

Sushil Kumar Vs. Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Pala

Sushil Kumar Vs. Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Pala

SooperKanoon Citation : sooperkanoon.com/33607

Court : Delhi

Decided On : Dec-31-2014

Judge : Sanjeev Sachdeva

Appellant : Sushil Kumar

Respondent : Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Pala

Judgement :

§~6 * IN THE HIGH COURT OF DELHI AT NEW DELHI + RSA4082014 & CM No.21411/2014 SUSHIL KUMAR Appellant Through Mr. K. K. Sharma, Sr. Advocate with Mr. Rakesh Kumar and Mr. Prabhat Kaushik, Advocates. versus DADA DEV MANDIR PRABANDHAK SABHA (BARAH GAON) PALAM Respondent Through CORAM: HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 31.12.2014 SANJEEV SACHDEVA, J (ORAL) CM No.21412/2014 (exemption) Exemption allowed subject to all just exceptions. RSA4082014 1. The appellant has filed the present Regular Second Appeal under Section 100 Read with order 41 CPC against the judgment and decree dated 29.11.2014 passed in Regular Civil Appeal.

2. By judgment dated 29.11.2014, the Court of the Additional District Judge has affirmed the judgment and decree dated RSA4082014 1 29.09.2014 passed by the Court of Senior Civil Judge, who has been pleased to decree the suit for

possession in favour of the respondent (plaintiff before the Senior Civil Judge) and against the appellant (defendant before the Civil Court).

3. The appellant was a tenant in the premises under the respondent society. The society had filed the suit for possession of the tenancy premises.

4. The said suit was filed on the premise that the premises are not covered under the Delhi Rent Control Act, 1958, as no notification under the Delhi Rent Control Act had been issued extending the applicability of the said Act to the area where the said premises is situated.

5. Primarily, two contentions are raised by the appellant. The first is that Mr. Chander Bhan through whom the present suit was filed was not duly authorized and competent to file the suit and secondly, that the appellant (defendant) was protected under Section 50 of the Delhi Rent Control Act, 1958.

6. The suit of the plaintiff was initially decreed under Order XII Rule 6. However, the said judgment was set aside and the matter was remanded back to the trial Court to decide the suit after the evidence was led by the parties.

7. The trial Court framed the following issues:

1. Whether Sh. Chander Bhan is not the duly authorized RSA4082014 2 person to verify, institute and maintain the present suit on behalf of the plaintiff?. OPD.

2. Whether the suit of the plaintiff is barred under Section 50 of the DRC Act?. OPD.

3. Whether the plaintiff is entitled for relief of possession as prayed for?. OPP.

4. Whether the plaintiff is entitled for arrears of rent from the defendant if so, at what rate and for which period?. OPP5 Whether the plaintiff is entitled for mesne profits/damages from the defendant if so, at what rate and for which period?. OPP.

6. Whether the plaintiff is entitled for permanent injunction as prayed for?. OPP.

7. Relief.

8. The parties led their evidence after the issues were framed.

9. The issue No.1 pertaining to the right and authority of Mr. Chander Bhan to verify, institute and maintain the suit was decided in favour of the plaintiff. The trial Court decided the said issue in favour of the plaintiff primarily on three grounds. Firstly, that the plaintiff had been able to prove on record the Resolutions dated 06.05.2012 (Ex. PW1/2) and 20.05.202 (Ex. PW1/3), which authorised Mr. Chander Bhan to verify, institute and maintain the present suit.

10. Secondly that the plaintiff had proved the Resolution dated 16.08.2009 (Ex. PW1/4) unanimously electing Mr. Chander RSA4082014 3 Bhan as the President of the plaintiff Society. The trial Court held that since Mr. Chander Bhan was the President of the Society, under Section 6 of the Society Registration Act, 1860, he was authorized and competent to file the present suit. Thirdly, the Trial Court held that the tenant had no right to challenge the title of the landlord and the tenant being a stranger to the Society had no right or authority to challenge either the election of Mr. Chander Bhan as the President or the authority of Mr. Chander Bhan to verify, institute and maintain the present suit. The said issue was decided in favour of the Plaintiff and the suit was accordingly decreed against the defendant and in favour of the plaintiff.

