
(1999) 04 DEL CK 0029

In the Delhi High Court

Case No : F.A.O. (OS) No. 92 of 1999

Sulakshan Kumar

APPELLANT

Vs

Multani Properties and Investment Co. Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 30-04-1999

Acts Referred:

Citation : (1999) 5 AD 467 : (1999) 80 DLT 589 : (1999) 4 RCR(Civil) 525

Hon'ble Judges : Devinder Gupta, Acting C.J.;Kripa Shankar Gupta, J

Bench : Division Bench

Judgement

K.S. Gupta, J.—This appeal by the plaintiff-appellant is directed against the order dated 11th March, 1999 of a learned Single Judge by which the plaint was ordered to be returned for presentation before a Court of competent jurisdiction.

2. Suit was filed, inter alia,alleging that the plaintiff was inducted as a tenant in the front covered verandah having an area of about 250 sq.ft. on the first floor of the property bearing No. H-68 Connaught Circus, New Delhi along with the right to use the common toilet in the rear portion in the year 1978 at a monthly rent of Rs.100/- by Smt.Geeta Vanti, general attorney of Sat Prakash Trehan and Bhupinder Prakash Trehan, the owners of the property with the tacit consent of defendants 2 and 3 / respondents 2 & 3. After the death of the original owners of the property their heirs sold the said property H-68, Canaught Circus, along with the other properties to M/s. Multani properties and Investment company Private Limited, defendant No. 1/respondent No. 1 in 1981. Accordingly by operation of law the plaintiff became a tenant under defendant No. 1 in respect of the front covered verandah at a monthly rent of Rs. 100/-. Defendants 2 and 3 after the sale of the aforesaid property continued to be the tenant in respect of two rooms, open courtyard with a right to use the toilet in the rear portion of the first floor portion of the property at a rent of Rs. 100/- per month.

3. It is further pleaded that on having learnt about the filing of Eviction Case No. 513/1981 by defendant No. 1 u/s 14(1)(a),(b),(d),(k) of the Delhi Rent Control Act, 1958 against defendants 2 and 3 for their eviction from the entire fist floor

consisting of two rooms, kitchen, open courtyard, verandah in front, combined bath room and latrine of said property No. H-68, the plaintiff filed an application under Order 1, Rule 10, CPC for impleading him as a respondent in the said petition. By the order dated 28th November, 1996 that application was dismissed by the Additional Rent Controller, Delhi inter alia, observing that if the plaintiff has any independent right to occupy the front covered verandah he can file objections u/s 25 of the Delhi Rent Control Act. C.M. (Main) 5 of 1997 filed against the order dated 28th November, 1996 was dismissed by this Court on 6th October, 1998 on the ground of the application under Order 1, Rule 10, CPC having been filed belatedly. It is stated that in the event of an order of eviction being passed in said Case No. 513/1981 the plaintiff apart from his right to file objections u/s 25 of the Delhi Rent Control Act, has also legal right to file suit. The relief claimed by the plaintiff in the suit are as under:

(a) A decree for declaration be passed in favor of the plaintiff and against the defendant No. 1 to the effect that the plaintiff is and has been the direct, real and independent tenant of the suit property consisting of the front covered verandah having an area of 250 sq.ft. Along with the right to use the common toilet in the rear portion existing on the first floor of property No. H-68, Connaught Circus, New Delhi, since the year 1978 at a monthly rent of Rs. 100/- previously under the erstwhile owners/ landlords and after the transfer of the property to the defendant No. 1 the tenant under it by operation of law, as shown by the words A B E F in the yellow colour in the plan filed with the plaint.

(b) As a consequential relief a decree for permanent injunction be passed in favor of the plaintiff and against the defendant No. 1 restraining the defendant No. 1, its servants and agents from forcibly dispossessing the plaintiff from the suit property or in execution of any order of eviction being passed by the Rent Controller Authorities in the Eviction Case No.513/1981 or otherwise without due process of law in any manner whatsoever....."

