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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 06th January, 2020
Pronounced on: 09th January, 2020**

+ RFA 633/2014

SHRI HANS RAJ

..... Appellant

Through : Mr.G.P.Thareja, Mr.Harshit
Thareja and Mr.Sunil Magon,
Advocates.

versus

SHRI RAGHUVIR SINGH & ORS

..... Respondents

Through : Mr.Deepak Gupta and Mr.Sumer
Nath, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Regular First Appeal is preferred by the appellant against the judgment and decree dated 11.07.2014 passed by the learned Additional District Judge-02/South-East District, Saket Courts, New Delhi/ (hereinafter as the learned '*Trial Court*') in CS No.194/2012 whereby the suit for possession and mesne profits in respect of property No.20, Yusuf Sarai, Main Market, New Delhi -110016 (hereinafter referred as '*suit property*') was decreed under Order XXII Rule 6 CPC in favour of the respondents herein.

2. The brief facts which led to the filing of this appeal are the respondents are admittedly the owners of the building bearing No.20/5, Yusuf Sarai Market, Aurobindo Marg, near Green Park Metro Station, New Delhi – 110016; the suit property being one shop (two storyed) admeasuring 300 (10x30) square feet on each floor comprised in the said

building was in the tenancy of appellant since 1960's (he being a tenant under the then owners / landlords at a rental of Rs.8/- per month). The appellant/tenant paid rentals of suit property to him @ Rs.8/- per month for the period ending 1989. Thereafter, he fell into arrears and did not tender, pay or even deposit, the rentals that accrued in respect of suit property either to the owner/landlord in the Court of the learned Rent Controller or Delhi. The appellant invariably continued to assert his tenancy rights in respect of suit property till August 2008.

3. On 28.08.2008 the appellant wrote to the Monitoring Committee appointed by the Supreme Court once again propounding / asserting that he was a tenant in the suit property at a rental of Rs.8/- per month under the owners/ landlords namely Sh.Raghubir Singh and Sh.Amarjit Singh. On 08-09-11.2008, the appellant instituted in the Court of learned District Judge / Sr. Civil Judge (South District) New Delhi three civil suits (a) for the relief of declaration; (b) for the relief of perpetual injunction; and (c) for recovery of damages on account of losses suffered by the appellant and / his stocks due to seepage of water into the suit property. In all these three suits, the appellant for the first time alleged/propounded *the facts that he has become an owner by adverse possession of shop at ground floor, first floor as well as on the second floor room situated at 20/5, Yusuf Sarai, New Delhi.*

4. Immediately thereafter, the owners/landlords (respondents herein) served upon the appellant a notice dated 11.04.2009 in terms of Section 114-A of the Transfer of Property Act, 1882 intimating him about the forfeiture of his tenancy rights in respect of the suit property. The

aforesaid notice dated 11.04.2009 was duly served upon the appellant but was never adverted to by him. He did not pay heed to the requests of the aforesaid notice dated 11.04.2009. Consequently, on 05.10.2009, the respondents herein (being the plaintiffs/respondents in this appeal) instituted a suit, *inter alia*, for recovery of possession in respect of the premises in suit against the appellant/defendant, contemporaneously seeking certain other reliefs, including mesne profits. With the passage of time, all these four (4) suits came (by virtue of administrative orders passed by the learned District Judge (District: South), Saket Court Complex, New Delhi, in one Court of competent jurisdiction. Issues in all these causes were framed by the successor court on 20.06.2013.

5. After the framing of the issues (keeping in view the clear and categorical admissions by the defendant / appellant herein, the plaintiffs / respondents herein in the fourth suit instituted by them against the appellant herein (for recovery of actual physical possession of the suit property) preferred in the learned Trial Court an application under Order *XII* Rule 6 of the Code of Civil Procedure, 1908 seeking from the learned Trial Court a decree on ejectment / possession against the defendant / appellant herein. The defendant / appellant herein filed a detailed reply (written statement) thereto. After hearing detailed submissions from learned counsels representing the contesting parties, as also after appreciating the law laid down by the Supreme Court as well as this Court, the learned Trial Court by judgment and order dated 11.07.2014 granted to the plaintiffs / respondents herein a decree (against the defendant/appellant herein) for recovery of actual physical vacant possession of the premises in suit.

