

Uma Devi vs.delhi Fruit & Vegetable Consumer Co-Op Federation Ltd & Ors

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Court : Delhi

Decided On : Oct-08-2018

Appellant : Uma Devi

Respondent : Delhi Fruit & Vegetable Consumer Co-Op Federation Ltd & Ors

Judgement :

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

8. h October, 2018 RSA822018 & CM No.41912/2018(u/S151of the CPC read with Order IX Rule 9 of the CPC). UMA DEVI Through: Ms. Suman Kapoor, Adv. Appellant versus DELHI FRUIT & VEGETABLE CONSUMER CO-OP. FEDERATION LTD & ORS

... RESPONDENTS

Through: None. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 21st April, 2016 in RCA No. of the Court of the Additional District Judge-03 (West)]. of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 12th December, 2013 in Suit No.264/2001 (New No.817/2002) of the Court of Senior Civil Judge (West)]. of dismissal of the suit filed by the appellant/plaintiff on 25th September, 2001 for (a) mandatory injunction directing the respondent/defendant no.1 to restore back the possession of Stall No.ME-12 &13, M-Block, Greater Kailash, New Delhi and to handover the articles/belongings

of the appellant/plaintiff lying in the subject stall at the time the respondent/defendant no.1 took possession thereof; and, (b) permanent injunction restraining the respondent/defendant no.1 from parting with possession of the subject stall to any other person. RSA No.82/2018 Page 1 of 6 2. This appeal came up first before this Court on 21st May, 2018 when none appeared for the appellant/plaintiff; however in the interest of justice adverse orders were deferred and the appeal re-notified for 31st August, 2018. On 31st August, 2018 also none appeared for the appellant/plaintiff. Noticing that the appeal was accompanied with applications for condonation of delay of 314 days in filing and of 312 days in refiling thereof, the appeal was dismissed in default.

3. 4. CM No.41912/2018 has been filed for restoration of the appeal. For the reasons stated, the application is allowed and the appeal restored to its original position.

5. 6. CM No.41912/2018 is disposed of. The counsel for the appellant/plaintiff has been heard on admissibility of this Second Appeal against concurrent findings of fact of the Suit Court and the First Appellate Court.

7. I may at the outset state that the appellant/plaintiff claims to have been dispossessed on 14th May, 2001. The suit as aforesaid, was instituted after four months therefrom, on 25th September, 2001. The suit remained pending before the Suit Court for nearly twelve years and the dispossession of the appellant/plaintiff, challenged in this Second Appeal, is nearly seventeen years old.

8. The counsel for the appellant/plaintiff on enquiry states that there was no interim order in favour of the appellant/plaintiff either during the pendency of the suit or during the pendency of the First Appeal. In the said long time, others must have come into use and occupation of the subject stall RSA No.82/2018 Page 2 of 6 and who have not been made parties at any stage of proceedings. In fact the counsel for the appellant/plaintiff states that the respondent/defendant no.1 keeps on changing the persons in occupation of the subject stall and which affirms that the appellant/plaintiff also had no right to the stall.