4. In terms of the impugned order the plaint was ordered to be returned by the single Judge observing:

"The plaintiff has valued the suit for purposes of Court-fee and jurisdiction at Rs. 6 lakhs. According to the averments made in the plaint, the suit premises were let out to the plaintiff at a monthly rent of Rs. 100/- . The suit ought to have been valued at the annual letting value of the suit premises i.e. Rs. 1,200/- . There appears to be no rational basis for valuation of this suit at Rs.6 lakhs. No doubt the plaintiff has right to put its own estimation of the reliefs sought in the plaint and that valuation has to be ordinarily accepted. But if the Court finds that such valuation is arbitrary or unreasonable, the Court can revise it. (Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaits Chandeshwar Prasad and Meshwar Prasad and Another, . In my opinion, the valuation put up by the plaintiff is arbitrary and unreasonable. Consequently, the plaint is returned to the plaintiff for its presentation before a Court of competent jurisdiction."

5. We are of view that the appeal can be disposed of without issuing notices to the defendants-respondents as summons in the suit have not been issued and the impugned order was passed when the plaint was taken up for consideration.

6. We have heard Mr. S.S. Panwar, Counsel for the appellant.

7. Para of the plaint dealing with payment of Court-fee and valuation which is relevant reads thus:

"That the value of the suit for purposes of Court-fee and jurisdiction for the relief of declaration and the consequential relief of permanent injunction is Rs.6,00,00,00/-(Rs. six lakhs) under the provisions of Section 7(IV)(C) of the Court Fees Act and the same is the valuation under the Suit Valuation Act. A Court-fee of Rs. 8,200/-(Rupees eight thousand two hundred) has been paid."

8. In another Suit No. 2514/1998 entitled Smt.Shakuntala Rani Vs. Sh. Rajesh Bhatt, (deceased) through LRs.,by an order dated 17th November, 1998 the plaint was ordered to be returned to the plaintiff for being presented before a Court of competent jurisdiction by a Single Judge observing that as the suit premises were let out to the plaintiff at a monthly rent of Rs.200/- the plaintiff ought to have valued the claim on the amount of the annual rent of the suit premises and there was no rational basis for valuation of the plaint on Rs. 5,05,000/-. Relief claimed in that suit was for passing a decree of permanent injunction restraining the defendants from causing any damage to the tenanted shop and also from interfering with the possession of the plaintiff in any manner whatsoever. In FAO(OS) 301 /98 Smt. Shakuntala Rani Vs. Sh. Rajesh Bhatt (deceased) through LRs., decided on 22nd April, 1999 taken out by the plaintiff against the said order dated 17th November, 1998 taking note of the ratio in the decisions in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, and Smt. Sheila Devi & Ors. Vs. Sh. Kishan Lal Kalra & Ors. 1974(II) (Delhi) 491, this Bench has taken the view that it was not open for the learned Single judge to have formed his opinion and substitute that for the plaintiff that the suit ought to have been valued for purposes of Court-fee at Rs. 2,400/- being the amount of the annual rent of the suit shop and that the valuation put up by the plaintiff at Rs. 5,05,000/- was arbitrary and unreasonable; that the amount of rent of immovable property payable for the year next before the date of presentation of the plaint is relevant only in such of the suits between landlord and tenant which are referred to in various clauses of Sub-section (xi) of section 7 of the Court Fees Act. Decision in Tara Devi's case (supra) which had been relied upon by the single Judge, would be applicable only when the plaint is shown to have been demonstrably undervalued and the suit fell under Clause(d) of Sub-section (iv) of Section 7 of the Court Fees Act.

9. Undoubtedly reliefs claimed in the present suit fall under Sub-clause (c) of Clause(iv) of Section 7 of the Court Fees Act as may be seen from the impugned order. Further in the opinion of the learned Single Judge the suit has not been undervalued by the plaintiff. The point in issue in this appeal is fully covered by

the decision in aforesaid FAO(OS) 301/98 and, Therefore, the order under appeal cannot be legally sustained.

10. Consequently, while allowing the appeal, the impugned order is set aside. Learned Single Judge will now entertain the suit and proceed to decide it in accordance with law. No order as to costs.

11. Appellant to appear before the Single Judge on 6th May,1999.

12. Appeal allowed.