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

Date of Decision : 09.12.2019

+ RSA 239/2019 & CM Nos. 52691-52693/2019
MULTAN @ SULTAN

..... Appellant

Through: Mr.Mittani Lal, Adv.

versus

SHIV PRASAD & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This appeal has been filed challenging the judgment and order dated 28.08.2019 passed by the learned Additional District Judge-2, East District, Karkardooma Court, Delhi in RCA 63/2018 dismissing the appeal filed by the appellant herein.

2. The respondents had filed a suit seeking possession and mesne profit against the appellant herein with respect to one shop in the property bearing no. H.N. IX/4351, (G.F.) Gali No.8, Ajit Nagar, Gandhi Nagar, Delhi-110031.

3. It was alleged that the said shop had been given on rent to the appellant on 04.11.2011 at a monthly rent of Rs. 7,400/- per month for a period of 4 years and 6 months by a Registered Rent Agreement

dated 17.11.2011 executed by the mother of the respondents, who later expired on 30.07.2013. As the appellant failed to pay the rent, a notice dated 12.07.2013 was issued terminating the tenancy of the appellant and thereafter the suit was filed seeking a decree of possession and also mesne profits.

4. On the appellant filing the Written Statement, the following issues were framed:-

“A. Whether the suit is not maintainable in view of section 50 of D.R.C. Act? OPD.

B. Whether the suit is bad for non-joinder of necessary parties? OPD.

C. Whether there existed landlord tenant relationship between, the plaintiff and the defendant? OPP.

D. Whether the plaintiff is entitled to a decree of possession as prayed for? OPP.

E. Whether the plaintiff is entitled to mesne profit/use and occupation charges, if ye, at what rate and for what period? OPP.

F. Whether the plaintiff is entitled to interest on the above amount, if yes, at what rate and for what period? OPP.”

5. While the parties were in the process of leading their evidence, an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) was filed by the respondents.

6. The learned Additional Civil Judge, Karkardooma Courts, Delhi by a judgment dated 23.04.2018 decreed the suit as far as the relief of possession was concerned. The plea of the appellant herein that the rent of the property was only Rs. 3,300/- and therefore, the Civil Court's jurisdiction was barred under Section 50 of the Delhi Rent Control Act, 1958 was rejected by the Court, observing as under:-

“4.1. By the admission of the defendant as to the existence of this rent agreement, the said rent agreement is proved, hence the landlord-tenant relationship exists between the plaintiff and defendant.

4.2. By the conjoint reading of Section 91 & 92 of Indian Evidence Act, 1872, the mandate of law is that where the terms of a contract or any other disposition of a property have been reduced to form of a document no evidence shall be given in proof of the terms of such contract or grant or other disposition of the property except the document itself or secondary evidence of its contents and where the terms of any such disposition of property have been proved no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

4.3. Thus, once the rent agreement and contents thereof are proved, the court shall not entertain any evidence which shall have the

effect of varying the terms of this rent agreement.

5. *Thus, the fact that agreed rate of rent was Rs. 7400/- per month is proved. The defendant has not paid Rs. 7400/- per month to the plaintiff as he has been pleading so. The defendant has admitted that he had been paying rent to the plaintiff No. 1, so, he admits the said plaintiff to be his landlord. The receipt of notice dated 12.07.13 is admitted. Thus, the determination of tenancy is also proved.”*

7. Being aggrieved of the said judgment/order the appellant preferred the appeal before the Additional District Judge-02, East District, Karkardooma Courts, Delhi, which has been dismissed by the Impugned Order, observing as under:-

“11.9 Viewing from the said perspective that once there is a registered lease deed between the parties/the terms are clear and categorical then no oral evidence/ vague plea to the contrary can be countenanced. The principles as enshrined under Section 91 & 92 of the Indian Evidence Act, 1872 squarely comes into play. The defence which is sought to be rejected is completely in derogation to the terms of the lease deed. The contention that the rate of rent is Rs. 3300/- is misconceived and there cannot be any evidence permitted to be led on the said point moreso when the defendant admits in his WS that such a lease deed was duly executed

and registered however the underlying understanding was that the rate of rent shall be Rs. 3300/- though on record shall be Rs.7400/-.

