
(2011) 05 DEL CK 0006

In the Delhi High Court

Case No : Regular Second Appeal No. 149 of 2007 and CM 7592 of 2007

Dharamshala Lala Lachman Dass Trust

APPELLANT

Vs

Smt. Sunita Sharma and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Citation : (2011) 124 DRJ 211

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Maninder Singh and Gaurav Sharma, for the Appellant; B.B. Gupta and Harsh Hari Haran, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 18.11.2006 which had reversed the finding of the trial judge dated 14.03.2005. Vide judgment and decree dated 14.03.2005, the suit filed by the Plaintiffs seeking possession of the suit property (i.e. property bearing No. 3, Part of Dharamshala Lala Lachman Dass bearing No. 1840 to 1854, Jamna Bazar, Nigam Bodh Ghat, Delhi as depicted in red colour in the site plan Ex.PW-1/8) had been decreed. The impugned judgment had reversed this finding; suit of the Plaintiffs stood dismissed.

2. Case of the Plaintiffs as is borne out from the pleadings is that the Plaintiffs are the trustees of the aforementioned Dharamshala Lala Lachman Dass Trust (hereinafter referred to as the Trust). The Plaintiffs had built 14 shops at the site and since then were managing the affairs of the trust. Lala Lachman Dass died on 16.10.1963. By virtue of a registered Will dated 02.12.1942 the following persons were left as his legetees:

1. Babu Tara Chand Advocate

2. L. Sada Nand Gurwale

3. L. Johri Mal
4. L. Brij Bhushan Sharan
5. Sh. Brij Mohan Sharan
6. Sh. Madan Mohan Sharan
7. Sh. Brij Behari Sharan
8. Sh. Brij Raj Sharan

(All sons of L. Lachman Dass)

3. The Defendant was a licensee in the suit property in terms of the licence deed dated 4.6.1992; he had caused damage to the suit premises. In spite of legal notice dated 24.1.1994 revoking his licence the Defendant had failed to vacate the suit property; present suit was accordingly filed.

4. Defendant Harish Chander contested the suit. It was stated that the premises are under the tenancy of the deceased son of the Defendant Vijender Kumar who was a tenant in respect of one room and covered verandah which is now in occupation of his legal heirs i.e. the Defendants. The premises had been let out for residential-cum-commercial purpose; widow of Vijender Kumar is carrying on her business in the said property; the site plan has not correctly depicted the suit property; under the garb of the present suit the Plaintiffs are seeking possession of the portion shown in red which is the occupation of the daughter-in-law of the Defendant which was not a part of the tenancy created by the Plaintiff in favour of Harish Chander. It was further denied that the Plaintiffs are the trustees of the suit property.

5. On the pleadings of the parties, the following seven issues were framed:

1. Whether the suit has not been instituted plaint signed and verified by duly authorized person? OPP
2. Whether there is no cause of action against Defendant? OPD
3. Whether the Plaintiff has no locus standi to institute the present suit? OPD
4. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD
5. Whether the suit is bad for non-joinder of parties? OPD
6. Whether the Plaintiff is entitled for relief of possession, as prayed for? OPP
7. Relief.

6. Oral and documentary evidence was led. On the pleadings of the parties as also the oral and documentary evidence adduced the suit of the Plaintiff was had been decreed.

7. The impugned judgment had reversed this finding; suit of the Plaintiff was dismissed. The court was of the view that no licence had been created in favour of the Defendants. No room number had been allotted to the rooms constructed on the Dharamshala; Plaintiff was not entitled to the relief claimed by him.

8. This is a second appeal. It has been admitted and on 25.5.2007, the following substantial question of law had been formulated:

1. Whether the trust deed and licence deed stand proved in accordance with the Indian Evidence Act?

2. Whether the Appellants have been able to identify the premises in dispute?

9. On behalf of the Appellant, it has been urged that the impugned judgment suffers from a perversity; the suit of the Plaintiff had been dismissed by drawing an adverse inference for not having produced the earlier license deed i.e. the license deed prior to 04.06.1992 which as per the impugned judgment would have depicted the correct number of the suit property; it is pointed out that this is clearly a perversity as DW-1 in her cross-examination had admitted the site plan to be correct and had admitted that house No. 3 was the property which was being occupied by her; there was thus no dispute about the identity of the suit property; as such even if the license deed of an earlier period was not produced, no ground for drawing an adverse inference was made out. It is pointed out that Ex.PW-1/1 which was the trust deed and Ex.PW-1/4 which was the license deed were duly proved in the court below; in fact DW-1 had admitted that her father in law Harish Chander had signed at point "A" on Ex.PW-1/4. The defence of the Defendant that he was a tenant in the suit property was never proved; attention has been drawn that part of the testimony of DW-1 wherein she has admitted that she had never paid any rent; the rate of rent was also not known to the Defendant. The impugned judgment holding otherwise suffers from an illegality; findings are liable to be reversed.

