

Ajit Singh Vs. Ram Saroopi Devi

Ajit Singh Vs. Ram Saroopi Devi

SooperKanoon Citation : sooperkanoon.com/700150

Court : Delhi

Decided On : Sep-01-1994

Reported in : 1994IVAD(Delhi)124; 55(1994)DLT759

Judge : Mohd.Shamim, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 10, Rule 2; [Delhi Rent Control Act, 1958](#) - Sections 2(1)

Appeal No. : Regular Second Appeal No. 202 of 1982

Appellant : Ajit Singh

Respondent : Ram Saroopi Devi

Advocate for Pet/Ap. : R.K. Tikku and; R.L. Kohli, Advs

Judgement :

Mohd. Sharnim, J.

(1) The appellant has taken exception through the present appeal to the judgment and decree passed by the learned lower Court dated 24/03/1981 and the judgment and order dated 6/08/1982 passed by the lower Appellate Court, Shri S.R. Goel, Additional District Judge, whereby the appeal was dismissed.

(2) It would be necessary to state in brief the facts of the present case which led to the present appeal in order to appreciate fully and properly the points involved herein. The defendant/appellant (hereinafter referred to as the appellant for the sake of convenience) is the tenant under the plaintiff/respondent (hereinafter referred to as the respondent for the sake of brevity) in respect of plot of land bearing Municipal No. 1/25748, situated at Church Road, Bhogal, at a monthly rent of Rs. 40.00. He has been carrying on motor-repairing workshop on the said plot. He has raised unauthorised structure of tin shed on the said plot. The tenancy of the appellant was terminated through a notice dated 15/02/1979. He was called upon through the said notice to vacate the said plot of land by the end of March 1979, but to no avail. Hence arose the necessity for the institution of a suit for possession against him.

(3) The appellant put in contest, inter alia, on the following grounds: that he has been a tenant for the last thirty years in respect of a tin shed constructed on the said plot of land bearing No. 1/25748, Church Road, Bhogal, New Delhi (hereinafter referred to as the disputed property in order to facilitate reference). The appellant became tenant under the respondent/plaintiff by operation of law when she purchased the said premises from the previous owner. The appellant has always been paying the rent to the respondent in respect of the shed at the rate of Rs. 40.00 per month. He has been issued rent receipts in token thereof. The respondent also got a rent deed executed in her favor from the appellant. The appellant has been carrying on his business of the repair of motor vehicles in the said tin shed for a number of years. He has in this connection obtained a license from the Municipal Corporation of Delhi from time to time. He has also secured power connection for running the various machines installed over there under the said tin shed. It is wrong and false that the appellant has put up the tin shed in an unauthorised manner. The notice in suit is illegal and invalid and does not terminate the tenancy of the appellant in accordance with law. The Civil Court has got no jurisdiction to entertain the suit for possession because the appellant is a tenant in respect of the demised premises consisting of a shed and the land appurtenant thereto. The suit is barred by the provisions of Section 50 of the Delhi Rent Control Act. The suit has not been properly valued for the purposes of Court fee and jurisdiction. The Court fee paid is insufficient. The suit is false and

frivolous and is thus liable to be dismissed.

(4) On the pleadings of the parties the following issues were framed by the learned Trial Court :-

1. Whether the defendant is a tenant under the plaintiff of a plot of land as mentioned in para 1 of the plaint? 2. Whether the jurisdiction of this Court to try the suit is barred u/Section 50 of the Delhi Rent Control Act? 3. Relief.

(5) The learned Trial Court was of the view that the appellant was a tenant under the respondent in respect of a plot of land and as such, the jurisdiction of The Civil Court was not barred to try the suit under Section 50 of the Delhi Rent Control Act. Consequently, the suit for possession over the said plot of land was decreed with costs.

(6) The appellant, thus, on his failure to have any relief from the Trial Court preferred an appeal before the Additional District Judge. The Additional District Judge agreed with the findings of the learned Trial Court and, as such, dismissed the appeal vide his judgment and order dated 6/08/1982.

(7) Aggrieved and dis-satisfied with the judgment and order passed by the Courts below the appellant has knocked at the doors of this Court through the present appeal.

(8) Learned Counsel for the appellant Mr. Tikku has assailed the legality and the validity of the impugned judgments and orders on the ground that both the Courts below fell into a grave error by coming to the conclusion that the disputed property was nothing but a plot and as such, the jurisdiction of the Civil Court was barred. According to the learned Counsel there is ample evidence on record to show to the contrary that the disputed property was a 'premises' within the meaning of Section 2(1) of the Delhi Rent Control Act and the learned lower Courts should have held as such. Hence, the jurisdiction of the Civil Court was obviously barred to entertain the present suit. Learned Counsel for the respondent Mr. Kohli has urged to the contrary.

