SUPREME COURT OF INDIA

Payal Vision Ltd.

Vs.

Radhika Choudhary

C.A.No.6734 of 2012

(T.S.Thakur and Gyan Sudha Misra,JJ.)

20.09.2012

JUDGMENT

T.S.Thakur,J.

1. Leave granted.

2. In a suit for possession and recovery of mesne profit filed by the plaintiff- appellant before the trial Court of Additional District Judge, Delhi, the plaintiff prayed for a decree for possession in its favour on admissions, invoking the Court's powers under Order XII Rule 6 of the Code of Civil Procedure, 1908. The trial Court examined the prayer and held that the jural relationship of landlord and tenant was admitted between the parties and so was the rate of rent as settled by them. Service of a notice terminating the tenancy of the defendant-respondent also being admitted, the trial Court saw no impediment in decreeing the suit for possession of the suit property. The application filed by the plaintiff- appellant under Order XII Rule 6 of the CPC was accordingly allowed and the suit filed by the plaintiff to the extent it prayed for possession of the suit property decreed in its favour.

3. Aggrieved by the decree passed against the respondent, the respondent filed Regular First Appeal No. 81 of 2009 before the High Court of Delhi which was allowed by the High Court in terms of its order dated 14th March, 2011 reversing the judgment and decree passed by the trial Court and remanding the matter back to the said Court for disposal in accordance with law. The present appeal by special leave assails the correctness of the said judgment.

4. Mr. Nagendra Rai, learned counsel appearing on behalf of the appellant, strenuously argued that the High Court had fallen in error in holding that there was no clear admission by the defendant either regarding the existence of a relationship of landlord and tenant between the parties or the service of notice of termination of tenancy upon the defendant. He referred to the averments made in the plaint and the written statement to buttress his submission that the existence of the tenancy was unequivocally admitted, no matter the defendant-tenant had

questioned the validity of the lease deed in her favour for want of stamp duty and registration as required under law. The fact that the lease deed was not registered did not, contended Mr. Rai, make any material difference so long that the defendant had been put in possession of the demised property pursuant to the said document and so long as she held the same as a tenant. The rate of rent was also not disputed by the defendant nor was the service of notice of termination, which aspects alone were relevant and if admitted or proved, sufficient for the Court to decree the suit for the relief of possession. Mr. Rai submitted that the defendant had no doubt disputed the title of plaintiff-appellant and alleged that the land underlying the super structure had vested in the Gram Sabha but any such contention was not available to her in view of Section 116 of the Indian Evidence Act, 1872 that estopped a tenant from denying the title of the landlord. Relying upon the decisions of this Court in *Karam Kapahi v. Lal Chand Public Charitable Trust*[1] and *Charanjit Lal Mehra v. Kamal Saroj Mahajan*[2] Mr. Rai argued that the High Court ought to have refused any interference with the decree passed by the Court below especially when no triable issue arose for determination by the trial Court.

5. On behalf of the respondent, it was argued that the High Court was justified in holding that the written statement did not contain a clear and unequivocal admission of the relevant aspects, namely the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy by service of a notice under Section 106 of the Transfer of Property Act, 1882. According to him, the High Court was also justified in relying upon the decision of this Court in *Jeevan Diesels Electricals Ltd. v. Jasbir Singh Chadha*[3] while reversing the judgment and decree passed by the Court below.

6. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the CPC, which reads as under:

> "Judgment on admissions-
>
> (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

7. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in Jeevan Diesels Electricals Ltd. (supra) relied upon by the High Court where this Court has observed:

"Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karam Kapahi (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation."

8. Coming then to the question whether there is any admission by the tenant- respondent regarding the existence of the jural relationship of landlord and tenant between the parties, it would be profitable to refer to the averments made by the plaintiff-appellant in para 2 of the plaint which is to the following effect:

"That the plaintiff had agreed to let out the entire property at Khasra No. 857 min. (1-03) Village Tehsil Mehrauli in the NCT of Delhi Gitorani alongwith superstructure including servant quarter and garage of the defendant to the defendant for residential requirement at a monthly rent of Rs.50,000/- (Rupees fifty thousand only) towards the rent for the demised premises exclusive of charges for the electricity appliances, fixtures and fittings for a period of three years commencing on 10th day of October 2001 vide lease agreement dated 10.10.2001."

