
(2010) 05 DEL CK 0290
In the Delhi High Court
Case No : CS (OS) 2032 of 2007

Shri Viney Kumar Mahajan APPELLANT
Vs
Smt. Vishambhari Devi RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Delhi Rent Control Act, 1958 — Section 45
Evidence Act, 1872 — Section 116

Citation : (2010) 118 DRJ 674

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : R.P. Sharma and S. Dutta, for the Appellant; S.S. Lingwal, for the Respondent

Judgement

S. Ravindra Bhat, J.—This suit is listed before the Court, after admission/denial of documents and framing of issues. This Court has considered the submissions of parties, and pleadings in the suit and is of the opinion that the case can be disposed of at this preliminary stage, having regard to the rival averments as well as the materials on record.

2. The suit claims a decree for possession against the defendant in respect of the premises shown in a Site Plan attached to the plaint. The plaintiff is owner and landlord of the property known as Regal Theatre, Connaught Place, New Delhi. It is submitted that Regal Theatre was being operated by a firm comprising of several partners (described in para 4 of the suit). The plaintiff claims that the shares in the firm were taken-over by him - a fact recorded in this Court's order dated 30.11.2006 in CS (OS) 1370/1982. The suit alleges that one Sh. Budh Singh Rawat, working as Peon in the Regal Theatre, used to live in the accommodation provided by the theatre's management. The premises, provided for him for his residence, is described in detail in para 7. It is submitted that the family of the said employee continued in these premises after his death sometime in 1989. The plaintiff urges that the widow of the said deceased Sh.

Budh Singh Rawat started claiming that she was tenant of the premises, and on that basis deposited rent in terms of provisions under the Delhi Rent Control Act. It is submitted that the plaintiff had contested the application and that the Rent Controller, by an order dated 05.02.2007, held that there was no relationship of landlord and tenant, and the application u/s 45 of the Delhi Rent Control Act was not maintainable. The appeal preferred by the defendant was allowed and the matter was remitted for reconsideration.

3. The plaintiff submits that the relationship of the parties is not one of landlord and tenant, and that the late employee - Sh. Budh Singh Rawat was merely a licensee and that after his death, the defendant cannot continue to occupy the premises, which are to an extent of 1200 sq. feet, and claim to pay only Rs. 100/- or so, as rent/charges when no such relationship exists. The plaintiff urges that on the available material, a decree can be drawn and points to what are termed as admissions in the written statement.

4. The defendant, in the written statement, does not dispute that late Sh. Budh Singh Rawat was an employee of the Regal Theatre and that he died in 1989. It is, however, urged that the said employer used to deduct amounts from Sh. Rawat's salaries each month, towards rent for the accommodation provided to him. It is submitted that the defendant was in continuous possession and enjoyment of the premises and that after the death of Sh. Budh Singh Rawat, she used to pay (to the management of the theatre), amounts in cash towards rent for which no receipts were issued. It is submitted that despite demand, the management of Regal Theatre refused to furnish any receipt which compelled the defendant to file a complaint and later on, to invoke provisions of the Delhi Rent Control Act.

5. It is urged that the plaintiff cannot claim any title or at any rate, claim to be landlord of the premises since he acquired the premises as a mere licensee. The defendant lastly contends that the suit cannot succeed since the plaintiff has not produced all the records which would have demonstrated that Sh. Budh Singh Rawat's salary was being deducted for the purpose of rent.

6. In support of the submission that the suit can be decreed, the plaintiff relies upon the exhibits, P-1 to P-32, extracts of the Salary Register, to say the entire amount payable as wages of the salaries to his employees used to be handed-over to them. It is pointed-out specifically that the extracts containing entries pertaining to Sh. Budh Singh Rawat showed no deductions were made from the salary. The defendant has admitted the signatures of Sh. Budh Singh Rawat but denied other contents.

7. The plaintiff relies upon a Division Bench ruling of the Supreme Court reported as B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others, to say that the relationship (where the employee is provided accommodation by the employer) is one of licensor and licensee and cannot amount to a tenancy.

8. In that decision, the Supreme Court had relied upon an older judgment of the

Bombay High Court in *Nippon Menkwa Kalmshilai v. F. Portlock* AIR 1922 (Bom) 70 to say that a servant's occupation, i.e. employee's occupation of the employer's premises is only a form of license whereby the servant is required to live in the house in order to better discharge his work. Approving the said ruling, the Supreme Court observed that the occupation of a officer or employee ceases not merely on the termination of his employment, but also upon his being shifted-out (from one office of the employer to another) as well as upon his death.

9. This Court has considered the submissions. It is evident from the above discussion that the essential facts about the late Sh. Budh Singh Rawat's employment - his being inducted into the premises on account of his employment with the employer and the premises being located in the zone or area of employment are not disputed. The defendant does not also deny that late Sh. Budh Singh Rawat was being paid salary by the management. The defendant's case of lease or tenancy, however, is unsupported by an document nor is there any material on record by way of receipt or even letter to support or sustain such submissions of tenancy. One needs to hardly emphasize that in order to successfully contend a subsisting tenancy or lease, there must be an admission to such effect, and a registered document.

10. The defendant's contention that the plaintiff is not entitled to maintain the proceedings as he is also a licensee, in this Court's opinion, cannot be countenanced because of Section 116 of the Evidence Act, which is a species of estoppel against the licensee. The said provision reads as follows:

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116. Estoppel of tenant; and of licensee of person in possession - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person has a title to such possession at the time when such license was given.

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11. In view of the above clear provision and the submission of the defendant itself that the amounts used to be paid to the plaintiff, the argument that the present suit is not maintainable because the plaintiff himself is a licensee has to fail.

12. So far as the argument that the defendant continued to be in occupation of the premises, and paid rents which were received in cash by the erstwhile management (and subsequently by the plaintiff) is concerned, again this is unsupported by an documentary material. As to when the amounts were paid; what were the amounts paid and the approximate period when the protests were made by the defendant about the receipts not being issued, has not been

averred, much less proved or substantiated by any document or letter. In these circumstances, the defendant's contention about having paid cash amounts which were being regularly accepted by the plaintiff or his predecessor, cannot be sustained.

13. In view of the ruling of the Supreme Court in B.M. LalL (Dead) by L.Rs v. Dunlop Rubber & Co. Ltd. and Ors. (supra), the Court is of the opinion that there is sufficient material indicative of the fact that late Sh. Budh Singh Rawat was allowed to live in the premises as a licensee on a rent-free or license-fee free basis. The said privilege ceased upon his demise sometime in 1989. The defendant has been unable to disclose the authority by which she can continue in the premises.

14. In view of the above findings, the suit has to succeed and is accordingly decreed in terms of para (a) of the Relief Clause. The plaintiff had, during the course of proceedings given-up the other reliefs. The defendant is directed to vacate the premises and hand-over possession to the plaintiff upon the expiration of three months. In the peculiar circumstances of the case, there shall be no orders as to costs.