

\$~23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 52/2018, CM APPL. 12603/2018, CM APPL. 12604/2018
CM APPL. 12605/2018, CM APPL. 12606/2018

RADHEY SHYAM YADAV Appellant
Through: Mr. Aseem Kr. Katoch, Advocate.

Versus

BHAGWAN MAHAVIR HOSPITAL & ORS Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **ORDER**
04.04.2018

1. This second appeal impugns an order dated 05.03.2018 dismissing the appellant's first appeal being RCA No.75/17, against a decree in a Civil Suit No. 61961/16 directing vacation of the suit property i.e. a kiosk located in the premises of respondent No.1.
2. The facts of the case are that the appellant/plaintiff had filed a suit seeking a mandatory injunction against his eviction from the kiosk being run by him, with permission of respondent No.1. The suit was dismissed on 22.08.2017 and a cost of Rs.1,00,000/- was imposed by the learned Trial Court which was of the opinion that the appellant/plaintiff had resorted to a luxury litigation. The appellant's appeal against the same was dismissed, however, the cost was reduced from Rs.1,00,000/- to Rs.25,000/-. This amount has not been deposited.
3. It is the appellant's case that he has no other place to earn his

livelihood from and has been running the kiosk for the last about a decade, that the impugned order has erred in looking into the facts of the case, therefore, it ought to be set aside.

4. Respondent No. 3 permitted respondent No.1 to operate for a period of one year the Kiosk, an HPMC Juice Stall located in the premises of the hospital. This tenure was extended successively but it ended on 31.08.2015. The impugned order considered that there was no written agreement between the appellant and either of the respondents to run the kiosk in question. His interest to run the same came through respondent No.3, in terms of the latter's agreement with respondent No.1; that tenure of the agreement had already expired; it was initially only for one year and successive extensions too had ended. The impugned order further noted that the appellant had utterly failed to show on record as to what legal authority he had to continue in possession of the kiosk in question after the expiry of the term of the agreement.

5. The learned counsel further states that eviction of the appellant from the property could be done only in terms of the Public Premises Act (Eviction of Unauthorized Occupants) Act, 1971 and that the notice dated 09.08.2016 cannot be taken into consideration because it has not been signed by an authorized person i.e. it has not been issued by a Designated Officer under the said Act. The Court would note that neither of these grounds were raised in the suit preferred by the appellant nor in his First Appeal. In any case, this cannot be a reason for interfering with the impugned order because the appellant is rank outsider and his right to continue in the suit premises came to an end when the tenure of the kiosk ended with respondent No. 3.

6. The learned counsel refers to the agreement, at page 95 of the paper book, seeking to draw benefit for the appellant. However, as noted in the impugned order, the appellant is not a party to the said agreement. It is between the hospital/respondent No. 1 and the respondent No.3. There being no privity of contract with the appellant, any reference to the said contract would be of no avail to him.

7. The appellant contends that the impugned order has erred in not considering the entire facts and the law and that the Appellate Court can always look into the matter so as to do justice in the matter. In support of his contentions, he relies upon the dicta of the Supreme Court in ***Vinod Kumar vs. Gangadhar, (2015) 1 SCC 391***, wherein it held that:-

“19. Being the first appellate court, it was the duty of the High Court to have decided the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 CPC mentioned above. It was unfortunately not done, thereby, resulting in causing prejudice to the appellant whose valuable right to prosecute in the first appeal on facts and law was adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law. It is for this reason, we are unable to uphold the impugned judgment of the High Court.”

8. The said principle of law is well established, but the appellants' reliance on it is misplaced. So is the reference to the Public Premises Act, as the suit property was not given out to him by a statutory authority under the Act. However, the Court is of the view that the occasion to look into the facts will arise only when the appellant could *prima facie* show that he had any right in the suit property. The appellant is not a party to the contract between respondent No.1 and respondent No. 3; rights that flow to the

appellant were only through respondent No. 3; since the tenure of the said contract has come to an end, the appellant would have no cause of action against respondent no.1.

9. In view of the above, the Court finds no reason to interfere with the impugned order. There is no merit in the appeal. It is dismissed.

NAJMI WAZIRI, J.

APRIL 04, 2018

sb