(9) It is manifest from above that the only question which arises in the circumstances stated above for the decision of this Court is as to whether The appellant is a tenant under the respondent in respect of a tin shed which is a premises within the meaning of Section 2(i) of Delhi Rent Control Act as canvased by the learned Counsel for the appellant Mr. Tikku during the course of his arguments. He has led me through the statement of the appellant dated 5/02/1980 recorded under Order 10 Rule 2 of the Code of Civil Procedure and has contended that the said statement has been tampered with. According to the learned Counsel, there was word 'not' in between the words 'was' and 'con- , The said word, according to the contention of the learned Counsel has been scored out with a view to reading the said statement as under:

'The shed referred to in my written statement was constructed by me'.

He has urged that this is not the statement made by the appellant before the learned lower Court. Thus the Courts below have wrongly attributed to the appellant the statement alluded to above which was not given by him. In fact, what he stated before the lower Court was that the shed was not constructed by him. The question is how far this contention of the learned Counsel for the appellant is correct? A close scrutiny of the order sheet dated 5/02/1980 reveals that the learned Trial Court recorded the statement of the appellant under Order 10 Rule 2 of the Code of Civil Procedure before framing of the issues. After recording the said statement the learned Trial Court secured the signatures of the appellant in the margin of the said statement in token of his having made the said statement. Thus, the appellant, if he challenged the veracity and correctness of the said statement should have objected to the same then and there. The appellant was not alone at that time. He was assisted on the said date by a Counsel. The said statement was made in his presence. Thus, it does not appeal to reason that a wrong statement other than the statement made by the appellant was recorded on the said date. The appellant has also admitted during the course of his cross-examination that he so knows English language. Hence it does not appeal to the reason, as to how a wrong statement could have been recorded. In any case, if the appellant challenged the authenticity of his statement he should have brought this fact to the notice of the Courts below. Curiously enough the appellant, for the

best reasons known to him, did not raise even a tiny finger of protest against the said statement before the learned lower Court. Thus, he will be deemed to have acquiesced in and agreed to the correctness of the said statement. Now it is too late in the day to raise this point in the second appeal before this Court.

(10) The learned Counsel for the appellant in order to buttress his argument has urged that the appellant could not have made the impugned statement alleged to have been made by him on the aforesaid date as the same is detrimental to his interest. No reasonable and prudent man is expected to do something and to say something which strikes at the very root of his interest. The contention of the learned Counsel is an ingenious one, but can be brushed aside within an anon without any difficulty. The respondent has stated in para 2 of the plaint that The appellant has raised a tin shed over the disputed property in an unauthorised manner. The appellant in the corresponding para 2 of his written statement, has nowhere denied the said fact. He has simply stated therein that it is denied that he has put up the tin shed in an unauthorised manner. It implies thereby that The appellant has not challenged the construction of tin shed by him. However, he has simply contented himself by stating that the same was not put up in an illegal and unauthorised manner. This goes a long way to show and prove that The appellant has nowhere questioned that a plot was let out to him. However, subsequently he got built a tin shed over there in order to facilitate his business. It is manifest from above that the appellant has admitted in his written statement that he was a tenant of a plot whereon he raised a tin shed at his own cost. He admitted so obliquely and indirectly through his written statement. Thus, there is nothing strange that the learned lower Court, and rightly so, before the framing of the issues sought clarification on the said point. It was in the above circumstances that The appellant made the impugned statement under Order 10 Rule 2 of the Code of Civil Procedure that the tin shed in question on the disputed plot was constructed by him. Thus, I feel that there is nothing inconsistent and wrong with the statement under Order 10 Rule 2 of the Code of Civil Procedure. Rather it is in consonance with the stand already taken by the appellant in his written statement.

(11) It has then been urged for and on behalf of the appellant by Mr. Tikku that a statement under Order 10 Rule 2 of the Code of Civil Procedure is not sacrosanct in as much as it is neither an evidence nor a pleading within the domain of Order 6 of the Code of Civil Procedure. Hence, it is open to a party making the said statement to show that it was made inadvertently under a mistaken notion. The learned Counsel in support of his argument has led me through the observations of a Single Judge of Allahabad High Court in *Balmiki Singh v. Mathura Prasad & Others*; : AIR1968 All259 'So far as the statement under Order X Rule 1 is concerned admissions made by a party under this rule are conclusive against him. Such a statement is in the same position as written pleadings of the parties. A statement under Rule 2 of Order X would certainly be of great value and has to be considered in the decision of the case, but there is a clear difference between a statement under Rule 1 and one under Rule 2.

