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Bakshi Sachdev (D) Vs. Concord (i)

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Court : Delhi

Decided On : May-26-1993

Reported in : 1993RLR563

Judge : Arun Kumar, J.

Acts : Evidence Act - Sections 57; Code of Civil Procedure (CPC), 1908 - Order 8, Rule 10

Appeal No. : Suit No. 723 of 1989

Appellant : Bakshi Sachdev (D)

Respondent : Concord (i)

Advocate for Pet/Ap. : Arun Mohan and; Chitra Mahendale, Advs

Judgement :

Arun Kumar, J.

(1) [ED. facts.: Plaintiff had let out tenanted premises to Deft. no. 4, a company of Defts. 2 and 5 on 19 6.74 @ Rs. 6000.00 p.m. After a few months Deft. no. 1 was accepted as tenant on same terms. Deft. no. 1 was mostly owned by Deft. no. 2 and in the tenanted premises Deft. no. 2 was residing with family members. Plaintiff on 12.12.88 gave notice terminating tenancy asking possession by last day of the month. Plaintiff on 10.3.89 filed suit for possession and asked mesne

profits, after termination of tenancy and on expiry of notice period, at market rate of premises at Rs. 50,000.00 p.m. Defts. 4 & 5 filed W/S in March, 90 saying that tenancy had been transferred in the name of Deft. no. 1 and they had no interest. Defts. 1 to 3 did not file W/S until 17.8.90 when their defense was struck out. They appealed to D B. and meanwhile filed W/S so that they could tell D.B. that W/S had been filed. D.B. allowed W/S to be taken on record upon heavy costs. They contended that Amended Rent Act allowing exemption to premises of rent above Rs. 3500.00 was unconstitutional; that Deft. no. 1 alone was not tenant and several associate companies were tenants who were paying less than Rs. 3500.00 rent through Deft. no. 1; that notice was bad as in the premises manifesting processes are done. Before settlement of issues a Director of Deft. no. 1 was examined who stated that Deft. no. 1 alone was tenant, ground floor was being used for residence and upper floor for office. The Court held that there was no manufacturing process and notice terminating tenancy was proper and Deft, no, 1 and 2 alone are tenant and only they were prosecuted by the Dda for misuser. About mesne profits etc. it was held :]

(2) Issue NO. 5. This issue is regarding claim of the plaintiffs to damages/manse profits @ Rs. 50,000.00per month w.e.f. 19.1.89. Further the plaintiffs have claimed the amount jointly and severally from the defendants. The tenancy of defendant No. 1 was terminated vide notice Ex. P-l ending with 18.1.89. The plaintiffs have claimed damages/ mesne profits w.e.f. 19.1.89.

(3) There are two questions involved in the issue. First is the rate at which damages/ mesne profits can be granted or ought to be granted in favor of the plaintiffs. Secondly, whether liability in this connection can be joint and several of defendants 1 to 3. On the first question the plaintiffs have led no evidence although the onus of (he issue is on the plaintiffs. The learned counsel for the plaintiffs has, however, submitted that the court should take judicial notice of the fact of phenomenal rise in rents in Delhi and particularly in posh colonies like Golf Links where the property in suit is located. On this basis the damages/mease profits are claimed at a rate higher than agreed rate of rent. The agreed rate of the premises is Rs. 6.000.00 per month. The plaintiffs have claimed damages/manse profits @ Rs. 50,000.00 per month. Nobody can deny the fact that there has been

phenomenal rise in rents in Delhi and particularly in the area where the property in suit is located. However, the claim of the plaintiff is unsubstantiated. The rent of Rs. 6000.00 per month was fixed in the year 1974. In the year 1989, i.e. on termination of the tenancy 15 years had passed. The increase is sought after the termination of the tenancy. Taking a judicial notice of the fact of increase in rents and in order to provide fair compensation to the plaintiffs I consider a sum of Rs. 10,0001- per month to be a fair amount towards damages/mesne profits to be awarded in favor of the plaintiffs. thereforee, the plaintiffs will be entitled to damages/manse profits @ Rs. 10,000.00per month w.e.f. 19th January 1989 till the date of handing over of vacant possession of the premises. Any payment made during the pendency of the suit for this period on account of rent will be liable to be adjusted in this amount,

