

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 13th November, 2018

Date of decision : 16th November, 2018

RSA 44/2018

ANIL KUMAR JAIN

..... Appellant

Through Mr. Alok Gupta, Adv.

Versus

PREM CHAND DUBEY & ORS.

..... Respondent

Through

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide the present Regular Second Appeal No. 44/2018 assails the impugned judgment and decree dated 31.10.2017 of the First Appellate Court of the learned Additional District Judge-8 (Central), Tis Hazari, Delhi in RCA No. 75/2017 which upheld the impugned judgment and decree dated 04.02.2017 of the Court of the learned Civil Judge-11 (Central), Tis Hazari Delhi in Suit No. 99811/16 (Old No. 766/14), vide which the suit filed by the appellant herein as the plaintiff thereof i.e. of Suit No. 99811/16 (Old No. 766/14) against the defendants no. 1, 2 & 3 therein, arrayed as the respondents no. 1, 2 & 3 to the present RSA 44/2018, vide which the

plaintiff, arrayed as the appellant herein, had sought the grant of the decree of possession and permanent injunction in relation to the portion shown as store type construction in green colour in the site plan stated to be part of the Property No. 11 situated at Khyber Pass Market, New Wine Shop, Mall Road, Civil Lines, Delhi with a further prayer for grant of mandatory injunction against the defendants arrayed as the respondents directing them to allow the plaintiff arrayed as the appellant herein for causing cleaning in the main whole that had been built and in the store type construction alongwith drainage pipes etc., was dismissed.

2. The appellant herein has based his claim in the suit for possession and injunction on the premise that he had received the Property No. 11 situated at Khyber Pass Market, New Wine Shop, Mall Road, Civil Lines, Delhi from his late father Sh. Mahabir Prasad Jain by virtue of inheritance and after his father's demise, he the plaintiff who has now filed the present appeal had maintained and looked after the property being its owner and landlord and had been dealing with the tenants occupying in the said property and that the defendant no. 3 i.e. the respondent no.3 to the present appeal Smt. John Jois Symon, who was a tenant in respect of one room situated in the back side of the ground floor had misused the absence of the appellant who was not residing in the property in question and had constructed one store type construction with roof of ACC cemented sheets in front of the tenanted room without the consent of the plaintiff and had also not been paying the rent as a consequence of which on

his insistence in the year 2007 to avoid any liability the respondent no. 3 vacated the tenanted room as also the store type construction and shifted her residence to another premise but did not hand over the possession of the entire premises including the store type construction which she handed over to defendant no. 1 and defendant no. 2 who were arrayed as the respondent no. 1 & respondent no. 2 to the present appeal.

3. The respondent no. 3 is also averred in the plaint of the plaintiff /the appellant herein to have vacated the tenanted premises pursuant to Eviction Petition No. 114/07 having been filed by the plaintiff i.e. the appellant herein and on her vacation of the tenanted room the said eviction petition had been withdrawn by the plaintiff i.e. the appellant herein but the respondent no. 1 & the respondent no. 2 herein continued in occupancy of store type construction shown in green colour in the site plan in which they had no locus to reside.

4. The learned Trial Court of the learned Civil Judge-11 (Central), Tis Hazari Delhi vide its impugned judgment dated 04.02.2017 categorically held in the evidence adduced by either side qua the issues framed to the effect : -

“1. Whether the plaintiff is entitled for relief of possession, as prayed for? OPP

2. Whether the plaintiff Li entitled for relief of mandatory injunction, as prayed for? OPP

3. Whether the plaintiff has no locus-standi to file the present suit? OPD-1 & 2.

4. Whether the premises in question falls within the property No.11 or 20, Khyber Pass Market, Delhi onus on both the parties.

5. Whether the suit of the plaintiff is without any cause of action against the defendant No.1 & 2? OPD No.1 & 2.

6. Whether the suit of the plaintiff is barred by limitation? OPDs.

7. Relief.”,

that the plaintiff arrayed as the appellant herein had been unable to prove the balance of probability of his late father Sh. Mahabir Prasad Jain or any right, title or interest in the suit property which could entitle him to recover the possession thereof from the defendants no. 1 & 2 and thus likewise was not entitled to the grant of any mandatory injunction as sought by him in as much as he has no locus standi and no legally enforceable right with respect to the suit property. Furthermore, the learned Trial Court also held that the suit property did not fall in Property No. 11 situated at Khyber Pass Market, New Wine Shop, Mall Road, Civil Lines, Delhi and that the defendants no. 1 & 2 i.e. the respondents no. 1 & 2 herein had been successful in proving the balance of probability on the records produced from the records and the witnesses examined from Delhi Jal Board and the License Department, North MCD to indicate that the suit property formed part of Property Bearing No. 20 situated at Khyber Pass Market near wine shop, Mall Road, Civil Lines, Delhi.