6. In this appeal, the plea of the appellant is two fold *a)* the jurisdiction of the Civil Court is barred per Section 14 of the Delhi Rent Control Act, 1958 (herein after referred as 'DRC Act') which has a *non-obstante* clause viz.,

"14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

(a) to (l) xxxxxx"

and *b)* there being no unambiguous or clear admission on record of the appellant, the power under Order XII Rule 6 CPC, could not have been exercised, especially in view of issues No.1 to 4 framed by the learned trial Court viz.

"1) Whether plaintiffs are the joint owner of specified share of major portion of property bearing No.20/5, Yusuf Sarai, Main Market, Aurobindo Marg, New Delhi ? OPP

2) Whether the sale deed dated 18.12.1989 and sale deed dated 29.01.2008 executed in favour of plaintiffs are forged and fabricated document ? OPD

3) Whether plaintiffs have deliberately undervalued the suit property and have not affixed the requisite Court fee on the plaint ? If so its effect. OPD

4) Whether defendant is a tenant of plaintiffs in a portion of property bearing no.20/5, Yusuf Sarai, Main market, Aurobindo Marg, New Delhi, more specifically shown in red colour in the site plan ? OPP"

7. Qua contention *a)* it was argued by the learned counsel for the appellant that section 14 of the DRC Act contain a *non-obstante clause* which makes a complete bar of eviction of a tenant except only on the grounds those provided under Section 14(1) or any other provision(s) of the DRC Act. He argued the filing of a civil suit for ejectment of a tenant whose rent is below Rs.3,500/- per month is completely barred. He alleged once a tenant is always a tenant *unless* and *until* an eviction decree is passed against him under provisions of the DRC Act.

8. The learned counsel for the appellant referred to legal notice dated 15.04.1989 sent by the respondent seeking rentals for the last three years

alleging *interalia* they have purchased the suit property. This notice was duly replied by the appellant vide his reply dated 30.05.1989. The appellant in reply did not admit the respondents to be the owners of the suit property and rather asked them to disclose their title documents. However, the appellant remitted the arrears of rental viz. Rs.288/- but *without prejudice to his rights and contentions*.

9. It was argued by the learned counsel for the appellant the learned Trial Court had wrongly relied upon *S.Makhan Singh vs. Smt.Amarjeet Bali* 154 (2008) DLT 2011 wherein this Court has held the provisions of Section 114(g) of the Transfer of Property Act, 1881 is based on public policy and principle of estoppel, hence a person who takes a premises on rent from the landlord is estopped from challenging the *title* and *right* of the landlord to let out and if he does so, the law does not recognize him a legal tenant in the premises and then the Civil Court shall have the jurisdiction to try and evict such tenant.

10. It was argued the view taken in *S.Makhan* (supra) was not accepted by the Coordinate Bench of this Court in *Naeem Ahmed vs. Yashpal Malhotra (Deceased) through Lrs and Anr.* 184 (2011) DLT 170 wherein the Court observed the ratio of *S.Makhan* (supra) is against the language of Section 14 of the DRC Act in as much as by virtue of *non obstante* clause of Section 14 of the DRC Act a tenant cannot be evicted, except on grounds mentioned in the Act.

11. The learned counsel for the appellant also referred to *Om Prakash Gupta vs. Rattan Singh and another* 1964 SCR Vol. I 259 wherein the Court held a simple denial of relationship by the tenant would not oust

the jurisdiction of the tribunals under the Act. Reference was also made to *Sheela and others vs. Firm Prahlad Rai Prem Prakash* AIR 2002 SC 1264 wherein the Court went on to say though in some States there is a provision under the rent Act where a tenant can be evicted if he does anything likely to affect *adversely* and *substantially* the interest of the landlord and such a thing may be which take colour from Section 111 (g) of the Transfer of Property Act and Section 116 of the Indian Evidence Act, but there is no such provision under the DRC Act.

