Durgeshwari Devi Vs. International Development Research Centre

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Court : Delhi

Decided On : May-19-1999

Reported in : 1999IVAD(Delhi)926; 79(1999)DLT750; 1999(50)DRJ67

Judge : M.K. Sharma, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 86 - Order XII, Rule 6

Appeal No. : I.A.No. 2603 of 1998 & S.No.1231 of 1997

Appellant : Durgeshwari Devi

Respondent : international Development Research Centre

Advocate for Def. : Mr. Sona Khan, Adv.

Advocate for Pet/Ap. : Mr. Vikas Singh, Adv

Judgement :

Dr. M.K. Sharma, J.

1. The present suit has been instituted by the plaintiff seeking for a decree for possession in respect of the suit premises bearing No.11, Jor Bagh, New Delhi and also for a decree for a sum of Rs.9.00 lakhs on account of mesne profits/damages for use and occupation of the suit premises from 1.4.1997 to 30.5.97 being the quantified damages agreed to between the parties and also for a

decree for payment of damages for Rs.15,000/-per day beyond 30th May, 1997 till the eviction of the defendant from the suit premises and for pendente lite and furture interest.

2. Along with the suit an interim application was filed by the plaintiff under Order 39,Rules 1 and 2, CPC on which an ad interim ex parte injunction was granted on 30th May, 1997 restraining the defendant from subletting, assigning or otherwise parting with possession of the whole or part of the premises in question or in any manner creating any third party right therein, until further orders.

3. The defendant entered appearance and contested the suit by filing the written statement. A preliminary objection has been raised in the written statement contending, inter alia, that the suit is not maintainable in view of provisions of Section 86, CPC. It is stated in the written statement that the defendant is an agency of the State of Canada and thus, has a special status and, thereforee, the defendant has special immunity in India. It is further stated that the plaintiff needs due permission and sanction of the Government of India for filing the present suit against the defendant and the plaintiff having not sought for any such permission, the suit is not maintainable. The defendant in the written statement has admitted execution of the lease deed with the plaintiff but has contended that the said lease deed was for a period of 10 years inasmuch as, as per the provision for increase of 30% of the rent payable, lease was to be extended up to 2004. The defendant, however, has taken up the plea that the lease agreement in isolation is not enforceable as it is a part of rest of the three agreements which have not been placed on record by the plaintiff. The defendant has also stated that the plaintiff has not provided any substantial documentary evidence of ownership of the suit property to the defendant and, thereforee, the plaintiff is not the owner of the suit property.

4. In the light of the aforesaid pleadings of the parties, the plaintiff filed application in this Court contending, inter alia, that the plaintiff is entitled to a judgment in her favor in terms of the provisions of Order 12, Rule 6, CPC. As against the aforesaid application reply has also been filed by the defendant, which is on record.

5. I have heard the learned Counsel appearing for the plaintiff as also the Counsel for the defendant on the preliminary issue that arises for my consideration as to whether the suit is maintainable in view of the provisions of Section 86, CPC and whether a decree straightaway can be passed in respect of the entire cause of action or part of the cause of action leaving the remaining matter to be decided on framing of issues or by appointing a Local Commissioner of the purpose of determining the amount of mesne profits and damages.

6. Before I enter into the question of alleged admission made by the defendant in the written statement, on the basis of which the plea for passing of a decree in terms of admission could be decided, it would be necessary to decide first as to whether the suit is maintainable under the provisions of Section 86, CPC.

7. Section 86, CPC, inter alia, provides that no foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government.

8. The defendant has filed the written statement contending, inter alia, that the defendant is an agency of the Government of Canada and has a special status and its activities are approved by the duly elected Parliament of Canada and thus, enjoys sovereign immunity in India, in view of which the defendant cannot be sued in any Court except with the consent of the Central Government certified in writing by a Secretary to that Government. It is contended that since no such permission has been obtained by the plaintiff from the Central Government as required under Section 86, CPC prior to institution of the present suit, the suit is not maintainable.

