IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR POSSESSION

RSA No.106/2006

RESERVED ON: 29.02.2008

DATE OF DECISION: 25.03.2008

Shri Surinder J. Sud ..... Appellant

Through: Mr.V.P.Singh, Senior Advocate with Mr.Jasmeet Singh, Advocate.

VERSUS

Shri R.R.Bhandari ..... Respondent

Through: Mr.Valmiki Mehta, Senior Advocate with Mr.C.S.Yadav, Advocate.

PRADEEP NANDRAJOG, J.

1. Present second appeal is preferred against the judgment and decree dated 15.12.2005 passed by the learned Additional District Judge Delhi whereby the appeal filed by the respondent against the judgment and decree dated 18.11.2003 and order dated 23.3.2005 passed by the learned Civil Judge Delhi was allowed.

2. Appellant was plaintiff and respondent was the defendant No.2 before the Trial Court. I shall be referring to the parties by their nomenclature in the Trial Court.

3. Plaintiff Mr. Surender.J.Sud through his attorney Mr. Sudhir Sud filed a suit for possession and mesne profits in respect of the property bearing No. B-6/69, Ground Floor, Safdarjung Enclave, New Delhi (hereinafter referred to as the suit property) against the defendant No.1 M/s. Foremost Ceramics Ltd. and defendant No.2 Mr. R.R.Bhandari.

4. In the plaint it was inter alia pleaded that the plaintiff is the owner of the suit property. That the lease deed dated 20.9.1990 was executed between the plaintiff and the defendant No.1 whereby with effect from 1.10.1990 the suit property was let out to the defendant No.1 at a monthly rent of Rs.4,000/- for a period of 3 years. That the suit property was given on lease to the defendant No.1 for the use and occupation of defendant No.2 who was an employee of defendant No.1. That vide legal notice dated 21.9.2003 tenancy of defendant No.1 was duly terminated. That since the defendants failed to deliver vacant possession of the suit property, a suit bearing No.897/1994 was filed in this court against the defendants. Vide order dated 9.12.1994 passed by this court, the defendant No.2 agreed to pay rent @ Rs.4,000/- per month to the plaintiff till the disposal of the suit. That the said suit was withdrawn on 28.3.2001 with liberty to file a fresh suit. Thereafter plaintiff issued another legal notice dated 5.4.2001 terminating the tenancy of the defendants. Since defendants again failed to deliver vacant

possession of the suit property, the plaintiff was constrained to file the present suit before the learned Civil Judge.

5. In the written statement filed by the defendant No.2 he took a defence that there is no landlord tenant relationship between him and the plaintiff and that the present suit is barred by Section 50 of the Delhi Rent Control Act 1958 for the reason the rent of the suit property is less than Rs.3,500/- per month.

6. It was inter alia pleaded in the written statement that the defendant No.2 has been occupying the suit property as a tenant under Smt. Gian Kaur Sud ever since 15.9.1987 and that he was paying rent to her in respect of the suit property. That the defendant No.2 joined the services of the defendant No.1 in January 1988 and one of the terms of the employment was that defendant No.1 was to make payment of the rent of the premises where the defendant No.2 was to reside. Consequently defendant No.1 started to make payment of rent for and on behalf of defendant No.2. That in November 1991 defendant No.2 left the employment of defendant No.1 and thereafter defendant No.2 has been paying rent of the suit property to Smt. Gian Kaur Sud. That lease deed dated 29.9.1990 was never executed between the plaintiff and the defendant No.1 in respect of the suit property. That the rate of rent of the suit property was Rs.2,000/- per month. A sum of Rs.1,000/- each was being paid by the defendant No.2 towards fitting charges and taxes respectively and these sums cannot be included within the meaning of the term rent.

7. In the replication to the written statement of defendant No.2, plaintiff pleaded that Smt. Gian Kaur Sud was accepting payment of rent from the defendant No.2 in her capacity as attorney of the plaintiff.

8. Plaintiff filed an application under Order 12 Rule 6 CPC praying for a decree on admission on the grounds that the written statement filed by the defendant No.2 as also order dated 9.12.1994 passed by this court in suit No.897/1994 shows that the defendant No.2 has admitted that he was a tenant in the suit property under the plaintiff and that the rate of the rent of the suit property was Rs.4,000/- per month.

9. Vide judgment and decree dated 18.11.2003 learned Trial Court allowed the application under Order 12 Rule 6 CPC filed by the plaintiff and thus decreed the suit of the plaintiff.

