(2011) 05 DEL CK 0404

Delhi High Court

Case No: Regular Second Appeal No. 47 of 2010

Bansi Lal Kohli		APPELLANT
	Vs	
Surjit Singh Sahni and Another		RESPONDENT

Date of Decision: May 30, 2011

Acts Referred:

- Delhi Municipal Corporation (Amendment) Act, 2003 - Section 12
- Delhi Municipal Corporation Act, 1957 - Section 121
- General Clauses Act, 1897 - Section 6

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Manish Garg and D.L. Sahni, for the Appellant; Vishwa Lochan Madan, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 6.2.2010, which has reversed the finding of the trial judge dated 17.11.2004. Vide judgment dated 6.2.2010 the suit of the Plaintiff seeking recovery of Rs. 1,28,543/- had been dismissed. Impugned judgment had reversed this finding. Suit stood decreed.

2. Plaintiff claimed to be owner of property bearing No. 725-726, Chota Bazar, Kashmere Gate, Delhi. He had purchased it from Amar Nath vide sale deeds dated 8.4.1993 and 22.2.1993. Defendant was an old tenant of the suit premises. Tenancy was for a commercial purpose at the rate of Rs. 440. Suit property comprised of a 2 1/2 storied building; in 1975, two other tenants had surrendered their tenancy and the same had been given to the Defendant by the erstwhile owner. In the first quarter of 1991 additions and alterations in the suit property carried out by the Defendant had changed the character of the property; they were in utter disregard of the municipal bye-laws; rateable value of the property tax was enhanced from Rs.

1670/- to Rs. 7,20,000/-; objections were filed by owner; notice has been issued to Defendant on 21.9.1992 to demolish this illegal and unauthorized construction. MCD thereafter reduced the rateable value from Rs. 7,20,000/- to Rs. 33,120/- w.e.f. 1.4.1988. Enhancement of the rateable value is only because of the illegal construction raised by the Defendant. Defendant is liable to pay the difference in the property tax as this cannot be the liability of the Plaintiff. Legal notice dated 21.2.1995 has also been sent to the Defendant. The present suit has accordingly been filed.

3. Defendant contested the suit. It was denied that the Defendant was liable to pay the property tax because of the enhanced rateable value.

4. Following three issues were framed:

1. Did the Defendant carry out material additions and alterations in the property of Plaintiff?

2. Has the house tax been enhanced on account of such additions and alterations?

3. To what amount, if any, is the Plaintiff entitled?

5. Oral and documentary evidence was led. Suit of the Plaintiff was dismissed by the Trial Court.

6. In appeal this finding was reversed; enhancement of the rateable value of the property was held to be because of the illegal construction raised by the Defendant; he was liable to pay the property tax in the sum of Rs. 1,28,543/- being the arrears of house tax which liability had been fastened upon the Plaintiff.

7. This is a second appeal. It has been admitted and on 15.2.2011 a substantial question of law was framed.

Whether the impugned judgment dated 6.2.2010 had construed the provisions of Section 121 of the Delhi Municipal Act (which had admittedly stood repealed w.e.f. 01.08.2003) in the correct perspective and if not, its effect.

8. On behalf of the Appellant, it has been urged that the judgment of the trial court decreeing the suit of the Plaintiff is a perversity; property tax could not be fastened as a liability of the Defendant as there was no evidence before the court below to substantiate the submission of the Plaintiff that any illegal or unauthorized construction had been carried out by the Defendant pursuant to which the rateable value had been enhanced. It is pointed out that this suit had been filed by the Plaintiff only to put pressure upon the Defendant and use it as a device to evict him from the tenanted premises. Counsel for the Appellant has placed reliance upon Hero Vinoth (minor) Vs. Seshammal, to submit that a second appeal lies in such a circumstance. For the same proposition reliance has also been placed upon Bondar Singh and Others Vs. Nihal Singh and Others, It is pointed out that where the finding returned in the impugned judgment is perverse, interference is called for by the first

appellate court.

