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

Date of Decision: 17th April, 2018

+ **RFA 83/2017 & CM Nos. 2688/2017 & 2690/2017**

SUSHIL KUMAR GUPTA

..... Appellant

Through: Mr. Bhupendra Singh Chauhan,
Advocate. (M:9899368377)

versus

JINDAL CHARITABLE TRUST

..... Respondent

Through: Mr. R. K. Sharma and Ms. Dezy
Gaur, Advocates. (M:9313340162)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (ORAL)

1. The present appeal arises out of judgment dated 5th September, 2016 passed by the Trial Court, by which the suit for declaration and re-possession filed in respect of the property bearing no.1/8B, First Floor, Jindal Trust Building, Asaf Ali Road, New Delhi – 110002 (*hereinafter*, 'suit property') was dismissed. The Appellant/Plaintiff (*hereinafter* 'Plaintiff') filed the suit for declaration, re-possession and injunction against Jindal Charitable Trust, Respondent/Defendant (*hereinafter* 'Defendant').

2. It is the case of the Plaintiff that he entered into the suit property in May, 1981. In paragraph 5 of the plaint, Plaintiff admits that one Mr. B. D. Gopal Dass was the tenant who was running his business from the suit property in the name and style of M/s Ajeet Sales Corporation. It is clear from a reading of the plaint that the Plaintiff has been inducted in the suit property by Mr. B. D. Gopal Dass. It is submitted by learned counsel for

Plaintiff that the Managing Trustee of the Defendant, at that time, had agreed to the tenancy as is evident from the letter dated 16th December, 1989, in which he acknowledged receipt of Rs.15,000/- from the Plaintiff for use and occupation of the suit premises. It is the Plaintiff's case that by virtue of this receipt, his tenancy in the suit property was confirmed and agreed to by the Defendant. Thus, it is the Plaintiff's case that he could not have been evicted without proceedings being taken against him, in accordance with law.

3. On the other hand, the Defendant's submission is that the eviction petition filed by it against Mr. B. D. Gopal Dass was decreed in its favour on 26th November, 2012. It is the Defendant's case that the Plaintiff has no *locus standi*, inasmuch as the tenant was Mr. B. D. Gopal Dass, against whom eviction proceedings were initiated under the Delhi Rent Control Act, 1958 and eviction orders were passed. The Defendant also stated that the suit of the Plaintiff is barred by limitation.

4. The Plaintiff claims to have filed an application on 22nd August, 2014 under Order I Rule 10 and Order IX Rule 13 CPC seeking impleadment and setting aside of the decree in the said eviction petition. However, the same was dismissed. Execution proceedings were initiated by the Defendant against Mr. B. D. Gopal Dass subsequent to the eviction decree and the bailiff, thereafter, took possession of the property.

5. It is the case of the Plaintiff that without initiating any eviction proceedings against the Plaintiff, the Plaintiff could not have been evicted as the Defendant had acquiesced and consented to the tenancy of the Plaintiff after he was inducted in the tenancy by Mr. B. D. Gopal Dass vide letter dated 16th December, 1989. It is the case of the Plaintiff that his induction in

the suit property was with the express agreement of the Defendant which is evident from page 118 of the appeal paperbook.

6. The Trial Court framed the following issues in the suit:

- “1) Whether the plaintiff is entitled to the relief of possession as asked for in the plaint? (OPP)*
- 2) Whether the plaintiff is entitled to the decree of mandatory injunction as asked for in the plaint? (OPP)*
- 3) Whether the plaintiff is entitled to permanent injunction as asked for in the plaint? (OPP)*
- 4) Whether the decree passed under DRC Act in Suit No. E-130/12 titled ‘Rajinder Charitable Trust Vs. G.D. Gopal’ would be binding upon the plaintiff, if yes, its effects? (OPD)*
- 5) Whether the plaintiff has never been the tenant or in occupation of the suit property? (OPD)*
- 6) Relief”*

7. Evidence was led before the Trial Court and the summary of the evidence has been captured in paragraph 6 of the impugned judgment. The Plaintiff himself (PW-1) and Mr. Manish Jain, an employee of the Plaintiff (PW-2), were examined on behalf of the Plaintiff and Mr. Suresh Jindal (DW-1), attorney of the Defendant was examined.

