
(2002) 09 DEL CK 0239

In the Delhi High Court

Case No : I.A. No's. 1974 and 5053/02 in S. No's. 1404 and 1405/01

Shri Ranbir Yadav

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151

Citation : (2002) 09 DEL CK 0239

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : H.L. Narula, Rajiv Garg, in I.A. 5053/01 and Rajiv Garg, in I.A. 1974/0, for the Appellant; Anurag Mathur, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Gupta, J.—This order will govern the disposal of identical I.As. being Nos. 5053/02 in S. No. 1404/01 and 1974/02 in S. No. 1405/01 filed under Order 1 Rule 10 read with Section 151 CPC by Balkishan Yadav.

2. Suit No. 1404/01 which is treated as lead case, was instituted by the plaintiff alleging that defendant bank has been in occupation of built-up area of 1501 sq. ft on ground floor and 855 sq. ft on first floor of property No. 55, Jawala Heri, New Delhi as a tenant under him. Tenancy was created by virtue of a lease deed dated 28th February 1989 (?) for a period of 5 years with effect from 20th April 1991. Under another lease-deed dated 23rd January 1995 (?) the tenancy was extended for a further period of 5 years with effect from 20th April 1996. Agreed rent was Rs. 24,710/- per month. Since the date of inception of tenancy the defendant has been paying rent month by month only to the plaintiff and rent stands paid up to April 2000. By the notice dated 4th April 2001 (served on the defendant on 12th April 2001), the plaintiff terminated the tenancy of defendant with the expiry of 19th April 2001 or on such date which the defendant consider that its tenancy month expires. Prayers made in the suit are for recovery of possession of suit property, arrears of rent from May 2000 to April 2001, interest

@ 18% p.a. thereon as also damage @ Rs. 1.5 lac per month.

3. Suit No. 1405/01 between the parties pertains to another built-up area of 3720 sq. feet on first floor of said property No. 55, Jawala Heri. Defendant is alleged to have been inducted as tenant therein under a lease deed dated 28th February 1989 for a period of 5 years which tenancy was extended under the lease deed dated 23rd January 1995 for a further period of 5 years on a monthly rental of Rs. 53,625/-. Tenancy of defendant is stated to have been terminated by the notice dated 4th April, 2001. Prayers made in suit are for passing decree of arrears of rent from May 2000 to April 2001, interest @ 18% p.a. thereon, damages for unauthorised use and occupation for two months @ Rs. 2 lacs per month in addition to possession of the property.

4. To be only noted that defendant has contested both the suits by filing separate written statements.

5. Contention advanced by Sh. Rajiv Garg for applicant was that the plaintiff cannot seek ejectment of defendant bank and claim entire rent/manse profits to the exclusion of applicant who is co-owner of property No. 55 Along with plaintiff, Randhir Singh and Dharam Pal and the applicant being necessary party deserves to be impleaded as a defendant. He also drew my attention to the order 17th January 2002 passed in I.A. No. 4621/01 in Suit No. 933/01 filed by the applicant against plaintiff and defendant bank as also the defense raised by defendant bank in the written statement in both these suits. Reliance was placed on the decision in V Surinder Kumar Jhamb Vs. Mr. Om Parkash Shokeen, . To be noted that by the said order dated 17th January 2002 after modifying earlier order dated 10th May 2001 bank impleaded in the suit as defendant No. 2, was restrained from releasing 1/4th share in the arrears of rent and future rent of the applicant. In the written statements filed in both the present suits it is alleged that suit is bad for non-joinder of other co-owners of property No. 55, Jawalaheri. Photostat copies of registered lease deeds dated 6th August 1992 and 31st August 1996 executed by the defendant bank are placed in Suit No. 1404/01. Similarly, in Suit No. 1405/01 the photostat copies of registered lease deeds dated 28th February 1989 and 23rd January 1995 executed by defendant bank have been filed by the plaintiff. These lease deeds go to show that it was the plaintiff who inducted the defendant bank as tenant in the portion noted therein of said property No. 55, Jawalaheri. In the written statement also the bank has pleaded that it is lawful tenant under the plaintiff. Bank paid rent up to April 2000 only to the plaintiff. It is settled law that plaintiff is dominus IIT is and he cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. (See Banarsi Dass Durga Prasad Vs. Panna Lal Ram Richhpal Oswal and Others, M. Abdul Razack Vs. S. Mohammad Shah, and Mujtabai Begum and Another Vs. Mehbub Rehman and Others,). In my opinion, to decide these suits based on relationship of landlord and tenant between the parties, the presence of applicant is not at all necessary. Scope of suit cannot be allowed to be widened to decide inter-se disputes

regarding ownership of property and claim for rent/manse profits between the applicant and plaintiff. Neither the said order dated 17th January 2002 nor Surinder Kumar Jhamb's case (supra) are of any assistance to the applicant. Applications, thus, deserve to be dismissed being without any substance.

6. Consequently, both the I.As are dismissed being without any merit.