SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Om Parkash vs.anamika

Om Parkash vs.anamika

SooperKanoon Citation : sooperkanoon.com/1216670

Court : Delhi

Decided On : Aug-01-2018

Appellant : Om Parkash

Respondent : Anamika

Advocate for Def. : Mr. Kapil Singhal

Advocate for Pet/Ap. : Mr. K.N. Jha

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

1. t August, 2018. RSA2002017 OM PARKASH * % + CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 ANAMIKA Through: Mr. K.N. Jha, Advocate ..... Appellant Versus Through: Mr. Kapil Singhal, Advocate ..... Respondent This Second Appeal under Section 100 of the CPC impugns the judgment and decree [dated 20th May, 2016 in RCA No.47/2017 (Unique ID No.02402C0019922017) of the Court of Additional District Judge-01, East]. of dismissal of First Appeal under Section 96 of the CPC filed by the appellant against the judgment and decree [dated 16th February, 2017 in CS No.9240/2016 of the Court of Administrative Civil Judge, East]. of dismissal of suit filed by the appellant / plaintiff against the respondent / defendant for recovery of possession of immovable property, recovery of licence fee, damages and for permanent injunction.

2. This appeal came up first before this Court on 4th August, 2017 when, without indicating the substantial question of law, notice thereof was ordered to be issued.

3. The counsel for the respondent appeared in response to the notice and mediation attempted failed.

4. The counsels have been heard. RSA2002017 Page 1 of 7 5. The appellant / plaintiff instituted the suit, from which this appeal arises, pleading: (i) that he is the owner / occupier of jhuggi no.209, Old Seelampur, Delhi; (ii) that the appellant / plaintiff had constructed the said jhuggi with his own monies; (iii) that the respondent / defendant requested the appellant / plaintiff to allow her to reside on the first floor of the jhuggi for a short period and assured that she would pay a sum of Rs.4,000/- per month excluding electricity and water charges as licence fee; (iv) that the respondent / defendant was thereafter paying licence fee to the appellant / plaintiff in cash; (v) the respondent / defendant, however, in the month of November, 2015, stopped paying the licence fee and did not pay the same despite repeated requests; (vi) the licence of the respondent / defendant was terminated vide legal notice dated 5th January, 2016; 6. The respondent / defendant contested the suit by filing the written statement, inter alia pleading:-

"(a) that the respondent / defendant had given a sum of Rs.2,50,000/- as security to the appellant / plaintiff and in response to which, the appellant / plaintiff had allowed the respondent / defendant to stay in his house for a period of three years and it was also agreed that when the respondent / RSA2002017 Page 2 of 7 defendant leaves the house, the appellant / plaintiff shall pay the sum of Rs.2,50,000/- which the appellant / plaintiff had taken as security; (b) that the appellant / plaintiff had however turned dishonest and was not wanting to return the amount of Rs.2,50,000/- paid by respondent / defendant as security; (c) it was denied that the respondent / defendant had agreed to pay Rs.4,000/- per month or ever paid the said amount; 7. The Suit Court, on the date when the suit was listed for first hearing, i.e. before framing the issues, dismissed the suit, reasoning that: (I) the property was a jhuggi and neither the appellant / plaintiff nor the respondent / defendant was the owner thereof; (II) both were squatters over government land. Since the appellant / plaintiff was also a trespasser / squatter, he had no

possessory or proprietary rights and could not transfer the same; (III) if a squatter loses possession, he has no right to re-claim possession.

8. The First Appellate Court dismissed the appeal, merely agreeing with the reasoning given by the Civil Judge.

9. Though no substantial question of law has been framed in this Second Appeal till now, but I have enquired from the counsel for the respondent / defendant, that the respondent / defendant having admitted being put into possession of the property by the appellant / plaintiff and having not pleaded any title to the property or her right to continue in RSA2002017 Page 3 of 7 possession of the property, why should a decree for possession be not passed forthwith, allowing this appeal.

10. I may mention that a suit for recovery of possession of immovable property can be filed either under Section 5 of the Specific Relief Act, 1963 or under Section 6 of the Specific Relief Act. The suit from which this appeal arises was admittedly not under Section 6. As far as suits under Section 5 are concerned, they can be either on the basis of prior possession or on the basis of title. Even if the appellant / plaintiff is presumed to have no title to the property, as held by the Suit Court and the First Appellate Court, though said finding could not have been returned without framing issues and giving an opportunity to the parties to lead evidence, the appellant / plaintiff could have still maintained the suit on the basis of prior possession. The respondent / defendant having admitted being put into possession of the property by the appellant / plaintiff as aforesaid, has to deliver back the possession to the appellant / plaintiff, unless discloses any right and which right has not been disclosed. Only the agreement for payment of licence fee was denied and else the complete reading of the written statement shows the agreement for grant of licence to have not been denied.

