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

+ RSA 82/2023 and CM APPL. 22090/2023, CM APPL. 28166/2023
CM APPL. 51765/2024

NAND KISHORE

.....Appellant

Through: Mr. Prakash Khandelwal, Adv.

versus

DILSHAD PUBLIC SCHOOL

.....Respondent

Through: Mr. Venkita Subramoniam T. R. Mr.
Rahat Bansal and Mr. Varun Mudgal,
Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

24.10.2024

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1. Learned counsel for the appellant/defendant submits that the Courts below have gravely erred in passing the impugned judgment and decree in as much as, they failed to consider that the appellant/defendant still remains in service of the respondent-School/plaintiff.

2. According to the learned counsel for the appellant/defendant, the documents placed on record along with an application under Order 41 Rule 27 of the Code of Civil Procedure (CPC) clearly indicates that the respondent-School/plaintiff had reinstated the appellant to the post of Chowkidar. Learned counsel, therefore, submits that the cause of action for the institution of the Civil Suit itself is in no more in existence, therefore, the impugned judgment and decree deserves to be set aside.



3. The submissions made by appellant/defendant are vehemently opposed by learned counsel who appears for respondent-School/plaintiff. He submits that the services of the appellant/defendant were terminated by the school, and later on revocation of the termination order would not automatically entitle him to re-occupy the premises which was allotted pursuant to service being rendered by the appellant/defendant. Learned counsel submits that once the licence was terminated, the appellant/defendant ceases to have any right pursuant thereto.

4. Learned counsel for the respondent-School/plaintiff further submits that the respondent-School/plaintiff has consciously not taken any decision for re-allotment of the premises in question to the appellant/defendant.

5. I have considered all the aforesaid submissions made by the parties and have also perused the record.

6. The judgment and decree passed by the Trial Court dated 16.03.2019 would indicate that the Trial Court *vide* order dated 05.01.2018 had framed following issues:

“(i). Whether the plaintiff is entitled for the relief of possession as prayed for ? OPP

(ii). Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for ? OPP”

7. Issue No.1 and Issue no. 2 were to be proved by the respondent-School/plaintiff, which relates to as to whether the respondent-School/plaintiff is entitled for the relief of possession and for mandatory injunction. The respondent-School/plaintiff appears to have examined Administrator of the School as PW1.

8. The material which was produced before the Trial Court would



clearly indicate that the premises in question was allotted to the appellant/defendant during the services on the post of Chowkidar. The services of the appellant/defendant came to be terminated by a Memorandum dated 01.07.2015. The Trial Court under paragraph No. 9 of its order has considered the aforesaid aspect and has held as under:

“The onus to prove this issue was placed upon plaintiff. The plaintiff school has filed the present suit for possession and recovery of damages/mesne profits. PW1 has deposed that defendant was working as chowkidar in the plaintiff's school and he was given possession of the demised premises in that capacity. However his services were terminated vide memo dated 01.07.2015 and show cause notice dated 07.08.2015. Defendant has admitted that he was appointed as chowkidar-cum-watchman by the plaintiff school. He has also not disputed how he came into the possession of the demised premises. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of title-holder. The principles of law in this regard are crystallized by the Hon'ble Supreme Court in the judgment titled as Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack De Sequeira (dead) through LRs. (2012) 5 Supreme Court Cases 370 as under:-

- (1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years of decades such person would not acquire any right or interest in the said property.*
- (2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
- (3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
- (4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.*
- (5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long possession.”*

9. It is not in dispute that the appellant/defendant was appointed as Chowkidar cum Watchman, and it is also not in dispute that he came into possession of the premises by virtue of his appointment.



10. The ownership of the premises in question always continued to remain with the respondent-School/plaintiff and at best, the appellant/defendant was in permissive possession of the premises.

11. However, once the services of the appellant/defendant were terminated and on notice being issued to the appellant/defendant for vacation of the premises, the appellant/ defendant was to handover the possession of the suit premises and having failed to establish any right to continue in possession, the Trial Court has rightly decreed the Civil Suit. In paragraph No. 12 of its order, the Trial Court has rendered following findings:-

*“12. In the case in hand, defendant has not pleaded that he had raised any construction acting upon the licence. PW1 has further deposed that plaintiff school had directed the defendant to vacate the demised premises in view of the termination notice. Defendant has not denied the termination notice which also speaks about termination of the licence of the defendant to reside in the demised premises. Ld. Counsel for defendant has objected the same on the ground that he has not received any notice of vacation of the demised premises. The contention of the defendant is inconsequential since licence is created at the will of the licensor and no separate notice is required to terminate the licence. Filing of the suit by the plaintiff is itself an express revocation of the licence of the defendant. Reliance placed upon judgment titled as **Chiddi Ram Vs. Ram Dass Foundation DHC 2011**. Hence the court is of the opinion that the licence of the defendant has been duly terminated by the plaintiff. The plaintiff is entitled to recover the possession of the demised premises. Accordingly, issue no.1 is decided in favour of the plaintiff and against the defendant.”*

