

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

+ **RSA No. 6/2017**

% **3rd May, 2017**

SHRI VINOD KUMAR AND ORS. Appellants

Through: Mr. D.D. Sharma, Advocate.

versus

SHRI SARWAN KUMAR SHARMA & ANR. Respondents

Through: Mr. Sandeep Kapur, Advocate
with Mr. Mohit Mudgal,
Advocate, Mr. Dheeraj Deo,
Advocate, Mr. Mayank Dutta,
Advocate and Mr. Ishan
Shivakumar, Advocate for
respondent No.2.

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 Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the concurrent judgments of the courts below; of the First Appellate Court dated 16.2.2016 and the Trial Court dated 30.11.2012; by which the suit for possession and recovery of *mesne* profits of the respondents/plaintiffs has been decreed.

2. The subject suit was filed by the respondents/plaintiffs by pleading that the parents of the appellants/defendants, namely Smt. Shanti Devi and Sh. Sarju Parshad were tenants with respect to the tenanted premises comprising of two rooms on the ground floor of the property no.46/2-C/1, East Azad Nagar, Delhi-110051. The respondents/plaintiffs are owners/landlords of the suit property. The monthly rent of the suit property was Rs.60/- per month. The tenants Smt. Shanti Devi and Sh. Sarju Parshad expired but during their lifetime the contractual tenancy of these tenants was terminated by the legal notice dated 23.1.1989 sent by the respondents/plaintiffs through their counsel. Since the appellants/defendants were not financially dependent upon the deceased tenants, hence they did not inherit any tenancy rights in the suit property beyond one year of the death of the deceased tenants in view of Section 2(l) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). As per Section 2(l) of the Act with respect to tenancies of residential premises in case the contractual tenancy of the tenant is terminated during the lifetime of the tenants, then the tenancy is inherited only in a limited manner whereby certain limited classes of legal heirs become tenants in place of the deceased tenants subject to the condition that they were financially dependent on the deceased tenants and were staying with

the deceased tenants at the time of their death. Since the appellants/defendants were not entitled as per Section 2(l) of the Act to inherit the tenancy rights as they were not financially dependent on the deceased persons, hence they became unauthorized occupants after one year of death of the tenants. The subject suit for possession and *mesne* profits was therefore filed.

3. The appellants/defendants contested the suit and denied that there was any relationship of landlord and tenant between the parents of the appellants/defendants and the respondents/plaintiffs. Ownership of the suit property of the respondents/plaintiffs was also denied by the appellants/defendants. It was claimed that the suit property was constructed by the parents of the appellants/defendants and hence they were in adverse possession of the suit property.

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

“(i) Whether the suit of the plaintiff is maintainable in view of S.41(h) of the Specific Relief Act? OPP

(ii) Whether the suit of the plaintiff is barred in view of S.50 of Delhi Rent Control Act? OPP.

(iii) Whether the plaintiff is entitled to a decree for possession of the suit premises, as prayed for? OPP.

(iv) Whether the plaintiff is entitled to a decree for recovery of damages/mesne profits as claimed? OPP.

(v) Whether there is no relationship of landlord and tenant between the parties? OPD.

(vi) Relief.”

5. Evidence led by the parties is referred to in paras 9 and 10 of the judgment of the trial court and which paras read as under:-

“9. In support of their case, plaintiffs examined three witnesses.

PW1 is plaintiff no.1 Sarwan Kumar Sharma who was examined by way of affidavit Ex.PW1/A and he relied upon documents marked as Ex.PW1/1 to PW1/7 respectively.

Ex.PW1/1 is the site plan.

Ex.PW1/2 is the legal notice dated 23.01.1989.

Ex.PW1/3 are the registered AD and UPC receipts respectively.

Ex.PW1/4 is the returned A.D. Card.

Ex.PW1/5 is the copy of the judgment dated 18.03.03 passed in Civil Suit No. 1636/89. It was de-exhibited and marked as PW1/Mark X.

Ex.PW1/6 is the certified copy of the judgment of Ld. Appellate Court passed in RCA No. 13/03.

Ex.PW1/7 is the certified true copy of the order dated 25.05.07 of Hon'ble High Court of Delhi passed in RSA No.135/06.

PW2 P. C. Tiwari, LDC in the office of Sub-Registrar, Nand Nagri proved the certified copy of the relinquishment deed dated 14.03.1983 as Ex.PW2/1.

PW3 Sanjay Saxena brought the summoned record from the office of Department of Delhi Archives and stated that the certified copy of the document registered vide registration no. 3619, book no.I, volume no. 2645, page no. 527 was issued by his office and is Ex.PW3/1 with the registration number as Ex.PW3/2.

10. The defendants examined only one witness who is defendant no.1 Vinod Kumar by way of affidavit Ex.DW1/A and relied upon documents marked as Ex.DW1/1 to DW1/4 respectively.”

