

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

+ **RFA No. 344/2006.**

% 5th October, 2018

JATINDER PAL SINGH

..... Appellant

Through: Mr. Amit Bhatia and Mr.
Simranjeet Singh, Advocates.

versus

HARINDER SINGH JAGGI & ANR.

..... Respondents

Through:

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 the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 24.01.2006 by which the trial court has dismissed the suit for possession, damages and injunction filed by the appellant/plaintiff against the respondents/defendants. Respondent no.1/Defendant no. 1 was the tenant inducted by the appellant/plaintiff in the suit property being the

ground floor of the property bearing No. 53/6, Desh Bandhu Gupta Road, Karol Bagh, New Delhi (hereinafter 'suit property'). The respondent no.2/defendant no.2 is pleaded to be the sub-tenant of the respondent no.1/defendant no.1.

2. The only issue for consideration in the suit, as well as in the present appeal, was whether the suit filed by the appellant/plaintiff was barred under Section 50 of the Delhi Rent Control Act, 1958. Admittedly, the respondent no.1/defendant no.1 was inducted as a tenant at a monthly rent of Rs. 260/- per month and thus having the protection of the Delhi Rent Control Act. The case of the appellant/plaintiff, however, was that the respondent no.1/defendant no.1 was not entitled to protection of the Delhi Rent Control Act, inasmuch as the respondent no.1/defendant no.1 did not remain a tenant because in proceedings instituted in an earlier suit, the reply filed by the respondent no.1/defendant no.1 to a contempt application filed by the appellant/plaintiff under Order XXXIX Rule 2(A) CPC, the respondent no.1/defendant no.1 had denied the ownership of the appellant/plaintiff to the suit property. It is pleaded that on denial by a tenant of the ownership of the appellant/plaintiff/landlord of a

tenanted property, the tenancy comes to an end, and a civil suit for possession in the civil court is maintainable.

3. The issue is no longer *res integra* because a Division Bench of this Court in the case of *Naeem Ahmed v. Yash Pal Malhotra (Deceased) Through Lr's and Another, 188 (2012)DLT 579* has held that on the tenant denying the ownership of the landlord of a tenanted premises, the tenancy of a tenant is legally brought to an end. The relevant paras of this judgment are paras 12 and 13 and these paras read as under:-

“12. As aforesaid, in Kurella’s case (supra) and Abdulla Bin Ali’s case (supra) when the tenants deny the title of the landlord and the tenancy, the suit filed for recovery of possession is not on the basis of the relationship of landlord and tenant between the parties, and would lie only in the civil suit and not otherwise. In the present case also it is observed that in response to the legal notice, the respondent no.1 denied the relationship of landlord and tenant and denied that the appellant had let out the premises in suit to the respondent no.1. Consequently, the respondent no.1 had repudiated and renounced the relationship of landlord and tenant and set up his own title in the property. Therefore, the appellant had filed the suit for recovery of possession in the civil court since the occupation of the respondent no.1 had become unauthorized and that of a trespasser.

13. In view of the above we hold that the ratio of the decision in S. Makhan Singh case (supra) does not warrant reconsideration. We are, therefore, of the considered opinion that in the facts and circumstances of the case the suit was cognizable by the civil court and the impugned order was erroneous, inasmuch as it held that the same was barred by provisions of Section 50(4) of the Delhi Rent Control Act. The appeal is allowed accordingly.

Consequently, the impugned order is set aside. The case is remanded back to the Trial Court with directions to readmit the suit under its original number in the register of civil suits and to proceed to determine the suit from the stage when the impugned order was passed in accordance with law. A copy of this order and judgment along with Trial Court record be transmitted to the court of the concerned District Judge with directions that the matter to be posted before the concerned civil judge for further proceedings.”

4. Therefore, if it is proved by the appellant/plaintiff that the respondent no.1/defendant no.1 had denied the ownership title of the appellant/plaintiff, thus, the tenancy of the respondent no.1/defendant no.1 will come to an end. It is not disputed by the respondent no.1/defendant no.1 in his written statement, filed in the present suit, of him being a tenant of the appellant/plaintiff as regards to the suit property.

