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

Judgment reserved on: 22.09.2015

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Judgment delivered on: 11.07.2016

+ **RSA 201/2015**

MANJIT KAUR & ORS.

..... Appellants

Through: Mr. Harvinder Singh, Advocate

versus

DAYA NAND & ANR.

..... Respondents

Through: Mr. Ankur Jain, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. This second appeal under Section 100 CPC is directed against the judgment and decree dated 20.04.2015 passed in RCA No. 70/14. The said first appeal had been preferred by the appellant/defendants against the judgment and decree passed by the trial court on 25.09.2014 in suit No. 255/11 filed by the respondent-Dayanand. The first appellate court has dismissed the first appeal preferred by the appellants/defendants and concurred with the findings recorded by the trial court, namely, learned JSCC-cum-ASCJ-cum-GDN Judge, Rohini Courts, Delhi.

2. The respondent/plaintiff preferred the aforesaid suit for recovery of possession, injunction and damages/mesne profits against the appellants/defendants in respect of property No. C-171, Sector 25, Rohini, Delhi, along with a decree of damages/mesne profits. The plaintiff claimed to be the owner of the suit property and to be in possession of the first floor portion thereof. He claimed that in the year 2008, he had asked one Mr. Ishak @ Chhotu (defendant No. 5) who was known to him for seven years, to take care of the suit property. He claimed that on 03.10.2010, when he visited the suit property, he found that it was occupied by defendant Nos. 1 to 4 and after inquiry, he contacted defendant No.5. On this, defendant No. 5 informed him that in 2008, defendant No. 1 was introduced to him through a common friend and he gave her shelter for three months in the suit property out of sympathy. However, all the defendants conspired to retain possession of the suit property. The plaintiff further stated that he received the summons in civil suit No. 600/10 filed by defendant No. 1 against him. In the said suit, defendant No. 1 claimed herself to be a tenant in the suit property under the plaintiff as landlord. She also claimed to have given Rs. 2 lacs to the plaintiff as security amount. The aforesaid civil suit was disposed of on 18.08.2011, as the plaintiff herein gave an undertaking to the court that he would not dispossess defendant No. 1 without due process of law. Consequently, the plaintiff filed the present suit. Upon service of summons, defendant Nos. 1 to 4 in the present suit filed a joint written statement. Defendant No. 5 filed a separate written statement. In their written statement, defendant Nos. 1 to 4 disputed the claim of ownership made by the plaintiff. Defendant No. 5 filed his written

statement supporting the case of the plaintiff. The trial court framed the following issues on the basis of pleadings:

1. *Whether the plaintiff is entitled to the relief of possession as prayed for? OPP*
2. *Whether the plaintiff is entitled to the decree of damages/mesne profit @ Rs. 99,500/- since the year 2008 till its realisation as prayed for? OPP*
3. *Whether the suit of the plaintiff has not been properly valued? OPD*
4. *Relief.*

3. The plaintiff relied upon the earlier proceedings, namely, civil suit No. 600/2010 wherein defendant No. 1 had claimed herself to be a tenant in the suit property and admitted the plaintiff to be the owner/landlord of the same. On the other hand, the defendants alleged that defendant Nos. 1 to 3 were inducted as tenants in the suit premises in the year 2006, and that they were in possession of the same. Simultaneously, they also disputed the ownership of the plaintiff by stating that the plaintiff had not filed any document to prove his ownership. The defendants also claimed to have paid Rs. 2 lacs to the plaintiff as security deposit. The jurisdiction of the civil court was also challenged on the ground that the defendants being tenants on a monthly rent of Rs. 1000/-, Civil Court did not have jurisdiction by virtue of Section 50 of the Delhi Rent Control Act. The plaintiff invoked Sections 116 of the Evidence Act to claim that the defendants are barred from challenging the ownership/title of the plaintiff.

4. The trial court decreed the suit on the basis that in their joint written statement, defendant No. 1 to 4 had themselves stated that they were residing in the suit property for the last 7 years as tenants. Their plea of

having advanced Rs. 2 lacs to the plaintiff as security amount was disbelieved. They admitted to not having any document to establish the said payment. However, the said averment was also construed as an implied admission by defendant Nos. 1 to 4 that they were in occupation of the suit premises under the plaintiff. Reference was also made to the evidence of DW1 Manjit Kaur, wherein she had deposed that the plaintiff herein had shifted her to the suit property. The Learned trial Court also took note of the appellants defence in their written statement. They had denied any role of defendant No.5 in their induction in the suit property. However, DW1 deposed that she had contacted defendant No.5 for taking the premises on rent and he had handed over the suit premises to her on rental basis, and that she had been paying rent to defendant No. 5 regularly. She stated that defendant No. 5 had never issued any rent receipt in her favour. The trial court thus brought out the contradictions in the stand taken by defendant Nos. 1 to 4 in their written statement vis-a-vis the deposition of DW1 Manjit Kaur. She claimed that the suit property was allotted to one Maya Devi. Pertinently, she also claimed in her examination in chief on affidavit that she had been handed over the suit premises by Maya Devi for taking care of the property in future.

