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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 21.09.2015

\+ **RSA 265/2015**

SATVINDER SINGH .... Appellant
Through: Mr. Sanjay Kumar, Advocate

versus

JASVINDER KAUR ..... Respondent
Through: Mr. Harminder Singh, Vijay Kumar Ravi and Sanjay Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 31.03.2015 passed by the first appellate court, namely, the Additional District Judge – 04, New Delhi District, Patiala House Courts, in RCA No. 25/14 preferred by the appellant/defendant to assail the judgment and decree passed by the trial court, namely, SCJ-cum-RC, Dwarka Courts, New Delhi, in Civil Suit No. 14/13 filed by the respondent/plaintiff to seek the reliefs of permanent injunction, recovery of possession, damages and mesne profits. The trial court by the said judgment and decree dated 30.08.2014, decreed the suit of the respondents/plaintiffs thereby passing a decree of possession in respect of the suit property and also directing payment of interest/damages @ Rs. 3000/- per month with effect from 01.10.2012 till handing over of possession of the suit property to the plaintiffs. The

appellant-defendant was also restrained from creating any third party interest in the suit property by way of sub-letting, transfer, alienation or otherwise parting with possession of the suit property. The appellate Court dismissed the first appeal of the appellant by the impugned judgment dated 31.03.2015, and affirmed the original judgment and decree.

2. The case of the respondents-plaintiffs in the suit was that they purchased the suit property bearing No. A-45, front side of land measuring 605 sq. yds. in the Naraina Industrial Area, Phase II, New Delhi, from Sunil Garg, Savita Garg, Ankit Garg and Bankim Garg, through a registered Agreement to Sell, receipt, possession letter and registered General Power of Attorney dated 06.05.2009 which were led in evidence as Ex.PW1/2 to Ex.PW1/5 respectively. The plaintiffs claimed that the father of the defendant was inducted as a licensee in a portion measuring 80 sq. yds. on the ground floor of the said property vide license agreement dated 01.05.1997 (which was led in evidence as Ex.PW1/7) by the previous owners, namely, Sushila Devi, Anil Garg and Sunil Garg on a monthly licnese fee of Rs. 600/-. After the demise of the defendant's father, the defendant claimed to have become the licensee in the said property. The plaintiffs claimed that despite giving intimation by PW1, the special attorney of the two plaintiffs, who is also the brother of the husband of plaintiff No. 1- Jaswinder Kaur, and husband of plaintiff no.2, regarding purchase of the suit property by the plaintiffs, and notwithstanding the legal notice dated 10.08.2010 (Ex.PW1/8) sent by the plaintiffs, the defendant did not pay the license fee to the plaintiffs. Instead, the defendant claimed to be paying license fee of Rs. 5,000/- per month to one of the previous owners, namely,

Shri Sunil Garg. Consequently, the plaintiffs terminated the license of the defendant through a legal notice dated 14.12.2010 (Ex.PW1/10) and gave 30 days' time to the defendant to vacate the suit premises. Since he did not vacate the premises, the aforesaid suit was preferred by the plaintiffs. Upon being summoned, the defendant in his written statement stated that the suit property was owned by M/s Hind Printing Press, of which Sushila Devi, Anil Garg and Sunil Garg were partners. He denied the ownership claimed by the plaintiffs. While he admitted the license agreement dated 01.05.1997 (Ex.PW1/7), he claimed that the defendant was a tenant in the suit property after the demise of his father. He denied being a licensee in the suit property. He also raised an objection that the suit was barred under Section50 of the Delhi Rent Control Act - on the averment that the monthly rent was Rs. 600/-. The trial court framed the following issues in the suit:-

1. Whether the defendant was inducted in the suit property as licesee or tenant? ….Onus to prove on Parties

2. Whether the suit of the plaintiff is barred under Section 50 of DRC Act? OPD

3. Whether the plaintiff is entitled for relief of possession as prayed for? OPP

4. Whether the plaintiff is entitled for mesne profits/damages from the defendant if so, at what rate and for which period? OPP

5. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

3. The plaintiffs led in evidence PW1-the special attorney of the two plaintiffs (vide Ex.PW1/1 and Ex.PW1/1A) who deposed on the basis of his personal information and knowledge. As aforesaid, he exhibited the

documents above referred to and deposed in terms of the averments made in the plaint. The defendant examined himself as DW1 and led his examination-in-chief in terms of his written statement. He was subjected to cross examination by the plaintiffs.

