
(2000) 08 DEL CK 0052

In the Delhi High Court

Case No : I.A. No. 3159/99 In S. No. 3381/91

Zulfiqar Ali Khan (dead) through LRs and Others

APPELLANT

Vs

Straw Products Limited and Others

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Citation : (2000) 56 DRJ 590

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. Parijat Sinha, Mr. L.R. Gupta, Mr. H.S. Chandhoke and Mr. Prashant Pakhiddey, for the Appellant; Mr. Rajiv Endlaw, Ms. Mukti Choudhary and Ms. Pinky Anand, for the Respondent

Judgement

J.B. Goel, J.—By this order plaintiffs application under Order 12 Rule 6 of the CPC (for short "CPC") for passing a decree of possession is being disposed of.

2. plaintiffs have filed a suit for ejectment and mesne profits against defendant No.1. plaintiffs along with defendants No. 2 and 3 had leased out the property known as "Rafat Mahal" bearing No.19, Friends Colony (West), New Delhi to defendant No.1 for a period of ten years w.e.f. 1.6.1979. A registered lease deed was also executed. The rent was agreed to be at Rs.5,500/- per month and in terms of the lease which provided two 10% increase every three years, the rent was increased to Rs.6,050/- w.e.f. 1.6.1982 and then to Rs.6,600/- w.e.f. 1.6.1985. Three notices dated 12.4.1989, 10.5.1989 and 27.5.1989 were sent to vacate on expiry of the lease. A notice terminating the tenancy dated 10.6.1991 requiring to vacate the premises on the expiry of 30.6.1991 was also sent, though it is alleged that it was not necessary as the tenancy had already expired on expiry of fixed period of ten years. The defendant did not vacate and so the plaintiffs filed the suit for recovery of possession and mesne profits.

3. The defendant No.1 has filed written statement contesting the suit. It is alleged that the premises was let out by plaintiffs and defendants No.2 and 3 and the notice of termination of tenancy given and also the suit for ejectment filed on

behalf of plaintiffs alone is not maintainable. Also that the notice of termination of tenancy dated 10.6.1991 is not valid as the earlier tenancy which was for a period of ten years commencing from 1.6.1979 expired on 1.6.1989 and the tenancy terminated with the expiry of 30th June 1989 is not valid. It is also alleged that it was agreed by the plaintiffs that defendant No.1 shall continue as a monthly tenant after the expiry of 10 years period of tenancy; the defendant was treated as a monthly tenant as rent was sent monthly by means of cheques which were retained by defendant No.1; the notice of termination of tenancy sent on 10.6.1991 also shows that monthly tenancy was created. It is also alleged that tenancy had commenced before the Delhi Rent Control (Amendment) Act of 1988 and the suit was barred under the Delhi Rent Control Act, 1958 (for short "the Act"). Though the factum of agreed rent with the increase in rent @ 10% every three years is not denied, however, it is alleged that the standard rent of the premises was less than Rs.3,500/- per month. It is thus denied that the plaintiffs are entitled to a decree for possession or mesne profits.

4. plaintiffs application under Order 12 Rule 6 CPC is also being contested on similar lines. It is denied that any admission is made for invoking Order 12 Rule 6. On the other hand, it is alleged that disputed questions of fact and law arise which need trial.

5. I have heard learned counsel for the parties. Learned Senior Counsel for the plaintiffs has contended that the factum of tenancy for a fixed period of ten years, the agreed rate of Rs.5,500/- per month and the last monthly rent paid @ Rs.6,600/- are not denied. Since the rent is more than Rs.3,500/-, the Act will not be applicable. The tenancy had come to an end with the expiry of ten years period and no further notice of termination of tenancy was required, however, without admitting that it was a monthly tenancy, by way of abundant precaution, the notice of termination dated 10.6.1991 was sent and served on defendant No.1 15 days before the expiry of the tenancy month. It is also contended that the plaintiffs had never agreed for continuance of the tenancy nor had accepted rent and it is not a case of holding over, the cheques were sent by the defendant of their own without any demand by the plaintiffs and were not accepted as rent nor encashed. It is also contended that the notice of termination even otherwise is valid, and as all the lessors have been impleaded in the suit, the suit is proper and is maintainable. In view of the admission of tenancy for fixed year, its expiry and monthly rent being more than Rs.3,500/-, no triable issues arise. Reliance has been placed on certain case law also.

