



\$~79 (Appellate)

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

+ **RSA 70/2022 & CM APPL. 29679/2022**

RAIS AHMED Appellant

Through: Mr. Amjad Khan, Adv.

versus

ANIS AHMED Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% 11.07.2022

1. Rais Ahmed, the appellant and Anis Ahmed, the respondent are brothers.

2. These proceedings emanate from Civil Suit 83522/2016, filed by the respondent against the appellant, and pertaining to a property situated at A-43, Okhla Village, Jamia Nagar, New Delhi ("the suit property").

3. The respondent contended, in the suit, that he had purchased the suit property from Deen Mohd and that the appellant was residing on the ground floor of the suit property as a licensee.

4. The plaint averred that, earlier, Zaheer Ahmed, the father of the appellant and respondent, was occupying the suit property as a tenant of Abdul Rehman and Mohd Ibrahim, the joint owners of the suit



property. The respondent alleged, in the plaint, that, during the lifetime of Zaheer Ahmed, the respondent purchased the suit property in his own name from Deen Mohd, the son of Abdul Rehman, through a registered General Power of Attorney (GPA) and Will dated 14th July 2000 accompanied by Agreement To Sell, affidavit and receipt. The respondent asserted that the suit property was assessed to house tax in his name and that he was regularly paying house tax on the said property.

5. Specific reliance was placed by the respondent in the plaint, on an affidavit dated 21st February 2002, executed by the appellant, in which he categorically stated that the respondent alone was the owner of the suit property and that the appellant had no concern with it. The said affidavit, which the appellant did not deem it appropriate to place on record with the appeal and which, consequent to the directions issued by this Court, has been brought on record by the appellant, reads (in its English translation) thus:

“AFFIDAVIT

I, Rais Ahmed S/o Sh. Zaheer Ahmed, R/o H. No. 43-A, Okhla Village, Jamia Nagar, New Delhi – 110025, hereby declare that:-

1. That it is stated that my abovementioned name, father name and address are correct.

2. *I solemnly state that my brother namely Sh. Anis Ahmed, S/o Sh. Zaheer Ahmed is the sole owner of the property i.e. R/o H. No. 43-A, Okhla Village, Jamia Nagar, New Delhi -110025, property bearing No. 43-A, Area 45 Sq. Yards, Khasra No. 125, located at Village Okhla Jamia Nagar, New Delhi.*



3. That it is stated that *there is no right on the above said property of my heirs or mine on the abovementioned property and none of my legal heirs will create any objection upon it in future.*

4. *That all the rights of the above said property reserved by my brother namely Sh. Anis Ahmed.*

5. That *I declare that the above said property was purchased by my brother namely Sh. Anis Ahmed and there is no right remain of mine & my family to raise any objections on it.*

6. That the present statement has been given under no influence, coercion or force by anyone.

...Deponent

Verification:-

Verified at New Delhi today dated 21.02.2002 and the above noted contents of the affidavit are in my knowledge, true & correct, nothing material has been concealed therefrom.

...Deponent”

(Emphasis supplied)

6. The plaintiff asserted that, with the passage of time and with his children attaining marriageable age, the respondent came to be in need of the suit property. In April, 2011, therefore, the respondent requested the appellant to hand over, to the respondent, vacant possession of the ground floor of the suit property. This request was reiterated on later occasions as well. The appellant, however, did not condescend to accommodate the respondent and, instead, according to the plaintiff, misbehaved with the respondent.

7. In these circumstances, the respondent, in the plaintiff, sought a decree of permanent injunction in his favour and against the appellant,



restraining the appellant from transferring, alienating, or creating any third party interest, or handing over the portion in the possession of the appellant in the ground floor of the suit property to any third person. Additionally, a mandatory injunction, directing the appellant to hand over vacant and physical possession of the portion of the suit property, of which he was in occupation, to the respondent, was also sought.

