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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 34/2017 & CM APPL. 3448/2017

BHUPENDER KUMAR KAKKAR

..... Appellant

Through: Mr. Ravi Joshi, Advocate.

Versus

AFZAL AHMAD KHAN

..... Respondent

Through: Mr. Shahid Ali with Mohd. Ovais and
Mr. Satish Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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16.01.2018

1. In this second order of the First Appellate Court dated 08.06.2016, is impugned. It had upheld the preliminary decree under Order XII Rule 6 of the Code of Criminal Procedure, 1908 (CPC) passed by the learned Administrative Civil Judge, Karkardooma Court Delhi, directing delivery of 'quiet' possession of the suit property to the plaintiff/respondent, who had claimed its possession as its owner. It was the latter's case that the appellant had been inducted as a tenant in the suit property at the monthly rent of Rs.3,000/-. This plea was contested by the appellant/defendant on the ground that: i) the property had been mortgaged to him for Rs.5 lacs; ii) he was not a tenant but was in the property as a matter of right under the mortgage and iii) till such time the said monies were repaid he was not obliged to vacate the premises. However, this defence was not supported by any document or evidence.
2. The appellant has replied to para 3 of the plaint as under:-

“3. That the contents of para no.3 of the plaint are wrong and vehemently denied in toto. It is specifically denied that the suit property was let out to the defendant on 30/03/2004 on a monthly rental of Rs. 3,000/- per month excluding electricity and water charges. At the time of letting out the flat, an advance of Rs.5,000/- was also paid to the plaintiff by the Defendant. The factum of letting out the premises, quantum of rent, factum of advance payment and of date of letting and the factum of electricity being extra and earlier address of Defendant were duly entered by the brother of the Defendant, namely, Sh. Mahender Kumar Kakkar, in the diary maintained by the plaintiff in due to course of his business, after being arrived at an amicable oral agreement in respect of tenanted premises being upto the date by the plaintiff. However, specific reply to this para have been given in paras of P.O. of this Written Statement.”

3. It is in the background of the aforementioned specific admission by the appellant that he was inducted as a tenant that the learned Trial Court passed the preliminary decree and left the option of recovery of arrears of Rs.5 lacs- the mortgaged amount by way of a suit or other remedies, as may be available to him in law.

4. The Appellate Court upheld the said judgment by the following reasoning:-

“6. I have perused the written statement. In the preliminary objections, it has been denied that the plaintiff is owner of the suit property. In reply on merits, in response to para no.1 and 2 of the plaint, it is stated in the written statement that contents of para no.1 & 2 of plaint are matter of record. In para No.3 initially, it has been denied by the defendant that property in question was let out to him. But from the 6th line of the para no.3, it is submitted that at the time of letting out the flat, an advance of Rs.5,000/- was also paid to the plaintiff by the

defendant. The factum of letting out the premises, quantum of rent, factum of advance payment and date of letting and factum of electricity extra and earlier address of the defendant were duly entered by the brother of the defendant, namely, Sh.Mahender Kumar Kakkar, in the diary maintained by the plaintiff in due course of his business, after being arrived at an amicable oral agreement in respect of tenanted premises.

7. Thus, it was rightly held by Ld Trial Court that there was an admission on the part of the defendant/appellant that he was a tenant under plaintiff. Only defence of the defendant was that he had paid Rs.5.00 Lacs to the plaintiff. But no document/writing has been produced on record in this regard. It has also come on record that it was an oral tenancy terminable by notice of 15 days. Notice was duly served on the defendant under Section 106 of the Transfer of Property Act. Even if it is presumed that no notice was served on the defendant, even then service of notice of summons of the suit is a good service. For this proposition, Ld. Trial Court rightly placed reliance on Sky Land International Pvt. Ltd. vs. Kavita P. Lalwani 1991 (2012) DLT 594 and Nopany Investments (P) Ltd. vs. Santokh Singh (HUF) 2008 (2) SCC 728. Since after service of demand notice or summons of the suit, defendant failed to deliver possession of the suit property, decree of possession was rightly passed by Ld. Trial Court directing the appellant/defendant to deliver peaceful possession of the suit property to the respondent/plaintiff. As far as Rs.5.00 Lacs allegedly paid by the defendant to the plaintiff is concerned, the defendant is at liberty to file a recovery suit.”

5. The learned counsel for the appellant submits that insofar as a defence had been raised by the appellant that he was not a tenant and was entitled to an amount of Rs.5 lacs i.e. the mortgaged amount against the said property, a specific issue should have been cast and the evidence ought to have been led on the same. The Court finds the said argument untenable in the absence

of a specific denial of the factum of the tenancy. Indeed, there is a clear/specific admission in para 3 of the plaint, which read as under:-

“3. That the suit property was let out to the defendant on 30.03.2004 on a monthly rental of Rs.3,000/- per month excluding electricity and water charges. At the time of letting out the flat, an advance amount of Rs.5,000/- was also paid to the plaintiff by the defendant. The factum of letting out the premises, quantum of rent, factum of advance payment and of date of letting and the factum of electricity being extra and earlier address of defendant were duly entered by the brother of the defendant, namely, Sh. Mahender Kumar Kakkad, in the diary maintained by the plaintiff in due course of his business, after being arrived at an amicable oral agreement in respect of tenanted premises being upto the date by the plaintiff.”

6. In view of the above discussion, the Court finds no reason to interfere with the impugned order. The appeal is without merits. It, alongwith the pending application, is dismissed.

NAJMI WAZIRI, J.

JANUARY 16, 2018

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