(4) Coming to the second question as to whether all the defendants can be made liable for this payment I am of the view that so far as defendant No. 1 is concerned there can be no dispute about its liability in this behalf. After the termination of tenancy all the defendants who are admittedly in occupation of the premises can be made liable. Admittedly defendants 2 and 3 Along with their family members have been all along residing in the premises during this period and till to day. Defendants 2 and 3 are enjoying the benefits of stay in the premises. In all fairness they should be equally liable for the payment towards damages/mesne profits on account of use and occupation of the premises after termination of the tenancy. Even otherwise defendant No. 1 is a company almost wholly belonging to defendants 2 and 3 and their family members. It is only a corporate veil. The benefits from the company and its premises are totally going to these defendants. Under, the circumstance I hold that for the amount on account of damages/mesne profits as determined by this court all the defendants, i.e. defendants 1 to 3 are jointly and severally liable to the plaintiffs, the issue is disposed of in these terms. The plaintiff will pay court fee on the amount falling due to them under this decree.

(5) Issue NOS. 6 & 7. Issues No. 6 and 7 are inter connected. The defendants have been using the premises for commercial purposes for which they were also prosecuted by the DDA. The said use is contrary to the terms of the parent lease granted by the Land & Development Officer. If the landlord is saddled with any

liability of payment to the Land & Development Officer on account of charges for breaches of the lease committed by the defendants, they are liable to make good the same. The Land and Development Officer has been levying and demanding various charges on account of breaches of the conditions of lease on account of misuse of the premises in suit. In order to keep the property intact it is necessary for landlords plaintiffs to have the breaches regularised and pay the necessary charges. thereforee, the liability for all such lawful charges which are recoverable by the Land & Development Officer has to be borne by the defendants I hold that the defendants are liable to pay the charges as levied by the Land & Develop ment Officer on account of misuse of the premises. A decree is passed in favor of the plaintiffs and against the defendants jointly and severally for payment of the exact amount which is found lawfully payable to the Land & Development Officer on this account. The plaintiffs will be liable to pay, the requisite court fee on the decree for such amount.

(6) Issue NO. 8. In view of my aforesaid findings I find no hurdle in the way of a decree being passed in favor of the plaintiffs for possession of the property in suit as per plan filed by the plaintiff.

(7) A.S a result of the above discussion the suit of the plaintiffs is decreed. A decree for possession of the property in suit as per plan is passed in favor of the plaintiff and against defendants 1 to 3. Further a decree is passed in favor of the plaintiffs and against defendants 1 to 3 jointly and severally for damages/ mesne profits @ Rs. 10,000.00 per month w.e.f. 19th January 1989 till handing over of vacant possession of the premises by the defendants to the plaintiffs. This decree will be subject to to the plaintiffs paying the requisite court fee on the amount finally becoming due to the plaintiff on this account. The defendants will however be entitled to adjustment of any amount already paid by them to the plaintiffs for this period. A decree of permanent injunction is also passed in favor of the plaintiffs and against defendants 1 to 3 restraining the defendants from using property No. 5 Golf Links, New Delhi for any purpose other than residential till their handing over vacant possession thereof to the plaintiffs in pursuance of decree for possession.

(8) Lastly a decree is passed in favor of the plaintiffs and against the defendants for payment by the defendants of all lawful charges payable to (he Land & Development Officer on account of misuse of the premises and for purpose of regularisation of breaches of conditions of lease. The decree will be subject to payment of court fee by the plaintiffs on the amount under the decree. This is without prejudice to the right of the defendants to challenge the demand of the L & D. O., if so, permitted to them in law. The plaintiffs will also be entitled to costs of the suit as per rules.

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