4. On issue No. 1, the trial court applied the test laid down by the Supreme Court in ***C.M.Beena and Anr. Vs. P.N.Rama Chandra Rao*** AIR 2004 SC 2103, to determine whether the nature of the transaction was a lease or a license. The Supreme Court, in this decision, had placed reliance on an earlier decision in ***Associated Hotels of India Limited Vs. R.N.Kapoor*** 1960 SCR 368. In ***C.M. Beena*** (supra), the Supreme Court observed;

> *"8. …… **difference between a 'lease' and 'license' is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document**, if any, executed between the parties and the surrounding circumstances. **Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created**; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful (See Associated Hotels of India Ltd. V. R.N.Kapoor). The decided cases on the point are legion. For our purpose, it would suffice to refer to a recent decision of this court in Corporation of Calicut V.K.Sreenivasan.*
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> *9. A few principles are well settled. **User of the terms like 'lease' or 'license', 'lessor' or 'licensor', 'rent' or 'licence fee' are not by themselves decisive of the nature of the right created by the document**. An effort should be made to find out whether thedeed confers a right to possess exclusively coupled*

with transfer of a right to enjoy the property what has been parted with is merely a right to use the property while the possession is retained by the owner. The conduct of the parties before and after the creation of relationship is of relevance for finding out their intension.

11. ……. ***In deciding whether a grant amounts to a lease, or is only a licence, regard must be had to the substance rather than the form of the agreement, for the relationship between the parties is determined by the law and not by the label which they choose to put on it****."*

(emphasis supplied)

5. The trial court then proceeded to consider the terms of the license agreement (Ex.PW1/7) in the light of the aforesaid observations of the Supreme Court. The discussion found in the trial court judgment on the said aspect reads as follows:

"13. Undoubtedly, the agreement dated 01.05.1997 i.e. Ex.PW1/7 fixed a monthly rate of Rs. 600/- as license fee, the agreement was for three years and recognized the occupation of the father of the defendant over the suit property. The agreement also recognized the use of the suit property as a shop by the father of the defendant. These terms may at first look suggest the transfer of possession and recognition of the rights of the father of defendant to use the suit property for a period of three years. In this view, the agreement could well have been treated as a lease deed notwithstanding the use of the term license in the same but for a crucial clause incorporated by the parties. This clause is reproduced below:

> *5. That the licensee shall ensure that none of its workman creates any disturbance or demonstrations inside the property. This license permits licensee to use the premises in day only i.e. 8 AM to 8 PM. The licensee violates the said clauses licensor in full to lock the premises*

immediately.

14. Since the transfer of exclusive possession by the granter of the premises in favour of the recipient is of determinative value for deciding the existence of a lease, the incorporation of the above clause negates such transfer by the original owners of the property in question in favour of the father of the defendant. If the intention of the owners was to induct the father of the defendant as a tenant, they would not have restricted the use of the suit property to certain houses in the day. That the owners permitted use only between 8 a.m. to 8 p.m. is a manifest indication of their intention to retain possession of the suit property with themselves. Evidently, the father of the defendant was granted only permissive use of the suit property for only a limited portion of the day. Exclusive possession was thus not handed over to him. Consequently, the terms of the license agreement dated 01.05.1997 are consistent only with the incidents of a license viz. the permission to use and occupy a premises with the possession remaining in the hands of the licensor. The term with respect to the monthly rate of Rs. 600/- is therefore to be read as described in the document viz. license fee.