5. In her cross-examination, she, inter alia, admitted to have filed yet another civil suit being Suit No. 453/11 against the plaintiff and the NDPL wherein, once again, she recognized the plaintiff as the landlord of C-171, Sector 25, Rohini. She also stated in her cross-examination, *‘thereafter the plaintiff herein shifted me to the suit property’*.

6. The learned trial court invoked Section 116 of the Evidence Act, which provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the title of the landlord to the suit property. The trial court also referred to and relied upon the certified copy of civil suit No.600/2010 (Ex.PW1/C) wherein defendant No. 1 Manjit Kaur had categorically stated that she is the tenant under the plaintiff who is the owner thereof. Pertinently, she did not implead defendant No. 5 in the said suit to claim that he was a landlord. She also did not implead any other person, including, Maya Devi, who was shown to be the actual allottee of the suit premises, and from whom she claimed to have come into possession for taking care of the property in future. The trial court held that the defendants were not able to substantiate their plea with regard to the rate of rent being Rs. 1,000/- per month. They were also not able to substantiate their plea for having paid Rs. 2 lacs to the plaintiff as security amount. The trial court held that the said defendant Nos. 1 to 4 were estopped from challenging the title of the plaintiff/landlord. The claim of the plaintiff for mesne profit/damages was, however, denied. The issue of valuation of the suit was also decided in favour of the plaintiff and, consequently, the suit was decreed.

7. In the first appeal, the appellants/defendant Nos. 1 to 4 primarily contended that the main issue before the trial court was whether defendant Nos. 1 to 4 were trespassers as claimed by the plaintiff, or they were tenants as stated by them in their written statement. They contended that the trial court had not decided the said issue and the trial court had passed the judgment without applying judicial mind. Their contention was that the

plaintiff had to stand on his own legs to prove his case. The trial court had decreed the suit on the basis of a weak defence of the defendants inasmuch, as, they had failed to establish their tenancy. However, the relief of possession against the trespassers could be claimed only by an owner and not a landlord. The first appellate court rejected the said contention of the appellant/defendant Nos. 1 to 4 in para 9 of the impugned judgment which reads as follows:

“9. So far as the appeal against judgment and decree dated 25.09.14 is concerned, it is argued by ld. Counsel for appellants/defendants that respondent No. 1/plaintiff himself has pleaded in his plaint before Ld. Trial Court that appellants/defendants are unauthorized occupants but he has not placed on record any document to prove that respondent No.1/plaintiff is the owner of the suit property and Ld. Trial Court has not appreciated this facts as well as the evidence led by the appellants/defendants and passed the impugned judgment in haste. This arguments is without any merit and cannot be substantiated in the eyes of law inasmuch as perusal of Trial Court record reveals that appellant/defendant No.1 Smt. Manjeet Kaur has filed a civil suit bearing no. 600/2010 for permanent injunction wherein she herself had admitted that she is tenant in respect of suit property under the landlordship of Shri Daya Nand who is respondent no.1/plaintiff. Since there is admission of appellant no.1/defendant No.1 that she is tenant in respect of suit property, then as per Section 116 of Indian Evidence Act, during the continuation of tenancy, tenant cannot deny the title of landlord of the suit property.”

8. Reliance placed by the appellants on **Jagdish Prasad Aggarwal and another Vs. Shashi Jain** in CM(M) 26/2014, CM Nos. 540-41/2014 & 2019/2014 decided on 30.04.2014 passed by this Court; **Makhan Lal Bangal Vs. Manas Bhunia & Ors.** Civil Appeal No. 4105/1999 decided on 03.01.2000 passed by Supreme Court; and **Ramchandra Sakharam**

Mahajan Vs. Damodar Trimbak Tanksale (D) & Ors. , Civil Appeal No. 2920 of 2007 decided on 09.07.2007 passed by Supreme Court, was rejected by observing that the said decisions do not apply to the facts and circumstances of the present case. The first appellate court placed reliance on ***Hari Dass Mandal Vs. Sahadeb Mandal*** AIR 1980 Kalkatta 140 wherein it has been held that the court in appeal would not interfere unless there is application of wrong principles in the impugned order.

