

(2007) 03 DEL CK 0276

In the Delhi High Court

Case No : Regular Second Appeal 87-90 of 2005

Ram Chander Sharma, Rajiv Kumar Sharma, Ghanshyam
Sharma and Shashi Sharma

APPELLANT

Vs

Sushil Kumar Jain and Dinesh Kumar Jain

RESPONDENT

Date of Decision : 06-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Delhi Rent Control Act, 1958 — Section 27

Citation : (2007) 95 DRJ 294

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Sudhir Nandrajog and Tatini Basu, for the Appellant; Mahmood Hasan and Ataul Haque, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The main controversy in this appeal centres around the question who was in possession of shop No. 1408, Gali Mandir Jhajjar Wala, Chandni Chowk, Delhi, at the relevant time, whether the appellants w.e.f. 25th March 1996, the day they purchased the shop, vide sale deed of even date, or the respondents who were tenants under the then landlord and were dispossessed by the appellants. The genesis and sequence of this case is as follows. Shri Surender Kumar Jain was a tenant in respect of the above said shop under the Vishnu Exchange Charitable Trust. On 19th November, 1994, the appellants filed a suit against him for possession claiming themselves to be the owners (idols plaintiffs 4 and 5 through their Priests/plaintiffs 1 to 3) of the shop. Appellants No. 1 to 3 were the plaintiffs No. 1 to 3 in that case. In April, 1995, the above said Surender Kumar Jain surrendered his possession. On 1st May, 1995, the Vishnu Exchange Charitable Trust inducted both the plaintiffs/respondents ? Sushil Kumar Jain and Dinesh Kumar Jain ? as tenants in the said shop at the rental of Rs. 1000/- per month. In the meantime, the Vishnu Exchange Charitable Trust sold the said property vide sale deed dated 30th January, 1996

in favor of Smt. Babita Jain, who in turn sold the property in favor of the present appellants vide sale deed dated 25th March, 1996. On 4th January, 1999, the plaintiffs/respondents in this case sent a notice to the Vishnu Exchange Charitable Trust through an advocate which is proved on record as Ex.PW 2/3. The said notice was received vide AD card Ex.PW 2/5 and was responded through an advocate by the Vishnu Exchange Charitable Trust, vide reply Ex.PW2/6, wherein the Vishnu Exchange Charitable Trust had admitted the relationship of landlord and tenant between itself and the present respondents.

2. Now the suit filed by the present appellants on 19th November, 1994 deserves a look. It is interesting to note that the present appellants stated that they had acquired the possession of the shop since 25.03.1996/31.03.1996, yet, they continued with the Suit till the year 1999, meaning thereby they had not received the possession till the year 1999. The proceedings of the said Suit further reveal that on 4th January, 1999, Sushil Kumar Jain and Dinesh Kumar Jain moved an application for impleadment under Order 1 Rule 10 CPC. On 20th April, 1999, an application for withdrawal of the suit was filed by the present appellants. The case was then adjourned to 6th May, 1999, 14th July, 1999 and 6th August, 1999. It is surprising to note that on 6th August, 1999, counsel for the present appellants, Shri Prem Bihari Lal, made the following statement:

I am counsel for plaintiff in this case and I have instructions from his clients to make the present statement. My client does not want to pursue with the present suit, the same may kindly be dismissed as withdrawn.

It is interesting to note that they did not state that the application moved by the respondents requires adjudication or that they had acquired the possession and Therefore, they were withdrawing the suit.

3. The respondents used the said shop as godown. During the rainy season, the roof of the shop started leaking and the goods were removed from the shop. However, the shop remained in possession of the respondents and it was kept under lock and key. On 05.07.1999, when the respondents visited their shop, it transpired that the appellants had removed the locks of the respondents and in turn they put their own locks in the shop and dispossessed the respondents. The appellants wanted to dispossess the plaintiffs/respondents while working in cahoots with the local police. The false complaint was moved to the Commissioner of Police by defendants/ appellants on 02.07.1999. Under these circumstances, the instant suit for possession and permanent injunction restraining Smt. Babita Jain and present appellants from demolishing, making any structural changes and from transferring the possession of the shop to any other person was instituted on 14.07.1999.

4. The appellants/defendants listed the following defenses in their written statement. plaintiffs / respondents have no locus standi to file the suit. They have not come to the court with clean hands and have not disclosed the correct facts. The defendants / appellants are in possession of the shop w.e.f.

