

(2002) 04 DEL CK 0112

In the Delhi High Court

Case No : CM No. 339/01 in Regular Second Appeal No. 2 of 1997

Shri Rajinder Singh

APPELLANT

Vs

Shri Bhagwat Prasad and Others

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Citation : (2002) 04 DEL CK 0112

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : R.P. Bansal and Anil Kaushik, for the Appellant; V.P. Makhija and Suman Bagga, for the Respondent

Final Decision : Dismissed

Judgement

Mahmood Ali Khan, J.—This order will decide an application (CM 339/2001) filed by the appellant u/s 151 CPC. The appellant has prayed for grant of interlocutory injunction restraining the respondents from damaging the suit premises which comprised of a room in the tenancy of the appellant in property bearing No. 4262, Gali Bharonwali, Nai Sarak, Delhi-110 006 and further creating any obstructions or hindrance in the repair work carried out by the appellant in the suit premises.

2. In the application it is alleged that the appellant is tenant in a room on the ground floor of the suit premises which he is using as an office for running his business of contract-Halwai i.e. taking orders for parties and functions, for a period of over 35 years. The respondents suit for recovery of the possession from him has been decreed. His appeal was also dismissed and he preferred the second appeal which has been admitted and the appellant's dispossession from the suit premises has been stayed during the pendency of the second appeal. The respondents in order to get rid of the appellant started damaging the property by "pounding/ hitting by bricks/hammers during night" in order to reduce it into a ruin. If the property by such damage caused by the respondents became dangerous, the Municipal Corporation would also issued notice for its

demolition. The appellant, Therefore, wanted to repair the premises at his own expenses and cost.

3. This application is resisted by the respondents who have pleaded that the appellant is not a tenant in the premises but he is a trespasser as held in the concurrent findings of the two courts below. It is also strongly refuted that any damage was caused or is being caused to the premises by hammering or pounding the structure or otherwise by the respondents. Rather, it is contended, that on account of heavy rains between the night of 13th and 14th August, 2001 the house which was over 80 years old, has fallen down and the premises in question has become inhabitable. It is denied that the appellant is carrying on any business of contract-Halwai in the premises and it is reiterated that he is a trespasser and has no right, title or interest of any kind in the premises. It is also denied that the appellant has right to reconstruct or he has even right to carry out nay repair in the property at his own cost or otherwise.

In the rejoinder the appellant reiterated his own case and denied that of the respondents.

4. Counsel for appellant has argued that the appellant is in occupation of the premises and his dispossession has been stayed by this court during the pendency of the second appeal. He has further submitted that the respondents failing in getting the premises vacated through legal means have adopted a novel device for ejectment of the appellant form the premises. They are causing extensive damage to the premises by hammering and pounding the walls brick by brick during night so that the premises is turned into a ruin and it becomes inhabitable and it is also demolished by procuring an order of the Municipal Corporation. It is also argued by him that the allegation of the respondent that heavy rain fall during the night of 13th and 14th August, 2001 had caused damage to the premises or had felled it are false. The premises is still habitable and the appellant has a right to remain in its occupation during the pendency of the appeal and further that in order to repair the damage caused by the respondents, appellant should be permitted to carry out the repairs of the premises at his own cost. Reliance was placed by him on the judgment of Allahabad High Court in Naushe Ali Khan Vs. Mohammad Siddiq and Others, ; Shiv Ram Singh Vs. Smt. Mangara and Others, and Rejendra Singh Yadav and Ors. v. Municipal Corporation of Delhi & Ors. 2001 5 AD (Del) 286.

5. Controverting the arguments advance on behalf of the appellant, counsel for respondents has argued that the two courts below have given concurrent finding that the appellant is a rank trespasser in the premises and that he has no title or interest in the suit premises. He strongly refuted the allegations of the appellant that the respondents had caused or had been causing damage to the suit premises by using hammers etc., or otherwise. According to him on account of heavy rain fallen during the night of 13th and 14th August, 2001 the premises which was over 80 years old, suffered heavy damage and has fallen down. it has become totally inhabitable. It is further submitted that the appellant was not in

occupation of it. According to him the appellant was only a trespasser in the premises and he had no right to carry out any construction or repairs in the premises even if he wanted to do it at his own cost. He has further argued that since the premises has fallen down and completely destroyed, the tenancy rights, if any, of the appellant, as claimed by him in this appeal, stand extinguished and he has no right to remain in occupation of the premises any more. Reference was made to the judgment of the Supreme Court in Vannattankandy Ibrayi Vs. Kunhabdulla Hajee, .

