

(2013) 01 DEL CK 0367

In the Delhi High Court

Case No : CM (M) 80 of 2013 and C.M.No. 1063 of 2013

Delhi Diocesan Trust Association

APPELLANT

Vs

Lawrance Messy

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 14 Rule 5
Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2013) 01 DEL CK 0367

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Sunil Kumar Singh and Mr. P.K. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Pratibha Rani, J.—The present petitioner, who is plaintiff in Suit No. 24/2010, is aggrieved by the order dated 25.10.2012 passed by

learned Civil Judge whereby his prayer for deleting the issue No. 2, has been declined by the Court. Learned counsel for the petitioner has

submitted that the petitioner/plaintiff filed a suit for possession, permanent injunction and recovery of damages and compensation against the

defendant seeking possession of Quarter No. 4 at 1, Church Lane, New Delhi, allotted to the respondent during the course of his employment.

Respondent had ceased to be the employee of petitioner as 10.09.2001, the respondent requested in writing for his earlier retirement, and his

request was accepted w.e.f. 20.10.2001.

2. Thereafter, the respondent was requested to handover the possession of the quarter allotted to him and to settle the account which he failed to

do. On getting information that the respondent was trying to create third party interest in the quarter and trying to part with the possession, the above referred suit was filed.

3. After the pleadings were completed, learned Trial Court framed the following issues on 12.03.2012:

1. Whether the plaintiff is a Company duly constituted and incorporated under the Companies Act 1913 ? OPP

2. Whether the plaintiff is the owner of the premises bearing quarter no. 4 campus of Bishop" House, 1 Church Lane, New Delhi ? OPP

3. Whether the defendant was allotted the premises bearing quarter no. 4, campus of Bishop House at 1 Church Lane New Delhi ? OPP

4. Whether the defendant is residing in the premises bearing quarter no. 4 campus of Bishop"s House, 1 Church Lane, New Delhi prior to the year

1970 ? OPD

5. Whether the plaintiff is entitled to decree of possession as prayed for ? OPP

6. Whether the plaintiff is entitled to decree of permanent injunction as prayed for ? OPP

7. Whether the plaintiff is entitled to award of compensation as well as damages ? If so, at what amount ? OPP

8. Relief.

4. The petitioner filed an application under Order 14 Rule 5 CPC seeking deletion of issue No. 2 and reframing of issue No. 4.

5. After hearing learned counsel for the parties, on the application under Order 14 Rule 5 CPC, the learned Civil Judge was of the view that issue

No. 2 was rightly framed by the Court since it appears to be a matter in dispute whether the plaintiff/petitioner is owner of the suit premises.

6. The petitioner, during hearing of application under Order 14 Rule 5 CPC did not insist on the prayer for reframing issue No. 4.

7. On behalf of the petitioner, it has been contended that the respondent was to handover the possession of the quarter allotted to him in his

capacity as an employee. In the given circumstances, the petitioner is not required to prove its title. It is further submitted that learned Trial Court

did not appreciate that not only the owner but any person having superior title to the person in possession, can initiate a proceeding for his eviction

in view of the fact that the person who puts another person in possession, has a

better title. The petitioner is only required to prove a superior title not the ownership, for which issue No. 5 has already been framed by the Court. Learned Trial Court failed to appreciate the plea taken by the respondent, claiming his ownership on the basis of adverse possession, that it is for the respondent to prove his plea and right to continue in possession of the suit premises. Learned counsel for the petitioner has submitted that title of the parties is not to be decided in the suit for possession and when the petitioner has only to prove the title superior to that of respondent, learned Trial Court exceeded its jurisdiction while framing issue No. 2 thereby requiring the plaintiff to prove its ownership. In the circumstances the learned counsel for the petitioner has submitted that issue No. 2 requiring the plaintiff to prove the ownership is required to be deleted for the reason that it does not arise out of the pleadings of the parties and the vague denial of ownership of petitioner in the written statement by the defendant is not sufficient to frame issue in this regard.