15. In this view, clause 4 cannot be construed as referring to a lease when it expressly records the status of the father of the defendant as a licensee. The said clause reads as under:

> *4. That the license expressly agrees and declares that it shall in occupation of the licensed premises purely as a licensed and that it shall not over contend that it is a leases or has any other interest in the licensed premises.*

16. The court finds that the license agreement dated 01.05.1997 was, in operation, precisely what it purported to be in description i.e. a license agreement. The status inherited by the defendant would remain the same as his father. The defendant cannot claim the benefit of being a tenant in the suit property after the demise of his father who was a licensee and

not a tenant."

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18. The present defendant fits the character of a licensee for another reason. It has emerged from the evidence led by both parties that the previous owners of the premises in question were operating a printing press at the premises. The respondent (DW1) admitted during cross-examination that his business related to the work of motor rewinding and that motors are used for the work of a printing press. He also admitted that his father was also engaged in the same business. Though he denied the suggestion that he used to repair the motors of M/s Hindi Printing Press i.e. the concern of the previous owners, the court finds it to be a reasonable proposition that a mechanic for motors used in a printing press would repair the motors of the printing press operated by the persons who inducted him into the property. To assume otherwise would be to hold that although the respondent was a motor mechanic he refused to repair the motors of M/s Hindi Printing Press situated in the same premises. Such a conclusion would be opposed to ordinary principles of probability and common sense.

19. Having reached the conclusion that the respondent did repair the motors of the Hindi Printing Press, it follows as a strong natural corollary that the respondent was inducted as a permissive user in the premises by the previous owners vide agreement dated 01.05.1997 only because he was engaged in work i.e. motor repair commensurate with the business of the licensor. Such induction must be treated as a license and not a lease."

6. Since the finding returned by the trial court was that the appellant-defendant was a licensee and not a tenant, issue No. 2 was decided against the appellant-defendant. The plaintiffs were held entitled to relief of possession – being the licensors and having derived interest in the suit

property from the original owners/licensors vide Ex.PW1/2 to Ex.PW1/5. The objection to PW-1 not being a competent witness – he being an attorney of the plaintiffs, was negated by observing that PW1 had deposed not merely in his capacity as the special attorney of the plaintiffs, but on the basis of the personal knowledge on account of his relationship with the plaintiffs. PW1 is the husband of plaintiff No. 2 and the brother-in-law of plaintiff No. 1. The trial court also held that the license was terminated vide Ex.PW1/10. Consequently, the suit was decreed. The respondent was held entitled to recover damages @ Rs. 3,000/- per month with effect from 01.10.2012. The said damages were assessed on the basis that the license agreement was executed on 01.05.1997 fixing license fee of Rs. 600/- per month. Consequently, suit was decreed as aforesaid.

7. The first appellate court has affirmed the said judgment and decree while dismissing the appellant's first appeal.

8. The submission of learned counsel for the appellant is that the perpetual lease in respect of the suit property stand cancelled by the DDA six years ago. Counsel submits that the respondents have taken no action till date to challenge the said cancellation of the perpetual lease. Consequently, the respondents, according to the appellant, had no locus standi to file or continue the suit against the appellant-defendant. Counsel for the appellant has placed reliance on two decisions, namely, ***Suresh Chand Gupta Vs. MCD & Ors.*** 2013(135) DRJ 351 and ***National Textile Corporation (MN) Ltd. Vs. Durga Trading Co. & Ors.*** 2015(2) Scale 464 to submit that on account of cancellation of the perpetual lease, the respondents had no locus standi to seek dispossession of the appellant-defendant.

9. Counsel for the appellant further submits that the respondents are not the recorded owners of the suit property, as they are claiming their rights in the property only on the basis of an agreement to sell, registered General Power of Attorney and the other documents mentioned above. The same does not amount to sale under the Transfer of Property Act and thus cannot be given effect to. In this regard, reference is made to ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.*** 2012 (1) SCC 656. It is also argued by learned counsel for the appellant that the nature of the appellant's occupation in the suit property was in the capacity of a tenant, and not a licensee.

