

Karamtullah and ors. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-16-1993

Reported in : 1993(25)DRJ556; 1993RLR268

Judge : C.M. Nayar, J.

Acts : [Specific Relief Act, 1963](#) - Sections 38

Appeal No. : Suit No. 1116 of 1983

Appellant : Karamtullah and ors.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : Vijay Kishan, Adv

Judgement :

C.M. Nayar, J.

(1) Plaintiffs have filed the suit for permanent injunction against the defendant from enforcing any order of re-entry and especially the one passed in June, 1983 and also from interfering with the peaceful use and enjoyment of the suit property.

(2) The brief facts of the case are that the plaintiffs are owners of the property bearing No. 54, Motia Khan Dumb Scheme New Delhi, hereinafter referred to as 'the suit premises'. Shri Niyamatullah, plaintiff no.2 is the constituted General

Attorney of the plaintiff and is authorised and competent to file the present suit and to sign and verify the plaint.

(3) It is alleged in the plaint that by an agreement for lease dated November 22, 1962, the defendant, as the Lesser had agreed to demise the land of the suit premises to one Shri Krishan Chand Ohri and by an agreement of hypothecation dated November 23, 1965, Shri Kishan Chand Ohri had entered into an agreement with one Sardar Joginder Singh for the construction of a multi-storied building on the plot and consequently, a building comprising of basement, ground floor, first floor and barsati with lift well was constructed on the said plot of land. The Municipal Corporation of Delhi on November 16, 1965 had issued occupancy certificate. The said Kishan Chand Ohri not being able to pay for the construction of the building, applied to the defendant for permission to transfer his right, title and interest in the said plot and the building in favor of Shri Joginder Singh. On such permission being granted, the right was accordingly transferred with title and interest to Shri Joginder Singh. Shri Joginder Singh again, with the permission of the defendant, transferred his rights, title and interest in the plot and the building to M/s Sardar Jagmohan Singh, Sardar Parvinder Singh, Miss Harvinder Kaur and Huf of the said family under a sale deed executed on June 9, 1966. On January 16, 1969 and September 30, 1969, the original lessees Sardar Jagmohan Singh and others had inducted the tenants in the suit property viz M/s United Automobiles in the ground floor and M/s Munshi Ram Manohar Lal in the first floor. The said tenants had already stood inducted and the alleged misuse had already started. The officers of the defendant, having duly inspected and surveyed the premises, raised no objection whatsoever, about the misuse by the said tenants. It is further reiterated that the defendant was aware of the said misuse by the tenants, inducted in the suit premises, and despite that perpetual lease was granted in favor of the original lessees. Thereafter, the original lessees obtained on December 28, 1973, from the defendant the permission to sell the suit premises to the plaintiffs and by a sale deed dated February 26, 1974, the original lessees sold the suit premises to the plaintiffs. The said sale deed was registered as document No. 823 in Book No. 1, Volume No. 3074 on pages 148 to 165 dated March 1, 1974. The original lessees i.e. Sardar Jagmohan Singh and others wrote letters to the tenants, requiring them to attorn to the plaintiffs and to pay rent to

them w.e.f. April 1. 1974.

(4) The defendant. Delhi Development Authority, issued a show cause notice bearing No.S/4(48) /75 dated August 5,1975 to the original lessees, as to why, the order of re-entry be not passed on account of misuse of the suit premises. The said notice reads as follows:

'AND whereas it has been reported that you are using the said land and the building standing thereon or have permitted the same to be used for the purpose of show room of United Automobiles on G.F. and Book Sellers in First floor which is contrary to the terms of the lease deed.'

(5) It is further alleged that by notice dated December 31. 1975, an order of re-entry was subsequently passed and the tenants were stopped to pay the rent to the plaintiff by means of an ex-parte order and without notice to the plaintiff. The defendant re-entered the premises but took no steps to call upon the tenants to stop the misuse and/or on then failure to terminate the tenancy or to obtain eviction order from the Estate Officer under the Public Premises (Eviction of un authorised Occupants) Act, 1971. The plaintiffs pursued the matter with the defendant and after complying with the requirements, paid a total sum of Rs. 11,646.05 on account of penalty for past misuse from August 1, 1975 to December 31. 1977. The lease of the said plot was thereafter restored by the Commissioner (Lands) with retrospective effect in the name of the plaintiffs. The tenants in the suit premises, as on February 15. 1978. were; (1) M/s United automobiles (2) M/s Munshi Ram Manohar Lal (3) M/s British Paints India Limited. The plaintiffs wrote to the defendant that since the tenants were inducted by the original lessees and the plaintiffs are not at fault, the aforesaid penalty for misuse deposited by them ought to be refunded, as the said misuse was prior to the perpetual lease deed in favor of the original lessees. The defendant finally refunded the entire penalty amount of misuse on July 2, 1980. The plaintiffs has raised the following plea in paragraph 3(0) of the plaint:

'3(0)Finally, the defendant refunded the entire penalty amount for misuse on 2.7.1980. This refund again amounts to further waiver of the objection raised by the defendant about misuse of the suit premises by the said tenants. It was clear

that the reason given by the plaintiffs that misuse was of a period prior to their purchase of the property was accepted by the defendants.'

(6) The reply to the said para by the defendant is as follows:

'(N)&(O)With regard to these sub-paras, it is submitted that a number of lessees of the plots in Motia Khan Dump Scheme instituted legal proceedings against the Delhi Development Authority and it was as a result of advice received by the Delhi Development Authority from competent quarters that the notices were withdrawn and the misuse charges realised from the various sub-lessees were refunded to them.'

