

(2011) 03 DEL CK 0522

In the Delhi High Court

Case No : Regular Second Appeal No. 386-87 of 2006

Shri Sarvesh Kumar and Another

APPELLANT

Vs

Shri Ratan Lal (since deceased) through his LRs.

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 507
Delhi Rent Control Act, 1958 — Section 1(2), 1(20), 50, 560
Evidence Act, 1872 — Section 57
Specific Relief Act, 1963 — Section 41

Citation : (2011) 5 AD 376

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : K.K. Sharma, for the Appellant; Sudhir Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 17.2.2006 which had endorsed the finding of the trial judge dated 29.10.2005 whereby the suit filed by the Plaintiff Rattan Lal seeking possession of the suit property bearing No. 262- C, Subhash Marg, Chhajjapur, Babarpur, Shahdara had been decreed in his favour.

2. The case of the Plaintiff as is evident from the averments in the plaint is that he is the owner of the suit property. The suit property had been let out to Defendant No. 1 at a monthly rent of Rs. 375/- including electricity charges. The Defendant did not tender the rent in time; he is in arrears of rent since 27.5.2001; legal notice was served upon the Defendant dated 16.10.2000. Contention is that the property situated in a rural area and being in the revenue estate the provisions of Delhi Rent Control Act, 1958 (hereinafter referred to as "the DRCA") are inapplicable. Defendant has failed to hand over the suit property. Suit was accordingly filed.

3. In the written statement, it was contended that there is a bar of Section 50 of the DRCA; Defendant No. 1 is a tenant at monthly rental of Rs. 375/- which was later on enhanced to Rs. 515/- per month. The relationship between the parties is governed by provisions of DRCA. Suit is not maintainable.

4. The trial judge had framed the following four issues; they read as follows:

1. Whether Plaintiff is entitled for the decree of possession as prayed for? OPP

2. Whether suit is barred u/s 50 of Delhi Rent Control Act? OPD

3. Whether suit is barred u/s 41(h) of the Specific Relief Act? OPD

4. Whether suit is not properly valued for the purpose of court fees and jurisdiction? OPD

5. Whether suit is bad for misjoinder of Defendant No. 2? OPD

5. Oral and documentary evidence was led. Issue No. 2 is relevant for the controversy in issue. The contention of the Defendant was that the suit is barred u/s 50 of the DRCA. The finding returned by the trial judge is as follows:

10. ISSUE No. 2:

Whether the suit is barred u/s 50 of Delhi Rent Control Act? OPD

Onus to prove the issue was upon the Defendants. Ld. Counsel for the Defendants has contended that the suit is barred u/s 50 of DRC Act as suit property is situated at Babarpur, Shahdara, Delhi where the provisions of DRC Act are applicable. He has relied upon the decisions reported as Omprakash Jain v. Hansraj and Ors. 1996 1 RCJ 35 and Sarwan Kumar and Anr. v. Madanlal Aggarwal wherein it was held that the jurisdiction of Civil Court to entertain any suit or proceedings relating to eviction of any tenant from premises covered by the Delhi Rent Control Act is barred u/s 50 of the DRC Act. On the other hand, Ld. Counsel for the Plaintiff has argued that Babarpur has not been notified so far as per Section 1(2) of the Delhi Rent Control Act, specifying Babarpur area within the schedule of the Act. He has relied upon the decisions reported as Mitter Sen Jain Vs. Shakuntala Devi, and Brahma Devi v. Krishna Devi 1996 (39) DRJ wherein it was held that even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section(2) of Section 1 of the Delhi Rent Control Act and unless the area is so specified in the schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. First schedule of DRC Act is as follows:

The first Schedule

[See Section 1(2)]

The urban areas within the limits of the Municipal Corporation of Delhi to which the Act extends

The area which, immediately before the 7th April, 1958, were included in-

1. the Municipality of New Delhi excluding the area specified in the First Schedule to the Delhi Municipal Corporation Act, 1957 (66 of 1957):
2. the Municipal Committee, Delhi;
3. the Notified Area Committee, Civil Station, Delhi;
4. the Municipal Committee, Delhi - Shahdara;
5. the Notified Area Committee, Red Fort;
6. the Municipal committee, West Delhi;
7. the South Delhi Municipal Committee;
8. the Notified Area Committee, Mehrauli