12. The Appellate Court *vide* judgment dated 28.02.2023 has negated the submissions raised by the appellant/defendant and in paragraph nos. 7 to 14 following findings have been rendered:-

“7. Being aggrieved, Appellant/Defendant has preferred the present appeal and assailing the Impugned Order, Id. counsel for Defendant has taken the grounds which are set out as below:

a) that Plaintiff did not terminate licence of Defendant nor asked him



to vacate the suit property. Plaintiff did not prove that licence of Defendant was actually terminated and thus, no cause of action had arisen in favour of Plaintiff.

b) that Dr. U.C.Jain, who had filed the suit had expired during pendency of the suit. No elections were conducted by Plaintiff's society after the same and thus, there was no President of the society. The only witness examined on behalf of Plaintiff Mr. Mridul Awasthi was not competent to sue on behalf of Plaintiff since he was neither duly appointed nor authorized to represent the Plaintiff in court proceedings. The authorization of PW-1 was not proper and he was not competent to depose on behalf of Plaintiff. Id. trial court did not adjudicate upon the issue of legality of authorization of AR of plaintiff or his competency to depose.

c). The impugned Judgment suffered from conjectures and surmises and was not based upon the appreciation of facts.

8. This Court has heard Id. counsels for both sides. Having examined the record and heard respective sides, the first aspect to be considered is the status of the defendant vis-a-vis suit property. The Plaintiff is owner of the demised premises. The only claim of Defendant is that he had been appointed as Chowkidar and his license was never terminated nor he was ever asked to vacate the demised premises. In this regard it would be apposite to refer to the observations of Id. trial court which are as below:-

“.....10. Reverting to the facts in hand, admittedly defendant is residing in the demised premises as caretaker. It is established principle of law that caretaker holds property on behalf of principal. It has been held by Hon'ble High Court in judgment titled as Sham Lal vs. Rajinder Kumar (DRJ P. 600 paras 1213) that 'possession of servant is possession of the owner. A servant cannot be said to be having any interest in the suit property. It cannot be said that a servant or a chowkidar can exercise such a possession or right to possession over the property as to exclude the master and the real owner of the property from his possession or exercising right to possession over the property.'

11. PWJ has further deposed that the plaintiff school had terminated the services of the defendant and it is also an admitted fact that the dismissal has been upheld by the Delhi School Tribunal and defendant has failed to produce any stay over the said order. Section 52 of the Indian Easement Act 1882 defines licence as under:

'Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the



absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.'

A licence as defined in Section 52 of the Indian Easement Act does not create or transfer any interest in the immovable property. The licensee possession is permissible and he can be evicted any time upon termination of license Reliance placed on judgment titled as Sultan Begum vs. Prem Chand Jain AIR (1997) Supreme Court 1006. Defendant is also not entitled to the protection of Section 60 of the Indian Easement Act."

9. *Ld. trial court has rightly observed that Defendant being a licensee was directed to vacate demised premises in view of termination notice. Ld. trial court further observed that Defendant did not deny his termination notice at any point of time. Even otherwise, the plea that Defendant was not served with termination order is itself contrary to stand taken by Defendant, since it is own case that he had challenged the said Order before Higher forum. So far as the plea challenging the authority of PW-I Mr. Mridul Awasthi, Administrator of Plaintiff's school is concerned, the law is no more res integra as is also observed by Hon'ble Apex Court in United Bank of India v. Naresh Kumar and ors. {DOD as 18.09.1996} that when the suits are instituted by Corporations or Societies, they should not be permitted to be defeated on mere technicalities. Even otherwise, the plea taken by Defendant challenging the authority of PW-I is without force as Defendant being a mere licensee cannot question the authority of his owner and the plea pales into insignificance.*

10. *The right of licensee to say in possession of demised premises is no more res integra. The same is dealt with by Division Bench of Hon'ble Delhi High Court in case of 'Chandu Lal v. Municipal Corporation of Delhi, AIR 1978 Del 174. The relevant portion is read as under:-*

"26. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an Interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He not secure a decree of the Court to obtain this right. He is entitled to resist in defense of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser....."

