

Nihal Chand Vs. Shiv NaraIn and ors.

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Court : Punjab and Haryana

Decided On : Jan-07-1958

Reported in : AIR1958P& H263

Judge : Mehar Singh, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 105 and 111; Delhi and Ajmer-Merwara Rent Control Act, 1947 - Sections 2, 8 and 9

Appeal No. : Second Appeal No. 39-D of 1953

Appellant : Nihal Chand

Respondent : Shiv NaraIn and ors.

Advocate for Def. : C.B. Aggarwal and; Daya Kishen, Advs.

Advocate for Pet/Ap. : Gurbachan Singh and; Jaishi Ram Goel, Advs.

Disposition : Appeal dismissed

Judgement :

Meher Singh, J.

1. This is a second appeal by Nihal Chand plaintiff from the judgment and decree, dated 30-4-1953 of the First Additional District Judge of Delhi varying, in certain respect only, the decree, dated 26-11-1951, of the First Class Subordinate Judge of Delhi, whereby the suit of the plaintiff against Shiv Narain, Rama Nand and Sadda Ram, defendants, sons of Giani Ram, Giano, defendant, widow of Giani Ram, and one Phool Wati, was dismissed in so far as the plaintiff claimed a decree for eviction of the defendants from the premises in suit, but was decreed for an amount of Rs. 197/1/- as rent due.

Special costs in the amount of Rs. 80/- were awarded against Shiv Narain, Ram Nand and Giano defendants. In appeal, the first appellate Court only varied the decree of the trial Court in the matter of costs, leaving the parties to their own costs before it as also in the trial court.

2. The premises were taken on lease by Giani Ram deceased from the plaintiff on 16-3-1941, at a rental of Rs. 5/- per mensem. It appears that the premises were under construction and on completion of the same on 25-7-1941, Giani Ram deceased went in possession of the same. Soon after there was litigation between them on the question of the rent of the premises, which was ultimately fixed by decree of the Court at Rs. 5/- per mensem. Between 1941 and 1946 there were six suits brought by the plaintiff against Giani Ram deceased either claiming increase of rent or eviction or both on one or more grounds such as are to be found in the Rent Acts that were in force at the time of the institution of the suits.

It appears that in all the suits the plaintiff failed. These facts are taken from para No. 13 of the written

statement of defendants Shiv Narain, Ram Nand, Satta Ram and Giano respectively Nos. 1 to 3 and 5, and the same are not controverted. At the same time the pleadings in these suits and the judgments and decrees in these suits have not been produced by either party and are not available on the record. Giani Ram deceased died on 10-8-1949. His three sons, defendants Nos. 1 to 3, and his widow, defendant No. 5 remained in possession of the premises.

3. On 16-2-1951 the plaintiff brought the suit, giving rise to this second appeal, claiming (a) arrears of rent in the amount of Rs. 200/- and (b) eviction of the defendants from the premises on the ground (i) of non-payment of rent (ii) of damaging the premises, and (iii) of having no right to remain in possession of the premises, because, according to the plaintiff, the tenancy came to end upon the death of Giani Ram deceased, leaving no rights that could devolve upon the sons and the widow of that deceased. In defence the contesting defendants, Nos. 1 to 3 and 5 took the pleas that there was no case of non-payment of rent or damaging the premises and that the tenancy in favour of Giani Ram devolved upon his sons, defendants Nos. 1 to 3 who are in occupation of the premises as tenants.

4. The learned trial Judge found that the plaintiff has not made out a case for eviction on the grounds of non-payment of rent and of damaging the premises or of the termination of the tenancy upon the death of Giani Ram deceased. He was of the opinion that the tenancy continued in favour of the heirs of Giani Ram deceased, who are his sons defendants Nos. 1 to 3 but he found that those defendants and defendant No. 5 were in arrears of rent to the amount stated above. He, therefore, partially decreed the claim of the plaintiff for rent but dismissed the suit for eviction. As stated, in appeal the decree of the trial Court to this extent was maintained by the first appellate Court, but it only interfered with that decree on the question of costs.

5. Only one question has been argued in this appeal at the hearing and that is whether or not, on the death of the previous tenant Giani Ram on 10-8-1949, the tenancy terminated and his sons defendants Nos. 1 to 3 have no rights in the premises? The answer to the question depends upon the nature of the tenancy, whether it is a contractual tenancy or what if for convenience and facility described as a statutory tenancy.

If a contractual tenancy determines for any cause, and the tenant or the previous tenant under the contractual tenancy remains in possession of the property not under the terms of the contract but pursuant to the provisions of statute like the Rent Act, his possession from the date of the determination of the contractual tenancy, when he starts maintaining the same under the provisions of a statute, is termed a statutory tenancy. This term is not used in the statute itself, but, as stated, it is a convenient term to express the capacity of a person continuing in possession of property, after the determination of contractual tenancy under the provisions of a particular statute.