8. The appellant contested the suit by way of a written statement. Paras 3, 4, 5 and 9 of the preliminary objections, and paras 2, 3 and 5 of the reply on merits in the written statement may be reproduced thus:

“Preliminary objections

“3. THAT the plaintiff has no locus standi to file the present suit against the defendant as the defendant is occupying the suit premises in the capacity of a tenant as *he has inherited the tenancy rights of the suit premises after the demise of his father Shri Zaheer Ahmed* and as such the plaintiff is not. legally entitled to cause interference or disturb the peaceful possession and tenancy rights of the defendant by way of the present false and frivolous suit. Hence the suit deserves outright dismissal.

4. THAT the plaintiff has not come to this Hon'ble Court with clean hands and has not stated the true facts and suppressed the true material facts from this Hon'ble Court. In this respect it is submitted that *the defendant is a lawful tenant in possession of the suit premises and he has inherited the tenancy rights of the suit premises after the demise of his father Shri Zaheer Ahmed who was previously a tenant in the suit premises and it is the own case of the plaintiff that the defendant's father Shri Zaheer Ahmed was tenant in the suit premises*. It is submitted that even if the claim of the plaintiff is believed upon, though denied as toto, that he has allegedly



purchased the suit premises but *even then the mere purchase of suit premises the plaintiff has got no right to allege the tenancy rights of the defendant as that of a licensee*. The plaintiff has cooked up a false and frivolous story of licensee in order to somehow throw out the defendant and his family from the suit premises. However, the plaintiff is legally not entitled to any relief whatsoever in the present suit against the defendant and hence the suit deserves for outright dismissal. It is further submitted that the defendant has already incurred huge expenditure on renovation, repair and bringing the suit premises for its habitation and occupation. The plaintiff has filed the present false and frivolous suit as *the tenancy of the defendant is continuous, regular, uninterrupted and till date subsisting and the plaintiff is not entitled to any relief whatsoever in the present suit*.

5 THAT the plaintiff has no locus standi to file the present suit as *the plaintiff is not the owner of the suit premises and he is only landlord qua the suit premises* and the plaintiff has filed the present suit only to oust the defendant from the suit premises, hence the suit is not maintainable and is liable to be dismissed.

9. THAT *the suit is barred under Section 50 of Delhi Rent Control Act* and the tenancy of the defendant is protected under the provisions of Delhi Rent Control Act and the plaintiff is legally not entitled to invoke the jurisdiction of civil court for recovery of possession, hence the present suit is not maintainable and is liable to be dismissed.

Reply on merits

2. THAT the contents of para no.2 of the plaint as stated are matter of record so far as that the defendant is a lawful tenant in possession of the suit premises, rest as stated are absolutely wrong and denied. *It is vehemently wrong and denied that the defendant is residing in the suit premises being the licensee of the plaintiff as alleged*. All the averments



are wrong false misconceived and contrary to the facts. It is already submitted that the defendant's father was inducted as tenant in the suit premises and *after his demise, the defendant has inherited the tenancy rights and has become a lawful tenant in the suit premises. There is no question of creation of any alleged license as wrongly alleged by the plaintiff.* Reference be made to the submissions in the preliminary objections.

3. THAT the contents of para no.3 of the plaint as stated are not denied to the extent that the father of the parties was tenant in the suit premises, rest as stated are absolutely wrong and hence denied. *It is wrong and denied that the same was purchased by the plaintiff in his own name from its erstwhile owner through alleged documents as alleged.* All the averments of the plaintiff are false, frivolous, misconceived and contrary to the facts. It is submitted that *the plaintiff is not the owner of the suit premises and he has no legal right and authority to file the present false and frivolous suit against the defendant.* Reference be made to the submissions in the preliminary objections.

5. THAT the contents of para no.5 of the plaint as stated are vehemently wrong and hence denied. It is totally wrong and denied that defendant executed an undertaking/affidavit dated 21.2.2002 with regard to the said property in favour of the plaintiff or that the plaintiff is the owner of the said property and the defendant has no concern with it as alleged. All the averments are false, frivolous and purely concoction and contrary to the facts. As already submitted *the defendant is a lawful tenant in the suit premises after the demise of his father* and he has never given, signed and executed any alleged undertaking/affidavit dated 21.2.2002 and the same appears to be fabricated and manipulated by the plaintiff malafidely and dishonestly the plaintiffs also not the owner of the suit premises. Reference be made to the submissions in the preceding paras.”