9. Counsel appearing for the parties place reliance on the documents filed, namely, the Act called the International Development Research Centre Act & I.D.R.C General By-law. The said Act was passed by the Parliament of Canada. Counsel for the defendant also relies upon the communications annexed with the reply filed by the defendant to the application filed by the plaintiff under Section 151, CPC. One of the letters on which strong reliance was placed by the Counsel appearing for the defendant, is the letter dated 2.6.1983 written by the Ministry of Finance, Department of Economic Affairs, Government of India, to the Secretary and General Counsel, International Development Research Centre. In the said

communication, it is stated that the defendant is an entity created and funded by the Parliament of Canada for the purpose of initiating, encouraging, supporting and conducting research into the problems of the developing regions of the world.

10. Counsel for the defendant also sought to place reliance on the decision of the Supreme Court in Veb Deautiracht Seereederei Rostock Vs . New Central Jute Mills Co.Ltd. & Anr. : AIR 1994 SC516 in support of her contention that consent of the Central Government having not been obtained, as required under Section 86, CPC, the suit is not maintainable. In order to appreciate the plea raised by the defendant regarding maintainability of the suit, I have carefully considered the documents as well as the decision relied upon by the Counsel appearing for the defendant.

11. The Act under which the defendant was created, was an Act passed by the Parliament of Canada. The said Act was passed to establish the International Development Research Centre. The said Act enunciates the objects and powers of the Centre in Section 4 of the Act. Power to make by-laws is provided for under Section 17 of the Act, where as Section 18(1) provides that the Centre is not an agent of Her Majesty, and, except as provided in Sub-section (2), the Governors and the officers, agents and employees of the Centre are not part of the public service. Reference may also be made to the provisions of Section 19 of the Act which provides that the centre, shall for the purposes of the Income Tax Act, be deemed to be a registered charity as defined in that Act. So far the financial provisions are concerned, it is indicated under Section 20 of the Act, that the Centre would establish under its management in a bank, an account to be known as the International Development Research Centre Account and there shall be credited to the Account all amounts realised by the Centre under this Act in carrying out research or technical development or from providing any other services in Canada or elsewhere under any contract or agreement. It is further provided that there shall be charged to the Account all expenditures incurred by or for the Centre under this Act in carrying out the research and development activities or providing the services referred to in Sub-section (2). Sub-section (4) of Section 20 further provides that the Minister of Finance shall, out of the special account for international development assistance in the accounts of Canada, pay

to the Centre, a grant of one million dollars to establish the Account. It is true that the defendant is constituted under the aforesaid Act called the International Development Research Centre Act enacted by the Parliament of Canada, but it is specifically provided under the Act that the Centre is not an agency of the Government of Canada when it states that the Centre is not an agency of the Government of Canada when it states that the Centre is not an agent of Her Majesty. It is also specifically provided that the Governors, officers, agents and employees of the Centre are not part of the public service. For the purpose of Income-Tax, the centre is deemed to be a registered charity.

12. Taking into consideration all the provisions of the Act, read Along with the documents placed on record, it cannot be said that the Centre is an agency of the Government of Canada or that it is a foreign State. In order to appreciate and come to the conclusion as to whether the defendant is a foreign State or an agency of the Government of Canada, the provisions of the Act are to be looked into, which created the institution, namely, the defendant. The communication dated 2.6.1983 only states that the defendant is an entity created by the Parliament of Canada, which is a fact. However, the view contained therein tht the defendant is created and funded by the Parliament of Canada for the purpose of initiating, encouraging, supporting and conducting research is not borne out by the records of the case except for the fact that an initial grant was given by the Minister of Finance to establish the Account out of the special account for international development assistance in the account of Canada. The Centre is to generate its own funds and amounts are to be realised by the Centre by carrying out research technical development or from providing any other services in Canada or elsewhere under any contract or agreement.