11. The second issue with regard to the applicability of the Delhi Rent Control Act, 1958 to the area in which the said premises is situated was also held in favour of the plaintiff. The trial Court recorded that an official from the Ministry of Urban Development was produced as a witness by the defendant (appellant themselves), who had brought on record the notification dated 26.02.1986 (Ex.DW4/A) and clarified that the said village was not a part of the notification. The Court, thus, returned a finding that the Delhi Control Act is not applicable to the tenanted premises and the suit was not barred under Section 50 of the said Act.

12. The said two findings were assailed by the appellant by way of a Regular Civil Appeal. The appellate Court had affirmed the RSA4082014 4 findings of fact by the trial court. The appellate Court has recorded that the appellate Court had itself gone through the original minute book containing the Resolution which were produced in Court by the counsel for the plaintiff.

13. The appellate Court had affirmed the findings of fact with regard to the election of Mr. Chander Bhan as the president of the Society and also the Resolution authorizing him to verify, institute and maintain the present suit.

14. The Trial Court as well as the First Appellant Court has gone through the evidence of independent persons who were produced by the parties and were duly examined.

15. After examination of the documents and evidence produced by the parties, both the Court below have returned the finding of fact that Mr. Chander Bhan was the president of the society and was duly authorized and competent to verify, institute and maintain the present suit. Concurrent finding of fact has further been returned that the area in which the said shop is situated is not covered under the Delhi Rent Control Act, 1958. The finding of fact returned by the Trial Court has been affirmed by the First Appellate Court.

16. An appeal under Section 100 of the Code of Civil Procedure, can only lie in case the High Court is satisfied that the appeal involves a substantial question of law. In my opinion, no substantial question of law arises in the present appeal. RSA4082014 5 Concurrent findings of fact have been returned by the Courts below after appreciation of the documents and evidence of the parties.

17. Learned senior counsel for the appellant has relied on the decision of the High Court of Judicature at Bombay in the case of Goa Sate Co-opp. Bank Ltd. Vs. Kurtarkar Traders dated 15.10.2014 2009 SCC OnLine Bom 1644: (2010) 3 Mah LJ297to contend that the proceedings can be initiated by only a duly authorized person.

18. The judgment is not applicable in the facts of the present case as in the present case, the trial court has held that Mr. Chander Bhan is the President of the Society and was thus competent to institute and prosecute the present suit. Further the trial court has held that being the president, he was duly authorized to verify, institute and maintain the present suit. The said findings have been affirmed by the first appellate court.

19. Learned counsel for the appellant has submitted that in identical circumstances by judgment dated 26.04.2014 in RSA No.105/2014, in respect of another shop, this Court has affirmed the decree and judgment passed by the Civil Court as affirmed by the appellate Court. It is contended that the said judgment involves identical questions and pertains to the same respondent society and a shop which is identically situated to the shop of the appellant. It is contended that against the said RSA4082014 6 judgment, a Special Leave Petition has been preferred to the Supreme Court wherein the implementation of the impugned order has been stayed by the Supreme Court. It is submitted that the said leave petition filed by the tenant therein to be listed on 10.02.2015 for final disposal.

20. In my view, the Appellant cannot take benefit of the pendency of Special Leave Petition and stay of the implementation of the order in respect of some other tenant and different premises more so in view of the fact that the said suit was decreed under order 12 rule 6 and the present case has been decided after a trial after framing of issues.

21. No other point is urged or pressed by the counsel for the appellant.

22. I find no merit in the appeal. The appeal is accordingly dismissed.

23. Order Dasti under the signatures of Court Master. SANJEEV SACHDEVA (VACATION JUDGE) DECEMBER31 2014 st RSA4082014 7

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