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Viney Kumar Mahajan Vs. Vishambhari Devi

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Court : Delhi

Decided On : Nov-01-2011

Judge : S. P. Garg, J.

Acts : Evidence Act

Appeal No. : RFA (OS) 76 of 2010

Appellant : Viney Kumar Mahajan

Respondent : Vishambhari Devi

Judgement :

1. Appellant has filed the present appeal against the judgment and decree dated 21.05.2010 whereby the suit filed by the respondent for possession against the appellant was decreed without trial and the appellant was directed to vacate the suit premises and hand over the possession thereof to the respondent within three months of the decree.

2. Claim of the respondent in the suit was that late Budh Singh Rawat, husband of the appellant was working as Peon/Care Taker since 1947 with the predecessor of the respondent and he remained in service till 24.02.1989 (till his death). During his employment, Budh Singh Rawat was given the accommodation in question without charging any amount either towards rent or other wise and since the master servant relationship snapped due to death of Budh Singh Rawat, his legal heirs were liable to return possession of the premises in question. Appellant took

the defence that late Budh Singh Rawat was a tenant under the predecessor in interest of the respondent and that initially `75/- per month towards rent was being deducted from the salary paid to her husband which were increased to `100/- per month and thereafter to `125/- per month.

3. Neither party filed any document to evidence the respective plea. But, the respondent filed extracts from the salary register containing signatures of various persons who were employed by the predecessor in interest of the respondent, which included late Budh Singh Rawat, acknowledging receipt of salary each month. The appellant was called upon to admit or deny said documents and she admitted the signatures of her late husband against entries pertaining to his name wherein monthly salary being received by him was acknowledged. These were exhibited as Ex.P-1 to Ex.P-32.

It be highlighted that while admitting signatures of her husband, appellant denied the contents of the acknowledgement.

4. The learned Single Judged has opined that no triable issue arises and has decreed the suit on the reasoning that the appellant had not denied that her husband was an employee under the predecessor in interest of the respondent and that the registers Ex.P-1 to Ex.P-32 wherein signatures of husband of the appellant were admitted against entries pertaining to monthly salary paid evidenced his receiving fully salary and thus the plea that each month rent was deducted when salary was paid was disproved.

5. Grievance in the appeal is that the suit ought to have been set down for trial.

6. Assertions of the appellant in the written statement regarding taking the premises on rent are vague. The appellant did not plead at all any specific date on which her husband was inducted as a tenant in the premises in question. The defence that monthly rent was deducted when salary was paid to her husband has been destroyed by the appellant when she admitted her signatures on Ex.P-1 to Ex.P-32 and the fact that while admitting the signatures, she denied the contents of the documents is a material for the reason under the evidence Act a presumption arises that before it was executed the document was properly drawn

up.

7. The appellant had filed a petition u/s 45 of the Delhi Rent Control Act. The said application u/s 45(3) Delhi Rent Control Act was dismissed by the learned ARC vide order dated 15.02.2007, observing that there was prima facie nothing on record to show relationship of landlord and tenant between the parties. In appeal before the learned RCT, only temporary connection was ordered to given to the appellant with the observation that if the trial court came to the conclusion that there was no relationship of landlord and tenant between the parties, the electricity connection would be disconnected by NDMC.

8. Even before us the appellant has not shown any document worth the name to establish relationship of landlord and tenant between the parties at any time. The premises occupied by the husband of the appellant being employed as Peon/Care Taker did not confer any status of tenant upon the appellant. The appellant has no legal right to occupy the premises in question simply because at one stage her husband was permitted to occupy the premises in question because his employment with the management of Regal Theatre.

9. The plea that the status of the respondent is that of a licensee, has rightly been negative by the learned Single Judge on the ground of estopple for the reason the appellant's own case is that her husband was a tenant under the predecessor in interest of the respondent and thus she could not deny the title of the respondent.

10. The Supreme Court in Civil Appeal Nos. 4912-4913 of 2011 in the case titled as Ramrameshwari Devi and Ors Vs. Nirmala Devi and Ors. has observed as under :

" According to the learned Amicus Curiae, every lease on its expiry, or a license on its revocation cannot be converted itself into litigation. Unfortunately, our courts are flooded with these cases because there is an inherent profit for the wrong-doers in our system. It is a matter of common knowledge that domestic servants, gardeners, watchmen, caretakers or security men employed in a premises, whose status is that of a licensee indiscriminately file suits for injunction not to be dispossessed by making all kinds of averments and may be even filing a forged

document, and then demands a chunk of money for withdrawing the suit. It is happening because it is the general impression that even if ultimately unauthorized person is thrown out of the premises the court would not ordinarily punish the unauthorized person by awarding realistic and actual mesne profits, imposing costs or ordering prosecution.

39. It is a matter of common knowledge that lakhs of flats and houses are kept locked for years, particularly in big cities and metropolitan cities, because owners are not certain that even after expiry of lease or licence period, the house, flat or the apartment would be vacated or not. It takes decades for final determination of the controversy and wrongdoers are never adequately punished. Pragmatic approach of the courts would partly solve the housing problem of this country."

11. We find no substance in the appeal preferred by the appellant and the same is dismissed but without any cost.

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