6. I have given careful consideration to the submission made and the case law cited by the counsel for the parties. The appellant, who claims himself to be the tenant in a portion of the property at the ground floor, has applied for permission to carry out repairs of the premises at his own cost. His case is that the damage to the property has been caused by the respondents by using hammers etc., during the nights. He has submitted that he carries on his business of contract-Halwai from one room tenement which has attached common facility of a toilet and also as a store. The respondents have controverted the claim of the appellant. Their case is that one Ram Batti Sharma was the tenant in the premises who died and the two courts below have given concurrent finding that the appellant is a trespasser and in unauthorised occupation of the premises. According to the respondents, the appellant does not have any right, title or interest in the property, Therefore, had also no right to be allowed to carry out any repair or reconstruction. Respondents have also alleged that during the night intervening 13th and 14th August, 2001 the heavy rains felled the disputed property as a result the whole of the property stood demolished and with that any right, which the appellant had claimed in the premises, also stood extinguished and for this reason also the appellant cannot be allowed to carry out the repairs etc.

7. This second appeal is preferred by the appellant against the decree of possession granted by the two courts below on the ground that the appellant is in unauthorised occupation of the premises. This court by an interlocutory injunction order has stayed the dispossession of the appellant during the pendency of the appeal. The appellant has submitted that he is in continuous possession of the premises for over 35 years. His claim that he inherited the tenancy right from Mr. Ram Batti Singh was negatived in the earlier rent control proceeding and he was not substituted in place of the tenant.

8. There is a serious dispute between the parties as to whether the premises is repairable or it has been completely demolished by heavy rains. Both the parties have filed the photographs. The photographs produced by the respondents do show extensive damage to the property. The appellant also does not deny that some other portions have been damaged badly. Though his allegation is that the respondents were responsible for causing damage to those portions also in the same manner in which they were causing damage and destruction of the suit premises. Apart from the allegation made in the application and the affidavit of

the appellant there is no other material to decide as to whether the respondents are responsible for the damage caused to the premises or that the property was damaged by some natural causes like rains. But it has been admitted by both the parties that there is heavy damage in the property of which the premises in question is part. Such a contentious issue cannot be decided in an application filed by the appellant particularly when the appellant has failed to give complete detail of the damage caused and the extent to which he intended to carry out repair. As noticed above there is no evidence to suggest that the extensive damage or destruction was caused to the premises by the respondents owner. It does not seem to be the case of routine repairs of the damage suffered by the premises on account of normal wear and tear and vagaries of weather which a tenant may legally carry out at his own cost in order to keep the premises let out in habitable and good condition. The serious dispute raised here could be decided only in a civil suit or a proceeding u/s 44 of the Delhi Rent Control Act as the case may be.

9. The photographs filed by the appellant show the front side of the room which the appellant claimed to be in his occupation. What is the internal condition of that room is not clear. But from the photographs which have been filed by the parties, it is clear that the property has suffered heavy damages. At this stage as observed above, it will not be possible to decide whether the premises has been completely destroyed/demolished as alleged by the respondents or it is still habitable as claimed by the appellant. Therefore, the judgment in *Vannattankandy Ibrayi* (supra) is not applicable to the facts of the case. In that case the tenancy shop was completely destroyed and it was held by the Supreme Court that with the destruction of the tenancy premises, the tenancy stood extinguished.