(12) Where therefore in reply to a question by a Court proceeding under Order 10 Rule 2, a Counsel for a party inadvertently gives an erroneous reply, the Court can go into the question to find out if the reply given was due to inadvertence and come to a finding.'

(13) To the same effect are the observations of a Single Judge of Allahabad High Court as reported in *Kailash Chandra v. Ratan Prakash & Another*, : AIR1974 All138 'But this does not mean that under no circumstances the party can come to Court and point out that a mistake had actually occurred in making the statement and recall an admission made on such an error. In fact it would be the duty of the Counsel for the party to bring to the notice of the Court the error which had crept in and the circumstances in which the erroneous statement was made so that the error may not perpetuate. The Court in that event could go into the question to find out if the statement was made due to any inadvertence or under some mis-apprehension of fact or lack of authority or other reasons of the like nature.'

(14) Learned Counsel for the respondent Mr. R.L.Kohli, on the other hand, has contended that a statement under Order 10 Rule 2 of the Code of Civil Procedure is conclusive against the party who makes it. The learned Counsel in support of

his contention has cited the observations made in *Amrita Devi and Others v. Sripat Rai and Others* AIR 1962 All 3,.....'On the 7th December, 1946 the plaintiffs' Counsel made a statement under Order 10 Rule 2, Civil Procedure Code to the effect that 'the book styled 'Nirmala' was written by the author Prem Chandji while he was in the employment of R. Saigal of the Chand Press, Allahabad, under a contract of service.' An admission made by a party under Order 10 Rule 2, C.P.C., is conclusive against him. A party cannot be allowed to deviate from his pleadings. The plaintiffs could not therefore be allowed to adduce evidence in support of the alleged assignment of copy-right by Sri Prem Chand. All the same, the evidence as discussed by the learned District Judge was highly unsatisfactory and was rightly discarded'.

(15) Since we are concerned with the construction of the provisions of Order 10 Civil Procedure Code the same can be adverted to in extenso with profit. They are in the following terms:-

'1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials. 2. (1) At the first hearing of the suit, the Court -(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and (b) may orally, examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied. (2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied. (3) The Court may, if it think fit, put in the course of an examination under this rule questions suggested by either party. 3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record. 4.....'

(16) Moreover, a duty has been cast on the shoulders of the Court to record a statement under order 10 Rule 2 of the Code of Civil Procedure, under Order 14 Rule 1(5) which reads as under:-

'At the first hearing of the suit the Court shall, after reading the plaint and the written statement, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.'

(17) It is abundantly clear from the relevant provisions of law, alluded to above, that a statement under Order 10 Rule 1 is recorded by the Court in order to clarify pleadings with regard to such allegations of fact which are not expressly or by necessary implication admitted or denied by the party against whom they are made. The said statement can be either of the party himself or of his pleader who represents him. Whereas a statement under Order 10 Rule 2 is recorded in order to elucidate matters in controversy, in the suit it can be either the statement of the party in person or of any other person who is accompanying that party. The substance of the said statement is to be reduced into writing and it shall form a part of the record.

(18) It can be safely inferred from above that a statement under Order 10 Rule 2 Civil Procedure Code is neither a part of the pleadings under Order 6 of the Civil Procedure Code nor it is an evidence as the same is not required to be made on oath.

(19) This brings me to the point as to whether a statement under Order 10 Rule 2 C.P.C, once it is made can in no circumstances be modified or corrected? Normally, once a statement under Order 10 Rule 2 Civil Procedure Code is recorded it becomes a part of the record and can be looked into and relied upon by the Court. However, there might be some exceptional circumstances such as when it was made under a mistaken notion or some mis-apprehension and without instructions from the party; it is only in those discerning few cases adverted to above that a party can bring to the notice of the Court the mistake which has crept in the recording of the statement under Order 10 Rule 2 Civil

Procedure Code and in that eventuality it will be open to the Court to find out and to ascertain as to how the said mistake has crept in and in case the Court comes to the conclusion that in fact, there is a mistake the Court would be under an obligation to rectify the record.