25.03.1996 when they purchased it from Smt. Babita Jain. The plaintiffs / respondents were never inducted as tenants in the case property. They admitted that one Surender Kumar Jain was in occupation of this shop. The suit was not properly valued for court fee and the jurisdiction. Pendency of the suit filed by the appellants No. 1 to 3 against Surender Kumar Jain was admitted.

5. The Trial Court held that appellants have failed to prove that they were the tenants in the suit premises. Consequently, the Court dismissed the suit vide judgment dated 10.03.2004 Aggrieved by that order, appellants preferred an appeal before the First Appellate Court. The First Appellate Court vide its order dated 19.01.2005 accepted the appeal.

6. I have heard the counsel for the parties on the question of admission of this appeal. The learned Counsel for the appellant vehemently argued that the respondents have failed to prove that they were in possession of the suit property in the capacity of tenants. He pointed out that the principal evidence adduced by the plaintiffs/respondents was a rent receipt Ex. PW2/1. The said rent receipt was proved by Sushil Kumar Jain, plaintiff/respondent. In his cross-examination, he denied that the above said rent receipt was forged. Although, it bears the stamp of the Vishnu Exchange Charitable Trust at its head, yet, I agree with the learned Counsel for the appellant in a measure. It was not proved in accordance with law. The executor of this receipt was not produced for the reasons best known to the plaintiffs/respondents. The learned Counsel for the appellants also submitted that the best evidence in rent agreement and other rent receipts did not see the light of the day. Again, no documents from the above said Trust were summoned and consequently, it appears to be inadmissible in evidence. In order to bring his point home, he has cited authorities reported in Mohammed Yusuf and Another Vs. D. and Another, , Rashtariya Printing Press Vs. Gian Chand, and Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., .

7. The two Sale Deeds dated 30.01.1996 and 25.03.1996 clearly, specifically and unequivocally go to show that the possession of the premises in dispute was handed over to Smt. Babita Jain and then to the appellants. Photocopies of the above two Sale Deeds Ex. DW1/PD and Ex. PW1/1, respectively, have been placed on the record. The learned Counsel for the appellants opined that stipulations to this extent goes to show that the plaintiffs/respondents were not in the possession of the suit property.

8. I am of the considered view that such like stipulations carry exiguous value. Much significance cannot be pinned with such like stipulations.

9. Now, I advert to the rest of evidence for which the counsel for the appellants did not make any submission. This is an indisputable fact that the defendants/appellants had filed a suit before the Learned Trial Court that Surender Kumar Jain was in unauthorised occupation of the suit premises and was liable to pay rent/damages for the period from 15.03.1994 to 15.10.1994. Vishnu Exchange Charitable Trust was also arrayed as defendant No. 3 in that suit vide

amendment application moved by the appellants. During the pendency of that suit, Vishnu Exchange Charitable Trust moved an application dated 28.01.1997, wherein, it had prayed that its name be struck off from the array of defendants as it has already sold away the suit property. On 04.01.1999, Sushil Kumar Jain and Dinesh Kumar Jain moved an application under Order 1, Rule 10 CPC of being impleaded as defendants in that suit. They pleaded that they had taken the suit premises on rent from defendant No. 2 on a monthly rent of Rs. 100/- per month. The withdrawal of suit by the appellants, as already mentioned, without any rhyme or reason, is a circumstance of utmost importance. It goes a long way to lift the pall of secrecy. The stand taken by the appellants that they had acquired the possession of the shop since 25.03.1996/31.03.1996 stands falsified.

10. The most telling evidence produced by the appellants is notice Ex. PW2/3. This notice was sent by the respondents Sushil Kumar Jain and Dinesh Kumar Jain through an Advocate Sh. Sat Bhushan Jain on 04.01.1999. The relevant portion of this notice is reproduced below:

1. That my clients were inducted as tenants by you in respect of shop in property No. 1408, situated in Gali Jhajjar Wali, Mandir Chandni Chowk, Delhi on 01.05.1995 on a monthly rental of Rs. 100/-, and thereby you got a rent agreement executed from my clients on 18.05.1995 through the Deed Writer Munshi Sumer Chand Jain.

2. That my client has made the payment of rent on 18.05.1995 from 01.05.1995 to 31.03.1996 for which a proper rent receipt being receipt No. 368 was issued by you in favor of my clients.