9. On 22.09.2015, the following substantial question of law was framed in this appeal:

“Whether the impugned judgment and decree suffers from any perversity or illegality?”

10. The calling of the record from the lower court was dispensed with since pleadings and the relevant evidence had been placed on record of the present appeal itself.

11. The submission of learned counsel for the appellants is that since the respondent/plaintiff had filed the suit for recovery of possession on the premise that the appellants/defendant Nos. 1 to 4 were trespassers, the respondent/plaintiff had renounced his character as that of the landlord and that of the defendants/appellants as that of tenants. Learned counsel submits that, no doubt, in the earlier proceedings initiated by the appellant No.1, she had admitted that the respondent was her landlord. However, by admitting that the respondent was the landlord, his title to the property as an owner does not get established, since it is not necessary that the landlord is also the owner. The landlord who is not an owner, would be entitled to seek eviction/ejectment of a tenant, or an erstwhile tenant. However, it is only

the owner who can seek a decree of possession against a trespasser. Therefore, the bar under Section 116 of the Evidence Act against a tenant from challenging the status of the landlord does not apply when the plaintiff seeks to deny the relationship of landlord and tenant, and claims himself to be the owner of the suit property and seeks decree for possession on the premise that the occupant is a trespasser. He submits that the Courts below have failed to frame and decide the real issue arising in the case, which has greatly prejudiced the appellants. Learned counsel for the appellant, in support of his submission, has sought to place reliance on the following decisions:

- (i) ***Champa Lal Sharma Vs. Smt. Sunita Maitra*** 1990(38) BLJR 268;
- (ii) ***Makhan Lal Bangal Vs. Manas Bhunia & Ors.*** Civil Appeal No. 4105 of 1999 decided on 03.01.2000 by Supreme Court;
- (iii) ***Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D) & Ors.*** Civil Appeal No. 2920 of 2007 decided on 09.07.2007 by Supreme Court; and
- (iv) ***Jagdish Prasad Aggarwal and Anr. Vs. Shashi Jain*** CM(M) 26/2014 decided on 30.04.2014 by this Court.

12. Learned counsel for the appellant further submits that the aforesaid decisions at Sl Nos (ii) to (iv) have not been considered by the first appellate court in the impugned judgment.

13. On the other hand, learned counsel for the respondents has supported the impugned judgment. Learned counsel submits that the two courts below have returned concurrent findings of fact and in second appeal this Court should not interfere with the said findings, unless they are shown to be perverse. The appellants have not been able to point out any perversity in

the said findings. Learned counsel submits that the appellants were not able to substantiate their defence that they were tenants in the suit premises @ Rs. 1,000/- per month or that they had made a security deposit of Rs. 2 lacs with the plaintiff/respondent. It was admitted by the appellants that they had come into occupation of the suit premises through the respondent/plaintiff. Thus, at the highest, they were licensees of the respondent/plaintiff in the suit premises and the said license had been revoked by the respondent/plaintiff. The respondents also placed reliance on Section 116 of the Evidence Act, which, inter alia, states that, “.....no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

14. **Champa Lal Sharma** (supra) was a decision rendered by Hon’ble S.B.Sinha, J. (as His Lordship then was) in a Civil Revision Application arising out of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The respondent had filed an eviction proceedings by resort to the aforesaid Act. The defence of the revisionist was that he was a tenant of the third party, but not under the respondent. An order was passed against the revisionist directing him to deposit the arrears of rent. Since the revisionist had disputed the claim of the respondent of being the landlord, the amount was directed to be deposited in court, and was not directed to be paid to the respondent. The revisionist, however, did not comply with the order and his defence was struck off. He was also debarred from cross-examining the witness of the plaintiff/respondent even on the aspect of her claim of title over the suit property. The denial of the right of the revisionist to cross-

examine the plaintiff's witness was premised on the amendment to Section 15 of the aforesaid Act. The question considered by the court was, whether the striking out of the defence of the tenant, and his debarment from cross-examining the witness of the plaintiff also debarred the tenant from cross-examining the plaintiff's witness on the issue whether the plaintiff was the tenant's landlord or not? The Court interpreted the provisions of the said Act in the light of its objects, and held that the defences which are struck off are only such defences which the revisionist could raise as a tenant, and not otherwise. Therefore, the right of the revisionist to cross examine the respondent/plaintiff on the aspect of his claim to be the landlord of the revisionist/tenant, could not be denied.