10. Against the said judgment and decree dated 18.11.2003 defendant No.2 preferred a review which was dismissed by the learned Trial Court vide order dated 23.3.2005.

11. Against the judgment and decree dated 18.11.2003 and the order dated 23.3.2005 passed by the learned Trial Court the defendant No.2 preferred an appeal before the Court of Additional District Judge.

12. After noting respective contentions of the parties the learned Appellate Court allowed the appeal preferred by the defendant No.2. The reason for so doing is that in a suit for possession of immovable property the court has to consider three things, firstly whether the relationship of landlord and tenant subsists between the parties; secondly whether the rate of the rent is more than Rs.3,500/- per month; thirdly whether the tenancy has been duly terminated or not. In case all the three things are admitted by a tenant, courts are under the duty/empowered to pass the decree of possession under Order 12 Rule 6 CPC. It has been held that it is clear from the bare reading of the pleadings of the parties that defendant No.2 has neither admitted to be a tenant in

the suit property under the plaintiff nor has admitted the rate of the rent of the suit property as Rs.4,000/- per month.

13. It may be noted at the outset, a fact conceded by Shri V.P.Singh, learned senior counsel for the appellant that no Second Appeal lies against the impugned order. However, as conceded by Shri Valmiki Mehta, learned senior counsel for the respondent, an appeal would lie against the impugned order under Order XLIII Rule 1 Clause u. Thus, instant appeal is treated as an Appeal against an order and not a Regular Second Appeal.

14. It is settled law that in Delhi, in a suit for ejectment, only 3 issues arise for consideration:- (a) Whether there exists a landlord-tenant relationship between the parties (b) Whether the tenancy has expired by efflux of time or stands determined by a valid notice to quit or the tenant has otherwise forfeited the right under the lease agreement and (c) Since Delhi Rent Control Act 1958 prohibits ejectment of a tenant paying rent up to Rs.3,500/- per month save and except by an order passed by a Rent Controller on the grounds specified under Section 14 of the Delhi Rent Control Act 1958, whether the rent of the leased premises is more than Rs.3,500/- per month

15. At the hearing of the appeal, Shri Valmiki Mehta, learned senior counsel for the respondent urged that the respondent is not taking any defence pertaining to the rent of the suit premises being less than Rs.3,500/- per month. Learned senior counsel urged that in the instant case his client has never admitted that the appellant was his landlord. That the consistent case of his client has been that appellant's mother Smt.Gian Kaur Sud was the landlady since 15.9.1987 and that his client had been paying rent to her. Learned senior counsel additionally urged that there is no valid determination of the tenancy inasmuch Smt.Gian Kaur Sud has never determined the tenancy.

16. Per contra, Shri V.P.Singh, learned senior counsel for the appellant urged that initially Smt.Gian Kaur Sud, acting on behalf of the appellant, had let out the property to the respondent in the year 1987 but the land being demised under a leasehold tenure by DDA a conveyance deed was executed by DDA in favour of the appellant on 9th June 2003. Thus, the appellant, as owner is the landlord of the respondent. Learned senior counsel further urged that the initial tenancy came to an end and status of the respondent came to be governed by a lease agreement dated 29th September 1990 executed between the appellant through his mother Smt.Gian Kaur Sud and M/s.Foremost Ceramics Ltd. of which the respondent was an employee. The said lease agreement clearly recorded that Smt.Gian Kaur Sud was acting as the attorney of the appellant and that the company was the tenant with a condition that the respondent, the employee of the company would reside in the premises.

17. Shri V.P.Singh, learned senior counsel for the appellant further submitted that on 5th April 2001, appellant determined the lease calling upon the respondent as also the company M/s.Formost Ceramics Ltd. to vacate the suit premises clearly stating that with effect from the midnight of 30th April 2001, on tenancy being determined, possession retained by the respondent would be unauthorized. Learned senior counsel submitted that the said legal notice was duly replied to by the respondent on 22nd May 2001 meaning thereby receipt of notice determining the tenancy was admitted by the respondent.

18. It was lastly urged by learned senior counsel for the appellant that the MCD had attached the rent on account of arrears of property tax and that vide letter dated 27th February 2007

addressed to the Assistant Assessor and Collector the respondent clearly admitted that the appellant was the owner of the premises.