8. Learned counsel for the petitioner has placed reliance on Ali Hussain Khan Vs. Mahinder Pal Singh, in support of his contention.

9. I have considered the submissions made by learned counsel for the petitioner. The question of framing issue arises when any material proposition of fact or law affirmed by one party has been denied by the other party. It is the duty of the Trial Court to settle all necessary issues whether of fact or of law which are arising out of the pleadings of the parties. The purpose behind this is to determine the material points in controversy and that they are decided so as to give finality to the litigation.

10. In Makhan Lal Bangal Vs. Manas Bhunia and Others, , the Apex Court, while dealing with the importance and objective of the stage of

framing of issues, observed as under:-

The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial

shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real

dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the

parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues,

correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the CPC dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other.

It was further observed:-

The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.

11. The petitioner has placed on record the copy of the plaint as well as the written statement. In para 3 of the plaint the plaintiff has pleaded as under:-

That the plaintiff is the owner of 1 Church Lane, New Delhi-110 001 which is the office cum residence of Bishop of the Dioceses of Delhi

commonly known as the "Bishop's House". Besides accommodating the office and residence of the Bishop, the Bishop House at 1 Church Lane,

New Delhi also consists of the servant quarters which are allotted to the workers, peons and servants associated with the Dioceses of Delhi and

Delhi Diocesan Trust Association.

12. In the written statement while denying the ownership of the plaintiff, the respondent has claimed himself to be in possession of the property

prior to 1970 claiming his right in the property on the basis of adverse possession.

13. Reliance placed on Ali Hussain Khan Vs. Mahinder Pal Singh, by learned counsel for the petitioner is of no help to the petitioner in this case

for the reason that it was a case where decree was passed on admission under Order 12 Rule 6 CPC. In that case since the averments in the

written statement were vague, the appellant's statement on oath was recorded by the Court as to whom the land belonged. It was in facts and

circumstances of that case that Court in para 8, 9 and 10 has observed as under:-

8. It is settled law that no issue can be settled between the parties on the basis of vague pleadings.

9. It is not pleaded by the appellant that an award has been made qua the land in question and compensation paid. Merely pleading that notification

u/s 4 of the LA Act, 1894 and the declaration u/s 6 thereof has been issued is neither here nor there.

10. Besides, every person can rain and re-gain possession of a property against any person whose title is inferior. It is only when the title of the

opposite party is superior, that possession can neither be protected nor regained by a person.

14. Reverting to the facts of the present case, the suit was filed by the petitioner seeking relief of possession, permanent injunction and recovery of

damages and compensation claiming to be owner of the suit property and handing over of the possession of the same by the respondent in his

capacity as its employee.

15. The contention of learned counsel for the petitioner is that in a suit for possession, since there is no requirement to prove the ownership but

only a better title than the respondent, issue No. 5 framed in this case takes care of this aspect, hence issue no. 2 is required to be deleted.

16. While disposing of the application under Order 14 Rule 5 CPC filed by the petitioner, learned Trial Court has observed that the issue No. 2

has rightly been framed.

17. The submissions made on behalf of petitioner that relief of possession on the basis of superior title can be taken care of by issue no. 5 without

there being any requirement to prove the ownership, has to be rejected for the reason that the effect, if not being able to prove the ownership, has

to be adjudicated by learned Trial Court. After referring to the pleadings of the parties, it cannot be said that issue No. 2 has been framed by

learned Trial Court without any basis.

18. The petitioner has invoked the power of this Court under Article 227 of Constitution of India. In normal circumstances, this power is exercised

where there is want of jurisdiction, error of law or perverse findings of the Trial Court. This Court would not substitute its opinion to interfere with

the finding of the Trial Court if there is no infirmity or perversity. This Court will interfere only when error of law is apparent on the face of record

which has resulted in gross injustice. Finding no illegality, infirmity or perversity in the order, the petition is hereby dismissed and the pending

application is also dismissed.