9. In the written statement filed by her, the defendant has while asserting that the averments made in para 2 above are vague, false and wrong asserted that the property in question was not let out for residential purposes as alleged by the tenant but was constructed for commercial use and let out for that purpose only. The execution of the lease deed dated 10th October, 2001 to which the plaintiff made a reference in para 2 of the plaint is also not denied. Although the defendant appears to be suggesting some collateral agreement also to have been orally entered into by the parties, the relevant portion of the written statement dealing with these aspects may at this stage be extracted:

> "It is further denied that property was let out for residentialpurposes. As submitted in preceding paras the said property was constructed for use of commercial purposes and was let out for commercial purposes at commercial rent. Execution of Lease Deed is though not denied but is vehemently submitted that the said document was entered upon on the asking of the plaintiff whereas the terms were different than those incorporated in the lease deed."

10. When placed in juxtaposition the averments made in the plaint and the written statement clearly spell out an admission by the defendant that lease agreement dated 10th October 2001 was indeed executed between the parties. It is also evident that the monthly rent was settled at Rs.50,000/- which fact too is clearly admitted by the defendant although according to the defendant, the said amount represented rent for commercial use of the premises and not residential purposes as alleged by the plaintiff. Suffice it to say that the averments made in the written statement clearly accept the existence of the jural relationship of landlord and tenant between the parties no matter the lease agreement was not duly registered. Whether the tenancy was for residential or commercial use of the property is wholly immaterial for the grant of a decree for possession. Even if the premises were let out for commercial and not residential use, the fact remained that the defendant-respondent entered upon and is occupying the property as a tenant under the plaintiff. The nature of this use may be relevant for determination of mesne profits but not for passing of a decree for possession against the defendant.

11. Incidentally, the defendant appears to have raised in the written statement a plea regarding the nature and extent of the super structure also. While the plaintiff's case is that the super structure as it existed on the date of the lease deed had been let out to the defendant and the defendant had made structural changes without any authorisation, the defendant's case is that the super structure was constructed by her at her own cost pursuant to some oral agreement between the parties. It is unnecessary for us to delve deep into that aspect of the dispute, for the nature and extent of superstructure or the legality of the changes allegedly made by the defendant is not relevant to the determination of the question whether the

existence of tenancy is admitted by the defendant. At any rate, nature and extent of structure whether modified or even re- constructed by the defendant is a matter that can not alter the nature of the possession which the defendant holds in terms of the agreement executed by her. The relationship of the landlord and the tenant remains unaffected even if the tenant has with or without the consent of the landlord made structural changes in the property. Indeed if the tenancy was protected by the rent law and making of structural changes was a ground for eviction recognised by such law, it may have been necessary to examine whether the structure was altered and if so with or without the consent of the parties. That is not the position in the present case. The tenancy in question is not protected under the Rent Control Act having regard to the fact that the rate of rent is more than Rs. 3500/- per month. It is, therefore, of little significance whether any structural change was made by the defendant and if so whether the same was authorised or otherwise. The essence of the matter is that the relationship of the landlord and the tenant is clearly admitted. That is the most significant aspect to be examined by the Court in a suit for possession especially when the plaintiff seeks a decree on the basis of admissions.

12. That brings us to the second question, namely, whether the tenancy stands terminated either by lapse of time or by a notice served upon the defendant. The defendant-tenant did not have the benefit of a secure term under a registered lease deed. The result was that the tenancy was only a month to month tenancy that could be terminated upon service of a notice in terms of Section 106 of the Transfer of Property Act. The plaintiff's case in para 6 of the plaint was that a notice was served upon the tenant under Section 106 of the Transfer of Property Act pointing out that the defendant- tenant had made substantial structural changes in the premises and had not complied with the terms of the lease agreement. The notice was duly served upon the tenant to which the tenant has not replied. Para 6 reads as under:

> "That since the defendant had carried out substantial structural changes and further did not comply with the covenants of the lease agreement the plaintiff was compelled to serve a notice under Section 106 of the Transfer of Property Act. The said notice was duly served upon the defendant and no reply to the said notice has been received by the plaintiff or its counsel."

13. In reply, the defendant has not denied the service of a notice upon the defendant. Instead para 6 is entirely dedicated to the defendant's claim that the whole structure standing on the site today has been constructed by her out of her own money. The defendant has not chosen to deny even impliedly leave alone specifically that notice dated 17th March 2003 was not served upon her. In para 6 of the preliminary objections raised in the written statement she

has simply disputed the validity of the notice on the ground that that the same is not in accordance with Section 106 of the Transfer of Property Act. Para 6, reads as under:

> "That the alleged notice dated 17th March, 2003 is not as per the provisions of Section 106 of Transfer of Property Act. It is settled law that notice for termination of lease has to be in mandatory terms so specified in Section 106 of Transfer of Property Act."

