

Chum Lal Vs. Sukh Devi Etc.

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Court : Delhi

Decided On : Mar-14-1977

Reported in : 1978RLR58

Judge : D.K. Kapur, J.

Acts : [Court Fees Act, 1870](#) - Sections 7

Appeal No. : Civil R. Appeal No. 398 of 1975

Appellant : Chum Lal

Respondent : Sukh Devi Etc.

Advocate for Pet/Ap. : Sultan Singh and; Y.K.Sabharwal, Advs

Judgement :

D.K. Kapur, J.

(1) The petitioner instituted a suit for possession of a shop 5039, Dina Nath Building, Pahargunj Delhi and for Rs. 2,410.20 on account of arrears of rent. The claim in the suit was that late Babu Ram was the tenant whose tenancy had been terminated during his life time. Now possession and arrears of rent and damages were claimed from the heirs and L.R's of said Babu Ram. Value for purposes of Court fee and jurisdiction was fixed at Rs 1000.00 for relief of possession.

(2) Defendants 3 and 4 claimed that the suit was not properly valued. This led to the framing of the issue 'whether the suit is properly valued for purposes of court fee and jurisdiction.

(3) The contention of the plaintiff was that the suit fell within S. 7(xi)(cc) of Court fees Act, but defendants urged that the suit had to be valued U/S 7(v) and thus court fee had to be paid on market value of the property. Trial court held that S. 7(xi) applied only in a suit between a landlord and tenant holding over and thus court fee was payable on the market value. Plaintiff then filed the revision.

(4) The question which has arisen before the Court is one which has very often been urged in the past and there are a large number of reported judgments concerning the question as to how court fee is to be paid. Relevant language of S. 7(xi)(cc) is 'for recovery of immovable property from a tenant including (a) tenant holding over after determination of tenancy...according to the amount of rent payable for the year next before the date of presenting the plaint.'

(5) Thus, if the suit falls under this provision, court fee payable, is to be paid on the annual rent of the property. On the other hand, if the case falls within Section 7(v) which are suits for possession of land, houses, etc., then the court fee has to be paid on the market value of the property. Obviously, in every case, the annual rent is a much smaller amount than the value of the property, and thus in a suit brought between a landlord and tenant, the court fee is much less and so is the jurisdictional value.

(6) The claim of the plaintiff in this respect is based on a tenancy which was created in favor of Shri Babu Ram, predecessor-in-interest of the defendants. The said tenancy was terminated but, Shri Babu Ram continued to remain in the premises as a statutory tenant under the protection of the Delhi Rent control Act. On his death, the statutory tenancy came to an end, such is the claim of the plaintiff. The claim of the plaintiff to recover possession from the heirs and legal representatives is not a claim against a tenant and thus the court has held that the court fee is payable on the market value. In as much as the court has rightly held that the defendants are not tenants at first sight it would seem that the decision is correct. However, this point has arisen very often and it has always been found

that suits falling under section 7(xi) are suit brought not against tenants, but against ex- tenants or their representatives. It is obvious that no landlord can eject a tenant during the continuance of the tenancy. Such a suit can only be brought against an ex-tenant. This point led to a great deal of confusion in the past, but it was finally settled by the decision of the Privy Council in *Karmani Industrial Bank Ltd., V. Satya Niranjan* 55, Ind. Case. 344A.I.R. 1928 P.C 227 The observations of the Court may be reproduced with advantage ;

'THEIR Lordships are of opinion that this adopts too narrow a construction of the words. In order to give any working effect to the Act it is necessary that the words 'Landlord and tenant' must include, as they often do in ordinary parlance, exlandlord & ex-tenant. An action against ex-tenant might ordinarily be described as an action of landlord against tenant.'

I think, that this is undoubtedly the true position in law, because no ejectment suit can be brought without first terminating the tenancy or, allowing the tenancy to terminate in one of the various ways allowed by law. The right to recover premises only arises to a landlord after a tenancy has come to an end. Thus, in every case brought by a landlord against a tenant, it will without exception be a case of an ex-landlord against an ex-tenant. The answer to the question of court fee cannot thus be found by determining whether the claim is brought against a tenant or not.

