

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of Judgment: 10.03.2011

RSA No.27/2001

SHRI. PIARE LAL & ORS.Appellants
Through: Mr. Pradeep Chaudhary, Advocate.

Versus

SHRI. MANOJ KUMARRespondent.
Through: Mr. Rajinder Mathur along with Mr. Harish Khanna and Ms.
Priyanka Sharma, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 20.09.2000 which has endorsed the finding of the trial judge dated 03.02.2000 whereby the suit filed by the plaintiffs seeking declaration and relief of possession qua the suit property i.e. property bearing shop no. 4727-A, Ram Bazar Cloth Market, Fatehpuri, Delhi -6 had been dismissed.

2. The plaintiffs had contented that they are the legal heirs of Bacchu Singh who was a tenant in the suit property. The plaintiffs had inherited the tenancy rights. They were tenants under the Delhi Cloth Market Trust Committee. On 20.03.1987, the defendant along with his associate Gopal Bajaj visited the suit shop and asserted his claim over the shop; reliance upon the alleged partnership deed dated 29.08.1982 executed by the plaintiff no.4 Ashok Kumar with the father of defendant was relied upon. Contention was that the defendant on 08.04.1987 had illegally dispossessed the plaintiff from the suit land; proceedings under Section 145 of the Code of Criminal Procedure (CrPC) had also been initiated. Defendant was an illegal

trespasser. Suit was filed seeking a declaration that the plaintiff is the only tenant in the suit property and possession of the suit property be handed-over to the plaintiff.

3. In the written statement, preliminary objections about the principle of res judicata, bar of Order 2 Rule 2 of the Code of Civil Procedure (CPC) and bar of limitation were raised. It was contented that the defendant is a tenant of the plaintiff and the bar of Section 50 of the Delhi Rent Control Act (DRCA) was operable. It was pointed out that the earlier suit filed by the plaintiff against the defendant had been dismissed on 04.03.1996; this judgment had held that the defendant is in occupation of the suit property since 1982 as a tenant and that judgment having attained a finality, it could not now be re-assailed; same issues could not be re-agitated.

4. Trial judge on 03.02.2000 disposed of the suit on the four preliminary issues which had been framed by it. They interalia reads as follows:-

2. Whether the suit is barred U/O 2 R 2 CPC? OPD

3. Whether the suit is time barred? OPD

4. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD

5. Whether the suit is barred U/S 50 of the DRC Act? OPD

Trial judge noted that the issue of res judicata, in fact, had been decided on 09.02.1988; it was also held that the suit under Section 6 of the Specific Relief Act, does not bar a suit to be filed under Section 5 of the said Act. This issue was decided in favour of the plaintiff. The court returned a finding that the bar of Order 2 Rule 2 of the Code is not attracted. This issue was decided in favour of the plaintiff. On limitation, it was held that the suit is time barred; period of 12 years had to be counted from August 1982 whereas the present suit has been filed after 12 years i.e April 1996. Date of August 1982 was in terms of the finding returned by the court of Sh. Pradeep Chadha, Civil Judge, in its judgment dated 04.03.1996 wherein defendant was held to be a tenant w.e.f. August 1982 . It was further held that the defendant having been held to be a tenant vide the aforementioned judgment, the bar of Section 50 of the DRCA was operable and a civil suit was not maintainable.

5. The impugned judgment had endorsed this finding. The findings returned issue wise in the impugned judgment reads as follows:-

Issue no.5. Whether the suit is barred u/s 50 of DRC act.

