

(2011) 06 DEL CK 0086

Delhi High Court

Case No: Regular Second Appeal No. 77 of 2010 and CM No. 7047 of 2010

Raj Rani

APPELLANT

Vs

Sardar Mohinder Singh and
Another

RESPONDENT

Date of Decision: June 1, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2), Order 2 Rule 2, 11
- Delhi Rent Control Act, 1958 - Section 14(1)

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: D.K. Rustagi, B.S. Bagga and N.S. Bhati, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

Indermeet Kaur, J.

The present appeal has impugned the judgment and decree dated 1.2.2010, which has reversed the finding of the trial judge dated 13.7.2009. Vide judgment and decree dated 1.2.2010, the suit of the Plaintiff Raj Rani seeking possession and damages qua the suit property i.e. property bearing No. 5419, Ladoo Ghati, Paharganj, New Delhi (as depicted in red and blue colour and referred to as the suit property) had been decreed. The impugned judgment had reversed this finding; suit had been dismissed.

2. Plaintiff claimed himself to be the owner of the affronted suit property. He had let out the property comprising of one room and a covered verandah (red portion) to late Ujagar Singh at a monthly rate of Rs. 6.25. The deceased Ujagar Singh had thereafter covered the open space with a tin shed and started his work as a carpenter. He was residing there with his wife Mukhtiar Kaur and daughter Kanwaljeet Kaur. Kanwaljeet Kaur was married to Defendant No. 1. Defendant No. 1

joined the business of carpenter and started residing with his in laws. Plaintiff terminated the tenancy of Ujagar Singh vide notice dated 12.7.1980 to which the reply dated 1.8.1980 was filed. On the termination of his tenancy Ujagar Singh had become a statutory tenant. He expired on 8.1.1982; after his death his widow became tenant for her lifetime as she was financially dependent upon her husband and was living with him. The present Defendants although living with Mukhtiar Kaur had not acquired any right, title or interest in the suit property. Plaintiff had filed an earlier eviction petition against Mohinder Singh and the two daughters of Ujagar Singh u/s 14(1)(e) of the DRCA. Under wrong advise he had impleaded the daughters of Mohinder Singh also as tenants; this was under wrong legal advise. On an application under Order 1 Rule 10(2) of the Code, the eviction petition had been permitted to be withdrawn on the submission that present suit for possession had been filed against the said Defendants; the said eviction petition was dismissed as withdrawn on 3.1.2005. Possession of the Defendants is illegal. They have no right or title to remain in the suit property. Decree of possession has accordingly been prayed for.

3. Defendants contested the suit. It was stated that there was a no relationship of landlord and tenant between the parties; the present suit is also barred on principle of resjudicata. On merits it was stated that Plaintiff was not the owner of the suit property.

4. The trial court vide order dated 3.1.2005 as framed following issues:

1) Whether the suit is bad for misjoinder of necessary parties? OPD

2) Whether the suit is barred by the principles of resjudicata? OPD

3) Whether the Plaintiff is entitled for decree of possession, as prayed for? OPP

4) Whether the Plaintiff is entitled for damages, as prayed for? OPP

5) Whether the Plaintiff is entitled for decree of permanent injunction, as prayed for? OPP.

6) Relief.

5. Oral and documentary evidence was led. All the issues were decided in favour of the Plaintiff. Suit of the Plaintiff stood decreed.

6. This judgment was reversed in appeal. The impugned judgment was of the view that the suit was barred under Order 2 Rule 2; doctrine of resjudicata was also applicable.

7. This is the second appeal. It has been admitted and on 2.5.2011 the following substantial question of law was formulated. "Whether the finding in the impugned judgment dated 01.02.2010 dismissing the suit of the Plaintiff on the ground of res-judicata and on the bar as contained in Order 2 Rule of the CPC was not a

perverse finding" If so, its effect"

8. On behalf of the Appellant, it has been pointed out that the judgment suffers from a perversity; attention has been drawn to the issues framed in the first suit i.e. suit No. 227/1990 as also the issues framed in the second suit i.e. suit No. 187/2005 (present suit). It is pointed out that the first suit was a suit for possession and injunction seeking a demolition of the unauthorized construction carried out on the terrace. The second suit was a suit for recovery of the entire suit property; the pleadings in the first and second suit are diametrically opposed; there was no question of the applicability of the doctrine of resjudicata. It is pointed out that no objection under Order 2 Rule 2 of the Code had also been raised in the courts below; it was the Court itself which had drawn a finding that the second suit i.e. suit No. 187/2005 is barred on the principle of Order 2 Rule 2 of the Code even though this was the never contention of the Defendant. The judgment suffers from a perversity; it is liable to be set aside.

