

IN THE HIGH COURT OF DELHI

CM(M) No.645/2007

Mrs. Geeta Bhargava Petitioner
! through: Mr. R.S.Endlaw, Advocate
Mr. A.S.Mathur, Advocate

VERSUS

\$ M/s Pur Polyurethane
Products Pvt. Ltd. Respondents
^ through: Mr. Sunil Gupta, Sr. Advocate
with Mr. Thomas Joseph, Advocate

RESERVED ON: 25.07.2007

% DATE OF DECISION: 30.07.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y
: **PRADEEP NANDRAJOG, J.**

1. Vide impugned order dated 5.3.2007 an application filed by the defendant under Order 1 Rule 10 of the Code of Civil Procedure seeking impleadment of Delhi State Industrial Development Corporation (hereinafter

referred to as DSIDC) has been allowed.

2. Plaintiff is aggrieved by the said order. Hence, the instant petition invoking remedy under Article 227 of the Constitution of India.

3. Shorn of unnecessary details, relevant for the purposes of adjudication of the matter in issue within the confines of Order 1 Rule 10 CPC, relevant facts are that the plaintiff filed a suit for ejectment, mesne profits/damages alleging that she had inducted the defendant as a licensee to use a portion of Shed No. 22, DSIDC Complex, Okhla Phase II, Scheme II, New Delhi. That the license was for a period of 3 years effective from 1.9.1990. That the license fee was Rs.19,000/- per month. That terms of license were to be found in a written deed dated 27.8.1990. That contrary to the terms of license, the defendant has trespassed into unlicensed areas within the shed.

4. In the written statement filed, the license agreement has not been denied. It is stated that the plaintiff was an allottee under DSIDC's hire purchase scheme. That the plaintiff had violated the terms of allotment and DSIDC had initiated action for eviction of not only the plaintiff but

even the current occupant i.e. the defendant. That DSIDC floated a scheme to regularize the possession of unauthorized occupants. That under the said scheme, defendant had accepted offer of DSIDC to have the allotment regularized in its favour.

5. Various issues were framed on the pleadings of the parties. Needless to state, an issue was framed whether the plaintiff is entitled to recover possession of the suit property from the defendant.

6. The issues were framed on 19.9.2002. Parties proceeded to lead their evidence. Evidence was recorded. On 19.1.2006 case was notified for final arguments to be heard on 28.1.2006. Parties were directed to file their written submissions. On 28.1.2006, plaintiff filed the written submissions. Matter was renotified for the defendant to submit its written statement. On 3.2.2007 the application under Order 1 Rule 10 CPC was filed by the defendant stating that in view of the defence taken in the written statement, namely, that DSIDC which had allotted the shed to the plaintiff under a hire purchase scheme had floated a scheme to regularize allotment in favour of the person who

was occupying the premises, presence of DSIDC was necessary for a final and a proper adjudication of the suit. Learned Trial Judge has allowed the said application.

7. To be fair to the parties, I may note that various events have transpired after DSIDC allotted, under its hire purchase scheme, the shed to the plaintiff and thus learned counsel made extensive reference to the said facts. But in my opinion, an extensive narration of the said facts would result in penning down facts which ultimately have no bearing upon the issue, for the reason said facts relate to the passing of an order of eviction under the Public Premises (eviction of unauthorized occupation) Act 1971 by the Estate Officer, DDA. Challenge thereto by way of an appeal and a further challenge by way of a writ petition.

8. Suffice would it be to note that the respondent has filed a writ petition in this Court registered as W.P.(C) No.12589/2006 praying that DSIDC should be directed to formalize allotment of the shed in the name of the respondent and execute a lease deed in its favour.

9. During pendency of the said writ petition, DSIDC has executed a conveyance deed on 13.11.2006 in favour of

the plaintiff. With the result, W.P.(C) No.12589/2006 was dismissed. The respondent has filed another writ petition, registered as W.P.(C) No.2589/07 challenging the conveyance deed executed by DSIDC in favour of the petitioner.

10. The principle of law that a tenant or a licensee cannot question the title of the lessor or the licensor as the case may be is subject to an exception, namely, it does not apply where the plea taken is that after grant of the license or the lease, the licensor or the lessor as the case may be has lost the title. If after so pleading, the licensee or the lessee pleads a direct attornment under a third party, presence of the said third party would be necessary in a suit for possession. The estoppel contemplated by Section 116 of the Indian Evidence Act is restricted to the denial of title at the commencement of the tenancy and does not extend to a plea of title being lost after the tenancy was created. [See AIR 1987 SC 1656 Mangat Ram Vs. Sardar Meharban Singh; Halsbury's Laws Of England, IVth Edition, Para 238 AIR 1987 SC 2192 D.Satyanarayana Vs. P.Jagadish and (2002) 3 SCC 1998 J.J.Lal Pvt. Ltd. Vs. M.R.Murali].

11. Pertaining to a litigation where the subject matter thereof would result in a declaration as regards status or a legal character, summarizing Order 1 Rule 10 of the Code of Civil Procedure, in the report published as AIR 1958 SC 886 Raziya Begum Vs. Sahebzadi Anwar Begum, in para 13, Supreme Court observed as under:-

“(13) As a result of these considerations, we have arrived at the following conclusions :

(1) That the question of addition of parties under R.10 of O.1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradiction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;

(3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy;

(4) The cases contemplated in the last

proposition, have to be determined in accordance with the statutory provisions of Ss. 42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6) The result of a declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present interest', as evolved by case law relating to disputes about property does not apply with full force; and

(7) the rule laid down in S. 43 of the Specific Relief Act, is not exactly a rule of res judicata. It is narrower in one sense and wider in another."

12. Thus, at first blush, considering the nature of the defence raised by the respondent in the written statement, impugned order appears to be in harmony with the various decisions noted in paras 10 and 11 above, but the impugned order has to be set aside for the simple reason, the controversy pertaining to formalization of possession of the respondent directly under DSIDC has taken a different legal shape with DSIDC executing a conveyance deed in favour of the plaintiff, which conveyance deed has been challenged by

the respondent by and under WP(C) No.2589/07 in this court.

13. Thus, as of today, admitted facts between the parties are that DSIDC recognizes the petitioner as the allottee under DSIDC. A conveyance deed has been executed. The legality of the action of DSIDC is being adjudicated under a writ petition filed by the respondent.

14. If DSIDC would be permitted to be impleaded as a co-defendant in the suit filed by the petitioner, the respondent would have to then amend the written statement and lay a challenge to the action of DSIDC in executing a conveyance deed in favour of the plaintiff. This would change the very nature of the suit. It would no longer be a case of a tenant or a licensee protecting possession on the plea that the licensor or lessor has lost title after the grant and that some third party has acquired title to the property and that the defendant has attorned to said third party.

15. Needless to state, respondent has invoked an independent remedy to question the conveyance deed executed by DSIDC in favour of the plaintiff.

16. The petition succeeds. Impugned order dated 5.3.2007 is quashed. Respondent's application under Order

1 Rule 10 CPC is dismissed.

17. However, since it cannot be said that the respondent's application was wholly frivolous and since issue debated was an issue which merited consideration, I refrain from imposing any cost.

July 30, 2007
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PRADEEP NANDRAJOG
(JUDGE)