10. On the other hand the case law cited by the appellant also does not advance the case of the appellant. In *Naushe Ali Khan* (supra) a civil suit was filed by the petitioner for mandatory injunction directing respondents No. 1 & 2 to restore the accommodation in dispute to its original condition or in the alternative allowing the petitioner to re-construct the house at the cost not exceeding Rs. 1,000/-. Soon after the property was purchased by the respondent the respondent started demolishing the suit property. The petitioner then filed a suit for restraining the respondents from demolishing the suit premises. Before an ad interim injunction could be granted, the respondents succeeded in demolishing the structures and only four walls of the house remained. The petitioner then obtained possession of the dilapidated house and filed the suit for direction to the respondents to restore the accommodation or allow him to re-built it, as alleged. It was observed by the court that the respondents had taken the law in their hands and had sought to deprive the petitioner of his valuable tenancy right in the house in dispute by using unlawful force. It was held that a suit filed for mandatory injunction directing the landlord to re-construct the tenancy premises was legally maintainable and that the decree, if granted, was capable of its execution. As such, it was a civil suit and the court held that the owner had

demolished the tenancy premises unlawfully with ulterior motive. In the instant case, as notice, there is no material to hold that the respondent owners were responsible for damage/destruction of the premises.

11. In Shiv Ram Singh (supra) the High Court held that an ad interim injunction could be granted in favor of the respondent in a civil suit in exercise of the inherent powers vested in a court u/s 151 CPC, even if Order 39 Rule 1 & 2 was not available for such an order. In this case the petitioner and respondent were two rival claimants to the title of the property. Both the parties claimed that they were in possession of the property. The petitioner prayed for grant of injunction for restraining the respondent from disturbing his possession over the property. The application after remaining pending for long was rejected. The respondents have also filed an application for restraining the respondents from interfering in his carrying out the repairs to the property in dispute. It was held that even if the provision of Order 39 Rule 1 & 2 was not available to the respondent in order to preserve the property, relief could be granted in favor of the respondent. It was held that the petitioner was not likely to suffer if the repairs are carried out and the building was put in order and that he would reap the benefit in the case of his ultimate success without paying anything for the expenses incurred on those repairs. It was further found that the court had granted permission to the respondent for carrying out repairs and putting certain constructions. In the instant case there is no dispute about the title between the rival claimants to the property. It is not a case where the tenant wanted to carry out specified repairs or improvement in a tenancy premises. Here firstly it is not clear as to what exactly the repairs and reconstruction are proposed to be made. Moreover there is a serious dispute as to whether the property is wholly destroyed by rain and the tenancy rights claimed by the appellant still subsist or it stood extinguished as claimed by the respondent owners. It is indeed, true that in appropriate cases in a civil suit/proceeding the court is not powerless to direct the reconstruction/repair of a disputed property. But the present case is not of one of those cases where the court exercises its discretion in favor of the unauthorized occupant/tenant in the peculiar facts and circumstances of the case.

12. In Rajendra Singh Yadav and & others (supra) a writ petition was filed by the owners against the Municipal Corporation and others for a direction to the MCD to demolish the remaining portion of the front part of the building to carry out its statutory obligation. The respondent was a tenant in a part of the premises where he was carrying on the repairs, the court directed the Municipal Engineer to carry out the inspection and it was noticed that the premises was repairable. In the totality of the peculiar facts and circumstances, the court declined to exercise discretionary jurisdiction in favor of the petitioner and allowed the repairs to be carried out under the supervision of the Municipal Corporation. It was observed that the petitioner owner could not be allowed to take advantage of his neglect and default. He was pressing for demolition of the entire premises on the ground of it being in dilapidated condition and dangerous without any proposal for its repair or reconstruction. Therefore, the facts of the cited case

ware quite distinguishable. The court was clearly of the view in the peculiar facts of the case that the landlord in order to get rid of the tenant wanted the leased premises demolished or felled by the MCD on the pretext that the premises had become dilapidated or dangerous.

13. In the peculiar facts and circumstances of the case the court does not find it appropriate to allow the appellant to carry on repairs/reconstruction of the premises in this application.

14. For the reasons stated above, the application has no merit. It is dismissed. It is, however, clarified that the view taken in this application will not cause any prejudice to any of the parties in any other civil suit or proceeding which involved adjudication of similar question.