12. *Tenancy has already expired. The four years and 6 months period/term as envisaged therein is over on 30.05.2016 – the defendant is left with no right to resist the handing over of possession on the basis of the said agreement. Apart thereof insofar as the questions pertaining to the service of legal notice to quit or related to the validity thereof is concerned no argument has been raised by the appellant. Even otherwise in view of the law laid down in the case of **Jeevan Diesels & Electricals Ltd. v/s M/s Jasbir Singh Chadha HUF & Anr 2011 (182) DLT 402** such questions are now academic issues and do not in any manner detain me any further.”*

8. The learned counsel for the appellant submits that the issues having being framed and the parties already being in the process of leading their respective evidence, the Impugned Judgment under Order XII Rule 6 of the CPC, cannot be sustained. He submits that infact, based on certain admission, the appellant had filed an application under Order VII Rule 11 of the CPC seeking dismissal of the suit.

9. The learned counsel for the appellant, however, does not deny that the relationship between the parties was governed by the

Registered Lease Deed which provides for a monthly rent of Rs. 7,400/-. In light of the registered document, the plea of the appellant of there being some oral understanding wherein the rent was agreed as Rs. 3,300/- per month has been rightly rejected by the learned Trial Court as also by the learned Appellate Court relying upon Section 91 and 92 of the Indian Evidence Act, 1872.

10. As far as the stage of proceedings is concerned, Order 12 Rule 6 of CPC provides that the Court may pass an order/judgment based on admission of a party at “any stage of the suit”. It is trite law that the expression “any stage of the suit” is un-ambiguous and therefore, it would not be permissible to lay down a cut-off point in the process of the proceedings to deny such relief. (Refer to *State Trading Corporation of India Ltd. vs. Nirmal Gupta & Ors.*, 2012 SCC OnLine Del 3556; *Meera Gupta vs. Dinesh Chand and Others*, 2002 (63) DRJ 264 (DB); *Delhi Jal Board vs. Surendra P. Malik*, 104 (2003) DLT 151).

11. The learned counsel for the appellant further submitted that on the death of the mother of the respondents, the respondents alongwith other legal heirs had inherited the tenanted shop and therefore, without impleading the other legal heirs in the suit, the suit was not maintainable.

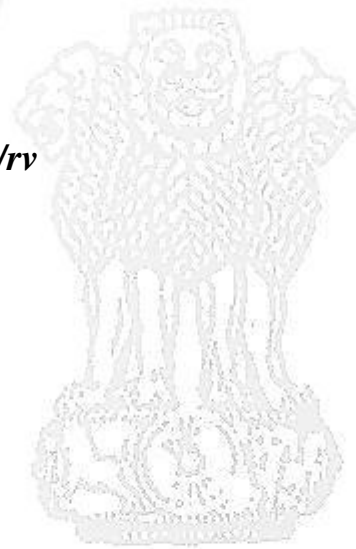
12. I again do not find any merit in the said submission. It is a settled law that even one of the legal heir of the deceased landlord can maintain an eviction proceeding against the tenant. (Refer to *Kasthuri Radhakrishnan & Ors. vs. M.Chinniyan and Others*, 2016 (3) SCC

296; *Mohinder Prasad Jain vs. Manohar Lal Jain*, AIR 2006 SC 1471; *Kanta Goel vs. B.P. Pathak and Ors.*, AIR 1977 SC 1599; *Krishna Prakash and Ors. vs. Dilip Harel Mitra Chenoy*, 93 (2001) DLT 777)

13. In view of the above, I find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

DECEMBER 09, 2019/rv



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