Counsel for the Defendants has referred a notification No. F.9 (2)66-Law. Cor. Dated 28.5.1966 issued u/s 507 of the Delhi Municipal Corporation Act, 1957 to show that DRC Act is applicable to the Babarpur Area. By this notification besides other areas, the entire remaining area of revenue estate Shahdara which has not so far been urbanized, has been urbanized. As Hon"ble Supreme Court has held in Mitter Sen case (supra) that even if any new area is included within the urban area of MCD of Delhi a further notification is required to be issued under proviso to subsection (2) and Section 1 of the DRC Act, hence, two notifications, one with regard to inclusion of any area in the urban area and second with regard to under proviso to subsection (2) of Section 1 of the DRC Act are required for the applicability of the DRC Act in any new area. By said notification dated 28.5.1966 entire revenue estate of Shahdara has been urbanised. The Defendant has not proved any document etc to show that Babarpur comes in the revenue estate of Shahdara. In the schedule of DRC Act, Shahdara Municipal Committee has been mentioned, and Babarpur has not been mentioned in that schedule. Defendant has not proved any document to show that area of Babarpur comes in the area of Shahdara Municipal Committee. No notification under the proviso to Sub-section (2) of Section 1 of Delhi Rent Control Act specifying the Babarpur area within the schedule of the Act has been referred. In view of the above discussions, I am of the view that the Defendant has failed to prove that the Babarpur area in which the suit property is situated falls I the area where the DRC Act is applicable. Hence, this issue is decided in favour of the Plaintiff and against the Defendant.

6. This finding was affirmed by the first appellate Court. It inter alia reads as follows:

After recording the evidence of the parties, the trial court decided this issue against the Appellant by holding, that the second notification which is required to have been issued by the Central Government in view of the provisions of Section 1(2) of the DRC Act has not been issued in this case and therefore, even through

the area in question has been urbanised. It cannot be said to have been covered the provision of DRC Act which would invite the bar of Section 560 of the DRC Act in filing of a suit for eviction by the Respondent in civil suit. The relevant discussion in this regard appears at page 5.6 and 7 of the judgment while deciding issue No. 2 which for the sake of reference is reproduced hereunder:

Onus to prove the issue was upon the Defendants. Ld. counsel for the Defendants has contended that the suit is barred u/s 50 of the DRC Act as suit property is situated at Babarpur, Shahdara, Delhi, where the provisions of DRC Act are applicable. He has relied upon the decisions reported as *Om Parkash Jain v. Hansraj and Ors.* 1995 1 RCJ 35 and *Sarwan Kumar and Anr. v. Madanlal Aggarwal* wherein it was held that the jurisdiction of Civil Court to entertain any suit or proceedings relating to eviction of any tenant from premises covered by the Delhi Rent Control Act is barred u/s 50 of the DRC Act. On the other hand Ld. counsel for the Plaintiff has argued that Babarpur has not been notified so far as per Section 1(20) of the Delhi Rent Control Act, specifying Babarpur area within the schedule of the Act. He has relied upon the decisions reported as *Mitter Sen Jain Vs. Shakuntala Devi, and Brahma Devi v. Krishna Devi* 1996 (39) DRJ wherein it was held that even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act and unless the area is so specified in the schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. First schedule of DRC Act is as follows:

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1. the Municipality of New Delhi excluding the area specified in the First Schedule to the Delhi Municipal Corporation Act, 1957 (66 of 9157):
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4. the Municipal Committee, Delhi - Shahdara;
5. the Notified Area Committee, Red Fort;
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Counsel for the Defendants has referred a notification No. F.9 (2) 66-Law. Cor.