14. Far from constituting a denial of the receipt of the notice the above is an admission of the fact that the notice was received by her but the same was not in accordance with Section 106 of the Transfer of Property Act. In fairness to counsel for the tenant-respondent in this appeal, we must record that the order passed by the High Court was not supported on the plea of the notice being illegal for any reason. A copy of the notice in question is on the record and the same does not, in our opinion, suffer from any illegality so as to make it non-est in the eye of law.

15.We may, before parting, refer to yet another contention that was raised by the defendant-respondent in her defence before the courts below. In para 1 of the written statement filed by her it was contended that the property in question had vested in the Gram Sabha and that the plaintiff, therefore, could not seek her eviction from the same. The contention was, it appears, based on an order dated 17th February, 1999 passed by the Revenue Authority under the Delhi Land Reforms Act whereby it was directed that the property would stand vested in the Gram Sabha if the plaintiff did not re-convert the land in question for agricultural purposes within three months. What is important is that the tenancy under the lease agreement dated 10th October, 2001 started subsequent to the passing of the said order of the Revenue Authority. In other words, the challenge to the title of the plaintiff qua the suit property was based on a document anterior to the commencement of the tenancy in question. It also meant that the challenge was in substance a challenge to the landlord's title on the date of the commencement of the tenancy. Section 116 of the Evidence Act, 1872, however, estoppes the tenant from doing so. The legal position in this regard is settled by several decisions of this Court and the Privy Council. Reference may in this regard be made to *Mangat Ram v. Sardar Mehartan Singh*[4] *and Anar Devi (Smt.) v. Nathu Ram*[5].In the later case this Court observed:

> "13. This Court in Sri Ram Pasricha v. Jagannath, has also ruled that in a suit for eviction by landlord, the tenant is estopped from questioning the title of the landlord because of Section 116 of the Act. The Judicial Committee in Kumar Krishna Prasad Lal Singha Deo v. Baraboni Coal Concern Ltd., when had occasion to examine the contention based on the words „at the beginning of the tenancy' in Section 116 of the

> Evidence Act, pronounced that they do not give a ground for a person already in possession of land becoming tenant of another, to contend that there is no estoppel against his denying his subsequent lessor's title. Ever since, the accepted position is that Section 116 of the Evidence Act applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attornment or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter's title, even when he is sought to be evicted by the latter on a permitted ground."

16. To the same effect is the decision of Privy Council in *Krishna Prasad v. Baraboni Coal Concern Ltd*[6]where Privy Council observed:

> "The section postulates that there is a tenancy still continuing, it had its beginning at a given date from a given landlord. It provides that neither a tenant nor any one claiming through a tenant shall be heard to deny that that particular landlord had at that date a title to the property. In the ordinary case of a lease intended as a present demise (which is the case before the Board, on this appeal) the section applies against the lessee, any assignee of the terms and any sub-lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant from disputing the derivative title of any who claims to have since become disentitled to the reversion " (emphasis supplied)

17. In the light of the above, the trial Court was, in our view, perfectly justified in decreeing the suit for possession filed by the appellant by invoking its powers under Order XII Rule 6 of the Code of Civil Procedure. Inasmuch as the High Court took a different view ignoring the pleadings and the effect thereof, it committed a mistake.

18. We accordingly allow this appeal, set aside the impugned judgement and order of the High Court and affirm the judgment and decree passed by the trial Court. The Parties are directed to bear their own costs.

19. Keeping in view the fact that the premises in question is being used by the tenant for commercial purposes, we grant to the defendant time till 31st December, 2012 to vacate the same on furnishing an undertaking in usual terms before this Court within four weeks from

today. Needless to say that the defendant shall be liable to pay the mesne profit for the period hereby granted at the rate determined by the trial Court.

20. The appeal is allowed accordingly.

Judgment Referred

[1]*(2010) 4 SCC 0753*
[2]*(2005) 11 SCC 0279*
[3]*(2010) 6 SCC 0601*
[4]*(1987) 4 SCC 0319*
[5]*(1994) 4 SSC 0251*
[6]*AIR 1937 PC 0251*