9. Arguments have been countered. It is pointed out that on no count does the finding in the impugned judgment calls for any interference. It is pointed out that the provisions of Section 121 of the Delhi Municipal Act, 1957 (hereinafter referred to as the DMC Act) have admittedly been repealed in 2003 but this provision was prevailing at the time when the lis between the parties was pending i.e. when the suit was filed by the Plaintiff in 1999; relying upon this legal proposition, the impugned judgment had decreed the suit which on no count calls for any interference. Attention has been drawn to Section 6(c) of the General Clauses Act, 1897; it is pointed out that even if an enactment is repealed, repeal shall not affect any right, obligation or liability acquired, accrued or incurred under the enactment so repealed.

10. Record has been perused. The averments in the plaint have also been perused. The case of the Plaintiff is that the Defendant is a tenant of the premises at a rent of Rs. 440/- per month; in the first quarter of 1991, the Defendant had carried out material additions and alterations in the suit property by increasing its walls; these illegal constructions were in disregard of the municipal bye-laws; because of these additions and alterations, the ex-parte assessment of the MCD was made which had increased the initial rateable value from Rs. 1,670/- to Rs. 7,20,000/-; pursuant thereto on the representations made by the Plaintiff enhanced rateable value of Rs. 7,20,000/- was reduced to Rs. 33,120/-. This was vide assessment order (Ex. PW-1/7) dated 01.12.1998; the Plaintiff was called upon to pay the aforenoted amount which he has since paid and this is evident from Ex. PW-1/9 to Ex. PW-1/22. This suit sum of Rs. 1,28,543/- is on account of this enhanced rateable value. The Plaintiff is liable to reimburse the Defendant for the said reason. Admittedly in these pleadings, provisions of Section 121 of the DMC Act had not been adverted to.

11. The Plaintiff had examined himself as PW-1; one witness had been examined in defence. Testimony of the sole witness of the Plaintiff is relevant. He has stated that the enhanced rateable value was only because of unauthorized construction in the suit property which was made by the Defendant; there were considerable additions and alterations. It is relevant to state that no date of this alleged addition or alteration has been given. This is the sum total of evidence of the Plaintiff qua these additions/ alterations purported to have been carried out by the Defendant in the suit property. PW-1 had also proved the site plan Ex. PW1/3 of the suit property which had shown the situation of the suit property at the time when the tenancy had been created in favour of the Defendant. Ex. PW-1/3 comprised of three blocks i.e. three shops in the first block, two rooms and a kitchen and open verandah as also the third block containing two rooms and an open verandah. Ex. PW-1/4 is the site plan showing the present position of the suit property. This site plan comprised of four blocks. All of them have been mentioned as halls. The assessment order Ex. PW-1/7 is dated 01.12.1998; this is the assessment for the period between 1988 to

1999. In his cross-examination, PW-1 has admitted that the previous owner (Amarnath from whom he had purchased the property) has paid house tax up to 1992-1993. The Plaintiff had purchased this property vide sale deeds dated 22.2.1993 and 08.04.1993; this is an admitted document; Clause 6 states that the taxes assessed of the property up to date i.e. up to 08.04.1993 shall be borne by the erstwhile owner Amarnath and after that period the property tax shall be borne by the vendee namely the Plaintiff Surjit singh Sahni. It has also come on record that upto 1993, the erstwhile owner Amarnath had cleared all dues.