8. After examining the pleadings and evidence, the Trial Court held that insofar as the issue Nos. 4 & 5 were concerned, it could not give any observation in respect of the order dated 26th November, 2011 passed by the Ld. ARC in the eviction petition filed against Mr. B. D. Gopal Dass. The relevant portion of the impugned judgment reads:

“(8) Issue no. 4 and 5 are clubbed together for the sake of convenience involving common discussion being interlinked. Onus of proving these issues was upon the defendant who have

examined Sh. Sushil Jindal, Attorney Holder of the defendant Trust as their sole witness as DWI" who has placed reliance upon the certified copy of the order dated 26.11.2012 and certified copy site plan which are Ex.DWI/1 and Ex.DWI/2. It is evident from the aforesaid that the competent court of Ld. Additional Rent Controller (Central) has passed the eviction order on 26.11.2012 and pursuant to the same the defendant had taken possession from its tenants Sh. B. D. Gopal Das by due process of law, which possession was taken in the execution petition filed in the said case. The order of the competent court of Ld. ARC which is Ex.DWI/1 is not under challenge before this court. Therefore, under the given circumstances, giving any observations and findings on the said aspect / issue as to whether the decree in the Eviction Petition E-130/12 would be binding upon the plaintiff or not and or whether the plaintiff Mr. Sushil Kumar Gupta was never tenant in occupation of the said property would be prejudicial to the parties in the eventuality of challenge of the said order before the court of competent jurisdiction. I, therefore, refrain from deciding these two issues (i.e. issue no. 4 and 5) which are hereby left open and even otherwise are irrelevant for the purpose of deciding the issues in dispute in the suit before this court."

9. Insofar as issue Nos. 1 to 3 were concerned, the Trial Court has relied upon the cross examination of PW-1 Shri Sushil Kumar Gupta. The Trial court observes that PW-1 admitted in his cross examination that he is not in possession of any lease or agreement recognizing his tenancy. PW-1, in fact, admits that there was an oral agreement of tenancy. PW-1 claimed that a consolidated payment of rent of around Rs.1500/- was made. He admits

that two rent receipts, Ex.PW-1/2 & Ex.PW-1/3 are not in his name.

10. On the basis of the evidence, the Trial Court held that the Plaintiff had failed to place on record any document showing that the relationship of landlord and tenant had been created. Relevant portion of the impugned judgment reads:

“.....

(10). It is evident from the aforesaid that admittedly, the plaintiff has not challenged the eviction order passed by Ld. ARC and the findings thereof in the present suit for setting aside the same and declaring the decree dated 26.11.2012 (Ex.DW1/1) as nullity. It is also borne out from the record that possession of the suit premises had been taken by the plaintiff pursuant to the said order of the competent court in the eviction proceedings. The plaintiff prima facie has failed to place on record any document showing that the relationship of landlord tenant had been created by a contract between them or that he was legally put into premises by the defendant, rather in his cross examination, he admits that it was Sh. B. D. Gopal Das who was the tenant of the plaintiff in the premises under the landlord-ship of the defendant. Though, the plaintiff claims that he was not aware of the eviction petition till date the present suit was filed, which is unbelievable since the record confirms that the possession was taken after eviction order through the Court Bailiff and there is no challenge of the eviction order. Though, the plaintiff claims that he has challenged the said eviction order in the present suit but the perusal of the pleadings shows that there is no such challenge to the said eviction order, in accordance with law, nor he has been able to place on record any document to show that he was inducted as tenant in the suit premises

by Sh. Amrit Lal Jindal. Merely because the electricity connection has been issued in his name, will not create any right in his favour and that too when the plaintiff has failed to show that the said connection was taken after obtaining the Non Objection from the defendant-trust.

