

CASE NO.:
Special Leave Petition (civil) 3971 of 1999

PETITIONER:
MOHINDER KAUR

Vs.

RESPONDENT:
KUSAM ANAND

DATE OF JUDGMENT: 08/05/2000

BENCH:
A.P. Misra & M. B. Shah.

JUDGMENT:

Shah, J.

Leave granted.

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In the High Court of Delhi, plaintiff filed Civil Suit No.28/78 for possession of the ground floor of the property bearing no.1/5, West Patel Nagar, New Delhi and mesne profits @ Rs.3000/- per month from 01.01.1978. The learned Single Judge decreed the said suit by judgment and decree dated 22.8.1997. Defendant preferred RFA (OS) No.45 of 1997 before the Division Bench. That appeal was allowed by judgment and decree dated January 28, 1999 and the same is challenged by the plaintiff by filing this appeal by special leave.

Plaintiff filed suit for recovery of possession and mesne profits inter alia alleging that plaintiff purchased the suit property from M/s Jawahar Mal & Sons sometime in the year 1961. M/s Jawahar Mal & Sons were the lessees of the land underneath the suit property. After purchase of the said property, it was let out by the plaintiff to National Cadet Corps. (NCC). As the property was being used by NCC for the purposes other than residence, the DDA lodged a complaint against the plaintiff under Section 29(2) read with Section 14 of the DDA Act, 1957 sometime in 1974. The running of office by NCC in the building in question was proved beyond doubt and, therefore, the Metropolitan Magistrate by order dated 21.4.1976 convicted the plaintiff for the said offence by holding that the building in question can be used only for residential purpose as it is in the residential zone of the Master Plan of Delhi. In view of the aforesaid non-confirming user of the property by NCC, the plaintiff filed an application for eviction under Section 14(1)(a), (c) & (k) of the Delhi Rent Control Act, 1958 against Union of India and others. Realising that the property cannot be put to non-confirming use, the NCC vacated the property on 31.8.1977. In those proceedings, one D.K. Chadha, employee of plaintiffs firm was appointed as power of attorney to conduct the eviction proceedings against NCC and others.

It is the case of the defendant that she got in touch with Mr. D.K. Chadha and asked to let her out the ground floor of the property on a monthly rent of Rs.3000/- for the purpose of residence and DK Chadha as power of attorney accepted the defendant as a tenant by accepting rent of Rs.3000/- per month for which a receipt dated 16.11.1977 was issued. It is the case of the defendant that since the plaintiff resided and carried business in Calcutta, D.K. Chadha before accepting the advance rent told her that the same was subject to confirmation by the plaintiff or her son Sharanjeet Singh as he was not competent to let out the property on his own and she will have to execute a lease deed. As the defendant was to occupy the ground floor portion of the said property w.e.f. 01.1.1978, she requested D.K. Chadha a week or so before that date to allow her to have the furniture/fixture prepared in the verandah of the property to which he agreed.

It is the plaintiffs case that on 29.12.1977 when Sharanjeet Singh (son of the plaintiff) visited the property, he found that defendant had entered into the ground floor portion by getting the keys of the outer door from the chowkidar. Sharanjeet Singh closed the outer door and put a lock on it. In the absence of Sharanjeet Singh and D.K. Chadha, the defendant put her lock over the lock of the plaintiff on the outer door. Thereafter, Sharanjeet Singh contacted the defendant and asked her to remove her belongings from the property but she declined to do so. Hence, he issued notice by telegram on 31.12.1977 and lodged FIR for criminal trespass.

On 2nd January, 1978, defendant filed a civil suit in the Court of Senior Sub Judge at Delhi for injunction restraining the plaintiff from disturbing her possession except in due process of law in respect of whole of the ground floor of the suit premises by contending that the tenancy was created in her favour from 1.12.1977 at a monthly rent of Rs.3000/-. Interim injunction as prayed for was granted in the said suit.