(20) With the above background let us now see as to whether there was any mistake in recording the impugned statement of the appellant under Order 10 Rule 2 Civil Procedure Code I have already observed above during my detailed discussion that no such inference can be drawn in the instant case. Hence, there is no question of making any correction or modification in the impugned statement. The above view was given vent to by a Single Judge of the Allahabad High Court in Jagannath Ram v. Mohammad Yusuf Abbasi and Others, : AIR1965 All266 'An Appellate Court is not entitled to get round or explain away a clear statement made under order 10 Rule 2 Civil Procedure Code on the speculative surmise that the Trial Court might have wrongly recorded it. This type of speculation is not only unfair to the trial Judge in attributing to it an error in the discharge of his duties but also introduces an element of uncertainty into the record of the proceedings for no reason. The Appellate Court is bound to accept the correctness of the statement recorded by the Trial Court unless there is a clear proof of error.....'

(21) In the above circumstances I conclude that the statement under Order 10 Rule 2 was correctly recorded by the learned Trial Court.

(22) Besides the above statement under Order 10 Rule 2 C.P.C., there is ample evidence on record to show and prove that what was let out to the appellant was a plot of land (vide statement of Pw1 Shri Multan Singh). To the same effect then is the statement of Shri Bal Mukand, husband of the respondent. He has deposed to the fact in unequivocal terms that the plot of land was let out to the appellant. On the other hand, an effort has been made by the appellant to show and prove that a tin shed was let out to him by one Shiv Dayal. There was a boundary wall on all the sides of the said tin shed with some open land inside the said boundary walls.

(23) In addition to the above oral evidence the parties have placed on record certain documents in support of their respective contention. The respondent in

support of her case has placed on record the original sale deed dated 3/09/1957 (Ex. AW1/1) executed in her favor by one Shri Nandu Mal Jain. A perusal of the same reveals that what was sold to the respondent by Shri Nandu Mal was a plot of land bearing No. 584. Besides the said sale deed there are certain counterfoils of rent receipts which were issued to the appellant (Vide Ex. P1 dated 11/11/1975, Ex. P2 dated 8/04/1976, Ex. P3 dated 26/12/1976 and Ex. P4 dated 13/02/1977). All these receipts bear the signatures of The appellant. The said receipts show that a plot is under the tenancy of the appellant. All the said documents are ante litem modem inasmuch as they came into being prior to the institution of the present suit. The present suit was filed on 8/05/1979. Thus, the said documents can be safely relied upon.

(24) The appellant, on the other hand, has placed on record quite a good number of rent receipts (vide Ex. D1 to Ex. D33). The learned Counsel for The appellant has contended on the basis of the said receipts that the said receipts go a long way to show and prove that there was a tin shed on the disputed property. The learned Counsel thus wants this Court to conclude there from that the tin shed was in existence from the very inception of the tenancy. I am sorry, I am unable to agree with the contention of the learned Counsel in the face of Ex. AW1/1 i.e. the sale deed dated 3/09/1957 in respect of the disputed property executed by Shri Nandu Malin favor of the respondent. Had there been any structure on the disputed property at the relevant time it would have been so mentioned in the sale deed. Strangely enough the said recital is missing there from. Thus, it would be an exercise in futility to argue that the impugned tin shed has been in existence from before the sale deed was executed in favor of the respondent.

(25) The next contention urged for and on behalf of the appellant is that Ex. DW1/1, a receipt dated 11/02/1956 issued by one Shiv Dayal proves beyond any shadow of doubt that the tin shed was very much there in the year 1956 i.e. much prior to the sale deed. The contention of the learned Counsel does not hold any water. Ex. DW1/1 is a suspicious sort of document inasmuch as this receipt has been issued on a plain piece of paper. Admittedly, all the receipts which have been placed on record are printed receipts. It, thus, does not appeal to the reason why this receipt was issued on a plain piece of paper. Furthermore, the impugned receipt is

alleged to have been issued by one Shiv Dayal Jain in his own hand. Shri Shiv Dayal Jain is also an attesting witness of Ex. Awi /1 i.e. the sale deed. A close scrutiny of his signatures on the said sale deed reveals that Shiv Dayal Mal Jain is well versed with Urdu writing. Ex. DW1/1 is purported to have been signed by one Shiv Dayal who does not appear to be well versed with Urdu language and writing. It appears to have been signed by a person who appears to have gained only the rudimentary knowledge of the Urdu language. Furthermore, a perusal of the said document reveals that Shiv Dayal signed as Shiv Dayal Mal Jain whereas Ex. DW1/I has been signed by one Shiv Dayal Jain. Moreover, the appellant Ajit Singh on being cross examined has admitted that he took on rent the disputed property in the year 1950. He further goes on to admit in para 10 of his statement that he is in possession of the entire record since the year 1948. If this is so, it does not appeal to the reason as to why did he place on record only one receipt. All these factors are pointer to the fact that Ex. DW1/1 is a suspicious sort of document and it would not be safe to place reliance thereupon.