12. Further in *Welfare Association A.R.P. Maharashtra and another vs. Ranjit P. Gohil and Others* AIR 2003 SC 1266 reference was made to *V.Dhanpal Chettiar vs. Yesodai Ammal* AIR 1979 SC 1745 to press once a liability is incurred under the rent Act the tenant has to leave the premises and he cannot turn around to say his tenancy was not terminated as per his contract, as even despite termination of tenancy, a tenant is yet not liable to vacate the premises till a decree of eviction is passed against him. An observation made in *Chettiar* case (supra) was high lightened by the appellant viz:

“Why this dual requirement? Even if the lease is determined by a forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise. In many State statutes different provisions have been made as to the grounds on which a tenant can be evicted and in relation to his incurring the liability to be so evicted. Some provisions overlap those of the Transfer of Property Act. Some are new which are mostly in favour of the tenants but some are in favour of the landlord also. That being so the dictum of this Court in Raj Brij's case comes into play and one has to look to the provisions law contained in the four corners of any State Rent Act to find out whether a tenant can be evicted or not. The theory of double protection or additional protection, it seems to us, has been stretched too far and without a proper and due consideration of all its ramifications.”

13. The learned counsel for the appellant also referred to *Smt.Nai Bahu vs. Lala Ramnarayan and Others* (1978) 1 SCC 58 and *Shivshankar Gurgar vs. Dilip* 2014 II AD (SC) 1 wherein the Court held a tenant can only be evicted if he incurs such liability under the Rent Control Act and cannot be evicted even if he gives his consent in a compromise.

14. Qua contention **b)** it was argued by the learned counsel for the appellant there has to be an unqualified admission by the tenant before passing a judgment under the provisions of order XII Rule 6 CPC. It was argued there was never any unqualified admission on the part of the appellant qua the ownership of the respondent and hence the impugned order ought not to have been passed, especially when the joint ownership of the respondent was even doubted by the learned Trial Court in view of issues No.1 to 4 (above) having been framed. It was argued in *M/s.Durga Builders Private Limited vs. Motor General Finance Limited*, RFA (OS) No.88/2007 decided on 10.04.2012 the Court held the admissions either in pleadings or documents or in the statements cannot be viewed in isolation and the entire material needs to be read as a whole to find out a clear admission and if it exists or not always depend on the facts involved and cannot be decided on the basis of judicial precedents.

15. Heard.

16. It is the admitted case of the parties that the appellant was a 'tenant' in a two storeyed large sized shop (300 square feet on each floor) located on the main Mehrauli Road (now known as Aurobindo Marg) in the locality of Yusuf Sarai, New Delhi - 110016 at a meager rent of Rs.8/- per month since 1960's approx.

17. It is also an admitted case of the parties the appellant was paying rentals/ usufruct in respect of the said demised shop to some of the respondents herein, at the contractual rate of Rs.8/- per month till about 1989; as also that thereafter he fell into arrears of rent.

18. It is not the case of the defendant / appellant herein that from 1990 till 2008 he ever pleaded his possession in respect of the premises in suit was (ever) "adverse"

19. Even in 28.08.2008 the defendant/appellant had admitted in writing (before the Monitoring Committee appointed by the Supreme Court) that he was a tenant in the premises which are subject matter of this appeal.

20. Admittedly, during the hearing of this first appeal the learned counsel for the appellant has conceded the appellant does NOT now press his plea of adverse possession.

21. In other words, the plea that has been propounded (once again) by the appellant on this record is that notwithstanding his having denied the title of the respondents and having asserted title in himself (on the plea of adverse possession) his tenancy rights in respect of the demised shop (subject matter of this appeal) do not stand forfeited in the eyes of law, wherefore he continues to be a tenant in the demised premises.