It is the contention of the appellant-plaintiff that on receipt of the summons of the said suit, she filed the present suit for eviction of the defendant on the ground that defendant was trespasser in the suit premises and for mesne profits @ Rs.3000/- per month w.e.f. January 1, 1978 until possession of the premises was restored back to the plaintiff and interest @ 12% per annum. The learned Single Judge framed the issues and after recording evidence and considering the contentions arrived at the conclusion that the plaintiff was landlord of the suit premises and there was no written lease deed between the parties which would govern the respective rights inter se. In her evidence defendant had stated that she had not forcibly occupied the premises in dispute but was inducted as tenant by D.K. Chadha, Power of Attorney of plaintiff. After considering the evidence on record, the Court held that defendant had trespassed in the premises without entering into an appropriate agreement for rental of the same. She could have waited for the plaintiff to come forward for that purpose, but on the contrary she hurriedly entered into the premises and started running a school without any written consent of the plaintiff in this regard. The receipt issued in her favour merely states the payment of Rs.3000/- as an advance against rent of the suit premises effective from January 1, 1978. The defendant in order to perfect her

legal entry into the premises instead of negotiating with the plaintiff chose to file a suit for injunction in the court of Senior Sub Judge, Delhi on January 2, 1978 for not disturbing her possession. The Court held that from the facts and evidence on record it was established that defendant trespassed into the premises in dispute on or about December 29, 1977. The Court further held that the property in dispute was, admittedly, in residential zone as on an earlier occasion the plaintiff had to file a suit for eviction of N.C.C. for use of the premises for non-residential purpose. In her letter dated October 28, 1977 defendant had stated that she required the premises for residential purposes. The Court further held that plaintiff was entitled to the amount of Rs.3000/- per month as mesne profits from January 1, 1978 till the date the possession is handed over to her. It is to be stated that the court took virtually 20 years for passing the aforesaid judgment and decree dated 22.8.1997.

Against that judgment and decree, the defendant preferred RFA (OS) No.45/97 which was allowed by the Division Bench on the ground that it was admitted that D.K. Chadha was given Power of Attorney to conduct the eviction case filed against the National Cadet Corps and it was for the plaintiff to show that the said power did not include the authority to let out the suit property by D.K. Chadha. As the said Power of Attorney or its photocopy is not produced on record by the plaintiff, it must follow that D.K. Chadha under the power of attorney had also the authority to let out the suit property on behalf of the plaintiff. The Court held that receipt Ex.P3 dated 16th November, 1977 executed by D.K. Chadha as attorney of plaintiff for having received Rs.3000/- from the defendant towards one months advance rent also negates the plea that the defendant occupied the suit property as a trespasser. The Court further held that it is not the case of the plaintiff that the possession of the property was handed over in collusion with D.K. Chadha to the defendant. Hence, the Court set aside the judgment and decree passed by the learned Single Judge and allowed the appeal. That judgment and decree is challenged by filing this appeal by special leave.

Shri R.F. Nariman, learned Senior Counsel for the appellant submitted that the judgment and decree passed by the Division Bench is, on the face of it, erroneous as it has ignored the vital document from its consideration, namely, the letter dated 28.10.1977. He further submitted that plaintiff has specifically denied that she executed power of attorney in favour of D.K. Chadha for managing the suit property and that she did not have the copy of the power of attorney executed in favour of D.K. Chadha for prosecuting the suit filed by her for evicting National Cadet Corps. That power of attorney was not produced on record and D.K. Chadha had left the plaintiff since years and that she did not know the whereabouts of D.K. Chadha.

As against this, Shri DA Dave, learned Senior Counsel for the respondent submitted that considering the receipt of advance rent executed by D.K. Chadha on 16.11.1977 it is apparent that defendant had entered into the premises as a tenant. He submitted that plaintiff has intentionally not produced on record the copy of the power of attorney executed in favour of D.K. Chadha and, therefore, adverse inference should be drawn against her.