6. The appellant/plaintiffs are L.Rs of Shri Bachu Singh. Shri Bachu Singh was himself a tenant. As per the facts of the appeal, said Shri Bachu Singh inducted a sub-tenant with him in the shop to run a tea stall. The said tea stall continued between the parties from 29.8.82 till 8.4.87. Since the intention of Shri Bachu Singh was to get vacated, sub-tenant by this way or that way then the L.Rs of Sh. Bachu Singh started litigation. First step was to file a criminal case u/s 145 of Cr. P.C., which was dismissed by the Trial Court. The second step was that Shri Ashok Kumar also filed a suit u/s 6 of Specific Relief Act against the present respondent/defendant. The said suit was dismissed by the court of Shri Pardeep Chadha learned civil judge, Delhi on 4.3.96. It is also alleged that another criminal case u/s 448 was filed by one of the appellants or Shri Ashok Kumar appellant No. 4 to get evicted the respondent/defendant from the tenancy shop. It was not possible for Shri Ashok Kumar appellant No. 4 to get evicted the respondent/defendant from the tenancy shop. It was not possible for Shri Ashok Kumar appellant No. 4 to get any eviction order through the forum of Rent Controller under DRC Act. Instead of following the correct legal forum, Shri Ashok Kumar appellant No. 4 filed the suit u/s 6 of Specific Relief Act alleging that the suit tenant Shri Manoj Kumar has dispossessed him from the disputed shop. It was a clever device. Behind the scenes there was a tenancy. Under the civil suit u/s 6 the case was made out for dispossession of the landlord, not of the tenant which could not be possible since the tenant was already a tenant. Under the garb of suit u/s 6 of Specific Relief Act, he tried to get possession of the tenancy shop from the respondent/defendant. The plaintiff/appellant No. 4 Shri Ashok Kumar failed in that attempt. Since he had visualized that the correct legal remedy under DRC Act will not be available to him so he opted the remedy u/s 6 of Specific Relief Act. It is a fact that Shri Manoj Kumar respondent/defendant was a tenant since earlier to 29.8.82 and plaintiff/appellant No. 4 Shri Ashok Kumar was a landlord receiving rent from Sh. Manoj Kumar. So there being relationship of landlord and tenant between the parties, the proper or legal forum was to file a petition for eviction of the respondent/defendant Sh. Manoj Kumar if the desire of the appellant No. 4 was to get possession from the respondent/defendant. When there is a relationship of landlord and tenant, civil suit u/s 6 is not maintainable.

The plaintiffs/appellants did not stop there. After having failed in criminal proceedings u/s 145 Cr. P.C. u/s 448 IPC, u/s 6 of the Specific Relief Act, they filed this regular suit for possession with declaration for which they also failed before the Trial Court and their attempt has not been

exhausted so this regular appeal. I will hold that the present appeal is nothing but a miss-use of the process of law. Even on the ground that the suit was barred u/s 50 of DRC Act, the earlier suit u/s 6 where the issue of tenancy was decided in favour of the present respondent/defendant and against the appellant No.4/plaintiff. If the earlier suit u/s 6 of Specific Relief Act was decided as dismissed in view of the bar u/s 50 of DRC Act, then how this regular suit before the Trial court for possession and declaration can be maintainable, and on what ground this appeal can be allowed, the appellants have no answer. So issue No. 5 decided by the Trial Court holding that the defendant has been a tenant and the remedy of the appellant/Plaintiff No. 4 was to file an eviction petition under DRC Act has been correctly decided and the same is hereby confirmed.

ISSUES NO. 1 & 2. Whether the suit is barred by the principles of res-judicata.

7. The earlier suit was filed by the appellant No. 4 Shri Ashok Kumar against the present respondent/defendant u/s 6 of Specific Relief Act which was dismissed by the court of Shri Pardeep Chadha learned civil judge, Delhi on 4.3.96. In suit also there was a claim of recovery of possession of Shop No. 4727-A, Ram Bazar, Cloth Market, Delhi. The present suit before the Trial Court is also a suit for possession. Pleadings are the same in both the suit, relief claimed is the same. The form and frame of the suit is different. Merely form and frame of the one suit is different from the other, it cannot be possible that provision of applicable to the second suit. The plaintiff/appellant should be vigilant under the legal process. If the motive of the appellant/plaintiffs in the earlier suit was not bonafide then the same motive can not be termed as bonafide in the second suit. If the attempt on the part of the plaintiffs/appellants was to misuse the legal process, and to file the suits one after the other on the same cause of action, then they are to suffer. The respondent/defendant has been a tenant since 29.8.82, and for the sake of arguments even on 8.4.87, the the appellants can not be allowed to misuse the process of law by opting separate forms available to them. Admittedly the remedy u/s 6 of Specific Relief Act was not available to the appellants, but at that stage and time, the remedy under DRC Act was also available to the appellant which was legal and correct, then why the appellant No. 4 elected/opted to avail of remedy u/s 6 of Specific Relief Act. Clearly motive is malafide. So when the suit u/s 6 of Specific Relief Act was filed by the appellant No. 4 against the present respondent/defendant, the remedy of declaration and possession was not available, to them in the earlier suit. They opted/elected to seek remedy only u/s 6. Not to file a

regular suit u/s 5 of Specific Relief Act but to seek remedy only u/s 6 of Specific Relief Act, the appellants/plaintiffs must have thought it fit that they will have to suffer the consequences. If there was no bar to file the petition under DRC Act or for the sake of arguments the regular suit u/s 5 of Specific Relief Act. If on the same cause of action and on the same set of facts, one legal remedy is opted, and one of the reliefs available under the same cause of action is omitted from the suit, then the principle of resjudicata read with order 2 rule 2 will come into operation against the appellants/plaintiffs. The respondent/defendant must have protection of these principles. So I will hold that the present suit before the Trial Court was barred by the principle of resjudicata u/s 11 of CPC as well as order 4 rule 2 of CPC. So the findings on the issues No. 1 and 2 are modified to this extent that the principles of resjudicata u/s 11 read with order 2 rule 2 are applicable to the facts of this case. Consequently the issues are decided in favour of the respondent/defendant and against the appellants.