15. I fail to appreciate the purpose of the appellant relying on this decision. The respondent/plaintiff has filed the civil suit on the premise that the appellants were trespassers, and not tenants. The respondents did not accept the appellants as his tenants in earlier proceedings. The consistent case of the respondents has been that the appellants were, at the highest, licensees whose license had been terminated and that they were trespassers. The claim of protection under the Delhi Rent Control Act made by the appellants was denied, and the jurisdiction of the civil court was asserted by contending that the same is not barred under Section 50 of the Delhi Rent Control Act.

16. The next decision relied upon by the appellants in *Makhan Lal Bangal* (supra) arise under the Representation of the People Act, 1951. The appellant has relied on this decision to contend that the issues had not been properly framed in the suit. The trial court had not framed a specific issue

whether the appellants/defendant Nos. 1 to 4 were tenants under the respondents/plaintiffs, or they were mere licensees whose license had been terminated and were, therefore, trespassers in the suit property. Premised on this decision, the submission of learned counsel for the appellants is that this Court should frame the primary issue, as aforesaid, and remand the matter back for adjudication after grant of appropriate opportunity to parties to lead further evidence.

17. I do not find merit in the submission of learned counsel for the appellant that the correct or primary issues were not struck by the court, or that the same has resulted in any prejudice to the appellants. The trial court framed the issue, '*Whether the plaintiff is entitled to the relief of possession as prayed for? OPP*'. The pleadings of the respondents/plaintiff in the plaint are abundantly clear. The respondent never accepted the appellants as his tenants. His case was that defendant No. 5 had allowed the appellants to stay in the suit property out of sympathy. It was never his case that defendant No. 5 had inducted the appellants as tenants without his authority, or that the defendant Nos. 1 to 4/appellants were tenants in the suit property- either under defendant No. 5, or under him. In the plaint itself, the respondent/plaintiff discussed the case set up by the appellant No. 1 in her suit No. 600/10 and averred that the claims made by appellant No.1/defendant No. 1 in the said suit for permanent injunction were false. Thus, the appellants were put to clear notice of the case set up by the respondents/plaintiff in his plaint, and they had adequate opportunity to deal with the same not only in their pleadings but also at the trial.

18. Reliance placed on ***Makhan Lal Bangal*** (supra) is misplaced. The observations made by a court cannot be quoted out of context and applied in a wholly different factual situation. Even otherwise, the Supreme Court did not lay down as a matter of principle that, in every case where proper issues may not have been framed, it should be remanded back for re-trial. The Supreme Court merely observed that non-framing of a proper issue, ‘*may be a ground*’ for remanding the case for re-trial but, ‘*subject to prejudice having been shown to have resulted by the omission*’. In my view, the appellants have not been able to show as to how they were prejudiced on account of a specific issue not being framed with regard to the status of the appellant/s defendant Nos. 1 to 4 in the suit property either as a tenant or as licensees/trespassers. The case dealt with by the Supreme Court whether under the Representation of People Act, wherein allegations of corrupt practices were made by the petitioner. It was in this background that the Supreme Court held that each one of the corrupt practice alleged should have formed the subject matter of a distinct issue, sufficiently expressive of the material proposition of fact and of law arising from the pleadings. The factual situation in the present case is wholly different. This decision is, therefore, of no avail to the appellants.

19. In ***Bachhaj Nahar Vs. Nilima Mandal & Ors.*** Civil Appeal No. 5798-5799 of 2008 decided on 23.09.2008, the Supreme Court relied on an earlier decision in ***Nedunuri Kameswaramma Vs. Sampati Subba Rao*** AIR 1963 SC 884 wherein the Supreme Court had observed;

“No doubt, no issue was framed, and the one, which was framed, could have been more elaborate, but since the parties went to trial fully knowing the rival case and led all the

evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion.”

20. This Court in ***Vidya Wati (deceased) Vs. Hans Raj (deceased)*** AIR 1993 Delhi 187 rejected a similar argument by observing that the parties knew as to what the case they have set up in the pleadings, and what case they have to prove by leading evidence, and even if there was any error or defect in framing of the issues, that had not caused any prejudice to the case of the tenant.

