

(2020) 02 DEL CK 0522

In the Delhi High Court

Case No : Civil Suit (OS) No. 203 Of 2019

Ashok Kumar Oberoi

APPELLANT

Vs

Raj Kumar Kapoor @ Raju & Anr

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)(e), 5B
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 17(3)

Citation : (2020) 02 DEL CK 0522

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

**Advocate : Nitin Soni, Deepjyot Singh, Priyanka, Amit Mehra, Santosh Kumar
Rout, Vijayendra Mishra**

Judgement

Mukta Gupta, J

CM No.15232/2019 (u/O XII Rule 6 CPC by the Plaintiff)

1. Learned counsel for the defendants states that cost as directed vide order dated 10th February, 2020 has been deposited. Copy thereof is handed

over to the Court which is placed on record.

2. By this plaint, the plaintiff seeks eviction of the defendant No.1 and besides recovery of possession of the suit property as well as recovery of

damages from the defendant No.1.

3. Case of the plaintiff is that the plaintiff purchased southern half portion measuring 140 square yards out of total 280 square yards of the built up

property bearing No.17 situated on Road No.27, East Punjabi Bagh on 7th January, 2011 for a consideration from the erstwhile owner Sh.Tejinder

Sahni S/o Avtar Singh. When the property was purchased by the plaintiff the

same was lying mortgaged with the defendant No.2/bank and on account of the default committed by the borrower which includes the erstwhile owner of the property, the defendant No.2/bank initiated proceedings under the SARFAESI Act consequent whereunto possession of the southern half portion of the property bearing suit property mentioned above was taken over by the Court receiver appointed on the application of the defendant No.2/bank.

4. The suit property was initially allotted by The Refugee Co-operative Group Housing Society, Punjabi Bagh to one Sh. Satwant Singh Bakshi vide

sale deed dated 24th April 1962. On 17th February 1964 Satwant Singh sold the entire property to Smt. Ganeshi Devi who thereafter sold the entire

property to Smt. Darshn Kumari on 13th April 1973. Smt. Darshan Kumari @ Darshana Kumari sold the property to Smt. Sumitra Devi and Sh.

Krishan Garg vide sale deed dated 22nd December 1995, who later through their SPA sold the northern party of the property through registered sale

deed in favour of Aditya Saraf vide sale deed dated 24th November, 2004 and the southern half of the property Sh. Suresh Chand Sharma vide sale

deed dated 13th July 2001. When the sale deed dated 22nd December 1995 was executed, the same clearly noted that one Hans Raj was a tenant in

the front side only in built up portion on ground floor on road No.27 and Sh. Sushil Kumar was occupying the back side open courtyard. Since the half

portion in the front side was in tenancy only the symbolic possession thereof was handed over to Aditya Saraf as noted in the sale deed dated 24th

November, 2004, clause 3 whereof reads as under: -

â??That property under sale is in tenancy with Dr.H.R.Kewal Kapoor. Hence the vendor has delivered the proprietary possession of the said

property to the vendee at spot.â??

5. On 21st March 2006 Suresh Chander Sharma executed a sale deed with respect to the southern side half portion in favour of Smt. Bela Chawla

who created an equitable mortgage of the suit property in favour of defendant No. 2 bank on 30th March 2007 and deposited the title document with

them. On 25th June 2007, Smt. Bela Chawla sold the suit property to Sh. Tejinder Sahni who also created mortgage of the suit property in favour of

Defendant No. 2 bank on 22nd December 2007 as a security of various loans in name of M/s Forgewell Engineering Corporation, M/s J.P Papers and

M/s BA Associates. The suit property was mutated in name of Sh. Tejinder Sahni

in records of Municipal Corporation Delhi. On account of default being committed by the borrower in repaying the loan defendant no.2 bank initiated proceedings under the provision of The Recovery Of Debts Due to Bank and Financial Institutions Act 1993 against M/s Forgewell Engineering Corporation and its guarantors by filing an OA no. 73/2010 in DRT titled as Syndicate Bank v. M/s Forgewell Engineering Corporation another OA bearing no. 156/2010 titled as Syndicate Bank v. J.P Papers and Anr. Defendant no. 2 also filed a civil suit bearing No. 70/2010 in concerned civil court titled as Syndicate Bank v. M/s B A Associates. Defendant No. 2 bank also initiated proceedings under SARFAESI and consequently Ld. ACMM vide order dated 16th October 2011 in â??Syndicate Bank v. M/s Forgewell Engineering Corporation decided to appoint receiver with direction to take possession of the southern half of the suit property and thereafter the court appointed receiver vide order dated 23rd November 2010.

6. On 27th December 2010 the tenant of northern half portion of the property namely Dr. H R Kanwal filed an application under Section 17(3) of the SARFAESI Act seeking quashing of proceedings initiated by defendant no. 2 bank and stated that bank officials with police authorities and one advocate being receiver alleging themselves in compliance of order came to the suit property on 23rd November 2010 and despite objection of the defendant put a lock and seal upon unused door at front and backside of the southern portion.

