

(2002) 04 SC CK 0123
In the Supreme Court Of India
Case No : 1522 Of 2000

Ashok Bimal Ghosh

APPELLANT

Vs

Smt. Beant Kaur

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Delhi Rent Control Act, 1958 — Section 14(1)
Evidence Act, 1872 — Section 116
Transfer of Property Act, 1882 — Section 108

Citation : (2002) 1 JT 559 Supp

Hon'ble Judges : R. C. Lahoti, J; B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In the suit premises described as C-646, New Friends Colony, New Delhi, the appellant was inducted by the respondent as a tenant for residential purpose on a monthly rent of Rs. 11,500/- w.e.f. 1.8.1994. The terms and conditions of the lease are contained in the deed of lease dated 31.7.1984 executed between the parties and registered with the sub-registrar of deeds, New Delhi. It appears that the appellant defaulted in payment of rent and sometime in the year 1986, the respondent initiated proceedings for eviction of the appellant-tenant on the ground of default in payment of rent before the rent controller u/s 14(1)(a) of the Delhi Rent Control Act, 1958. With effect from 1.12.1988, by virtue of Delhi Rent Control (Amendment) Act, 1988, Clause (c) was added in Section 3 of the Act whereby Delhi Rent Control Act ceased to apply to the suit premises as the monthly rent thereof exceeded Rs. 3500/- per month. In view of the amendment, the rent controller lost jurisdiction over the proceeding and the same was transferred to the civil court. It came to be registered as suit No. 91 of 1993 in the court of additional district judge, Delhi.

2. In the written statement, the tenant admitted the plaintiff to be landlady and having been inducted as tenant into the suit premises by her and also having

paid rent to her. However, one of the pleas raised in the written statement was that the ownership over the property did not vest in the plaintiff but in the son of the plaintiff and, therefore, the suit was bad for non-joinder of necessary party. When the plaintiff appeared in the witness box, she admitted that so far as ownership of the building was concerned, it vested in her son, but, on account of an internal family arrangement between the son and the mother, the mother was entitled to enjoy the property or the earning thereof during her life time and that is why she had let out the property to the tenant and was entitled to recover the rent.

3. The trial court held the plaintiff to be landlady and hence entitled to file the suit. By judgment and decree dated 31.5.1997, the trial court directed the suit to be decreed for recovery of rent and mesne profits as also for recovery of possession over the suit premises.

4. The defendant did not file any appeal against the judgment and decree. On 7.7.1997, he moved an application before the trial court under Order 47 Rule 1, read with Section 114 of the CPC seeking review of the judgment and decree dated 31.5.1997. The only ground taken in the review application was that sometime in September, 1996, in the absence of the defendant-tenant from the premises, as he was out of station, a lady, by name Francoise Cremel had come to his residence and left a letter in writing, the contents whereof indicated that she was a French lady, having married with Karanjit Singh Sekhon, the son of the respondent-landlady and Karanjit Singh Sekhon had expired on 27.10.1995 leaving behind a daughter born to her from Karanjit Singh Sekhon. On account of death of Karanjit Singh Sekhon, the lady claiming herself to be the widow of the deceased was entitled to recovery of rent from 18th September, 1996 onwards for herself and for her daughter. The review application further stated that there was a servant in the house who had received the letter but the servant had also left without informing the defendant-tenant of the factum and the contents of the letter which came to his knowledge when he was searching through the papers in the last week of June, 1997, i.e., after about a month of the passing of the judgment and decree of the trial court.

5. The review application was contested denying all the factual averments made in the application and submitting that no case for review of the judgment and decree was made out. The trial court, after hearing the parties, by order dated 6.6.1998 rejected the prayer for review. During the course of its order, the trial court had stated that the averments made in the application carried the defendant-tenant's case nowhere. The facts stated in the review application were not in the personal knowledge of the defendant-tenant. The servant who is said to have received the letter with the enclosures and the lady who had left the letter were not traceable and their whereabouts were also not known. In any case, the contents of the review application did not make out a case for review within the meaning of Rule 1 of Order 47 of the CPC. It was this order dated 6.6.1998 rejecting the review application against which a revision petition was

filed by the defendant-tenant in the High Court which has been dismissed. The subject matter of this appeal, by special leave, is the order of the High Court upholding the rejection of revision petition by the trial court. The judgment and decree disposing of the original suit were not challenged by filing an appeal nor are the subject matter of this appeal.

6. Having heard the learned counsel for the parties, we are satisfied that no case is made out for interfering with the order of the High Court rejecting the revision and upholding the rejection of review application by the trial court. It is not disputed that the respondent-landlady had inducted the tenant-appellant into the possession of the suit premises. u/s 108 Clause (1) of the Transfer of Property Act, it is the obligation of the tenant to pay or tender rent to his lessor at the proper time and place, and under Clause (p) on the determination of the lease, the lessee is bound to put the lessor into possession of the property. Clauses (1) and (p) of Section 108 of the Transfer of Property Act are to be read along with Section 116 of the Evidence Act. No tenant of any property shall, during the continuance of the tenancy, be permitted to deny the title of the lessor to such property. The rule of estoppel contained in section 116 of the Evidence Act continues to operate so long as the tenant has not surrendered possession of the tenancy premises to his lessor or unless evicted by holder of title paramount, which is not the case here. The trial court rightly decreed the suit upholding the entitlement of the landlady-respondent to recover the rent and possession over the suit premises over which she had inducted the tenant-appellant. No case was made out for recalling the judgment and decree of the trial court in exercise of review jurisdiction on any of the grounds under Order 47 Rule 1 of the CPC. The review petition was rightly rejected and the rejection was rightly upheld by the High Court.

7. For the foregoing reasons, the appeal is held wholly devoid of any merit and liable to be dismissed which is dismissed accordingly and with costs throughout.