9 None has appeared for the Respondent.

10 The prayer made in the first suit i.e. suit No. 227/1990 was for decree of possession of the "chapper" and "khokha" (blue portion) of the suit premises i.e. house No. house No. 5419, Ladoo Ghati, Paharganj, New Delhi; damages were also claimed. There were 11 issues framed in the first suit. They inter alia reads as follow:

1. Whether the Plaintiff is the owner/landlord of property No. 5419, Laddo Ghati, Paharganj, New Delhi? OPP

2. Whether the Defendants have unauthorized, illegally constructed a kachha chhapper on the terrace. If so, to what effect? OPP

3. At what rate and to what amount the Plaintiff is entitled as damages for use and occupation? OPP

4. Whether the Defendant along with Mukhtiar Kaur is tenant in the disputed premises? If so, to what effect? OPD

5. To what amount Plaintiff is entitled for damages caused to the property? OPP 6. Whether the suit is bad for mis-joinder of parties? OPD

7. Whether the suit is bad to non-joinder of Mukhtiar Kars as a party in the suit? OPD

8. Whether the civil court has no jurisdiction to try the suit? OPD

9. Whether the suit of the Plaintiff is barred by time? OPD

10. Whether the suit is properly valued for the purposes of court fee and jurisdiction.

11. Relief.

11 The prayer made in the present suit seeks possession of the portions shown in red and blue in the site plan forming a part of property No. 5419, Ladoo Ghati,

Paharganj, New Delhi as also for damages. The portion show in red comprises of one room and a verandah in front of the said room; the blue portion comprises of the "terrace" and "chapper" made therein. In this suit, there were six issues. They read as follow:

1. Whether the suit is bad for misjoinder of necessary parties? OPD
2. Whether the suit is barred by the principles of resjudicata? OPD
3. Whether the Plaintiff is entitled for decree of possession as prayed for? OPP.
4. Whether the Plaintiff is entitled for damages, as prayed for? OPP
5. Whether the Plaintiff is entitled for decree of permanent injunction, as prayed for? OPP
6. Relief.

12. A perusal of the two suits and the pleadings contained therein show that the two suits are distinct and different from one another. In the first suit, the Plaintiff had sought a decree of possession only for the "khokha" and "chapper" on the terrace of the disputed premises; the cause of action had arisen in favour of the Plaintiff and against the Defendants when the Defendants had illegally and unlawfully possessed the suit premises and unauthorized made construction thereupon; contention of the Plaintiff was that only one room and a verandah had been let out to Ujagar Singh (father of Defendant No. 2 and father in law of Defendant No. 1). After his death, his wife Mukhtiar Kaur had become the statutory tenant; Defendants had unauthorizedly raised construction on the terrace; for this the first suit had been filed. The judgment in the first suit had been delivered on 28.10.1996. Issue No. 2 had been decided against the Plaintiff; the court was of the view that the Defendant has not unauthorizedly or illegally constructed the "chapper" therein; the Plaintiff was held not entitled to any damages qua the suit property. While disposing of issue no 4 the court was of the view that there was no need to return any finding as to whether the Defendants (Mahinder Singh and Amarjeet Kaur) are tenants in the suit property or not.

13 The present suit had been disposed of on 13.07.2009. Issue No. 2 was decided in favour of the Defendant; doctrine of resjudicata was held applicable.

