

(2011) 05 DEL CK 0455

In the Delhi High Court

Case No : Regular Second Appeal No. 32 of 2008

Shri Hira Lal

APPELLANT

Vs

Shri Rakesh @ Raju and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Delhi Land Reforms Act, 1954 — Section 86A

Citation : (2011) 05 DEL CK 0455

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 01.11.2007 which had endorsed the finding of the trial judge dated 17.11.2005. Vide judgment and decree dated 17.11.2005 the suit filed by the Plaintiff Hira Lal seeking ejectment from the suit property i.e. the property bearing No. 104, Near C.C. Colony, Kalyan Vihar, Delhi as also recovery of damages had been dismissed.

2. Plaintiff claims himself to be the owner of the suit premises. In 1985 the brother of the Plaintiff namely Gopi Chand who is the father of the Defendants approached the Plaintiff to permit him to use the suit property on licence basis at monthly licence fee of Rs. 500/-. Gopi Chand expired on 29.3.1996; his sons i.e. the Defendants are in possession of the suit property. In spite of demand notice dated 29.4.2003 claiming arrears of user charges and vacation of the suit property Defendants had failed to vacate the suit property. Suit was accordingly filed.

3. In the written statement, it was contended that the Plaintiff has not come to the court with clean hands. Plaintiff and the father of the Defendants had acquired the premises jointly after partition from other brothers; Plaintiff had

agreed to leave all the properties in the village in lieu of this aforementioned property; the intention of the Plaintiff had become bad; he had failed a suit for permanent injunction which was later withdrawn; in that suit Plaintiff had not averred that the Defendant was a lessee; his contention was that the father of the Defendants wanted to grab the property of the Plaintiff; he has set up contrary plea. Present suit was even otherwise barred under the provisions of Order 2 Rule 2 of the CPC (hereinafter referred to as "the Code").

4. Defendant No. 5 had filed separate written statement. It was stated that the suit property is bhumidari land and the suit is barred u/s 86A of the Delhi Land Reforms Act; Plaintiff has already received his share in partition of Rs. 75,000/-.

5. From the pleadings of the parties, the following six issues have been framed:

1. Whether the Plaintiff is entitled to a decree of possession? OPD
2. Whether the suit has been valued properly for the purposes of court fee and pecuniary jurisdiction? OPD
3. Whether the Defendants are the owner of the suit property? OPD
4. Whether the Plaintiff is entitled to arrears of licence fee? IF yes, for what period and for what rate? OPP
5. Whether the Plaintiff is entitled for pendente lite interest? If so, at what period and at what rate? OPP
6. Relief.

6. Oral and documentary evidence was led. Trial judge had noted that none of the parties had title documents of the property; however the Defendants were admittedly in possession of the suit property. The court had noted that the Plaintiff was not clear whether the Defendants were tenants or lessee. Plaintiff had failed to prove that the Defendants are licencees; his claim was rejected.

7. This finding was endorsed in first appeal.

8. This is a second appeal. It has been admitted and on 05.10.2009 the following substantial question of law was formulated:

Whether the family settlement dated 5.1.1978 needed compulsory registration?

9. None has appeared for the Appellant in spite of the fact that the counsel for the Appellant Mr. B.P. Singh Parihar, Advocate and counsel for Respondent Mr. R.K. Dahiya, Advocate had been informed telephonically. This was recorded by this Court on 06.5.2011. Matter has since been retained on Board. There are two concurrent finding of fact against the Appellant. Findings of fact cannot be interfered with in a second appeal unless and until there is a perversity. Defendants for the first time in this appeal has set up a plea that the family settlement dated 27.1.1978 requires a registration. This was never a contention in the courts below. The courts below had in fact noted that the family

settlement had in fact been acted upon.

10. The substantial question of law is accordingly answered against the Appellant and in favour of the Respondent. There is no merit in the appeal. It is dismissed on merits as also for non-prosecution.