

SirajuddIn Vs. Prem Vanti

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Court : Delhi

Decided On : May-19-1967

Reported in : 4(1968)DLT50

Judge : T.V.R. Tatachari, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 116

Appeal No. : Civil Revision Appeal No. 119 of 1987

Appellant : Sirajuddin

Respondent : Prem Vanti

Advocate for Pet/Ap. : Y. Dayal and; F.C. Bedi, Advs.

Judgement :

T.V.R. Tatachari, J.

(1) This Revision Petition has been filed by a Judgment-debtor, Sirajuddin, against the Judgment and order of Shri D. R. Khanna, Additional Senior Subordinate Judge, Delhi, dated 3rd March, 1967, in Misc. Civil Appeal No. 15 of 1967 confirming the order, dated 10th February, 1967, of Shri G. C. Gupta, Subordinate Judge, 1st Class, Delhi, in Execution Case No. 84 of 1966 in Suit No. 540 of 1956 on his file.

(2) The respondent decree-holder, Smt. Prem Wati, is the landlord of the premises No. 8166, Mohalla chimney Mill, Bara Hindu Rao, Delhi, and the petitioner Judgment-debtor was originally a tenant of the said premises. The respondent filed the above mentioned suit against the petitioner for his ejectment on the ground that she required the premises for her personal requirements. The suit was decreed under the provisions of the Delhi and Ajmer Rent Control Act 38 of 1952 on 27th March, 1957. The petitioner judgment-debtor was granted 15 months to vacate the premises. The said period of time expired on 26th June, 1958. But the property happened to be within a Slum Area governed by the Slum Areas (Improvement & Clearance) Act No. 96 of 1956. The respondent had, therefore, to apply to the Competent Authority under the said Act for permission to execute the decree. She filed the application on 20th December, 1960. But, the Competent Authority refused to give the permission, and dismissed the application on 17th April, 1961.

(3) Against that order, the respondent filed an appeal on 9th May, 1961 before the Chief Commissioner under section 20 of the said Slum Areas Act. During the pendency of the appeal, the respondent received on 3rd April, 1962 a sum of Rs. 187/8.00 from the petitioner towards arrears of rent for the period from November 1959 to April 1962 at the rate of Rs. 6/4.00 per month, and issued a receipt, Ex. J.D.W. 5/3. The appeal before the Chief Commissioner was dismissed on 8th May, 1962.

(4) Again, on 24th November, 1964, the respondent received a sum of Rs. 93/12.00 from the petitioner towards arrears of rent for the period from August 1962 to October 1963 at the rate of Rs. 6/4.00 per month, and issued a receipt, Ex. J.D.W. 5/4.

(5) Meanwhile, there was a certain amendment of the Slum Areas Act, and taking advantage of the said amendment, the respondent applied again on 15th December, 1964 for permission to execute her decree.

(6) The Competent Authority granted the required permission on 31st May, 1966. There upon the respondent decree-holder filed an Execution Petition on June, 1966. Prior to that date, on 4th June, 1966; the petitioner filed an application

contending that after the decree for ejectment was passed against him there was a compromise with the respondent and an agreement of new tenancy was effected on; 3rd June, 1966, fixing the rate of rent at Rs 128.00 per month, that the respondent received a 'sum of Rs,200 towards arrears of rent, that on that ground the decree became inexecutable, and that the petitioner judgment-debtor cannot therefore be evicted execution of the decree. As already stated, the execution, was filed on 9th June 1966. Then, on 17th October, '1966 a writ petition, NO. 599 of 1966, filed by the petitioner in the high court against the order, dated 31st May 1966, granting permission to execute the decree, was dismissed by the High Court. The judgment was reported in 1966 D. L. J. 167; The petitioner filed again an application on 24th October, 1966 Way of objections to the Execution Petition in the Execution Court, contending that the Execution Petition was not accompanied by the plan of the property, and a certified, copy of the Order of the Competent Authority under the Slum Areas Act, that the Execution Application was barred by time, that the decree, being a compromise decree, was a nullity and cannot be executed, that the respondent decree-holder had created a fresh, tenancy and accepted rent, as evidenced by the receipts dated 3rd April, 1962 and 24th November 1964 that the right of the decree holder to execute the decree was thus extinguished and that therefore the decree cannot be executed the respondent decree holder, in her reply, the first application of the petitioner judgment debtor, denied the allegations made in the application by the 'petitioner judgment debtor, and pleaded inter alia that there was no compromise, that she never agreed to create a fresh tenancy or to receive rent at the rate of Rs. 128.00 per month and that the objections of the petitioner judgment debtor were nothing but delaying tactics to prolong the execution proceedings in her reply to the second application of the petitioner judgment -debtor she ' pleaded inter alia that the petitioner judgment debtor was estopped from raising the objection that in the writ petition No. 599D of 1966 filed by the petitioner he gave specifically undertaking that if the writ petition is dismissed he would vacate the premises within a fortnight of the order of the court that the High Court, while dismissing the writ petition, allowed 14 days' time, to the petitioner to vacate the premises voluntarily as per his undertaking given to the High Court that the copy of the plan of the premises and the certified copies of the order of the Competent Authority

were already filed, and that the objections of the petition judgment debtor were baseless and unfounded.'

