

(2009) 12 DEL CK 0058

In the Delhi High Court

Case No : FAO No. 319 of 2009 and CM No's. 14723 and 14725 of 2009

Sh. Chaman Goel

APPELLANT

Vs

Varender Kumar Singh Saini

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 10
Transfer of Property Act, 1882 — Section 53A

Citation : (2009) 12 DEL CK 0058

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Manoranjan Padhi, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.

CM No. 14725/2009 in FAO No. 319/2009

1. There is a delay of one day in filing this appeal. For the reasons stated in the application, delay is condoned. Applications stands disposed of.

FAO No. 319/2009 & CM No. 14723/2009

This appeal has been filed against order dated 3rd July, 2009 passed by Civil Judge, Delhi. Vide impugned order, appellant's application for review of order dated 7th April, 2008 was dismissed.

2. Respondent herein, filed a suit for possession and recovery against the appellant on the ground that he is the owner/landlord of Flat No. L-301, Siddh Apartments, I.P. Extension, Delhi. Appellant was inducted as a tenant in this flat in February, 2001 at a monthly rent of Rs. 5,000/-. Respondent served on appellant a legal notice to quit cum demand dated 25th January, 2007. In spite of legal notice, appellant did not vacate nor did he pay the arrears of rent.

3. In the written statement, appellant stated that as a matter of fact he has taken the premises on rent in February, 2001 at monthly rent of Rs. 2800/- and also paid Rs. 2 lacs as security. However, in 2002, respondent representing as Sh. Mahesh Kumar Singh Saini desired to sell the said flat as his wife was suffering from cancer and settled the deed for Rs. 12,80,000/-. Respondent took a sum of Rs. 8 lacs and balance of Rs. 4,80,000/- was payable at the time of execution of the documents. Thereafter, respondent fell ill and could not execute the necessary documents, although appellant was always ready to pay the balance amount.

4. Trial court, vide order dated 7th April, 2008, directed the appellant to deposit rent/damages/mesne profits at the rate of Rs. 4800/- p.m. w.e.f. 1st January, 2004 and to continue deposit the rent month by month. It may be pertinent to point out that this order was never challenged by the appellant. The same has thus become final.

5. Appellant, later on filed an application for review of order dated 7th April, 2008. Grounds taken for review read as under;

That the defendant/applicant through sheer typing mistake and over sight mentioned in his legal notice dated.27.01.2007 that he had taken the suit property at a monthly rent of Rs. 4800/-. One very important material fact has neither been considered nor appreciated by this Hon''ble Court and that is ensuing legal notice dated 13.02.2007 in which the applicant/defendant amended and clarified that the rent during 2001 & 2002 was mutually settled at Rs. 2800/- per month and not Rs. 4800/- per month which was erroneously mentioned in the earlier notice.

That one more material fact has escaped the sight of this Hon''ble Court while passing the order in question and that is that when in the beginning of 2002 the petitioner was desperately fighting financially and physically to save his cancer ridden wife he voluntarily decided to sell the suit property to the defendant for a sum of Rs. 12,80,000/- out of which the plaintiff gradually but in quick succession received an advance amount of Rs. 8,00,000/- and became duty bound to transfer the suit property to the defendant/applicant at any point of time. Thus, the order in question by this Hon''ble court suffer from infirmity and erroneous deductions.

That reference to Section 53-A of TPA also suffers from infirmity and erroneous reference as after the contract/agreement in the beginning of 2002, even if verbal, the plaintiff and the defendant ceased to be in the original role of landlord and tenant and acquired the new role of the landlord/seller and the buyer. In consideration of the total sale amount of Rs. 12,80,000/- as mutually agreed between the two parties the landlord gradually received Rs. 8,00,000/- from the defendant/applicant and became duty bound to transfer the property in the name of the defendant/applicant. The reality is that the plaintiff is no longer the landlord of the suit property nor acting bonafidely and as such does not deserve

any right to recover any rents and mesne profits from the defendant.

6. Principles for review are well-settled that is, an order can be reviewed only, when there is any error apparent on the face of record. Trial court in the impugned order held that there is no error apparent on the face of record or any mistake in the order dated 7th April, 2008.

7. Relevant portion of impugned order reads as under:

In the present application, applicant/defendant has sought review of order dated 07.04.2008 on the ground that plaintiff is a wrongdoer and rate of rent of property in dispute is at Rs. 2,800/-but not 4,800/- and plaintiff is not landlord/owner of property in dispute. After going through order dated 07.04.2008, I find that there is no any error apparent on the face of record or any mistake in order dated 07.04.2008. Ground taken by defendant in present review application has specifically been considered by the Court in order dated 07.04.2008. I find no merit in the ground taken in present application for review of order dated 07.04.2008 passed on application under Order 39 Rule 10 CPC moved by plaintiff.

8. Thus, grounds for review mentioned in para 4, 5 & 6 of the review application, were already there in the written statement filed by appellant. The same have been fully considered and dealt with by the trial court in its order dated 7th April, 2008. Thus, there is no infirmity or illegality in the impugned order. Application for review was rightly dismissed by the trial court.

9. Present application for review filed by appellant is most bogus and frivolous one and has been filed just to delay the proceedings pending before the trial court. Moreover, appellant has no intention to pay rent/occupation charges, when admittedly he is in occupation of the property in question. Hence, this appeal is dismissed with costs of Rs. 10,000/-.

10. Appellant is directed to deposit the costs of Rs. 10,000/- with Registrar General of this Court within four weeks from today, failing which the same be recovered in accordance with law.

CM No. 14723/2009

11. Dismissed.

12. Copy of this order be sent to the trial court.

13. List for compliance on 12th January, 2010.