
(2013) 02 DEL CK 0316

In the Delhi High Court

Case No : Regular First Appeal No. 203 of 2011

Friends Foundation

APPELLANT

Vs

Nar Bahadur

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2014) 1 RCR(Civil) 494

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Rajesh Gupta, Sandeep Puri and Narender Singh, for the Appellant;
R.M. Sinha, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Pathak, J.—Appellant-plaintiff has preferred this appeal against the judgment and decree dated 7th January, 2010 passed by the trial court whereby suit for possession, mesne profit, damages and permanent injunction filed by the appellant against respondent/defendant has been dismissed. Appellant alleged in the plaint that it was a charitable society registered under the Societies Registration Act, 1860 having its registered office at 313/1, Inderlok, Delhi. Appellant was exclusive owner of property bearing No. 5354, First Floor, Ward No. XV, Ladoo Ghati, Pahar Ganj, New Delhi-110055. Suit was being filed by it through its manager Narender Singh, who was duly authorized to do so vide Board Resolution dated 7th December, 2007 passed by the appellant. M/s. Runwell India Private Limited was sister concern of appellant. Respondent was employee of the said company and was permitted to reside in two rooms at the first floor of appellant's aforesaid property. Permission so granted to respondent was co-terminus with his employment. Respondent was permitted to occupy the suit property on a license basis at the pleasure of appellant. On 8th September, 2006 respondent voluntarily left his job, thus, permission granted to him to occupy the said two rooms came to an end with effect from 8th September, 2006. Respondent while leaving the job undertook in writing to vacate the suit

property by 23rd September, 2006. On humanitarian grounds appellant allowed the respondent to occupy said two rooms till 23rd September, 2006. However, respondent did not honor his commitment and declined to vacate the said rooms despite repeated requests of appellant. On 18th November, 2006 Narender Singh visited the said property to take over the possession but respondent refused to vacate, inasmuch as, forcibly occupied open verandah in front of the said rooms (hereinafter the two rooms and open verandah are being referred to as the "suit property"). Respondent also removed steel fixtures, electric fittings, water pipes etc., thereby compelling the appellant to lodge complaints at police station Pahar Ganj on 2nd December, 2006 and 25th December, 2006 respectively. Vide notice dated 29th May, 2007 respondent was called upon to vacate the suit property but to no effect. Hence the suit.

2. Respondent filed written statement alleging therein that he was never an employee of M/s. Runwell India Private Limited nor was ever put in possession of suit premises during the course of alleged employment. He alleged that he was working as a driver with Kishore Lal right from 1994 onwards. In fact he had worked almost in all the concerns/companies with which Kishore Lal was associated. Respondent was inducted in the suit property as a tenant by Kishore Lal and his daughter, namely, Anu Sabharwal in the year 2005 on a monthly rent of Rs. 400/-. Respondent was also paying Rs. 100/- towards electricity and water charges. Thus, the suit was barred u/s 50 of Delhi Rent Control Act, 1958. Respondent was depositing Rs. 500/- per month with Kishore Lal right from 1998 onwards and when he asked Kishore Lal to refund the said amount so that he could invest the same in interest generating FDR in some bank, an altercation broke out between the respondent and Kishore Lal and the present litigation is outcome of the said altercation. Narender Singh was accountant of Kishore Lal. Narender Singh obtained signatures of respondent on number of blank papers and the same have been misused. Respondent denied that suit property was given to him by the appellant on license basis. It was further alleged that M/s. Runwell India Private Limited was a necessary party and in its absence suit was liable to be dismissed. Respondent further alleged that Kishore Lal and his muscle men tried to forcibly evict him and his family members but they could not succeed in their ill designs. Respondent denied that he had agreed to vacate the suit property by 23rd September, 2006. Respondent denied that he had removed steel fixtures, electric fittings, water pipes etc. It was further alleged that Kishore Lal in collusion with police officials tried to dispossess him and his family members on 21st December, 2006 but could not succeed in their effects. Respondent stated that notice dated 29th May, 2006 was based on concocted facts. Respondent denied that he was in illegal use and occupation of suit property with effect from 24th September, 2006. It was prayed that suit be dismissed.

3. In the replication, appellant denied allegations levelled in the written statement and reiterated and reaffirmed the averments made in the plaint.

4. Following issues were framed by the trial court on 17th March, 2009:-

1. Whether the suit is barred by Section 50 of the Delhi Rent Control Act. OPD
2. Whether the suit has not been filed by a duly authorized/competent person. OPD
3. Whether the suit is bad for non-joinder of necessary parties. OPD
4. Whether the proper court fee has not been affixed by the plaintiff. OPD
5. Whether the plaintiff is entitled to a decree for possession in respect of the suit premises. OPP
6. Whether the plaintiffs entitled to a decree for damages/mesne profits w.e.f. 24.09.2006 pendente lite and future, in respect of the suit premises. OPP
7. Whether the plaintiffs entitled to a decree for permanent injunction in respect of the suit premises. OPP
8. Relief.

