

Sunila Wadhawan and ors. Vs. Silver Smith India Ltd.

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Court : Delhi

Decided On : Mar-26-2010

Judge : Shiv Narayan Dhingra, J.

Acts : Delhi Rent Control Act; ;Code of Civil Procedure (CPC) - Order 12, Rule 6; ;Registration Act - Sections 17(1) and 49; ;Transfer of Properties Act - Section 111; ;Evidence Act - Section 116; ;[Constitution of India](#) - Article 227

Appeal No. : CM (M) 1042/2008

Appellant : Sunila Wadhawan and ors.

Respondent : Silver Smith India Ltd.

Advocate for Def. : Girdhar Govind and; Noorun Nahar Firdausi, Advs.

Advocate for Pet/Ap. : Anil K. Kher, Sr. Adv. and; Rishi Manchanda, Adv.

Disposition : Petition allowed

Judgement :

Shiv Narayan Dhingra, J.

1. By way of present petition under Article 227 of the [Constitution of India](#), the petitioners have assailed an order dated 26th March, 2008 passed by learned ADJ dismissing an application filed by the petitioners under Order 12 Rule 6 CPC for

passing a decree of possession of the premises in question in favour of the petitioner.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner had let out a premises bearing number M-15, Green Park, New Delhi to the respondent by way of a lease deed dated 25th January, 1999 for a period of two years with effect from 1st February 1999. The monthly rent reserved was Rs. 30,000/-.

3. The petitioner filed a suit for recovery of possession of the premises, permanent injunction and recovery of mesne profits alleging therein, apart from other things, that the lease expired on 31st January, 2001 by efflux of time but the premises in question was not vacated. The defendant (respondent herein) was also served a legal notice dated 8th December 2003 terminating the month to month tenancy, if the defendant (respondent) considered himself to be a tenant in the premises on month to month basis. The tenancy was thus terminated by the said notice giving clear 15 days time and the premises was to be vacated and peaceful possession to be handed over by expiry of 31st December 2003. The plaintiff, in the notice, also made other averments regarding damages and rent which are not relevant for the purpose of deciding the present petition. In application under Order 12 Rule 6 CPC, the plaintiff made prayer for passing of a decree of possession only on the basis of admission of relationship of landlord-tenant, valid termination of tenancy and admission that rent of premises was above Rs. 3500/- per month. The defendant (respondent) in the written statement did not deny factum of it being a tenant, however, denied ownership of the plaintiffs. The other stand taken by defendant was that plaintiffs had deliberately not disclosed that the notice sent by plaintiffs dated 8th December 2003 was duly replied by the defendant vide its reply dated 28th December 2003 and it was stated by the defendant that lease of the suit premises was extended by the landlady for a further period of five years on expiry of the earlier period of lease. Since the suit was filed by all co-owners, it was stated that there was no privity of contract between plaintiffs No. 2 to 4 and the defendant. The other averments made by the defendant were regarding the rate of rent as well as change of rent. In any case, it was not disputed that the rent was above Rs. 3500/-. In view of this written statement where the relationship of

landlord and tenant in respect of the premises was not denied, the receipt of notice terminating the tenancy was not denied and the fact that the rent was above Rs. 3500/- and the premises was not covered under Delhi Rent Control Act was clear, the plaintiffs (petitioners herein) prayed to the Court of learned ADJ that a decree of possession of the premises be passed on the basis of admissions.

4. The application under Order 12 Rule 6 CPC was resisted by the respondent herein on the ground that there was no clear admission made by defendant of the averments of the plaintiff and, therefore, no order under Order 12 Rule 6 CPC could be passed. The learned trial court observed that from the pleadings of the parties, it was apparent that a plea was taken by defendant of renewal of lease deed for a further period of five years and this plea was denied by plaintiffs. It was also stated that plaintiff No. 1 was the sole Lessor and plaintiffs No. 2 to 4 were not proper parties. The Court also observed that plaintiff had not mentioned about the reply of notice he received in the plaint. She observed that the suit was filed on 5th March, 2004 and according to plaintiffs lease deed was executed on 31st January 2001 but as per defendant, the lease stood extended up to 31st March, 2006. Thus, there was no clear admission and she dismissed the application.

