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Chand Krishan Bhalla Vs. Mohinder Kumar

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Court : Delhi

Decided On : Nov-22-2007

Reported in : 2008(100)DRJ446

Judge : Pradeep Nandrajog, J.

Acts : Evidence Act, 1872 - Sections 58, 92 and 114; Code of Civil Procedure (CPC) - Order 8, Rule 5(1)

Appeal No. : RSA No. 2/1999

Appellant : Chand Krishan Bhalla

Respondent : Mohinder Kumar

Advocate for Def. : M.L. Bhargava, Adv.

Advocate for Pet/Ap. : S.K. Bhalla, Adv

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. On 5.11.1999 the following substantial question of law was framed:

Whether the finding rendered by the courts below that the respondent has established the jural relationship of landlord and tenant between the appellant and the respondent on the facts and circumstances of this case.

2. I re-frame the question of law as under:

Whether the finding rendered by the courts below that the respondent has established the jural relationship of landlord and tenant between the appellant and the respondent is correct on the facts and circumstances of this case.

3. Facts constituting the backdrop with reference whereto the question of law has to be answered are that property bearing Municipal No. XIV/2199A/A (Old), new number being 10213-17, Manak Pura, Shidipura (Bhagat Singh Nagar), Karol Bagh was owned by one Mohd. Shafi and was declared to be an evacuee property. The settlement commissioner sold the same to one Ganesh Dass vide sale certificate no. 231 registered in supplementary book no.1, volume No. 202 at Page 140 on 7.10.1967. After death of Ganesh Dass, Chand Krishan Bhalla purchased the property from the sons of Ganesh Dass vide sale deed dated 26.4.1982, Ex. DW-1/1. When Ganesh Dass purchased the property from the settlement commissioner parts thereof were in occupation of various persons Mohinder Kumar claimed to be one of them.

4. Chand Krishan filed a suit for recovery of possession and damages alleging that Mohinder Kumar was an unauthorized occupant in a part of the property purchased by him. That Ganesh Dass never recognized him to be a tenant. That Ganesh Dass had called upon Mohinder Kumar to attorn to him as a tenant and get executed a rent note but Mohinder Kumar did not do so. That he i.e. Chand Krishan was entitled to a decree for possession and mesne profits.

5. Mohinder Kumar took a defense that he was a tenant under Ganesh Dass and was paying to him rent at Rs.5/- per month. That no rent deed was executed but Ganesh Dass and his grand son Yashpal Arora were executing rent receipts to him.

6. At the trial, apart from the sale deed Ex. DW-1/1 by and under which appellant had purchased the property in question, various other documents were proved. I need to note only those which are relevant for decision in the present second appeal. The documents are Ex. DW-4/PA and Ex. DW-4/PB. Both documents are legal notices caused to be served upon the respondent by lawyers engaged by Ganesh Dass calling upon the respondent to execute a rent deed and become a tenant under Ganesh Dass. The other documents are exhibits EX. DW-3/2, Ex. DW-3/3, Ex. DW-3/4 and Ex. DW-3/17 being the rent receipts executed by Ganesh Dass or his grand son and Ex. DW-3/1 being lawyer's notice dated 17.5.1982 addressed to the respondent after property was sold by the sons of Chand Krishan calling upon the respondent to attorn to Chand Krishan.

7. From the documents both courts below have concluded that respondent Mohinder Kumar has duly proved that he was a tenant under Ganesh Dass and thus continued to be a tenant under Chand Krishan.

8. The evidence on which landlord tenant relationship has been held to be proved are:

(a) sale deed Ex. DW-1/1 executed by children of Ganesh Dass in favor of Chand Krishan which records that the respondent is a tenant in respect of the suit property being a part of the property sold under the sale deed and that the monthly rent is Rs.5/-;

(b) rent receipts EX. DW-3/2, Ex. DW-3/4, Ex. DW-3/3, Ex. DW-3/17;

(c) Ex. DW-3/1 being the lawyer's notice dated 17.5.1982 requiring respondent to attorn to the plaintiff.