(26) The appellant in his written statement has stated that a rent deed was got executed in favor of the landlady when he took the disputed property on rent (vide para I of the written statement). He has further stated that there is a description of the premises which he took on rent in the said rent note. If this is so, the said rent note was the best possible evidence which could have been led from the side of the appellant in order to show and prove that what was let out to The appellant was a tin shed. Curiously enough the appellant, for the best reasons known to him, did not place the said rent deed on record. Thus, the appellant is guilty of suppressing the best possible evidence which could have been led in the circumstances of the present case. Hence, adverse inference is liable to be drawn against the appellant and in favor of the respondent.

(27) The appellant has then placed on record quite a good number of documents issued by different departments. Ex. DWI/2 is a letter from the Electricity Power Control Board. It shows that a power load of 7 H.P. has been sanctioned in favor of the appellant. Ex. DWI/3 is a letter from the Assistant Development Commissioner addressed to the appellant. It is also in connection with the sanction of industrial power load. Ex. DWI/4 is a letter from Municipal Corporation of Delhi.

There is a mention in the said letter that a tin shed is in existence over the disputed property. This letter is dated 21/02/1959. Ex.DWI/5 is a license issued under Delhi Shops & Establishments Act. Ex. DWI/6 is also a license issued by the New Delhi Municipal Committee for running the business i.e. motor workshop. Ex. Yz is a letter dated 4/03/1957 from the New Delhi Municipal Committee addressed to the appellant. A perusal of the same reveals that through the said letter a request was made to him to get the unauthorised construction regularised. The learned Counsel thus wants me to conclude from the said documents that there was a tin shed. There is no dispute with regard to the fact that there is a tin shed in existence on the disputed property. However, the pertinent question for determination of the present appeal is as to who got the same constructed? The said tin shed, as I have already observed above, was got constructed by the appellant. It furthermore becomes quite clear from the letter dated 4/03/1957, Ex. Yz, addressed to the appellant where by he was requested to get the said unauthorised structure regularised. The said letter, I feel, was addressed to the appellant because it was he who was the builder of the said structure. Thus, the existence of tin shed is of no assistance to the appellant in as much as it would not change the nature of the property. The property in dispute would continue to be a plot and would not become 'premises' within the meaning of Section 2(1) of the Delhi Rent Control Act. Admittedly, as is manifest from above that a plot was let out to the appellant. Thus, it will continue to remain a plot notwithstanding the fact that a tin shed has been built thereon.

(28) The above view was given vent to by a learned Single Judge of Allahabad High Court as reported in Abdul Sami and Another v. Mohammad Noor, : AIR1966 All39 'A vacant plot of land which is rented for the purposes of carrying on a Tal business will not be converted into an accommodation so as to bring it within the meaning of Section 2(a) merely by construction of a Chhappar and a latrine thereon. Nor will the construction amount to a part of a building. The word 'building' has not been defined in the Act. It is neither possible nor even desirable to give a rigid meaning to the word which will cover every conceivable case. Whether a particular structure amounts to a building and therefore, accommodation within the meaning of Section 2(a) depends upon the circumstances of each case. The existence of a roof may not be necessary for a

structure to be classed as a building, but it does not follow that every roofless structure is a building.'

(29) I am further fortified in my above view by the observations of their Lordships of the Supreme Court in *Krishnapasuba Rao Kundapur & Another v. Dattatraya Krishnaji Karani*, AIR 1966 S.C. 1024,.....'In this case, we are not concerned with a building lease. The building on the land was constructed by the tenant at his own cost before the execution of the rent note. The building belonged to the tenant and was not the subject-matter of the letting. The land only was the subject-matter of letting. Consequently, the premises are land within the meaning of Section 13(l)(i).'

(30) The learned Counsel for the appellant Mr. Tikku has then led me through the statement of Shri Shiv Lal, Clerk, N.D.M.C. who has deposed to the fact that a license to run a workshop is not issued to a person who wants to carry on his business on an open plot of land. Since the appellant has got a license, hence the learned Counsel on the basis of the above statement and other documents has contended that a tin shed was in existence on the plot from before it was purchased by the respondent. The contention of the learned Counsel is devoid of any force inasmuch as no such rule and regulation was placed on record in support of the above. Furthermore, on being cross-examined he has pretended his ignorance with regard to the procedure for the grant of a license. In the circumstances stated above, I do not see any force in the present appeal. It is thus dismissed with costs.