

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: CODE OF CIVIL PROCEDURE

RSA No.74/2007

DATE OF DECISION: 02.01.2008

Delhi Cantonment Board

Appellant
Through: Mr.R.Nanavati, Advocate

VERSUS

Sh. S.N.Sahni

Respondent
Through: Mr.R.K.Anand, Senior Advocate
with Mr.S.B.Sharma, Advocate.

PRADEEP NANDRAJOG, J.

1. On 20.7.2007 following substantial question of law was framed:-A When the Civil Court had no jurisdiction to try this case, could it have decided all the issues on merits and dismiss the suit
2. Learned counsel for the parties concede that the aforesaid question of law needs to be decided with reference to the decision by the learned Trial Court as affirmed by the Appellate Court pertaining to issue Nos.(ii), (iv), (v) and (vi).
3. For record I may note that issue No.(i) and (iii) related to the valuation of the suit and the authority of the person who instituted the suit. Said issues have been decided in favour of the appellant.
4. Issue Nos.(ii), (iv), (v) and (vi) read as under:- (ii) Whether the suit is not triable by this Court (iv) Whether the suit is barred under the provisions of Delhi Rent Control Act and this Court has no jurisdiction (v) Whether the defendant is in possession of property in dispute continuously for his own right for more than 35 years to the knowledge of the plaintiff If so to what effect (vi) Whether the defendant is in unauthorized occupation of property in dispute
5. To appreciate the issues it needs to be noted that case of the appellant who sought recovery of possession of the suit property was that it had let out the property in question to one Siri Chand who in turn had sublet the same to the respondent and that since Siri Chand had died, appellant was entitled to eject the respondent from the suit property for the reason his possession was akin to that of a trespasser.
6. In other words, case of the appellant was that an unauthorized occupant is liable to be ejected in a civil action.
7. Respondent took the plea that he was a direct tenant under the appellant and to the knowledge of the appellant was in occupation of the premises for over 35 years. According to the respondent he was a tenant under the appellant at a rent much less than Rs.3,500/- per month

and since Delhi Rent Control Act 1957 applied to the area no court can order ejectment save and except the Court of the Rent Controller.

8. The question raised by the respondent in defence required evidence to be led. Needless to state the bar to the jurisdiction of the Civil Court created by the Delhi Rent Control Act would have come into force only when the respondent proved that he was a tenant under the appellant and was not a sub-lettee under Siri Chand and that the rent was less than Rs.3,500/- per month.

9. Thus, decision on issues Nos.(v) and (vi) had to be on facts. Depending upon the decision on the said issues was the consequential decision on issues No.(ii) and (iv).

10. I could put the matter differently. Had the issue been framed: Whether in view of the defence taken in the written statement was the suit triable by the Court in view of the provisions of the Delhi Rent Control Act, the decision would have embraced the wider issue as framed.

11. Merely because the wider issue has been split up into distinct issues does not mean that the Court exceeded its jurisdiction in deciding the issues as framed.

12. I repeat, the decision on the question whether the defence successfully established a direct landlord-tenant relationship and the rent paid being less than Rs.3,500/- was the core decision.

13. On the evidence led, finding of fact has been returned that the respondent was a tenant under the appellant and the rent originally fixed was Rs.31.44 per month subsequently enhanced to Rs.47.16 per month.

14. The appeal is dismissed.

January 2, 2008

Sd./-
PRADEEP NANDRAJOG, J.