9. Be that as it may, this Second Appeal is not entitled to be entertained for this reason only.
10. I have enquired from the counsel for the appellant/plaintiff, the right if any of the appellant/plaintiff to the subject stall.
11. The counsel for the appellant/plaintiff states on rental basis.
12. However on being asked to show the registered Rent Agreement entitling the appellant/plaintiff to continue in use/occupation/possession beyond the date of the dispossession, the counsel for the appellant/plaintiff states that the appellant/plaintiff used to pay Rs.500/- per day.
13. The respondent/defendant no.1(the respondents/defendants no.2 to 6 are Registrar of Co-operative Societies, Government of National Capital Territory of Delhi, Naresh Kumar, Ram Gopal and SHO PS Greater Kailash- I) in its written statement pleaded (i) that the husband of the appellant/plaintiff, in the year 1989 was appointed as Stall Incharge with the respondent/defendant no.1 on the basis of Minimum Wages Act and was doing his duty at the subject stall as an employee; (ii) that the husband of the appellant/plaintiff played fraud upon the respondent/defendant no.1; he used to receive fruits and vegetables from the godown of respondent/defendant no.1 and stopped depositing the daily sale amount and the profits earned therefrom; (iii) husband of the appellant/plaintiff, on 7th April, 2001 gave an undertaking that he shall deposit the whole of the arrears of the sale amount RSA No.82/2018 Page 3 of 6 by 30th April, 2001 but which were not deposited; (iv) that the husband of the appellant/plaintiff vide letter dated 7th April, 2001 had admitted that he was the Stall Incharge and working under the respondent/defendant no.1; (v) that the appellant/plaintiff had no right to subject stall and was never in possession thereof; (vi) that there was no privity of contract between the appellant/plaintiff and the respondent/defendant no.1; (vii) the subject stall was never given on a rent of Rs.500/- per day and no such payment was ever made or received; (viii) that the husband of the appellant/plaintiff was dismissed from service on 30th June, 1990 but was subsequently, on 1st November, 1990 , reinstated and on 10th May, 2001 transferred from the subject stall to Shahpur Jat godown of the respondent/defendant no.1; (ix) the subject stall was always in the

control and possession of the respondent/defendant no.1 and neither the husband of the appellant/plaintiff nor the appellant/plaintiff was ever in possession of the subject stall; and, (x) in fact the appellant/plaintiff, under the garb of the suit was attempting to get forcible possession of the subject stall.

14. I have enquired from the counsel for the appellant/plaintiff as to how the appellant/plaintiff, without showing any right as a tenant or otherwise to the subject stall, can seek the reliefs as claimed.

15. The counsel for the appellant/plaintiff states that the respondent/defendant no.1 could not have taken the law into its own hand and ought to have resorted to due process of law.

16. The counsel for the appellant/plaintiff has been reminded of the dicta of the Full Bench of this Court of nearly half a century back in Chandu Lal Vs. Municipal Corporation of Delhi AIR1978 Del 174 holding that a bare RSA No.82/2018 Page 4 of 6 licensee having no interest in the property cannot maintain an action for its possession and reasonable force can be used for removing persons like the appellant/plaintiff from the premises under their respective control.

17. The Suit Court and the First Appellate Court also have held (i) that the respondent/defendant no.1 had proved that the husband of the appellant/plaintiff was an employee of the respondent/defendant no.1 and was in charge of the stall and was required to deposit with the respondent/defendant no.1 the proceeds of sale from the said stall of fruits and vegetables supplied by the respondent/defendant no.1; and, (ii) the appellant/plaintiff had miserably failed to prove her claim.

18. Supreme Court, in Southern Roadways Ltd. Madurai Vs. S.M. Krishnan (1989) 4 SCC603 dealt with the question whether an agent, after revocation of his authority, was entitled to remain in possession of the premises of the principal and interfere with the business thereof. It was held that (a) an agent holds the principals property only on behalf of the principal and he acquires no interest for himself in such property; (b) he cannot deny principals title to property nor he can convert it into any other kind or use; (c) the agents possession is the possession of

the principal for all purposes. The Court further held that the respondent-a commission agent appointed by the appellant Company Southern Roadways Ltd. was in possession on behalf of the company and not on his own right and therefore it was unnecessary for the company to file a suit for recovery of possession. It was held that the respondent/agent had no right to remain in possession of the premises after termination of his agency. RSA No.82/2018 Page 5 of 6 19. In the present case, the appellant/plaintiff has admitted to be in employment of the respondent/defendant No.1. By virtue of his employment, he was put into use/occupation/possession of the subject stall for the limited purpose of doing his duties under the employment of the respondent/defendant No.1 and the appellant/plaintiff cannot now claim any right to the subject stall independent of the employer.

20. In the aforesaid facts the appeal cannot be said to be raising any substantial question of law. Dismissed. No costs. RAJIV SAHAI ENDLAW, J.

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