
(2008) 11 DEL CK 0141

Delhi High Court

Case No: Regular First Appeal No. 155 of 2008

Bhagwan Das Narang

APPELLANT

Vs

Radhey Kishan

RESPONDENT

Date of Decision: Nov. 19, 2008

Citation: (2008) 11 DEL CK 0141

Hon'ble Judges: Pradeep Nandrajog, J; J.R. Midha, J

Bench: Division Bench

Advocate: K.K. Aggarwal, for the Appellant; None, for the Respondent

Judgement

Pradeep Nandrajog, J.

None appeared for the respondent at the first call. None appears for the respondent even at the second call.

2. We have heard Learned Counsel for the appellant.

3. We find that impugned judgment and decree dated 29th November, 2007 appears to have been passed post haste. The result is that the

appellant has lost the right to recover possession of shop No. A-305 New Subji Mandi, Azadpur, Delhi.

4. This is in spite of the fact that a perpetuate lease deed dated 6th July, 1971 evidencing that the President of India acting through the Government

of Delhi transferred perpetual leasehold rights in the land in question in favor of M/s. Delhi Alu Company was filed before the Learned Trial Judge.

5. Learned Trial Judge has failed to realize the distinction between a licence issued by the Agricultural Produce Marketing Committee authorizing

traders to carry on business within the precincts of a market vis-à-vis the licence granted under the Easement Act. The impugned judgment

shows that the licence issued by APMC to carry on business within the precincts of Azadpur Subji Mandi has been construed as the entitlement of

the defendant as the owner of the premises.

6. Vide impugned judgment dated 29th November, 2007, holding that the appellant had led no evidence, the suit has been dismissed commenting

that the plaintiff has not even filed any title document and that the licence issued by the APMC evidenced the right of the defendant to occupy the

premises.

7. We allow the appeal and set aside the impugned judgment and decree dated 29th November, 2007. The suit filed by the appellant is restored

with a direction to the Learned Trial Judge to grant an opportunity to the appellant to lead evidence.

8. Needless to state even the defendant would be permitted to lead evidence.

9. We take on record the assurance of Learned Counsel for the appellant that the appellant would be more vigilant and would ensure that his

evidence is brought on record and that the witnesses are produced on the date notified for evidence by the Learned Trial Judge.

10. Dasti on payment of charges.