

(2007) 01 DEL CK 0067

In the Delhi High Court

Case No : Regular Second Appeal No. 07 of 2007

Smt. Kamlesh

APPELLANT

Vs

Shri Pritam and Shri Madan Kumar

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151

Citation : (2007) 137 DLT 616

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Santosh Jain, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The case of the appellant/plaintiff is this. She is a tenant in respect of House No. A-215, First Floor, J.J. Colony, Wazir

Pur, since 1981, under Shri Pritam, respondent No.1, who is her father-in-law at the rental of Rs.300/- per month. The respondent No.1 never

issued the rent receipts. In the year 1985, the rent was enhanced to Rs.400/- per month and on 20.07.1995, it was further enhanced to Rs.600/-

per month. Madan Kumar, respondent No.2/defendant No.2 is appellant's husband. The relations between husband and wife went awry because

respondent No.2 used to drink and quarrel with the appellant. The respondent No.1 had taken Rs.30,000/- from the appellant to pay of the

security amount deposited by another tenant and had grabbed Rs.50,000/- from the appellant.

2. The respondent No.1 filed a collusive suit bearing No.241/2001 for mandatory injunction and recovery of damages/ mesne profits praying

therein to direct the respondent No.2 and his family members to handover the

vacant physical possession of the suit premises. The said collusive suit was decreed against the respondent No.2 and his family members on 16.11.2002. In that suit, respondent No.2 was shown as a licensee. It is alleged that her husband took this situation lying down and did not contest the suit tooth and nail. The appellant, who is a tenant was not made a party to that suit. It is alleged that on 18.11.2002, the respondents No.1 and 2 came at about 2.00 PM and threatened the appellant to vacate the premises in dispute or else face dire consequences. Under these circumstances, the appellant filed the instant suit before the learned Trial Court wherein she prayed that the decree passed on 16.11.2002 be declared as null and void and decree for permanent injunction in favor of the appellant and against the respondents may be passed, thereby restraining them from dispossessing the appellant from the premises in dispute without due process of law.

3. During the pendency of this case, Pritam, respondent No.1 moved an application under Order VII Rule 11 read with Section 151 C.P.C. for dismissal of the suit. The said application was accepted by the learned Trial Court vide its order dated 23.11.2004. The first Appellate Court also dismissed the appeal filed by the appellant vide its order dated 06.09.2006. Aggrieved by that order, the instant second appeal has been filed.

4. I have heard the learned Counsel for the appellant. A four fold argument was advanced by her to assail the judgments of the lower Courts.

Learned counsel for the appellant vehemently argued that her suit cannot be dismissed under Order VII Rule 11 C.P.C. She submitted that the

appellant was not made a party to the first suit. She contended that she should have been made a party. It was also argued that the lower court

erred in discussing the evidence while deciding the rights of the parties. The appellant should have been given an opportunity to produce evidence.

5. All these arguments have left no impression upon the Court. In the suit bearing No.241/2001 filed by the respondent No.1, the following issue

was also framed by the Court :

Whether the wife of the defendant is a tenant of the plaintiff with respect to the suit property? (OPD).

I have also perused the file No.241/2001, wherein the appellant Kamlesh had filed an affidavit in support of her case. Paragraph Nos.1, 2 and 7

are reproduced as under :

1. That I am the defendant's wife and well conversant with the facts of the case and competent to swear this affidavit.

2. That I had taken two rooms, latrine, situated at first floor in the premises No.A-215 (FF), Wazirpur JJ Colony, Delhi, on rent @ Rs.600/- per

month from the plaintiff and also paying 1/3 bill of light and water charges.

7. That I am the tenant under the plaintiff, there is no question of revoking the license of the defendant. I am the lawful tenant under the plaintiff and

paying Rs.600/- per month as a rent, but the plaintiff was not issuing any rent receipt.

She also appeared in the dock. In her cross-examination as DW4, she admitted that her husband used to give her the rental amounts of Rs.300-

Rs.400 per month. She explained that thereafter she further handed over the rent of Rs.300-Rs.400 to her father-in-law. In the said suit, the Trial

Court was pleased to hold :

In view of the discussion hereinabove, I am of the considered opinion that the defendants have failed to prove that his wife is a tenant in the suit

property and infact he had admitted that he is licensee in the suit property.

6. As a matter of fact the appellant does not have a crow to pluck with someone. It appears that husband and wife are working cheek by jowl. On

the one hand, she deposed that she used to pay rent to respondent No.1 which was actually given by her husband and on the other hand she had

no qualms in alleging collusion between her husband and father-in-law. If so, then, who is paying the litigation expenses? Her counsel could not

produce rent receipts. Her counsel claimed that she has paid up to date rent without getting rent receipts despite the fact that they are at

loggerheads since her father-in-law allegedly threatened her to vacate the premises on 18.11.2002 and litigation is pending between them since

long. It is well settled that no man should be vexed twice for the same cause.

7. The learned Trial Court has rightly relied upon an authority reported in S.P. Chengalvackya v. Jagannath 1994 RLR SC 102, wherein the portion

of the head-note runs as follows :

Unscrupulous persons are abusing court process using it as lever to retain illegal gains. A person whose case is based on falsehood can be

summarily thrown out at any stage of litigation. Rules cannot be reduced to absurdity to become engine of fraud by dishonest litigants.

8. In T. Arivandandam Vs. T.V. Satyapal and Another, , it was held :

We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly

resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First

Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints.

The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of

not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned

therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party

searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining

the party at the first hearing so that bogus litigation can be shot down at the earliest stage.

9. The appeal has no force and the same is, Therefore, dismissed in limine. Copy of this order be sent to the lower Court along with L.C.R.

forthwith.