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

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Date of Decision: January 20, 2017

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RSA 25/2017

RAM NIWAS SINGH

..... Appellant

Through: Mr.Ram Lal, Advocate

versus

RAJENDRA SINGH & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.2295/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA 25/2017

1. This Regular Second appeal under Section 100 CPC is filed against the concurrent judgments of the Courts below i.e. of the trial Court dated 5th July, 2016 and of the First Appellate Court dated 28th November, 2016 whereby the suit of the respondents/plaintiffs have been decreed for possession under Order XII Rule 6 CPC in respect of the plot No.WZ-934/1 (Now 934/1A) Basai Darapur, New Delhi-110015 as shown red in the site plan.

2. Mr.Ram Lal, learned counsel for the appellant/tenant has submitted that the instant appeal raises substantial question of law for the following

reasons:-

(i) That both the Courts below have failed to take note of the fact that the appellant/tenant had also filed a civil suit for possession and mandatory injunction against the respondents herein in respect of about half portion of the suit property from which he was forcibly dispossessed on 14th November, 2002.

(ii) That respondents/plaintiffs have not placed on record Relinquishment Deeds dated 1st August, 1995 and 18th February, 2014 to show their title.

(iii) The open area which was let out to the appellant/tenant is a disputed fact for the reason that the appellant claimed himself to be a tenant in respect of a vacant plot admeasuring 110 sq. yds. whereas the suit has been filed in respect of area admeasuring 60 sq. yds. The rate of rent to be ₹1900 per month was in respect of the entire vacant plot admeasuring 110 sq. yds. whereas the respondents have alleged ₹1900/- per month as rent for area about 60 sq. yds. which requires trial and investigation.

3. Civil Suit No.192/15 was filed by the respondents herein against the appellant seeking a decree for ejectment with possession and recovery of arrears of rent/damages as well for mandatory and permanent injunction in respect of a vacant plot bearing No. WZ-934/1 (Now 934/1A) Basai Darapur, New Delhi-110015.

4. Written statement was filed by the appellant/defendant wherein relationship of the landlord and tenant between the parties was not disputed. It was also not disputed that tenancy was in respect of an open plot. The plea was taken about his forcible dispossession on 14th November, 2002 from about half of the plot in his tenancy for which he had already filed a civil suit which is pending trial. Service of the legal notice dated 14th August, 2015 terminating his tenancy was not disputed.

5. Learned Trial Court after hearing the parties passed a decree for possession under Order XII Rule 6 CPC on the basis of admission made in the written statement wherein neither the factum of tenancy in respect of the open plot nor the rate of rent was disputed. The submission of the appellant/tenant that he had taken up approximately 110 sq. yds. of plot on rent and has been forcibly dispossessed from half of it on 14th November, 2002 has also been dealt with by the learned Trial Court in para no.9 of the order and while rejecting the contention it was recorded that status of the parties as landlord and tenant remains unchanged.

6. Before the First Appellate Court also similar contentions have been raised and for the reasons recorded in para no.13, extracted herein the First appellate court has dismissed the appeal.

“13. Appellant, undoubtedly admitted the contentions of the respondent that he is a tenant in respect of the suit property measuring 60-65 sq. yds. The receipt of legal notice is also not in dispute. In so far as the claim of the appellant with regard to his alleged dispossession from the remaining part of the plot is concerned, it is matter of record and an admitted fact that a separate proceedings in this regard is pending disposal before the concerned Court. Even otherwise, the present suit pertains only to the portion indicated in red colour in the site plan annexed with the plaint. The impugned order does not reflect and has no bearing either on the remaining disputed portion of the plot or the divergent claim of the parties in respect thereto. The question as to the admitted rent of ₹1900/- PM. being only for the suit property or for the entire plot admeasuring 110 sq. yds. has also not been decided by the impugned order and the suit is still pending with regard to the recovery of rent/damages, which would also include adjudication with respect of the amount of rent payable by the appellant. The impugned order has been passed solely on the basis of the facts as admitted by the appellant herein and thus calls for no interference whatsoever.”

7. Learned counsel for the appellant has reiterated the above contention before this Court today. When his attention was drawn to the requirement of Section 100 CPC that for the purposes of consideration of second appeal, substantial question of law is required to be raised in this appeal, he submitted that he has been forcibly dispossessed from half of the plot in his tenancy. Superstructure on the open plot was raised by him and the suit filed by him against his forcible dispossession from part of the vacant plot is still pending trial.

8. On being questioned learned counsel for the appellant did not dispute the relationship of the landlord and tenant between the parties in respect of an open plot thereby taking the case out of the purview of Delhi Rent Control Act. Service of the notice terminating his tenancy has also not been disputed.

9. While admitting that he was inducted as tenant by Sh.Kripa Ram status of the respondent as co-owners/legal heirs has also not been disputed. However, he contended that the relinquishment deeds have not been placed on record.

10. The aforesaid contention of the counsel for the appellant/defendant is not in consonance with the decision of the Hon'ble Supreme Court in India Umbrella Manufacturing Co.Vs. Bhagabandei Agarwalla, 2004 (3) SCC 178 wherein it was held that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. A Division Bench of Hon'ble Supreme Court in Mercury Travels (India) Ltd. Vs. Shri Mahabir Prasad, 89 (2001) DLT 440 held that even where there is litigation between the legal heirs of the deceased landlord, the tenant cannot take any advantage thereof and the said litigation does not preclude some of the heirs from filing ejectment suit till the inter se litigation is given a quietus. Another Division

Bench in *Smt.Krishna Prakash Vs. Dilip Harel Mitra Chenoy*, AIR 2002 Delhi 81 held that the principle laid down by the Supreme Court in eviction suits filed under various Rent Control legislations can equally be applied in general law in a suit for recovery of possession/ejectment. Similarly in *Mr.Zulfiqar Ali Khan Vs. J.K.Helene Curties Ltd.*, AIR 2002 Delhi 425 also it was held that there is hardly any distinction between a suit for eviction and recovery of possession against a tenant after determination of tenancy and a co-owner alone is entitled to determine the tenancy and maintain a suit for eviction of tenant after determination of tenancy.

11. Since both the Courts below have granted the relief of possession in respect of the suit property on the basis of admission made in the written statement, the instant appeal does not raise any substantial question of law. The appeal is, therefore, dismissed.

12. The parties to bear their own costs.

CM No.2294/2017

Dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

JANUARY 20, 2017

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