A contractual tenancy is determined in one of the three ways and that is by flux of time or forfeiture or on a notice to quit. Such a tenancy, apart from a tenancy-at will is a right in property, and as such subject to devolution on succession and also subject to assignment. A statutory tenancy under a Rent Act, and the Act relevant for the present case is the Delhi and Ajmer-Merwara Rent Control Act 1947 (Act No. XIX of 1947), which will hereinafter be referred to as 'the Act' is a personal right to remain in possession of the property, and no more, of which the legal consequence is that the right comes to an end upon the death of the person in whom it resides.

This is because such a tenant cannot dispose of this type of tenancy by assignment, subletting or otherwise parting with possession of the premises. In the present case if upon his death Giani Ram deceased was in possession of the premises under a contractual tenancy, there can be no two opinions that the tenancy devolved upon his heirs according to the law of succession on the other hand, if he was a statutory tenant of the premises, upon his death his right came to end, and nothing passed on to his heirs by devolution.

It is common ground between the parties that the premises were let out on monthly rent and the tenancy was a tenancy from month to month. It was obviously not a tenancy-at-will.

So if Giani Ram deceased was holding the premises under a contractual tenancy, the same devolved upon his heirs upon his death otherwise not.

6. There is no denying the fact that initially the tenancy of the premises in favour of Giani Ram deceased was a contractual tenancy. It is nobody's case that it determined according to ordinary law during the life time of Giani Ram deceased. There is no allegation that a notice to quit according to law was given by the plaintiff to the deceased. The contractual tenancy, therefore, continued from the beginning right upto the death of Giani Ram deceased. No legal incidents under the ordinary law of tenancy, happened, which determined the contractual tenancy in favour of Giani Ram deceased before his death.

7. A consideration then arises whether there is any other factor, which if taken with the provisions of the Act, would lead to the conclusion that some time before the death of Giani Ram deceased the contractual tenancy in his favour determined and from the date of such determination Giani Ram deceased began to hold the premises as a statutory tenant? The learned counsel for the plaintiff relies upon two such factors and they are (a) that in at least five suits, during the life time of Giani Ram deceased, the plaintiff sought either to recover rent from or to evict, or sought both reliefs against the deceased under the provisions of the Rent Act applicable and the deceased defended himself under the provisions of such an Act, (b) that, a fact admitted by both the parties, the initial rent being Rs. 5/- per mensem, an increase of 25 per cent was accepted by Giani Ram from February 25, 1948, and according to the defendants the arrears with the increased rate were deposited in Court.

The learned counsel for the plaintiff urges that all this was in pursuance to the particular Rent Act applicable to the case at the particular time and as both the parties were pursuing their rights, not under the contract, but under the particular Rent Act, the contractual tenancy had come to determine in the life time of Giani Ram deceased, who had continued in possession of the premises as a statutory tenant only. In so far as the first ground is concerned, in my view no act of a plaintiff in instituting suits of the type as was done by the plaintiff in this case, can convert what is a contractual tenancy into a statutory tenancy.

This is apart from the fact that in each and every suit the plaintiff was unsuccessful. The written statements by Giani Ram deceased have not been brought on the record nor the judgments of the Courts passing decrees in the previous suits. It is therefore not possible to conclude as a matter of fact exactly what position the parties took in those suits. But the mere filing of a suit under a particular Rent Act by a landlord cannot possibly convert what is a contractual tenancy into a statutory tenancy. If that was so, the tenant would be at the mercy of the landlord to alter the nature of the tenancy to the disadvantage of the tenant at his sweet will.

The institution of such a suit cannot be taken as a notice to quit either. The second ground is pressed rather more strenuously. It is said that soon after the beginning of the contractual tenancy the relations between the parties became strained, followed by litigation in Court. Giani Ram deceased could not therefore, have agreed to 25 per cent statutory increase in the rent voluntarily in the year 1948 and particularly he would not have deposited the rent, with the increase in court if the increase had been voluntarily agreed to.

It is contended that the increase of the rent was according to the provisions of the Act applicable at the time and as it was not voluntary, the inference is that from the date of the statutory increase in rent the contractual tenancy came to an end and was replaced by a statutory tenancy. The various Rent Acts, including the Act, provide certain additional protections to tenants and also for a statutory manner of increase of rent in favour of a landlord. Such provisions operate to modify the contract of tenancy between the parties. If in pursuance of a statutory provision a party accepts increase of rent, it does not thereby determine or put an end to the contractual tenancy.

The contract remains between the parties until it comes to an end according to ordinary law between landlord and tenant. The rights of the parties under it undergo a change as provided in the particular Rent Act applicable, but otherwise the contractual tenancy continues to subsist. It is not the case of any party that a notice of increase of rent under Section 8 of the Act, or a similar provision applicable under the relevant Act at

the time of the statutory increase of rent in this case was given by the plaintiff to the tenant, Giani Ram deceased.