13. In the light of aforesaid provisions of the Act and the documents placed on record, I am of the conscious view that the defendant is not a foreign State and does not enjoy the protection as provided for under Section 86, CPC. The decision in Veb Deautiraht Seereederei Rostock (supra) and relied upon by the defendant in support of her contention is not applicable to the facts and circumstances of the present case. A perusal of the said decision would indicate that it was an admitted position in the said case that the appellant belonged to and was owned by the

German Democratic Republic. The contention of the appellant therein was that it is a department and/or agent and/or instrumentality of the Government of German Democratic Republic, which is recognised as a sovereign foreign State. The same was admitted by the carrier and in the light of the aforesaid fact, the Court came to the conclusion that the appellant is a foreign State and is protected under the provisions of Section 86, CPC and that without consent of the Central Government no suit could be instituted against the appellant being a sovereign foreign State. In the present case, the Act under which the defendant was created, itself specifically provides that the defendant is not an agency of the Government of Canada and, thereforee, it cannot be treated as a foreign State within the meaning of provisions of Section 86, CPC and, thereforee, the preliminary objection raised by the defendant is held to be misplaced and not tenable and it is held that the suit is maintainable against the defendant even without obtaining permission from the Central Government and that the provisions of Section 86, CPC are not applicable to the facts and circumstances of the present case.

14. Having decided so, the next question that arises for my consideration is whether the plaintiff is entitled to a decree as sought for in the plaint on the basis of admission in the written statement and if so, to what extent.

15. The Legislature has thought it fit to enact a provision under Order 12, Rule 6, CPC which enables a party to obtain speedy relief in respect of a fact which is admitted by the other party. Such an admission could be in respect of the entire claim made in the suit or even for a part of the claim for which decree could be passed separately. There are several decisions of this Court proceeding to pass a decree for possession on the basis of admission made by the defendant in the written statement. In this connection, reference may be made to the decision in M/s. S.L.Associates Pvt. Ltd. v. Karnataka Handloom Dev., reported in 61(1996) DLT 386 and in Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd. & Others : 66(1997)DLT54 . In the said decision, the law has been reiterated to the effect that it is open to the Court in a suitable case to afford relief on the basis of the case set up by the defendant since no prejudice is caused to the defendant because the relief legitimately springs from the case set up by the defendant. In the said decisions it was also held that when there was admission by the

defendant that it had entered into possession of the suit property on the strength of the lease deed and even assuming in favor of the defendant that the lease was further extended for a period of three years and even that period was held to have come to an end during pendency of the suit, the plaintiff was held to be entitled to judgment under Order 12 Rule 6, CPC on unequivocal admissions that entry in possession was on the basis of lease and that even the extended period had come to an end. The aforesaid proposition of law is well-settled and cannot be disputed that in a case of clear and unequivocal admission, suit can be decreed or in other words decree in part for one of the reliefs could be passed. However, before coming to the conclusion as to whether such a relief can be granted or not, the Court must be satisfied that there is an admission in the case entitling the plaintiff to claim a decree for possession.

16. A bare reading of Rule 6 would indicate that the Court either on the application of any party or on its own motion and without waiting for determination of any other question between the parties proceed to give judgment as it may think fit having regard to the admission. The defendant in the present case has not disputed the entry of defendant in possession of the suit property on the basis of registered lease deed dated 7.2.1994. A copy of the said registered lease deed is also placed on record. Admittedly, the plaintiff has not served any notice since according to the plaintiff the aforesaid lease came to an end by efflux of time. The present suit was filed seeking for the aforesaid reliefs. The registered lease deed was made between the plaintiff and the defendant on 7th February,1994. The said lease deed recites that the Lesser is the owner of the suit premises and the lessee has approached the Lesser for letting out the said premises for office-cum-residence purpose and accordingly a lease is created between the parties for a fixed period of five years commencing from 1st April, 1994 to 31st March, 1999 on the condition that the rent for the said premises for the period of three years i.e. from 1st April, 1994 to 31st March, 1997 would be Rs. 40,000/-per month and the rent for the remaining two years i.e. from 1st April, 1997 to 31st March, 1999 would be Rs. 48,000/-per month. It was also stipulated that the entire amount of rent for the first three years i.e. 1.4.1994 to 31.3.1997 @ Rs. 40,000/-per month amounting to Rs. 14,40,000/- would be paid in advance at the time of execution of the lease and the rent for the further period of two years i.e. from 1.4.1997 to 31.3.1999 @ Rs.

