(1999) 08 DEL CK 0111

In the Delhi High Court

Case No : Regular First Appeal No. 73 of 1975

Kishan Chand and Others APPELLANT

Vs

Dena Bank RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Citation : (1999) 81 DLT 116

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : V.B. Andley, for the Appellant; S.C. Sharda, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—This appeal is against the judgment and decree dated 28th September, 1974 whereby Mr. P.L. Singla, Additional District Judge dismissed the suit filed by the appellants (plaintiffs) for recovery of Rs. 28,000/- against the respondent (defendant).

2. Brief facts are that the appellants filed a suit on the allegations that, they had given ground floor and second floor of the premises No. 1-C, Ram Nagar, Qutab Road, New Delhi on license to one IS. Hassanwalia at the monthly rate of Rs. 1800/- for a period of 11 months commencing from 14th September, 1970; on 6th August, 1971 they served a notice on the licensee terminating his license and calling upon him to surrender the vacant possession of the said property by 13th August, 1971 and for payment of arrears of license fee, etc. It was further alleged, in the meantime, as the respondent/Bank had unauthorisedly entered upon the ground floor of the premises, Therefore, a copy of the notice was also sent to them respondent/Bank continued to be in illegal and unauthorised possession of the ground floor from 18.8.1971 to 30.3.1973. The appellants claimed damages from respondent/Bank for use and occupation at the rate of Rs. 1400/- per month for 20 months amounting to Rs. 28,000/-.

3. In the written statement filed by the respondent/Bank, it is pleaded that at no

point of time there was relationship of landlord and tenant between them and the appellants; that they were never in constructive or physical possession of the premises; the goods stored in premises in question belonged to I.S. Hassanwalia and the Bank, had a first charge on the same : the premises were in actual possession and tenancy of I.S. Hassanwalia who alone was liable to pay rent to the appellants; the suit was bad for nonjoinder of necessary parties and the plaint did not disclose any cause of action against the respondent.

4. On the pleadings of the parties following issues were framed :

"1. Has the suit been instituted and plaint signed and verified by a competent person ? OPP 2.Is the suit not maintainable ? OPP 3.Is the suit bad for non-joinder of necessary parties ? OPD 4.Does the plaint disclose no cause of action ? OPD 5. Was the defendant in possession of the property in dispute during the relevant period ? OPP 6. If issue No. 5 is proved, to what amount, if any, is the plaintiff entitled by way of damages for use and occupation ? OPP 7. Relief."

5. The parties led evidence in support of their respective case. On the basis of the material on record the learned Trial Court dismissed the suit and recorded findings against the appellants on all issues, except the Issue No. 4 regarding the cause of action.

6. We have heard learned Counsel for the parties and have been taken through the record.

7. The main issue arising in the above appeal is whether the respondent/Bank was in possession of the property in dispute during the relevant period i.e. from 18.8.1971 to 30.3.1973 for a period of 20 months. The appellants admittedly obtained possession of the property in execution proceedings pursuant to an order of eviction passed against IS Hassanwalia.

8. Learned Counsel for the appellant while assailing the findings of the learned Trial Court relied upon (i) statement of PW 5 Tahal Ram, General Attorney of the plaintiffs, (ii) Exhibit P 8 Leave and license Agreement dated 11.9.1970 between the plaintiffs and I.S. Hassanwalia, and (iii) Exhibit P9 Notice dated 6.8.1971 sent by the attorney of the plaintiffs to I.S. Hassanwalia informing him that the payment of license fee was not being made by the Bank in respect of the premises in question and demanded the same from him, copy of which was also sent to the Bank.

9. PW 5 Tahal Ram, in his evidence stated that the respondent/Bank was in possession of the premises in dispute till 30.3.1973 when the possession was taken over by him from the Bank and let out to another tenant. However, in cross-examination he admitted that I.S. Hassanwalia had taken credit facilities from the respondent/Bank; he had mortgaged the goods lying on the ground floor in favor of the Bank. The property in dispute was given to I.S. Hassanwalia who used to lock and unlock the same; the eviction petition regarding aid

premises was filed by him against Mr. Hassanwalia and against the respondent/ Bank in the Court of Rent Controller and on the basis of the eviction order passed by the Court the possession of the property was taken in the execution proceedings.

10. Learned Counsel for the respondent relied upon statement of DW1, MS. Jain, officer of the advances department of the Bank, who deposed that I.S. Hassanwalia had obtained credit facilities from the Bank on the basis of pledge of goods. He had pledged key with the Bank; and Bank was never in actual physical possession of the godown in question and it was never a licensee of the godown; as it had never opened the godown, the key of which was pledged with the Bank; and that I.S. Hassanwalia owed an amount of Rs. 1,34,000/- exclusive of interest to the Bank.

11. Reference to Clause 6 of document Exhibit P8 ''Lease and license Agreement'' dated 11th September, 1970 between the appellants and the respondent/Bank was made whereby the compensation for the use and occupation of the ground floor of the said property was payable every month in advance by the respondent/ Bank on account of Mr. Hassanwalia to the appellants (plaintiffs); it does not in any way show that the possession of the premises in question was that of the Bank. Further document Exhibit P9 letter dated 6th August, 1971 written by the attorney of the plaintiffs to I.S. Hassanwalia also shows the payment by the respondent/Bank was not being made to them and calling upon him to make the payment also shows that the premises were never in possession of the respondent/Bank as the compensation was demanded from Mr. Hassanwalia.

12. Thus from his evidence it is clear that Mr. I.S. Hassanwalia was the tenant in the premises under the appellants; he had obtained credit facilities and had pledged some movables with the defendant/Bank, which were lying on the ground floor in the property in question.

13. We are of the view that learned Trial Court rightly recorded the finding that the respondent/Bank was not in possession of the property in dispute during the relevant time. Moreover I.S. Hassanwalia was the person liable to pay the damages for use and occupation. He was not imp leaded as a party despite the fact that the objection was taken at the earliest stage.

There is no merit in the appeal and the same is dismissed. No order as to costs.