9. The learned Civil Judge framed the following issues, as arising for consideration, *vide* order dated 9th November 2011:



“Issue no.1 *Whether plaintiff is entitled to a decree of permanent injunction to restrain the defendant, agents, employees etc. from creating third party interest in the suit property which is ground floor, property bearing no. A-43, Okhla Village, Jamia Nagar, New Delhi as shown in red color in the site plan? OPP*

Issue no.2 *Whether plaintiff is entitled to the mandatory injunction directing the defendant, his agents, employees etc. to hand over possession of the suit property? OPP*

Issue no.3 *Whether the defendant is a tenant and not a licensee? OPD*

Issue no.4 *Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPP*

Issue no.5 *Whether the suit is barred by Section 50 of The Delhi Rent Control Act? OPD*

Issue no.6 *Whether the plaintiff is entitled to any relief? If so, what?”*

Evidence

10. During the course of proceedings before the learned Civil Judge, the appellant led his own evidence as DW-1 and led the evidence of Mohd. Ibrahim as DW-2. DW-1 and DW-2 filed their affidavits in evidence, and were cross-examined.

11. The appellant, as DW-1, claimed, in cross-examination, to be residing in the suit premises as a tenant, in which capacity he was paying rent @ ₹ 50 per month to Mohd Ibrahim, the brother of Abdul Rehman since 2011. He claimed to be in possession of a rent agreement executed between Ibrahim and himself, which he undertook to produce. However, he acknowledged that he did not have any rent



receipt, evidencing payment of rent by him to Ibrahim.

12. The appellant, in his cross-examination, further submitted that it was correct that the respondent had purchased the suit property and, immediately thereafter, volunteered that the sale purchase documents were forged. Even so, he submitted that he had not challenged the documents relating to sale and purchase of the suit property in any Court of law or lodged any complaint in that regard with the police. Nor had he filed any suit in any Court, claiming any right in the suit property against the respondent.

13. Apropos the affidavit dated 21st February 2002, the appellant alleged that the documents did not bear his signatures at two points. Denying the fact that he had signed the said documents, the appellant acknowledged, however, that he had not lodged any complaint against the respondent in connection therewith.

14. Apropos payment of rent, the appellant deposed that, prior to 2011, he used to pay rent to the respondent, who used to forward the payments so made to the actual landlord, i.e. Abdul Rehman and Mohd Ibrahim on behalf of the appellant. However, having come to learn, in 2011, that the respondent had purchased the suit property, the appellant stated that he discontinued paying rent to the respondent and commenced such payment to Mohd Ibrahim, the brother of Abdul Rehman. He, however, voluntarily acknowledged that, from 2000 to 2011, he was paying rent to the respondent. He denied being a licensee in the suit property. The appellant, as DW-1, otherwise denied the assertions of the respondent.



15. Mohd. Ibrahim, one of the original owners of the suit property (apart from Abdul Rehman), and to whom the appellant claims to have been paying rent even after 2011, deposed as DW-2. He acknowledged that no receipt had been placed on record, by him, to vouchsafe payment of rent by the appellant to him. Though he stated that the appellant stopped paying rent in 2011 but he acknowledged that no notice was issued to him to the appellant in that regard. He also sought to contend that the rental agreements between the appellant and himself was oral.

16. DW-2 further stated that he had instituted two cases against Deen Mohd for allegedly illegally selling the suit property, which were disposed on compromise but was unable to place any document relating to the said cases on record. He acknowledged that he was not able to place on record any evidence, evidencing the said compromise. He denied the suggestion that he was not the owner of the suit property along with Abdul Rehman. Towards the conclusion of his cross-examination, however, he specifically stated thus:

“It is wrong to suggest that at any point of time, Anis Ahmed or Zahir Ahmed tendered rent to him with respect to the suit property.”