48,000/-per month amounting to Rs. 11,52,000/- would be payable in advance on or before 31st March, 1997, failing which the lease would stand determined from 1st April, 1997 as the case may be and that the lessee would hand over the vacant and peaceful possession of the demised premises to the lessor. It is the case of the plaintiff that the defendant has paid the rent for three years i.e. from 1.4.1994 to 31.3.1997 in advance, but the defendant did not pay the rent for the subsequent two years period, in advance, as stipulated in the lease agreement and, thereforee, the lease stood determined from 1.4.1997, as stipulated in the agreement. The aforesaid lease deed is a registered document.

17. The defendant has admitted in the written staement about the execution of the aforesaid lease deed, which is a registered document and, thereforee, the terms and conditions on which the aforesaid lease was created, are to be looked into and are vital for determining the present issue that arises for my consideration.

18. The rent for the first three years as stipulated in the lease agreement was paid in advance but the rent for the subsequent two years period, at an enhanced rate of Rs. 48,000/-per month, which was also to be paid in lumpsum in advance, was not paid in advance by the defendant and, thereforee, the lease stood determined by efflux of time on expiry of 31.3.1997. To the aforesaid extent there is admission in the written statement. One of the defenses taken by the defendant is that the plaintiff is not the owner of the suit premises. In order to appreciate the aforesaid contention, reference may also be made to the contents of the aforesaid lease deed which is signed by both the parties, including on behalf of the defendant. The lease deed which is a registered deed, clearly stipulates and recites that the plaintiff is the owner and landlady of the suit premises, which is also an admitted fact. Now, in order to make out a defense, the defendant cannot deny title of the plaintiff and set up a plea that the plaintiff is not the owner of the suit premises.

19. In Sri Ram Pasricha v. Jagannath and Others : [1977]1SCR395 the Supreme Court has held that under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It was further held that the tenant in a suit for eviction filed by the landlord is estopped from questioning the title of the landlord under Section 116 of the Evidence Act, particularly the tenant

cannot deny that the landlord had title to the premises at the commencement of the tenancy. In Jaikaran Singh v. Sita Ram Agarwalla and Others : AIR1974 Pat364 , the Division Bench of the Patna High Court has held that a tenant who has been let into possession by the landlord cannot deny his landlord's title so long as he has not openlyrestored possession to the landlord and until such restoration or surrender of possession the tenant will be; estopped even from contending that the landlord had ceased to have title subsequent to the commencement of the tenancy. It was further held that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord, should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of the landlord. It was also held that the concensus of judicial opinion both of Courts in India as well as those of English Courts is that before surrendering possession the tenant shall not be permitted to set up a title in a third person or jus tertii.

20. Reference may also be made to a decision of this Court in P.S.Bedi v. Project & Equipment Corpn. of India Ltd. : AIR1994 Delhi255 wherein a Single Bench of this Court has held that a tenant is estopped from challenging title of the landlord under Section 116 of the Evidence Act.

21. In view of the aforesaid position of law and in my considered opinion, the defendant herein who was given possession of the suit property by the plaintiff and admitted the plaintiff to be the landlady of the suit premises under the recitation in the lease deed, cannot challenge the title of the landlady in the present proceedings.

22. It was also contended by the Counsel appearing for the defendant that in absence of the remaining three agreements executed between the parties, the plaintiff is not entitled to any relief in the present suit. The said submission, in my considered opinion is also misplaced and is not tenable. I am concerned mainly, at this stage, with the admission made by the defendant in the written statement and in order to appreciate the said admission, reference is required to be made only to the lease deed by which the tenancy was created in between the parties. On consideration of the aforesaid documents and records, it is clear and apparent that

there is an admission on the part of the defendant regarding execution of the lease deed and to the effect that the rent for the subsequent two years i.e. from 1.4.1997 to 31.3.1999 was to be paid in advance which admittedly was not paid in advance and thus, the plaintiff definitely is entitled to a decree for possession since no issue could be stated to be arrived for determination, so far claim for possession is concerned.

23. I.A.No. 2603 of 1998 accordingly stands allowed to the extent that the plaintiff is also entitled to a decree for possession in respect of the suit premises. The defendant is directed to put the plaintiff in possession of the suit property within a period of two months from today. Decree be drawn up in terms of the law. So far as the remaining issues, namely, ascertainment of mesne profits are concerned, the same would be considered and decided by framing issues.

24. Put up on 5.10.1999 for framing of issues on the said question.