
(1985) 10 DEL CK 0024

In the Delhi High Court

Case No : Civil Revision Appeal No. 257 of 1985

Bhagwant Singh and Another

APPELLANT

Vs

Mohan Lal and Another

RESPONDENT

Date of Decision : 17-10-1985

Acts Referred:

Citation : (1986) 10 DRJ 38

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : G.S. Vohra, M.S. Vohra, Kailash Vasdev and Sudhir Kumar, for the Appellant;

Judgement

Sultan Singh, J.

(1) This revision has been filed by Bhagwant Singh and Harbel Singh, defendant Nos. 2 and 3, while another revision (Civil Revision No. 457 of 1985) has been filed by Krishan Lal, defendant No. 1. Both the revisions challenge the judgment and order dated 1st December, 1984 of the lower appellate court confirming the order of the trial court dated 14th November, 1983 restraining the defendants from forcibly and wrongfully dispossessing the plaintiff from almirah like shop and also from demolishing the front wall in which the said almirah is embedded till the disposal of the suit.

(2) Briefly these are the facts ; Mohan Lal, plaintiff/respondent No. I, on 6th April, 1983 filed a suit for permanent injunction restraining the defendants from disposing him from the almirah shop and from demolishing the wall on which the me is fixed. The plaintiff has alleged that he is a tenant in a shop forming part of 89, Ghaffar Market, New Delhi, delineated in the site plan annexed with the plaint for the last over 25 years on a monthly rent of Rs. 100.00 . He has alleged that the property was allotted to Sajjan Singh and Mehboob Singh ; that he was inducted as tenant at Rs. 100.00 per month by Mehboob Singh ; that he was carrying on his business under the name and style of Mohan Chappal Stores and

he was assessed to Sales-tax ; that he obtained separate electric connection in his own name and later on the plaintiff closed his chappal business and started business of artificial jewellery. He alleges that the shop comprises of an almirah embedded in the wall with the remaining super-structure on the Municipal land which was on Tehbazari basis in the name of Mehboob Singh; that during emergency period the Tehbazari rights were abolished and the super-structure on Municipal land was demolished by the concerned authorities leaving only an almirah on the wall ; that he continued to pay Rs. 100.00 per month as rent to Mehboob Singh and after his death to his legal heirs; that defendant No. 1, in 1973, who was also a tenant of Mehboob Singh, purchased a portion of the shop from the legal heirs of Mehboob Singh and thereafter he started paying rent to defendant No. 1, that he appeared as a witness in the suit : Krishan Lal v. Harbel Singh etc. filed in 1976 in the High Court of Delhi; that he was summoned as a witness to depose that he was a tenant in the premises at Rs. 100.00 per month and his testimony was recorded. The plaintiff has further alleged that the defendants are planning to demolish the entire wall on which the almirah shop of the plaintiff is fixed so that defendant No. 2 would have opening of hi(r) shop on the main road itself. The plaintiff thus prayed for a permanent injunction. Along with the suit he filed an application for temporary injunction.

(3) Krishan Lal, defendant No. 1, admits that during emergency the structure on the Municipal land was removed by the concerned authorities; he denies that there was any almirah embedded in the wall; that he purchased a portion of the said property from the legal representatives of Mehboob Singh ; he denies that the plaintiff became tenant under him at Rs. 100.00 per month.

(4) Defendant Nos. 2 and 3 in their written statement have pleaded that plaintiff was only a licensee on the Municipal land outside the shop in question and after the revocation of the license, he has no right to remain on the Municipal land and he can be thrown out by permissible help ; that Sajjan Singh and Mehboob Singh were carrying on business in separate portions of the shop. It is denied that the plaintiff was inducted as tenant at Rs. 100.00 per month by Mehboob Singh in any portion of shop No. 89, Ghaffar Market, New Delhi. It is denied that any electric connection was obtained by the plaintiff in his own name. Existence of almirah embedded in the wall is denied. It is further alleged that the plaintiff has not paid any rent to them ; that the plaintiff was a tenant only on the Tehbazari land. It is admitted that there has been litigation between defendant No. 1 on the one hand and defendants 2 and 3 on the other.