11. The counsel for the appellant also is found to be pursuing the suit, I am forced to state, without knowledge of law. The suit, for the purposes of court fees and jurisdiction, is found to have been valued as between a landlord and tenant. On the same being put to the counsel for the appellant / plaintiff, the counsel states that when the agreement is for payment up to RSA2002017 Page 4 of 7 Rs.3,500/- per month, it is a tenancy and if it is more than Rs.3,500/- per month, it

is a licence.

12. The same reflects the manner in which the legal proceedings are being pursued.

13. The threshold of Rs.3,500/- per month is provided in Section 3(c) of the Delhi Rent Control Act, 1958, only for the purposes of applicability thereof. While premises, rent whereof is up to Rs.3,500/- per month, are covered by the Rent Act, premises, rent whereof is in excess of Rs.3,500/- per month, are not covered within the purview of the Rent Act.

14. At this stage, the counsel for the respondent / defendant, under instructions from the respondent / defendant present in Court, states that the respondent / defendant shall vacate the premises within one year and she has no objection to a decree for recovery of possession being passed in favour of the appellant / plaintiff and against the respondent / defendant, subject to the appellant / plaintiff not claiming any arrears of license fee from the respondent / defendant. It is further stated that the respondent / defendant, for the said period of one year, shall pay to the appellant / plaintiff use and occupation charges at the rate of Rs.4,000/- per month with effect from the month of August, 2018 till the month of vacation of the premises. It is yet further stated that liberty be also granted to the respondent / defendant to institute a suit against the appellant / plaintiff for recovery of Rs.2,50,000/- which the respondent / defendant claims to be due from the appellant / plaintiff.

15. The aforesaid is agreeable to the counsel for the appellant / plaintiff. RSA2002017 Page 5 of 7 16. The respondent / defendant is identified by the counsel who states that she has no objection to this appeal being allowed and the suit from which this appeal arises being decreed in favour of the appellant / plaintiff and against the respondent / defendant insofar as for recovery of possession. It is further stated that the respondent / defendant is in occupation and possession along with her minor child of the premises, for recovery of possession of which the suit was filed and none else is in control and/or possession of the said premises.

17. The respondent / defendant undertakes to this Court: (i) to hereafter not induct any other person into possession of the premises aforesaid and to not share the premises with any third party; (ii) to on or before 31st July, 2019 hand over vacant peaceful physical possession of the premises to the appellant / plaintiff; (iii) to pay to the appellant / plaintiff a sum of Rs.4,000/- per month towards charges for use and occupation of the premises aforesaid, with effect from the month of August, 2018, till the month of vacation of the premises on or before 31st July, 2019, in advance for each month by the 10th day of every succeeding English Calendar month; (iv) to pay all electricity and water charges for the premises till the date of vacation of the premises.

18. The aforesaid undertaking of the respondent / defendant is accepted and the respondent / defendant is ordered to be bound thereby and cautioned of consequences of breach of undertaking given to this Court. RSA2002017 Page 6 of 7 19. The appeal is accordingly allowed in terms of the above. A decree is passed in favour of the appellant / plaintiff and against the respondent / defendant, of recovery of possession of first floor of Jhuggi no.209, Old Seelampur, Delhi as shown in the site plan filed along with the plaint and on which site plan, in the Trial Court Record, in todays date, Exhibit C-1 is put for purposes of identification. The remaining claims of the appellant / plaintiff in the plaint is dismissed. However, subject to the respondent / defendant complying with her undertaking aforesaid, the decree for possession is made inexecutable till 31st July, 2019. If the respondent / defendant is in breach of any of the terms of undertaking, the appellant / plaintiff shall be free to initiate proceedings against the respondent / defendant for breach of undertaking given to this Court and shall also be entitled to forthwith execute the decree.

20. It is further ordered that it will be open to the respondent / defendant to institute a suit for recovery of Rs.2,50,000/- with interest against the appellant / plaintiff and the appellant / plaintiff shall be entitled to contest the said suit on all pleas available in law. However, institution and pendency of the said suit will not interfere in any manner whatsoever with the decree aforesaid or execution thereof.

21. The parties are left to bear their own costs.

22. Decree sheet be prepared.

23. The Trial Court record requisitioned in this Court be returned. AUGUST01 2018/pk/ak RSA2002017 RAJIV SAHAI ENDLAW, J.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com