17. The appellant has not chosen to place the affidavit in evidence of the respondent, as PW-1, on record. Instead, he has placed on record a truncated copy of cross-examination of the respondent as PW-1. In the said cross-examination, the respondent, as PW-1, categorically asserted that his father Zaheer Ahmed remained a tenant



in the suit property till the time he, i.e. Anis Ahmed, purchased the suit property. He also stated that he had got the tenancy determined with the previous landlord. He denied the suggestion that, consequent on the death of Zaheer Ahmed, the petitioner and himself, i.e. Rais Ahmed and Anis Ahmed, were tenants in the property.

18. Zaheer Ali, a friend of the respondent Anis Ahmed testified as PW-2. He denied the suggestion that Zaheer Ahmed was the tenant of Mohd Ibrahim and Abdul Rehman and volunteered to state that he was instead the tenant of Deen Mohd. He also corroborated the deposition of the respondent (as PW-1) by denying the suggestion that, till the time Zaheer Ahmed was alive, he remained a tenant in the property. Instead, he confirmed that the property was purchased by the respondent during the lifetime of his father.

Findings of Ld. CJ

Re: Issue No. 3

19. The learned Civil Judge first addressed Issue No. 3 i.e. whether the appellant was a tenant or a licensee. The learned Civil Judge noted that the appellant had accepted the respondent to be his landlord. This, even by itself, indicated that the respondent had a better title, qua the suit premises, than the appellant. Though the appellant sought, later, to plead that the acknowledgment, by him, in his written statement, of the respondent being his landlord, in his written statement, was by inadvertence, the learned Civil Judge correctly holds that such a contention could not be accepted, as it was always



open to the appellant to amend his pleadings if an error had crept in by inadvertence. No such attempt having been made by the appellant, the learned Civil Judge holds the petitioner to be bound by his admission, in his written statement, that the respondent was his landlord.

20. In view of the aforesaid clear admission, the learned Civil Judge holds that testimonies, in evidence, which were aimed at discrediting the relationship of landlord and tenant between the respondent and the appellant could not be accepted, as they were contrary to the appellant's own pleadings.

21. Apropos the ownership of the respondent, the learned Civil Judge notes that the appellant had as much as accepted the respondent to be the owner of the suit property in his pleading. Even in cross-examination, he first accepted that the respondent had purchased the suit property and, thereafter, in a contrary vein, sought to assert that the sale documents were forged. Even so, he acknowledged that he had never challenged the documents of title executed in favour of the respondent such as the GPA, Will etc.

22. The learned Civil Judge also notes that DW-2 Mohd Ibrahim, even while asserting that he had filed two cases against Deen Mohd for allegedly illegally selling the suit property, was unable to provide any detail of the said cases. The learned Civil Judge also relies on the admission, by DW-2, that he never took any legal action against the appellant for failing to pay rent after 2011. In this context, the learned Civil Judge notes that the assertion, by the appellant, as DW-1, that he



had been paying rent in respect of the suit property to Mohd Ibrahim since 2011, was unsupported by any document, and no rent agreement had been placed on record. Nor had he placed any evidence on record to indicate that he had been paying rent to Mohd Ibrahim till 2011.

23. As against this, the learned Civil Judge noted that Ex. PW-1/2 (Colly), being the title documents dated 14th July 2000, indicated that the respondent had purchased the suit property during the lifetime of his father Zaheer Ahmed. Since then, it was an acknowledged fact that the appellant was residing in the suit property. It was not the case of the appellant that he had been paying any rent to the respondent. Though the appellant sought to contend that he had been paying rent to Mohd. Ibrahim, no evidence to the said effect could be produced by him. Mohd. Ibrahim, for his part, stated that, after 2011, the appellant had not paid rent, though he had initiated no proceedings in that regard.

24. The attempt of the appellant to seek to establish, during evidence, that Mohd Ibrahim was the owner of the suit property, was held to be unacceptable, as it was contrary to the case set up by the appellant in his written statement. Besides, held the learned Civil Judge, the appellant was estopped, by Section 116 of the Indian Evidence Act, 1872¹ (“the Evidence Act”) from challenging the title of the respondent in respect of the suit property.

¹ **116. Estoppel of tenant; and of licensee of person in possession.**—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.



