(2011) 05 DEL CK 0314

Delhi High Court

Case No: Regular Second Appeal No. 13 of 2008

Harish Chandra Bhutani	APPELLANT
Vs	
Inderjeet Singh	RESPONDENT

Date of Decision: May 20, 2011

Acts Referred:

- Registration Act, 1908 - Section 17, 49

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: G.P. Thareja, for the Appellant; R.K. Sharma and M.L. Manocha, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 31.10.2007 which had reversed the finding of the trial judge dated 20.11.2004. Vide judgment and decree dated 20.11.2004, the suit filed by the Plaintiff Inderjeet Singh seeking permanent and mandatory injunction, (to the effect that the shutter affixed by the Defendant on the suit premises i.e. shop in property No. 1/810, G.T. Road, Shahdara, Delhi is illegal; Defendant be directed to remove the said shutter as it is illegal and unauthorized), had been dismissed. Impugned judgment had reversed this finding. The suit of the Plaintiff was decreed in part; Defendant had been restrained from carrying out any further construction in the suit property; he had been restrained from using the roof which had come into existence on account of the aforenoted additions and alterations carried out by him.

2. The Plaintiff had taken the aforenoted the suit property on rent from the Defendant at the monthly rental of Rs. 175/-; this was vide Rent Deed dated 26.03.1984; the transaction had been entered into with Smt. Madan Kaur, the deceased mother of the Plaintiff. Smt. Madan Kaur had died on 08.06.1995; after her

death, the Defendant had attorned to the Plaintiff; Plaintiff was the landlord of the Defendant; Defendant had no right to sublet, assign or part with the tenanted premises or to make any unauthorized alternations or additions which he did without permission of the Plaintiff; he had affixed several shutters in the shop at a distance of 8 ft in each wall i.e. approximately 60 ft in length, giving a new shape to the tenanted premises; this came to be known to the Plaintiff on 18.01.99 when he visited the shop to realize the rent; Defendant was directed not to cause damage to the suit property or make any additions or alterations without the consent of the Plaintiff but to no avail; local police had also been approached but they did not paid any heed. Present suit was accordingly filed.

3. The Defendant denied the averments in the plaint. His contention was that he was well within his rights to carry the said additions and alterations in terms of the Rent Agreement dated 26.03.1984; Clause 6 permitted him to do so; Plaintiff had no cause of action; suit was liable to be dismissed .

4. On the pleadings of the parties, the following three issues were framed:

(i) Whether the Plaintiff is entitled to decree for Permanent injunction against the Defendant as prayed for ? OPP

(ii) Whether the Plaintiff is entitled to decree for mandatory injunction against the Defendant as prayed for ? OPP

(iii) Relief?

5. Oral and documentary evidence was led which included two PW''s on behalf of the Plaintiff as also the local commissioner; one witness was examined on behalf of the Defendant. Trial judge was of the view that the Rent Deed Ex. PW 1 /2 was not registered in view of the provisions of Section 49 of the Registration Act, it could not be looked back; not even for a collateral purpose. At the same time, the trial judge had relied upon Clause 6 of the Rent Deed to non-suit the Plaintiff; trial judge was of the view that Clause 6 gave ample power to the Plaintiff to make necessary additions and alterations in the suit premises; Plaintiff was not able to prove his case. His suit was dismissed.

6. This is a second appeal. Although the formal order of admission has not been passed but on 16.09.2010 the following substantial question of law was formulated:

Whether the impugned judgment dated 31.10.2007 restraining the Appellant from carrying on further construction in the property/not interfering with the rights to use the roof of suit property is a perversity as no such relief was claimed? If so, its effect?

7. On behalf of the Appellant it has been urged that the impugned judgment is perverse. It has reversed the finding of the Trial Judge without any cogent reason; the Court has failed to take into account the fact that Clause 10 had stood deleted

from the rent deed (Ex. PW1/2); Clause 6 had clearly recited a right in favour of the Appellant to construct in the suit premises; he had accordingly raised construction therein and is now using the premises for his shop and go down; there is no staircase to the roof; the Respondent cannot in any manner reach the roof; the tenanted premises necessarily comprise of the roof as well. Learned Counsel for the Appellant has placed reliance on AIR 1986 Delhi 236 Rawal Singh v. Kwality Stores and Ors. to substantiate his submission that when a one storeyed building is let out, in the absence of a contract to the contrary, the presumption is that the roof of the building has also been let out along with that building. It is pointed out that the ratio in the aforesaid judgment is clearly applicable to the facts of the present case.

8. Arguments have been countered. It has been stated that Smt. Madan Kaur, the deceased mother of the Plaintiff was an illiterate lady; parties were bound by Clause 10 which clearly stated that the roof was not a part of the tenanted premises and tenant would not construct on the first floor and not use the roof of the property.