5. The learned Trial Court vide its impugned judgment dated 04.02.2017 held that the suit filed by the plaintiff i.e. the present appellant on 04.06.2012 was clearly barred by limitation in as much as the plaintiff had himself contended that there was no relationship of any nature between him and the defendants no. 1 & 2 i.e. the respondents no. 1 & 2 to the present appeal, who were not even his tenants nor his licensees and the defendant no.1 Prem Chand Dubey i.e. the respondent no. 1 herein in his examination in chief Ex.DW1/A had deposed that in the year 1986 he had raised construction over the suit property and his children namely Apurva and Pankaj were born in the suit premises on 19.4.1989 and 15.3.1992 respectively and the birth certificates of the said children were Ex. DW1/4 to Ex. DW1/5 and the cross-examination of DW1 indicated that this testimony of the birth of the children on the defendant no. 1 in the suit premises had remained unrebutted indicating the balance of probability that the defendant no. 1 i.e. the respondent no. 1 as on 19.4.1989 when his daughter Apurva was born, was in possession of the suit property as on 19.04.1989 and thus the suit filed on 04.06.2012 was clearly barred by limitation.

6. The First Appellate Court vide its impugned verdict dated 31.10.2017 has upheld the findings of the learned Trial Court and has held that the plaintiff i.e. the appellant herein had failed to prove that he was the owner of the suit premises as held by the learned Trial Court and that he had no locus standi to institute the suit and that the suit was barred by limitation.

7. It is essential to observe that the learned Trial Court and the learned First Appellate Court have conclusively and concurrently given their findings on the basis of the facts and evidence led before them which cannot be assailed through the second appeal in terms of Section 100 of the Code of Civil Procedure, 1908 as amended.

8. The contention that has however been raised on behalf of the appellant is to the effect that the substantial questions of law arise in the instant case which are claimed to the effect : -

“A. Whether the courts below erred in law and failed to appreciate that the status of the defendants no.1 & 2 was only that of unauthorized occupants / trespasser/ encroachers over the plaintiffs land and the plea of adverse possession was not available to them and hence no limitation law applied to the facts & circumstances of the case.

B. Whether the courts below have grossly erred in facts and law and wrongly dismissed the suit/ first appeal of the appellant ?

C. Whether the contents of the written statement filed by the defendants no.1 & 2 could be read in isolation from the Defendants Evidence recorded before the Ld. Trial Court, which comprises material contradictions and concealments done by the defendants no.1 & 2 and none of the defendant's relied upon/ Exhibit documents were proved on record, which hence proved the case of the appellant ?

D. Whether the Ld. courts below have grossly erred in facts and law and wrongly decided Issues no.1 to 6 against the appellant/plaintiff ?

E. Whether the Written Statement filed by defendant no.3, who got proceeded ex-parte subsequently, could be all together discarded/ignored by the Ld. courts below?"

9. In support of the contentions that the aforementioned substantial questions of law arise in the matter, reliance was placed on behalf of the appellant on the written statement of the defendant no.3 i.e. the respondent no. 3 to the present appeal to the effect that she had admitted the tenancy in one room shown in red colour in the site plan attached with the plaint and had admitted that she had vacated the same and it was thus submitted on behalf of the appellant that the portion shown in green colour in the site plan in which construction was raised, about which she had stated that she had no concern with the same and the same had been done by the defendants no. 1 & 2 outside the rented premises was itself an indicator that the premises shown in green colour in the site plan in relation to which the suit had been filed within the Property No. 11 situated at Khyber Pass Market, New Wine Shop, Mall Road, Civil Lines, Delhi. The said contention cannot in any manner be accepted in view of the public records produced during the trial of the in Suit No. 99811/16 (Old No. 766/14).

10. The other contention raised on behalf of the appellant was that the factum that the respondent no. 3 had admitted her tenancy through her written statement submitted before the learned Trial Court in relation to the portion shown in red colour in the site plan attached to the plaint and that she had handed over the vacant possession of the same in Eviction Petition No. 114/07 in proceedings before the

learned Rent Controller, Delhi itself, indicated the *locus standi* of the appellant herein in relation to the premises shown in the green colour in the site plan - cannot be accepted at all in as much as the learned Rent Controller cannot adjudicate upon the title of the premises and ownership of the same in as much as in terms of Section 50(4) of the Delhi Rent Control Act, 1958 as amended itself, it has been substantially provided to the effect : -

“50(4) Nothing in sub-section (1) shall be construed as prevailing a civil court from entertaining any suit or proceeding for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.”

which makes it apparent that it is the determination of the learned Civil Court which matters in relation to the title of any premises and that the absolute ownership is not a *sine qua non* for proceedings under the Delhi Rent Control Act, 1958 as amended.

11. In the circumstances, it is held that there is no substantial question of law that arises in the matter for exercise of jurisdiction under the provisions of Section 100 of the Code of Civil Procedure, 1908 as amended in as much as the concurrent findings on facts arrived at by the learned Trial Court and the learned First Appellate Court which are on appreciation of relevant evidence cannot be interfered with in as much as none of the findings of the Trial Court and the First Appellate Court can be termed to be *perverse*.

12. The present RSA 44/2018 is dismissed.

ANU MALHOTRA, J

NOVEMBER 16th, 2018/mk