6. Trial court held that the respondents/plaintiffs proved the relationship of landlord and tenant between the parents of the appellants/defendants and the respondents/plaintiffs, and for this purpose trial court has referred to an earlier judgment in a suit for mandatory injunction filed by the respondents/plaintiffs against the appellants/defendants, and in which judgment it was held that there

was a relationship of landlord and tenant between the parties. The judgment of the trial court was taken in appeal and the first appellate court also confirmed the existence of relationship of landlord and tenant. The matter was taken further in appeal thereafter to the High Court and the High Court also confirmed the factum of existence of relationship of landlord and tenant. The relevant observations of the trial court in this regard read as under:-

“Now, coming on to the next question as to whether their existed relationship of landlord-tenant between the plaintiffs and the parents of the defendants, again it is the testimony of the plaintiff / PW1 which assumes significance. In his testimony by way of affidavit Ex.PW1/A, plaintiff identified the copy of judgment and decree dated 18.03.03 passed by the Court of Sh. Sanatan Prasad in civil suit no. 1636/89 as Ex.PW1/5 (de-exhibited and marked as Ex.PW1/Mark X, however, the passing of the said judgment is an admitted fact between the parties), the certified copy of the judgment passed by the Court of Sh. Pradeep Chadha, Ld. ADJ as Ex.PW1/6 and the certified true copy of the judgment of the Hon'ble High Court of Delhi in RSA No. 135/06 dated 25.05.07 as Ex.PW1/7 respectively. In the judgment dated 18.03.03 passed by Sh. Sanatan Prasad, the then Ld. Civil Judge in the suit for permanent and mandatory injunction filed by the plaintiffs herein against the defendants herein, one of the issues was:- Whether the plaintiff has no locus standi to file the present suit as there is no relationship of landlord – tenant between the parties. Now, I quote the findings given by the Ld. Judge with respect to the said issue:-
'this is an issue as to whether the plaintiff has no locus standi to file the present suit as there is no relationship of landlord – tenant between the parties and burden to prove this issue is placed on the defendants and it appears that except for oral deposition and taking a bald plea of adverse possession, the defendants have failed to bring any evidence on record to show that they were owners of the suit property or they were not the tenants in the suit property, on the other hand, Ex.PW2/1 is inspection form of the record from MCD and the same is an authentic document which is duly proved and therein the defendants are recorded as old tenants. The authenticity of the document cannot be questioned as it is maintained in official course of business and therefore, there is a presumption also and in view of this it appears that the defendants are tenants in the suit premises and accordingly they cannot deny the title of the plaintiff because of the rule of estoppel and the predecessor in interest of the plaintiff is shown as assessee in the inspection form and therefore, the relationship of landlord and tenants between the parties is well established on record'.

From the aforesaid, it is clear that the issue of relationship of landlord and tenants between the parties was decided by the Ld. Judge in the said civil suit and thus, the contention of ld. defence counsel that in the said judgment, the ownership / relationship of landlord-tenant was not an issue and that it was given on some misrepresentation of facts, is ill founded and is accordingly rejected.

Going further, the defendants herein preferred an appeal RCA No. 13/03 against the said judgment which was dismissed by the ld. Appellate Court of Sh. Pradeep Chadha, Ld. ADJ. In the said judgment of the Ld. Appellate Court, the contention of ld. counsel for the appellants / defendants herein was rejected that the entries in the assessment register can only give indication of the occupier of the premises and does not provide any basis for arriving at conclusion about relationship of landlord-tenant between the parties. While rejecting the said contention, the Ld. First Appellate Court observed and which I quote:- *“It is no doubt true that the entries in municipal record should not be taken as conclusive proof of relationship between the parties. Nevertheless, they can be considered alongwith other evidence which is put forth by the parties. Plaintiff / respondent had placed on record relinquishment deeds which have been executed by other LR's of his deceased father. Moreover, it was Chiranji Lal, father of the respondent in whose name the property stood in the records of MCD. Inspection had been carried out by the MCD in 1983. At that time, this suit had not been initiated and so it cannot be said that the father of the plaintiff / respondent Sh. Chiranji Lal had manipulated MCD record in advance anticipating some litigation in distant future. Appellant Vinod Kumar (DW1 Vinod Kumar herein) in his cross-examination admitted that in 1983 when the survey was done his sister Chander and Mother Shanti Devi were living in the property. If we take a look at Ex.PW2/1 which is an inspection form, we find that his sister Chander had signed the inspection form. As I have already stated earlier that in 1983 there was no litigation pending, hence, there was no question of fabrication of record. As per MCD's inspection form Shanti Devi and Sarju were tenants @ Rs. 30/- p.m. each. Appellants (defendants herein) claimed ownership by adverse possession. It was also claimed that house tax was in the name of Smt. Shanti Devi but no record had been filed by the appellants to show that the property was assessed in the name of Shanti Devi.”*

