
(2001) 04 DEL CK 0031

In the Delhi High Court

Case No : I.As. 1259/99, 12562/99 and Suit No .1626 of 1998

Dr. S.S. Rikhy and Others

APPELLANT

Vs

Hermes Travels and Cargo Pvt. Ltd.

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Citation : (2001) 4 AD 772 : (2001) 91 DLT 659 : (2001) 59 DRJ 13 : (2001) RLR 471

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Ms. Kamlesh Mahajan, for the Appellant; Mr. K.K. Rai, for the Respondent

Judgement

Vikramajit Sen, J.—The plaintiff have filed this suit for possession, recover of arrears of rent, damages of mesne profits. Apart from filing its Written Statement the Defendant has also filed I.A. 1259/99 under Order VII Rule 11 read with Section 151 of the CPC (hereinafter referred to as "the C.P.C.") for the dismissal of the suit. The plaintiffs have filed I.A. 12562/99 under Order XII Rule 6 of the C.P.C. praying for the passing of orders for possession of the demised property.

2. The relief of possession is in respect of two properties, covered by two separated registered Lease Deeds, both dated 18.12.1979. These properties are, covered by a Perpetual Lease dated 26.11.1975 executed by the Delhi Development Authority with Dr. S.S. Rikhy (plaintiff No. 1) and late (Mrs.) S. M. Rikhy (through her legal representatives). From the order in which they have been filed in these proceedings, the first Lease (Lease "A") is between late (Mrs.) S. M. Rikhy and the Defendant, at a monthly rental of Rs. 1900/- in respect of the Ground Floor- half part being the Southern portion including storage space and Mezzanine Floor built on Plot No. 4, Basant Lok, Community Centre, Vasant Vihar, New Delhi Containing an area of 145.57 sq. meters. The second Lease (Lease "B") is between Dr. Sudershan Singh Rikhy, (plaintiff No. 1) and the Defendant at a monthly rental of Rs. 1300/- in respect of the Ground Floor - half

part being the Northern portion including storage space and Mezzanine Floor built on Plot No. 4, Basant Lok, Community Centre, Vasant Vihar, New Delhi. Both the lettings were for a period of four years and eleven months. The plaint itself states that the rentals were increased from time to time. Both the Lease Deeds contained a Clause "that on every successive renewal of Lease period of four years and eleven months, the rent will be increased by 15% (fifteen per cent) of the rent last paid." It is not in dispute that in January 1999 the rent in respect of lease "A" stood increased from Rs. 1900/- to Rs.2186/- and in respect of Lease "B" from Rs. 1300/- to Rs. 1495/-. As per Legal Notice dated 1.10.1997 the rent in respect of Lease "B" was Rs. 1719/- per month. In respect of Lease "A" it appears that the rent stood increased to Rs. 2514/-.

3. The Legal Notice dated 1.10.1997 should be dealt with immediately. In the first place only a typed copy thereof has been placed on the record, which has been hurriedly certified as a true copy. The plaintiffs have not even placed reliance on the original or the office copy thereof. This is a document on which the suit is based and should, Therefore, have been filed along with the plaint. Reference may be directed to Order VII Rules 14 and 18 of the C.P.C. Non-filing would have the consequence of the dismissal of the plaint since without the "Notice to quit" a suit for ejectment cannot be decreed. Furthermore, it is clearly stated to have been issued on behalf of the plaintiff No. 1 only, and in respect of Lease "B", that is, the "ground floor, half part being the northern portion including storage space built on plot of land bearing Plot No.4, in the layout plan, Basant Lok, Community Centre, Vasant Vihar, New Delhi". This is also pleaded in paragraph 12 of the plaint. There is no Explanation in the Legal Notice dated 1.10.1997 as to the basis on which it has been stated in the second paragraph that the rent exceeds Rs. 3500/- whereas in the first paragraph it has specifically been recorded "the present rent paid by you is Rs. 1719/- per month". It is left to an assumption that the rents for Lease A and Lease B have been aggregated. The prayer in the plaint is for the passing of "a decree for possession in respect of ground floor and mezzanine floor as shown yellow in the plan attached in respect of property No. 4, Basant Lok, Community Centre, Vasant Vihar, New Delhi". Unfortunately no plan has been filed. An investigation in this regard had been made by me because it is nebulous as to whether the possession of both the portions owned by Dr. S.S. Rikhy and by late (Mrs.) S. M. Rikhy have been prayed for. Assuming that both the portions of the property are covered in the plaint, if prayer (a) of the plaint is perused, and these two tenancies, covered by two separate registered Lease Deeds, are to be treated as a simultaneous single letting (as appears to be the case of the plaintiff) then the suit is liable to immediate dismissal since no notice to quit has been issued in respect of portion owned by late (Mrs.) S. M. Rikhy. It appears to be the case of the plaintiff that both the tenancies were dealt as joint and single tenancies and it was for this reason that the rentals payable in respect of Lease "A" as well as Lease "B" were taken as Rs.4233/- per month.

