
(2011) 04 DEL CK 0220

In the Delhi High Court

Case No : Regular Second Appeal No. 235-38 of 2006 and CM No. 10204 of 2006

Shri Rajendra Kumar Bansal and Others APPELLANT

Vs

Shri Des Raj Batra and Others RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, 151

Citation : (2011) 04 DEL CK 0220

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Shiv Charan Garg and Imran Khan, for the Appellant; G.B. Tulsiani, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 13.7.2006 which had endorsed the finding of the trial judge dated 15.12.2005 whereby the suit filed by the Plaintiffs seeking mandatory and perpetual injunction against the Defendants that they should be restrained from interfering in their possession qua the suit property had been decreed.

2. There are three Plaintiffs in the present case. Plaintiff Nos. 1 and 2 claimed to be joint tenants in respect of two rooms on the first floor above shop No. 4707 and 4849 on the eastern side staircase and one room and one kitchen on the first floor above shop No. 4748 on the eastern side and common toilet on the ground floor. Plaintiff No. 3 claimed himself to be tenant in respect of two rooms on the first floor on the western side of the stair case and common toilet and common staircase. Plaintiffs had taken on rent the affronted suit property from Defendant No. 1 w.e.f. 16.5.1991; rent receipts had been executed by Defendant No. 1.

Plaintiffs were regularly paying the rent to the said Defendant. On 01.5.1991 one Kailash Chand Jain an erstwhile tenant had surrendered the portions of his

tenancy to Defendant No. 1. On 16.5.1991 Defendant No. 1 created a new tenancy in favour of the Plaintiffs in respect of the portions which had fallen vacant pursuant to the vacation of the property by Kailash Chand Jain in addition to the portion already in the tenancy of the Plaintiffs. On 16.9.1991, Defendants No. 2 and 3 contacted the Plaintiff and told him to stop paying rent to Defendant No. 1 as interse disputes had arisen between Defendant No. 1 on the one hand and Defendants No. 2 and 3 on the other hand. Plaintiffs apprehended threats of dispossession; present suit was filed.

3. Defendants No. 2 and 3 filed their written statement. It was stated that they are the owners of the suit property. No tenancy had been created in favour of the Plaintiff.

4. On the pleadings of the parties, the following ten issues were framed:

1. Whether the court has no pecuniary and territorial jurisdiction to try the present suit? OPD

2. Whether the suit is bad for mis-joinder and non-joinder of the parties? OPD

3. Whether the Plaintiffs have no cause of action against the Defendants? OPD

4. Whether Defendant No. 1 is owner of the property in dispute? OPD

5. Whether the rent receipts are forged and false and bogus? OPD

6. Whether the grandfather of Defendants No. 2 and 3 and father of Defendant No. 1 execute any will, if so, its effect?

7. Whether any mental agreement was executed between Defendant No. 3 and Sh. Kailash Chand Jain? OPP

8. Whether tenanted premises let out for residential-cum-commercial purposes? OPP

9. Whether the Plaintiff are tenant under Defendant No. 1? OPP

10. Whether the Plaintiffs are entitled to the relief claimed? OPP

11. Relief.

5. Oral and documentary evidence was led. Plaintiff has examined himself as PW-1 and proved site plan of the portion which was under his tenancy as Ex.PW-1/1. His contention was that there was an oral tenancy between the parties. Suit property had been handed over to him on 16.5.1991. PW-2 has proved the rent receipts which have been executed in favour of the Plaintiff which are Ex.PW-2/1 and Ex.PW-2/2; in spite of opportunity PW-2 was not cross-examined. The Plaintiff had moved an application seeking permission to recall PW-2 which was dismissed. This was vide order dated 30.3.2005. This order has since become final as no appeal has been filed against the said order. The oral and documentary evidence was scrutinized by both the courts below. The impugned

judgment had clearly noted that these rent receipts Ex.PW-2/1 and Ex.PW-2/2 had been issued by Vimlesh Bansal (Defendant No. 1) and showed the extent of the tenancy of Naresh Chand Jain i.e. the Plaintiff No. 3. Ex.PW-2/4 was the receipt of possession of the portion which was under the erstwhile tenant Kailash Chand Jain; Ex.PW-2/7 evidenced that Kailash Chand Jain had handed over the portions of his tenancy to Defendant No. 1. Ex.PW-1/2 to Ex.PW-1/12 evidenced that Plaintiffs No. 1 and 2 (namely Des Raj Batra and Baljit Kumar Batra) are tenants of one room on the first floor along with a kitchen; these receipts bear the signature of Defendant No. 1; court drew a categorical finding that there was no evidence to show that the affronted documents i.e. the rent receipts Ex.PW-1/2 to Ex.PW-1/12 and Ex.PW-2/1 and Ex.PW-2/2 were either forged or fabricated. Vimlesh Bansal is admittedly the daughter of Ram Bhagat Bansal. She was claiming her right in this suit property in terms of a will dated 30.11.1984. It has been admitted by the parties that this will has since been probated although Appellants have filed an appeal against the said probate.

6. Be that as it may, the will is not the only document which has proved the claim of the Plaintiff; all the affronted documentary evidence coupled with the oral testimony established that the Plaintiffs were tenants in the suit property under Vimlesh Bansal; they could not be dispossessed by Defendants No. 2 and 3; the report of the local commissioner had also been adverted to; he had also held that the possession of the suit property was with the Plaintiffs.

7. This is a second appeal. It has been admitted and the following three substantial questions of law were formulated on 02.7.2007:

1. Whether the Appellant was given an opportunity to cross-examine PW-2 in accordance with law?
2. What is the effect of not passing any order on the application moved under Order 41 Rule 23 and Section 151 of the CPC wherein it was mentioned that the case be remanded back for proper adjudication?
3. Whether the rent receipt Ex.PW-2/1 and Ex.PW-2/2 were proved in accordance with law?

Today i.e. 20.4.2011, in view of the submission an additional substantial question of law was formulated; it reads as follows:

Whether the findings in the impugned judgment dated 13.7.2006 are perverse as they are based on no evidence? If so, its effect?

8. Record shows that in spite of opportunity the Defendants have failed to cross-examine PW-2. This right has now been lost. Rent receipts Ex.PW-2/1 and Ex.PW-2/2 were proved in accordance with law; no objection was taken qua their proof at any stage. Even if the impugned order did not specifically make a mention of the remand application; it is an implicit corollary of the dismissal of the appeal that the prayer seeking remand had been rejected. No perversity has been pointed out by the learned Counsel for the Appellant. The findings of the

court below are based on cogent and corroborative evidence which call for no interference. Substantial questions of law are answered accordingly. There is no merit in the appeal. The appeal as also the pending application is dismissed.