

Omkar Vs. Chander Pal and anr

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Court : Delhi

Decided On : Nov-02-2010

Judge : Mr. Mool Chand Garg. JJ.

Acts : Code Of Criminal Procedure (CRPC) - Order XXXIX Rule 10 CPC

Appeal No. : FAO No.347/2009

Appellant : Omkar

Respondent : Chander Pal and anr

Advocate for Def. : Mr.S.K.Duggal, Adv.

Advocate for Pet/Ap. : Mr.S.D.Singh ; Rahul Kr.Singh, Advs.

Judgement :

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

ORDER

1. This appeal is filed by the appellant, who is aggrieved of an order dated 29.09.2009 passed by the Civil Judge, Delhi in Suit No. 38/2004, whereby the learned Civil Judge has dismissed the application filed by the appellant under

Order XXXIX Rule 10 CPC.

2. The appellant has filed a civil suit against the respondents/defendants for their ejection from the suit property and for recovery of possession and recovery of arrears of the rent as well as the recovery of mesne profit and damages with pendent elite interest @18% per annum till its realization.

3. According to the appellant, the respondents were unauthorized occupants in the suit property even though they were inducted as tenants by virtue of rent deed executed by the parties. It is also contended by the appellant that the defendants/respondents were not paying the rent as well damages to the plaintiff/appellant and that the defendants/respondents be directed to deposit a sum of ` 3,630/- per month as occupation charges and mesne profits during the pendency of the suit. It is also contended that the plaintiff/appellant has a prima facie case, balance of convenience and that irreparable loss would be caused to him if the application is not allowed and that the irreparable loss would be caused to him if the application under Order XXXIX Rule 10 CPC is not allowed.

4. According to the respondents, the application filed by the appellant is baseless and afterthought. It is also contended that the defendants/respondents are the owners in possession of the property in question and the plaintiff/appellant has no right, title or interest in the same. It is further contended that there is no reason/ground for demanding a sum of ` 3,630/- per month. It was for that reason the claim of the plaintiff/appellant was termed as baseless and prayer was made to dismiss the application.

5. The learned Civil Judge dismissed the application under Order XXXIX Rule 10 CPC vide impugned order after making the following observations:-

"The perusal of the record reveals that it is a suit for ejection, recovery of possession, arrears of rent, mesne profits and damages. The issues had already been framed vide order dated 02.03.2006 and the relief sought through the present application stands covered by the issues already framed. No grounds mentioned in the application sufficient for directing the plaintiff. Mere getting an injunction order does not authorizes the plaintiff to seek a direction against the

defendants to deposit a sum of `3,630/- per month as occupation charges and mesne profits. I do not find any merits in the application and the same is dismissed."

6. To appreciate the controversy between the parties, it would be appropriate to take note of the averments made by the appellant in the plaint.

7. In paragraph 3 of the plaint, it has been submitted on behalf of the appellant that he has purchased the house in question from the respondents against the consideration and on 3.6.1999 the respondents executed various documents such as General Power of Attorney, Wills, affidavits, deed of agreement as well as also issued the receipt of the consideration received by them towards the said house which was owned by them earlier. The General Power of Attorney as well as the wills executed by the respondents were registered before the Sub Registrar on the same day i.e. 3.6.1999 and the remaining documents were duly attested. The respondents herein had handed over the possession of the entire property to the appellant and the appellant had become the absolute owner of the property in question in all respects.

8. It was also pleaded that the respondents herein have handed over the peaceful, vacant and physical possession of the ground, first and second floors of the house mentioned above on 3.6.1999 and thereby, the appellant became the absolute owner of the property.

9. It was further pleaded that on the request of the respondents, the appellant on 4.6.1999 allowed the respondents to continue in possession of the suit property on rent and accordingly, a rent agreement dated 4.6.1999 came to be executed between the appellant and the respondent for 11 months i.e. w.e.f. 4.6.1999 to 3.5.2000.

10. It was also pleaded that the respondents paid rent to the appellant upto October 2002 and sine November, 2002 the respondents herein had not paid the rental amount @ ` 3300/- per month.

11. The suit in question was instituted sometime in the year 2004.

12. It was also pleaded in the suit that a notice was also given by the appellant to the respondent on 11.11.2003, thereby terminating the monthly tenancy of the respondent and calling them to hand over the vacant and peaceful possession.

13. Suffice it would be to say that in the written statement the case of the appellant regarding purchase of the property has been denied by the respondents. It has also been denied that the suit property was let out by the appellant to the respondent as pleaded. As regard execution of some papers, it has been specifically denied that they ever sold any property to the appellant against consideration. It has been pleaded that the value of the property is more than 6 lakhs. It was submitted that the respondents are illiterate persons who after death of their only educated uncle Shri Kishan La. Shri Kishan Lal on the pretext of arranging a loan of ` 2,00,000/- (rupees Two lacs) had advised respondents to sign some paper for mortgaging the suit property for security of loan in the year 1999. Respondents were to made the sign on alleged documents by misrepresentation and fraud. Respondents even did not know the appellant. Appellant was only known to Shri Kishan Lal who has obtained the signature of the Respondent by misusing the faith reposed on him. It is submitted that agreement to sell does not confer any rights of ownership but only a right for specific performance. Appellant did not file any suit for specific performance since 1999 and has lost said heights by effluxes of time, though it is specifically denied that respondents ever agreed to sell the property. Respondents have neither received any consideration nor even agreed to execute GPA Wills, affidavit, agreement to sell or receipt. It is already submitted that all documents were obtained by misrepresentation and fraud and when same has been detected, respondents have filed a suit for declaration, which is pending disposal before the Court. House is owned by respondent and four other co-owners and not by respondents only. A suit for possession against the owner is not maintainable in law. It is submitted that on the pretext of arranging loan by mortgaging the suit property, Shri Kishan Lal has obtained signature of the Respondents and took them to the office of Sub-Registrar, which was not even in the knowledge of the respondent. After knowing the fraud said registered power of attorney and wills have already been invoked under information to appellant with whom respondent has neither jural nor contractual relations. Attestation of documents does not confer any right, which

were never executed by free will and after understanding them. Respondents do not know English and even cannot read and write Hindi properly. It is specifically denied that possession ever handed over to the appellant by the respondents. Respondents are residing in the suit property since 1972-73 and never shifted to any other place at any point of time. There is no question of handing over possession to appellant who was not known to the Respondents. It is specifically denied that appellant ever became owner much less absolute owner of the suit property. When there is not even a whisper of the sale. It is specifically denied that possession of ground floor, first floor and second floor was taken by appellant on 3.6.1999 or on any other date.

14. In view of the aforesaid controversy raised by the respondents, it cannot be said that the rights of the appellant to claim damages from the respondent have been crystallized inasmuch as the right of the appellant to claim ownership itself is in dispute.

15. Thus, the order which was sought by the appellant against the respondent cannot be granted unless the evidence of parties is recorded. I, therefore, do not find any ground to interfere with the orders passed by the learned Civil Judge. The appeal filed by the appellant is dismissed with no order as to costs. Parties are directed to appear before the learned Civil Judge on the date already fixed. A copy of this order be sent to the learned Judge along with the TCR, if any, forthwith.

CM No. 16322/2009 (Stay)

In view of the orders passed above, the application is disposed of as having become infructuous.

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