Without such a notice, even if, in the circumstances of the case and having regard to the statutory provisions and the relations of the parties, the tenant, Giani Ram deceased, submitted to increase of rent, it cannot be said that acceptance of such statutory increase of rent can be deemed to be equivalent to a notice to quit, thus determining the contractual tenancy. In Section 8 of the Act it is not provided that notice of increase of rent shall be deemed to have effect as it were a notice equivalent to terminate the existing tenancy, as has been provided in Section 1, Sub-section (1) of the English Rent Restrictions Notices to Increase) Act, 1923, see *Aston v. Smith* (1924) 2 KB 143 (A), and so, even if notice under Section 8 of the Act, or the like provision applicable at the time when the statutory increase of the rent was accepted by Giani Ram deceased, had been given, it could not have been urged that the notice should be deemed to be a notice to quit.

Thus merely because Giani Ram deceased paid the statutory percentage of increase of rent to the plaintiff, that does not mean that the contract of tenancy between him and the plaintiff determined because of that and thereafter he held the premises as a statutory tenant under the Act only.

8. There is another consideration which has some bearing upon this case and that is that there is a conflict of opinion whether under a provision for eviction as in Section 9 of the Act, in the case of a contractual tenancy, a landlord can obtain eviction under Act, when he is not entitled to obtain eviction under the contractual tenancy? In this Court the view is that he can and this view was taken in *Hem Chand v. Sham Devi*, 57 Pun LR 441 (B) but, while in the Madras High Court the view has not been consistent, see *Parthasarathy v. Krishnamoorthy* AIR 1949 Mad 387 (C), *Krishnamurthy v. Parthasarathy*, AIR 1949 Mad 780 (D) and *D. P. Merchant v. Bank of Mysore, Ltd*; AIR, 1939 Mad 784 (E), the Calcutta High Court in *Firm Gurupada Haldar Jiban Krishna Das, v. Arjoondas Goenka*, AIR 1949 Cal 61 (F) has taken the contrary view.

I am bound by the decision of the Division Bench of this Court in the case cited above and will proceed upon this that the landlord under the Act can claim eviction even before a cause has arisen for him to claim eviction under the contractual tenancy between the parties. It may well be contended that, if ignoring the contractual tenancy, the landlord can obtain eviction under the provisions of the Act and takes step in that direction, the tenancy thence onwards ceases to be a contractual tenancy and becomes a statutory tenancy.

But it has already been pointed out that the provisions of the Act, during the continuance of a contractual tenancy, super add conditions to the contract between the parties, and if in pursuance to such statutory conditions eviction can be claimed by a landlord, it is not clear how it can be contended that that puts an end to the contractual tenancy between the parties. It may then be said that for all practical purposes the existence of contractual tenancy is about quite the meaningless thing in such circumstances. That may or may not be so where questions merely of arrears of rent or eviction of a tenant are concerned. None of those however is the question that settles the dispute in this case.

9. The Act deals with certain aspects of relations between landlord and tenant, but it has no concern with the devolution of a tenancy, where the nature of a tenancy permits devolution. Thus a case can be envisaged when during the continuance of a contractual tenancy, the parties to the contract are also taking advantage of the provisions of the Act, which however will not put an end to the contractual tenancy.

The importance of the contractual tenancy still remains in at least matters of devolution upon succession and when a question of this type arises on the facts of a particular case the Court must proceed to a decision whether the contractual tenancy has determined and has been followed by a statutory tenancy. It is only in the case of the latter that no question of devolution arises but in the case of former, except as regards tenancy-at-will, the devolution is according to the law of succession.

10. In the present case it has not been shown that the contractual tenancy between the plaintiff and Giani Ram deceased determined at any time before the death of the latter. Upon his death the tenancy rights

devolved upon the heirs of Giani Ram deceased, but obviously continued under the same contractual tenancy between the parties. At no time has the tenancy become a purely statutory tenancy.

11. There remains only one other contention on behalf of the plaintiff for consideration and that is with reference to the definition of the term 'tenant' as given in Section 2(d) of the Act It says:

' 'tenant' means a person who takes on rent any premises for his own occupation or for the occupation of any person dependent on him but does not include a collector of rents or any middleman who takes or has taken any premises on lease with a view to sub-letting them to another person.'

It is contended that the contesting defendants are not tenants within this definition. It appears to me that this is misconceived, for if it was a statutory tenancy, they are in possession of the premises without any right and no question of their being tenants under the definition arises. On the contrary, if, as it has been found, they are in possession of the premises under the contractual tenancy, which has devolved upon them upon the death of the last tenant then they are persons who stand in the position of one 'who takes on rent any premises for his own occupation' and so they are tenants within the scope of that definition.

12. In consequence, the appeal fails and is dismissed, but there is no order as to costs in this appeal.

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