14 The doctrine of resjudicata is contained in Section 11 of the CPC (hereinafter referred to as the "Code"). The principle of resjudicata is based on giving a finality to judicial decisions; bar contained in this principle is that same matter shall not be adjudged again. The following conditions are essential conditions for the applicability of this resjudicata u/s 11:

1. That the parties are same or litigating under the same title.

2. That the matter directly and substantially in issue has been directly and substantially in issue in a former suit

3. That the matter in issue has been finally decided earlier.

4. That the matter in issue was decided by a court of competent jurisdiction.

15. If anyone or more conditions are not proved the principle of resjudicata would not apply.

16. Applying the aforestated principle to the facts of the instant case, it is noted:

(i) First suit was filed by the Plaintiff against Mahinder Singh and Amarjit Kaur; it was a suit for recovery of possession of the "roof" and "chapper" (blue portion) where unauthorized construction had been raised by the Defendants. Contention of the Plaintiff was that the ground floor comprising of one room and a verandah (red portion) had been let out to Ujagar Singh for a residential purpose. After his death, his widow Mukhtiar Kaur had become a statutory tenant; in June, 1989 the Defendants who are the daughter and son in law of Mukhtiar Kaur had raised unauthorized construction in the red portion; present suit was filed. This suit had been decided on 13.07.2009. The Court had returned a fact finding that the Defendants had not raised any unauthorized construction in the blue portion. Finding on issue No. 4 i.e. as to whether the Defendants were tenants or not had been left open. While disposing of issue No. 2, it was held that the Defendants are not unauthorized occupants of the suit property; however their status as tenants remained undefined.

(ii) The second suit being Suit (No. 187/2005) was filed by the Plaintiff against Mahinder Singh and Amarjeet Kaur wherein her contention was that after the death of Ujagar Singh, his widow Mukhtiar Kaur had become a statutory tenant; her son in law and daughter were unauthorized occupants of the suit premises which included one room on the ground floor as also chapper and the roof (i.e. the red portion and blue portion) illegally.

(iii) In the first suit possession of the red portion (where unauthorized construction had been raised by the Defendants) had been claimed. Second suit was a suit for possession of the entire suit property which included the red portion as also the blue portion; contention being that even after the death of Mukhtiar Kaur Defendants continued occupying this red portion although Mukhtiar Kaur was the only statutory tenant of Ujagar Singh and after the death of Mukhtiar Kaur, the Defendants had no authority to remain in this red portion; blue portion was also under their unauthorized occupation.

(iv) It is relevant to state that Mukhtiar Kaur had died on 04.04.2003. She was alive at the time when the first suit was filed i.e. suit No 227/1990; that is why her right to remain as a statutory tenant in the red portion (ground floor of the suit premises) had been recognized and no claim had been made qua this portion of the suit

property. The second suit i.e. suit No. 187/2005 had been filed on 03.06.2005; by this time, Mukhtiar Kaur had died. The cause of action in the second suit had become distinct; cause of action being that after the death of Mukhtiar Kaur, the red portion was also being illegally retained by the Defendants although they were unauthorized occupants as Mukhtiar Kaur was the only statutory tenant of Ujagar Singh.

(v) Thus the matter in issue in the first and second suit was substantially different. Parties litigating were undoubtedly the same but the matter directly and substantially in issue in the former and the second suit was distinct. This is clear from the pleadings of the second suit. Doctrine of resjudicata was misapplied.

17. This finding is a perversity. It is liable to be set aside.

18. Bar of Order 2 Rule 2 of the Code was never raised by the Defendants. It was also not examined before the first appellate court not having been argued but it was suo moto taken up by the Court while recording the impugned judgment.

19. Order 2 Rule 2 of the Code reads as under:

1. Frame of suit.-Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Suit to include the whole claim.-(1) Every suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action; but a Plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim-Where a Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

20 The scheme of this section is based on the principle that the Defendant may not be and should not be vexed twice for one or the same cause of action. Admittedly when the first suit was filed, there was no cause of action for seeking possession of the ground floor of the suit premises (i.e. the red portion); Mukhtiar Kaur was recognized as a statutory tenant and she was alive at the time of filing of the first suit. Cause of action seeking eviction of the Defendants from the red portion arose only after the death of Mukhtiar Kaur when the second suit was filed. Order 2 Rule 2 of the Code has also been misapplied by the trial Court.

21. In view of the affronted discussion, both the substantial questions of law are answered in favour of the Appellant and against the Respondent. Appeal is allowed; the suit of the Plaintiff stands decreed.