19. Responding to the aforesaid pleas of the appellant, Shri Valmiki Mehta, learned senior counsel urged that the respondent was not a party to the lease agreement dated 29th September 1990. Counsel submitted that as a service condition under M/s.Foremost Ceramics Ltd. the employer had agreed to pay actual house rent to his client and that if his employer had executed some document with the appellant, the same did not bind his client. More so, counsel urged, since his client was admittedly in possession of the suit premises much prior to the lease agreement dated 29.9.1990. In respect of the notice determining tenancy referred to by Shri V.P.Singh, learned senior counsel for the appellant, Shri Valmiki Mehta, learned senior counsel for the respondent submitted that in response his client categorically stated that the appellant was not the landlord and hence the notice determining the tenancy was meaningless.

20. In response to the submission predicated on respondent's letter dated 27.2.2007 addressed to the Assistant Assessor and Collector referred to by Shri V.P.Singh, learned senior counsel for the appellant, Shri Valmiki Mehta, learned senior counsel for the respondent urged that since MCD had referred to the appellant as the person primarily liable to pay property tax, respondent's response was to inform the MCD the address of the appellant. Counsel submitted that the context in which said letter was written is relevant. It related to a notice by the MCD treating appellant to be the owner and respondent's response providing the appellant's address to MCD.

21. It is settled law that to be entitled to a decree on admission, the admission has to be unequivocal. Further, the admission need not necessarily be in the substantive pleadings of the parties. The admission may be contained in pleadings pertaining to interim applications. Additionally, the admission may be contained even in a document admitted by the respondent.

22. Having considered the submissions made by learned counsel for the parties it would be useful to note that admittedly even as per the appellant his mother had let out the suit premises to the respondent on 15th September 1987. She had been receiving the rent in her own name. Though, it was sought to be projected on behalf of the appellant that Smt.Gian Kaur Sud acted as the attorney of the appellant but unfortunately for the appellant she did not do so. While executing the lease agreement in question, Smt.Gian Kaur Sud never stated that she was acting as the attorney of the appellant. No doubt, under the conveyance deed relied upon by the appellant, being the conveyance deed dated 9.6.2003, executed by DDA in his favour he is shown as the owner of the suit premises but the fact of the matter remains that there is no reference to said conveyance deed in any pleading. No document has been shown to this Court containing an admission from the side of the respondent pertaining to the said conveyance deed. To compound the problem for the appellant the conveyance deed nor certified copy nor even the photocopy thereof has been filed before the learned Trial Judge. There is thus no admission of the respondent qua appellant's title.

23. Even the lease deed dated 29.9.1990 does not come to the rescue of the appellant for the reason admittedly the respondent is not a signatory thereto. As noted above, the respondent has made pleadings with respect thereto by stating that the respondent was in occupation of the suit premises since 15th September 1987 under Smt.Gian Kaur Sud and that in the year 1990 respondent's employer had agreed to reimburse the rent and that if executed, the document cannot bind the respondent who is not a signatory thereto and cannot be in derogation of the tenancy rights of the respondent which enured since September 1987.

24. I may only state that evidence would be required to be led on this issue i.e. what is the effect of the lease agreement dated 29.9.1990. Evidence would come in the form of who paid the rent For purposes of tax laws, how was the same accounted for Etc. etc.

25. Short of virtually conceding, Shri V.P.Singh, learned senior counsel for the appellant tacitly conceded that it appears to be a case where the land was initially alloted by DDA in favour of Smt. Gian Kaur Sood who voluntarily requested DDA to convey the title in favour of her son i.e. the appellant. Transfers amongst blood relations are normally acceded to by DDA. This is the reason why the conveyance deed was ultimately executed in favour of the appellant. Unfortunately for the appellant a better legal advice could have solved his problem only if Smt.Gian Kaur Sud was advised to serve a notice of attornment upon the respondent intimating that her son had become the owner of the suit premises with a direction to the respondent to henceforth pay the rent to the appellant. Admittedly, no such notice of attornment has been issued or served upon the respondent.

26. Pertaining to the notice determining the tenancy referred to by Shri V.P.Singh, learned senior counsel for the appellant suffice would it be to note that the respondent responded thereto vide reply dated 22.5.2001. The respondent categorically denied being a tenant under the appellant. The respondent categorically stated that he was a tenant in the premises since 1987. That his landlady was Smt.Gian Kaur Sud.

27. Indeed, Shri V.P.Singh, learned senior counsel for the appellant could not point out any admission of the respondent admitting that the appellant was his landlord.

28. I concur with the view taken by the learned Appellate Judge that there is no admission made by the respondent which entitles the appellant to a decree on admission.

29. The appeal fails. The same is dismissed.

30. No costs.

31. TCR be returned forthwith.

Sd./-

25th March, 2008 PRADEEP NANDRAJOG,J