9. Learned Counsel for the appellant urged that the finding returned by the learned courts below is not based on discussion of full evidence and that in a second appeal said evidence can be considered. Counsel urged that if said evidence is considered, the findings returned are liable to be set aside. The evidence stated not to be considered is Ex. DW-4/PB and Ex. DW-4/PA being legal notices served upon the defendant by Ganesh Dass calling upon the defendant to execute a rent

deed. It was urged that by not executing a rent deed it was apparent that the defendant was an unlawful occupant. Counsel urged that both courts had ignored Ex. DW-4/PB and Ex. PW-4/PA. Counsel cited 2002 (VII) AD (S.C.) 658 Rattan Dev v. Pasam Devi 1979 (1) RLR 315 Shrimati Basi Devi v. Faqir Chand @ Faqira 1982 (2) RLR 115 Shri Raghbir Singh v. Shri Ram Murti 1976 RLR (S.C.) 634 Damadi Ram v. Paras Ram and : 12(1976)DLT150 S. Bhagwant Singh and Anr. v. Jagan Nath and Ors. to bring home the point that where first Appellate Court does not discuss relevant evidence, in second appeal the evidence can be noted.

10. To get over the recitals in the sale deed Ex. DW-1/1 to the effect that the defendant was a tenant in a part of the property sold and monthly rent payable was Rs.5/- counsel urged that admissions and recitals in a document can be proved to be erroneous. Counsel relied upon:

1. 1979 UJ (SC) 251 Avadh Kishore Dass v. Ram Gopal and Ors.

2. 2002 (2) RLR 573 Hansalaya Properties v. Reservation Data Maintenance India Pvt. Ltd.

3. : [1958]1SCR1384 Bai Hira Devi and Ors. v. The Official Assignee of Bombay

4. : AIR1933 Pat708 Murli Manohar and Ors. v. Bindeswari Prasad and Ors.

11. Third submission urged was that even if a fact is admitted, parties can still be called upon to lead evidence to prove the same. Counsel relied upon : AIR 1996 SC2074 Patna Regional Development Authority and Ors. v. Rashtriya Pariyojana Nirman Nigam and Ors. 1968 DHCN No. 224 Western Engineering Co. v. Tiger Products (P) Ltd. and AIR 1972 Gau 81 Dinesh Chandra v. Harender Biswas.

12. Fourthly, counsel urged that a tenancy agreement has to be proved. Counsel relied upon the following decisions:

1. : AIR1975 Bom52 Pandu v. Ananda

2. 1978 (1) RLR 827 (Delhi) Bhagwant Singh v. Jagan Nath

3. 1999 RLR 343 Satjit Singh v. Skipper Towers P. Ltd.

4. 1989 RLR 10 Suraj Perkash and Ors. v. UOI and Ors.

13. Lastly, counsel urged that as per Section 114 (illustration 'd') of the Evidence Act a state of things which have been shown to exist within a period shall be presumed to exist prior and subsequent to the time on which it was shown to be existing as held in the report published as : [1966]1SCR758 Ambika Prasad Thakur and Ors. v. Maharaj Kumar Kamal Singh and Ors.

14. Pertaining to the decisions cited on the issue that where evidence is not discussed by first Appellate Court and it would be permissible to discuss the same in a second appeal suffice would it be to state that the ratio of each authority is that if important evidence is ignored by the first Appellate Court then alone it would be open to the second Appellate Court to re- appreciate the evidence. The reason is obvious. No court can examine a problem in isolation. No evidence can be viewed in isolation. Preceding and succeeding evidence has also to be considered. In other words there has to be an inclusive discussion of all relevant evidence.

15. Pertaining to the decisions cited on the issue that admissions/recitals in a document can be shown to be erroneous, suffice would it be to state that the correct proposition of law is that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong; but they do raise an estoppels and shift the burden of proof on the person making them or on his representative in interest. Unless shown or explained to be wrong they are an efficacious proof of the facts admitted therein. The decision of the Supreme Court reported as : [1958]1SCR1384 Bai Hira Devi and Ors. v. The Official Assignee of Bombay, though cited on the proposition that admissions/recitals in a document can be shown to be erroneous actually relates to the rule of exclusion enunciated under Section 92 of the Evidence Act and holds that strangers to a document or representative in interest of parties to a document are at liberty to lead evidence of oral agreement notwithstanding the fact that such evidence, if believed, contracts, varies, adds to or subtracts from the terms of the document. The decision holds that the rule of exclusion enunciated by Section 92 of the Evidence Act applies to parties to the document being passed on the doctrine of mutuality.