10. On the other hand, learned counsel for the respondent submits that the cancellation of the perpetual lease dated 03.04.1969 in respect of the suit property has been assailed by the predecessor-in-interest of the respondent in W.P.(C.) No.8587/2011, which is still pending consideration before this Court. Learned counsel has produced before this Court the orders passed in those proceedings, including the order dated 05.01.2012, whereby this Court has directed the Delhi Development Authority not to take coercive steps in respect of the suit premises against the petitioners. The said interim order was confirmed by this Court on 17.09.2012. Thus, it cannot be said that the cancellation of the perpetual lease has attained finality and that the respondents have no locus-standi to file the suit in question.

11. Learned counsel has placed reliance on the judgment of this Court in ***Shanti Sharma & Others Vs. Ved Prabha & Others***, 1981 (20) DLT 127. In this case, the perpetual lease of the leasehold plot had been cancelled. The issue arose whether the landlord, who had let out the built-up building

on the said leasehold plot, had the locus-standi to seek ejectment of the tenant on the ground of *bona fide* requirement under section 14 of the Delhi Rent Control Act. This Court held that the landlord remained the owner of the super structure even after the cancellation of the lease deed of the plot and was, thus, entitled to seek ejectment of the tenant. Learned counsel, therefore, submits that this decision answers the issue sought to be raised by the appellant with regard to the respondent's locus-standi to file the suit.

12. So far as reliance placed on ***Suraj Lamp*** (supra) is concerned, learned counsel for the respondent submits that this decision is prospective in its application and does not seek to affect the transaction which had already taken place on the basis of registered General Power of Attorney, Will and unregistered Agreement to Sell, etc.

13. The decision in ***Suraj Lamp*** (supra) is dated 11.10.2011. The transaction in question between the respondents and the erstwhile owners took place in the year 2009. The decision in ***Suraj Lamp*** (supra) applies prospectively and, therefore, would not affect the transaction, whereby the respondents derive their rights in the suit property, of the year 2009.

14. In the present case, the two Courts below have returned consistent findings of fact with regard to the nature of occupancy of the respondent. Both Courts have consistently held that he was merely a licensee in the suit premises and not a tenant, as claimed by him. The Courts have relied upon clause 5 of the agreement between the parties dated 01.05.1997 (Ex.PW-1/7), which limited the right of the premises by the appellant only between 08:00 a.m. to 08:00 p.m. Both the Courts have held that such a clause

negates the transfer of the property by the original owners in favour of the father of the defendant by way of a lease. Exclusive possession, thus, could not be said to have been handed over by the original landlord to the original defendant – the father of the defendant appellant. The parties had expressly agreed and declared that the occupation of the licensed premises shall be purely on license basis and shall not be treated as a lessee. Thus, not only the parties had expressly and consciously agreed that the transaction pertained to a license granted in respect of the suit property, but also the terms & conditions thereof support that conclusion.

15. It cannot be said that the finding returned by the Trial Court and the First Appellate Court with regard to the interpretation of the agreement (Ex.PW-1/7) is either perverse, or not premised on cogent evidence or that the same has been arrived at for extraneous considerations. This Court, in second appeal, cannot interfere with consistent findings of fact, particularly when they appear to be rational, and no perversity is pointed out in the same.

16. The submission of the appellant that the perpetual lease in respect of the suit property stands determined, and that, therefore, the respondent/ plaintiff had no locus-standi to file the suit has been sufficiently met by the respondent. Firstly, the said cancellation has not been accepted and is pending challenge before this Court. This Court has already granted interim protection to the petitioners in the said writ petition. Moreover, merely because the perpetual lease may have been cancelled in respect of the leasehold plot, the right of the respondent – owners of the built-up structure, to seek possession from the occupant – be it a lease or license, remains intact as held by this Court in ***Shanti Sharma*** (supra). The decisions relied upon

by the appellant, viz. ***Suresh Chand Gupta*** (supra) and ***National Textile Corporation*** (supra) have no relevance to the present case and do not advance the submission of the appellant.

17. For all the aforesaid reasons, I find no merit in the present second appeal. No substantial question of law arises for consideration of this Court. The appeal is, accordingly, dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J

SEPTEMBER 21, 2015
sl /B.S. Rohella