9. Perusal of the record shows that what has been let out to the Appellant is a shop; it is depicted in red colour in the site plan attached with the plaint; it was in property No. 1/810, G.T. Road, Shahdara at a monthly rent of Rs. 175/-. The mother of the Plaintiff (Madan Kaur) vide document dated 26.03.1984 had given a lease of these premises to the Defendant. This document has been admitted. It has been proved in the Court as Ex. PW1/2.

Clause 6 of the agreement provides as under:

The tenant shall carry out any structural addition or alterations to the said premises layout or fixture.

Clause 10 is the disputed clause, it reads as under:

That the tenant shall not construct the first floor on the rented premises and also will not use the roof of the said property.

The contention of the Appellant is that Clause 10 has been struck out and this has been duly signed by the parties. This position has been disputed. Even presuming that Clause 10 is not read as part of Ex PW1/2; the whole case of the Appellant is hinged upon Clause 6; i.e. his permission to carry out the additions or alterations in the premises.

10. The document Ex PW1/2 was admittedly not a registered document; it could be looked into only for a collateral purpose. What is a collateral purpose had been rightly held to be: to determine the relationship between the parties or the purpose of letting. It could not be looked into for any other purpose.

11. The finding returned in the impugned judgment reads as follows:

Issues which arise for the consideration are:

(i) Whether Ex. PW 1 /2 dated 26.03.1984 being an unregistered document can be read in evidence being unregistered documents and if not what is the effect thereof.

(ii) Whether addition/alteration which have been carried out by the Respondent in 1993 and 1999 can be treated as having been carried out by the Respondent with the consent of the Appellant.

(iii) Whether the addition/alteration carried out by the Respondents have caused substantial damage to the suit property and have changed the nature of the property.

(iv) Whether the Appellant is entitled to the relief of injunction as prayed for including the relief of mandatory injunction with a direction to restore the status quo ante as on the date when the addition/alteration has been carried out.

12. Ld. Counsel for the Appellant submitted that a document which is unregistered is inadmissible in evidence cannot be looked into to prove the terms of tenancy on account of bar of the Section 49 of the Registration Act even though such a document can be looked into collateral purposes does not include the terms of tenancy.

13. However, the collateral purposes would not include the terms of tenancy. It is submitted that the permission to carry out additions/alterations in the suit property being a term of tenancy is not collateral purposes for which an unregistered document can be looked into. It is further stated, that the Respondent being a tenant had no legal right to change the nature of the property and is, therefore, liable to restore the property was it was in existence at the time of letting out.

14. The Appellant has relied upon the following judgments:

(i) Bhaiya Ramanuj Pratap Deo Vs. Lalu Maheshanuj Pratap Deo and Others,

(ii) Jagatjit Industries Ltd. Vs. Sh. Rajiv Gupta,

15. In the case of Bhaiya Ramanuj Pratap Deo v. Lalu Maheshanuj Pratap Deo and Ors. (supra) Hon''ble Supreme Court dealt with the fact of the non-registration of a document which were required to be registered compulsory. In para 22 of the aforesaid judgment it has been observed.

22. As regards the second reason, the argument is based on Section 17 read with Section 49 of the Indian Registration Act. Section 17 of the Registration Act enumerates the documents requiring registration. Section 49 of the Registration Act provides that no document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall (a) affect any immovable property comprised therein, (b) * * * (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Khorposh (maintenance) deed is document which requires within the meaning of Section 17 of the Indian Registration Act and as the document was not registered, it

cannot be received as evidence of any transaction affecting such property. Proviso to Section 49, however, permits the use of document, even though undersigned, as evidence of any collateral transaction not required to be effected by registered instruction. In this view of the legal position the maintenance deed can be looked into for collateral purpose of ascertaining the nature of possession."

16. In the case of M/s Jagatjit Industries Ltd. New Delhi v. Rajiv Gupta (supra) Hon''ble Mr. Justice Singh, the Hon''ble High Court of Delhi discuss the meaning of collateral transaction in relation to an unregistered lease in para 8 of the judgment wherein, it has been observed:

Learned Counsel for the Petitioner contends that even if this document requires registration and as it has not been registered, the same can be read as evidence of any collateral transaction not required to be effected by registered instrument. It is true that under the proviso to Section 49 of the Registration Act an unregistered document affecting immovable property can be received as evidence of any collateral transaction. The question is what is the collateral transaction in the present case. Learned Counsel for the Petitioner relies upon Term No. 2 of the lease deed. The term is as under:

That the lease is for a period of 11 months with retrospective effect from 1st May, 1969 with two years option with the lessee. The lease can be terminated or extended by giving two months'' notice by either side after expiry of lease of option period. If exercised.

