
(2013) 08 DEL CK 0317
In the Delhi High Court
Case No : CS (OS) 157 of 2012

Sh. Khilar Singh	Vs	APPELLANT
Chand Kiran Tyagi and Others		RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2013) 08 DEL CK 0317

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : S.K. Sharma, Mr. Avinash Sharma and Mr. Rohit Gandhi, for the Appellant; Som Dutta Sharma, Advocate for Defendant No. 2, for the Respondent

Judgement

P.K. Bhasin, J.—The plaintiff has filed this suit for recovery of possession, mesne profits etc. in respect of plot no. D-54, admeasuring 96 sq. yds. forming part of khasra no. 283/2 in village Chhatarpur (hereinafter referred to as the "suit property") on the allegations that he is the owner of the same but the defendants have illegally dispossessed him and taken its possession on 25th July, 2005. It is stated in the plaint that the suit property originally belonged to M/s. D.B. Rewari, R.N. Rewari and P.P. Rewari whom sold the same and delivered its possession to P.D. Aggarwal and Hakumat Rai, partners of M/s. Prabhu Land and Finance. They then sold it to the plaintiff herein on 24th February, 2005 by way of agreement to sell etc. After having purchased the suit property, the plaintiff deputed one Tilak Raj as a care taker of the suit property and since the day the suit property had been bought it was in the hands of Tilak Raj who was taking care of it. However, on 25th July, 2005 Tilak Raj informed the plaintiff that the defendants had come to the suit property around 10.30 p.m. and that defendant no. 4 was armed with a sword and defendant no. 1 was carrying a pistol and the other two defendants and some ladies who were accompanying them were all armed with lathis and asked Tilak Raj to leave the suit property and forced their entrance into the suit property. The plaintiff could not visit the suit property as he was terrified that time but went there the next day i.e. 26th July, 2005 along

with his friends and found the property to be in illegal possession of the defendants. On seeing the plaintiff defendants pushed him and his friends out of the suit property and threatened him of dire consequences if he came again. This deterred the plaintiff to lodge any complaint that day but later when he approached the local police it refused to take any action because of the defendants' nexus with the local police and high-ups in the police department. It has been stated in the plaint that defendant nos. 1 and 4 form a notorious land mafia and have been involved in many criminal cases including that of rape, extortion, land grabbing etc. Since police was reluctant to register a case against the defendants, the plaintiff filed a complaint in the Court of the concerned Magistrate and upon his directions FIR was registered by the police on 26th November, 2005. It is further pleaded that despite having been sent legal notice dated 19th March, 2008 for vacating the suit property and also to pay damages @ Rs. 10,000/- per month the defendants did not pay anything for unauthorized use and occupation of the suit property.

2. The following reliefs have been claimed in the plaint:

(a) Pass and pronounce a decree of possession in favour of the plaintiff and against the defendants thereby directing the defendants to vacate and deliver actual and physical possession to plaintiff of the suit property i.e. Plot No. D-54, admeasuring 96 sq. yds. Comprised of Khasra no. 283/2 situated at Village Chhatarpur, New Delhi more specifically shown in Red color in the site plan attached;

(b) Pass and pronounce a decree of recovery, in favour of the plaintiff and against the defendants thereby directing the defendants jointly and severally pay a sum of Rs. 7,72,500/- to the plaintiff towards damages/mesne profits till the date of filing of the suit;

(c) Pass and pronounce a decree of recovery, in favour of the plaintiff and against the defendants thereby directing the defendants jointly and severally pay damages/mesne profits at the market rate of the rent (per month) from the date of filing of the suit till the defendants actually vacate and deliver possession of the suit property to the plaintiff;

(d) Pass and pronounce a decree of permanent injunction, in favour of the plaintiff and against the defendants thereby restraining the defendants from selling, alienating or parting with the possession or creating any third party interest in the suit property i.e. Plot No. D-54, admeasuring 96 sq. yds. Comprised of Khasra no. 283/2 situated at Village Chhatarpur, New Delhi more specifically shown in Red color in the site plan attached;

(e) Interest @ 15 % per annum w.e.f. 25th July, 2005 on the aforesaid amount and also the interest on the damages awarded to plaintiff from the date of filing of the suit till the defendants vacate the suit property may also be awarded to the plaintiff.