21. Similarly, in ***Sudhangshu Bikash Dutta Vs. Ranesh Kumar Chakraborty and ors.***, AIR 1997 Gau 15, the Gauhati High Court observed that no injustice had been caused to the defendant/appellant in not framing a particular and specific issue regarding the agreement of sale which was the disputed matter between the parties, inasmuch, as reasoned finding had been arrived at with proper pleadings made by the parties concerned in the matter. The Court also held that it was not empowered to interfere with the findings of fact considered in appeal on the ground of it being erroneous, unless there is substantial error or defect in procedure prescribed by law which may have produced error or defect in the decision of the case upon merits.

22. In ***Ramchandra Sakharam Mahajan*** (supra), the plaintiff had filed a suit for declaration of joint title with some of the defendants and for recovery of possession of the plaint scheduled property and mandatory

injunction. The plaintiff produced documentary evidence to establish his title to the suit property. However, the trial court held that the said documents were not enough to establish the plaintiff's title to the suit property and, consequently, dismissed the suit. The trial court also found that the occupants of the suit property, namely, defendant Nos. 1 to 9, had also not been able to establish their title to the suit property. However, it was held that the burden to prove his title was on the plaintiff and any weakness in the defence would not entitle the plaintiff to a decree for recovery of possession. The first appellate court also did not find merit in the plaintiff's case and dismissed the appeal. In the course of its decision, the Supreme Court observed in para 10 that the suit had been filed for recovery of possession on the strength of title. The burden was on the plaintiff to establish that title. The weakness of the defence, or the failure of the defendant to establish the title set up by them would not enable the plaintiff to a decree. Premised on the aforesaid observation, the submission of the appellants is that simply because defendant Nos. 1 to 4 / appellants failed to establish their tenancy in the suit property, they could not be assumed to be trespassers. The respondents/plaintiffs was obliged to stand on his own legs and establish his title to the suit property to secure a decree for possession. However, the plaintiffs had not established his title to the suit property.

23. The decision in ***Ramchandra Sakharam Mahajan*** (supra), in my view, also does not advance the case of the plaintiffs. The Supreme Court while holding that the burden is on the plaintiff to establish his title-where he seeks recovery of possession on the strength of title, also observed, that

in appreciating the case of title set up by the plaintiff, the Court is also entitled to consider the rival title set up by the defendants. In the present case, the defendants/appellants, in their defence, admitted to have come into occupation of the suit premises through defendant No.5 at one place, and through the respondents/plaintiffs at another place (during cross-examination of PW1). Thus, the status of the appellants, at the highest, could be that of tenants. Going by their own admission, the appellants were either tenants, or licensees of the respondents/plaintiffs. In either situation, the title of the respondents could not have been questioned by them, having come into possession of the suit premises through the respondents/plaintiffs. Section 116 of the Evidence Act clearly bars their right to question the title of the plaintiff. Pertinently, it was not the case of the appellants that they were rank trespassers in the suit premises. Pertinently, this was not even the case of the respondents/plaintiffs, as he had claimed that the appellants had been inducted as licensees of defendant No.5-his caretaker. Consequently, this decision, to my mind, is of no avail to the appellants.

24. In the light of the aforesaid discussion, the decision in ***Jagdish Prasad Aggarwal and Anr.*** (supra) also is of no avail to the appellants. Pertinently, in ***Jagdish Prasad Aggarwal and Anr.*** (supra), the Court dismissed the petition challenging an order passed by the trial court directing the defendants to lead evidence first. The onus had been placed on the defendant to lead evidence first on the issue, '*Whether the defendant becomes the owner of the suit property through oral gift? OPD*'. Thus, onus was placed on the defendant and the defendant was first required to lead evidence on the said issue since that was the defence set up by the

defendant in a suit for possession premised on title filed by the plaintiff. This Court did not find merit in the said petition and affirmed the view of the trial Court. The said decision, therefore, in any event, does not advance the case of the appellants.

25. The consistent finding returned by the two Courts below is that the appellants/defendants could not establish their title as tenant in the suit property. That being the portion, their objection to the maintainability of the suit premised on Section 50 of the Delhi Rent Control Act was had no merit.

26. In the light of the aforesaid discussion, I am of the considered view that there is no merit in the present second appeal. The findings returned by the two courts below cannot be said to be perverse and cannot be interfered with in the present second appeal. The question of law as framed is answered against the appellants.

27. The present second appeal is, accordingly, dismissed with costs in favour of the respondents.

VIPIN SANGHI, J.

JULY11, 2016

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