He says that the lease can be terminated by giving two months'' notice by either side after expiry of lease i.e. after the expiry of the initial fixed period of 11 months. He says that such a term can be looked at to find out the period of notice to quit to determine the tenancy. He relies upon Lala Fateh Chand v. Mst. Radha Rani. 1956 All Lj 625. With respect to the learned Judge, I do not agree. The term regarding notice of eviction is a term which affects immovable property and therefore it cannot be said to be a collateral transaction. Further this authority was held to be not good law by Allahabad High Court itself in Sallomal Vs. Smt. Naina Baj (died) and Others, u/s 49 of the Registration Act a document compulsorily registrable, if unregistered, is inadmissible in evidence of a transaction affecting immovable property. The term regarding notice of eviction is a term which effects the immovable property. The main purpose of this term is as to when the tenant can be required to deliver possession of the tenancy premises.

17. Ratio of the aforesaid two judgments read with Section 17 and 49 of the Registration Act makes it abundantly clear that a Lease Deed to be read in evidence which is for a period of more than 11 months has to be compulsorily registered falling which, the terms and conditions as mentioned in a Lease Deed which is unregistered even if the lease continues after a period of 11 months becomes inadmissible in evidence. A document creating a lease of such a nature at the most

can be seen only for collateral purposes i.e. to the relationship between the parties or the purpose of letting.

18. On the other hand, the Respondent while referring the written note submitted before the ll. Trial court relied upon the following judgments:

i) 1985 RLR 408

ii) Sewak Ram and Others Vs. State of Uttar Pradesh and Others,

iv) AIR 1986 Del 236

19. I have gone through the aforesaid judgments. As far as the judgments delivered in 1985 RLR 408 and Sewak Ram and Others Vs. State of Uttar Pradesh and Others, do not help the case of the Appellant in understanding the impact of an unregistered lease deed. The judgment delivered in the case of AIR 1986 Del 236 only lays down that an unregistered lease deed can be looked into to ascertain the collateral purposes. In view of the judgment of Hon''ble Mr. Justice Sultan Singh reported in Jagatjit Industries Ltd. Vs. Sh. Rajiv Gupta, this judgment is again of no help to the case of the Respondent. In view of the judgment cited, this judgment is of not much help to the case of the Respondent. Thus answer to the first question is given in favour of the Appellant. For the similar reason, it cannot be said that the addition/alteration carried out in the property by the Respondent in 1993 and 1999 were carried out with the consent of the Appellant.

20. However, since there is no evidence led on record which may go to show that by carrying out additions/alteration the value of the suit property has been impaired or any substantial damage has been caused to the property or it has changed the nature of the suit property. The fourth question is answered against the Appellant.

21. Taking into consideration the facts of this in their entirety it is apparent, that the Respondent being a tenant had no right to carry out the addition/alteration which have been done in the suit property however as the additions/alterations have not impaired the value of the property or have caused any substantial damage to the same, there is no necessity to grant the relief for mandatory injunction as prayed for by the Appellant.

22. However, the Respondent is not entitled to carry out any further construction in the property or to restrain the Appellant from using the roof of the property which have come into existence now on account of additions/alteration carried out by the Respondent at his own responsibility in as much as, even from the reading of Ex.PW 1 /2 for collateral purposes it can not be inferred, that the roof of the suit property was let out to the Respondent. Thus, I allow the appeal in part and pass an order of injunction against the Respondent from carrying out any further construction in the property without consent of the Appellant and further not to interfere with the rights of the Appellant to use the roof of the suit property. With these observations, the appeal is disposed of. Copy of this order be sent to the trial court along with

TCR. Appeal file be consigned to the record room.

12. Impugned judgment had rightly returned the finding that the roof was not a part of the tenanted premises; it had come into existence only after the additions and alterations had been made by the Defendant which he was not permitted to do. No permission was available with the Defendant to carry out any additions or alterations on the roof. There was admittedly no stair case by which the tenant could have any access to the roof; roof was an independent portion and not a part of the tenancy of the Defendant. Photographs have also been placed on record to depict the site; these photographs do not substantiate the case of the Appellant; the roof could in no manner be accessed.

13. The judgment relied upon by the learned Counsel for the Appellant reported in Rawal Singh v. Kwality Stores(supra) is of no help. This was a case where a shop has been let out by the Defendant; staircase was common to the shop of the Plaintiff as also another shop; there was admittedly an access to the roof through this common staircase; in these circumstances presumption was drawn that the roof formed a part of the tenanted premises as there was no agreement to the contrary; ratio is inapplicable.

14. Impugned judgment does not in any manner call for any interference. Substantial question of law is accordingly answered in favour of the Respondent and against the Appellant. There is no merit in this appeal. The appeal is dismissed.