22. In other words, the appellant has contested the mandate set-out in Section 111 (g) of the Transfer of Property Act, 1882 and thereafter reverted back to claim protection under the DRC Act.

23. The appellant cannot be allowed to do so, as having asserted his adverse possession, *qua*, the ‘premises in suit’, for the first time, in November 2008, his ostensible tenancy rights in the ‘premises in suit’ disappeared into thin air and the provisions of the DRC Act ceased to apply to the suit property, the remedy of the respondents herein lay before the learned Civil Court.

24. The learned counsel for the respondent though referred to *Naeem Ahmad* (supra), but this decision was challenged in Division Bench in 188 (2012) DLT 579 (DB) wherein the Court held:-

“10. Now turning our attention to the ratio of the decision in V. Dhanapal Chettiar case (supra) it is observed that in the said decision it was held that determination of lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act. It is trite to state that a decision is an authority for what it holds and not what flows from it.

11. From the above, it is observed that the decision in V. Dhanapal Chettiar case (supra) is not an authority for the proposition that even if a tenant denies the title of the landlord and claims himself to be owner, he continues to be a tenant in the eyes of law and the protection of the Delhi Rent Control Act is still available to him.

12. xxx

13. In view of the above we hold that the ratio of the decision in S. Makhan Singh case (supra) does not warrant reconsideration. We are, therefore, of the considered opinion that in the facts and circumstances of the case the suit was cognizable by the civil court and the impugned order was erroneous, inasmuch as it held that the same was barred by provisions of Section 50(4) of the Delhi Rent Control Act. The appeal is allowed accordingly. Consequently, the impugned order is set aside. The case is remanded back to the Trial Court with directions to readmit the suit under its original number in the register of civil suits and to proceed to determine the suit from the stage when the impugned order was passed in accordance with law. A copy of this order and judgment along with Trial Court record be transmitted to the court of the concerned District Judge with directions that the matter to be posted before the concerned civil judge for further proceedings.”

25. *Welfare Association* case (supra) is also an authority which propounded the same theory as of *V.Chattiar’s* case. It is a settled law

the DRC Act proceeds on an assumption that there exists a relationship of landlord – tenant between the parties and in cases of mere denial of such relationship the tribunal has an authority to determine such question, per *Om Prakash Gupta vs. Rattan Singh and another* 1964 SCR Vol. I 259. However I may also refer to *Narang Medicine Company vs Swaran Lata Agarwal and Others* 238 (2017) DLT 301 to find the true import of forfeiture. The Court held:-

"20. There is no quarrel with said preposition of law, but that does not mean that the person claiming to be the landlord cannot proceed by filing a civil suit by relying upon the pleadings of the tenant before the competent authority slum and if in said civil proceedings can show that the nature of the pleading by the tenant is of a kind which results in determination of the tenancy by forfeiture. If the person succeeds, that would be the end of the matter to the benefit of the landlord. If he fails, the right to proceed under the Rent Control Legislation or any other law on the basis of a landlord tenant relationship would be lost to the landlord because the mandate of law is that a landlord can evict a tenant in a slum area in Delhi only after obtaining permission from the competent authority slum."

26. Now though the appellant in his communications of June 2008 to the Monitoring Committee has alleged himself to be a tenant of this were premises but in para 15 and 22 of his written statement has *denied* such relationship and alleged himself to be an owner by adverse possession. Thus once the appellant claims to be in adverse possession of the premises, he cannot alleged himself to be a tenant as both these pleas cannot exist together. The principle *once a tenant always a tenant* ends on taking plea of adverse possession and asserting one's own right.