4. The Defendant has raised an objection to the effect that the present suit is not

maintainable under the Transfer of Property Act. It was averred that the Defendant is a statutory tenant, the tenancy being governed and protected by the provisions of Delhi Rent Control Act. In my view the Preliminary Objection must be sustained. Reliance has been placed on the decisions of the Supreme Court in Mohar Singh (Dead) by Lrs. Vs. Devi Charan and Others, Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate, . In the latter case the former decision of the Apex Court was considered and followed. Reliance has also been placed on a decision of a Division Bench of this Court in Surinder Kumar Jhamb Vs. Mr. Om Parkash Shokeen, . None of these decisions are of any avail to the plaintiff. In Mohar Singh's case (supra) in the submission of the facts of the case it has been specifically recorded that the "first respondent was a tenant of two adjacent shops, under a single lease, obtained from two co-owners". (Emphasis has been added). It was in this context that it was held that "a landlord cannot split the unity and integrity of the tenancy and recover possession of a part of the demised premises from the tenant." If this precedent has any application to the facts of the present case it would operate against the plaintiff in as much the "Notice to Quit" has only been issued on behalf of plaintiff No. 1, and that too in respect of only a portion of the tenancy. It appears to be the plaintiff's case that there was a unity and integrity of the tenancy, although this stance appears to be wholly misconceived. In the Sk Sattar's case (supra) the previous decision in Mohar Singh's case (supra) was relied on. It was held by the Apex Court that "a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent." the Court had also observed that "it will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of the tenant except on specified grounds set out in the relevant statute". In Surinder Kumar Jhamb's case (supra) the Division Bench of this Court observed that "since the entire building was one unit and was in the occupation of the tenant as on unit, common question of law and facts had arisen and, Therefore, the suit still did not suffer from multifariousness nor was it hit but he provisions of Order I Rule 1 C.P.C." It has evidently been overlooked that the Division Bench had specifically taken into contemplation the fact that there was overwhelming evidence on record to show that what was let out was "land" and that for this reason the provisions of the Delhi Rent Control Act did not come into play. If the said Act had application, it is quite likely that the Court would have observed that the suits in respect of three separate tenancies fetching different rentals of three separate tenancies fetching different rentals in favor of sundry Lessers could but have been jointly tried in one plaint. Applying the ratio of the above cases to the facts of the present case, if the rent in respect of each of the Leases was over Rs.3500/- per month thus taking it beyond the protection of the Delhi Rent Control Act, it would have been salutary for the plaintiff to have combined both causes of action in one suit. It is, however, not permissible for the plaintiff to add up the rentals in the two distinct Leases A & B, covered by two separate registered Lease Deeds, in respect of different premises, and executed by different Lessers, and then file a suit for

ejectment de hors the Delhi Rent Control Act. It may perhaps be open to the plaintiffs in the present case to file a single petition for eviction of the tenant u/s 14 of the Delhi Rent Control Act but it is not open to them to defeat the protection of the Delhi Rent Control Act by the device of adding up the two rents. Considered in all its aspect the suit is palpably not maintainable.

5. The argument was also raised that the Defendant/tenant had tendered rent at the rate of Rs. 4233/- for the month of March 1998 in terms of its letter dated 7.3.1998. Again, as in the case of the Notice to Quit, only a freshly typed copy of this letter has been put on record and certified to be a true copy. If a party expects the Court to take cognizance of documents, they should be in original. The plaintiff is in possession of the original of this document and was duty bound to file it along with the plaint. Having failed to do so no reliance can be placed on this document. Be that as it may, it has been explained, and in my view adequately so, that the sum of Rs.4233/- was tendered not because the tenancies were treated as joint, may one single tenancy, but because the rents had been attached by the Municipal Corporation of Delhi and had been regularly paid to the Municipal Corporation of Delhi with effect from 7.11.1992 onwards.

6. It would also be appropriate to consider the legal propriety of the present suit. In respect of the relief of possession it has been valued at Rs.50,796/- and the ad valorem court fee has been paid. This, however, does not attract the pecuniary jurisdiction of this Court. The plaintiff's attempt to fulfill the pecuniary jurisdiction is by seeking the relief of "damages of Rs.10 lakhs based on the damages of Rs.1,25,000/-" on which tentative court fee of Rs.50/- has been paid. In order to comprehend the statements made in paragraph 17 it would be necessary to refer to paragraph 17 of the plaint. The mesne profits at the rate of Rs.1,25,000/- per month is for a period of eight months, thus aggregating Rs.10 lakhs. Once this figure has been determined by the plaintiff, ad valorem court-fees must be paid thereon. Where it is not possible to make the determination of damages, the provision of Order XXII Rule 12 of the C.P.C. would permit a tentative valuation of the plaint. But not so where a specified amount has been claimed in the plaint itself. The lack of bona fides of the plaintiff is evident from the fact that the plaintiff had sought monthly damages of only Rs.25,000/- in its Legal Notice. There is no justification or Explanation in the plaint for the arbitrary and astronomical increased of damages from Rs.25,000/- per month to Rs.1,25,000/- per month. It is obviously to attract the territorial jurisdiction of this Court, and that too without the appropriate ad valore, court fee having been affixed. The Registry is directed to be more vigilant where plaints are valued in the manner that has been done in the present case. Mindful of the provisions, inter alia, of Order VII Rule 11 of the C.P.C., it is clarified that the suit has not been dismissed/plaint rejected on the grounds of the incorrect valuation of the plaint for the purposes of court fee.

7. The suit is clearly not maintainable for various reasons not least amongst which is that the two tenancies appear to have the protection of the Delhi Rent

Control Act. A suit for ejectment under the provisions of Transfer of Property Act is not an available relief.

8. Suit is accordingly dismissed with costs. The Defendant's application being I.A. No. 1259/99 under Order VII Rule 11 of the C.P.C. is allowed. The plaintiff's application being I.A. No. 12562/99 under Order XII Rule 6 of the C.P.C. is dismissed with costs of Rs.2000/-.