

Rama Saroop Vs. Daljit Singh

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Court : Delhi

Decided On : Feb-01-1995

Reported in : AIR1995Delhi351; 58(1995)DLT783; 1995RLR152

Judge : Arun Kumar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 144 and 151; [Delhi Rent Control Act, 1958](#) - Sections 14

Appeal No. : C.M. (M) 248 of 1991

Appellant : Rama Saroop

Respondent : Daljit Singh

Advocate for Def. : Mr. Sandeep Sethi, Adv.

Advocate for Pet/Ap. : Mr. Mukul Rohtagi, Sr. Adv.,; Mr. Rahul Gupta and; Mr. Nava

Judgement :

1. The facts giving rise to the present appeal are that an eviction petition was filed by Daljit Singh, respondent herein against the present petitioner under Section 14(1)(d) seeking his eviction from premises No. 5-A, Sujjan Singh Park, New Delhi. This petition was filed on 11th August, 1986. According to the tenant (petitioner herein), he was in detention since October, 1985. The notice of the eviction

petition was served through publication in newspaper on 12th November, 1986. The tenant was thereafter proceeded ex parte and an eviction order was passed on 18th February, 1987. In execution of the said eviction order, Daijit Singh obtained possession of the tenancy premises on Sth May, 1987. The tenant was released from jail on 9th May, 1987 but was placed under house arrest. On 25th May, 1987, the tenant moved application under Order 9, Rule 13, C.P.C. for setting aside the ex parteeviction order. On the same date, the Additional Rent Controller passed an interim order in favor of the applicant/tenant restraining the landlord from creating any fresh tenancy qua the premises in suit. The application under Order 9, Rule 13, C.P.C. was allowed by the Additional Rent Controller on 13th March, 1989. The interim stay order naturally continued to be in operation all along. The appeal filed by the landlord against the order of the Additional Rent Controller allowing the application of the tenant under Order 9, Rule 13, C.P.C. was dismissed by the Rent Control Tribunal on 25th September, 1989. Thereafter, the tenant moved an application under Section 144, Civil Procedure Code on 25th October, 1989 for restoration of possession of the tenanted premises. It was in response to this application that the landlord for the first time disclosed that he had let out the premises to M/s. K. C. Vanaspati on 9th May, 1987. The application for restoration was allowed by the learned Additional Rent Controller on 9th January, 1991 directing Daljit Singh to restore possession of the tenanted premises to petitioner herein. The landlord filed an appeal against the said order which was disposed of by the Rent Control Tribunal on 12th April, 1991 remanding the matter back to the Additional Rent Controller and directing him to dispose of the application of the tenant under Section 144, C.P.C. after allowing the parties adequate opportunity to lead evidence in proof of their respective versions. The Tribunal felt that the question regarding letting out the premises in the meanwhile to M/s. K. C. Vanaspati as a tenant required to be decided on evidence and, therefore, the case was remanded to the trial Court. The present petition is directed against the said order of the Rent Control Tribunal.

2. The learned counsel for the appellant has contended before me that the alleged tenancy in favor of M/s. K. C. Vanaspati was totally bogus and sham. Even otherwise the alleged new tenant had no right to the premise under the law. therefore, no evidence was required to be led. In support of this submission, it