25. In view of the fact that the respondent had successfully proved his ownership of the suit property, under the title documents dated 14th July 2000 (Ex.PW-1/2 collectively), the learned Civil Judge held that the appellant was not the tenant, but the licensee of the respondent.

26. Inasmuch as the appellant had failed to prove that he was residing in the suit property as a tenant, rather than as a licensee, and the respondent had, on the other hand, succeeded in proving ownership over the suit property, the learned Civil Judge held that CS 83522/2016 having been instituted by the respondent with requisite promptitude after issuing, to the appellant, legal notices on 8th May 2011 and 23rd May 2011 requesting the appellant to vacate the property, was within time, and the respondent was entitled to a decree directing the appellant to vacate the suit property and a decree of mandatory injunction directing the appellant to hand over vacant possession of the suit property to the respondent.

27. As the title documents dated 14th July 2000, which were executed prior to the judgment of the Supreme Court in *Suraj Lamp & Industries Ltd. v. State of Haryana*², were approved by the respondent, the respondent had made out a better title to the suit property than the appellant. The appellant had, in fact, not pleaded any title to the suit property. The learned Civil Judge held, therefore, that the respondent was entitled to a decree of permanent injunction restraining the appellant from creating any third party interest in the suit property.

² (2012) 1 SCC 656



28. Inasmuch as the appellant had not succeeded in showing that he was a tenant in the suit property, and had also not pleaded that the suit property commanded a rent less than ₹ 3,500/- per annum, the learned Civil Judge held that the suit could not be treated as barred under Section 50 of the DRC Act.

29. Judgment of the learned ADJ

30. The learned ADJ observed that, in his affidavit (Ex.PW-1/4), the appellant had unequivocally acknowledged that the respondent was the owner of the suit property. The said document, it was observed, was not disputed by the appellant as PW-1, even during cross-examination. No evidence to indicate that the document was forged or fabricated or had been executed under duress or coercion, was led by the appellant.

31. Coupled with this, the appellant had, in his written statement, categorically admitted the respondent to be his landlord. Though, at a later stage, the appellant sought to resile from the said admission, stating that it was by oversight, no attempt was made to amend the written statement or remedy the alleged oversight.

32. In his cross-examination during trial, the appellant sought to set up an entirely new case, of the suit property being owned by Mohd. Ibrahim (DW-2) and Abdul Rehman. The learned ADJ upheld the finding of the learned Civil Judge that the said claim, sought to be established through evidence, could not be sustained as it was beyond pleadings. In this context, the learned ADJ noted that DW-2, too, did not take any steps to get the title documents dated 14th July 2000,



issued in favour of the respondent, declared null and void.

33. The appellant's claim to ownership over the suit property as testified by him during trial, had not been subjected to cross-examination and had remained unrebutted. DW-2 Mohd. Ibrahim, on the other hand, had failed to establish either ownership over the suit property or receipt, from the appellant, of rent in respect of the suit property till 2011.

34. The appellant having thus been shown not to have been a tenant in the suit property, the learned ADJ observed that it was required to be examined whether he was a licensee. The appellant did not claim any title in the suit property. In cross-examination, notes the learned ADJ, the appellant had admitted the factum of purchase of the suit property by the respondent in 2011. In these circumstances, the learned ADJ upheld the finding of the learned Civil Judge that the respondent had been able to prove a better title, in respect of the suit property, than the appellant. The appellant, not being either the owner of the suit property or a tenant in respect thereof, could safely be regarded as a licensee.

35. The learned ADJ also upheld the finding, of the learned Civil Judge, that the suit of the Respondent 2 was not barred by Section 50 of the DRC Act, as the appellant had failed to prove that he was a tenant in respect of the suit property and had not chosen to aver, anywhere in the written statement filed by him, that he was paying rent in respect of the suit property to anyone.

36. For all these reasons, the learned ADJ upheld the judgment of



the learned Civil Judge.

Rival Submissions

37. Aggrieved thereby, the appellant has approached this Court in second appeal under Section 100 of the CPC. Mr. Amjad Khan, learned Counsel for the appellant submitted that the appellant was occupying the suit premises as a tenant, having inherited tenancy rights from his father Zaheer Ahmed. The respondent was not, therefore, in the appellant's submission, entitled to disturb his peaceful possession of the suit premises.