(11). Under these circumstances, he hereby hold that the plaintiff has not been able to prove his case. Firstly that there was a contract between him and the defendant or any relationship of landlord tenant. Secondly that by application of law the plaintiff became a tenant. Merely because the plaintiff deposits the arrear of rent of the original tenant Sh. B. D. Gopal Das, he does not become the tenant thereof because there is no concept of transfer of tenancy in the manner in which the plaintiff has asserted; Thirdly that the plaintiff has failed to place on record any document even in the form of rent deed, the rent receipt, etc., to prove his tenancy in the suit premises and Lastly that the plaintiff was forcibly dispossessed from the suit property without due process of law. In fact the possession of the suit property has pursuant to a court order through a Bailiff in execution proceedings by adopting due process of law.”

Under these circumstances, the suit of the Plaintiff was dismissed.

11. Before this Court, learned counsel for Plaintiff placed heavy reliance on the letter dated 16th December, 1989. He submits that this document shows that he was inducted as tenant with the consent of the Defendant. The text of the said letter is set out below:

“I acknowledge with thanks a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) on behalf of Mr. B. D. Gopal Dass who has handed over possession of tenanted premises to you.

As you have now cleared arrears of rent till 31.03.1990 w.e.f. 01.04.1990 we shall be issuing rent receipts in your name for tenanted premises at First Floor, 1/8B, Jindal Trust Building, Asaf Ali Road, New Delhi-110002."

12. On a specific query put to the Plaintiff as to whether any rent receipt subsequent to this letter was issued in favour of the Plaintiff, learned counsel for Plaintiff submits that there are no records available with him at this point.

13. A perusal of the letter clearly reveals that the acknowledgment of the sum of Rs.15,000/- made by the Defendant was *`on behalf of Mr. B. D. Gopal Dass'*. This clearly shows that the Defendant never acquiesced to the Plaintiff's position as tenant in the suit property. No other ground is urged or pressed.

14. The Court has perused the pleadings and evidence. Cross examination of PW-1 is quite relevant. There is a candid admission of PW-1, that he does not have any document in his possession to show that he was a tenant in the suit property. The relevant part of the cross examination of PW-1 is extracted below:

under:

"It is correct that the defendant is the owner of the suit property. It is correct that M/s B. D. Gopal Dass was a tenant in suit property under the landlordship of defendant. Vol. They were tenant upto a particular period. It is wrong to suggest that M/s B. D. Gopal Dass was tenant for a particular period. I was not aware whether defendant had filed eviction petition against M/s. B. D. Gopal Dass for evicting him from the suit property. Vol. I came to know of this case only after I filed the present suit surprisingly when the

defendant filed reply in this case. It is wrong to suggest that I did not come to know about the eviction petition after I filed the present suit. I was not aware whether the defendant had taken the possession the suit property after eviction order dated 26.11.2012 in execution proceedings from B.D. Gopal Dass through Bailiff. Vol. Now I am aware of the same after the filing of suit. We did not challenge the eviction order after coming to know of the same Vol. We filed the police complaint. Again said we challenged the same by filing the present suit.

*I cannot say whether the eviction order has not been challenged in the present suit. It is wrong to suggest that the plaintiff was never a tenant in the suit property under the landlordship of the defendant. I am not in possession of lease or agreement. Vol. It was only an oral agreement and receipts were being issued thereafter which I have placed on record. It is wrong to suggest that there was no oral agreement or that no receipts were executed by the defendant including the receipts **Ex.PW1/2 and Ex.PW1/3**. I was inducted as a tenant in suit property by Sh. Amrit Lal Jindal, the previous trustee. It is wrong to suggest that there was no oral agreement with me and Sh. Amrit Lal Jindal with regard to the tenancy. The rate of rent as agreed was the same as was the previous tenant i.e. Rs.100/- Rs.150/-, but I am not sure. Vol. Consolidated payment of rent used to be made i.e. approximately around Rs.1,500/-. It is wrong to suggest that I have never paid a consolidated rent of Rs.1,500/- or any other amount. I am a businessman. Vol. I am doing the business of chemical manufacturing and plastic distribution. I do not have any statement of account relating to my business. Vol. V/e maintain regular balance sheets. I am an income tax assessee. I am not aware if the rent which I was giving to the defendant is reflected in my income tax returns. It is correct that the receipt Ex.PW1/2 and Ex.PW1/3 are not in my name. It is*