(7) The plaintiffs have accordingly contended that the defendant having condoned the misuse of the premises by the tenants, cannot again issue to the plaintiffs a fresh notice bearing No.S/4(48)/75 dated November 30, 1981, requiring the plaintiffs to show cause why an order of re-entry be not passed for the said misuse. The misuse complained of was also in respect of the same tenants as before and pertains to the misuse as before. Plaintiffs replied to the aforesaid notice and reiterated that when the property in question was purchased by them, the tenants were already occupying and using the property contrary to the alleged conditions of lease deed, that the said tenants have become the plaintiffs' tenants by operation of law and the plaintiffs served notice on the defendant to stop the misuse, failing which legal action had been threatened. Plaintiffs further took steps, as required by law, and ultimately petitions under Section 14(1)(k) of Delhi Rent Control Act against the said tenants was filed and the said petitions are pending in the trial court before the Additional Rent Controller. The plaintiffs also filed an additional separate suit against M/s Munshi Ram Manohar Lal for permanent injunction restraining the said tenants from misusing the premises and the said suit is also pending. In all, three suits/petitions are pending in the Subordinate Courts. The plaintiffs have accordingly contended that they have never been party to the unauthorised use of the premises, inasmuch as the misuse existed much prior to the purchase of the property by them and they have taken all reasonable steps, as provided in law.

(8) Plaintiffs have alleged in the plaint that the alleged action of the defendant, in cancelling the lease in question and passing an order of re-entry had not been communicated to them. They did not receive the rent from the tenants and they were informed by the said tenants that a notice was received from the defendants asking them to stop the payment of rent as an order of re-entry had been passed. It has further been contended that copy of such order of re-entry has not been served on the plaintiffs till the date of filing the suit.

(9) Summons in the suit was issued to the defendant. The defendant put in appearance in this court and filed written statement dated January 6, 1984. Plaintiff filed the replication to the written statement.

(10) The following issues were framed on December 9, 1986:

1. Whether the lease-deed of the plaintiff has been rightly cancelled by the defendant? 2. Whether there is any contravention of any term of the lease-deed in question? If so, to what effect? 3. Whether the defendant is estopped from passing the order of re-entry or cancelling the lease-deed for the reasons stated in para 3 of the plaint? 4. Whether any show cause notice has been served upon the plaintiff, if so required under the lease-deed or otherwise? If not, to what effect? 5. Whether the plaintiff is entitled to the relief claimed? 6. Whether the suit has been properly valued for the purposes of court-fee and jurisdiction? 7. Whether the plaintiff is entitled to the injunction claimed for? 8. Relief

(11) Plaintiff filed an application, being I.A. No. 11316/90 for amendment of the plaint to add paragraphs 16A and 16B and prayer I A as set out in paragraphs 5 & 6 of the application. The defendant did not file reply to the application and the same, as a consequence, was allowed. The amended plaint, as filed by the plaintiff, was taken on record. Written statement to the amended plaint was not filed despite opportunities being granted to the defendant and the matter was listed before D.R. for admission/denial of documents. Thereafter, the defendant did not appear and was ordered to be proceeded against ex parte by an order of this Court dated August 24, 1992.

(12) Plaintiff was directed to file evidence by way of affidavits and the matter came up for final dispose on February 12, 1993 as well as February 16, 1993.

(13) Learned counsel for the plaintiffs has submitted that the plaintiffs have taken necessary steps to stop misuse by the tenants and two eviction petitions and one suit are pending in the respective subordinate Courts against the defaulting tenants. He has relied upon the judgment of this Court in *Dewan Daulat Rai Kapoor v. Union of India and another* : 44(1991)DLT167 wherein it has been held that when the petitioner had taken steps to stop the misuse by the tenants even before notice was issued by the respondent and in fact, an eviction petition was filed which was still pending before the Additional Rent Controller and since the petitioner was not in a position to stop the misuse committed by the tenant, the petitioner must get time to remedy the breach till eviction petition is decided. The writ petition, as a consequence, was allowed and the impugned order was quashed. The present case is also based on similar facts, as the plaintiffs have filed two eviction petitions and a suit against the tenants, who are responsible for the misuse and the same are pending final consideration before different courts. These are referred to in paragraph 7 of the plaint as Suit No. E-284 of 1982, Suit No.504 of 1982 and suit No.E-222 of 1983 respectively.

(14) The counsel is, therefore, correct in contending that the defendant cannot take action of re-entry in respect of the suit premises in the circumstance of the present case, where necessary action is already taken by the plaintiffs.

(15) The second contention, which is raised by the counsel for the plaintiff, is that by a notice No.S/4/(48)/75 dated December 31, 1975, an order of re-entry was passed and the tenants were restrained to pay the rent to the plaintiffs. This was an ex parte order and without notice to the plaintiffs. The plaintiffs pursued the matter with the defendant and after complying with the requirements, paid a total sum of Rs.11,646.00 on account of penalty for past misuse. The plaintiffs thereafter wrote to the defendant that since the tenants were inducted by the original lessees and the plaintiffs are not at fault, the aforesaid penalty for misuse deposited by them ought to be refunded by them. as the said misuse was prior to the lease-deed in favor of the original lessees, The defendant accepted the plea of

the plaintiffs and refunded the entire penalty amount of misuse on July 2, 1980. It is contended that this refund amounts to waiver of the objections raised by the defendant about the misuse of the suit premises by the said tenants. It will not be necessary for me to deal with this contention, as the plaintiffs are liable to succeed on the first ground itself that they have taken steps to stop the misuse by the tenants and such proceedings are pending in the trial court in respect of the defaulting tenants.

(16) In view of the facts and circumstances of the present case, I pass a decree against the defendant restraining it from enforcing an order of re-entry in respect of the suit premises. The defendant will, however, be at liberty to take steps according to law after the eviction petitions against the tenants are disposed of. No order as to costs.

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