5. While deciding an application under Order 12 Rule 6 CPC seeking passing a judgment on admissions for possession of premises on termination of lease, the Court must not ignore and forget the mandatory statutory provisions regarding termination of tenancy and creation of lease for a specific period and entertain such defence which law does not permit. Nor the Court should forget the statutory provisions of Registration Act and Stamps Act and it should consider, if the defence taken by defendant was tenable in law. A frivolous defence taken by a party, not tenable under law, cannot be a basis for denying relief to the plaintiff.

6. Section 17(1)(d) of the Registration Act makes it mandatory that where a lease is for more than 11 months, it is required to be compulsorily registered under Registration Act and Section 49 of the Registration Act makes it clear that a document compulsorily required to be registered if not registered, cannot be read in evidence. The defendant had not taken the stand that there was a registered lease deed in respect of the property in question for a period of five years. The

documents relied upon by the defendant was a lease agreement on a Rs. 10 stamp paper signed by the parties. This document could not have been looked into by the learned trial court under any circumstances, except for collateral purpose and the document should not have been relied upon by the trial court to deny the relief. The submissions made in the written statement about creation of a tenancy for a period of five years without a supporting registered deed could not have been looked into by the trial court to infer that lease stood renewed for five years.

7. Even if the trial court had given credence to the fact that the lease had been renewed for a further period of five years in view of the averments made in the written statement, this period of five years had also expired long back, before passing of the impugned order by the trial court and the trial court comfortably closed its eyes to this fact. Thus, the lease deed, even as per the defendant's version had come to an end by efflux of time. There is no denial of the fact that the rent was above Rs. 3500/- and the tenancy can be terminated by giving 15 days notice in terms of Section 111 of the Transfer of Properties Act, in case the lease was month to month lease. It is settled law that where a lease is created for a fixed period between the parties by unregistered document, the Court cannot look into the document as a document of creation of lease for a fixed period of more than one year but will have to consider the lease as month to month lease. In view of this legal position, there was no option available with the trial court but to consider that the lease in question was a month to month lease determinable by 15 days' clear notice. Since the receipt of notice was not denied by defendant, terminating the tenancy became obvious. The defence taken by defendant of creation of a fresh lease for a fixed period of five years could not have been looked into in view of the provisions of Registration Act. The trial court ought to have come to conclusion that the contractual tenancy created by the petitioners came to an end and the petitioners were entitled for a decree of possession. The plea taken by respondent that plaintiffs No. 2 to 4 were not privity of contract could not be a ground for the trial court to refrain itself from passing a decree of possession in favour of plaintiff No. 1 alone in view of the admission made by defendant that he had privity of contract with plaintiff No. 1 alone.

8. This Court and the Supreme Court have time and again emphasized that the Courts must do meaningful reading of the pleadings and the grain has to be sifted from chaff. Today in pleadings many irrelevant and unnecessary things are stated which have no legal basis. The Courts must be able to sift the material part of the pleadings necessary for disposal of an application. It is not the duty of the Courts to simply reproduce the pleadings of the two parties in its order, and without analyzing the facts, in last paragraph write that in his/her opinion, no ground in the application was not made. The trial court in this case had done the same thing. She did give a list of judgments referred but unfortunately she had not bothered to refer to the relevant judgments and see their applicability. In such an application, the Court has to look into only three facts; (i) whether the relationship of landlord and tenant is admitted; (ii) whether the lease has been terminated by serving a notice or not; and (iii) and whether the rent was above Rs. 3500/- or not. The Court must keep in mind that Section 116 of Evidence Act creates an estoppel against the tenant from challenging the ownership of the landlord/landlady. Where the relationship of landlord and tenant is admitted, the averments challenging ownership of the landlord are not to be looked into.

9. Keeping in view the above facts and settled legal position, I allow this petition. The application for the petitioners under Order 12 Rule 6 CPC is hereby allowed and a decree of possession of premises bearing number M-15, Green Park, New Delhi shall be passed by the trial court. The trial court shall proceed with the rest of the issues raised which are pending before it.

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