

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

+ **RFA No.134/2005**

% **6th November, 2017**

TEJBIR SINGH Appellant

Through: Mr. Mohit Monga, Advocate.

versus

M/S. SAYA AUTOMOBILES (P) LTD. 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 First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 27.11.2004 whereby the trial court has dismissed the suit of the appellant/plaintiff filed for recovery of Rs.3,58,424/- claimed on account of arrears of rent. At the outset I would like to note that there was a second relief claimed in the suit of the direction against the respondent/defendant to demolish certain illegal construction in the tenanted premises, however counsel for the appellant/plaintiff states that this relief is not pressed.

2. The facts of the case are that the appellant/plaintiff claimed that the respondent/defendant was let out an area of 5,500 sq. yards situated in Khasra nos. 288/2, 291/2, 293/2 and 292/2 in village Siraspur, Delhi. This area of 5500 sq. yds. was let out to the respondent/defendant in terms of the lease deed dated 28.2.1989. It was further pleaded in the plaint that the property was let out to the respondent/defendant under the lease deed dated 28.2.1989 by the mother of the appellant/plaintiff Smt. Harjeet Kaur along with another co-owner Sh. Ved Parkash Yadav. The rate of rent was fixed at Rs.44,000/- per month. Later on the respondent/defendant purchased 1725 sq. yds. from one lessor/co-owner Sh. Ved Parkash Yadav and whereafter a fresh lease was entered into between three lessors being the appellant/plaintiff (for his share of land of one bigha/1008 sq. yds.), his mother Smt. Harjeet Kaur and another co-owner Sh. Rakesh Anand. It was pleaded that the respondent/defendant used to pay rent of Rs.8,772/- to the appellant/plaintiff as appellant/plaintiff's share of the rent and last cheque in this regard was drawn in favour of the appellant/plaintiff on 2.6.1997. Simultaneously a cheque of Rs.9,972/- was drawn in favour of Smt. Harjeet Kaur and a cheque of Rs.6,600/-

was drawn in favour of Sh. Rakesh Anand. Sh. Rakesh Anand has expired leaving behind his wife and daughter and who have become co-lessors along with the appellant/plaintiff and his mother Smt. Harjeet Kaur with respect to the suit property. It was pleaded that the respondent/defendant promised to vacate the suit property in March, 1998 but did not do so and in fact made some illegal constructions. The appellant/plaintiff pleads in the plaint that a demand notice dated 7.4.2001 was served upon the respondent/defendant claiming arrears of rent as also interest which had no effect and therefore the subject suit was filed claiming arrears of rent of Rs.3,58,424/- along with interest.

3. Respondent/defendant contested the suit and denied that the appellant/plaintiff is the owner of the property let out to the respondent/defendant. It was pleaded in the written statement that the appellant/plaintiff has failed to produce any documents relating to his title and also that there is no appropriate and complete address of the suit land which is filed. The respondent/defendant denied that about one bigha of land was let out by the appellant/plaintiff to the respondent/defendant at rent of Rs.8,772/- per month. It was pleaded

that the rent as stated in the plaint was collected by the appellant/plaintiff prior to the purchase of the land by the respondent/defendant and that the appellant/plaintiff is not entitled to the claim of rent stated in the plaint. The respondent/defendant admitted that it had issued the cheque dated 2.6.1997 in favour of the appellant/plaintiff for a sum of Rs.8,772/-. It was also admitted by the respondent/defendant that the lease deed dated 28.2.1989 was signed by him with Sh. Ved Parkash Yadav and others but that the subject lease agreement had come to an end after the respondent/defendant purchased the land from its owner namely Sh. Ved Parkash Yadav and which it was claimed would be proved in the suit. It was also pleaded that the cheque issued in the name of the appellant/plaintiff was as per the directions of Sh. Ved Parkash Yadav. The respondent/defendant also denied that he made any illegal construction. The suit was therefore prayed to be dismissed.

4. After pleadings were complete the trial court framed the following issues:-

- “1. Whether the plaintiff is entitled to recover any amount from the defendant? If so, at what rate and for what period? OPP
2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP

3. Relief.”

5. Whereas the appellant/plaintiff appeared and proved his case as PW-1 as also by leading evidence of PW-2 Sh. K.K. Nagpal, the respondent/defendant in support of his case examined Sh. Dinesh Chawla who was working as Senior Sales Executive for the respondent/defendant. Trial court has decided issue no.1 against the appellant/plaintiff by holding that the appellant/plaintiff failed to prove any documents of title with respect to the suit property and the case of the appellant/plaintiff was vague as to which was the portion of the appellant/plaintiff's land as comprised in Khasra numbers stated in the plaint. Trial court notes that during his cross-examination appellant/plaintiff admitted that he was 16 years of age when first lease was executed in February, 1989 and that no title documents were filed by him to prove his ownership. As regards the admitted lease agreement dated 28.2.1989, trial court holds that the appellant/plaintiff was not a party to the same as it was executed between Smt. Harjeet Kaur and Sh. Ved Parkash Yadav in favour of the respondent/defendant. Trial court held that the cheque of Rs.8,772/- dated 2.6.1997 paid by the respondent/defendant to the

appellant/plaintiff would not make any difference as this amount was paid to the appellant/plaintiff as per the instructions of Sh. Ved Parkash Yadav who was the lessor and that subsequently the suit land was purchased by the respondent/defendant from Sh. Ved Parkash Yadav. Trial court also held that though in law a tenant is no doubt estopped from denying title of the lessor but once there is no relationship of landlord and tenant there does not arise the issue of the respondent/defendant being estopped.

6. The relevant discussion of the trial court in this regard for holding issue no.1 against the appellant/plaintiff are contained in paras 8 to 11 and these paras read as under:-

“8. Plaintiff has entered into witness box and deposed that he is the owner of 1 Bighas of land out of Khasra No. 288/2, 291/2, 293/2 and 292/2 situated at Village Siraspur, Delhi. No document has been placed to prove this deposition nor any official witness was summoned to prove this averment. Even the statement is vague and not specific as much as he has not stated particulars as to which portion of the land comprised in said Khasra Nos. that is in the ownership of the plaintiff. During his cross examination he had admitted. “I was aged about 16 years when the first lease was executed. In this lease deed my name was not there. I do not find any power of attorney on record. I have not filed any other documents regarding ownership on the record. I have purchased the land in question from Sh.K.K. Sodhi. I have not filed any copy of the documents. In 1990 I purchased the land from A.K. Sodhi. Power of attorney is of 1988 but I have not filed the same on record.” From this statement of the plaintiff it is clear that he lacks the coherence to make the court believe his testimony about his any right or title to the lands comprised in Khasra No. 288/2, 291/2, 293/2 and 292/2. He has not produced anything on record to show his any right, title or interest in the

said land. It is settled principle of law that the person who deliberately withheld any documents, the adverse inference can be drawn against his claim.

9. In his affidavit of evidence he has deposed that the demised land was leased to the defendant in Feb., 1989, a photo copy of which is marked as "X" which is an admitted document but the same does not help the plaintiff because this lease deed was executed between Mrs. Harjeet Kaur Monga and Ved Prakash Yadav in favour of the defendant in respect of 5500 sq. yards of open land forming part of khasra Nos. 228/2, 291/2, 293/2 and 292/2 situated at Siraspur, Badli. There is no document to link the plaintiff with the land in question. The only material appears to be the admission of the defendant that some amounts having been paid by the defendant to the plaintiff, last being by a cheque dated 2.6.97 for Rs.8,772/-. The defendant has stated that the said amounts were paid at the instructions of Sh. Ved Prakash Yadav who was the lessor and subsequently the lands were purchased by the defendant from Sh. Ved Prakash Yadav. There is neither allegation nor any proof that plaintiff was ever paid any alleged rent after 2.6.97. Not only this there is not even a single proof on record that the plaintiff demanded the rent from the defendant after 2.6.97 for 4 to 5 years. In case his version that he kept on demanding the rent orally, is to be believed, there is no answer as to why he did not take any action against the defendant for recovery of rent or eviction. The defendant did not pay any lease rent to the plaintiff for about 5 years and did not allow the defendant to enter the premises and inspect the same and allegedly carried out the unauthorized construction. Under such circumstances, why the plaintiff kept silence for last five years and why any action was not taken by him for evicting the defendant from the demised premises. The answer appears to be simple because the plaintiff had no title to the demised premises and has nothing with him to show that he is the owner or landlord of the demised premises. The only admission of the defendant of having paid to the plaintiff the part of lease rent due to Sh. Ved Prakash Yadav by a cheque dated 2.6.97 for Rs.8,772/- at his instructions do not constitute him landlord/owner of the demised premises. This admission of payment is not sufficient to infer a conclusion that there existed any relationship of landlord and tenant between the parties.

10. PW2 Sh. K.K. Nagpal has deposed that he had been visiting the site under lease of the defendant and that the defendant has raised certain constructions which are visible from outside and the same are liable to be demolished. From perusal of his examination in chief by way of affidavit and cross examination, I am of the opinion that he is not trustworthy and that he could not prove any of facts in issue. On the other hand the defendant produced DW1 Sh. Dinesh Chawla who deposed that earlier the defendant was lessee of Sh. Ved Prakash Yadav from whom the said land was purchased and thus the lease agreement of 1989 came to an end.

