

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR PERMANENT INJUNCTION

Date of reserve : 5th July, 2007

Date of decision : 12th July, 2007

RSA No. 64/2007

Mr. Naveen Kumar

..... Appellant

Versus

1. Mr.Ashok Kumar

2. Mr.Dharam Pal

3. Pandit Kailash Chand

4. Mr.Murari Lal

5. Mr.Nikhil Khanna

..... Respondents

Advocates who appeared in this case :

For the appellant : Mr. P.K.Gupta, Advocate.

For the respondents : None

J.M. MALIK, J.

1. The case of the plaintiff/appellant is this. He is a tenant with regard to open terrace of the properties bearing Nos. 3828, 3829, 3831, 3832, 3833A and 3833B, Mandir Gouri Shanker, Pahar Ganj, New Delhi, under Ms.Sushila Khanna, who is the owner/landlord of the above-said property, at the monthly rental of Rs.250/- per month, that is, Rs. 50 per month per terrace. The plaintiff stated to be in continuous possession of the said premises and has been using the same for his customers, who sit on the open terrace for taking tea since the appellant has been running his tea

business on the ground floor of the tenanted premises in the same building. It is also averred that there is only one staircase leading to the terrace and from that stairs his customers and the appellant use the open terrace for sitting and serving/taking tea.

2. It is alleged that defendants threatened the appellant to take forcible possession of the above-said tenanted premises. Defendant No.1 extended the said threat on 21st November, 1994. A report was lodged with the Police Station. On 23rd November, 1994 the defendants again tried to take forcible possession and as such, another report dated 30th November, 1994 was lodged with the police. On 29th November, 1994, defendants and some other persons came to the tenanted premises and gave beating to Shri Ashok Sharma, appellant's real brother. The defendants have got no right, title or interest in the suit property. Consequently, the instant suit for permanent injunction restraining the defendants from taking the forcible possession of the suit property or interfering with the use and enjoyment of the tenanted property was instituted in the court on 1st December, 1994.

3. The above-said suit was contested by defendants Nos. 3 and 5 only. Pandit Kailash Chand, defendant No.3, explained that he is the priest of Mandir Gouri Shanker for the last 18 years. His family members and he himself was provided accommodation consisting of one room, courtyard, toilet, bathroom along with roof by the trust. Defendant No. 3 has put up a tinshed over the roof with the permission of the trust. It is alleged that the plaintiff has suppressed the material facts and has not approached the courts with clean hands. It is categorically denied that Sushila Khanna is the owner of the suit property.

4. Nikhal Khanna, defendant No. 5 pointed out that property Nos. 3838, 3829, 3831, 3832, 3833A and 3833B belong to Mandir Gouri Shanker Trust and Smt. Sushila Khanna is the trustee and being an old lady she is not able to manage the property effectively. Nikhal Khanna is a tenant in respect of shop No. 3832 and premises bearing No. 3830, which is used for residential purpose. The shop is on ground floor and the residential premises is on first floor. The terrace of shop No. 3829 forms part of tenanted portion under occupation of defendant No.5. It is explained that, as a matter of fact, terrace of each shop is under tenancy and occupation of tenant on ground floor. Again, there is no separate or independent stairs except one common staircase. The appellant is neither in occupation nor has got any connection with the above-said terraces. It is also contended that landlady is a necessary party. It is alleged that the present suit has been filed in order to grab the suit property. The said defendant is in possession of the above-said premises for the last 35 to 40 years. It is alleged that the plaintiff has recently put up an iron staircase which was never existed at the time of filing of the suit in order to create false

evidence. The old staircase was never used by the appellant at any time. Both the court below have dismissed the case of the appellant. Aggrieved by those orders, the instant appeal has been preferred.

5. I have heard the counsel for the appellant. The only submission made by him was that the rent receipt Ex. PW1/1 to Ex. PW1/8 were not considered by the courts below.

6. This argument lacks conviction. The said rent receipts were not proved in accordance with law. These rent receipts are purported to have been executed by Smt. Sushila Khanna. Smt. Sushila Khanna was neither examined to prove these documents nor she was impleaded as a party in this case. Again, no other evidence except appellant's own statement was adduced. His mere ipse dixit is not sufficient. Due to withholding of best evidence i.e. the statement of Smt. Sushila Khanna, the executant of these rent receipts i.e. the most solid and unflappable evidence, adverse inference can be drawn against the appellant in terms of celebrated authority by apex court reported in Gopal Krishnaji Ketkar vs. Mohamed Haji Latif and others AIR 1968 SC 1413.

7. Moreover, flip flops in the deposition of the plaintiff/appellant and other incongruities have baffled the Court. The case of the plaintiff is that there is only one stair case leading to the terrace. However, in his cross-examination he admitted that he had seen the stair case inside the temple premises that leads to the roof of the temple. This suit was filed on 02.12.1994 but the site plan was filed by the appellant on 16.02.2000. In his cross-examination Ram Prakash, PW3 admitted that stair case of iron was got constructed by the plaintiff. However, plaintiff deposed that this stair case was got constructed by the land lady. On the other hand, Mahesh Chand Sharma, DW2 testified that iron stair case was fixed about two three years back. He was not cross-examined on this point. Thus, it is clear that plaintiff's evidence is an inchoate mix of irreconcilable opposites.

8. Again, in his cross-examination appellant deposed that there is a partition wall of about 3 to 4 feet between the roof of the temple and the roof under his possession but his own witness Naresh Kumar, PW2 admitted in his cross-examination that there is no partition wall on the roofs. These facts go to establish the ambivalent character of the appellant's case.

9. It is, also, crystal clear that the case of the appellant is not only contradictory but it also stands proved that the appellant has not approached the court with clean hands. He has suppressed the material facts.

10. Both the courts below came to the conclusion that plaintiff had failed to prove any right, title or interest in respect of the case property. To my mind no substantial question of law arises. Appeal is without merit. The same is, therefore, dismissed at admission stage.

Sd/-
J.M. MALIK, J.