

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

+ **RSA No. 61/2017**

% **5th May, 2017**

RAJENDER PRASHAD Appellant

Through: Mr. H.N.Pandey, Adv.

versus

BHAGWATI PRASHAD SHARMA Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant/son impugning the concurrent judgments of the courts below; of the Trial Court dated 13.7.2016 and the First Appellate Court dated 10.1.2017; decreeing the suit of the respondent/plaintiff/father against the appellant/defendant/son to vacate the suit premises being No. 7699, Dharampur Lodge, Subzi Mandi, Clock Tower, Delhi.

2. The facts of the case are that the subject suit for mandatory injunction and recovery of damages was filed by the respondent/plaintiff/father against the appellant/defendant/son pleading

that the respondent/plaintiff was a tenant of the suit property under the landlord “Wakf Bibi Ahmadi Begum Estate”. Appellant/defendant is the elder son of the respondent/plaintiff and has been residing in two rooms on the ground floor and a big room on the first floor portion of the suit premises and he was allowed to reside in the said portion on account of being the son of the respondent/plaintiff. When the respondent/plaintiff asked the appellant/defendant that on account of increase of the family the appellant/defendant must accommodate another son in his room, appellant/defendant however refused to do so and in fact became hostile and threatened to kill the respondent/plaintiff in case the respondent/plaintiff (father) interfered in the portion in occupation of the appellant/defendant. It was also pleaded that the appellant/defendant had all the documents of the suit property but failed to give them to the respondent/plaintiff and the appellant/defendant was duty bound to return the documents. The respondent/plaintiff also lodged complaints with the police on 21.10.2013, 7.11.2013 and 19.11.2013 against the appellant/defendant. Respondent/plaintiff ultimately was left with no alternative but to serve a legal notice dated 12.3.2014 upon the appellant/defendant terminating the licence, and whereafter the subject suit for mandatory injunction and damages was filed.

3. Appellant/defendant pleaded that he was a co-tenant in the suit property with the respondent/plaintiff and hence prayed for dismissal of the suit.

4. The aspect that the respondent/plaintiff was the sole tenant in the suit property and the appellant/defendant was not a co-tenant, has been dealt with by the trial court in paras 8 and 12 of its judgment and which paras read as under:-

“8. This issue seems more or less a legal issue. Tenancy or lease is a right in an immovable property and the tenant like an owner of the property enjoys multifarious rights in the property one of which is to possess, use and enjoy the leased property to the exclusion of others. Lease as per section 105 of Transfer of Property Act is a transfer of property for a limited time or for perpetuity to enjoy such property. The right of the defendant in respect of the tenanted premises originates from the permission given to him by his father that is the plaintiff to reside in the tenanted premises. Although, the defendant has claimed himself to be the co-tenant in this property but he is unable to show any valid evidence that he is a co-tenant in this property along with his father. Since the plaintiff is the tenant of this property, he has every right to use the property in his possession with or without his family members subject however to his obligations if any, towards his family under law. The tenancy in this case is an old tenancy created between the plaintiff and the Wakf Bibi Ahamadi Begum Estate. As per the plaint, the plaintiff has been residing in the tenanted portion of this property since 1977. It is not the case of the defendant that this tenancy has been created by the landlord in his favour and it appears that defendant is claiming all his rights since to reside in this property through his father who is the original tenant in this property. This also evident from the cross-examination of the defendant who says that he was born in the year 1965 and his father has come to Delhi from his home-town in U.P. He has also admitted that his father has brought him in the suit property and he has not come in the suit property independently under any agreement with the landlord. Therefore, on the basis of aforesaid discussion, it cannot be said that the plaintiff do not have any locus standi to file the present case against the defendant.

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12. The discussion of the issue no.1 shows that the plaintiff is the tenant in this property as admitted by the defendant and defendant is claiming this property through him without any independent right and therefore since the defendant is unable to show any independent right in this property. I find no

legal impediment in passing a decree of mandatory injunction against him as prayed by plaintiff. The defendant although has alleged himself to be a co-tenant but has pleaded this fact in a very cursory manner and has not led any positive evidence to prove the same. The other contentions that he has contributed in the family expenses and is also contributing in the payment of rent along with his father will not entitle him to get any protection from his removal from this property at the instance of his father. The financial contribution of defendant while staying in this property has been due to the fact that he has been staying in the joint family as alleged by him. Moreover, a child lives with his parents in the house of his parents under a permissive possession and not strictly as a licensee. No rights akin to the rights of a licensee are available to the child (Shri Ramesh Kumar Handu & Ors. Vs. Shri Biney Kumar Basu RSA 286/07 dated 19/11/2007). In the present case the defendant is residing with his father and his earlier residence was with the consent of his father and if the father do not want to continue the residence of his son with him any further, the son has no choice but to leave unless and until he has established an independent right in the property in question. This issue is, therefore decided in favour of the plaintiff and against the defendant. (underlining added)

5. It is seen that the appellant/defendant therefore led no evidence whatsoever to show that he was a co-tenant with the respondent/plaintiff under the “Wakf Bibi Ahmadi Begum Estate” and the courts below have rightly held that the appellant/defendant was not a co-tenant and in the suit premises.

6. Learned counsel for the appellant/defendant argued that the respondent/plaintiff in his cross-examination on 1.4.2015 admitted that the rent receipt was issued in the name of “Bhagwati Prashad and sons” and therefore, the appellant/defendant who is the son of the respondent/plaintiff/Bhagwati Prashad should also be held to be a tenant, however, this aspect has been rightly dealt with by the trial court in para 8 of its judgment reproduced above and by the first

appellate court in para 16 of its judgment by observing that the appellant/defendant was born in 1965 in native village in U.P. and he was brought in 1977 in the suit premises by his father (respondent/plaintiff) and that the appellant/defendant had no proof of tenancy in his name.

7. In view of the above discussion, since the courts below have taken one possible view out of two possible and plausible views, and which was in the realm of jurisdiction of the courts below, hence an issue of appraisal of evidence does not raise any substantial question of law under Section 100 CPC. The courts below therefore have rightly rejected the claim of the appellant/defendant of being a co-tenant with his father.

8. Dismissed.

MAY 05, 2017/ib

VALMIKI J. MEHTA, J