38. Mr. Khan submitted that, even if it were to be accepted that the respondent had purchased the suit premises from Deen Mohd, that would not entitle the respondent to disturb the appellant's possession of the suit property. Mr. Khan categorically denied the allegation that his client was a licensee in the suit premises. In fact, submits Mr. Khan, the respondent not being an owner of the suit property could not have maintained the suit as he was only a landlord. Mr. Khan also submitted that the suit was barred by Section 50 of the DRC Act, under which the tenancy of the appellant was protected.

39. Mr. Khan also denied the execution, by the appellant, of the undertaking/affidavit dated 21st February 2002 which, he submitted, was fabricated and manipulated by the respondent. Mr. Khan placed reliance on the judgment of the Supreme Court in **B. Bal Reddy v.**



Teegala Narayana Reddy³ and R.S. Grewal v. Chander Parkash Soni⁴ He submitted that the respondent had, in para 3 of his plaint, admitted the inheritance of tenancy, by the appellant, from Zaheer Ahmed. He also pointed out that, in his cross-examination, the appellant had clearly disowned his signatures in the affidavit Ex. PW-1/4.

Analysis and findings:

40. The present appeal, being limited to Section 100 of the CPC, is restricted to substantial questions of law.

41. The expression “substantial questions of law” may be understood by reference to the judgment of the Supreme Court in ***Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.*⁵** and ***Nazir Mohamed v J. Kamala*⁶**.

42. The findings of the learned Civil Judge, as well as of the learned ADJ, are pure findings of fact. Such findings can give rise to substantial questions of law only if they are perverse. Perversity is defined in ***Kilasho Devi Burman v. C.I.T.*⁷**, ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal*⁸** and ***Damodar Lal v. Sohan Devi*⁹**.

³ (2016) 15 SCC 102

⁴ (2019) 6 SCC 216

⁵ 1962 Supp (3) SCR 549

⁶ (2020) 19 SCC 57

⁷ (1996) 7 SCC 613

⁸ (2012) 7 SCC 288

⁹ (2016) 3 SCC 78



43. The learned Civil Judge noted, *inter alia*, that (i) though the appellant claimed to have been paying rent to Mohd Ibrahim since 2011, he did not have any rent receipt, evidencing such payment with him, (ii) in his affidavit/undertaking dated 21st February 2002, the appellant had specifically acknowledged and admitted the ownership of the respondent over the suit property, (iii) even in the cross-examination, the appellant had admitted that the respondent had purchased the suit property, (iv) even in his written statement, the appellant accepted the respondent to be his landlord, which itself indicated that the respondent had the better title than the appellant *qua* the suit property, (v) the submission of the appellant that the said admission had crept into the written statement by inadvertence could not be accepted, as no attempt was made by the appellant to amend his pleadings, (vi) the appellant could not, in the face of the said pleadings, seek to rely on oral testimonies to dispute the ownership of the respondent over the suit property, (vii) the respondent had placed, on record, the title documents indicating that he had purchased the suit property from Deen Mohd, (viii) Mohd Ibrahim had, deposing as DW-2, specifically acknowledged that he had no document to indicate receipt of rent, by him, from the appellant, after 2011 and (ix) as such, not being either a tenant or the owner of the suit property, the continued possession of the suit property by the appellant could only be as a licensee.

44. These are primarily findings of facts, which are based on the evidence on record. Especially in view of the admissions, in the pleadings, by the appellant, of respondent being the owner of the suit



property as well as the landlord and the appellant having placed on record no material to indicate that he had a right to continue in the suit property either as owner or as a tenant of the respondent, no perversity whatsoever can attach to the findings of the learned Civil Judge and the learned ADJ that the appellant was a licensee in the suit property.

45. In that view of the matter, it cannot be said that any substantial question of law arises for consideration.

46. The appeal is accordingly dismissed.

C. HARI SHANKAR, J.

JULY 11, 2022

dsn/r.bararia