7. Grievance of the plaintiff is that he is the owner of the southern portion of the suit property having purchased the same from one Sh. Tejinder Sahni on 7th January, 2011. Copy of the sale deed in this regard has been placed on record and since Sh. Tejinder Sahni had borrowed money from the defendant No.2/bank as noted above SARFAESI proceedings were going on in respect of the southern portion of the suit property which had been sealed by the seal of the bank. The proceedings before the DRT and DRAT would show that when the bank wanted to hand over the property to the borrower on satisfaction of the claim it was found that the defendant No.1 had illegally trespassed in the said property.

8. In the proceedings before the learned DRT, the defendant No.1â??s father filed an application seeking possession of the property wherein an order was passed on 1st February, 2011 directing the possession to be handed

over to the defendant No.1's father as the claim of the bank stood satisfied. Said order was challenged by the bank before the DRAT which vide order dated 16th August, 2018 set aside the order dated 1st February, 2011 of the DRT-III, Delhi disposing of SA No.7/2011 filed by the father of the defendant No.1 with the direction to the authorized officer of the bank to restore the possession of the property in question setting aside the order of the DRT-III disposing of SA 7/2011. The symbolic possession of the property thus continues with the defendant No.2/bank though the defendant NO.1 despite being a tenant on the northern portion of the property and with no claim whatsoever on the southern portion claims to be in possession of the property.

9. Before this Court learned counsel for defendant No.1 argues that defendant No.1 is the owner of the southern portion of the suit property however this plea has not been taken in the written statement wherein the plea taken is of simple denial of the pleadings of the plaintiff. In the entire written statement defendant has not pleaded as to how he became the owner and was in possession of the southern portion of the suit property except denying whatever has been stated in the plaint. The defendant No.1 has filed documents along with the written statement which only show his possession to the suit property and no further title.

10. Subsequently Aditya Saraf filed an eviction petition against Dr.H.R.Kewal Kapoor, father of defendant No.1 namely Hans Raj under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act wherein leave to defend application was filed by Dr.H.R.Kewal Kapoor wherein he admitted that the said petition was filed because the petitioner therein was forcing Dr.H.R.Kewal Kapoor to increase the rate of rent per month and on refusal thereof the petition for eviction on the ground of bona fide requirement was filed.

11. Learned ACJ cum ARC West Tis Hazari vide order dated 13th January, 2014 dismissed the leave to defend application filed by Dr.H.R.Kewal Kapoor, father of defendant No.1. In the said leave to defend application, father of defendant No.1 took a specific plea that Aditya Saraf was not the owner of the tenanted property which plea was turned down and it was noted that the father of the defendant No.1 had admitted that he used to pay rent to Aditya Saraf and because Aditya Saraf demanded increase in the rate of

rent, the eviction petition was filed. Thus there was a clear admission by father of the defendant no. 1 that he was a tenant of Aditya Saraf in the northern portion of the property.

12. Thus an eviction order under Section 14(1)(e) of the Delhi Rent Control Act was passed in respect of the tenanted premises that is northern side

half portion of 140 square yards out of the total 280 square yards of the property bearing No.17/27, East Punjabi Bagh, New Delhi against the father

of defendant No.1. Father of defendant No.1 passed away after the proceedings before the learned ARC was completed but before an order could be

passed. Hence defendant No.1 challenged the order dated 13th January, 2014 passed by the learned ARC by filing a rent revision being RC Revision

132/2014 before this Court wherein vide order dated 10th July, 2014 noted that after some arguments the petition was dismissed as not pressed and

the petitioner therein i.e. the defendant No.1 herein sought time to vacate the suit premises on or before 28th February, 2015 which was granted

subject to filing of an undertaking before the Court within two weeks.

13. In an execution petition filed by Aditya Saraf notice was issued to defendant No.1 which was refused to be accepted by his wife and one

Ms.Rekha appeared claiming to be the sister of the judgment debtor that is defendant No.1. However, defendant no. 1 failed to appear. The learned

Executing Court noting that the only purpose to issue notice to judgment debtor No.1 therein i.e. the defendant No.1 herein was to see whether he had

complied with the condition imposed by the High Court asking him to file undertaking on an affidavit within two weeks. Consequently, the warrant of

possession was issued in favour of Aditya Saraf in respect of the front i.e. the northern portion of the suit property.

14. Considering that the averments in the plaint are denied simplicitor and based on the earlier proceedings between the various parties which includes

the admission of the predecessor in interest that is the father of defendant No.1 reliance whereof has also been placed by defendant No.1 the present

application is allowed and a preliminary decree is passed in favour of the plaintiff and against the defendant No.1 directing defendant No.1 to vacate

the suit property i.e. southern half portion of property No.17/27, East Punjabi Bagh, New Delhi shown in red colour in the site plan, possession

whereof to be handed over to the plaintiff within two months from the date of

this order.

CS(OS) 203/2019 & IA No.5324/2019 (u/O XXXIX R-1 and 2 CPC)

List the suit on 20th April, 2020 for the parties to lead their evidence in respect of the damages.