Going further, the defendants herein went in second appeal before the Hon'ble High Court of Delhi against the said order of the Ld. First Appellate Court. The said second appeal also came to be dismissed and it was held by the Hon'ble High Court that:- *“Inspection form is a document of utmost importance. The name of the assessee is mentioned as Chiranji Lal Sharma. The names of the tenants are mentioned as Shanti Devi and Sarju Parshad, her husband. In the last column no.7, it is mentioned that Smt. Shanti Devi and Sh. Sarju Parshad are the old tenants. The same is thumb marked by none else than Shanti Devi herself as well as it bears the signature of Nanda Kumari d/o Sarju Parshad. This document pertains to the year 24.10.1983. This document contains the admission made by the original appellant herself as well as Nanda Kumari. The appellants are tinkering with useless defences. This is well known that a tenant cannot deny the title of his*

landlord as per S.116 of the Indian Evidence Act.” It was further held that “Vinod Kumar (LR of Smt. Shanti Devi) in his cross-examination admitted that in the year 1983 his sister and mother were living in the property. In view of this documentary evidence the defence set up by the appellants (defendants herein) that they had become owners of the premises in dispute by adverse possession falls flat. Appeal has no merits. Both the Courts have already decided that relationship of landlord and tenant exists”.

From the aforesaid, it is abundantly clear that the issue of landlord-tenant between the parties stood already decided not only by the then Ld. Civil Judge but also by the Ld. First Appellate Court and Hon'ble High Court of Delhi. The defendants herein are thus, estopped from agitating the issue any further and it is established beyond doubt that in fact there existed relationship of landlord – tenant between the plaintiffs and late Smt. Shanti Devi and late Sh. Sarju Parshad, the parents of the defendants herein with respect to the suit property.” (underlining added)

7. Trial court has further held that contractual tenancy of the parents of the appellants/defendants was terminated in terms of the legal notice which was proved as Ex.PW1/2, the postal and UPC receipts were proved as Ex.PW1/3 and AD card was proved as Ex.PW1/4. Hence the contractual tenancy of the deceased parents of the appellants/defendants was held to have been terminated in their lifetime. Ownership of the respondents/plaintiffs was proved by the certified copy of the sale deed as Ex.PW3/1. Accordingly both the courts below have rightly held that the respondents/plaintiffs were the owners of the suit property, the parents of the appellants/defendants were tenants and which issue achieved finality in the earlier civil proceedings between the respondents/plaintiffs and the parents of the appellants/defendants, and that the respondents/plaintiffs have terminated the contractual tenancy of the parents of the

appellants/defendants in terms of the notice of termination of tenancy. Accordingly the courts below have further rightly held that the appellants/defendants only had a right up to one year after the death of their parents to continue in possession and thereafter they were bound to hand over vacant physical possession of the suit premises to the respondents/plaintiffs and which since they failed to do, the subject suit for possession was decreed. The courts below have also awarded a sum of Rs.300/- per month as damages/*mesne* profits from 15.12.2001 till handing over of vacant physical possession of the suit property by the appellants/defendants to the respondents/plaintiffs.

8. I do not find any illegality or perversity whatsoever in the findings and conclusions of the courts below inasmuch as ownership of the respondents/plaintiffs was proved in terms of the sale deed Ex.PW3/1, the relationship of landlord and tenant was proved through proceedings in the earlier suit and copy of judgment in earlier proceedings were proved and exhibited as Ex.PW1/5 to Ex.PW1/7 and termination of tenancy was proved by means of the legal notice dated 23.1.1989 Ex.PW1/2 with the registered AD and the UPC receipt as Ex.PW1/3 and AD card as Ex.PW1/4. Clearly therefore the judgments of the courts below are legally correct and unimpeachable and thus they call for no interference by this Court. Besides the fact that leave

aside no substantial question of law arises, even a question of law does not arise.

9. Learned counsel for the appellants/defendants argued that respondents/plaintiffs had admitted the appellants/defendants as tenants in cross-examination of the PW1 on 30.9.2010, however, the argument is misconceived because not only till the appellants/defendants are in possession of the suit property respondents/plaintiffs can receive the rent and adjust amounts received towards *mesne* profits, and in any case, the statement in cross-examination of PW1/plaintiff no.1 was only for receiving of rent for the limited period of one year and for which period the appellants/defendants were entitled as per Section 2(1) of the Act to stay in the suit premises. Also it is noted that there is no pleading of the appellants/defendants, nor any issue was got framed by them, that a fresh tenancy came into existence in their favour and a fresh relationship of landlord and tenant was created between the appellants/defendants and the respondents/plaintiffs. Therefore, appellants/defendants now cannot be allowed to argue that there was a fresh tenancy and fresh relationship of landlord and tenant between the appellants/defendants and the respondents/plaintiffs.

10. In view of the above discussion, there is no merit in the present regular second appeal. No substantial question of law arises. Dismissed.

MAY 03, 2017/ Ne

VALMIKI J. MEHTA, J

