

(2011) 03 DEL CK 0402

In the Delhi High Court

Case No : Regular Second Appeal No. 239 of 2005 and CM No. 11757 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

National Security Assurance Co. Ltd.

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0402

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 26.05.2005 whereby the suit filed by the Plaintiff i.e. M/s National Security Assurance Co. Ltd. (through its voluntary liquidator) had been decreed.

2. Present suit was a suit for possession. The Company M/s National Security Assurance Co. Ltd. was a joint stock company. Vide Resolution dated 07.06.1962, the Plaintiff company went into voluntary liquidation. Mr. N.R. Desai and Dr. Rustom C. Cooper were appointed as voluntary liquidators. After the resignation of Mr. N.R. Desai vide Resolution dated 13.09.1973 Mr. N.P. Sarda and Mr. R. Raghavan were appointed liquidators jointly and severally with Dr. Rustom C. Cooper. Present suit has been filed through Mr. N.P. Sarda. The contention of the company is that it is lawful tenant of K-41, Sher Singh Building, Opposite Plaza, Connaught Circus, New Delhi under the landlord Sh. Om Prakash. In 1958, the Plaintiff company had allowed the erstwhile company namely Vulcan Insurance Company Ltd. to occupy a portion of the suit premises as a licensee; this portion comprised of two rooms with common bath and latrine. Vulcan Insurance Co. Ltd. merged with the Defendant company i.e. M/s United India Insurance Co. Ltd.. The Defendant company is keeping the premises under lock and has not paid any compensation to the Plaintiff company. The Plaintiff company is in de

jure and de facto occupation of the suit premises. Only a temporary license had been granted to Vulcan Insurance Company Ltd.; the Defendant had no right to retain the possession. Suit for possession was accordingly filed.

3. In the written statement, the claim of the Plaintiff had been refuted. It was stated that the Defendant had been paying rent directly to owner namely M/s Sher Singh Ranbir Singh who had been signing vouchers for the receipt of the rent in favour of M/s Vulcan Insurance Company Ltd. The Defendant being the tenant in the suit premise, the Civil Court has no jurisdiction to try the suit.

4. On the pleadings of the parties, the trial Judge had framed 7 issues. One witness was examined on behalf of the Plaintiff. He was the liquidator Mr. N.P. Sarda. He had proved documents Ex. PW-1/1 & Ex. PW-1/2 which were resolutions evidencing his capacity to institute the suit. Admittedly an earlier eviction petition had been filed by the landlord M/s Sher Singh Ranbir Singh against the Defendant; the written statement filed by the Defendant in that eviction petition had been proved through the version of PW-1 as Ex.PW-1/19 and ex. PW-1/20; the said petition had been dismissed as withdrawn vide judgment Ex. PW-1/21. It is pointed out by the learned Counsel for the Appellant that this eviction petition had been withdrawn without seeking any liberty to refill a fresh proceeding.

5. The Defendant did not lead any evidence. Trial judge held that the specific plea set up by the Defendant that he was the tenant and he had been paying rent directly to the owner M/s Sher Singh Ranbir Singh had not been proved. The Plaintiff on the other hand had been able to establish through cogent oral evidence that the Plaintiff had only permitted Vulcan Insurance Company Ltd. to occupy the premises as a licensee; thereafter Vulcan Insurance Company Ltd. had merged with the Defendant; the Defendant had no independent title; being only a licensee he was liable to be evicted. There was no relationship of landlord and tenant between the parties. The suit had accordingly been decreed.

6. The impugned judgment had endorsed this finding.

7. This is a second appeal. It had been admitted and on 16.03.2007, the following substantial questions of law were formulated:

1. Whether the Civil Judge has jurisdiction to try this case?
2. Whether the Appellant is in possession of the premises in dispute as a licensee or direct tenant under the owner/landlord or the Respondent?
8. On behalf of the Appellant, it has been urged that the judgments of the two courts below are perverse for the reason that only one witness has come into the witness box namely the voluntary liquidator Mr. N.P. Sarda who had no personal knowledge in the present case because admittedly he was not in the picture at the time when the so called license was created. This was a clear case of tenancy. Jurisdiction of the Civil Court was barred.

9. None has appeared for the Respondent although he has been served.

10. The findings in the impugned judgment do not in any manner call for any interference. The suit was Plaintiff had been rightly decreed. The case of the Plaintiff as is evident from the documentary evidence including the written statement filed by the Defendant in the earlier eviction proceedings (Ex.PW-1/20) had been adverted to. In Ex.PW-1/20 the National Security Assurance Co. Ltd. had set up a plea that it is the exclusive tenant in the suit property; it had granted permissive user of the property to Vulcan Insurance Company Ltd. Ex.PW-1/19 was the written statement of Unit Vulcan wherein it was admitted that M/s National Security Assurance Company was the tenant of the suit premises. Thereafter, on a subsequent date i.e. 28.07.1976 in view of the statement made by the parties, the landlord had sought permission to withdraw this eviction petition. This document is Ex. PW-1/21. The defence set up by the Defendant in the present suit was that it had been paying rent directly to the landlord M/s Sher Singh Ranbir Singh was never substantiated. In fact there was no evidence adduced by the Defendant at all; it did not lead any evidence; its defence had stood closed.