11. Although the tenant is stopped from denying the title of the landlord but when the defendant has denied existence of any relationship of landlord and tenant between him and the plaintiff and prima facie there is no cogent reason for the Court to believe existence of such a relationship between the parties, it was the duty of the plaintiff to establish such relationship by bringing the cogent evidence. It is settled principle of law that the onus of proof lies on that party who wants the Court to believe into existence of certain facts. The factum of existence of tenant and landlord relationship between the parties is sine qua non for entitling the plaintiff to the relief as claimed and as per Section 101 of the Evidence Act, "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. The provisions of Section 116 of the Evidence Act do not help the plaintiff under the facts and circumstances discussed as above. Thus I have reached to the conclusion that there does not exist any relationship of landlord and tenant between the parties and thus the plaintiff is not entitled to recover any amount from the defendant. The issue is accordingly decided in favour of the defendant and against the plaintiff."

7. In my opinion, this appeal has to be allowed and the reasons for the same are stated hereinafter.

8. It is required to be noted that in the written statement filed by the respondent/defendant, at various places in the same the respondent/defendant has admitted to making of payment of rent to the appellant/plaintiff, and in view of these admissions, it clearly has to be held that appellant/plaintiff is the landlord of the respondent/defendant with respect to an area of 1 bigha of land in the subject Khasra numbers. These relevant admissions are contained in paras 2,4 and 6 of the written statement and these paras read as under:-

“2. The para under reply is denied being false and baseless. The plaintiff has concealed the material facts in para under reply as the rent/lease collected by the plaintiff from the defendant was prior to purchasing of land by the defendant and whereas the plaintiff is trying to suppress material facts and trying to mislead this Hon’ble court. Whereas the land which is in the possession of the defendant was earlier belongs to Sh. Ved Prakash S/o Sh. Shiv Chand Yadav and on his instructions the defendant was paying the lease charges to the plaintiff and others, but when once the defendant purchased the property from Sh. Ved Prakash S/o Sh. Shiv Chand Yadav there shall not be any reason to pay any lease charges to any body who is not the owner of land including plaintiff. The defendant paid the amount for the land and is able to prove before this Hon’ble court regarding its purchase of land and as on date the defendant has a clear title on the land which is in possession of the defendant. It is admitted that the cheque mentioned in para under reply was paid by defendant to the plaintiff but the same was paid to the plaintiff by the defendant prior to purchasing of land by the defendants from its right full owner i.e. Sh. Ved Prakash S/o Sh. Shiv Chand Yadav.

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4. Para under reply is admitted to the effect that in February, 1989 the defendant entered in an agreement with S/Sh. Ved Prakash Yadav and others, but that lease agreement was finished and thereafter the defendant purchased the land from its rightful and legal/absolute owner Sh. Ved Prakash Yadav and the defendant is able to prove it before this Hon’ble Court. The terms of lease has no nexus with the present case as the lease had expired since long and thereafter the defendant had purchased the land against valuable consideration.

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6. The para under reply is denied being false and baseless. It is reiterated that on the instructions of Ved Prakash Yadav the lease charges were paid earlier by one cheque and thereafter on specific instructions of Sh. Ved Prakash Yadav it was paid as per his directions and wish. It is admitted that the cheques mentioned in para under reply were paid by the defendant to the plaintiff but it was suppressed by the plaintiff that thereafter the defendant purchased the land and there shall not be any reason to pay any amount. More or less the land stated to be of plaintiff is not the land which is in possession of the defendant. The plaintiff has no nexus with the land of defendant and the alleged land claiming to be of plaintiff might be somewhere else but not the same which is in possession of the defendant and it is an admitted fact that there is confusion to the plaintiff over the khasra No. and when the plaintiff is not aware of his khasra no., could not produce any document with regard to his alleged claim, the suit itself is not maintainable and be dismissed outrightly.”

(underlining added)

9.(i) It is seen that in para 2 of the written statement respondent/defendant clearly admitted that rent was in fact collected by the appellant/plaintiff from the respondent/defendant prior to alleged purchasing of the land by the respondent/defendant from Sh. Ved Parkash Yadav. Para 2 of the written statement also admits that lease charges were paid to the appellant/plaintiff by the respondent/defendant, of course on the instructions of Sh. Ved Parkash Yadav. In para 4 of the written statement, it is not disputed that a lease agreement dated 28.2.1989 was entered into and which is with the mother of the appellant/plaintiff and Sh. Ved Prakash Yadav, but it is only pleaded that lease relationship came to an end on purchase by the respondent/defendant of the suit land from the owner Sh. Ved Prakash Yadav. In para 6 of the written statement payment of rent by cheques to the appellant/plaintiff is admitted but it is stated that it was as per the instructions of Sh. Ved Prakash Yadav.

(ii) It is therefore seen that to the extent that lease money was paid to the appellant/plaintiff is an admitted fact except that it is stated that after purchase by the respondent/defendant of the suit land thereafter, appellant/plaintiff is not entitled to the rent.