(f) Award costs of the suit in favour of the plaintiff and against the defendants; and

(g) Pass any other or further order which this Hon"ble Court may deem fit and proper.

3. The defendants have chose not to contest this suit and so the plaintiff led ex parte evidence by way of his own affidavit in which he affirmed all the aforesaid facts pleaded in the plaint.

4. Thereafter the case was reserved for ex parte judgment after hearing the counsel for the plaintiff.

5. While going through the record for writing the judgment it came to my notice that before the filing of this suit the plaintiff had filed a suit in the District Court also for the same relief of recovery of possession of the suit property and mesne profits. A copy of plaint of that suit has been filed by the plaintiff which shows that in that suit, besides the relief of possession of the suit property, damages/ mesne profit @ Rs. 10,000/- per month from 25th July, 2005 (when the plaintiff was allegedly dispossessed by the defendants) till 1st June, 2008 amounting to Rs. 3,32,500/- were claimed. Interest on that amount @ 15% per annum was claimed with effect from 25th July, 2005 till the filing of that suit. That plaint was valued for the relief of possession at a sum of Rs. 16 lakhs, being the market value of the suit property, for the relief of damages/mesne profit at Rs. 3,32,500/- and for the relief of permanent injunction, which was also claimed at Rs. 130/-. In that suit defendant no. 1, who is defendant no. 4 in the present suit only, filed his written statement and took an objection regarding the valuation of the plaint for the purposes of court fee and jurisdiction and also moved an application under Order 7 Rule 11 of the CPC for rejecting the plaint on the ground that on the basis of the valuation of the plaint of that suit District Court had no pecuniary jurisdiction if the amount of interest claimed on damages/ mesne profit was added to the valuation for other reliefs.

6. The learned Additional District Judge vide order dated 18th October, 2011 directed the return of the plaint to the plaintiff for being presented before a Court having pecuniary jurisdiction.

7. However, the plaintiff instead of presenting that plaint after taking it back from the trial Court did not present the same in this Court. Instead, he prepared a fresh plaint claiming the relief of recovery of possession of damages/mesne profit of Rs. 7,72,500/- calculated @ Rs. 10,000/- per month from 25th July, 2005 till 1st January, 2012. Interest on the said amount @ 15% per annum was also claimed. Quite surprisingly, the plaintiff instead of furnishing fresh requisite court fee payable on the basis of valuation of the plaint of the present suit removed the court fee which he had annexed with the plaint of his earlier suit and utilized that court fee for the present suit also. In addition to that he paid balance court fee calculated on the basis of fresh valuations of different reliefs.

8. In the opinion of this Court, the plaintiff was supposed to present the same very plaint which was returned to him by the learned Additional District Judge in this Court and he could not have kept the plaint with himself and removed the court fee papers and for being used for the present suit which, as noticed above, is clearly a fresh suit in which relief of additional damages/mesne profit was claimed and significantly even the market value of the suit property was shown Rs. 26 lakhs as against Rs. 16 lakhs shown at the time of filing of the earlier suit. This clearly shows that the plaintiff never intended to present the plaint of the earlier suit to this Court. Consequently, he could not have used the court fee of that case for the present suit. He is thus required to furnish a fresh court fee in lieu of the court fee of the earlier suit i.e. Rs. 23,590/-. In view of the aforesaid, before any further orders are passed in the matter the plaintiff is called upon to furnish the court fee of Rs. 23,500/- within two weeks and thereafter the matter shall now be placed before the regular Bench, as per the roster on 20th September, 2013 for fresh consideration of the matter since now the question of limitation would also come into play because of the present suit having been considered as a fresh suit and not a presentation of the plaint of the earlier instituted suit.