

(2010) 12 DEL CK 0128

In the Delhi High Court

Case No : Regular Second Appeal No. 19 of 2003

Lala Sri Kishan Das Gupta (Deceased) Through L. Rs.

APPELLANT

Vs

Ved Prakash Gupta and Others

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Transfer of Property Act, 1882 — Section 111

Citation : (2010) 12 DEL CK 0128

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 1.10.2002 which has endorsed the finding of the trial judge dated 9.7.1999 whereby the suit of the plaintiff i.e. of Shri Krishan Das Gupta seeking recovery of arrears of rent from Ved Prakash Gupta had been dismissed.

2. plaintiff Shri Krishan Das Gupta had filed a suit for recovery of arrears of rent against Defendant No. 1 Ved Prakash Gupta. His contention was that Ved Prakash Gupta is the tenant of the plaintiff in respect of shop bearing No. 3767, Chawri Bazar, Delhi at a monthly revised rent of Rs. 41/- per month. The Defendant is in arrears of rent up to 30.12.1992; he is liable to repay this amount along with interest at the rate of 15% per annum; suit for recovery of Rs. 2603.87p. was filed.

3. Contention of Defendant was that he is not the sole legal heir of his deceased father Baldeo Pershad who was the erstwhile tenant. After the death of Baldeo Pershad, Ved Prakash Gupta along with other legal heirs of their deceased father had become joint tenants in the suit property. He alone was not liable to pay the rent.

4. Trial judge had framed four issues. Issue No. 1 and Issue No. 2 are relevant; they inter alia read as follows:

- i. Whether the suit is bad for non-joinder of necessary parties in view of the preliminary objection No. 1 of W.S. of Defendant? OPD.
- ii. Whether the suit is barred by resjudicata in view of preliminary objection No. 2 of the W.S.? OPD.

5. On Issue No. 1 it was held that the suit is bad for non-joinder of necessary parties. After the death of the original tenant all the legal representatives had become tenants in the suit property. On Issue No. 2 it was held that a judgment Ex.DW1/1 dated 24.12.1986 had been delivered which was a suit for recovery of rent and possession filed by the present plaintiff. This suit was dismissed on the ground that all the legal representatives of the original tenant of Baldeo Pershad had inherited the tenancy, they not having been joined the suit was dismissed. This judgment Ex.DW1/1 has admittedly attained a finality. It has not been challenged.

6. This is a second appeal. On behalf of the Appellant it has been urged that the courts below have failed to take into account that a subsequent judgment dated 13.2.1994 had been delivered by Mr. P.C. Ranga, Civil Judge wherein the plaintiff had sought recovery of rent against Ved Prakash Gupta and the said suit had been decreed in his favour. This judgment has superseded Ex.DW1/1. It is pointed out that the courts below have failed to consider the effect of Ex.P-1 which was a rent receipt dated 28.12.1988 executed by the Defendant Ved Prakash Gupta alone thereby impliedly establishing that Ved Prakash Gupta alone was the tenant of the suit property. His other legal heirs had impliedly surrendered their tenancy rights, if any. The effect of the provisions of Section 111 of the Transfer of Property Act, 1882 (hereinafter referred to as "the T.P. Act") has not been considered. This has raised substantial question of law.

7. This is a second appeal. After its admission on 2.11.2006, the following substantial question of law was formulated, which inter alia reads as follows:

What is the effect of implied surrender by rest of the legal heirs of the deceased Baldev Prasad in terms of Section 111 of the Transfer of Property Act, 1882?

8. The present suit was a suit for recovery of arrears of rent. This suit was filed against Ved Prakash Gupta alone. Contention of the plaintiff was that Ved Prakash Gupta alone is a tenant. Thereafter on an application under Order 1 Rule 10 of the CPC (hereinafter referred to as "the Code"). Sat Narain Gupta, another legal representative of deceased Baldeo Pershad was arrayed as Defendant No. 2. While allowing this application, the question as to whether Ved Prakash Gupta alone is a tenant or there are other co-tenants as well was left open.