27. As per law the *only* requirement to *oust* the jurisdiction of the tribunal under the DRC Act is to give a notice by the landlord to the tenant disclosing his intention to terminate the lease, per Section 111 (g) read with Section 114A of the Transfer of the Property Act, 1882. Such a notice dated 11.04.1988 has, admittedly, been given by the landlord in

this case. The citations supporting my this view are numerous viz. *Namdeo Lokman Lodhi vs. Narmadabai and Others* AIR 1953 SC 228; *Raghupati Roy and Others vs. Debu Karmakar and Others* AIR 1956 Calcutta 79; *Abdul Sattar Mian vs. Kailash Prasad* AIR 1966 Patna 93; *Chandra Nath Mukherjee vs. Chulai Pashi and Another* AIR 1960 Calcutta 40; *Ramniranjan Prasad Tulshyan and Others vs. Gajadhar Prasad and Others* AIR 1960 Patna 525; *Somti Parkash Lakshmi Narain Singh vs. Natha Baga and Another* AIR 1964 Punjab 449; *Devasahayam (Dead) by Lrs. vs. P.Savithramma and Others* (2005) 7 SCC 653. I need not repeat the law laid in these judgments, hence, contention *a*) is accordingly answered and is rejected.

28. Qua contention *b*) it is a settled law where a person files a suit for declaration on a plea of adverse possession against the defendants, necessarily *admits* the defendant(s) to be the real owner(s) of the premises, as the plea of adverse possession only lie against the real owner(s) of the property, per *T.Anjanappa and Ors. vs. Somalingappa and Anr.* 2006(8) SCALE 624 and *Dagadabai (Dead) by Lrs. vs. Abbas alias Gulab Rustum Pinjari* (2017) 13 SCC 705 wherein the Court held:-

“16.xxxxIt is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.”

Madan Lal Kaushik vs. Shree Yog Mayaji Temple & Ors. 178 (2011) DLT 398; in *S.Pritam Singh & Ors. vs. Ram Narain Vij* 1999 I

AD 785 and *Mrs. Adarsh Kaur Gill vs. Smt. Surjit Kaur Gill & Ors.* FAO(OS) 634/2009 decided on 15.01.2010 also support this view.

29. Hence, the contention *viz* the ownership ought to have been proved by the respondents in view of the issues framed hold no merit since by filing of a suit against the respondents – herein, for declaring the appellant as an owner by adverse possession, the appellant has admitted the respondents to be the real owners of the subject property. The issues framed, thus, shall not come in the way of passing of the judgment under Order XII Rule 6 CPC.

30. Neither in *V Chettiar* (supra) nor in *Vinay Eknath Lad vs Chiu Mao Chen* Civil Appeal No.4726/2010 decided on 19.12.2019 the plea of adverse possession was ever raised. These are the cases of simple denial of relationship and in such circumstances, undoubtedly, the learned ARC has a power to determine such relationship. However, where a plea of adverse possession is raised by a tenant, assuming the title in himself against the real owner and once a notice to determine lease, per Section 111(g) (2) of the Transfer of the Property Act, 1882 is given, as is given in this case by the landlord, the tenant cannot allege ouster of civil jurisdiction.

31. Lastly, it was urged by the appellant the suit for possession being valued at Rs.96/- ought to have been tried by the learned Civil Judge. This contention also appears to be frivolous since the plaint reveals besides possession, the relief of mesne profits of Rs.10.00 lacs was also sought, hence suit was rightly tried by the learned Additional District

Judge. Admittedly, the annual rent of the premises was Rs.96/-, hence is rightly valued per *S.Makhan Singh (supra)* wherein the Court held:-

“6. Where the tenant continues in occupation after he repudiates the title of the landlord, lease comes to an end by operation of law because of the repudiation of title and the landlord/owner can file a suit for possession in Civil Court. The valuation of such a suit has to be on the basis of annual rent in view of Section 7(xi)(cc) of Court Fee Act.”

32. Thus there is no error in the impugned judgment passed under Order XII Rule 6 CPC. The appeal is, therefore, dismissed. The pending application, if any, also stands dismissed. LCR be remitted forthwith. No order as to costs.

YOGESH KHANNA, J.

JANUARY 09, 2020

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