was submitted that M/s. K. C. Vanaspati never came forward to agitate its right as a lawful tenant in the premises. On the other hand, it was pointed out that on the date of the order of the Rent' Control Tribunal even M/s. K. C. Vanaspati was not in the premises as per facts which came to light subsequently. One Nand Kishore claims to have been inducted in the premises as a tenant w.e.f. 1st February, 1988 in place of M/s. K. C. Vanaspati. These facts came to light in view of a suit filed by Nand Kishore in the trial Court claiming himself to be a lawful tenant in the premises. In the said suit, Daljit Singh is respondent No. 1 while the present petitioner has been impleaded as respondent No. 2. That is how the present petitioner claims to have got knowledge of these facts. The stand of Daljit Singh in this connection is M/s. K. C. Vanaspati had subletting rights and Nand Kishore was inducted in the premises at the instance of M/s. K. C. Vanaspati. In any case, Nand Kishore claims to have become a lawful tenant in the premises since 1st February, 1988. It is interesting to note that the lease deed in favor of Nand Kishore is alleged to have been executed by none other than Daljit Singh, the landlord. A copy of the lease deed has been placed on record of this petition by the petitioner in which Daljit Singh is a signatory as the landlord. Apart from the lease deed stated to have been executed by Daljit Singh in favor of Nand Kishore, other documents have been placed on record by the petitioner which show that Daljit Singh has been recognised by Nand Kishore as a tenant in the premises in suit. One of these documents is a letter dated 1st June, 1988 written by Daljit Singh to General Manager, Mahanagar Telephone Nigam Limited giving his no objection for sanction of a new telephone connection in favor of Nand Kishore whom he calls as 'my lawful tenant of 5/A, Sujjan Singh Park, New Delhi from 1-2-88'. These documents have been placed on record of this case by the petitioner along with an application supported by an affidavit. Reply to the application has been filed on behalf of Daljit Singh, respondent. In the reply, the veracity of the documents is not disputed. The only stand is that these documents are not relevant and, therefore, they should not be permitted to be filed. Further, in para 2 in the reply on merits, it has been stated 'the tenant of Respondent M/s. K. C. Vanaspati had the right to sublet the premises in terms of the Agreement entered into with them. On January 31, 1988, the said M/s. K. C. Vanaspati addressed a letter to the Respondent stating, inter alia, that they were putting Mr. Nand Kishore

of 120, Sunder Nagar as a tenant in respect of the subject flat in their place. As the said M/s. K. C. Vanaspati had the powers of sublet, he made it clear that the Respondent had no option but to accept the said Mr. Nand Kishore as tenant, failing which he shall sublet the premises to the said Mr. Nand Kishore. A copy of the said letter dated January 31, 1988, is annexed hereto and marked as Annexure 'A'. It was in these circumstances that the petitioner had to accept the said Sh. Nand Kishore as tenant.'

3. Thus, induction of Nand Kishore as a tenant has been admitted by Daljit Singh. The date of induction of Nand Kishore as tenant is 1st February, 1988. The application for restoration of possession under Section 144, C.P.C. was filed by the tenant, i.e., petitioner herein on 25th October, 1989 which was allowed on 9th January, 1991. The appeal against the said order was disposed of on 12th April, 1991. thereforee, during this entire period, according to the admissions of Daljit Singh himself, Nand Kishore was the tenant in the premises. However, in reply to the restoration application under Section 144. C.P.C., the stand of Daljit Singh was that M/s. K. C. Vanaspati was the tenant in the premises and this stand was maintained all throughout even till the disposal of the appeal before the Tribunal. This leaves no manner of doubt in my mind that Daljit Singh has been all along taking a false stand about having lei out the premises after obtaining possession in execution of the decree against the present petitioner. Interestingly, the date of letting out is being given as 9th May, 1987 which is just the next day to the day on which the possession of the premises was obtained by Daljit Singh an execution proceedings. When the party taking such a palpably false stand, there is no question of any evidence being recorded on such a stand.

4. Today, it is urged before me on behalf of Daljit Singh that Nand Kishore has filed a suit in the trial Court in which he has obtained an injunction against his dispossession and, thereforee, it is further urged that I should stay my hands off in this proceedings in view of the-subsisting injunction order. From the aforesaid facts, it is clear that Daljit Singh is playing all these tricks and is trying to overreach the Court by setting up such palpably false case of tenancy in order to retain posses* sion of the premises. Since the suit is said to be pending in a civil court, I do not want to say anything more in this connection. However, if in the present

proceedings, I am ordering restoration of possession, that is because I consider the same to be appropriate and in accordance with law in the facts of the case. So far as the suit filed by Nand Kishore is concerned, the law will take its own course.

5. Daljit Singh obviously did not disclose the alleged tenancy in favor of Nand Kishore in a bid to mislead the Court so that at least his stand regarding creation of tenancy in favor of M/s. K. C. Vanaspati is sustained. Disclosure of further tenancy in favor of Nand Kishore and through his own pen would have probably changed the entire complexion of the case and the approach of the Tribunal could have been different. Daljit Singh did not want to take so much of a risk. Conduct of Daljit Singh in this litigation right from the beginning appears to be totally deliberate, dishonest and mala fide.

