

(2011) 01 DEL CK 0298

In the Delhi High Court

Case No : Regular Second Appeal No. 9 of 2011 and CM No. 1203 of 2011 (for stay)

Naresh Chand Sharma

APPELLANT

Vs

Harbans Lal

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0298

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Chetan Lokur, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur. J.

CM No. 1204/2011 (for exemption)

Exemption is allowed subject to just exceptions.

RSA No. 9/2011& CM No. 1203/2011 (for stay) & Caveat No. 47/2011

1. This appeal has impugned the judgment and decree dated 14.12.2010 which has endorsed the finding of the trial judge dated 20.8.2010 whereby the suit of the Plaintiff Harbans Lal seeking possession of the suit property i.e. KG-II/130, LIG Flats, Ground Floor, Vikaspuri, Delhi had been decreed.

2. The case of the Plaintiff that he is the owner of the suit property. Defendant was his tenant by virtue of a rent agreement. The rent was Rs. 4000/- per month which was exclusive of electricity and water charges. The Defendant was his tenant w.e.f. 28.5.1999 for a period of eleven months in terms of the lease deed dated 27.5.1999. He has not paid arrears of rent since 28.5.1999. Legal notice dated 28.8.2010 was issued to him terminating his tenancy but in spite of that he has filed to vacate the suit property.

3. In the written statement, it was contended that the monthly rent was the Rs. 2000/- and further a sum of Rs. 2000/- was paid as fittings and fixtures. It was denied that he was in arrears of rent since 28.5.1999.

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

1. Whether the Plaintiff has the cause of action to file the present suit? (OPP)

2. Whether the present suit is barred u/s 50 of the DRC Act?(OPD)

3. Whether the suit is not maintainable in view of provisions of Section 106 of the Transfer of Property Act?(OPD)

4. Whether the Plaintiff is entitled to the relief of possession of property bearing flat No. KG-II/130, Vikaspuri, as mentioned in the plaint? (OPP)

5. Relief.

5. Plaintiff in support of his case had led oral as also documentary evidence which included the rent deed Ex.PW-1/2 dated 27.5.1999. Legal notice dated 28.8.2000 had been proved as Ex.PW-1/3. The Defendant has also adduced oral evidence. On the basis of the oral and documentary led by the parties the suit of the Plaintiff was decreed. The impugned judgment had affirmed this finding.

6. This is a second appeal. On behalf of the Appellant, it has been urged that the rent agreement dated 27.5.1999 was an under stamped document; in terms of Section 33 and 35 of Indian Stamp Act, 1899 it was obligatory on the part of the Courts below to have impounded the document; such a document could not have been relied upon to returned a positive finding in favour of the Plaintiff. This has raised a substantial question of law.

7. This document i.e. the rent agreement Ex.PW-1/2 was executed on 27.5.1999. This argument now urged had also been raised before the first appellate Court. Even if this document is ignored and not looked into the admission made by the Appellant in his written statement is sufficient to establish the relationship of landlord and tenant between the parties. The contention of the Appellant/ Defendant in the written statement was that there was an oral agreement between the parties wherein the Defendant had been inducted as a tenant at a monthly rental of Rs. 2000/- as rent and Rs. 2000/- for fittings and fixtures for an initial period of 11 months. The impugned judgment had also adverted to the provisions of Section 116 of the Evidence Act to draw a conclusion that the relationship of landlord and tenant having been admitted the tenant cannot now raise this dispute.

8. If the rent agreement Ex.PW-1/2 is ignored the tenancy between the parties has to be treated as a monthly tenancy. No dispute has been raised before this Court about the rate of rent. The legal notice dated 28.8.2000 Ex. PW-1/3 is also an admitted document. The said document fulfills the requirements of Section 106 of the Transfer of Property Act (hereinafter referred to as "the TP Act"). Contention of the Defendant in his written statement was that he had replied to

the said notice but admittedly the said reply has not been proved on record; adverse inference for not bringing that document on record has to be drawn.

9. The only contention now raised is that as per the legal notice claim for arrears of rent had been made from 27.8.1999. It is contended that in the plaint a contrary version has been set up and in para 3 it is stated that the rent has not been paid from May 1999. This contention is answered from the perusal of the legal notice wherein the Plaintiff has alleged that electricity and water charges have not been paid since 28.5.1999 but rent has not been paid after 27.8.1999. Even presuming for the sake of arguments that this is a contradiction, it does not in any manner amount to a perversity which is a pre-requisite for interference in findings of fact by the second Appellate Court. The Plaintiff was well within his legal right to terminate the monthly tenancy of the tenant which he had illegally done vide legal notice Ex.PW-1/3. In these circumstances, the decree necessarily had to follow.

10. The substantial question of law have been formulated on page 2 of the body of the appeal. They read as follows:

(a) Whether an Agreement, not duly stamped as per the Indian Stamp Act, 1889, be admissible in evidence and/or form the basis for passing of a decree?

(b) Whether in light of the apparent and material contradictions on the part of the Plaintiff appearing on the face of the record, the suit ought to have been decreed in favour of the Plaintiff?

(c) Whether an Appellate Court has to the power and jurisdiction under law to examine a party under Order 10, CPC Code?

(d) Whether the judgment of the First Appellate Court is sustainable in law, when the same has not even considered the Grounds of appeal, let alone adjudicate upon them?

No such substantial question of law having arisen, the appeal as also the pending applications are dismissed.