

(2010) 08 DEL CK 0341

In the Delhi High Court

Case No : Regular Second Appeal No. 68 of 2010 and C.M. Appls. 6183-84 of 2010

Sh. Arun Kumar Sharma and Smt. Ravi Bala Sharma

APPELLANT

Vs

Smt. Roshni Qureshi

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Transfer of Property Act, 1882 — Section 106

Citation : (2010) 08 DEL CK 0341

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : N.S. Dalal and Devesh Pratap Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.

C.M.Appl. No. 6183/2010 (for exemption)

1. Allowed subject to just exemption.

2. Application is disposed of.

RSA No. 68/2010 & C.M.Appl.6184/2010 (for stay)

3. This is a second appeal impugning the judgment of the first appellate court dated 22.1.2010 which had endorsed the finding of the trial court dated 23.11.2009 decreeing the suit of the plaintiff/respondent under Order 12 Rule 6 of the CPC (hereinafter referred to as "the Code").

4. The facts emanating are as follows:

(i) The plaintiff/respondent had filed a suit for possession of property bearing No. E-2/1/30, Sector-15, Rohini, Delhi comprising of three rooms, one latrine, one

bath, one kitchen, open verandah and three galleries. Her case was that two rooms with a common latrine, bath, kitchen, three galleries and open verandah had been given on tenancy to the defendant vide rent agreement dated 2.8.2006 at monthly rental of Rs. 3800/-. The document was duly registered. Out of three rooms, plaintiff had kept one room for herself. In January 2007 in the absence of the plaintiff, the defendant No. 2 had trespassed into the room of the plaintiff by breaking open the locks and removing the articles including the gold ornaments therein. Suit for possession of the entire property had been filed.

(ii) A common written statement had been filed on behalf of defendants No. 1 and 2. It was not disputed that the husband of the plaintiff had purchased this property on 12.4.1999; however, no documentary evidence had been proved by the plaintiff to establish her claim to the property. In para 9 of the written statement it had categorically been stated that the property i.e. three rooms had been let out to the defendant; rent agreement nowhere disclosed that any room was kept by the plaintiff for her own use. It was further stated that the notice terminating the tenancy of the defendant was not in accordance with law.

(iii) The defendant had made following admission in his written statement; relevant paragraphs of which are as follows:

3. That the contents of para No. 3 of the plaint to the extent that the plaintiff and defendants entered into an agreement of suit premises that is MIG flat bearing No. E-2/1/30, Sector-15, Rohini for a limited period of 11 months, the rent agreement was executed by the plaintiff and the defendants is admitted. It is submitted that the defendant No. 2 with her full particulars signed/thumb impression on the said agreement for the defendants and the plaintiff signed the same.

5. That the contents of para No. 5 to certain extent is admitted to the effect that the suit property was let out for monthly rent of Rs. 3800/- (Rupees three thousand eight hundred only) exclusive of electricity and water for a period of 11 months and the terms and conditions of the rent agreement as mentioned in Clauses 1, 3, 4 and 11 are matter of record of the said agreement.... It is worthwhile to mention that the rent agreement itself clearly find mention defendant No. 1 and 2 as tenant because plaintiff desired that the agreement should be executed by a male member that is why it was signed by defendant No. 1 since the husband of defendant No. 2 was out of station and defendant No. 1 being the brother-in-law (Devar) of defendant No. 2, executed the agreement as per the desire of the plaintiff and on behalf of defendant No. 2 signed the same which is also the matter of record....

7. That the contents of para No. 7 i.e. since the date of inception of the aforesaid tenancy, the defendant No. 2 had been making the payment of rent at the agreed rate of Rs. 3800/- (Rupees three thousand eight hundred only) per month to the plaintiff....

20. ...It is submitted that as per the verbal agreement between the plaintiff and

the defendants that defendants can continue as long as the rent of the premises is being paid to plaintiff....

