

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

+ **RFA No. 945/2018**

% ***Reserved on: 4th December, 2018***
Pronounced on: 7th December, 2018

RAMESH CHANDER SETHI AND ANR.

..... Appellants

Through: Mr. Himanshu Sapra and Mr.
Pramod Kumar Ahuja,
Advocates (Mobile No.
7988487418).

versus

SHASHI GROVER

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

C.M. Appl. No. 48442/2018 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

RFA No. 945/2018 and C.M. Appl. No. 48441/2018 (for stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit

impugning the Judgment of the trial court dated 10.10.2018 by which the trial court had decreed the suit for possession, arrears of rent and *mesne* profits to the extent of the relief of possession, and has passed a decree for possession under Order XII Rule 6 CPC.

3. In Delhi, once the rate of rent is above Rs. 3,500/- per month, then the premises fall outside the protection of the Delhi Rent Control Act, 1958 and a tenant who does not have a registered lease deed in his favour for the period of tenancy, such a tenant is liable to be evicted from the premises in a suit filed for possession. In fact, though termination of tenancy is required to be done by issuing a notice under Section 106 of the Transfer of Property Act 1882, yet the filing of a suit has been treated as a notice terminating tenancy in terms of the judgment in the case of *M/s. Jeevan Diesels & Electricals Ltd. v. M/s. Jasbir Singh Chadha (HUF) & Anr., 2008 SCC OnLine Del 1623; 2011 (182) DLT 402* and this judgment relies upon the ratio of the earlier judgment of the Hon'ble Supreme Court in the case of *Nopany Investments (P) Ltd. v. Santokh Singh (HUF), (2008) 2 SCC 728*.

4. The admitted facts of the case are that the respondent/plaintiff/landlady is the owner of the suit premises being house No. 7/130, Ramesh Nagar, New Delhi-110015. The ground floor of this property was let out by the respondent/plaintiff to the appellant no. 1/defendant no. 1 in terms of a registered Rent Agreement dated 14.11.2011 for a period of two years at a rent of Rs. 15,500/- per month. The respondent/plaintiff pleaded that the rent was only paid for 22 months and despite the termination of tenancy and demand for arrears of rent given in terms of Letters/Notices dated 20.09.2013, 12.11.2013 and 26.12.2013, the appellant no. 1/defendant no.1 failed to vacate the suit premises or pay the arrears of rent, therefore, a civil suit being **CS No. 6998/2016** was filed for recovery of possession, arrears of rent and *mesne* profits. In this earlier suit, the appellant no. 1/defendant no. 1 had filed a written statement stating that no doubt he was originally the tenant as per the Rent Agreement dated 14.11.2011, but on expiry of the two year period under the Rent Agreement dated 14.11.2011, it was the appellant no. 2/defendant no. 2, who is the sister of the appellant no. 1/defendant no. 1, who had become a tenant, and therefore she is the

tenant and not the appellant no.1/defendant no.1. The earlier suit was withdrawn by the respondent/plaintiff on account of the aforesaid facts and some technical defects, and thereafter the subject suit for possession was filed.

5. The Ld. counsel for the appellants/defendants argued that the subject suit could not be decreed under Order XII Rule 6 CPC because it has to be determined as to whether the decree has to be passed against appellant no. 1 /defendant no. 1/brother or against the appellant no. 2/defendant no. 2/sister, because it is only against a tenant that a decree can be passed.

6. The trial court, though in my opinion, has rightly observed that the fact of the matter is that either one of the appellants/defendants is a tenant and therefore such a person who is a tenant is liable to vacate the property, and therefore the decree for possession has to be passed. The trial court in this regard has rightly observed in paras 10 and 11 of the impugned judgment which read as under:-

“10. From the stand taken by both the defendants, it is clear that they are trying to create confusion regarding relationship of landlord and tenant between the parties. But, it is also manifests from

the written statements of both the defendants that one of them is tenant of the plaintiff in the suit property and other is residing therein not in his/her individual capacity but as a family member of the one who is tenant in the property.

11. To the mind of this court, the question under consideration is limited whether the plaintiff is entitled for the decree of possession u/o 12 rule 6 CPC, therefore, the controversy whether it is the defendant no.1 or the defendant no.2 is the tenant loses its importance in the pecuniary facts of this case since, as already observed, one of the defendant admittedly is the tenant in the property and other is residing only as family member of the tenant. The defendant no.2 has stated herself to be tenant of the plaintiff in the suit property w.e.f. 16.01.2014, on the basis of oral tenancy entered between her and plaintiff. The plaintiff has denied any such oral tenancy agreement between her and defendant no.2. Considering, only for the purpose of point under consideration, the averments of the defendant no.2 to be correct that she is the tenant of the plaintiff in the suit property, the ingredient of relationship of landlord and tenant between the plaintiff and defendant no.2 stands established.”

7. In my opinion, the aforesaid conclusion of the trial court is buttressed by the legal provision of Order I Rule 7 CPC which provides that where the plaintiff is in doubt from whom the relief is to be sought, the plaintiff in such a situation can add more than one parties as defendants to the suit. This provision of Order I Rule 7 CPC reads as under:-

“7. When plaintiff in doubt from whom redress is to be sought.- Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.”

8. In my opinion, therefore, the reasoning and conclusion of the trial court is correct because in a suit for possession, a person who has no right to continue in the tenanted premises, as the tenancy of the tenant stands terminated, a decree for possession has to be passed, and the same was therefore rightly passed by the trial court by making relevant observations in paras 10 and 11 of the impugned judgment which are reproduced above, and this reasoning is buttressed by Order I Rule 7 CPC, which has also been reproduced above. The person who is the tenant is evicted and the other appellant living only as a family member of the tenant will also go when the tenant is evicted.

9. The facts of the case also show that the respondent/plaintiff has pleaded that the rent has not been paid way back since March, 2014 i.e. almost four and a half years, no less. It is claimed by the appellant no. 2/defendant no. 2 that the rent has been paid till February, 2017, but no proof of payment of rent has been filed. Obviously, therefore, *prima facie*, no rent has been paid for the suit premises since March, 2014 till the pronouncement of the impugned Judgment on 10.10.2018 i.e. for around 4½ years.

Obviously, therefore, the appellants/defendants are not only harassing the respondent/plaintiff in refusing to vacate the property but are staying in the premises without payment of charges, subject of course to the final finding in this regard by the trial court which is determining the issues of arrears of rent and payment of *mesne* profits. The appellants/defendants are, therefore, clearly grossly dishonest persons.

10. This appeal is therefore dismissed with costs of Rs. 1,00,000/- by noting that no cost has been imposed by the trial court while passing the impugned judgment in favour of the respondent/plaintiff. Costs be paid to the respondent/plaintiff within four weeks from today.

11. I would also like to note that the trial court can at the time of passing of the impugned judgment exercise powers under Section 340 of the Code of Criminal Procedure, 1973 read with Section 209 of the Indian Penal Code, 1860 to direct the filing of a criminal case against the appellants/defendants, in case the appellants/defendants are found to have laid out a false defence to the

suit and are falsely contesting the suit filed by the respondent/plaintiff.

12. In view of the aforesaid observations, the appeal is accordingly dismissed.

DECEMBER 7, 2018
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VALMIKI J. MEHTA, J