Admittedly, in 1977 plaintiff was residing at Calcutta and there was no direct talk between the plaintiff and the defendant for letting out the premises. In this view of the matter, for appreciating the contentions raised by the learned counsel for the parties, we would reproduce the letter dated 28.10.1977 written by the defendant to plaintiff and the receipt dated 16.11.1977, on which heavy reliance is placed for proving tenancy rights, for proper consideration.

Letter dated 28.10.1977 :

Dear Sir,

I have seen your premises 1/5, Ground Floor, West Patel Nagar lying vacant for residential purpose through Mr. Mahajan of M/s Mahajan & Co., property dealers.

I am interested to take the said premises on rental basis for residential purpose. The monthly rent as indicated by Mr. Mahajan is Rs.3500/- per month, while we are interested at Rs.3000/- per month which according to us is very reasonable, looking to the rents prevailing in the same locality for the same like accommodation.

I would request you to kindly consider my offer and rent out the said premises to me at your earliest convenience.

Please let me have your confirmation immediately through your representative Mr. D.K. Chadha or Mr. Mahajan. You may even convey your decision on the telephone nos.584618, 588057, 527193.

If any surety is required, the same can be provided.

Receipt dated 16.11.1977 :

RECEIPT Received a sum of Rs.3000/- (Rupees three thousand only) from Mrs. K. Anand r/o 13/20, East Patel Nagar, New Delhi-8. This is advance against rent of 1/5 West Patel Nagar (Entire Ground Floor premises). The rent is effective from 1st of Jan., 1978. In case the possession is given earlier the difference will be chargeable or adjustable from the date possession is given. --- Sd/- (Attorney) (K. Chadha).

Undisputedly, aforequoted letter is written by the defendant to the plaintiff. The letter specifically negates the contention of the defendant that D.K. Chadha was the power of attorney holder of plaintiff. Firstly, because if D.K. Chadha was power of attorney to manage the suit premises and for letting it out then there was no necessity of writing letter to the plaintiff secondly, the letter specifically mentions that D.K. Chadha or Mr. Mahajan (property dealer) were plaintiffs representatives. Letter also specifically mentions that defendant was interested in taking the premises on rental basis for residential purpose and not for running school. This also indicates that defendant was knowing the fact that premises were in residential zone and plaintiff would not let it out to the defendant for non-residential purpose. This is to be appreciated in the light of the fact that plaintiff was convicted by order dated 21.4.1976 by the Metropolitan Magistrate for the offence punishable under Section 29 read

with Section 14 of the DDA Act, 1957 for letting out the premises for office purpose to NCC. After receipt of the said letter dated 28.10.1977 plaintiff has not conveyed its confirmation that she was willing to let out the premises to the defendant at a rent of Rs.3000/- per month as offered. May be that plaintiff was interested in fixing the rent which may exceed Rs.3500/- so that provisions of Delhi Rental Control Act, 1958 may not be applicable. Without waiting for any confirmation from the plaintiff if D.K. Chadha accepted the said advance rent of Rs.3000/- effective from 01.1.1978 that would not be binding on the plaintiff. Undisputedly, the plaintiff's son when came to Delhi and found that defendant had entered into the premises, he immediately locked the premises and took away the keys. He contacted the defendant and requested her to remove her belongings from the premises but she declined to do so. He sent telegram on 31.12.1977 that defendant has trespassed on the premises and that she should vacate immediately. He also lodged FIR on the same date. If the premises were really let out to the defendant in November/December then the plaintiff would not have lodged FIR in the month of December itself.

