
(2002) 09 DEL CK 0154
In the Delhi High Court
Case No : IA 6726-02 in S. 1256-82

Shri Yatendra Nath Gupta

APPELLANT

Vs

Shri Jagdish Chander Sharma and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 3, Order 14 Rule 5, 151

Citation : AIR 2003 Delhi 267 : (2002) 101 DLT 59

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Anjana Gosai, for the Appellant; Lalit Bhardwaj, for the Respondent

Final Decision : Disposed Off

Judgement

S.K. Agarwal, J.

By this application under Order 14 Rules 3 and 5 read with 151 CPC, defendants are seeking amendment or framing of the additional issue.

1. plaintiff filed the suit against the defendants or recovery of possession of the premises bearing Nos. E-16 and E-40, Connaught Place New Delhi and mesne profits etc. The case set up by the plaintiff is that R.L. Sharma (father of defendant Nos. 1 and 2), was employed with late Lala Amar Nath (father of plaintiff), who died in the year 1932, leaving behind his widow, two minor daughters and ten month old son (plaintiff). There was no adult male member in the family to look after his business. R.L. Sharma was asked to stay and look after the interest of the minor (plaintiff). In order to enable him to discharge the duties entrusted to him, R.L. Sharma was allowed occupation (as an employee only) of a flat in the mezzanine floor of property No. E-16, Connaught Place, New Delhi (the suit property), and when he fell sick and was bed ridden, he was allowed to use the portion of the flat bearing No. E-40, Connaught Place, New Delhi. Thus he was merely a licensee. The defendants in the written statement (para 7 to 11), while denying above averments have pleaded that R.L. Sharma

occupied the premises in question as a tenant under late Lala Amar Nath. It is specifically denied that he was a licensee. On 27.2.1987 following issues were framed:

1. Whether the suit is bad for non-joinder/ misjoinder of parties?
2. Whether the suit is bad for mis-joinder of causes of action?
3. Whether the defendants are the tenants in the property in dispute? (Onus objected to)
4. If issue No. 3 answered in favor of the plaintiff, whether the plaintiff is entitled to charge mesne profits? If so at what rate and for what period?
5. Whether the plaintiff is the owner of the property in dispute?
6. Whether the plaintiff is entitled to charge interest? If so, at what rate?
7. Relief.

I have heard learned counsel for parties and have been taken through the record.

2. Learned counsel for defendants argued that no issue has been framed regarding specific stand taken by the plaintiff in the plaint to the effect that R.L. Sharma, father of defendant Nos. 1 and 2 was a licensee in the suit premises. That issue No. 3 is erroneously framed and same needs to be amended or fresh issue in this regard be framed, putting the onus on the plaintiff regarding the case set up by him. Learned counsel for plaintiff argued to the contrary submitting that defendants/applicants by this application are attempting to delay the proceedings and the issue have been correctly framed.

3. I have considered the rival contentions. Law for amending issues, or framing of additional issues is well settled. During the course of the trial in the suit, the court is bound to take cognizance of the question going to the root of the subject matter in controversy between the parties. Perusal of the issues noted above, shows that no issue has been framed on the case set up by the plaintiff that R.L. Sharma (father of defendant Nos. 1 and 2) was licensee in the premises. In my considered view, the interest of justice would be met, if issue No. 3 is amended, so as to include the plea of the licensee, set up by the plaintiff. It is necessary for determining the matter in controversy between parties. Accordingly, issue No. 3 is amended as follows:

3. Whether Shri R.L. Sharma (father of defendant Nos. 1 and 2), was a licensee or tenant in the premises in dispute? (Onus on both the parties)
4. plaintiff evidence is still being recorded. If plaintiff desires he may file affidavit by way of "examination in chief" of his witnesses, in support of the amended issue or in the alternative re-examine him/them.

With the above directions application stands disposed of.