6. Whereas learned counsel for defendant No.1 has contended that neither there is express admission nor constructive by law of pleading under Order 8 Rules 3 to 5 CPC. On the pleadings, triable questions of law and fact arise which could be decided after framing of issues under Order 14 Rule 1 CPC and recording evidence and so neither Order 12 Rule 6 nor Order 15 Rule 1 is attracted. It is also contended that after expiry of this period of 10 years, it was agreed that

defendant No.1 would continue as a tenant and defendant No.1 had also been paying the rent every month by means of cheques. Those cheques have been accepted and retained by the plaintiffs; the monthly tenancy was created thereby also; that notice of termination dated 10.6.1991 was given also shows that monthly tenancy was created. That notice is not valid as the tenancy has not been terminated with the expiry of the tenancy month which would not expire on 30.6.1991 but on first day of following month. He has also relied on some case law.

7. I have considered the contentions, the pleadings of the parties and other material available on record.

8. Under Order 12 Rule 6 CPC, the Court on the application of plaintiff or on its own may make judgment upon the admission made by the opposite party. The object of this rule is to enable a party to get speedy judgment to the extent, according to the admission of opposite party, he is entitled to. Such admission may be either in pleading or in any other document.

9. Order 8 Rules 3 to 5 provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication in pleading of the defendant or by implication, be deemed to be admitted. This will be a constructive admission by pleading. Thus admission could be either express or constructive. Order 15 Rule 1 CPC provides that where the parties are not at issue on any question of law or fact, the Court can pronounce the judgment at once. Order 14 Rule 1 provides for framing of issues where material proposition of fact and/or of law arise out of the pleadings.

10. This is a notorious fact that to drag the case, a person so interested often takes all sorts of false or legally untenable pleas. Legal process should not be allowed to be misused by such persons. Only such defense as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas to delay the suit. The issues will be framed in a suit only when pleadings raise material proposition of law and/or fact which need investigation and so could be decided after trial giving parties opportunities to adduce such relevant evidence as they may think necessary and proper. Material proposition of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved. If a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable court time.

11. Now coming to the facts of the present case. It is admitted by defendant No.1 that the tenancy was created by means of lease deed dated 1.6.1979, a duly registered lease was executed by plaintiffs and defendant No.2 and 3 as lessors and defendant No.1 as lessee. Ex.P-1 is the certified copy of the lease deed. This lease is not disputed. It clearly provides that the lease shall be for a

period of 10 years commencing from 1.6.1979 and the monthly rent agreed is at Rs.5,500/- with a provision for increase twice @ 10% from the commencement of 4th and 7th year. It is not disputed/denied that the rent was being so paid with agreed enhancement. The parties had agreed to these terms and had been acting thereon. They are bound by these terms. Even otherwise, the initial rent was more than Rs.3,500/- and after amendment made in the Act in the year 1988, the premises where the monthly rent was more than s.3,500/- stood excluded from the purview of the Act. Admittedly, the agreed rent is more than Rs.3,500/- per month. Though it is alleged that monthly standard rent is less than Rs.3,500/-, however, it is not the case of the defendant that standard rent of the premises was fixed under the Rent Act. Unless standard rent is fixed, a tenant is bound to pay the rent as agreed.

12. The tenancy had commenced in the year 1979. By the amendment made in the Act in 1988, properties where rent was more than Rs.3,500/- have been excluded from the purview of the Act. It was held in the case of D. C. Bhatia Vs. Union of India JT 1993 (7) SC 114 that this amended Act also applies to the tenancies created before this amendment came into force where the monthly rent is more than Rs.3,500/-. This suit is thus properly laid and is maintainable.

13. The tenancy was for a period of ten years and having come to an end by efflux of time on or about 31.5.1989, no notice for termination of tenancy u/s 106 of the Transfer of property Act was required.