11. Both the fact finding courts had correctly returned a finding that the Defendant was only a licensee in the suit premises; it had been granted only permissive user by the Plaintiff in a portion of the suit property; after its merger with the United India Insurance Company Ltd., it had no right to retain the suit premises without any authorization. Relationship of landlord-tenant did not stand substantiated as this stand taken by the Defendant was never proved. In no manner, the findings in the impugned judgment are perverse. The impugned judgment in fact examined all issues raised before it and returned the aforementioned findings. They read as under:

13. The plea that the suit is time barred was not raised before the learned trial court and has been for the first time in appeal. But being a legal issue, the same can be entertained in appeal also. The Plaintiff/ Respondent has averred in its suit that in 1958 it allowed Vulcan Insurance Company Ltd. as a licensee out of its own free will and without any contractual obligations. The Appellant/ Defendant company its merger with M/s Vulcan Insurance Company Ltd. did not acquire any right over the premises. The Plaintiff/ Respondent made repeated requests and demands to it to hand over the portion in their possession to the Respondent/Plaintiff. Since they failed to do so, finally on 02.05.1978 a registered notice was sent calling upon them to stop its occupation and hand over the portion in their possession to the Plaintiff/ Respondent. The suit has been filed on 17.07.1979.

14. The Appellant in their written statement have not specifically denied that the Plaintiff/ Respondent did not make any requests or demands to it to hand over the possession of the premises in their occupation. Neither they have denied the receipt of notice dated 02.05.1978 served on it by Plaintiff/Respondent. Thus from the pleadings of the parties, it is apparent that after passing of the General

Insurance Business, Nationalisation Act, 1972, the Appellant company merged with M/s Vulcan Insurance Company Ltd. The Respondent did not recognize their possession in the suit property. Thus they asked them many times to remove their goods from the said premises. Therefore, the suit filed by the Respondent/Plaintiff is within the period of limitation.

15. The Appellant has contended that the Respondent has not paid proper court fees for valuation of the suit. That the Respondent is liable to pay the court fees u/s 7(v)(e) of the Court Fees Act, 1870. It is an admitted case of the parties that the Respondent was tenant in the suit property under the original landlord. Thus he could no acquired better right than of a tenant in the suit premises. Therefore he is entitled to pay the court fees according to the provisions of Section 7(v)(c) that is according to the amount of rent of the immovable property to which the suit refers payable for the year next before the date of presenting the plaint.

16. The Respondent has averred that the monthly rent of the premises is Rs. 82.50/- and the annual rent comes to Rs. 990/- which it has fixed as the value for the court fees and for the purpose of jurisdiction. The Respondent has paid the court fees on the said amount. The Appellant has not stated that how much monthly rent the suit premises could fetch during that time. Neither it has proved any other market rent than as averred by the Respondent. Thus the learned trial court has correctly held that suit has been properly valued for the purposes of court fees and jurisdiction.

17. It was contended on behalf of the Appellant that the Respondent had abandoned all his rights and interests in the suit property. Thus it had no legal right to file the present suit. PW-1 Sh. N.P. Sarda has deposed that "the Plaintiff company is in possession of the suit premises even today. However a portion of the premises was given to M/s Vulcan Insurance Company Ltd. to use the same on the leave and license basis. The remaining portion of the suit property is in their possession. At no time, neither the Vulcan nor the Defendants were in exclusive possession of the suit premises." The witness has not been cross-examined on the said deposition. However, he has denied the only suggestion made to him that the Plaintiff/ Respondent company is not in possession of any part of the suit property.

18. In the written statement the Appellant has claimed that M/s Vulcan Insurance Company Ltd. was in exclusive possession of the premises. However, Appellant has not proved the said plea raised by it. Neither it has proved that the Plaintiff/Respondent had surrendered the entire possession of the tenanted premises to M/s Vulcan Insurance Company Ltd. and since 1958 the Appellant company is in the exclusive possession of the premises. Thus the learned trial court has correctly decided issue number 2.

12. There being no relationship of landlord and tenant between the parties, civil court had the jurisdiction to entertain the present suit; the Defendant was only a licensee. Both the substantial questions of law are answered accordingly.

13. There is no merit in this appeal. The appeal as also the pending application is dismissed.