Dated 28.5.1966 issued u/s 507 of the Delhi Municipal Corporation Act, 1957 to show that DRC Act is applicable to the Babarpur Area. By this notification besides other areas, the entire remaining area of revenue estate Shahdara which has not so far been urbanized, has been urbanized. As Hon"ble Supreme Court has held in Mitter Sen case (supra) that even if any new area is included within the urban area of MCD of Delhi a further notification is required to be issued under proviso to subsection (2) and Section 1 of the DRC Act, hence, two notifications, one with regard to inclusion of any area in the urban area and second with regard to under proviso to subsection (2) of Section 1 of the DRC Act are required for the applicability of the DRC Act in any new area. By said notification dated 28.5.1966 entire revenue estate of Shahdara has been urbanised. The Defendant has not proved any document etc to show that Babarpur comes in the revenue estate of Shahdara. In the schedule of DRC Act, Shahdara Municipal Committee has been mentioned, and Babarpur has not been mentioned in that schedule. Defendant has not proved any document to show that area of Babarpur comes in the area of Shahdara Municipal Committee. No notification under the proviso to Sub-section (2) of Section 1 of Delhi Rent Control Act specifying the Babarpur area within the schedule of the Act has been referred. In view of the above discussions, I am of the view that the Defendant has failed to prove that the Babarpur area in which the suit property is situated falls I the area where the DRC Act is applicable. Hence, this issue is decided in favour of the Plaintiff and against the Defendant.

5. Ld. counsel for the Appellant despite given an opportunity has not been able to produce to second notification, if any, which would bring the property under the purview of DRC Act even before this tribunal. Hence no infirmity can be found in the observation made by the trial court about the applicability of the DRC Act to the present proceedings.

7. This is a second appeal. On 14.8.2008 it has been admitted and the following substantial question of law was formulated: "Whether the property in question is situated in an area which is covered by Delhi Rent Control Act?

8. On behalf of the Appellant, it has been urged that both the concurrent findings of fact had refuted the defence of the Defendant only for the reason that the second notification which was contemplated after the first notification of 28.5.1966 had not been proved. It is submitted that this second notification dated 27.3.1979 had since been filed in the present proceedings and judicial notice can be taken of this document as it is a public document.

9. Arguments have been countered. It is pointed out that in the absence of an application seeking permission of this Court to adduce additional evidence this subsequent notification dated 27.3.1979 cannot be read by the second appellate Court. Even otherwise the first notification dated 28.5.1966 which has been proved in the courts below did not make any mention of the suit property; there was no reference to Babarpur where the suit property is situated. The impugned judgment calls for no interference on any count.

10. The findings as returned by the two fact finding courts below has been noted hereinabove. The defence of the Defendant was that the provisions of the DRCA are applicable and for this proposition reliance has been placed upon the notification dated 28.5.1966. The said notification has been perused. In this notification admittedly there is no mention of Babarpur which is the place where the suit property is located. This had been noted by both the courts below. The subsequent notification which is sought to be relied upon by the learned Counsel for the Appellant cannot be read in evidence as admittedly till date no application has been filed by the Appellant seeking permission of this Court to adduce additional evidence. Submission of the learned Counsel for the Respondent that in the absence of an application under Order 41 Rule 27 of the Code granting this prayer of the Appellant, this document cannot be read, carries forces. The judgment relied upon by the learned Counsel for the Appellant reported in *Mukhtiar Ahmed Vs. Husan Bano (Smt) and Others, etc.* has no application. There is no doubt that u/s 57 of the Indian Evidence Act judicial notice can be taken of the laws which are in force in the country. It is also an undisputed proposition that an appeal is a continuation of the original proceedings. However, before the appellate court admits additional evidence, at the stage of a second appeal, and reads a fresh document, the Appellant must cross the hurdle of Order 41 Rule 27 of the Code. Besides the fact that no written application to the said effect has been filed till date; even no oral prayer for taking this document on record was made before this Court. This document cannot suo moto be read by the Court.

11. The Supreme Court in *Mitter Sen Jain Vs. Shakuntala Devi*, had held that even when an area has been urbanized and becomes a part of the Municipal Corporation of Delhi a further notification is required to be issued u/s 1(2) of the DRCA and unless the area is so specified in the schedule by a second notification, the provisions of DRCA Act cannot be applicable. Admittedly the second notification has not seen the light of the day. The two concurrent findings of fact do not call for any interference. The impugned judgment had rightly held that the DRCA is inapplicable to the suit property. No other argument has been addressed before this Court. Substantial question of law is answered accordingly. Appeal is dismissed.