership of the respondent/plaintiff was disputed. Suit was also prayed to be dismissed on the ground that though the suit was filed for mandatory injunction really it was a suit for possession. It was pleaded that the suit was barred under Section 50 of the Delhi Rent Control Act, 1958. It was also pleaded that deceased defendant was kept as a pujari and was donated the suit quarter in the year 1942 on permanent basis and hence the defendant and now his legal heir/appellant is entitled to own and possess the same.

6(i) Both the courts below have held that the deceased defendant was only an employee of the respondent/plaintiff and during the course of his employment, he had executed the Undertaking dated 20.4.1966 (Ex.PW1/D) admitting that the suit property had been allotted to the deceased defendant only till the time he remains under the employment of the respondent/plaintiff. Though counsel for the appellant sought to argue that this undertaking Ex.PW1/D is not proved, however, it is seen that this document was exhibited as per the affidavit of evidence filed on behalf of the respondent/plaintiff of Sh. V.K. Mishra as PW-1. As per para 5 of this affidavit, undertaking is proved and exhibited as

Ex.PW1/D. Appellant before commencement of cross-examination did not object to the mode of proof and exhibition of this document and therefore appellant/defendant cannot claim that the undertaking is not duly exhibited in view of the judgment of the Supreme Court in the case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another, (2003) 8 SCC 752.***

(ii) The courts below have further held that once the deceased defendant was only an employee, the relationship between him and the respondent/plaintiff (and after the death of the defendant, his legal heirs), can only be of a licensor and licensee. Once the relationship is of licensor and licensee, a licensee is estopped from questioning the title of the respondent/plaintiff of the suit premises under Section 116 of the Indian Evidence Act, 1872.

(iii) The courts below have also held that the case put forth by the appellant/defendant that the deceased defendant was the owner of the suit property is without any basis whatsoever for the reason that the Certificate dated 10.9.1979 by the manager of the respondent/plaintiff/temple trust was not proved and only marked X because neither the executant of the alleged document was produced nor any person acquainted with the handwriting of the executant of this certificate was produced to prove the certificate. It is also held by the trial court that there did not arise any issue of a manager of the respondent/plaintiff/temple

trust giving such certificate because the temple trust as per its Memorandum cannot alienate the property of the temple and the land attached to it, and which also includes the suit premises. In addition to the reasoning of the courts below, I would like to note that the ownership of an immovable property can only be by means of registered document as per Section 17(1)(b) of the Registration Act, 1908 and therefore for this reason also the so called Certificate dated 10.9.1979 allegedly given by the manager of the temple trust cannot confer ownership rights upon the deceased defendant, and now the appellant.

(iv) The courts below have also held that the respondent/plaintiff need not have filed the suit for possession because as against a licensee, suit for mandatory injunction is sufficient in view of the judgment of the Supreme Court in the case of *Sant Lal Jain Vs. Avtar Singh AIR 1985 SC 857*. Trial court also relied upon other judgments as stated in para 25 of its judgment. I may also add that a licensee has only a right to enter and exit the licensed premises and since there is no legal possession with the licensee, it is not necessary for a suit for possession to be filed against a licensor or his legal heirs and it is only a suit for mandatory injunction which is required to be filed.

(v) The courts below have also noted that various documents have been filed and proved by respondent/plaintiff as Ex.DW1/P1, Ex.DW1/P3, Ex.DW1/P5 and Ex.DW1/P6 to show that the respondent/plaintiff/temple trust was in

dominion and control of the suit premises because it was the admitted case in the cross-examination of DW1 on behalf of the appellant that the suit property is not having electricity or water connection in the name of the appellant or in the name of the deceased defendant/father of the appellant since the time of occupancy of the suit property. In fact, supply of water by the respondent/plaintiff to the deceased defendant and now his legal heirs has been without payment of any charges.

7. Learned counsel for the appellant argued before this Court the following points:-

(i) The suit for mandatory injunction was not maintainable inasmuch as the suit for possession had to be filed.

(ii) The deceased defendant and now the legal heirs were owners of the suit property in view of the Certificate dated 10.9.1979 given by the manager of the respondent/plaintiff/trust.

(iii) The first appellate court wrongly dismissed the application under Order XLI Rule 27 CPC of the appellant by which the appellant sought to lead additional evidence that respondent/plaintiff was not the owner of the suit premises.

8. All the arguments urged on behalf of the appellant are without any substance whatsoever. As already discussed above, deceased defendant was only a licensee in terms of the document Ex.PW1/D wherein the deceased defendant had stated that he is occupying the premises only till his services continued with the respondent/plaintiff. Also, once the deceased defendant, and now the appellant, is only a licensee, the suit for possession need not be filed and a suit for mandatory injunction is sufficient in view of ratio of the judgment of the Supreme Court in the case of *Sant Lal Jain (supra)*. The deceased defendant, and now the appellant, being only licensee, is estopped under Section 116 of the Indian Evidence Act from questioning the title/ownership of the respondent/plaintiff of the suit property. In view of the conclusions of the courts below stated in paras 6(iii) & (iv) above, it is seen that the ownership rights in the suit property could not be claimed by the deceased defendant and now his legal heir being the appellant.