10. Arguments have been rebutted. It is pointed out that the fact findings returned in the impugned judgment do not call for any interference. It is pointed out that PW-7 had not signed the plaint; there was nothing on record to show that any other person was entitled to sign on his behalf; suit had not been filed by a duly authorized person. The impugned judgment had correctly noted that Harish Chander the Defendant had a separate tenanted portion which was room No. 4 and which was returned back by him to the Plaintiff; the Defendant Sunita Sharma (legal representative of Vijender) was occupying room No. 3 in her independent capacity; electricity bills produced by the Defendant had also been correctly appreciated in the right perspective. No interference is called for in the impugned judgment.

11. Record has been perused. Plaintiff No. 7 is the Trust of whom Plaintiffs No. 2 to 6 are its trustees. The case of the Plaintiffs as is evident from the pleadings in the plaint is that Lala Lachman Dass the father of Plaintiffs No. 1 to 5 had taken this piece of land on lease from the Government for the purpose of a

dharamshala; this was vide lease deed dated 11.08.1939. He had constructed the plot and built 14 shops therein; he died on 16.10.1963 leaving behind a registered will dated 02.12.1948 bequeathing his properties to his five sons as also to two other persons of whom Plaintiff No. 6 is also a trustee. The registered trust deed has been proved as Ex. PW-1/1. This shows that this trust had come into operation on 01.08.1991. Further case of the Plaintiff is that the Defendant had executed a licence deed dated 04.06.1992 in favour of the Plaintiff. However, he was misusing the property and thereafter inspite of legal notice dated 24.01.1994 revoking the license of the Defendant, the Defendant had failed to vacate the suit property. The case of the Defendant-Harish Chander was that he was a tenant of room No. 4 which had since been given back to the Plaintiff; his son Vijender had a separate tenancy with the Plaintiff (i.e. room No. 3) which has been created in his favour and after his death on 30.10.1992 his widow Sunita and his three minor children continued to occupy the suit property. To prove her tenancy, an electricity bill in the name of her husband Vijender dated 23.01.1987. Her case was that she had an independent status of a tenant since the year 1986; the electricity bill was however not proved; it was given a mark.

12. This Court has to answer the substantial question of laws as formulated by it on 25.05.2007.

13. Ex. PW-1/4 is the license deed executed by Harish Chander in favour of the Plaintiff. This document is dated 04.06.1992. It recites that Harish Chander has taken room No. 3 on a temporary license basis from the Trust and whenever he is asked to vacate the property, he will do so. This document was witnessed by two witnesses of whom Om Prakash Sharma was examined as PW-2. He had testified that Ex.PW-1/4 was executed in his presence. Harish Chander could not come into the witness box because at that time he was a dead man. PW-1 had also testified on the veracity of this document; he was Brij Mohan Saran. Although initially this document had been refuted by the Defendant Sunita (DW-1) yet in her cross-examination she admitted that the signatures at point "A" on Ex.PW-1/4 bears the name of Harish Chander, her father- in- law but she could not say whether they are his signatures as they were not put in her presence. This testimony of DW-1 coupled with the version of PW-1 & PW-2 as noted by the trial Judge had led him to hold that Ex.PW-1/4 was a genuine document; contention of the Defendant that it was forged and fabricated had been repelled. The impugned judgment had rejected this document only for the reason that Ex.PW-1/4 had been executed by Harish Chander in favour of the Plaintiff through B.B. Saran who had not come into the witness box; further that the earlier license deed prior to 04.06.1992 has not been produced which would have material to prove the room number allotted to various shops in the Dharamshala. For this an adverse inference has been drawn.

14. The finding on this score is perverse. DW-1 in her cross-examination has admitted that the site plan Ex.PW-1/8 showing room No. 3 in red colour is correct and site plan is also correct. Drawing of an adverse inference on this

count is an illegality. The evidence of PW-1 & PW-2 of whom PW-2 was a witness to this document has also been ignored; admission of DW-1 that this document bears her father-in-law's signatures had also not been adverted to; merely because Mr. B.B. Saran who was a witness to this document which had been executed by Harish Chander had not been produced in the witness box for rejecting this document. It had stood proved. The impugned judgment holding otherwise is a finding suffering from an illegality and is liable to be set aside.