14. However, plea has been taken by the defendant that a monthly tenancy came into existence after expiry of this period of lease as the tenancy was agreed to be continued, rent was being paid by means of cheques, cheques were accepted and retained and also notice of termination of tenancy dated 10.6.1991 was also given. It is also alleged that the notice of termination dated 10.6.1991 is even otherwise not valid for two reasons: firstly, the notice does not terminate the tenancy with the end of tenancy month and secondly all the co-owners have not joined in terminating the tenancy.

15. Whereas on behalf of the plaintiffs it is contended that the tenancy being for a fixed period of ten years, came to an end with the efflux of time and notice of termination of tenancy was not required. The notice dated 10.6.1991 may be ignored as it was without prejudice and by way of abundant precaution and it is also stated in this notice that the tenancy had come to an end after the expiry of 10 years period.

16. Shortly before the tenancy was to come to an end. the lessors through their attorney Shri Sushil Kumar Vohra by means of letter dated 12.4.1989 (Ex.P-4) had notified to defendant No.1 that the tenancy will expire on 31.5.1989 and reminded it to vacate and handover the possession on 1.6.1989. Having received no reply to it, he sent reminder on 10.5.1989 (Ex.P-5) asking the defendant when possession will be given on 1.6.1989. To this, defendant No.1 in reply dated 22.5.1989 (Ex.P-6) took the plea as under:-

"We acknowledge the receipt of your letter dated 12th April, 1989 and 10th May, 1989. We are really surprised to see the contents of the same. The matter was discussed between us and the landlords when the landlords have agreed not to dispossess us after the expiry of the Lease dated 1st June, 1979. It has been agreed that we will be allowed to continue as tenants of the premises and you may refer to the landlords in this regard. In view of this understanding, we had not replied to your letter of 12th April, 1989. However, since you have written to us on 10th May, 1989, we thought of bringing the facts on record."

17. Soon after receipt of it, plaintiff No. 1 by means of letter dated 27.5.1989 (Ex.P-7) refuted the allegations/stand taken by defendant No.1 in their letter dated 22.5.1989 as false. To that, no rejoinder was sent by defendant No.1. During continuance of lease period, question of creation or continuation of existing tenancy would not arise. Two letters dated 10.4.1989 and 10.5.1989 sent by the attorney of the lessors and third letter dated 27.5.1989 sent by plaintiff No.1 indicate that the lessors had made it clear that the tenancy would not be continued after the term of the tenancy came to an end. The stand of the defendant obviously is false and mala fide.

18. Section 116 of the Transfer of Property Act Provides for creation of tenancy by holding over in two circumstances : (1) where the Lesser or his legal representative accepts rent from the lessee; or (2) otherwise assents to his continuing in possession.

19. After the expiry of the tenancy, it appears that some cheques were sent towards rent by defendant No.1 to plaintiff No.1. These cheques were not encashed by the lessors. So, it cannot be said that the rent was accepted by the lessors after the tenancy had come to an end. This was within the knowledge of defendant No.1 that these cheques were not encashed. The act of sending cheques obviously was voluntary and without the consent or authority of the lessors.

20. In view of the express indications given by the lessors in the notices dated 10.4.1989, 10.5.1989 and 27.5.1989 (Ex.P-4 to Ex.P-6) to defendant No.1 to vacate the premises on expiry of 10 year period of lease, it cannot be said that the lessors had "otherwise assented" to their continuing in possession also.

21. As regards the plaintiffs notice dated June 10, 1991 (Ex.P-10), plaintiffs had notified as under:-

"2. That after obtaining permission from the Rent Controller on 1.6.1979 my clients leased out the said property to you for a period of ten years, which ten years expired on 31.5.1989. Registered Lease Deed dated 1.6.1979 was executed. The term has expired.

3. That my clients have accepted rent till the period 31.5.1989 but have refused to accept rent thereafter. There did not subsist any Landlord-Tenant relationship thereafter. The cheques sent by you thereafter were not encashed.