9. Ex.DW1/1 is dated 24.12.1986. This was a judgment rendered in a suit between the parties wherein the present plaintiff Kishan Das Gupta filed a suit for recovery of arrears of rent against Ved Prakash Gupta. Vide this judgment

dated 24.12.1986, the court of Sh. Nand Kishore, Civil Judge had held that all the legal representatives of deceased Baldeo Pershad had become co-tenants in the suit property; all of them had inherited the tenancy right in the suit property. It categorically decided this issue that all the legal representatives of Baldeo Pershad were co-tenants in the suit property. This judgment has since attained finality.

10. Submission of the learned Counsel for the Appellant that subsequently it had been established that Ved Prakash Gupta alone was the tenant in the suit property as the rent receipt had been signed by him in his individual capacity and not on behalf of other legal representatives is without force. No doubt, this rent receipt Ex.P1 was signed by Ved Prakash Gupta but the contention of Ved Prakash Gupta examined as DW1 all along has been that all the legal heirs of his deceased father had inherited this joint tenancy; his categorical version being that he alone is not a tenant in the suit premises; further all the legal heirs wanted to make payment of rent to the landlord but the same was not accepted by him; the money order sent was refused. This position has also been admitted by PW-1 in his cross-examination. A specific suggestion was also put to PW1 that this rent receipt Ex.P-1 was deliberately issued by him in the name of Defendant No. 1 only and that he had further agreed that after this he would issue receipt in favour of all the other legal heirs; PW1 has also admitted that the pay order for the arrears of rent sent by the other legal heirs had been returned by him. In these circumstances, both the courts below had rightly held that this issue already having been concluded in the judgment Ex.DW1/1 and there being nothing further to undo this, it could not be said that Ved Prakash Gutpa alone was the tenant of the plaintiff.

11. Submission of learned Counsel for the Appellant that the judgment dated 13.2.1994 of Sh.P.C. Ranga (the then Civil Judge) has not been considered and it had modified the findings in the judgment Ex.DW1/1 (dated 24.12.1986) is an argument without any force. Vide judgment dated 13.2.1994 the court had only granted arrears of rent in terms of a suit for recovery which had been decided ex-parte against Ved Prakash Gupta. The question as to who are the legal heirs and whether Ved Prakash Gutpa alone was a tenant in the suit property or the other legal heirs were also co-tenants was never gone into.

12. Section 111 of the T.P. Act inter alia reads as follows:

111. Determination of lease.- A lease of immovable property determines-
(f) by implied surrender.

13. Reliance by learned Counsel for the Appellant on the judgment Sushil Kumar, Pushpa Rani v. Bhagwanti Devi 1989 RLR 61 is misplaced; this judgment had only enunciated that if on the death of the contractual tenant is one son attorns to the landlord and the receipts are given in his name only without any objection by the other heirs it would be an implied surrender of tenancy by the other co heirs. In this context, the court had held as follows:

It is settled principle of law that implied surrender or surrender by operation of law occurs firstly by creation of new relationship or secondly by relinquishment of possession. Implied surrender does not depend on the intention of the parties, like express surrender. It has to be implied from the conduct of the parties. The principle underlying Section 111 of the T.P.A. is that whatever relationship exists between two parties in respect of particular premises and new relationship arises, if two sets of relationships cannot exist as being inconsistent and incompatible that is to say, if the latter can come into effect only on termination of earlier, that would be deemed to have been terminated in order to enable the latter to operate. The essence of implied surrender is not change of possession but the doing of an act which is inconsistent with the continuance of the lease or tenancy.

14. The judgment of the Supreme Court Pushpa Rani and Others Vs. Bhagwanti Devi and Another, which was an appeal against the judgment of Sushil Kumar, Pushpa Rani (supra); it had dismissed the appeal. It was held that the findings of "implied surrender" have to be supported by evidence on record and has to be inferred from such evidence which was led as also from the conduct of the parties. This question of implied surrender can necessarily be decided only by going into the evidence of the parties which a second appellate court cannot go into. It is not a third fact finding court. Interference in findings of fact are called for only if the said findings are perverse which are clearly not so in the present case. Substantial question of law is answered accordingly. Appeal is without any merit; it is dismissed.