
(2001) 05 DEL CK 0119

In the Delhi High Court

Case No : IA. 4659 of 2001 in Suit No. 928 of 2001

Shri Suraj Prakash Sharma

APPELLANT

Vs

Smt. Shakuntla Rani Dewan

RESPONDENT

Date of Decision : 14-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 15(4), 151
Delhi Rent Control Act, 1958 — Section 14(1)

Citation : (2001) 94 DLT 530

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. P.N. Bhardwaj and Mr. Ashutosh Bhardwaj, for the Appellant; Mr. R.S. Kela, for the Respondent

Final Decision : Dismissed

Judgement

A.K.Sikri, J.—By this order, I propose to dispose of the application filed by the plaintiff under Order XXXIX Rules 1 and 2 and Section 151 of the CPC for ad-interim ex-parte injunction and injunction till the decision of the suit. The plaintiff has filed this Suit for declaration to the effect that an Eviction Decree dated 25th September, 1999 passed in favor of the defendant and against the plaintiff by Mrs. R. Kiran Nath, as Rent Controller in Eviction Case no..21/94 be declared as a nullity. The plaint proceeds on the basis that the defendant had filed the aforesaid Suit for eviction against the plaintiff who was tenant in the Suit property. The Suit was filed on the basis of Agreement dated 26th March, 1993 as per which Shri Sheetal Prasad Diwan had given maintenance right to the defendant and the right to recover rent from the tenant in respect of the Suit premises. During the pendency of the said Eviction Petition, the plaintiff allegedly entered into Agreement to Sell dated 10th September, 1997 with Shri Sheetal Prasad Diwan as per which Shri Sheetal Prasad Diwan agreed to sell the Suit property to the plaintiff for consideration of Rs.15 lakhs and certain documents were executed between the parties which include Agreement to Sell, Will dated 10 the September, 1997 and irrevocable General Power of Attorney. The case of

the plaintiff is that after the purchase of that property no cause of action survived in the Eviction Petition inasmuch as the plaintiff had become the owner of the property and the could not be evicted from the said property of which he ceased to be a tenant and had become the owner. Still, the defendant went ahead with the Suit and got the impugned Order and decree dated 25th September, 1999.

2. Along with the summons in the Suit notice in this is was also directed to be served on the defendant. Mr. R.K.Kela appeared for the defendant and he submitted that he would argue the matter without filing formal reply. He however, filed certain documents in the Court which are taken on record. I have heard the learned counsel for both the parties.

3. In the Eviction Petition filed by the defendant, defense of the plaintiff, who was respondent in the said petition, was struck off for non-compliance with the Order passed u/s 15(4). Thereafter, the Court proceeded with the Eviction Petition and passed eviction Order dated 25th September, 1999. The plaintiff filed appeal against the Order before the Rent Controller Tribunal. In this appeal, the plaintiff had taken specific ground to the effect that after the plaintiff had become the owner of the tenanted premises the defendant was not entitled to seek eviction of the plaintiff. However, by judgment dated 7th January, 2000 appeal of the plaintiff was dismissed. Opening para of this judgment reads as under:-

"The main controversy calling for determination in this appeal directed against the judgment dated 25.9.99 is whether the appellant has become the owner of the tenanted premises w.e.f. 10.9.97 and as such the respondent no.1 who is the wife of respondent No.3 owner of the premises has become disentitled to seek eviction of the appellant on the ground U/s.14(1)(a) DRC Act or not."

4. While dismissing the appeal, the learned Additional District Judges observed as under:-

"Though there is no evidence on record that the respondent no.2 had executed an agreement to sell or power of attorney in favor of the appellant, mere execution of the agreement to sell or power of attorney or for that purpose, a will by the owner of the premises in favor of the third person does not confer title upon the person in whose favor the documents are executed. These documents may confer some rights but in no way these documents confer title upon a person as a owner. However, the covenants of these documents does not confer the title of landlord."

