

(2002) 03 DEL CK 0077

In the Delhi High Court

Case No : I.A. 3162 of 1999 in S. 3382 of 1991

Mr. Zulfiquar Ali Khan and Others

APPELLANT

Vs

J.K. Helene Curtis Ltd. and Others

RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Citation : (2002) 5 AD 208 : AIR 2002 Delhi 425 : (2002) 62 DRJ 442 : (2002) 4 RCR(Civil) 52 : (2002) 2 RCR(Rent) 231

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : P. Sinha, H.S. Chandhiok and Deepali Chandhiok, for the Appellant; R.P. Bansal and S.K. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—This is an application under Order 12 Rule 6 CPC seeking decree for possession on the admissions made by defendant No. 1 in the written statement.

2. It is pointed out at the very outset that two portions of the property were leased out vide identical lease deeds both dated 1.6.1979 to two sister concerns namely Straw Products Ltd. and defendant No. 1 of the instant suit. Both the suits were consolidated for trial. Similar application was also made in Civil Suit bearing No. 3381/1991 and was decided on 4.8.2000 by Hon'ble Mr. Justice J.B. Goel whereby suit was decreed against Straw Products Ltd. However, the instant application could not be decided as Hon'ble Mr. Justice J.B. Goel retired by that time. Besides merits, it is on the premise of decision of the Hon'ble Mr. Justice J.B. Goel moved in S.No. 3381/1991 that decree for possession is being sought in this suit also.

3. plaintiffs have brought out following admissions emanating from written submissions:-

i) There is admission on the part of defendant No. 1 of the execution of duly

registered lease agreement which expired by efflux of time on 31.5.1989; (ii) Though the tenancy had expired by efflux of time yet by way of abundant caution and to obviate future legal objection to the tenancy being month to month basis, a legal notice u/s 106 of the Transfer of Property Act was issued by the plaintiffs which was duly served upon defendant No. 1 Defendant No. 1 also sent reply to the said notice of the plaintiffs.

4. Defendant No. 1 has resisted passing of the decree by raising following pleas: (i) that the plaintiffs are not the owners of the premises and Therefore they are required to prove their ownership as there is a dispute to the title of the property which is pending adjudication by way of suit of partition bearing S.No. 3144/90. This suit is between the co-owners and was instituted prior to the instant suit; (ii) that the defendant has been paying Rs. 4320/- per month to M/s. Superfine Decorators in addition to monthly rent of Rs. 5400/- and Therefore M/s. Superfine Decorators is a necessary party; (iii) though the lease deed admittedly was for a period of 10 years but the real intention and agreement between the parties was to lease out the premises to defendant No. 1 for an indefinite period of 99 years. This is demonstrated from the stipulation that original rent was for Rs. 4500/- for a period of three years where after it was to be increased every three years by 10% Defendant No. 1 was also permitted to make structural alterations and fix even permanent fittings in any portion of the property; (iv) In view of the aforesaid terms of the lease, the entire flooring was changed with Italian and Granite marble stone fittings, both the rooms were re-decorated and the entire premises was made air-conditioned at a huge expense of Rs. 2 crores. These facts show that lease was for a period of 99 years and not for a period of 10 years.

5. At the threshold, Mr. R.P. Bansal, learned Senior counsel for defendant No. 1 has contended that plaint as such is defective and is not maintainable, firstly for the reason that it has not been signed by all the plaintiffs and secondly that there is no pleading that Sh. S.K. Vohra is a valid constituted attorney of plaintiff Nos. 3 & 4 on whose behalf he has signed the plaint nor has the power of attorney been annexed with the plaint and Therefore the suit is not signed, verified by a duly authorised person.

6. Mr. Bansal contends that unless and until it is proved that the plaint has been signed, verified and duly instituted by an authorised person, no decree can be passed under Order 21, Rule 6 CPC. In support of this contention Mr. Bansal has placed reliance upon decision of this Court in State Bank of India Vs. Midland Industries and Others, wherein a suit was filed by the Bank for recovery of loan and the similar objection was taken as raised by the learned counsel for the defendant and it was held that preliminary objection going to the very root of the suit resulting to non-suiting the plaintiff disentitles the plaintiff to a decree under Order 12 Rule 6 CPC.

7. The perusal of the plaint, various documents including the lease deed shows that the above objection has no substance and holds water like a sieve. Following

facts entitle Mr. S.K. Vohra to institute and file the suit:-

(i) The plaint has been signed and verified by plaintiffs 1 & 2 personally and by Mr. S.K. Vohra on behalf of plaintiffs 3 & 4 as their Attorney.