5. Although the expiry of the lease determined your tenancy but by way of abundant precaution my clients, who do not wish to keep you as tenants any more, hereby terminate/determine your tenancy, and require you to hand over vacant physical possession of the property to them at the expiry of the tenancy month of June 1991. According to my clients, the tenancy month expires on the midnight of 30th June 1991."

22. In this notice also, it is not admitted that the tenancy was continued or was subsisting. This has to be read as a whole. It is clearly notified therein that the tenancy period had expired on 31.5.1989 and had refused to accept rent thereafter. This notice has been sent by way of abundant precaution as is so stated therein. This is obviously without prejudice to their contention that tenancy had already expired. The termination of the tenancy by the plaintiffs without joining defendants No.2 and 3 who are the other co-owners would not be valid according to defendant itself. For the same reasons, the plaintiffs alone would not be competent to create tenancy by holding over and so would have no authority to continue the tenancy after the expiry of 10 years on or about 31.5.1989. This notice thus also would not be available to defendant No.1 to show that the lease by holding over came into existence after the expiry of the lease of ten years. In that view, it is not necessary to go into the question of legality or otherwise of this notice.

23. All the lessors are impleaded in the suit, some as plaintiffs and others as defendants No.2 and 3 and thus as necessary parties are before the Court, an effective decree of possession can be passed against defendant No.1. Moreover, defendant No.2 has not filed any written statement and defendant No.3 in her written statement has raised no objection in the plaintiffs filing the suit. Thus other co-owners have no objection in the plaintiffs filing the suit. This suit thus filed by plaintiffs who are co-owners is for the benefit of all the co-owners and thus is maintainable.

24. The defense set up by the defendant thus does not raise any triable and bona fide defense which needs investigation. In that view, the plaintiffs are entitled to a decree for possession against defendant No.1.

25. On the day the case was fixed for arguments, defendant No.1 filed an application under Order 6 Rule 17 CPC to incorporate a plea that defendant No.3 and her daughter have filed a suit for partition before the present suit was filed, claiming 1/6th share in the suit property; the decree of partition that will be passed in the suit will relate back to the day when defendant No.3 and her daughter indicated their intention to partition or when the suit for partition was filed and that event is prior to the institution of the present suit. The decree for partition will separate their share and the rent will be apportioned according to their shares. On partition, defendant No.1 will be tenant under different owners and thereby the rent of their shares will also be separate which will be less than Rs.3,500/- and in that case, the Court's jurisdiction will be barred under the Act.

26. I had put a question to the learned counsel for defendant No.3 that unless partition takes place, how a co-owner can say which portion belongs to him and how such a plea is legally tenable at this stage. He has not shown any authority in support. A suit for partition itself does not effect partition amongst the co-owners and unless a partition by metes and bounds takes place, no one can say which portion belongs to him. Every co-owner has right in respect of whole of the property and the ownership in the property vests in the whole body of co-owners. Thus, till a partition takes place, no owner can claim any right to any particular portion in it.

27. In Sri Ram Pasricha Vs. Jagannath and Others, , it was held:-

"A co-owner is as much owner of the entire property as any sole owner of the property is. Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns part of the composite property along with others and it cannot be said that he is only an owner or a fractional owner of the property."

28. As at present, neither there is partition by metes and bounds nor there is apportionment of rent amongst the co-owners. There is one tenancy. The suit for possession for the entire tenancy premises thus is maintainable. The proposed amendment is based on mere conjecture and assumption. It may be just possible that the property may be found to be not partible by metes and bounds. In that case, it cannot be said that there is division of tenancy and apportionment of the rent. This plea thus is not going to improve the case of the defendant in any way.

29. The defense raised by the defendant thus needs no investigation. As already noticed, lease deed, rate of rent, termination of tenancy by efflux of time stand admitted or are not disputed and need no investigation. A decree for possession thus can be passed in the circumstances.

30. This application is accordingly allowed and a decree for possession of the tenancy premises, namely, 19 Friends Colony (West), New Delhi as per lease deed Ex.P-1 is hereby passed in favor of the plaintiffs, defendants No.2 and 3 and against defendant No.1 with costs so far as this relief is concerned. Defendant No.1 is given one month's time to vacate the premises.

31. This application stands disposed of.