

Ram Chander Rathi.Vs. Rajinder Parshad .

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Court : Delhi

Decided On : Aug-26-2010

Judge : Indermeet Kaur, J.

Appeal No. : R.S.A. No. 122/2008

Appellant : Ram Chander Rathi

Respondent : Rajinder Parshad .

Advocate for Def. : Mr. Rahul Gupta,;Mr. Surkhar Dasi,; Ms. Ira Gupta, Advs.

Advocate for Pet/Ap. : Mr. Rajinder Aggarwal, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

ORDER

1. This second appeal has impugned the judgment and decree dated 11.12.2009 which had endorsed the finding of the Civil Judge dated 22.09.2006 dismissing the suit of the plaintiff on issue nos. 1,2 and 3.

2. Briefly stated the factual matrix of the case is as follows:

1. The plaintiff/appellant had filed a suit for permanent and mandatory injunction as also for recovery of damages. The defendant/respondent is stated to be the tenant under the appellant in respect of the suit property at the ground floor of Katra Rathi as shown in red colour in the site plan at a monthly rent of Rs. 150/-. The allegation was that the defendant had raised a platform in front of the shop which was shown in green colour in the said site plan. In July, 1997, the defendant had illegally and wrongfully encroached the platform and raised a glass glazed panel R.S.A. No.122/2008 Page 1 of 4 damaging the property. A legal notice dated 27.05.2000 was sent to the respondent.

2. The written statement filed by the defendant had contested the litigation. It was stated that there has been no encroachment in the suit property and the suit premises were in the same state as when they had been taken on rent by the defendant in the year 1992. It was further submitted that only some furniture and fixtures had been replaced in the year 1992- 1993 which had not changed the character of the suit property.

3. The trial judge had framed six issues which inter alia reads as follows:

i. Whether there existed any cause of action in favour of the plaintiff for filing the present suit? OPP. ii. Whether the suit filed by the plaintiff is barred by time? Onus on parties.

iii) Whether the plaintiff has waived his right by acquiescence, laches and conduct as claimed in the written statement? OPD.

iv) Whether the plaintiff is entitled to the relief of mandatory injunction as claimed in the plaint? OPP. v) Whether the plaintiff is entitled to recover an amount of Rs. 72,000/- on account of damages from the defendant alongwith interest? OPP.

vi) Whether the plaintiff is entitled for damages w.e.f. 01.07.2000 till the actual removal of the encroachment and restoration of the premises in its original condition alongwith interest. If so, at what rates? OPP vii) Relief.

4. Issue nos. 1,2 & 3 were all decided against the plaintiff and in favour of the defendant. Issues No. 4-6 were also consequently decided against the plaintiff.

The suit of the plaintiff was dismissed.

5. Before the trial judge, one witness had been examined on behalf of the plaintiff and five witnesses had been examined on behalf of the defendant. Their detailed versions were scrutinized as also the documentary evidence proved in their testimonies. Lease Deed executed between Mr. Anil Rathi, the brother of the plaintiff and the defendant was proved as exhibit PW1/D1. Even before this court, at the time of arguments, the learned counsel for the appellant had conceded that he is not disputing this document. The photographs of the suit property and the site plan had been proved in the versions of DW1 and DW 5; the site plan is exhibit DW 1/84 and the photographs as DW 1/67 to DW 1/74. The contention of the defendant is that these documents substantiate his argument that there was no encroachment in the suit property; the property which had been leased out had not changed in character. Trial judge had also noted that the said witnesses i.e. DW-1 & DW-5 have not been cross-examined on the aforementioned documents. The suit was accordingly dismissed.

6. These findings of the trial judge were endorsed by the first appellate court in its judgment and decree dated 11.12.2009. The first appellate court had also noted that the reliance by the trial judge on the photographs DW1/67 to DW 1/74 as also the site plan exhibit DW 1/84 had established that the defendant had not carried out any material additions or alterations in the suit property and this contention of the plaintiff has been negated. It was further held that the suit of the plaintiff is barred by limitation under the provisions of Article 113 of the Limitation Act. The suit had been filed on 04/07/2000 and as per the evidence on record, the defendant had changed the furniture and fixtures sometime in the year 1992; as such the suit filed in the year 2000 by the plaintiff was also time barred.

3. This is a second appeal. The appeal has not yet been admitted. The substantial questions of law have been formulated at page 10 of the memo of appeal. The inter alia reads as follows: i) Whether in the facts and circumstances of the case the alleged lease deed stated to have been executed between the respondent and Shri. Anil Rathi has any binding effect of the appellant.

ii) Whether the plea of the respondent in regard to the area of the shop and the mezzanine floor could be accepted on the basis of the alleged site plan which was never proved, nor the respondent was able to prove, particularly when the respondent even failed to prove that the site plan was ever a part of the lease deed dated 25.07.1992 alleged to have been executed between Shri. Anil Rathi and the respondent? iii) Whether the claim of the respondent can be accepted on the basis of the alleged lease deed which have been admittedly alleged to have been executed by Sh. Anil Rathi who was never the owner/landlord of the suit premises?

4. These are all propositions of fact. The lease deed is an admitted document. The contention of the appellant that the site plan was not proved is not substantiated by his argument. He has failed to show as to how the site plan does not stand proved. Trial court as also the first appellate court had correctly held that the site plan exhibit DW1/84 has been proved in the version of DW 1; in fact no cross-examination had been conducted of this witness.

5. There are two concurrent findings of facts by both the courts below. No substantial question of law has arisen in this case. This court is not a third fact finding court. Unless and until a substantial question of law arises, no interference is called for. There is no merit in the appeal. The appeal is dismissed in limine.

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