21. ...It is denied that after the expiry of the fixed period of eleven months, the said agreement does not confer any right, title or interest to the defendant No. 1 qua the flat in question.... The status of the defendant No. 1 is not only that of a trespasser after the expiry of the period of limited tenancy, but also the defendant No. 2 is an unauthorized occupant of the premises since from the very beginning. It is submitted that as per the verbal talk between the plaintiff and defendants the defendants had been paying the regular rent to the plaintiff....

5. On these admissions as detailed hereinabove decree had been passed by the trial court under Order 12 Rule 6 of the Code. This was reaffirmed by the first appellate court.

6. Learned Counsel for the appellant has urged that a substantial question of law has arisen on the correct interpretation of the provisions of Order 12 Rule 6 of the Code. Such a decree could not be passed as the rent deed was between the plaintiff and defendant No. 1; defendant No. 2 had no role to play. Further the rent agreement was for two rooms and the decree for the entire suit property could not have been passed. These raise a substantial question of law on the interpretation of the aforementioned provisions of Order 12 Rule 6 of the Code.

7. Submissions of the Learned Counsel for the appellant are devoid of any force. The defendants i.e. defendants No. 1 & 2 had filed a co-joint and common written statement. Defendant No. 2 is the "Bhabhi" of defendant No. 1. It has been admitted by the said defendants that the rent agreement has described both the defendants as tenants. It has also been admitted that the entire suit property had been let out to the defendants and no room had been kept by the plaintiff for her own use. This rent agreement was admittedly a document executed between the plaintiff and defendant No. 1. It was for a limited period i.e. for a period of 11 months; agreement is dated 2.8.2006; it had expired by efflux of time i.e. after a period of 11 months; thereafter admittedly there was no written document executed between the parties. At best the lease had become a lease on a month to month basis. Legal notice dated 29.3.2007 was served upon the defendant to vacate the property on the last date of the tenancy month i.e. by 30.4.2007 which was by way of an abundant precaution although the tenancy of the defendant stood terminated by efflux of time i.e. on 1.7.2007 as has been admitted by the defendants; in such a case a notice u/s 106 of the Transfer of Property Act is not mandated. Receipt of notice dated 29.3.2007 however stood admitted in para 15 of the written statement. It fulfills the twin requirement; i.e. an advance notice of 15 days as also the tenancy expiring on the last day of the tenancy month i.e. by 30.4.2007. Rate of rent was also admitted. In the written statement defendants have stated that defendant No. 2 was the actual tenant but since her husband was out of station, defendant No. 1, her brother in law being a male member had signed the rent agreement. These admissions are binding on the defendants.

8. The findings of the first appellate court in this regard are relevant as contained in para 17 of the impugned judgment and read as follows:

The record reveals that the Appellants/Defendants have admitted the landlord-tenant relationship. The Appellants have also admitted that the rent of the suit premises was Rs. 3800/- per month i.e. more than Rs. 3,500/- per month. I have held hereinabove that though no notice u/s 106 of the Act was required to be served yet a notice u/s 106 of the Act was duly served by the Respondent/plaintiff on the Appellants/Defendants. The documents on record and the contents of the written statement, leave no room for any doubt that there are clear unequivocal and unambiguous admissions on part of the Appellants/Defendants. I, in the circumstances, do not find any error of fact or/and law in the impugned judgment/decreed passed by the Trial Court.

9. On all counts the admissions made by the defendant in his written statement entitled the plaintiff to a decree which had rightly been granted by the Trial Court and endorsed by the Appellate Court under Order 12 Rule 6 of the Code.

10. Provisions of Order 12 Rule 6 of the Code have been enacted for the purpose of expediting adjudication in the face of clear and unequivocal admissions on the part of the defendants. Case of the plaintiff had squarely fallen into the four corners of this provision. Findings of the courts below call for no interference. No question of law much less any substantial question of law has arisen. The appeal as also the pending application is dismissed in limine.