12. The Plaintiff had admittedly purchased this property on 08.04.1993. His contention in the plaint is that in the third quarter of 1991, the Defendant had made unauthorized additions and alternations in the suit property which had led to the enhancement of rateable value of the suit property; admittedly at that time, the Plaintiff was not in the picture; he was the owner; he had become the owner of the suit property in April, 1993; what was the position and status of the suit land in the third week of January, 1991 was admittedly now known to him; his averment in the plaint that these additions and alternations had been carried out by the Defendant is based purely on his own imagination. The assessment order Ex. PW-1/7 is also relevant on this count. It has recorded that the Assessee namely the Plaintiff Surjit Singh Sahni does not have any valuation report or building plans about the start of the construction or its completion; inspite of opportunity the Plaintiff had failed to produce these documents before the assessing officer; Ex. PW-1/7 has further recorded that because of non-production of documents, site had been got inspected; reports dated 04.02.1998 & 05.02.1998 had reported that construction on the ground floor, first floor and second floor measuring 533 square feet on each floor; this has been a case of reconstruction and not of any addition or alternation; Ex. PW-1/7 had further noted that though the Assessee had claimed that the tenant had made additions and alternations in the property in the year 1987-1988 yet the reports of inspection dated 04.02.1998 & 05.02.1998 and the third report dated 07.04.1998 had reported a case of reconstruction and not being a case of addition or alteration. Ex. PW-1/7 clearly states that 533 square feet constructions on each floor in the suit premises is a reconstruction and not an addition or alteration; case of the Plaintiff falls flat on this ground only as the foundation his case is that the Defendant has made additions and alterations; the Plaintiff had failed to lead any evidence on this score; in fact he could not have had any know-how of the status of the building prior to April, 1993 i.e. when he had purchased the suit land. In the plaint, his averment was that the addition and alternation had been made by the Defendant in the third week of January, 1991; his contention noted in Ex. PW-1/7 was that the additions and alterations had been made by the Defendant in 1987-1988 by spending an amount of Rs. 1,30,000/-. Besides the fact that these are contrary and conflicting stands; even otherwise Ex. PW-1/7 has recorded a categorical finding that this is a case of reconstruction and not of additions or alterations. Enhancement of rateable value for this reason is thus not acceptable.

13. The whole case of the Plaintiff is bordered upon the averment that the Defendant had carried out unauthorized and illegal constructions pursuant to which the rateable value has been enhanced; this has not been proved.

14. The Trial Judge had dismissed the suit. The impugned judgment has proceeded on the argument of Section 121 of the DMC Act; this was never a plea in the plaint. The impugned judgment had noted that being a question of law, it had adverted to it. The court had noted and rejected the contention of the Plaintiff that the issues should be reframed; issues had been answered in terms of the issues framed by the trial court and as noted supra. However, without adverting to these issues and dealing with them, the Court had resorted to the provisions of Section 121 of the DMC Act. It had not returned any finding on issues No. 1 & 2 as to whether the additions and alterations alleged to have been carried out by the Defendant had in fact been carried out or not; this position was not even examined. This was a perversity. This question had necessarily to be answered in the impugned judgment. It was no done so.

15. Provisions of Section 121 of the DMC Act were not applicable. Section 121 of the DMC Act reads herein as under:

121 Appointment of liability for property taxes when the premises assessed are let or sub-let.- {Rep. by the Delhi Municipal Corporation (Amendment) Act, 2003, (Delhi Act 6 of 2003), Section 12 (w.e.f. 01.08.2003).} (See Annexe).

16. Admittedly this Section has been repealed w.e.f. 01.08.2003.

17. Even presuming that Section 121 was an existing provision on the statute book on the date when this lis was filed i.e. in the year 1999 (in terms of Section 6(c) of the General Clauses Act), the Plaintiff cannot seek any shelter under this provision. Case of a Plaintiff has to be founded on the averments made in his plaint; averments made in his plaint are plain and simple; they are bordered on the averment that the Defendant had made unauthorized additions and alterations and being opposed to municipal bye-laws, this had led to the enhancement of rateable value; he had failed to prove these averments. It was never proved that the Defendant had raised any unauthorized addition or alteration; a case of re-construction had been recorded in Ex. PW-1/7. The Plaintiff cannot put forward a case which was never pleaded in the court below; he is not entitled to seek any shelter under the provisions of Section 121 of the DMC Act. The impugned judgment decreeing the suit of the Plaintiff is an illegality; it is a perverse finding; it calls for an interference.

18. Substantial question of law is answered in favour of the Appellant and against the Respondent. Appeal is allowed. Suit of the Plaintiff stands dismissed.