
(1994) 05 DEL CK 0009
In the Delhi High Court
Case No : Suit No. 1286 of 1991

Laj Bedi and Others

APPELLANT

Vs

Parasrampurias Synthetics Ltd.

RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Registration Act, 1908 — Section 17

Citation : (1994) RLR 361

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : S.R. Khandelwal, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is a suit for ejectment and recovery of possession of L-7, N.D.S.E. Part II and recovery on account of mesne profits/damages for use and occupation of the said premises filed by the plaintiffs who are stated to be the legal heirs of the owner of the said property against the deft. company who is stated to be the tenant of the said premises.

(2) Summons of the suit were served upon the deft. Initially one Mr. P.D. Gupta, Advocate appeared on behalf of the deft. and sought time to file w/s, but later on, he only represented the occupier of the premises, who was stated to be an employee of the deft. co. and moved an application under Order 1 Rule 10 CPC for impleadment of the said person as one of the defts. The said application was ultimately dismissed and it was held that the deft. co. was the only tenant in respect of the premises.

(3) Thereafter despite service of summons, no body appeared on behalf of the deft. co. and the said deft. co. was proceeded against exparte and the plaintiffs were directed to lead exparte evidence on affidavits.

(4) Pursuant to the aforesaid directions, the plaintiffs filed the affidavits of Smt.

Laj Bedi, plaintiff No. 1 herein, Shri Jaspal Singh Uppal and Bawa Kirpal Singh in support of their averments in the plaint. Smt. Laj Bedi has stated in her affidavit that she is the widow of late Shri Sukhbir Singh Bedi, who was the owner of the premises in question and she has signed the plaint along with plaintiffs 2 and 3 who are stated to be the son and the daughter of the said late Sukhbir Singh. The property in question has devolved upon the plaintiffs on the death of said Sukhbir Singh. She has further stated that the premises in dispute are as shown in site plan marked as Ext. P-1. Ext. P-2 is the sale deed in favor of the said Sukhbir Singh in respect of the property in question. The said deponents have further stated that the premises in question were given to the defts. on lease at a monthly rent of Rs. 4500.00 vide agreement dated 18.3.1983 which is Ext. P-S which was by mutual consent raised to Rs. 5500.00 in 1986 vide Ext. P-24 and thereafter was further increased to Rs. 6325.00 w.e.f. 1.4.88, As the said agreement was not on a stamp paper of adequate value, the same was impounded u/S. 35 of the Stamp Act(--)

(5) The plaintiff was directed to make up the deficiency in stamp duty together with a penalty equal to ten times the deficiency. The plaintiff has since paid the said amount of Rs. 5,918.00. The next question that arises for consideration is that this document purports to create a lease of 3 years. Under S. 17(d) of Registration Act, 1908 a lease deed for a period exceeding one year is required to be compulsorily registered. The effect of non-registration of a document, registration where of is compulsory, has been provided in S. 49 which reads :-

"49. Effect of non-registration of documents required to be registered-No document required by Section 17 (or by Transfer of Property Act, 1882 (4 of 1882), to be registered shall-(a) --(b)--or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. (Provided that an unregistered document may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 (S of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.)"

(6) The document creating lease in the present case has not been registered and as such it cannot be read in evidence except as provided in the proviso to S. 49 quoted above, i.e., evidence of collateral transaction and/or as evidence of part performance of contract for the purposes of S. 53A of the T.P.A. Thus, the document Ext. P-3 though cannot be tendered as evidence of the rights of the parties arising there under being unregistered can be taken into account to determine the nature of occupancy of the deft. From the said agreement, it appears that the deft. co. occupied the premises in dispute as tenant. The letter dated Ext. P-24 for the same reasons as aforesaid cannot be looked into as a document renewing the lease since it is not registered and the term of the lease sought to be created is in excess of one year. However, on the said document

and also the correspondence and the acknowledgement of the fact of deft. co. being the tenant in its reply to the notice dated 29.8.89, I am not in any doubt that the deft. co. was in possession of the property in dispute as tenant and since there was no registered lease deed, their tenancy was from month to month. Mr. Chaudhary was only one of the employees of the deft. co. who was in that capacity in occupation of the premises. I am also satisfied that the tenancy came to an end on 1.10.1990 on the expiry of the notice period vide Notice Ext. P-6 and the deft. became liable to hand over peaceful possession. The said agreement has been further proved by Jaspal Singh Uppal, who was a witness to the said agreement and he has also filed an affidavit in support of the same in the present proceedings.

(7) It is further stated by Laj Bedi that the deft. used to send the rent by cheque at their Chandigarh address and the deft. sent its letter dated 7.4.90 along with a cheque of Rs. 6325.00 towards the payment of rent for April 1990. The said letter is Ext. P-4. The defts. last remittance of rent was a cheque for Rs. 6325.00 towards the payment of rent for the month of July 1990. The said letter is Ext. P-5. Thereafter the deft. has not paid the rent which has remained in arrears. It is further alleged by the plaintiffs that the deft. has illegally sublet the premises to Shri S. Chandra who is no longer in service of the deft. co.

(8) The deponent, Smt. Laj Bedi has further proved a legal notice dated 1.9.90 u/ S. 106 of the Tpa served through counsel on the deft. terminating the tenancy of the deft. The notice is Ext. P-6 and the postal receipt in respect thereof is Ext. P-7. It is further alleged that the occupation of the deft. w.e.f. 1.10.90 had become illegal and unauthorised and the deft. is liable to pay the damages for the use and occupation of the suit property. Thereafter on 1.11.90, the said Shri Sukhbir Singh Bedi expired and a death certificate in proof of this fact is Ext. P-8. Ext. P-9 is a legal notice dated 15.1.91 served upon the defendant calling upon it to pay the arrears of rent for the months of August and Sept. 1990 @ Rs. 6325.00 p.m. amounting to Rs. 12650.00 and damages for use and occupation @ Rs. 25000.00 p.m. w.e.f. 1.10.91 till they handed over the possession and also the interest on the said arrears and damages @ 20% per annum. Ext. P. 10 is the postal receipt and Ext. P. 11 is the A.D. receipt in respect of the said notice. Thereafter few letters were exchanged between the counsel of the plaintiffs and Shri S. Chandra, who was at the relevant time in possession of the premises being an employee of the deft. co. The said correspondence and the postal receipts in respect thereof are Ext. P. 12 to P. 17. The plaintiffs have claimed a sum of Rs. 1,87,650.00 till the date of filing of the suit. Bawa Kirpal Singh has filed his affidavit who is a resident of the same locality where the premises are situated and has stated on oath that the property in question can easily fetch rent/damages at the rate of Rs. 25000.00 p.m.

(9) There has been no rebuttal to the aforesaid facts on behalf of the defendants.

(10) The deft. continues to remain liable to pay damages for use and occupation at same rate as rent. As the rent last paid was Rs. 6325.00 p.m. the deft. is

liable to pay for the period subsequent to the date of termination of lease the amount which was mutually agreed as rent/compensation for occupation i.e. Rs. 6325.00 and no other measure will be a reasonable one. I further hold that the damages being the adequate measure of compensation, the amount will not carry any interest thereon. Such claim for interest is rejected.