5. Appellant examined himself as PW 1. Examination-in-chief of this witness by way of affidavit supports the version as contained in the plaint. Photocopy of sale deed in respect of property bearing No. 5354, First Floor, Ward No. XV, Ladoo Ghati, Pahar Ganj, New Delhi-110055 has been proved as Ex. PW 5/A. Original sale deed was produced in Court at the time when copy was exhibited. Site plan has been proved as Ex. PW 1/A. Memorandum of Association and Rules and Regulations of appellant have been proved as Ex. PW 1/2. List of Members of appellant as on 7th December, 2007 has been proved as Ex. PW 1/3. Certificate of registration has been proved as Ex. PW 1/5. Extract of Board Resolution dated 7th December, 2007 has been proved as Ex. PW 1/6. Letter-cum-undertaking dated 8th September, 2006, duly signed by the respondent and counter signed by Narender Singh and one Nitin Gupta, has been proved as PW 1/7. Copies of complaints dated 2nd December, 2006 and 25th December, 2006 made to police station Pahar Ganj have been proved as Ex. PW 1/8 and Ex. PW 1/8-A respectively. Copy of legal notice dated 29th May, 2007 together with postal receipts including A.D. card has been proved as PW 1/10 to PW 1/12 and Ex. PW 1/14 respectively. Courier receipt has been proved as PW 1/13. PW 1 was cross examined at length but his statement in examination-in-chief has remained unshaken and unshattered.

6. Respondent had examined himself as DW 1. His examination-in-chief is in line with the defence taken by him in his written statement. However a careful perusal of his cross examination shows that the defence taken by him has fallen flat on account of inconsistent and vague stand taken by him. Answers given by him in his cross-examination also make him untrustworthy and unreliable witness. Though in his written statement and examination-in-chief he had feigned ignorance about M/s. Runwell India Private Limited and his association with the said company but his cross-examination indicates that he was employed

as a driver in the said company. In the written statement respondent had categorically denied that he was associated with the said company, inasmuch as his case was that he was working with Kishore Lal as a driver and it is said that Kishore Lal let out the suit property to him on a monthly rent of Rs. 400/- plus Rs. 100/- towards electricity and water charges. But in his cross-examination he has stated that suit property was given to him by M/s. Runwell India Private Limited for residential purpose. He volunteered that the said company used to deduct rent of Rs. 400/- and also Rs. 100/- towards electricity from his salary. His answer in his cross examination completely demolished his plea of being tenant of Kishore Lal, inasmuch as, he failed to produce any rent receipts. At one point in his cross-examination he stated that suit property was given to him by M/s. Runwell India Private Limited for residence but in his answer to a subsequent question he gave an evasive reply by saying that he was not aware whether he was working with M/s. Runwell India Private Limited or not. At the same time, he admitted that he left his job with M/s. Runwell India Private Limited in October, 2006. He admitted that he did not work with M/s. Runwell India Private Limited after 8th September, 2006. He further admitted that he had asked 15 days time from M/s. Runwell India Private Limited to vacate the suit property. He admitted that he had received legal notice Ex. PW 1/10 from the appellant but had not given any reply to the said notice. Though in his affidavit, respondent had claimed that he was employed with Kishore Lal, however, in his cross-examination he has admitted that he used to receive payments from Narender Singh; but at the same time he feigned ignorance about the fact that Narender Singh was working as Manager with the appellant.

7. After scrutinizing the evidence adduced by the parties trial court has decided issue Nos. 1, 2 and 4 in favour of the appellant. Findings on the above issues have remain unchallenged in this appeal since same have neither been challenged by the appellant nor by the respondent as respondent has neither filed any appeal nor the cross-objections. Trial court has categorically held that respondent had failed to prove that there existed relationship of landlord-tenant between the respondent and Kishore Lal, thus, suit was not barred u/s 50 of Delhi Rent Control Act. However, suit has been dismissed only on account of finding returned by the trial court on issue No. 3.

8. Trial court has held that respondent was allowed to stay in the suit property by M/s. Runwell India Private Limited being its employee. Occupation of respondent in the suit property was coterminous with his employment. Appellant was nowhere in picture. It was not the case of appellant that respondent was living as a licensee of appellant. Though appellant had claimed M/s. Runwell India Private Limited to be its sister concern but no evidence was led to prove this fact. M/s. Runwell India Private Limited was a separate legal entity. There was no privity of contract between the appellant and respondent. Even license was terminated by the appellant vide legal notice Ex. PW 1/10 and not by M/s. Runwell India Private Limited. Since appellant had not impleaded M/s. Runwell India Private Limited in the suit, therefore, no relief could have been granted to appellant as the suit was

bad for non-joinder of necessary party. In view of this finding trial court has concluded that plaintiff cannot claim decree of possession, mesne profit and permanent injunction, consequently, had failed to discharge onus to prove issue Nos. 5, 6 and 7 as well.

