

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

+ **RSA No.364/2014**

Decided on : 20th January, 2015

RAM HIT @ RAM CHANDER Appellant

Through: Mr.Akhilesh Singh, Adv.

versus

RAM HANS & ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM No. 442/2015

1. Allowed subject to deficiency being rectified.
2. The application stands disposed of.

CM No. 441/2015

1. This is an application for restoration of the appeal which was dismissed in default on 3rd December, 2014.
2. Appeal is restored to its original number as sufficient cause is shown by learned counsel for the appellant for his non-appearance on 3rd December, 2014.

RSA No.364/2015

1. This is a regular second appeal filed against the order dated 22.10.2011 passed by the trial court.

2. I have heard the learned counsel for the appellant. The learned counsel for the appellant has not been able to formulate any substantial question of law arising from the appeal which may warrant issuance of notice to the respondent and accordingly appeal is dismissed, however, before dealing with the appeal it is pertinent here to mention brief facts.

3. The appellant herein had filed a suit for possession against the respondents alleging himself to be the tenant in respect of one shop bearing Property No. 6656, Nehru Gali, Gandhi Nagar, Delhi-31. It was the case of the appellant that he was inducted as a tenant on a monthly rent of Rs.210/- including electricity and water charges under one Sh. Babu Ram, the deceased father of the respondent No.2. It is his case that he was running a shop, however, he was dispossessed by the respondents on 31st March, 1993. Accordingly he filed the present suit. It was the appellant who had stated that the cause of action accrued to him for the first time on 31st March, 1993.

4. The respondents filed their written statement. So far as respondent No.1 is concerned, he contested the fact of the present appellant was the tenant in respect of the shop in question. It was his case that the appellant was a tenant in respect of one other shop in property bearing No. 6656/3, Nehru Gali, Gandhi Nagar, Delhi on a monthly rent of Rs. 400/- per month, however, it was denied that he was dispossessed from the shop in question. The respondent No.2 admitted in his written statement that his father had inducted the present appellant as a tenant but denied the dispossession. The learned trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for a decree for possession as claimed in the prayer clause (a) of the plaint? OPP

2. Whether the suit is under valued for the purpose of court fees and jurisdiction? OPD

3. Whether the suit is maintainable as present? OPD”.

And after examination of the witnesses of the parties the Court held that the appellant was not the owner of the suit property and it was not entitled to decree of possession.

5. Even with regard to proof of dispossession also the trial court held that no proof of tenancy as proof was produced.

6. The aforesaid dismissal of the suit filed by the appellant was upheld by the First Appellate Court vide order dated 22nd October, 2011.

7. The appellant by virtue of the Regular Second Appeal is raising a question with regard to maintainability of the suit as well as the factum that he was the tenant in respect of a suit premises and he was not dispossessed. The question is as to whether the appellant was a tenant or not is a question of fact which has been adjudicated upon by the courts below and cannot go into by his Court at the stage of second appeal. Even otherwise I find that the suit of the appellant as pleaded is barred by limitation. This is on account of the fact that the appellant is claiming himself to be the owner of the suit property. His suit for possession was premised on the ground that he was a tenant in respect of the shop in question he was dispossessed on 31st March, 1993 while admittedly the suit has been filed in 2004.

8. If a suit for possession is filed which is not based on ownership and simply on peaceful possession then suit has to be filed within a period of six months from the date of dispossession in terms of Section 6 of Specific Relief Act. While as admittedly in the instant

case, the suit has been filed on the basis of alleged dispossession and that too after more than a period of six months. The explanation which is sought to be given by the appellant for a belated filing is that he was before the court for mandatory injunction which suit was permitted to be withdrawn and with liberty to file a fresh suit and accordingly the present suit was filed.

9. Even if assuming the stand of the present appellant to be correct even then the suit of the appellant could not have been entertained as it was not his case that he was prosecuting the wrong remedy or a correct remedy in a wrong forum in other words it was never his case that he was bonafidely prosecuting the case in a forum which could not have given him the benefit and thus benefit under Section 14 of the Limitation Act. This being state of affairs I feel the suit itself was not entertainable and in any case the present appeal does not raise any substantial question of law and accordingly the appeal is dismissed.

JANUARY 20, 2015/nk

V.K. SHALI, J