11. *Hon'ble Delhi High Court in M/s Aresko Restaurant Pvt Ltd & Anr vs New Delhi Municipal Corporation & Ors (decided on 10 April, 2015) held as under:*



"28. It is settled principle of law that a licensee has no legal right to stay in the property after termination of the licence. A learned Single Judge of this Court in Thomas Cook (India) Limited Vs. Hotel Imperial & Ors., 2006 (127) DLT 431 has held as under:-

"26. The nature of occupancy is clearly permissive. In fact it does not amount to possession at all. The relationship between the plaintiff and the defendant in terms of the compromise decree was that of Licensor and Licencee and not Lessor and Lessee. The plaintiff had use of the two rooms under a licence. A licence does not create any interest in the property. It merely permits another person to make use of the property. There is no parting with possession as the legal possession continues with the owner (licensor). In C.M. Been.a v. P.N. Ramachandra Rao: (2004) 3 SCC 595, the Supreme Court held:-

"Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful (Associated Hotels of India ltd. v. R.N. Kapoor [AIR 1959 SC J 262]) "

12. Same view of learned Single Judge in Thomas Cook (India) Limited (supra) was approved by Hon'ble Supreme Court in Maria Margaridz Sequeira Fernandes and Others vs. Erasmo Jack De Sequeira (Dead) Through LRs, (2012) 5 SCC 370.

13. Having observed so, this Court does not find any ground much less plausible one to interfere in the Impugned Judgment rendered in favour of Respondent. The pleas taken in the appeal do not forward case of Appellant and Appellant has failed to show any or illegality on factual or legal aspect. The scope and nature of appeals and the limitations of powers of an Appellate Court to substitute its own discretion in an appeal preferred against the order is well-settled. An Appellate Court will not interfere with the discretion of the trial court only because a different view is possible. As long as the view taken by the court below is a reasonable one, no interference is warranted.

14. I have no hesitation for concurring with the findings of ld. trial court and I find no infirmity or error in the impugned Judgment. The appeal, being meritless deserves dismissal.

15. The same stands dismissed with costs of Rs.10,000/to be deposited by



Appellant/Defendant with DL.SA (Shahdara) within 15 days.”

13. As far as the submission made by the appellant/defendant in respect of the revocation of termination is concerned, the same would not automatically entitle the appellant/defendant to take back the possession of the premises in question unless the respondent-School/ plaintiff specifically re-allot the said premises.

14. The exposition of law under Section 100 of CPC clearly elucidate that the second appeal can only be entertained, if the instant appeal raises a substantial question of law. Furthermore, a bare perusal of the record would indicate that both the Courts below are at *ad-idem* with respect to the entitlement of the appellant/defendant to take back the possession of the premises in absence of re-allotment.

15. In the ***Thiagarajan v. Sri Venugopalaswamy B. Koil***¹, the Supreme Court observed that the where the findings of the fact by the lower appellate court are based on evidence, the second appellate court cannot ouster such finding and substitute it with its own finding on reappraisal of evidence merely on the ground that another view was possible. The Supreme Court further observed that it is the obligation of the Courts of law to further the clear intendment of the legislature as envisaged under Section 100 of CPC and not frustrate it by excluding the same.

16. Interference in the concurrent findings of the fact is permitted but only in exceptional circumstances. As a second appeal is not the third trial on facts and the first Appellate Court is final arbiter of facts, this interference by the second Appellate Court is rarity rather than regularity.

¹ (2004) 5 SCC 762.



In ***Jai Singh v. Shakuntala***², the Supreme Court held that it is permissible to interfere even on questions of fact but it has to be done only in exceptional circumstances. The Court observed as under :-

*“6. ... While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would in our view be too broad a proposition and too rigid an interpretation of law not worthy of acceptance but that does **not also clothe the superior courts within jurisdiction to intervene and interfere in any and every matter—it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible—it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.**”*

17. In ***P. Chandrasekharan v. S. Kanakarajan***³, the Supreme Court laid down the exposition of law that the interference in the second appeal is permissible only when the findings are based on misreading of evidence or are so perverse that no person of ordinary prudence could take the said view. More so, the Court must be conscious that intervention is permissible provided the case involves a substantial question of law which is altogether different from the question of law. The concurrent findings of the Courts below cannot be readily interfered unless and until the appeal raises substantial question of law.

18. In view of clear enunciation of law as elucidated in the judicial precedents cited above, the Court, therefore, finds no reason to interfere with the judgment and decree rendered by the Trial Court which has been rightly upheld by the first Appellate Court.

19. The appeal failed and, therefore, stands dismissed.

²AIR 2002 SC 1428.

³(2007) 5 SCC 669.



20. All pending applications are also disposed of.

PURUSHAINdra KUMAR KAURAV, J

OCTOBER 24, 2024

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