3. That since 01.04.1996 my client has been persuading you to accept the rent but you have been avoiding to accept the same on one pretext or the other which resulted that my clients have fallen in arrears of rent from 01.04.1996 to 31.12.1998, in the sum of Rs. 3300/-. My clients tendered the aforesaid amount in cash to you on 24.12.1996 but you refused to accept the same due to which my clients have been advised to make payment of the same by way of demand draft, clearing all the arrears of rent till date.

Under these circumstances you are requested to accept the rent, in the sum of Rs. 3300/- being sent by my client through me by way of demand draft issued by Karnataka Bank Ltd, Chandni Chowk Branch, Delhi-6 dated 04.01.1999, being DD No. 594971. You are requested to accept the demand draft and to issue a proper rent receipt in favor of my clients to avoid any complicity in the matter, failing which my client shall have got no option but to deposit the said amount in the court u/s 27 of DRC Act.

The said notice was served upon the previous landlord vide Registered AD, its card Ex. PW2/5 was proved on the record.

11. In response to the said notice, the previous landlord gave the following reply

dated 30.01.1999, through Sh. R.K. Sanghi, Advocate:

Under instructions from and on behalf of our client M/s Vishnu Exchange Charitable Trust, through its President Shri Sheel Chand Jain, C/o. M/s Parkash Chand Sheel Chand, 1266 Chandni Chowk, Near Katra Dhulia, Delhi-110006, we hereby reply to your notice dated 04.01.1999 as under:

1-2 With reference to para 1 and 2, it is stated that your clients had made the advance payment through cheque on 18.05.1995. Subsequently, our client on 30.01.1996 had sold / transferred the property under reference to Smt. Babita Jain, W/o Shri Manish Jain. Enclosed please find a Draft bearing No. 074442 dated 21.01.1999 for Rs. 200/- of Bank of India, Chandni Chowk Branch, New Delhi-110006, which our client without prejudice to its rights is paying back to your clients.

3. That the contents of para No. 3 are refuted. However, it is pertinent to mention here that our client has nothing to do with the rent for the period mentioned in the para under reply since the property / premises under reference has already been sold / transferred to the landlord / owner and on the date as mentioned in the foregoing para of this reply. Therefore, the question of rent from 01.04.1996 does not pertain to our client and hence needs no reply. With reference to last para of the notice, it is stated that under the facts and circumstances as stated above, our client is not the owner / landlord of the premises / property under reference and, hence, not liable to accept the rent sent by your client. Therefore, our client is sending back to you the said draft bearing No. 594971 dated 04.01.1999 for Rs. 3300/-(draft enclosed). You are hereby requested to withdraw the notice under reply immediately failing which, our client, shall be constrained to take appropriate legal action against your client at their own risks and costs which please note.

Yours faithfully,

for SANGHI and COMPANY

(R.K. SANGHI)

ADVOCATE

12. The learned Counsel for the appellants objected that these notices were not properly proved and these should have been proved by calling the advocates. I find no force in these arguments. These documents including AD Card are admissible per se. It is the opposite party and nobody else, who, is to carry the ball in rebutting the same. Notice Ex. PW2/3 and its reply Ex. PW2/6 fully prove the case of the respondents. The fact that the previous landlord had returned rent amount, proves its genuineness and bona fides. The doubts about the possession of the respondents in respect of shop at the relevant time have proved to be puerile and baseless.

13. Lastly, the case of the respondents is further fortified by the statement made

by Surender Kumar Jain, who is the independent witness in this case. He made the following testimony before the Court. Previously, he was the tenant in respect of the suit premises under Vishnu Exchange Charitable Trust. He surrendered the suit premises in favor of Vishnu Exchange Charitable Trust in April 1995. He stated that appellants were inducted as tenants in the suit premises on 01.05.1995. He deposed that Sh. Sheel Chand Jain, Pradhan of Vishnu Exchange Charitable Trust had issued a rent receipt in favor of the plaintiffs/ respondents in his presence. He also supported the fact that appellants had filed a suit against him and proved its certified copy Ex. PW1/1 and the certified copies of proceeding sheets Ex. PW1/2. He also pointed out that the said suit was ultimately withdrawn by the plaintiffs/respondents in August 1999. His statement certainly goes to embolden the case of the respondents.

14. The case of the respondents is safely entrenched behind undeniable facts. The appeal is lame of strength. The same is Therefore dismissed at admission stage.

CM No. 5564/2005

In view of the dismissal of the appeal, no further orders are required to be passed in this application and the same is dismissed.