wrong to suggest that I have no right, title or interest in the suit property. It is wrong to suggest that there is no electricity connection in my name in the suit property. I cannot tell when the electricity connection was sanctioned in my name and installed in the suit property. Vol. It was many years ago. I am not aware if any form was filled up or no objection had been obtained from the landlord prior to installation of electricity connection. Vol. It was done by my office. It is wrong to suggest that, no electricity bills were coming in my name. Vol. The bills were regularly being received in my name. I cannot tell the period for which I am enjoying the electricity connection in the suit premises. It is wrong to suggest that I was never receiving the electricity bills in my name in the suit premises. It is wrong to suggest that I was never in possession in the suit premises. It is wrong to suggest that B. D. Gopal Dass was the only tenant in the suit premises and all the receipt were being issued in his name. It is wrong to suggest that the tenancy of the suit premises was never transferred in my name by the defendant. It is wrong to suggest that I have never tendered any rent to the defendants or any amount for purposes of user of the suit premises. It is wrong to suggest that neither me nor my employee, associate or authorized representative was in possession of the suit property. It is wrong to suggest that the forcible possession of the suit premises was never taken from me or from my employees, associates or authorized representative. Vol. I was in possession and it was taken forcibly from me. It is wrong to suggest that the possession was taken from me by adopting due process of law. It is wrong to suggest that the police complaints have been made by me on false and frivolous grounds. I do not remember if Jindal Charitable Trust or the defendants had also made a police complaints against me. It is correct that in my affidavit of evidence Ex.PW1/A, para 11, I have mentioned about the police

complaint and amicable settlement between me and the defendants but it is wrong to suggest that these are false grounds or that there was no such settlement. It is wrong to suggest that I have deposed falsely to the extent that I used to keep goods/ files, records in the suit premises. It is wrong to suggest that none of my employees used to sleep in the suit premises. Vol. One Raju used to sleep in the suit premises. It is correct that I have not mentioned the name of Raju either in my plaint or in my affidavit.

*It is wrong to suggest that I have not been dispossessed from the suit property wrongfully. It is wrong to suggest that my lock put over the suit property has not been removed. It is correct that except the record, nothing was placed in the suit property. Vol. May be other things also which I do not remember. It is wrong to suggest that legal notice **Ex. PWI/12** is based upon false and frivolous allegations. It is wrong to suggest that the defendant is not liable to restore the possession of the suit property to me. It is wrong to suggest that I have not suffered with an irreparable loss, reputation, image or loss of business. It is wrong to suggest that defendant did not take any material record or documents belonging to me. I am aware that "Our-India" was having their office on the top floor above the suit property. Sh. Uttam, Arora was the Managing Editor of "Our India". It is wrong to suggest that Sh. Uttam Arora was not the Managing Editor of "Our India" or that "Our India" did not have an office on the floor above the suit property. It is correct that I have not mentioned this fact about "Our India" having its office on the floor above the suit property or Sh. Uttam Arora being the Managing Editor. Vol. It was not required as I have already filed the complaint made by 'Our India' making a complaint to the local police confirming this aspect. It is wrong to suggest that the complaint **Ex. PWI/8** is a fabricated document. It is wrong to suggest that eviction order*

dated 26.11.2012 is binding upon me. It is wrong to suggest that defendant never recognized me as tenant in the suit property. It is wrong to suggest that defendant has taken the possession of suit property from the right person with due process of law..... "

In view of the clear testimony of PW-1, it is clear that, apart from the electricity connection, there was no other document or evidence to establish the Plaintiff's case. The Trial Court's finding that the case of the Plaintiff that he was not aware of the eviction proceedings is unbelievable, is found to be correct. The Plaintiff being an occupant of the suit premises, only on behalf of Mr. B.D. Gopal Dass cannot claim any independent right or identity on the basis of the letter dated 16th December 1989. The Plaintiff does not press or urge any other ground. Under these circumstances, the trial court judgment cannot be faulted with and does not warrant interference.

15. The appeal is accordingly dismissed with no order as to costs. Miscellaneous applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

APRIL 17, 2018/dk