ISSUE NO. 3. Whether the suit is time barred?

8. Findings of the Trial Court on this issue are hereby confirmed. Possession of the present defendant is earlier to 29.8.82 of the shop No. 4727-A. It is wrong to say that the present respondent/defendant came into possession only on 8.7.87.

ISSUES NO. 4 Whether the suit is properly valued for the purpose of court fee and jurisdiction.

9. Before the Trial Court though it was regular civil suit for declaration and possession but in fact it was a suit for ejection of the tenant. Under the garb of regular civil suit for declaration and possession the appellants/plaintiffs can not say that they can avoid the petition for ejection of the tenant from the tenancy premises. However in the Memo of appeal valuation has put by the Trial Court has not been objected. Even otherwise the proper court fees has been paid, if the suit for ejection of the tenant would have been failed which could be only annual rental of the premises. So issue is modified to this extent.

ISSUE NO. 6 Whether the plaintiff is entitled for the relief as prayed for.

10. Findings of the Trial Court under issue No. 6 are hereby confirmed. Plaintiffs/appellants are not entitled to the relief prayed for in the suit. Since the principle of resjudicata u/s 11 read with order 2 rule 2 are applicable to the facts of the case before the Trial Court. Suit is barred by time and also hit by Section 50 of DRC Act.

11. I have heard the arguments of the learned Counsel for the appellants. In spite of repeated opportunities to address arguments but the appellants as well as the counsel has not given any assistance to the court, rather the appellants have absented from contesting the appeal.

6. This is a second appeal. It is yet at the stage of its maintainability. The substantial questions of law have been formulated at page 10 of the body of the appeal. They read as follows:

“i) That if the court can decide the title issue in a suit under section 6 of Specific Relief Act.

ii) whether the suit can be disposed off on the basis of preliminary issue, which required evidence.

iii) whether the decision of a case under section 6 of Specific Relief Act, operate as resjudicata.

iv) whether the court can direct the parties to pay court fee on the value of the suit property, while holding that the suit is barred under section 50 of DRC Act.”

7. No substantial question of law has arisen. The impugned judgment had correctly noted that a suit under Section 5 of the Specific Relief Act is maintainable notwithstanding the fact that the earlier suit under Section 6 of the said Act have been dismissed. Reliance placed upon the judgment of the Apex Court reported in AIR 2004 SC 3354 Sanjay Kumar Pandey Vs. Gulbahar Sheikh is misplaced. This judgment only re-affirms the legal proposition that the remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the said Act.

8. In the present case, the impugned judgment had noted that the finding of Sh. Pradeep Chadha, Civil Judge (in his judgment and decree dated 04.03.1996) had attained a finality. This judgment had gone into two issues which are issues no. 1 and 3. They read as follows:-

“1. Whether the plaintiff is a tenant in the suit shop no. 727 Ram Bazar, Cloth Mkt, Delhi and once dispossessed by the deft. illegally and by force on 08.04.87? OPP

3. Whether the deft. has been in occupation of the suit shop since August 1982 as a tenant under plaintiff? OPD”

While disposing of these issues, the Court of Sh. Pradeep Chadha, had held that the defendant is in occupation of the suit shop since 1952 as a tenant under the plaintiff; issue no. 1 had been decided against the plaintiff.

This finding of 04.03.1996 has since attained a finality. It has not been challenged. The subsequent suit had been filed under Section 5 of the Specific Relief Act by the plaintiff. The court vide the judgment dated 03.02.2000 had disposed of the suit on preliminary issues as noted hereinabove. The finding on the question of the defendant being a tenant of the plaintiff since August 1982 had been elaborately returned by the Court of Sh. Pradeep Chadha, where the court had arrived at a conclusive finding that the defendant was in occupation of the shop since August 1982 as tenant of plaintiff. This was after a detailed evidence, both oral and documentary. This fact finding decided on merits could not now be re-agitated in the subsequent suit. This was rightly held by both the courts below.

9. No substantial question of law having been arisen, the appeal is dismissed in limine.

Sd/-
INDERMEET KAUR, J.