9. From the above, it is clear that appellant has been non suited to seek relief of possession, damages/mesne profit and permanent injunction only on the ground that there was no privity of contract between the appellant and respondent since respondent was put in possession of the suit property by M/s. Runwell India Private Limited being its employee and it is only the said company which was entitled to claim possession, damages/mesne profit and permanent injunction.

10. A careful perusal of trial court record makes it clear that findings returned by the trial court on issue No. 3 are contrary to the evidence adduced on record. Trial court has fallen in grave error in holding that there was no privity of contract between the appellant and respondent and that suit was bad for non-joinder of necessary party, that is, M/s. Runwell India Private Limited. The case set up by the appellant in the plaint is that respondent was put in possession of the suit property being employee of its sister concern, that is, M/s. Runwell India Private Limited. It has nowhere been pleaded in the plaint that M/s. Runwell India Private Limited had put respondent in possession of the suit property. Appellant is owner of the suit property, as is evident from the sale deed Ex. PW 1/5. PW 1 Narender Singh is Manager of appellant and has categorically deposed that respondent was an employee of M/s. Runwell India Private Limited and was permitted to reside in the suit property being an employee of the said company. Said permission was co-terminus with his employment. Permission was a mere license and respondent's occupation in respect of the suit property was at the pleasure of appellant. His this deposition has remained unchallenged in his cross-examination and there is no reason to disbelieve the same. Statement of a witness in respect of a fact in examination in chief, if remains unchallenged in his cross examination, has to be accepted as correct.

11. That apart statement of PW 1 being credible has to be accepted as against the non-creditworthy statement of DW 1. In his written statement respondent alleged that he was inducted in the premises as a tenant by Kishore Lal. In his cross examination, he deposed that he was put in possession by M/s. Runwell India Private Limited. He again said in answer to a question that he used to pay rent to plaintiff (appellant). He again said that he used to be paid salary by Narender Singh (PW 1) and rent used to be deducted from his salary. He admitted a suggestion that PW 1 Narender Singh was Manager of appellant. Respondent neither produced nor proved any rent receipt. The answers given by the respondent also support the appellant's version that respondent was put in possession of the suit property on a license basis by the appellant.

12. Above all, Ex. PW 1/7 duly signed by the respondent at point A also indicates that he admitted appellant to be licensor, inasmuch as respondent undertook to vacate the suit property by 23rd September, 2006. PW 1 has also signed Ex. PW

1/7. It has been categorically stated by the respondent in Ex. PW 1/7 that he would vacate the suit property by 23rd September, 2006. This letter also strengthens the case of the appellant that respondent was permitted to live in the suit property as a licensee by the appellant. From the evidence available on record it can safely be inferred that respondent was put in possession of the suit property as a licensee by the appellant being an employee of its sister concern, thus, it was competent to terminate the license and to seek possession of the suit property. M/s. Runwell India Private Limited is neither necessary nor a proper party. Accordingly, finding on issue No. 3 is returned in favour of appellant.

13. Ex. PW 1/10 is the legal notice whereby license was terminated. Thus, respondent had no right to retain possession of the suit property and his status was rendered to be that of an unauthorized occupant in the suit property. Thus, he is also liable to pay mesne profit for the unauthorized use and occupation of the suit property with effect from 1st June, 2007 till he hands over vacant possession of the suit property. Though, appellant has claimed Rs. 5,000/- per month towards mesne profit, however, except oral statement of PW 1 no other evidence has been adduced to show the prevailing market rent which the suit property could have fetched. Be that as it may, court can still take judicial notice of the fact that two rooms with open verandah in a centrally located area such as Pahar Ganj could easily fetch Rs. 2000/- per month.

14. In the light of above discussions, a decree of possession is passed in favour of appellant and against the respondent, in respect of the suit property, forming part of property bearing No. 5354, First Floor, Ward No. XV, Ladoo Ghati, Pahar Ganj, New Delhi-110055, and more particularly shown in red colour in the site plan Ex. PW 1/1. Respondent shall pay Rs. 2,000/- per month to the appellant towards use and occupation of suit property with effect from 1st June, 2007 till he vacates the suit property. Respondent is also restrained from creating any third party interest in the suit property. Appellant shall pay court fee on the mesne profit. Appeal is disposed of in the above terms.