9. The application under Order XLI Rule 27 CPC seeking to lead evidence to question the ownership of the respondent/plaintiff by the appellant has also rightly been dismissed by the first appellate court inasmuch as not only a licensee is estopped from questioning the title of the licensor, a more or less identical issue to question the ownership of the respondent/plaintiff was made earlier by filing a similar application, but, this endeavour was not successful as

the first appellate court has rightly held that if an application for additional evidence is moved on the ground of information being available under RTI, then, there was no reason why the application could not have been moved before the trial court by getting the information earlier before the trial court through RTI. In any case, as stated above, a licensee cannot question the ownership of the licensor of the suit property. The first appellate court has rightly dismissed the application for additional evidence by observing as under:-

“1. This is an application U/o 41 Rules 27 CPC on behalf of applicant for producing additional evidence.

2. Reply to the application has been filed.

3. I have heard Ld. Counsels for the parties.

4. It is stated by the applicant that his stand before the Ld. Trial Court was that the respondent/plaintiff was not the owner of the suit property. He had filed the application under RTI in respect of ownership of the suit land in question on 19-20/03/2012 and had received reply of the same on 30/05/2012. As per the same, the land on which the suit property was situated was never allotted to the respondent/plaintiff. The said information is required to be brought on record which supports the main defence of the applicant/defendant that the plaintiff was not the owner of the property. This information could not be produced at a prior date as the said fact was not within the knowledge of the applicant before the receiving of information on 30/05/2012.

5. Reply to the application has been filed stating that the application was not maintainable. Applicant's defence in the suit was based on the denial of ownership of the plaintiff and therefore, should have produced the document before the Trial Court. It is stated that there was no ground for allowing of the application.

On merits it is stated that the applicant before the Ld. Trial Court had taken a defence that the suit property in question was donated by Jugal Kishore Birla to father of the applicant but in reply to the legal notice had stated that he was occupying the property in the capacity of a tenant. Applicant had also not pressed for framing of issue in regard to title of the respondent/plaintiff. It is denied that the said information sought to be produced by applicant was not available on a prior date.

6. As per the impugned judgment plaintiff on the basis of being a licensor of the suit property had sought eviction of applicant/defendant on the ground of

termination of his license. Defendant had taken a stand that the suit was not maintainable as the suit property was gifted and donated to father of defendant by Sant Jugal Kishore and that he was occupying the exclusive possession of the suit property as an owner. Defendant had also taken a stand in the suit that same was barred U/s 50 of DRA Act. Ld. Trial Court had framed 04 issues, issue no.1 being “*Whether the suit was barred by Section 50 of the Delhi Rent Control Act, 1958? OPD.*”; issue no.2 being “*Whether the plaintiff is entitled for a decree of mandatory injunction? As prayed for? OPP.*”. Plaintiff had to prove their entitlement for the relief of mandatory injunction while defendant was required to either prove their status as owner of the suit property or the suit being barred U/s 50 of DRC Act.

7. Under issue no.2, defendant was entitled to produce all documents proving his ownership or disputing the ownership of the plaintiff. Therefore, to say that documents sought to be produced by applicant as per the present application could not have been in the knowledge of the applicant/defendant at a prior date is not tenable as defendant at the time of leading of their evidence was required to take all steps for proving his ownership or denying the ownership of the plaintiff. As per applicant, the fact of ownership of land has come to his knowledge only after the decision of the case is also not tenable, as defendant could have sought the same information at a prior date. Merely to say he applied on a later date therefore, additional evidence be allowed is no ground. The contention of applicant therefore, neither prove their due diligence nor their discovery of fact in a prudent manner.

8. Accordingly, the application is not maintainable and is dismissed. Appeal be taken up for hearing.” (underlining added)

10. I would like to note that appellant is abusing the process of the law by questioning the order of the First Appellate Court dated 5.10.2012 dismissing the application under Order XLI Rule 27 CPC inasmuch as appellant had questioned that very Order dated 5.10.2012 in this Court by CM(M) No.1272/2012 but this CM(M) was dismissed by an Order dated 22.4.2014 passed by a learned Single Judge of this Court. Once the Order dated 5.10.2012 of the first appellate court had achieved finality by dismissal of CM(M) No.1272/2012 vide Order dated 22.4.2014, I fail to understand as to how this ground can be

urged in the present second appeal. In addition to the above aspects, I may note that the appellant has been making every sort of endeavour to somehow or the other delay and drag the proceedings. Two applications under Order VII Rule 11 CPC were filed and which were dismissed and in one of which application it was pleaded that in the absence of other legal heirs of the deceased defendant, suit could not lie. The order of the trial court dismissing this application under Order VII Rule 11 CPC was questioned in this Court by the appellants by filing CM(M) No.71/2004 and this CM(M) was dismissed by the Order passed by a learned Single Judge of this Court way back on 2.1.2007 observing that once the deceased defendant was only a licensee, on his demise only the persons occupying the premises and resisting possession of the respondent/plaintiff/temple trust were required to be impleaded and other legal heirs who are not defending the suit need not be added as parties.

11. In view of the above, there is no merit in the appeal and the same is therefore dismissed with costs of Rs.1 lakh. Costs shall be paid by the appellant to the respondent/plaintiff/temple trust within a period of four weeks from today. It is noted that the costs are imposed as appellant is taking up one after another frivolous stands to grab the property of a temple trust. I may also note that this suit is pending since 31.3.1997 ie for nineteen long years, respondent/plaintiff/temple trust has been deprived of possession of the suit

premises on account of one or the other frivolous defences of the appellant who wants to keep on continuing litigation in perpetuity. Counsel for the appellant also states that if execution proceedings are filed, rights of the appellant on the same grounds to file objections in execution proceedings be reserved, and which is in spite of the fact that the present second appeal is being dismissed. This clearly shows the *malafides* on the part of the appellant.

AUGUST 03, 2016
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VALMIKI J. MEHTA, J