(8) The leading judgment on the question of court fees payable in a suit like the present is *Asutosh Pramanik v. Nibandhan Ganguly* (1934) 147 I.C 209 decided by a Division Bench of the Calcutta High Court. In that case, a suit had been brought to evict a defendant's heirs, and the question arose whether ad-valorem court-fees was payable or court-fees under Section 7(xi)(cc) of the Court Fees Act. This was answered in favor of the landlord and it was held that court-fees was payable only on the basis of the annual rent. The Court held :-

'IT is only necessary to mention in this connection that defendant No. 1 claiming to be on the land on payment of rent after the demise of his father who was before his death holding over, for a number of years, after the expiration of the terms of his lease, could not be held to be in the position of a trespasser on the land, against whom the plaintiff had to proceed by way of getting his title established in

a properly constituted suit.'

Thus, the question was decided on the basis that the defendant was in occupation as a result of the tenancy in favor of his father and not as a trespasser. The same is the position in the present case. The defendants are being sued as legal representatives of the late Shri Babu Ram and are not in possession as trespassers.

(10) There are a number of other judgments wherein it has been held that Section 7(xi)(cc) is to apply when a suit for ejectment is brought against a tenant after the tenancy has terminated. Examples of such cases are- Govinda Kumar V. Mohini Mohan : AIR1930 Cal42 Chhabba Ram V. Nathu Ram A.I.R. 1941 Lah 39 Ishar Dass V. Qazi Mohd. A.I.R. (32) 1945 Peshawar 16, Ram Lal V. Mt. Bibi A.I.R. 1935 pat 90 and other similar reported cases.

ITIn fact, the question would not give rise to any discussion in my view, except that there is one judgment of the Punjab and Haryana High Court, taking the opposite view. That judgment is Gauri Shankar V, Smt. Shakuntla Devi and others, , where Mehar Singh C.J., took the view that if the tenant's heirs are sued after his death, then ad-valorem court fees is payable. The Court held that once the tenant died then no estate was transferred to the heirs and hence they had no right to be in possession of the shop. Consequently, the heirs concerned were not tenants of any type. As I have said, this argument is based on a fallacy which has been rejected several times.

(12) In a Full Bench judgment of this Court, Shri Kedar Nath V. Smt. Mohanini Devi I.L.R. 1974 Delhi 151:1973. R.L.R. 711 it was held that if an ejectment proceeding, had been instituted under the Delhi Rent Act, 1958, for evicting a tenant, it could be continued after his death against the legal representatives and an eviction order could also be passed against those legal representatives. It was argued in that case that no estate passed to the legal representatives and hence they could not be ejected and the proceeding could not continue against them. The Court rejected this contention and held as follows :-

'THE right of the deceased tenants to statutory protection from eviction from the premises was personal to them, but their obligation to deliver it back to the landlord on the termination of the statutory protection, was not personal. The claim of the landlord for possession of the premises was not extinguished with the death of the tenants. The premises are still in existence and their possession is in the hands of the legal representatives, who can be directed to hand it over to the landlord. The death of the tenants, who were liable to put the landlord into possession of the premises, which they had earlier acquired, would not, therefore, effect the liability of their estate. The landlord still can follow his claim for recovery of the premises, in the hands of the legal representatives of the deceased tenants. Accordingly, his right to sue survives against them'.

In view of these observations of the Full Bench, it follows that the present plaintiff also has the right to get back the possession of the premises at the end of the period of the lease from the persons who are now in possession thereof who are the legal representatives of the deceased tenant.

(13) Another judgment which has been relied upon by the counsel for the plaintiff is *Shrimati Gauri and others, V. Shrimati Brijkanwar Devi*, 1974, R.C.R. 378. It was there held by a Single Judge of the Rajasthan High Court as follows :

'If the rent control legislation were not in force, then there could be no manner of doubt that the heirs of a deceased tenant could have been sued, on the death of the tenant, in the same manner as the deceased tenant himself if he were alive, that is it was not necessary for the landlord to sue the heirs of the deceased tenant on the basis of title on payment of Court fee for a title suit.'

