
(2001) 09 DEL CK 0081

Delhi High Court

Case No: Regular Second Appeal No. 82 of 2001

Smt. Promila Mathur
and Others

APPELLANT

Vs

Sh. Bhim Chand and
Others

RESPONDENT

Date of Decision: Sept. 27, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Delhi Rent Control Act, 1958 - Section 2, 50
- Transfer of Property Act, 1882 - Section 106, 111

Citation: (2001) 94 DLT 443 : (2001) 60 DRJ 419

Hon'ble Judges: Ramesh Chandra Chopra, J

Bench: Single Bench

Advocate: Ms Neelam Rathore and Ms Geetika Panwar, for the Appellant; Mr. Kamal Mehta, for the Respondent

Final Decision: Dismissed

Judgement

R.C. Jain, J.

As the matter has been fully argued on behalf of the parties and with the consent of the parties, this appeal is being finally disposed of at the stage of admission itself.

2. This second appeal is directed against the judgment of the learned Additional District Judge, Delhi, dated 14th, March, 2001 by which the first appeal filed by the appellants herein against the judgment and decree dated 5th October, 1984, passed by the learned trial Court in Suit No. 249/75 has been dismissed.

3. Brief facts, leading to the present appeal are that the predecessor-in-interest of the respondents herein had filled a suit for possession in respect of the land measuring 2 Bighas 16 bids was out of Khasra No. 22 which had been leased to the

predecessor-in-interest of the appellants for a fixed period of 20 years commencing from 3.11.1949 and ending on 2.11.1969 at yearly premium of Rs. 1,000/- with the stipulation that lessee would be entitled to raise the pacca/kuchcha construction on the demised premises for residential or commercial purposes. After the expiry of the term of lease, the vacant possession of the plot of land was not handed over to respondents. The suit was contested by the appellants on a variety of grounds viz. suit as framed was not maintainable; suit had not been properly valued for the purpose of court fees and jurisdiction and it was a bad for misguide of parties and causes of action. It was also pleaded that the suit was bad for want of notice u/s 106 Transfer of Property Act and was barred by the provisions of Section 50 of the Delhi Rent Control Act and that the civil court had no jurisdiction to entertain the suit. A number of issues were framed by the learned trial court and after the trial the court decreed, the suit of the respondents by holding that they were entitled to the possession of this suit land from the appellants herein Along with damages for a period of three years at the rate of Rs. 30/- p. a. after making payment of Rs. 20,000/- to the appellants towards the cost of superstructure raised, on the suit land. Aggrieved by the said judgment and decree of the learned trial court, the appellants filed on appeal before the Appellate Court and the appellant pressed the following three grounds in support of their appeal:

- i) Whether the suit properly is covered under the definition of Section 2(i) of the Delhi Rent Control Act. If so, then whether the suit is barred under the provisions of Section 50 of the DRC Act.
- ii) Whether the appellants are tenants holding over or are tenants at sufferance and whether they are entitled for notice as so provided u/s 106 of Transfer of Property Act.
- iii) In case, both the above propositions are decided against the appellants then to what amount the appellants are entitled on accounts of super-structure?"

4. With regard to the first point, the learned Appellate Court found no merits in the arguments of the appellants and held that the suit properly is not a premises within the definition of Section 2(i) of the Delhi Rent Control Act and, Therefore, the suit was not barred under the provisions of Section 50 of Delhi Rent Control Act. In regard to the second point, the Appellate Court, while upholding the finding of the trial court on the strength of additional reasoning categorically held that the appellate were tenant of sufferance and not tenant being holding over because there was no evidence on record to prove that the respondents had acquiesced in the continuation of the lease of the appellants in respect of the suit land and it was not proved that the rent was paid and accepted after the expiry of the lease. Similarly with regard to the requirements of notice u/s 106 of Transfer of Property Act, the Appellate Court held that there was no requirement to serve the notice upon the appellants as the lease was for a definite term which expired by efflux of time by reason of Section 111(a) of the Transfer of Property Act. On the third point also the trial court upheld the finding with regard to the value of the super structure as determined by the trial court.

5. I have heard, learned counsel for the parties at sufficient length and have given my thoughtful consideration to their respective submissions. Learned counsel for the appellants has assailed the judgment of the learned trial court and the first appellate court mainly on the ground that their finding that the appellants were tenant at sufferance and not holding over is erroneous and not in consonance with the provision of Transfer of Property Act and the legal position emerging from various decisions of the superior Courts and secondly; the finding with regard to the valuation of the super structure is perverse and not based on the evidence obtaining on record. Both these contentions have been refuted from the side of the respondents primarily on the ground that the contentions are not liable to be raised or considered by this Court while sitting in second appeal there already exist concurrent finding of both the courts below on this aspect.

6. The scope of Section 100 CPC, in regard to second appeal has been more fully considered by the Hon"ble Supreme Court in the case of [Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others](#), and the following prepositions of the law were laid down as follows:

- (1) High Court must adhere to the procedure and conditions prescribed in the section and no court has the power to add to or enlarge the condition of appeal;
- (2) High Court must satisfy itself that a substantial question of law is involved and must then formulate the question on which the appeal would then be heard;
- (3) the respondent has the right to argue that no substantial question of law is involved;
- (4) a second appeal cannot be decided on merely equitable grounds;
- (5) the court must distinguish between a question of law and a substantial question of law;
- (6) a substantial question of law must be distinguished from a substantial question of fact;
- (7) concurrent findings of fact, however, erroneous, cannot be disturbed under the section.

7. Having considered the submissions made on behalf of the appellants, it may be stated at the outset that no substantial question of law is involved in this appeal because findings on both these points which are sought to be raised from the side of the appellants now are essentially findings of fact or in any case findings based on mixed question of facts of law. To my mind, none of the findings appear to be perverse on can be said to be based on no evidence or material. Rather the findings are based on correct and proper appreciation of the evidence and material obtaining on record and are in consonance with the settled legal position. The learned counsel for the appellant has urged that there was evidence to show that the appellants had been paying rent to the respondents even after the stipulated period of lease was over and, Therefore the learned

trial court as well as the Appellate Court had erred in taking the view that the appellants were tenants at sufferance and were not holding over. I see no substance in this arguments as nothing could be pointed out from the record to support this contention. No other point was pressed in this appeal.

8. In the result, I hold that this appeal is devoid of any merits and is accordingly dismissed with costs quantified at Rs. 5,000/-