

**SUPREME COURT OF INDIA**

Delhi Diocesan Trust Association

Vs.

Ashwani Kumar

C.A.No. 8008 of 2015

(Dipak Misra and Prafulla C.Pant,JJ.,)

28.09.2015

**JUDGMENT**

**Prafulla C.Pant,J.,**

SLP (Civil) No. 25427 of 2014

1. Leave granted.
2. This appeal is directed against the order dated 01.04.2014, passed by High Court of Punjab and Haryana at Chandigarh in regular Second Appeal No. 1282 of 2011 (O & M), whereby said court has dismissed the second appeal.
3. We have heard learned counsel for the parties and perused the papers on record.
4. Brief facts of the case are that plaintiff/appellant Delhi Diocesan Trust Association, instituted suit (No.264 of 2004) for mandatory injunction against the defendant/respondent with the pleading that the plaintiff is the owner of the land in question. The land was given to one Anjana Devi (grandmother of the respondent) in 1971, on license, on payment of Rs. 5,000/- per annum. When Anjana Devi failed to surrender the possession after the expiry of license, a deed was executed on 06.03.1997, extending the period of license for one more year. She was using the land as Nursery. When Anjana Devi failed to deliver possession of the land to the plaintiff, license in her favour was terminated by getting served a notice on her. The occupation of the land thereafter, by the respondent (grand son of Anjana Devi), is unauthorized. As such, the suit was filed against him by the plaintiff.
5. Defendant/respondent contested the suit, and filed his written statement. In his written statement, the defendant pleaded that he is tenant over the land in question. He further pleaded that suit in the present form is not maintainable as the property lies in urban area and he can be evicted only under Haryana Urban (Control of Rent and Eviction) Act, 1973. He further denied the title of the appellant.

6. The trial court framed necessary issues, recorded the evidence and after hearing the parties, decreed the suit vide judgment and order dated 30.07.2008. Aggrieved by said judgment and decree passed by Additional Civil Judge (Senior Division), Karnal, the defendant preferred Civil Appeal No. 233 of 2008 before the first appellate court. Said court, vide judgment and order dated 06.10.2010, allowed the civil appeal, and reversed the decree passed by the trial court. On this, second appeal was filed by the plaintiff before the High Court which was dismissed by the order challenged before us.

7. Learned counsel for the plaintiff/appellant argued before us that the first appellate court has reversed findings of the trial court on the conjectures and surmises holding that the plaintiff failed to prove his title, and the High Court has erred in law in upholding the same. It is contended that Anjana Devi had admitted the title of plaintiff and, as such, the defendant who is in unauthorized occupation in her place, cannot escape from dispossession merely by denying the title. It is also submitted that once the suit is filed by the plaintiff against the defendant, license if any, automatically stood terminated.

8. In reply to the above, learned counsel for the respondent pleaded that the respondent is tenant of the land, and his tenancy cannot be terminated without following the procedure prescribed under the law. But the defendant failed to show us any document supporting his case, that he was lessee in the property. He further failed to show the payment of rent to the lessor. The Managing Committee to whom he pleads to have paid the rent, its Manager (PW6) has categorically denied it.

9. Relation between Anjana Devi and the defendant are not disputed in the pleadings. Papers on record show that Anjana Devi, when apprehended dispossession, filed a suit for permanent injunction but later withdrew the same, and appears to have executed a deed on 06.03.1997, whereby one more year was allowed to her to run nursery of plants on payment of Rs. 5,000/-. Defendant has not pleaded that lease was created independently in his favour. The trial court after going through the evidence on record found that PW-6 Edwin Jacob to whom the defendant claims to have paid rent has supported the case of the plaintiff. He (PW-6 Edwin Jacob) has stated that he had letter of authority (Exhibit P-10) from the plaintiff/church. He (PW-6) has further stated that defendant was a licensee in open piece of land, adjoining to residential complex of the Church and said piece was part of land of the Church. This witness has further clarified that in the first round of litigation initiated by grandmother of defendant, after it was agreed between parties that license shall be renewed for one more year for Rs.5,000/-, the suit was withdrawn by her. Not only this, DW-1 Ashwani Kumar himself in cross-examination admitted that local committee of the Church stood merged with the plaintiff. As such, plaintiff clearly failed to prove that he was a tenant in the open land as pleaded by him.

10. On going through the judgment (Annexure P-15) passed by first appellate court, it reflects that in paragraph 16, said court has also found that the defendant failed to prove himself to be statutory tenant as pleaded by him. In the circumstances, we are of the opinion that the first appellate court has erred in not accepting the finding of the trial court, and

reversing the same. The High Court has also erred in ignoring the title of the plaintiff, based on judgment (Exhibit P-9) passed in Civil Suit No. 66 of 1978 between Haryana Church Welfare Association and the defendant's grandmother, particularly in view of the fact that DW-1 Ashwani Kumar (defendant) has admitted in the cross examination that the local church merged with the plaintiff/church.

11. For the reasons as discussed above, we set aside the judgment and decree passed by the first appellate court and that of the High Court. The decree passed by the trial court is restored. The defendant is directed to vacate the land in question within a period of two months from today. Appeal accordingly stands disposed of. No order as to costs.