

inderjit Grover Vs. Indrawati

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Court : Delhi

Decided On : Oct-16-2003

Reported in : 2003VIIIAD(Delhi)267; 108(2003)DLT16

Judge : R.S. Sodhi, J.

Acts : Limitation Act - Schedule - Article 67; Delhi Rent Control Act - Sections 2(I); Code of Civil Procedure (CPC) - Sections 100 - Order 6, Rule 17

Appeal No. : RSA 40/2003 and CM 123/2003

Appellant : inderjit Grover

Respondent : indrawati

Advocate for Def. : S.K. Gupta, Adv.

Advocate for Pet/Ap. : L.M. Asthana, Adv

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. R.S.A. 40 of 2003 is directed against the judgment and order dated 13.2.2003 of the Additional District Judge in R.C.A. No. 10 of 2000 whereby the learned Judge has set aside the judgment of the trial court with directions to the defendants-

respondent to file amended written statement before the trial court; thereafter fresh issues be framed and, after giving opportunity of leading evidence, to decide the suit afresh.

2. Brief facts of the case, as noted by the First Appellate Court, are as under :

'A suit for recovery of possession was filed by the predecessor of the respondents on the ground that Shri Hira Lal Verma, father of Shri Prem Lal (original defendant) was a tenant of the suit premises bearing No. 6422-23, Nabi Karim, Paharganj, New Delhi and that his tenancy was terminated during his life time. Said Shri Hira Lal Verma died on 4.4.1972. It was further the case of the plaintiff that the defendant had become liable to vacate the premises as he did not become a tenant on the death of his father Shri Hira Lal Verma. The learned Civil Judge, vide impugned order held that the tenancy of Shri Hira Lal Verma had been validly terminated during his life time and thus, the suit for possession was decreed along with damages @Rs. 50/- per month w.e.f. 7.8.1981 till the recovery of the possession. The plaintiff moved an application under Order 6 Rule 17 of the Code of Civil Procedure (for short, the Code): It has been stated in the application that in the plaint the plaintiff had alleged that the cause of action accrued to the plaintiff on 4.4.1972 when Shri Hira Lal Verma died: whereas, the suit was filed only in August, 1984 i.e. After expiry of 12 years from the date of death of Shri Hira Lal Verma. During the course of arguments before the learned Civil Judge, it had been argued that the suit of the plaintiff was barred by limitation. However, no finding was given by the learned Civil Judge thereon. It has further been pleaded in the application that as per provisions of Section 3 of the Limitation Act, every suit, preferred after the prescribed period of limitation, shall be dismissed even though the limitation had not been set up as a defense in the said proceedings. It has been stated that Article 67 of the Limitation Act provides for limitation of such type of suits, to be 12 years and therefore, the trial court ought to have gone into the question if the suit was within limitation or not irrespective of the fact whether this ground was set-up as a defense by the defendant or not. It has further been pleaded in the application that Decree for Possession has been passed without giving any finding about the purpose of letting of the premises. It has been stated that it is very well settled law that a Commercial tenancy is heritable: whereas the

tenancy in respect of residential premises devolved upon the LRs of the tenant only for a limited period under Section 2(l) of the Delhi Rent Control Act. It has been stated that the trial court ought to have framed issues on this aspect, which had not been done. The defendant, therefore, wanted to take up preliminary objections 4 and 5, by virtue of amendment in the written statement, which are reproduced hereunder:-

PRELIMINARY OBJECTIONS:

4. That the suit filed by the plaintiff is also barred by law of limitation on the face of the allegations made in plaint by the plaintiff. Hira Lal Verma died on 4.4.72 whereas the suit was filed in August, 1984 i.e. after the expiry of a period of more than 12 years.

5. That the premises in question was let out by the predecessors of the plaintiff to the predecessor of the defendants for residential cum commercial purposes and the same has always been used as such since the very inception of the tenancy. The suit filed by the plaintiff is thus not maintainable in law and deserves dismissal on this point alone.

4. It has been stated that the proposed amendments are necessary for just and proper adjudication of the controversy between the parties and it goes to the very root of the case.

5. The application has been opposed by the plaintiff on the ground that the suit of the plaintiff was not barred by limitations in view of the judgment of Punjab & Haryana High Court : in Harnam Kaur and Others v. Malkiat Singh and Others, 1989 SLJ 20 and that the plea of limitation has been taken by the defendants in the grounds of appeal and can be gone into by this court while deciding the appeal. Regarding the second amendment, i.e. the purpose of letting of premises, it has been submitted that the premises had been let out to Shri Hira Lal Verma only for residential purpose. The defendant has nowhere stated in the written-statement that the purpose of letting was not residential. The Court of Shri S.N.Dhingra, learned Addl. District Judge vide its order dated 28.1.1990, had also acknowledged that the premises had been let-out for residential purpose while

dismissing the appeal of the defendant against the order of the trial court, restraining the defendant from misusing the premises for commercial purpose.

3. The First Appellate Court, after hearing parties and perusing the record, came to the finding that the purpose of letting out was not mentioned in the plaint. It also noted that it was only during the pendency of the suit that another suit was filed by the plaintiff for restraining the defendants from using the premises for commercial purpose, which suit was stayed. In the application dated 17.11.1997 under Section 151 of the Code of Civil Procedure filed by the plaintiff before the trial court it was mentioned that the defendants in Suit No. 229/1997, pending in the Court of Shri L.K. Gaur, Civil Judge, had filed a written statement wherein they had taken a plea that the premises had been let out for residential-cum-commercial purpose and the same were being used as such. The Supreme Court has, in *Smt. Gyan Devi v. Jeevan Kumar & ORs.* 1985 (1) RCJ 640, held that the tenancy for commercial purpose as well as for residential purpose is heritable and it is only the residential tenancy which is inherited by the tenant's legal heirs subject to limitation. In view of this it became incumbent upon the trial court to have returned a finding as to the purpose of letting. If the purpose was residential-cum-commercial, as claimed by the defendant in the application, then the suit, as such, was not maintainable. The amendment sought, in view of the above circumstances, was essential for the purpose of decision of the suit and the core issue. In this view of the matter it was proper and in the interests of justice and for effective adjudication of the controversy between the parties that the amendment be allowed. The First Appellate Court, consequently, allowed the application under Order 6 Rule 17 of the Code of Civil Procedure vide its order dated 13.2.2003.

4. Counsel for the appellant has not been able to show me as to why this amendment ought not to have been allowed. He also has not been able to point out any infirmity in the order under challenge nor formulated a substantial question of law requiring interference under Section 100 of the Code of Civil Procedure. Counsel, however, does state that the amended provisions of the Code of Civil Procedure do not warrant an amendment at this stage. But, the facts and circumstances, as stated in the judgment under appeal, certainly empower the court to allow an amendment. Rules of procedure are intended to be a hand-made

to the administration of justice. A party cannot be refused just relief merely because of some mistake, inadvertence or even infraction of the rules of procedure. The court always allows amendment unless it is satisfied that there was mala fide or the blunder has caused injury to the opponent which could not be compensated by costs. Mere delay and laches in making the application for amendment is not a ground for refusal of the amendment. Amendment is a discretionary matter and although amendment at a late stage is not to be granted as a matter of course, the court must be in favor of doing full and complete justice in the case.

5. In this view of the matter, having given my careful consideration and having gone through the judgment under challenge, I am of the view that the same need not be interfered with. R.S.A. 40 of 2003 and C.M. 123 of 2003 are dismissed with no order as to costs.

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