(ii) All the plaintiffs have signed the replication personally wherein they have admitted that the suit has been filed for and on behalf of plaintiffs 3 & 4 under their authority. The plaintiffs 3 & 4 have filed affidavits which are on record stating that the suit was instituted on their behalf by Mr. S.K. Vohra as their Attorney and he has full authority to do so.

(iii) Last but not the least it was Mr. S.K. Vohra who signed and executed the lease deed on behalf of all the co-owners.

8. Even otherwise Order 6 Rule 14 CPC provides that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. The nature of objection raised by the learned counsel is hyper-technical and not certainly a substantial objection that may non-suit the plaintiff.

9. Even if it is assumed for the purpose of argument that all the plaintiffs have not signed the plaint, the suit is still maintainable if one of the plaintiffs has signed it. However in the instant case the plaint has been signed by plaintiffs 1 & 2 on their own and by Mr. S.K. Vohra as Attorney of plaintiffs 3 & 4. The reiteration of the authority of S.K. Vohra to sign and verify the pleadings and institute the suit on behalf defendants No. 3 & 4 by way of replication when this objection was raised itself provides a sufficient ground and authority to Mr. S.K. Vohra to sue the defendants. In such circumstances it is a matter of discretion of the Court to deal with the objection in view of the totality of the facts and the circumstances and not in isolation.

10. A plaint cannot be rejected if it suffers from curable defect or irregularity. Such a defense does not hit at the fount of the plaint. It is such an objection which can be not only conveniently disposed off but can be cured also without having its legal effect disagreeably felt. For the purpose of Order 12 Rule 6 CPC it is not a substantial plea to stultify or scuttle the admissions sufficient for decreeing the suit. Unless the admission of a party is not on the edifice that renders the case of the plaintiff collapsible or rends the case of the plaintiff from foundation to cornice the admission has to be held as clear, unambiguous or unequivocal and sufficient for decreeing the suit.

11. However very fairly Mr. Bansal has conceded that the plea raised by him that the lease was for 99 years is not worthy of consideration or even agitation. Even otherwise this plea is a feeble attempt by a drowning person to clutch the flimsy legal straw. Admittedly the lease had expired by efflux of time. The defendants have already overstayed for more than 10 years. The plea that the defendants have spent crores of Rupees on its restructuring the renovation etc. is no ground

for making a tenant stay beyond the agreed period of lease. Unless and until there is a specific covenant giving him the compensation or suo motto extension of the lease period on account of expenses to be incurred by a tenant, every tenant enters into the lease agreement with open eyes and, Therefore, should be always prepared and ready to surrender the possession on the expiry of the lease unless there is a fresh agreement for its extension.

12. On merits, Mr. Bansal has contended that there are certain disputed facts which go to the root of the matter as to the maintainability of the suit and need to be ascertained by way of trial. For instance the persons referred in the lease deed as the Lessers are not the plaintiffs and unless and until the plaintiffs prove themselves to be owner of the premises they are not entitled to decree for possession. It is further contended that there is a distinction between the eviction petition and suit for recovery of possession as eviction petition under the Rent Act can be filed by the landlord who may not be an owner but might have leased out in his capacity as landlord whereas a suit for recovery of possession can be filed by the owner alone.

13. In addition, Mr. Bansal further contended that until and unless plaintiffs implead other co-owners of the property who have not joined them as plaintiffs they cannot maintain suit for recovery of possession. In support of this proposition, Mr. Bansal has placed reliance upon *Sucharita Pradhan and Ors. v. U.P. Twiga Fibreglass Ltd. and Ors.* 2001 5 AD (DEL) 291 where question arose whether the suit for possession on determination of the tenancy under ordinary law of landlord and tenant was not maintainable by one of the co-owners. However, referring to a decision in the case of *Nanlal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others*, wherein a view was taken that a co-owner may maintain an action to eject a trespasser without joining other co-owners in such action, it was held that this principle can have no application where a co-owner seeks to evict a tenant who is in possession of property after the termination of of lease. Such a tenant can be evicted only by an action taken by all the co-owners.