(iii) The introductory portion of the lease deed dated 28.2.1989

reads as under:-

“LEASE DEED

FOR A PERIOD OF THIRTY SIX MONTHS

This Lease-Deed for a period of thirty six months is made at Delhi, on 28th day of February, 1989, between:-

1) M/s Saya Automobiles (P) Ltd., Thru’ its Managing Director Shri Ramesh Hande, having their registered office at 30-31, Connaught Circus, New Delhi-110001

Hereinafter called the L E S S E E :

in favour of

2) a) Mrs. Harjeet Kaur Monga w/o S. Surender Singh Monga, r/o C-50, Mahindru Enclave, G.T.K. Road, Delhi

b) Mr. Ved Prakash Yadav s/o Shri Shiv Chand Yadav, r/o 298, Sampur, Delhi-110 042.

Hereinafter called the L E S S O R S :

WHEREAS the Lessors owns about 5500 sq. yds. of open land forming part of Kh. Nos. 228/2, 291/2 293/2, and 292/2, all situated at Siraspur Badli, Delhi-110042, as the owners thereof, and whereas the Lessee have requested them to lease out the above plot of land to them on the monthly lease charges of Rs.44000/- (Rs.Forty Four Thousand only) per month payable every month in advance as per English calendar month."

.... ... (underlining added)

10.(i) The issue is that whether the respondent/defendant has proved its purchase of the entire land of 5,500 sq. yds. as stated in the lease deed dated 28.2.1989.

(ii) Respondent/defendant has however miserably failed to prove that it purchased the land of 5,500 sq. yds. and with respect to which land it was the lessee as per the lease agreement dated 28.2.1989. Not even a single document whatsoever has been filed by the

respondent/defendant showing that it has purchased 5500 sq. yds. of land from Sh. Ved Prakash Yadav. In any case Sh. Ved Prakash Yadav could never have sold 5500 sq. yds. of land unless it was proved that Sh. Ved Prakash Yadav was the owner of 5500 sq. yds. of suit land, because in terms of the lease deed dated 28.2.1989 it was not only Sh. Ved Prakash Yadav who was the sole lessor but it was also Smt. Harjeet Kaur who was co-lessor of the suit land totaling to 5500 sq. yds. Once the respondent/defendant has failed to prove purchase of the entire suit land of 5500 sq. yds., and which total land in any case could not have been purchased only from Sh. Ved Prakash Yadav, it has to be held that Smt. Harjeet Kaur continued to be the owner and landlord of the suit land except the land which was in the ownership of Sh. Ved Prakash Yadav and which is claimed by the respondent/defendant to have been sold to it by Sh. Ved Prakash Yadav. Also, it has come on record that appellant/plaintiff was a minor when this lease was executed on 28.2.1989 in favour of the respondent/defendant and on the appellant/plaintiff becoming a major he also became a co-lessor/landlord and therefore, he was receiving his share of the rent of Rs.8,772/- per month and which is so clearly

admitted by the respondent/defendant in paras 2,4 and 6 of the written statement which have been reproduced above. Therefore, it has to be held that appellant/plaintiff was the landlord/lessor and the respondent/defendant was the tenant/lessee with respect to 1 bigha of land comprised in the subject Khasra numbers as stated in the lease deed dated 28.2.1989.

11. I may note that counsel for the appellant/plaintiff has stated that a separate suit has been filed by the mother Smt. Harjeet Kaur claiming her share of rent with respect to the land owned by her and that appellant/plaintiff will file an affidavit in this Court of Smt. Harjeet Kaur that the mother Smt. Harjeet Kaur has no claim to the rent of the land falling to the share of the appellant/plaintiff. Needful in this regard be done by Smt. Harjeet Kaur by filing her affidavit in this Court within four weeks.

12. Once the appellant/plaintiff is the landlord of the suit premises then respondent/defendant is estopped under Section 116 of the Indian Evidence Act, 1872 from challenging the title of the appellant/plaintiff with respect to the suit premises comprised in 1 bigha of land of the subject Khasra numbers.

13. In view of the above discussion this appeal is allowed and the suit of the appellant/plaintiff is decreed for a sum of Rs.8,772/- per month with effect from three years prior to filing of the suit. The suit was filed on 29.4.2002 and therefore, appellant/plaintiff will be entitled to rent at Rs.8,772/- per month from 29.4.1999 till filing of the suit on 29.4.2002. On the arrears of rent so payable appellant/plaintiff will be entitled to interest at 9% per annum simple commencing from the last date of the month for which rent was payable and till the amounts due are paid. Decree sheet be drawn. Parties are left to bear their own costs.

NOVEMBER 06, 2017
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VALMIKI J. MEHTA, J