

(2011) 08 DEL CK 0014
In the Delhi High Court
Case No : CM (M) No. 290 of 2005

Shr. C.R. Yadav and Chottey Lal Yadav	APPELLANT
Vs	
Sh. Prem Singh and Another	RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Delhi Rent Control Act, 1958 — Section 14(1), 27
Evidence Act, 1872 — Section 106

Citation : (2011) 08 DEL CK 0014

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Harish Kumar Mehtra, for the Appellant; Mohd. Yameen, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J. (Oral)

1. The order impugned is the order dated 18.12.2004 passed by the Additional Rent Controller Tribunal (hereinafter referred to as "the ARCT") which had set aside the order dated 08.03.2004. Vide judgment and decree dated 08.03.2004, the eviction petition filed by the landlord u/s 14(1)(b) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been dismissed. The ARCT had upset this finding eviction petition had been decreed in favour of the landlord. This order is the subject matter of the present petition. Record shows that the landlord/Prem Singh had filed an eviction petition u/s 14(1)(b) of the DRCA. In the grounds for eviction, it had been contended that sometime in the first week of April 2001 the tenant (C.R. Yadav) had sub-let the premises to Brijpal @ Toni (Respondent No. 2) contention was that Respondent No. 2 was paying Rs. 60 to Respondent No. 1 through the son of Respondent No. 1 namely Ashok Kumar amount was being collected by Ashok Kumar on a daily basis the shop was under the exclusive possession and occupation of the Respondent No. 2 who was the

sub-tenant although Respondent No. 1 had been depositing rent u/s 27 of the DRCA but the said deposit was illegal.

2. In the written statement these contentions were denied it was specifically denied that there was any person by the name of Toni in para 18 (a) of the written statement it was stated that this is a manipulated story and Respondent No. 2 is a creation of the Petitioner.

3. After issues were framed, oral and documentary evidence was lead by the respective witnesses. Two witnesses were examined on behalf of the Petitioner/ landlord and three were examined by the Respondent No. 1/tenant. The landlord had come into the witness box as PW-1 his contention was that he had let out the premises to the Respondent No. 1 who was his tenant but presently the property is in occupation of Respondent No. 2 since the last about one year that is since about April 2001 this version of PW1 on oath had corroborated his averments made in the eviction petition in his cross-examination he had admitted that Toni i.e. Respondent No. 2 is now using the shop and Respondent No. 1 is no longer in occupation of the same. This had also been reiterated by the second witness i.e. PW-2 who was a neighbor version of PW-2 was also to the effect that Toni had himself told him that he has been paying a rent of Rs. 60 per day to the Respondent No. 1 as charges for carrying on his business of repairing of scooters in the shop and the said amount was being paid by him to Respondent No. 1.

4. Three witnesses had been examined by the Respondent No. 1/tenant. The Respondent No. 1 had come into the witness box as RW3 his contention was that his son Ashok Kumar was carrying on the business of scooter repairs in the shop he had reiterated in his affidavit that a fictitious and fabricated person by the name of Brijpal @ Toni has been created he is a bogus person. The other two witnesses examined on behalf of the Respondent No. 1/tenant, however, let the cat out of the bag and the true picture had been revealed in their cross-examination they were the neighbours and working in the same vicinity as the tenant/RW3. RW1 in his crossexamination had admitted that the shop was being operated by Ashok Kumar (son of the tenant) with the assistance of a helper RW1 has admitted that he knew Toni who is a scooter mechanic RW1 knew him personally he has further admitted that Ashok Kumar was being assisted by a helper who was working in this shop during the period April, 2001. This cross-examination of RW1 was totally contrary to the stand set up by the RW 3 RW-3 had denied from the very existence of any person by the name Toni whereas according to RW1 Toni was personally known to him and definitely not a fictitious man. RW2 in his cross-examination had also admitted that in April, 2001 the shop was being operated by one Pappu who was working alone in the said shop he had further stated that only Pappu is in occupation of the shop since April 2001 specific query appears to have been put to this witness (RW2), whether the Pappu is the same person as Toni or not he could not give a positive answer on that count. From this crossexamination of RW-2 it has been established that

since April 2001 the shop was in the exclusive possession and occupation of one person by the name of Pappu this could be Toni as RW1 did not know whether Pappu and Toni are one and the same person RW1 had also admitted that Toni was in existence; and he was working in a shop as a scooter mechanic in the same gali in which the suit property is located. This was the entire gamut of evidence. Tribunal had correctly observed that in a case of the present nature the onus to prove that a person by the name of Brijpal @ Toni exists or not was upon Respondent No. 1/Prem Singh. The law u/s 14(1)(b) of the DRCA is clear once the landlord has specifically pleaded that a person apart from the tenant is occupying the suit premises, the onus u/s 106 of the Evidence Act shifts upon the tenant to disprove this fact. As noted supra, the stand of the tenant has been shifting and conflicting his earlier contention was that there was no person by the name of Toni his own witnesses RW1 and RW2 had negated this contention they had deposed that Toni was a scooter mechanic working in the said shop and Toni could also be Pappu said person was in exclusive possession of this suit shop since April, 2001 to the exclusion of the original tenant.

5. This Court is sitting in jurisdiction under Article 227 of the Constitution of India unless and until, there is a patent illegality this Court exercising supervisory jurisdiction and not being an appellate forum is constrained not to interfere in fact findings. The ARCT had appreciated the evidence of the parties in the correct perspective it had noted the specific averment of the landlord that user charges were being paid by the sub-tenant to the original tenant through Ashok Kumar who was the son of the tenant there was no cogent explanation as to why Ashok Kumar (son of the tenant) had not been produced into the witness box adverse inference was rightly drawn.

6. In Shama Prashant Raje Vs. Ganpatrao and Others, the Apex Court had noted that in a proceeding under Articles 226 and 227 of the constitution of India, the High Court is not sitting in appeal over the competent Tribunal jurisdiction of the High Court is supervisory it cannot convert itself into a court of appeal and examine for itself the correctness of the decision and decide what is the proper view or the order to be made unless and until there is a manifest error by the misconstruction of documents or the material on record, the High Court will not be justified in interfering with the findings of the Tribunal below. Applying the aforementioned parameters to the facts of the instant case, it is clear that no interference is warranted in the orders of the ARCT.

7. Petition is without merit it is dismissed accordingly.