14. In the aforesaid case, the court while being in agreement with the Full Bench of the Gujarat High Court on the point of determination of tenancy by all the co-owners held that the notices terminating the tenancy in those cases served during the pendency of the suit are of no help to the plaintiff as the termination of tenancy has to precede filing of suit. In *Sucharita Pradhan* case, defendant No. 1 was inducted as tenant for a limited period of three years under a lease deed dated 1.8.1976 at a monthly rent of Rs. 4000/-. After the said fixed tenancy came to an end, Sh. Suraj Kumar Nijhawan who let out the premises died on 11.11.1996. Defendant Nos. 2 & 3 after serving notice to quit dated 10.6.1991 filed suit which was dismissed in default; notice to quit dated 11.7.1997 sent by the plaintiffs was duly received by defendant No. 1 and after determination of tenancy, the possession of defendant No. 1 over the suit property was held to be unauthorised. However, on 1.12.1988, premises fetching rent above Rs. 3500/-

per month were taken out of purview of Delhi Rent Control Act, 1958. The plaint showed that mesne profit was claimed from defendant No. 1 from 1st July, 1991 onwards. It was observed that by acceptance of rent between 1st December, 1988 to 30th June, 1991 during which protection against eviction under the said Act was not available the plaintiffs and or defendants 2 & 3 had assented to defendant No. 1's continuing in possession of suit property as a tenant on month to month basis. It was under these circumstances it was held that notice dated 11.7.1997 by defendant Nos 2 & 3 i.e. co-owners is of no avail as determination of tenancy is to precede filing of suit.

15. As is apparent from the aforesaid facts and ratio of authority, the question was whether the suit was maintainable on the basis of notice given by one of the co-owners after filing of the suit and entitled the co-owners to maintain a petition for eviction or not. Here the question is whether one of the co-owners of the tenanted premises can maintain a suit for recovery of possession or not. In *Sri Ram Pasricha Vs. Jagannath and Others*, which was also referred in the said case it was held that "a co-owner in as much an owner of entire property as any sole owner of property is and, Therefore, suit filed by plaintiff who was one of the co-owners after death of his father was held to be legally maintainable."

16. In the instant case the crux and tenor of the contention of learned counsel for defendant No. 1 is that unless and until plaintiffs prove themselves as owners of the premises, they are not entitled to maintain suit for recovery of possession. Admittedly there is suit for partition pending between the plaintiffs and other co-owners. Defendant No. 1 has not denied that plaintiffs are not the co-owners of the premises in question. A landlord may not be an owner but owner is necessarily a landlord and Therefore to contend that Lessors who have let out by way of regd. lease deed have no right to file the suit is difficult to accept.

17. As the plaintiffs happen to be owners of the premises though there are some other co-owners, they have filed this suit in their capacity as co-owners and impleaded those who did not join them as defendants. Again if the plea that unless plaintiffs prove themselves as owners of the premises they cannot maintain suit is accepted, it would tantamount to in use or abridge the right of the plaintiffs as co-owners or co-Lessors have to seek eviction of the tenant. To fortify such a plea, tenant has to disclose as to who are the owners if plaintiffs are not. Such a plea is available only in suit for title when there is dispute as to the title of the suit property and not in a suit for recovery of possession against a tenant. This position of law has always been beyond the pale of controversy and was fortified by the Supreme Court in *Sri Ram Pasricha's* case (*supra*) by taking the view that co-owner is also sole owner of the entire property and it is not correct to say that co-owner is not an owner. He owns part of the composite property along with others and it cannot be said that he is only a fraction owner of the property. This takes care of the objection of defendant No. 1 as to the maintainability of the suit by the plaintiffs who are co-owners of the premises and this comes within the purview of admission as to the ownership of the plaintiffs so far as provisions of

Order 12 Rule 6 CPC are concerned.

18. There is hardly a distinction between suit for eviction and suit for recovery of possession. To say that an owner who seeks recovery of possession by filing a suit against a tenant has to prove his title first even if he has let out the premises by way of lease deed is highly farfetched proposition. A landlord has also a right to seek eviction of a tenant under the provisions of Rent Act but it does not mean that an owner is precluded from seeking eviction if he has not let out the premises. owner always includes landlord while the converse may not be true. ownership is required to be proved only in those cases where there is a dispute as to the title of land and not in a case between the landlord and the tenant as the eviction proceedings cannot be allowed to be converted into suit for title nor for that purpose suit for recovery of possession can be allowed to be converted into a title suit.

19. In the instant case some of the plaintiffs are Lessers while those who have not joined, have been arrayed as defendants. In view of the observations of the Supreme Court in Sri Ram Pasricha case (supra), the view taken by this court is no more valid.

20. In view of the foregoing reasons I find that the plaintiffs have ben successful in making out a case for decree for possession under Order 12 Rule 6 CPC on the basis of the admissions of the defendants with regard to the creation of lease for a period of 10 years between some of the plaintiffs and itself which has by efflux of time expired though by way of an abundant precaution the plaintiffs terminated it by way of legal notice u/s 106 of the Transfer of Property Act. The application is allowed. The suit is decreed in terms of prayer (i) of the plaint. Defendant No. 1 shall hand over the possession within two months.

21. List of 6th August, 2002 with regard to the prayers (ii) & (iii) in the suit.