6. Apart from the question of the alleged creation of fresh tenancy being bogus and sham, there is yet another aspect of the matter and it is this. Even if the tenancy created by the landlord was proper and not sham, the inductee or the new tenant would be liable to be dispossessed as per the law. The new tenant would be deriving his title to the premises only from the landlord and if the landlord's own title was defective or not legal, he could not bestow a better title on the alleged tenant. In this connection, the learned counsel for the petitioner has relied on *Gurjoginder Singh v. Smt. Jawant Kaur*, : [1994]1SCR794 . This was an appeal against the judgment of this Court in SAO 417 of 1978 decided on 25th January, 1980 reported as *Sham Lal Dhingra v. Jaswant Kaur*, : AIR1980 Delhi171 . A Division Bench of this Court had taken the view that a bona fide purchaser or transferee stands on a different footing. His right being an independent right cannot be disturbed in equity or in law and Section 144, C.P.C. was of no help in such a case. In this case also, the tenant had been evicted in execution of an ex parte decree. Another tenant who was unaware of the litigation was inducted in the premises. The earlier decree for eviction was subsequently reversed. The question was whether the evicted earlier tenant could be put back in possession by displacing the new tenant from the premises. It was held that the new tenant who took the premises on rent bona fide and without knowledge of litigation would be entitled to protection of Section 14 of the Delhi Rent Control Act and Section 144, C.P.C. was not applicable. Reversing this view of this Court, the Supreme Court

held that the status of a bona fide purchaser in an auction sale in execution of a decree to which he was not a party stands on a distinct and different footing from that of a person who is inducted as a tenant by a decree holder-landlord. A stranger auction purchaser does not derive this title from either the decree holder or the judgment debtor and, therefore, restitution may not be granted against him but a tenant who obtains possession from the decree holder-landlord cannot avail all the same right as his possession as a tenant is derived from the landlord. When the decree had been set aside, he was bound to restore to the judgment-debtor what he gained under the decree. What follows from this is that even if a fresh tenancy was created by Daljit Singh in favor of a third party who had no knowledge of litigation between Daljit Singh and the present petitioner-tenant, on the ex parte eviction decree in favor of Daljit Singh being set aside, Daljit Singh was bound to restore possession of the premises to the tenant judgment-debtor. Thus, the view taken by the Rent Control Tribunal in any case was contrary to law. If the new tenant allegedly inducted in the premises had no right to remain in possession under law, no evidence whether about the new tenancy being bona fide or not was relevant or material and there could be no occasion for remand of the case to the Additional Rent Controller.

7. The scope of the principle of restitution was further enlarged by the Supreme Court in *Kavita Trehan v. Balsara Hygiene Products Ltd.*, : AIR 1995 SC441 . It was held that Section 144, C.P.C. was not exhaustive enough for purposes of law of restitution and order of restitution could be passed by the Court in exercise of its inherent jurisdiction under Section 151, C.P.C. also.

8. It may be recalled that so far as question of setting aside the eviction decree is concerned, it had become final on the appeal against the order of the Additional Rent Controller having been dismissed by the Rent Control Tribunal on 28th September, 1989. On the eviction decree being set aside, the landlord became liable to restore possession of the premises to the tenant. The effect of setting aside the decree was that there was no eviction decree against the tenant and, therefore, the landlord could not claim or retain possession of the tenanted premises.

9. There is yet another aspect of the matter which goes against the respondent. The alleged tenancy in favor of Nand Kishore took effect from 1st February, 1988. On that date, there was already an injunction order passed by the Rent Controller which was in force restraining the landlord from creating any fresh tenancy regarding the premises in suit. The said order was passed on 25th May, 1987 and was in force at the relevant time. thereforee also, creation of any tenancy contrary to the injunction order of the Court restraining such an act will be clearly unauthorised and illegal.

10. For all these reasons, the petition succeeds. The impugned judgment of the Rent Control Tribunal dated 12th April, 1991 is set aside. The alleged tenancy in favor of M/s. K.C. Vanaspati was already held to be a sham transaction by the Additional Rent Controller in its judgment dated 9th January, 1991 and I am in agreement with the view of the Additional Rent Controller. The further alleged tenancy in favor of Nand Kishore is also a totally sham, bogus and otherwise illegal transaction. Be that as it may in view of the settled law, the respondent is directed to hand over the possession of the tenancy premises to the petitioner herein forthwith. For further proceedings on the eviction petition, in view of the ex parte decree having been set aside, the matter is sent back to the Additional Rent Controller.

11. Petition allowed.