15. Ex.PW-1/1 was the trust deed. It had been proved in accordance with law. This is also not disputed by learned Counsel for the Respondent. The impugned judgment had rejected the trust deed Ex.PW-1/1 holding that a photocopy of the same has been placed on record; at the time of exhibition of this document, there was no objection; further there is also no dispute about the factum of this document; rejecting it on this ground only that it was a photocopy of the same is again an illegality. PW-1 had also brought the original document and the court had also noted that the original has been seen. This was recorded in the proceeding of 09.05.1996. In one breath the appellate court had rejected this document whereas Clause 2 & 3 had thereafter been relied upon to hold that a lease could have been granted only by the secretary or Manager of the Trust. The case of the Plaintiff was not of the eviction of a lease; his case is that the Defendant is a licensee. Moreover the impugned judgment in one breath had rejected this document and in next breath relying upon its contents to non-suit the Plaintiff is again a perversity.

16. The impugned judgment had noted the contention of the Defendant that Vijender (deceased husband of Sunita) had an independent status as a tenant; there was however no documentary evidence to substitute this fact; no rent agreement or rent receipt in favour of the Defendant was produced. The sole electricity bill produced in the name of Vijender dated 23.01.1997 showing that he was a resident of 1850, ground floor, Jamna Bazar, Delhi had not been proved; it had merely been marked. Moreover the learned Counsel for the Appellant had drawn attention of this Court to the unrebutted testimony PW-2 wherein he had stated that Harish Chander for some time was living in room No. 3 alone; he had another residence also in Jamna Vihar; it had thus come on record that apart from the present premises i.e. room No. 3 which had been let out to Harish Chander, there was yet another room which was in occupation of Harish Chander and although he lived in room No. 3 exclusively for about three years; thereafter it was shared by his family. Ex.PW-1/7 & Ex.PW-1/9 were the "mafinamas/pardon receipts (executed by Harish Chander dated 08.01.1992 & 11.08.1993) wherein he has clearly stated that room No. 4 which he had illegally usurped is returned back to the Plaintiff and he will remove his lock from there. These documents had been proved in the testimony of PW-1; not a single suggestion has been given to this witness that these documents were either forged or fabricated.

17. The trial Judge had thus correctly noted that there was no evidence to

substantiate the claim of Defendant No. 5 (Sunita who was claiming tenancy through her husband) that she had an independent status as a tenant.

18. The next argument urged by learned Counsel for the Respondent is that even as per the case of the Plaintiff the Defendant had been inducted as a licensee only in the year 1992 by virtue of the licence deed, Ex.PW1/4 ; this stand in his plaint was contrary to his evidence; for this purpose attention has been drawn to the averments made in the plaint.

19. The averments have been perused. The case of the Plaintiff is that it was a trust; reference to 04.06.1992 is only for the purpose of showing that on 04.06.1992 a document in the form of a license deed had been created; Otherwise the case of the Plaintiff is that the Defendant was in occupation of the suit premises prior thereto and this is clear from his deposition (PW-1) wherein he had stated that prior to the termination of license of the Defendant, he was residing in this property as a licensee; the said room had been given to him on license basis to look after the dharamshala; no rent was being paid by him as he was not a tenant. This submission of learned Counsel for the Respondent thus has no force.

20. Counsel for the Appellant has lastly submitted that the plaint has not been signed by Plaintiff No. 7; plaint has also not been filed through an authorized person. PW-1 had deposed that he was the attorney holder of Plaintiffs No. 3 & 6 who had authorized him to file the present suit; powers of attorney in his favour were Ex. PW-1/2 and Ex.PW-1/3; plaint has been signed by Plaintiff No. 1; Plaintiff No. 2 has signed for himself and as attorney of Plaintiff No. 6; Praveen Kumar has signed as attorney of Plaintiff No. 3; plaint has also been signed by the other Plaintiffs. Further in terms of Ex. PW1/1, (registered Trust Deed) Plaintiffs were competent to institute, sign and verify the pleadings and to file the suit against the Defendant. This was also dealt with by the Trial Judge while disposing of Issue No. 1. This argument has also no force. The suit was instituted by a duly authorized person.

21. For all the aforementioned reasons, the findings in the impugned judgment call for an interference; it suffers from a perversity. The Plaintiff is entitled to the relief sought for by him.

22. Both the substantial questions of law are answered in favour of the Appellant and against the Respondent. Appeal is allowed. Suit is decreed.