5. The plaintiff preferred C.M. (Main) No.41/2000 against this Order. This was also dismissed by this Court vide Order dated 20th January, 2000. After the Order was dictated and the petition was dismissed, learned counsel for the plaintiff requested for some time to vacate the premises and accordingly notice was issued to the defendant limited to this extent namely, grant of time of one year as requested by the plaintiff. However, thereafter the plaintiff filed R.A. No.19/2000 seeking review of the portion of the Order whereby he had agreed to

vacate the premises within a period of one year. This Review Application was also dismissed by Order dated 10th February, 2000. Still not satisfied, the plaintiff filed Petition for Special Leave to Appeal against the Order passed in C.M.(Main) No.41/2000. On this petition, initially notice was issued by the Supreme Court and while issuing notice stay of dispossession was granted. After hearing both the parties, SLP was dismissed by passing the following Order:-

"The order of the High Court impugned before us is in the eviction proceedings instituted by the respondent. After going through the record we are not inclined to interfere. The SLP is dismissed."

6. Significantly when the plaintiff had allegedly entered into Agreement to sell dated 10th September, 1997, proceedings before the Rent Controller were still pending. However, no steps were taken by the plaintiff to bring on record the alleged factum of Agreement to Sell dated 10th September, 1997 on the basis of which the plaintiff is projecting himself to be the owner of the property in question. Any prudent person would have done so immediately after purchasing the property and prayed to the Court for dismissal of the eviction petition on that ground. Instead the plaintiff allowed the eviction petition to continue and waited for eviction orders passed against him. Thereafter he challenged these orders successively but without success as mentioned above.

7. It may be mentioned at this stage that the plaintiff, after the alleged purchase of the property, also filed Suit for declaration in this Court being S.No.2570/97. The declaration sought is that the plaintiff is lawfully occupying the Suit property as owner thereof. This suit is also filed on the basis of Agreement to Sell dated 10th September, 1997. The plaintiff had filed application for injunction under Order XXXIX Rule 1 and 2 in this very Suit but could not obtain any interim Order.

8. The aforesaid admitted facts would show that there is an Order/decreed passed in favor of the defendant which has been upheld up to the level of Supreme Court. Further on the basis of same very document the plaintiff has filed a Suit in this Court which is pending since 1997 but no interim protection has been given to the plaintiff. Learned counsel for the plaintiff strenuously argued that the Eviction Order/Decree dated 25th September, 1999 is a nullity inasmuch as the plaintiff had become the owner of the property in question after purchasing the same vide Agreement to Sell dated 10th September, 1999 and thereafter there was no relationship of landlord and tenant between the parties and Therefore Rent Control Tribunal, Delhi could not pass such an Order. It was also contended that the defendant had obtained the said decree by fraud and Therefore the plaintiff had the right to file the present Suit and seek declaration that the decree is a nullity and without jurisdiction. On the other hand, learned counsel for the defendant relied upon certain documents including the statement of Mr. Sheetal Prasad Diwan recorded in other proceedings to show that execution of Agreement to Sell, etc. was denied by the defendant as well as Shri Sheetal Prasad Diwan.

9. While it would be a matter of evidence as to whether any such Agreement to Sell dated 10th September, 1997 and other related documents were executed by Shri Sheetal Prasad Diwan or not, the admitted position disclosed above stares fat the face of the plaintiff as per which the plaintiff has not been able to succeed either in the Eviction Petition although he challenged the Order of eviction successfully and further he was also not successful in claiming similar relief in S.No.2570/97 although he attempted twice by moving applications for the same prayer in the Suit. It also cannot be comprehended as to why the plaintiff did not move appropriate application in the eviction petition after he allegedly purchased the Suit property as the said petition was still pending before Rent Controller.

10. Therefore, I do not consider that balance of convenience is in favor of the plaintiff or that the plaintiff would suffer irreparable injury if the injunction is not granted. When the defendant is having the eviction decree in her favor which has been upheld till the Supreme Court, there is no ground to deny the defendant fruits of the said decree. In case, the plaintiff succeeds ultimately, the plaintiff can always be put back in possession. On the other hand, in case the plaintiff is given the injunction now and ultimately he fails in this Suit, it would amount to denying the defendant benefits of the decree which has been passed in her favor. For these reasons, this application is dismissed.

S.NO.928/2001

11. Let written statement be filed within six weeks. Replication, be filed within six weeks thereafter. Documents, if any, be filed within twelve weeks from today.

12. List before the Joint Registrar for admission and denial of documents on 24th September, 2001.

13. List before the Court for framing of issues on 16th October, 2001.