

(2001) 12 DEL CK 0028

In the Delhi High Court

Case No : IA 8520 of 2001 and Suit No. 1461/94

Santosh Chandiok

APPELLANT

Vs

Indian Fertilizers Farmers Cooperative

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Citation : (2001) 12 DEL CK 0028

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : A.S. Chadha and S. Vaidyalingam, for the Appellant; Madho Kapur, for the Respondent

Judgement

V.S. Aggarwal, J.—Mrs. Santosh Chandhiok filed a suit for possession and mesne profits with respect to the suit premises. She was claiming the possession primarily on the ground that the defendant (National Cooperative Society) is a tenant in the suit premises. The same had been purchased by the plaintiff by virtue of sale deed dated 20th July, 1959. The property was leased to the defendant for a period of three years at a monthly rent of Rs. 22000/-. The lease deed was registered on 29th October 1987. The lease could be terminated by giving three months notice and the plaintiff had terminated the lease of the defendant w.e.f. 30.4.1990. The defendant did not vacate the premises with the result that the plaintiff had filed a suit for possession. The said suit ultimately was withdrawn on 20.12.1990 as the parties agreed to another lease for three years. Accordingly, a lease dt. 25th October, 1990 for a further period of three years was granted from 15th December, 1990 till 14th December, 1993. The rent was revised to Rs. 27000/- per month.

2. plaintiff asserts that her husband died on 24th October, 1993. She needed the property in question. The defendant did not show any inclination of vacating the premises. The lease expired by efflux of time on 14th December, 1993. Even a notice terminating the tenancy of the defendant had been served. In these circumstances the suit as such for possession besides the other relief mentioned

above had been filed.

3. In the written statement filed the defendant contested the suit. It is alleged that a notice dt. 12th April, 1994 purported to have been served by the plaintiff is invalid. After the expiry of the lease the defendant tendered Rs. 68,406.45 towards rent for the period that is part of December, 1993, January and February 1994. The plaintiff accepted the said cheque and had encased it. Therefore, it cannot be stated that the lease of the defendant had come to an end. It is denied that the plaintiff is entitled to recover the possession of the premises.

4. During the pendency of the suit the plaintiff preferred the application under Order 12 Rule 6 (IA 8520/2001) contending that so far as paragraph 5, 7, 19, 17 and 18 of the plaint are concerned, there is no specific denial. The relationship of landlord and tenant is admitted. The rent is more than Rs. 3500/- per month. The lease had expired as per the pleadings of the parties by efflux of time on 14th December, 1993 and thereafter no lease has been created. The service of the notice dated 12th April, 1994 even is admitted and Therefore the plaintiff is entitled to a decree for possession on basis of the admissions in the written statement.

5. In the reply filed the defendant contests the suit. It is contended that there is no privity of contract between plaintiff No. 1A and the defendant. The plaintiff No. 1A is neither owner nor the landlord of the property. It has further been pleaded that Mrs. Santosh Chandhiok has since died and her legal representatives were imp leaded. The plaintiffs are not entitled to claim the possession of the property.

6. From the resume of the facts narrated above, it is patent that the short question that comes up for consideration is as to if on basis of the pleadings and the admitted documents on the record, the plaintiffs are entitled to claim possession of the property or not.

7. At this stage, it is relevant to mention that plaintiff, Mrs. Santosh Chandhiok, during the pendency of the suit has expired. Vide order of this court dated 2nd August, 2001 her legal representatives had been imp leaded as a party. The said legal representative was imp leaded as a party on basis of the registered will of Mrs. Santosh Chandhiok because there was no objection raised by the heirs, namely, the son of the deceased. It has also been relevant to mention that is 10982/98 has been filed for impleading additional parties, namely M/s Sarthi Estate Pvt. Ltd. This court on 24th September, 1999 had allowed it to be arrayed as one of the plaintiffs.

8. The first and foremost argument urged on behalf of the defendant was that the present plaintiff could not seek possession as landlords of the property in question. So far as this contention is concerned, it necessarily must be rejected because the hear is of the deceased Mrs. Santosh Chandhiok admitted the will and Therefore, her legal representatives were imp leaded. Once such is the position and legal representative of a deceased had been so arrayed on basis of

the will which has been admitted by the heirs of the deceased indeed this particular argument at this stage Therefore loses its significance and thrust. As the legal representative of the deceased is on the record he can in that view of the matter claim possession of the property.

9. In that event it had been pointed that the defendant had been continued to be a tenant in the property because after the second lease term had expired the plaintiff (Santosh Chandhiok) has accepted the rent. However, it is well settled principle that tenancy can only be created when there is an intention to create a demise in the property. From the pleadings of the parties it is patent that the earlier lease had come to an end with the efflux of time on 14th December, 1993. If some payment has been made that does not necessarily create a fresh lease unless there is an intention to do so. That intention is missing in the present case. It is not shown as to how and why were payment at that stage created a new agreement. It is not even specifically pleaded that there was a fresh contract between the parties. Merely encashing the cheques, Therefore will not create a fresh tenancy. The said contention Therefore will not come to the rescue of the defendant.

10. The earlier lease as already referred to above expired in 1990 and thereafter a fresh agreement had been arrived at. The said agreement also came to an end with the efflux of time on 14th December, 1993. When no fresh agreement has been arrived at indeed the defendant cannot claim that it had continued to be a tenant. In any case vide the notice of 12th April, 1994 the deceased plaintiff terminated the lease of the defendant. It was specifically stated in the notice:-

"That the result is that you are continuing in illegal occupation of our client's property since 15th December, 1993 as Tress-passer. You are also liable to damages at the market rate from the said date. You are hereby notified that your lease/tenancy in respect of our client's premises No. 13, Mahatma Gandhi Marg, Lajpat Nagar IV ((also known 13/14 Ring Road), New Delhi, has determined by efflux of time with effect from 14th December, 1993. However, assuming that you are under a monthly tenancy, you are hereby notified that such monthly tenancy shall stand terminated on 14th May, 1994. In case, according to you, the tenancy would have expired on any other day, the same shall stand terminated on such date next occurring 15 days after the receipt by you of this notice. You are requested to hand over vacant and peaceful possession of the premises to our client in terms of this notice failing which appropriate legal proceedings will be instituted immediately after 14th May 1994 for your eviction."

11. The receipt of the notice is admitted. The defendant does not claim as to how notice is invalid. The notice specifically points out that in case the defendant is a monthly tenant the lease is terminated on 14th May, 1994 or would stand terminated on any other date in case according to the defendant the month of the tenancy expires. This is a comprehensive notice and Therefore in either event it must be taken to be valid.

12. Reference with advantage can well be made to the decision of this court in the case of *Vikas Theatres and Exhibitors Vs. Punjab and Sind Bank*, . In the cited case also there was admission that the lease was to expire on a particular date. Once that was so this court concluded that the plaintiff was entitled to claim possession of the premises. Keeping in view of the aforesaid, the irresistible conclusion Therefore would be that the lease of the defendant had been terminated. He had ceased to be a tenant in the property and Therefore he has no right to continue in the property. The plaintiff is entitled to a decree for possession.

13. Accordingly the suit of the plaintiff for possession is decreed. The defendant is granted a month's time to vacate the property.

14. List it for directions on 14th March, 2002.