(5) In view of the denial of the defendants regarding the existence of almirah like shop on the wall of shop No. 89, Ghaffar Market, New Delhi, the trial court appointed a Local Commissioner. The Local Commissioner reported that there was an almirah like shop on the front wall of shop No. 89, Ghaffar Market, New Delhi. The defendants 2 and 3 filed objections to the report of the Local Commissioner seeking cross-examination of the Local Commissioner or in the alternative appointment of a new Local Commissioner on the ground that there

was no almirah like shop 3" depth as reported by the Local Commissioner. The objections were dismissed.

(6) The trial court after considering the facts of the case held prima facie that almirah like shop existed at the spot; that the plaintiff had raised arguable questions; that he would suffer irreparable injury in case of refusal to grant injunction; that injury could not be calculated in terms of money and that the balance of convenience was in his favor. The trial court, Therefore, issued the temporary injunction as already observed.

(7) On appeal, the lower appellate court confirmed the said injunction holding that the plaintiff had a prima facie case. It has also been observed that the almirah exists on a portion of the wall which is Immovable property and that lease of a portion of the wall can be created.

(8) Learned counsel for the petitioner/defendants 2 and 3 submits that the courts below have not correctly appreciated the facts of the case; that they have committed material irregularity in the exercise of their jurisdiction : that the broad facts of the case have not been understood. He submits that Mehboob Singh was only licensee of Tehbazari, that Tehbazari rights were abolished during emergency in 1976 and as such the license came to an end; that there is no almirah embedded in the wall: that there is only a card board nailed on the wall; that the plaintiff places ready- made clothes and artificial jewellery on a cord fixed with iron nails on both sides of the board; that there are no shelves ; that the licensee of Tehbazari acquires no right after its revocation : that there cannot be a lease of a spot on the wall u/s 105 of the Transfer of Property Act : that it was a case of license and not of lease which the courts have not appreciated at all.

(9) Learned counsel for the plaintiff/respondent No. 1 on the other hand submits that the two courts below have taken into consideration all the aspects of the case and have prima facie held that there is an almirah like shop fixed on the wall of Shop No. 89, Ghaffar Market, New Delhi ; that the plaintiff has been carrying on business for over 25 years ; that the plaintiff would suffer irreparable injury/loss and that the balance of convenience is in his favor. He submits that the courts below considered all the ingredients for the grant of temporary injunction before passing the temporary injunction in question ; that there is no jurisdictional error and in any case there would be neither failure of justice nor irreparable injury to the petitioners/ defendant Nos. 2 and 3 if the injunction in question continues during the pendency of the suit.

(10) On the facts of the present case it must be held that the case set up by the plaintiff/respondent No. I requires consideration and investigation.

(11) From the report of the Local Commissioner it is apparent that there is an almirah like shop fixed on the Southern wall of shop No, 89, Ghaffar Market, New Delhi. The plaintiff has filed a plan which shows that the size of almirah fixed on the wall is 5'x10". The front elevation of this wall shows that there is a ply fixed

on the wall. The petitioners/defendants 2 and 3 have also filed a plan showing that there is a ply over the wall measuring 4"-6"x5"6" shown red in their plan. The petitioners admit that the plaintiff was a tenant on the Tehbazari land under Mehboob Singh and that he has not paid any rent to them. A copy of the agreement to sell between the heirs of Mehboob Singh and Kriahan Lal, respondent No. 2, has been filed on record. It is dated 25th July, 1974. In this agreement it is mentioned that Mohan Lal, plaintiff, is tenant of Tehbazari land measuring 5" on the front side of the shop. The case of the plaintiff is that there has always been an almirah on the super-structure of Tehbazari. He, however, admits that Tehbazari structure was demolished during emergency and the almirah like shop continued to remain on the wall. He asserts that he has been carrying on his business. He has filed on record various documents showing that his business has been assessed to Sales Tax under the name and style of Mohan Chappal Store. The address of his business is 89, Ghaffar Market, New Delhi. He has filed Sales-Tax documents disclosing that he has been served at the address of the shop in suit for 9th April, 1983. He has also placed on record receipts showing payment of subscriptions by him to Ghaffar Market Beopar Mandal (Regd.) at the address of the shop in suit. It is, Therefore, apparent that the plaintiff has been carrying on his business in the almirah like shop fixed on the wall of shop No. 89, Ghaffar Market, New Delhi.

(12) The dispute is whether he was inducted as a tenant or he was only a licensee. This question is to be decided during the trial of the suit. At present it is sufficient to observe that the case of the plaintiff requires serious investigation.

