

Om Prakash Malik vs.pawan Kumar Malik

Om Prakash Malik vs.pawan Kumar Malik

SooperKanoon Citation : sooperkanoon.com/1218513

Court : Delhi

Decided On : Oct-05-2018

Appellant : Om Prakash Malik

Respondent : Pawan Kumar Malik

Advocate for Pet/Ap. : Mr. Surendra Mishra, Ms. Sonal Mishra

Judgement :

* [% + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

5. h October, 2018. RSA1462018 & CM No.41229/2018 (for stay). OM PRAKASH MALIK Appellant Through: Mr. Surendra Mishra and Ms. Sonal Mishra, Advs. versus PAWAN KUMAR MALIK CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW Through: Mr. Bhavneet Singh, Adv. Respondent Caveat No.928/2018.

1. 2. The counsel for the caveator appears. The caveat stands discharged. RSA1462018 & CM No.41229/2018 (for stay).

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 19th May, 2018 in MCA/DJ/31/2017 of the Court of the Additional District Judge-05 (West)]. of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 12th April, 2017 of the Court of Civil Judge (West)]. on admissions, under Order XII Rule 6 of the CPC, of ejectment of

the appellant/defendant from Shop No.WZ-6/1, Jawalaheri Market, Paschim Vihar, New Delhi.

4. The counsel for the appellant/defendant has argued that the appellant/defendant, on 1st October, 2018, has already been ejected from the subject shop. He states that no notice was given to him of execution. The counsel for the appellant/defendant further states that he personally asked RSA1462018 Page 1 of 5 the bailiff the date when the bailiff was coming, but the bailiff did not inform him and suddenly came to the shop and removed all the goods of the appellant/defendant therefrom and took possession.

5. I have enquired from the counsel for the appellant/defendant, under which law was the appellant/defendant/judgment debtor expecting to be informed.

6. 7. No answer is forthcoming. Under Order XXI Rule 22 of the CPC, when an application for execution is filed within two years of the date of the decree, no notice is required to be sent to the judgment debtor. The grievance of the appellant/defendant in this context is without any basis in law.

8. The counsel for the appellant/defendant has next drawn attention to the questions of law proposed in para 17 of the memorandum of appeal as under:-

"the impugned a) Whether the 1st Appellate Court is correct in judgment without passing considering the objection of the appellant with regard to cause of action, valuation of suit, jurisdiction, court fee and non termination of tenancy?. b) Whether the 1st Appellate Court is correct in judgment without passing considering the provision of Order 12 Rule 6 CPC and the appellant?. judgment relied upon by impugned the c) Whether the 1st Appellate Court is correct in passing judgment without considering the issue wrong site plan filed by the respondent?. impugned the RSA1462018 Page 2 of 5 d) Whether the Decree dated 19.05.2018 is non executable due to under valuation of suit and deficient payment of court fee and wrong site plant of the suit property?. and has also drawn attention to page 73 of the paper book, being para 17 as under:-

"17. That the value of the suit for the purpose of Court fees for Arrear of Rent, possession and mesne profit and damages at Rs.95,000/- for which court fee of Rs.1,950/- is been paid and Court fee. The plaintiff undertake to pay the deficient court fee if any. of the plaint in the suit from which this Second appeal arises and has contended that the appellant/defendant raised objection that the suit had not been properly valued for the purposes of court fees and jurisdiction; that no separate valuation for each of the reliefs claimed in the suit had been given and that there was no valuation for the purposes of jurisdiction, but neither the Suit Court nor the First Appellate Court have dealt with the said aspects.

9. I have enquired from the counsel for the appellant/defendant that as per which law, according to him, the valuation as done is wrong.

10. Again no answer is forthcoming.

11. Section 7 (xi) of the Court Fees Act, 1870 provides for valuation of a suit, between landlord and tenant, for the purposes of court fees, to be of annual rent payable for the premises. Section 8 of the Suits Valuation Act, 1887 provides that the valuation for the purposes of jurisdiction shall be the same. It was the case of the respondent/plaintiff in the plaint that the appellant/defendant was a tenant on last paid rent of Rs.5,500/- per month i.e. at an annual rent of Rs.66,000/-. It was further the case in the plaint that RSA1462018 Page 3 of 5 the appellant/defendant had not paid rent amounting to Rs.93,000/-.

12. Judgments of as far back as in Kishori Lal Roy Vs. Sharut Chunder Mozumdar MANU/WB/0047/1882 and consistently followed in (i) Reference under the Court Fees Act, 1870, s. 5 1894 SCC OnLine ALL56 (ii) Nauratan Lal Vs. Wilford Joseph Stephenson AIR1922 Pat 359; (iii) In re. Parameswara Patter AIR1930 Mad 833 (FB); (iv) In re. D. Lakshminarayana Chettiar AIR1954 Mad 594 (FB); (v) S.V. Narasimham Vs. P.V.G. Raju Rajah of Vizianagaram 1958 SCC OnLine AP322 (vi) Balmer - Lawrie Vs. Bank of Maharashtra 1999 SCC OnLine Cal 522; and, (vii) Krishna Prakash Vs. Dilip Harel Mitra Chenoy (2001) 93 DLT777(DB) have held, that in a suit for ejectment and for arrears of rent and mesne profits, composite court fees can be paid on valuation for the purposes of ejectment and valuation for the purposes of recovery of arrears of rent and mesne profits. The

respondent/plaintiff was thus entitled to club valuation of Rs.66,000/- with the amount of arrears of rent and mesne profits claimed.

13. Though in para 10 of the plaint, an amount of Rs.93,000/- was pleaded to be due towards arrears, but in the prayer paragraph in the plaint, the claim was only for Rs.75,000/-. Thus the respondent/plaintiff was entitled to club Rs.75,000/- with Rs.66,000/-. The valuation given of Rs.95,000/- was deficient.

14. However the same cannot be fatal to the suit and if the Suit Court, while admitting the suit did not scrutinize the said aspect, the only effect thereof would be that the respondent/plaintiff, either before executing the decree for arrears of rent/mesne profits which has not been passed till now, RSA1462018 Page 4 of 5 will have to pay the deficient court fees or be entitled to recover arrears of rent/mesne profits proportionate to the court fees paid. It has been held by the Supreme Court in Mannan Lal Vs. Chhotaka Bibi 1970 (1) SCC769 that Section 149 of CPC is to be read as a proviso to Section 4 of the Court Fees Act and which reading allows the Court to fix a period of time in which deficiency in court fees can be made good. Similarly, in A. Nawab John Vs. V.N. Subramaniam (2012) 7 SCC738 it has been held that any amount of lapse of time does not fetter the authority of the court to direct the payment of deficient court fees. The same can thus not be reason for framing any substantial question of law.

15. Else, the relationship of landlord and tenant and the rate of rent being Rs.5,500/- per month was not disputed in the written statement and it was not the case that there was any registered Lease Deed entitling the appellant/defendant to continue as a tenant in the shop. The Suit Court was thus entitled to decree ejectment on admissions and the First Appellate Court justified in dismissing the appeal.

16. No other argument has been raised qua other substantial questions of law as framed in the memorandum of appeal. The same, even otherwise, do not arise.

17. The appeal does not raise any substantial question of law and has no merit and is dismissed. No costs. RAJIV SAHAI ENDLAW, J OCTOBER05 2018 pp.. RSA1462018 Page 5 of 5