5. During the course of his evidence, the appellant/plaintiff has proved the reply filed by the respondent no.1/defendant no.1 to the application under Order XXXIX Rule 2(A) CPC as Ex.PW1/E. Para 7 of this reply filed by the respondent/defendant categorically denies the ownership of the appellant/plaintiff of the suit property. This para 7 of the reply of the respondent no.1/defendant no.1 to the application filed

by the appellant/plaintiff under Order XXXIX Rule 2(A) CPC in the earlier suit proceedings reads as under:-

“7. That even otherwise, as mentioned in para 1 of the written statement filed by the answering defendants, it is further submitted that the plaintiff is neither the owner nor the landlord of the suit premises let-out to the answering defendant and the plaintiff has no right in the suit property. It is submitted that the plaintiff is prolonging the proceedings of the suit for the ulterior motives.”

6. Therefore, it is seen that the respondent no.1/defendant no.1 has indeed denied the title of the appellant/plaintiff of the suit property while continuing to claim tenancy of the said property, and therefore, applying the ratio of the Division Bench Judgment of this Court in the case of *Naeem Ahmed (supra)*, it is held that the tenancy of the respondent no.1/defendant no.1 came to an end on the respondent no.1/defendant no.1 denying the ownership title of the appellant/plaintiff of the suit property. Once the tenancy comes to an end, a suit can be filed in a civil court for possession. Further, once there is no relationship of landlord and tenant, then, Section 50 of the Delhi Rent Control Act is not a bar to filing of a civil suit for possession.

7. The next aspect to be examined is regarding the quantum of *mesne* profits which would be liable to be paid by the respondent no.1/defendant no.1 to the appellant/plaintiff. In this regard, counsel for the appellant/plaintiff has rightly placed reliance upon a Legal Notice issued by the respondent no. 1/defendant no.1 to the respondent no. 2/defendant no. 2 dated 26.08.2003. This Legal Notice dated 26.08.2003 has been proved and exhibited as Ex.PW3/1 by the appellant/plaintiff by summoning the Advocate, Sh. Naveen Chaudhary, who had given his reply to the Legal Notice dated 26.08.2003 issued by the respondent no.1/defendant no.1 to the respondent no.2/defendant no.2. This reply has been proved and exhibited as Ex.PW3/2. A reading of the documents Ex.PW3/1 and Ex.PW3/2 shows that the respondent no.1/defendant no.1, through his lawyer, had stated that respondent no.2/defendant no.2 was a licensee at a monthly licence fee of Rs. 28,000/- per month. The respondent no.2/defendant no.2 had, however, contended that he was not a licensee but was a tenant inducted at a rent of Rs. 28,000/- per month. In any case, the monthly charges for use and occupation of the suit premises are admittedly Rs. 28,000/- per month. In view of the

aforesaid discussion, in my opinion it is proved that the monthly charges payable as *mesne* profits for the suit premises would be Rs. 28,000/- per month.

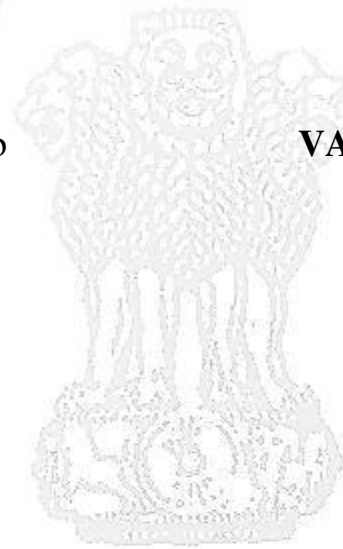
8. At this stage, this Court would like to note that respondent no.2/defendant no.2 has filed a written statement in the suit that he should be deleted from the array of the defendants in the suit because he has already handed over possession of the suit premises to the respondent no.1/defendant no.1.

9. In view of the aforesaid discussion, this appeal is allowed. Impugned judgment of the Trial Court dated 24.01.2006 is set aside. Suit of the appellant/plaintiff is decreed for possession with respect to portion of the ground floor of property bearing No. 53/6, Desh Bandhu Gupta Road, Karol Bagh, New Delhi and as shown in red colour in the site plan filed by the appellant/plaintiff alongwith plaint and list of documents dated 29.03.2003. The appellant/plaintiff is also held entitled to *mesne* profits at Rs. 28, 000/- per month from three years prior to filing of the suit till the date of filing of the suit, and at the same rate of Rs. 28,000/- *pendente lite* and future till the respondent no.1/defendant no. 1 vacates the suit premises and hands

over actual vacant physical possession of the suit premises to the appellant/plaintiff. The appellant/plaintiff is also entitled to interest @ 9% per annum from the end of the month for which *mesne* profits are payable till payment as interest is payable on *mesne* profits in view of Section 2(12) CPC. Parties are left to bear their own costs. Decree sheet be prepared.

OCTOBER 05, 2018/ib

VALMIKI J. MEHTA, J



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