(13) Learned counsel for the petitioners submits that the court does not issue temporary injunction unless it is thoroughly satisfied that there is a prima facie case in favor of the plaintiff which implies probabilities of the plaintiff obtaining a relief on the materials placed before the court at this stage. He has referred to Air 1968 Kerala 179 : Vellakutty v. Karthyayani and another, in support of this submission. In that case documents produced by the parties were not taken into consideration in deciding the existence of the prima facie case to justify issue of temporary injunction and, Therefore, it was held by the High Court that the court acted illegally or atleast with material irregularity- in the exercise of its jurisdiction. I do not agree that at this Stage the court should be thoroughly satisfied that there is probability of plaintiff obtaining a relief before an injunction can be granted to him. Prima facie case means that it needs consideration, investigation or determination. It does not mean proof at this stage. It means bona fide dispute requiring determination without pre-judging the case. The proper stage for judging the case is at the conclusion of the trial when the full facts of the case are placed before the court. The case of the plaintiff/respondent No. 1, as observed above, requires consideration and investigation to the extent whether he is a tenant of the almirah like shop or he is a licensee or that his license came to an end with the removal of Takhat (Tehbazari) during emergency. Reference in this connection may be made to 1973 R.L.R. 542 Gopal Krishan Kapoor v. Ramesh Chander ", 1976 R.L.R. 1 Gurmukh Singh v. Inderprasth

Finance Co. and 1976 R.L.R. 550 Sahab Dayal Chaman Lal v. M.CD.

(14) The plaintiff has been carrying on his business admittedly till the time of abolition of Tehbazari during emergency. plaintiff alleges that he has been carrying on his business after abolition of Tehbazari and in support of that he has placed on record some documents pertaining to Sales-tax assessment proceedings. It cannot, Therefore, be said that he has not been carrying on his business. If his possession is not protected at this stage, he would suffer irreparable injury.

(15) It is admitted that there had been litigation between defendant No. 1 on the one hand and defendants 2 and 3 on the other which has since been settled. If the petitioners/defendants 2 and 3 are allowed to demolish the wall where the almirah like shop is fixed, it would amount to closer of the business of the plaintiff. The petitioners, Therefore, cannot be allowed at this stage to dispose the plaintiff or demolish the wall on which the almirah is fixed. The balance of convenience is also in favor of the plaintiff. If injunction is not granted, he would suffer irreparable injury.

(16) In D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, , it has been observed that while exercising the jurisdiction u/s 115 of the CPC it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. It has been further observed that the words "illegally" and "with material irregularity" as used in Clause (c) of Section 115 of the CPC do not cover either errors of fact or of law, they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this Clause (c) may relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision.

(17) In AIR 1949 156 (Privy Council) , Madras it has been held that u/s 115 of the CPC the High Court has to satisfy itself upon three matters (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction ; and (c) that in exercising jurisdiction the Court has not acted "illegally" i.e. in breach of some provision of law or with material irregularity i.e. by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

(18) In the instant case the courts below have jurisdiction to grant temporary injunction under Order 39 Rule 1 (c) of the Code of Civil Procedure. The courts have considered all the ingredients i.e. prima facie nature of the case; balance of convenience and irreparable injury before the grant of the temporary injunction in question.

(19) I am, Therefore, of the opinion that the courts have rightly exercised jurisdiction in granting the injunction to the plaintiff; that no illegality or irregularity was committed in the exercise of jurisdiction.

(20) Learned counsel for the petitioners has referred to 1978 R.L.R. 278 ChanduLal, Bal Krishan, Madan Mohan, Mohan Lal v. M.C D., where it has been observed that a person who is given possession of a property as a licensee cannot claim the status of a lessee even if he is given exclusive possession. The facts of that case are not applicable to the present case.

(21) In the instant case heirs of Mehboob Singh is) the agreement to sell admit that Mohan Lal was a tenant with respect to Takhat (Tehbazari). Petitioners also admit that the plaintiff was a tenant of Tehbazari under Mehboob Singh.

(22) I do not find any infirmity in the judgments of the courts below and hold that it is not a fit case to interfere u/s 115 of the Code of Civil Procedure. The revision petition is, Therefore, dismissed with no order as to costs.

(23) Krishan Lal, defendant No. I, is petitioner in Civil Revision No. 457 of 1985. No body has put in appearance on his behalf at the time of hearing. Civil Revision No. 457 of 1985 is, Therefore, dismissed for default of appearance. No order as to costs.