However, relying heavily on the receipt issued by D.K. Chadha, learned counsel Mr. Dave submitted that receipt would clearly establish the case of the defendant that the premises were let out to her by accepting an advance rent of Rs.3000/-. He further submitted that as per the receipt, rent was to be effective from 01.1.1978 and in case the possession was given earlier difference of rent was to be charged from the date of possession. As stated earlier, if D.K. Chadha was having power of attorney then there was no necessity of writing letter to the plaintiff who was residing at Calcutta. There was no necessity of having confirmation from her that the premises be let out to the defendant and in the letter itself it is mentioned that D.K. Chadha was only representative along with Mr. Mahajan (property dealer). In the cross-examination, defendant has admitted that she wanted confirmation from the owners through Mr. Chadha and she received only one word confirmation from Mr. Chadha. It is true that the plaintiff has admitted that D.K. Chadha had the power of attorney for conducting a suit filed against the NCC for eviction from the suit premises. This would not mean that D.K. Chadha was having any power to let out the premises. Without verifying any power of attorney from D.K. Chadha, if the defendant had given any advance rent to Mr. Chadha, it would not bind the plaintiffs. Learned counsel Mr. Dave, however, submitted that as the plaintiff has not produced the copy of the power of attorney executed by them in favour of D.K. Chadha for conducting the suit filed against NCC, adverse inference should be drawn against the plaintiff and it should be held that D.K. Chadha had the power to let out the premises. For this purpose, he submitted that Division Bench of the High Court rightly arrived at the conclusion that since the execution of power of attorney concerning the property in dispute in favour of D.K. Chadha is admitted by PW1, it was for the plaintiff to show that it did not include the power to let out the suit premises. In our view, the aforesaid inference drawn by the Division Bench is illegal and erroneous firstly on the ground that plaintiffs PW1 and PW3 have specifically stated D.K. Chadha was employed by them and was not having any power of attorney to let out the premises. At the risk of repetition, we would state that if D.K. Chadha was having

any power of attorney for letting out the premises, there was no necessity of writing letter dated 28.10.1977 to the plaintiff for having confirmation of letting out the premises at the monthly rent of Rs.3000/-. Further, it was open to the defendant to get certified copy of the power of attorney, which was executed by the plaintiff in favour of D.K. Chadha for conducting the suit filed against the NCC, from that suit proceedings. If really such power of attorney was there with the plaintiff, defendant could have followed the procedure prescribed under Order 11 Rule 12 C.P.C. by filing an application for discovery and inspection of document and its production, which admittedly is not followed in the present case. Learned counsel Mr. Dave, however, referred to the provisions of Section 114 of the Evidence Act and illustration (g) which provides that court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. In our view, in the present case, there is no question of presuming that the plaintiffs were in possession of the power of attorney executed in favour of D.K. Chadha. From the facts of the present case, it is difficult to draw an adverse inference that she was withholding the power of attorney which was in her possession. In evidence, plaintiff has specifically denied that she has executed any such power of attorney in favour of Mr. Chadha. Further, plaintiff was not asked to produce the copy of the power of attorney executed in favour of D.K. Chadha for conducting the eviction proceedings against NCC and plaintiff has produced on record the other power of attorney executed in favour of D.K. Chadha for conducting the business of the partnership firm. Not only this, other vital aspect which was not considered in appeal is that defendant had nowhere stated that before paying Rs.3000/- to Mr. Chadha she had seen or verified power of attorney executed in his favour by the plaintiff. Not only this, in the cross-examination, defendant had admitted that she had presumed that D.K. Chadha was attorney of the plaintiffs because the receipt Ex.P3 contained hand-written names of Darshan Singh and Mohinder Kaur on the top of the letter-head. From this type of evidence neither presumption nor any inference can be drawn in favour of so-called tenant. If such presumption is drawn, result would be immovable property of number of persons would be unsafe.

In the result, considering the evidence on record it is difficult to arrive at the conclusion that plaintiff had let out the suit premises to the defendant in December 1977 for running the school or that D.K. Chadha was having any power of attorney to let out the said premises. In this view of the matter, the appeal is allowed, the impugned judgment and decree passed in RFA (OS) No.45 of 1997 is quashed and set aside. The judgment and decree passed by the learned Single Judge is restored with costs. Defendant- respondent is directed to hand over physical possession of the suit premises to the plaintiff-appellant on or before May 1, 2000.