16. Decisions cited on the issue that notwithstanding a fact is admitted a party can be called upon to prove the same relate to the proviso of Sub Rule 1 of Rule 5 of Order 8 of CPC which states that notwithstanding that if an allegation is not specifically denied or is not denied by necessary implication it shall be deemed to be admitted, a court may in its discretion require any fact so admitted to be proved otherwise than by such admission. The decisions note that the proviso to Sub Rule 1 of Rule 5 of Order 8 of CPC embodies a principle enunciated under proviso to Section 58 of the Evidence Act 1872 which is worded in pari materia language.

17. Decisions cited on the issue that a tenancy agreement has to be pleaded and proved by he who alleges the tenancy hold that tenancies cannot be proved on vague and roving pleas. And mere use of the term rent or tenant in a rent note or a receipt are not conclusive evidence that the jural relation of landlord and tenant existed. That relationship of landlord and tenant is a result of parties being ad idem and a contract between the two to create a landlord and tenant relationship.

18. The decision of the Supreme Court reported as : [1966]1SCR758 Ambika Prasad Thakur and Ors. v. Maharaj Kumar Kamal Singh and Ors. expands the scope of illustration (d) to Section 114 of the Evidence Act and brings home the legal principle that existence of state of things proved gives rise to continued backward and forward existence of the thing proved unless by evidence the contrary is proved.

19. Pertaining to material evidence being ignored by the courts below, suffice would it be to note that the grievance of the appellant pertains to non consideration of Ex. DW-4/PB and Ex. DW-4/PA. I note that both documents have been duly noted and considered by the learned Trial Judge in para 6 of the decision while considering issue No. 3 whether relationship of landlord and tenant was established. Thus, it is not a case where the court of first jurisdiction has ignored the same. The learned Trial Judge has considered the said documents with reference to Ex. DW-3/17 being rent receipt issued by Ganesh Dass himself under his signatures and other rent receipts being exhibits Ex. DW- 3/2, Ex. DW-3/3 and Ex. DW-3/4 issued by the grand son of Ganesh Dass. The learned Trial Judge has also considered the effect of the recital in the sale deed Ex. DW-1/1 as also the

term of sale; recital being that the defendant was a tenant in a part of the property sold at a monthly rent of Rs.5- and a covenant being that the purchaser shall be entitled to release arrears of rent from the tenants. The learned Trial Judge has noted that the rent receipts record that the defendant was a tenant in respect of the suit property. In this connection, I may additionally note Ex. DW-3/1 being lawyer's notice dated 17.5.1982 addressed on behalf of the legal heirs of Ganesh Dass informing Mohinder Kumar that on 26.4.1982 they had sold the entire property to the plaintiff and he i.e. Mohinder Kumar should attorn to the plaintiff. The recitals in the sale deed are corroborated by not only the rent receipts and the notice of attornment they are even consistent with the conduct of Ganesh Dass who during his life time took no steps to evict the defendant.

20. The plaintiff has brought no evidence on record to disprove the recitals in the sale deed.

21. Further, it is not a case of a stray rent receipt being relied upon. 4 rent receipts have been proved. Just as the recitals in the sale deed gets support from the rent receipts, vice versa, the rent receipts get support from the sale deed. Additionally, individually and jointly the recitals in the sale deed and the rent receipts find sustenance from the lawyer's notice of attornment Ex. DW-3/1.

22. The question of law is thus answered by holding that findings rendered by the court below that the evidence established that there existed a landlord and tenant relationship between the parties is correct on the facts and circumstances of the case and the evidence led.

23. The appeal is dismissed.

24. No costs.

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