(1997) 05 DEL CK 0081

Delhi High Court

Case No: Regular Second Appeal No. 21 of 1995

Rajdhani Chit Fund (P) Ltd.	APPELLANT
Vs	
Mukesh Maheshwari	RESPONDENT

Date of Decision: May 20, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (1997) 4 AD 77 : (1999) 96 CompCas 837 : (1997) 67 DLT 493

Hon'ble Judges: M.S.A. Siddiqui, J

Bench: Single Bench

Advocate: P.K. Jaitely, I.S. Mathur and A.P. Aggarwal, for the Appellant;

Judgement

M.S.A. Siddiqui, J.

(1) This appeal is directed against the judgment dated 29th July, 1994 passed by the Addl. Distt. Judge, Delhi in Rca 438/93 arising out of judgment dated 29.9.93 passed by the Sub Judge in Civil Suit No. 59/93 dismissing the plaintiff/respondent''s suit for injunction.

(2) Briefly stated, facts giving rise to this appeal u/Section 100, CPC are that the respondent No. 1/plaintiff filed a suit for mandatory injunction against the appellant/defendant on the allegations that the appellant company being licencee of the suit premises, had refused to vacate the same after termination of the licence. The suit was resisted by the appellant-Company on the ground that it was in occupation of the suit accommodation as the tenant of the respondent No. 1 and the agreement dated 1.9.75 (Ex Public Witness Public Witness 1/1) executed between the parties is a camouflage to circumvent the provisions of Delhi Rent Control Act. It was also averred that the respondent No. 1 has no locus standi to file the suit and further the eviction suit is also barred under the provisions of the Delhi Rent Control Act. The learned Sub Judge, Delhi by the judgment dated 29th September, 1993 found that the deed of agreement dated 1.9.75 (Ex. Public Witness

Public Witness 1/1) created relationship of landlord and tenant between the parties and as such the plaintiff''s suit for eviction is barred by Section 50 of the Delhi Rent Control Act. Accordingly, the plaintiff suit was dismissed. In appeal filed by the plaintiff, the learned Additional District Judge by the judgment dated 29.7.94 held, on an analysis of the facts and circumstances, that the defendant/appellant was a mere licencee and his license was validly terminated. Consequently, the judgment and decree of the Trial Court was set aside and the plaintiff''s suit for injunction was decreed. Feeling aggrieved, the defendant has filed this appeal u/Section 100 of the CPC.

(3) The main question involved in this appeal is whether the appellant- company was a licensee or a tenant and also incidentally the question whether the Trial Court had jurisdiction to entertain the suit filed by the plaintiff-respondent No. 1. It is well settled that in determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee, the decisive consideration is the intention of the parties. Inevitably, the issue here has to run around the terms and conditions of the agreement dated 1.9.75 (Ex. Public Witness Public Witness 1/1). The Trial Court interpreted the said agreement as a contract of tenancy whereas, the lower Appellate Court relying upon the judgment of the Supreme Court in Associated Hotels of India Ltd. Vs. R.N. Kapoor, construed it as a deed licence.

(4) Admittedly, the agreement dated 1.9.75 (Ex. Public Witness Public Witness 1/1) was executed between the appellant-Company and the respondent No. 1. The question is whether the appellant-Company under this agreement is a tenant or a licensee. The distinction between a lease and a licensee is well known. A lease is the transfer of a right to enjoy the premises; whereas a license is a privilege to do something on the premises which otherwise would be unlawful. If the agreement is in writing it is a question of Construe of the agreement having regard to its terms and where its language is ambiguous, having regards to its object and the circumstances under which it was executed. The transaction is a lease if it grants an interest in the premises, it is a license if it gives a personal privilege with no interest in the premises. It is also well settled that the test of exclusive possession is not conclusive, though it, is a very important indication in favor of tenancy. Associated Hotels of India Ltd. Vs. R.N. Kapoor, .

(5) The intention of the parties in making the agreement is determinative of the question whether it was a lease or licence. While interpreting the agreement (Ex. Public Witness Public Witness 1/1), the Court has also to see what transpired between the parties before and after the agreement. It is undisputed that the plaintiff/respondent No. 1 was a tenant in the suit premises which was owned by Kanshi Nath, Ram Nath Charitable Trust. In 1975, the respondent No. 1 was a share-holder of the appellant-Company. The respondent No. 2, who is the father of the respondent No. 1, was the Managing Director of the appellant-Company. On a

perusal of the minutes of the meeting of the Board of Directors of the appellant-Company (Ex. Public Witness Public Witness 1/2) and minutes of the Annual General meeting of the appellant-Company (Ex. Public Witness Public Witness 1/4), it appears that at the relevant time, the appellant company was in need of some space for accommodating its office and it, Therefore, approached the respondent No. 1 for the said purpose. Consequently, on 1.9.75, the agreement (Ex. Public Witness Public Witness 1/1) was executed between the parties under which the appellant-Company was allowed to use the premises jointly with the respondent No. 1. The respondent No. 1 has been described as party No. 1 and the appellant-Company has been described as party No. 2 in the agreement (Ex Public Witness Public Witness 1/1). The relevant terms and conditions of the agreement (Ex. Public Witness Public Witness 1/1) are as under:

1.That the first party shall be responsible to pay rent to the landlord Kashinath Ramnath Charitable Trust and the second party appellant- Company shall not be liable to make payment of the rent to the landlord direct in any manner.

2.That the physical and actual possession of the premises shall always remain with the first party and it shall be deemed to remain with the first party.

3.That on the main door of the room a lock will be put up and key of the same shall remain with the first party and the other key will remain with the second party-Each of the parties can open the premises according to their convenience.

4.That the first party shall allow the second party a peaceful user of the room and to have their office and to allow them to conduct chit etc. in the said room. The first party shall also not object if the second party engages or employees one or mere persons in their employment and the first party will allow all such persons to sit in the said room and to do the work of the second party.

5.That the first party will not raise any objection regarding conduct of business by the second party, quo this agreement but in his capacity as shareholders the first party will have a right to criticise or ask for the details of business from the second party.

6.That the second party shall not object or create any hindrance in the user of the room the first party also in the manner, first party may like. But the user by the first party should be in such a manner that it may not create obstacle into the running of the office by the second party. So also the second party should run office in a manner not to create obstacle in the way of the first party to do its business or to have office in the said premises.

(6) For the said terms and conditions of the agreement, it is clear that what was given to the appellant-Company was the use of the suit premises without creating any sort of tenancy rights .in favor of the appellant-Company. The said agreement creates no interest in the suit premises. It gives only a personal privilege or license

to the appellant-Company to occupy the suit premises. There is nothing on the record to show that the agreement (Ex Public Witness PW1/1) was merely a facade or a devise calculated or designed to conceal the real intent and object of the transaction. The lower appellate Court rightly held that the appellant-Company was in occupation of the suit premises as a licencee of the respondent No. 1 and that on termination of the license the appellant-Company was not entitled to remain in possession thereof. In my opinion, the lower Appellate Court rightly decreed the suit. In the result, the appeal is dismissed. Appellant-Company shall pay the costs of the respondent No. 1 and bear its own. Counsel''s fee Rs. 5,000.00.