

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : September 15th, 2017

+ RFA 6/2007

SURENDER SINGH & ORS. Appellant

Through: Mr. Sunil Singh Gurjar, Advocate.

versus

KANWALJEET KAUR Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellants against the judgment and decree dated 27.10.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the respondent/plaintiff for damages has been decreed against the appellants/defendants.

2. The facts enumerating from the record are that an application under Order 33 Rule 1 & 2 read with Section 151 CPC was filed by the respondent/plaintiff for recovery of Rs.6,00,000/- on account of damages caused by theft and rioting by the appellants/defendants. It was alleged that the respondent/plaintiff was living at RZ-101, Ravi Nagar Extension, near Tilak Nagar, Village Khyala, New Delhi. On 26.05.1997 at about 12.30 in the night, the appellants/defendants armed with weapons and lathis entered in the premises of the

respondent/plaintiff, broke open the door while the plaintiff along with her sister and brother were inside and started damaging the property and movable goods. They took away forcibly valuable articles in the truck and drove away. The plaintiff lodged an FIR No.446/97, Police Station Tilak Nagar, under Sections 147/148/149/452/448/380/323/506/354/342/427 IPC against the appellants/defendants. The enmity for the said action by the defendants was due to instigation by defendant no.1 who claimed him to be the owner of the said property. It was further alleged that due to the action of the appellants/defendants the property of the plaintiff has been misappropriated and many valuable goods were misappropriated. The total loss of theft was worth Rs.2 lakhs. The damages and losses were assessed to be worth Rs.3 lakhs. The reconstruction of the damaged property and repair of damaged fixtures, furniture, fridge and other articles were assessed to be worth Rs.1 lakh.

3. In reply to the suit filed by the respondent/plaintiff, the appellants/defendants denied that they entered the house of the plaintiff on 26.05.1997 as alleged while armed with weapons or committed any damage to the property and movable goods of the house. It was also denied that they took away any article. The FIR lodged against the appellants/defendants was based on false and frivolous facts and the same was lodged in collusion of the police officials. Rest of the case of the plaintiff was denied.

4. On the basis of pleadings of the parties, following issues were framed :

1. Whether the plaintiff is entitled to claim Rs.6 lacs as damages?

2. Whether the plaintiff has no cause of action?

3. Relief.

5. Issue no.2 was decided against the appellants/defendants and in favour of the plaintiff. Issue no.1 was decided in favour of the plaintiff and against the defendants. The Court below decreed the suit for recovery of a sum of Rs.1 lac with interest @ 6% per annum.

6. Feeling aggrieved of the findings of the Court below on issue no.1 decreeing the suit for recovery of Rs.1 lac from the appellants/defendants, the present appeal has been preferred.

7. Argument advanced by the counsel for the appellants is that the entire findings recording by the Court below are based on the FIR registered against the appellants/defendants and there is no other evidence available on record to assess the damages claimed by the plaintiff/respondent. It was further submitted that the articles mentioned in the FIR have been made the basis to assess the damages claimed by the plaintiff, but in the FIR too no such computation of the damages or losses have been mentioned. It was further submitted that by allowing the claim of the plaintiff/respondent, the Court below has committed error inasmuch as holding them guilty of the alleged theft and committing mischief.

8. I have gone through the submissions made by the counsel for the appellants and the evidence and documents available on record.

9. Perusal of the impugned judgment passed by the Court below shows that the plaintiff/respondent had claimed Rs.3 lacs as damages and losses suffered by her because of taking away of household goods, Rs.2 lacs on account of misappropriation of goods and Rs.1 lac on account of reconstruction of damaged properties caused by the appellants/defendants. The Court below assessed the amount of Rs.1 lac on the basis of list Ex.PW1/N having details of articles damaged/taken away by the appellants/defendants. It was further observed that in the FIR Ex.PW1/A it was mentioned that the accused had damaged the household goods and had taken away colour TV, jewellery box and cash Rs.20,000/-. The contents of FIR were the basis in forming opinion by the Court below the plaintiff had suffered the loss due to illegal act of the appellants/defendants.

10. From the perusal of record, it is apparent that the trial of the FIR lodged against the appellants/defendants was still pending and the decision/judgment of the criminal court had not come at the time of passing the impugned judgment by the Court below. The Court below found the alleged acts of the appellants/defendants illegal without having any independent evidence or material on record. Though it is true that the names of the appellants/defendants have been figured in the FIR lodged against them by the plaintiff/respondent, but mere naming them in the FIR cannot held them guilty for the offences alleged in the absence of clear evidence and the judgment of conviction by the criminal court. It is also apparent from the record that though some articles belonging to the plaintiff/respondent were

mentioned therein which were allegedly damaged or taken away, but there is no computation of their value. There is no basis in the findings of the Court below in assessing the value of the lost/damaged articles as of Rs.1 lac. In my considered opinion, the decision arrived at by the Court below is not based on any independent evidence, document or material on record.

11. In view of the above mentioned discussion, this Court is not inclined to concur with the findings returned by the Court below. Consequently, the impugned judgment and decree passed by the Court below are hereby set aside. The appeal is accordingly allowed.

12. No order as to costs.

(P.S.TEJI)
JUDGE

SEPTEMBER 15, 2017
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