The Full Bench judgment of this Court in *K. G. Malhotra v. Vijay Kumar*; 1973, R.C.R. 475 1973. RLR. 366 and *Gauri Shankar v. Smt. Shakuntala Devi* , were also referred to, but the case did not decide the question of court fees. In my view, the question of court fees has to be decided on the basis of the rights claimed against the defendants. The present suit has been brought for recovery of possession as a result of a lease granted by the plaintiff to the late Shri Babu Ram. It is claimed that the lease was determined during the life time of Shri Babu Ram, who enjoyed the protection of the Delhi Rent Control Act, 1958, on the

determination of the lease, the rights of the Lesser and lessee are to be governed by the provisions of the Transfer of Property Act. Section 108(q) of the Act requires the lessee to put the Lesser back into possession on the determination of the lease. As held by the Full Bench of this Court, this right continues even against the legal representatives.

(14) When such a suit is brought, it is obviously a suit by a landlord against the ex-tenant. The fact that the ex-tenant has died means that the suit has to be brought against the heirs; but nevertheless, the suit is one brought by the landlord against his ex-tenant. In such a suit, it is not necessary for the landlord to establish his title. In fact, Section 116 of the Evidence Act provides

(15) This estoppel governs also legal representatives during the continuance of the tenancy. It has been repeatedly held that the estoppel operates also after the termination of the tenancy. That is to say that if a tenant comes into possession under a lease, he is estopped from denying the title of the landlord however defective it may be, so long as he has not restored possession to his landlord. This view has been approved by the Privy Council in *Bilas v. Desraj*, 42 I.A. 202 (see reference - *Mohammad Asim v. Raja Saivid Mohammad*, and *surajmal v. Rampoaravlal* : AIR1966 Pat8). The only exception to this rule is when the tenant has been ousted by title paramount.

(16) Thus, the legal position would be that the plaintiff is entitled to claim possession from the tenant's legal representatives on the basis that the tenancy has come to an end. He does not have to prove his title in the property as would be the case if the suit was for recovery of possession simpliciter. The reason for this is that the estoppel prohibiting the tenant or his legal representatives from denying the title of the plaintiff continues not only during the continuance of the lease, but also afterwards, so long as the possession is not restored. The fact that there are so many cases holding that the estoppel under Section 116 continues even after the lease has been determined shows that Section 7(xi)(cc) of the Court Fees Act is applicable after the tenancy has been determined or has come to an end.

(17) As I have analysed above, the question of filing an ejectment suit against a tenant only arises after the lease has been determined. This is obvious from general principles, and also, from the provisions of the Transfer of Property Act, because the obligation of the tenant to return the premises only arises after the lease has been determined and not during the continuance of the lease. thereforee, a suit for the relief of possession brought by a landlord against a tenant has necessarily to be the recovery of possession necessitated by the end of the lease. If the tenant is alive, such a suit has to be brought against him, on the death of the tenant, such a suit has necessarily to be brought against the representatives. The death of the tenant does not convert such a suit into anything else for it is still a suit for carrying out one of the obligations of the tenant specified in the Transfer of Property Act, namely, the necessity to return possession of the premises leased out to the Lesser.

(18) I may mention that an unreported decision of this Court, the Delhi State Cooperative Bank Ltd. v. Mr. Eric etc, 1975. Rlr 124 decided on 25th August, 1975, was brought to my notice in which the judgment of Mehar Singh, C J., referred to above, had been followed. It seems that all the other decisions regarding the manner in which the word 'tenant' has to be interpreted were not pointed out and nor were the two Full Bench decisions of this Court. As the matter has already been settled by a Full Bench of this Court, I think, I need not refer to the said judgment any further.

(19) The result of this analysis would be that it would follow that the present suit is one brought by the landlord against his tenant for the recovery of possession within the meaning of Section 7(xi)(cc) of the Court fees Act. It does not make any difference that the defendants were at no point of time tenants as far as plaintiff claims. The obligation being enforced against them is an obligation of the tenant to restore possession of the premises as provided by Section 108(q) of the Transfer of Property Act, and such a right has necessarily to be enforced against the legal representatives of the deceased tenant as held in the aforementioned Full Bench judgment of this Court. The issue has, thereforee, to be decided in favor of the plaintiff. The Revision Petition is accordingly accepted.