(7) On the aforesaid pleadings, a number of issues were framed, the executing court, One of the issues was as to whether the respondent decree holder had created a new tenancy and received the amounts of rents pleaded by the judgment debtor and whether right of the respondent decree holder to execute the decree became extinguished thereby it is unnecessary to refer to the other issues, as they did not survive. The learned Subordinate Judge, by his order dated 10th February 1967, decided the relevant issues in favor of the respondent decree-holder, 'and dismissed the application filed by the petitioner words 'tenant' and 'rent' as well as the form of the receipts in support of his contention that the respondent recognised the petitioner as her tenant and received rents from him as such. He further pointed out that the first of the receipts was given to the petitioner when the respondents appeal before the Chief Commissioner was pending, with the second receipt was given about 2 years after the appeal was dismissed.

(8) The genuineness of the two receipts was admitted before me by the learned counsel for both the parties. The learned counsel for the petitioner argued that the issue of the receipts, particularly the second receipt, at a time where no proceedings between the parties were pending, shows that the parties intended to bring into existence a new tenancy, under the decree for eviction passed in her favor. He also pointed out that according to the definition of the word 'tenant' in the Delhi Rent Control Act, a person against whom a decree for eviction was passed, is not a tenant. He relied upon the decision of the Federal Court in *Kai Khushroo vs. Bai Jerbai*, and submitted that the petitioner was not a tenant at all, and much less a statutory tenant, and therefore when rent was accepted from him, a new tenancy was created in law, and the respondent disentitled herself to the right under the decree for eviction. In the case relied upon by him, the Federal Court observed as follows;

'In case of tenancies relating to dwelling houses to which the Rent Restriction Acts apply, the tenant may enjoy statutory immunity from eviction even after the lease has expired. The landlord cannot eject him except on specified grounds mentioned

in the Acts themselves. In such circumstances, acceptance of rent by the landlord from a statutory tenant whose lease has already expired, could not be regarded as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge by way of defense, in a suit for ejectment brought against him, under the provisions of Rent Restriction Act, that by acceptance of rent, a fresh tenancy was created which had to be determined by a fresh notice to quit.'

(9) After observing in that manner, the Federal Court held on the facts of that case that defendants 2 and 3 therein were statutory tenants, and that money was not only paid as rent by the said defendants 2 and 3 but was received as rent by the plaintiff therein, and consequently a monthly tenancy under the provision of section 116, Transfer of Property Act, did come into existence. Shri Yogeshwar Dayal, therefore, argued on the basis of the said decision that by the acceptance of the amounts as rent by the respondent from the petitioner as tenant, a new tenancy came into existence. He also relied upon the decision in Bapur to v. Waman. In that case, the landlords gave notice of ejectment to the tenant, and then filed an 'application under the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958. before the Naib Tehsildar. The said application was allowed and the Naib Tehsildar ordered the tenant to deliver possession to the landlords. The said' order was confirmed ultimately by the Revenue Tribunal. Against that order, the tenant filed a writ petition in the High Court of Bombay. During the pendency of the writ petition, the landlords filed a civil suit for the recovery of rents from the tenant for a period prior to the date of the order of the Revenue Tribunal. The High Court of Bombay held that:-

'THE act on the part of the landlord in filing the 'suit for recovery of rent for 3 years from the tenant as a tenant is certainly inconsistent not only with the notice of ejectment, that they originally gave to the tenant in 1989 but also with all the proceedings that they took on the basis of that notice. We have no doubt that the landlords by this act not only waived the original notice of ejectment but also waived the benefit of the order for possession which was eventually made by the Tribunal in their favor'

(10) He next referred to the decision in *Gililga Dull Morarka v. Kartik Chandra Dass*. 'In that case, it was held that :

'WHEREA contractual tenancy to which the rent control legislation applies' has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises by virtue of statutory protection the acceptance from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord has assented to a new contractual tenancy. There is, however, no prohibition against the landlord entering into a fresh contract of tenancy with a tenant whose right of occupation has determined and who remains in occupation by virtue of the statutory immunity. Apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case.'

(11) Shri Dayal submitted that the conduct of the respondent in accepting the rent shows that she entered into a fresh contract of tenancy with the petitioner.

(12) Shri Yogeshwar Dayal also relied upon the decision in *Lakshmi Chand Kheman v. Kamran Devi*. In that case, the Supreme Court, confirming the decision of a Division Bench of the High Court of Punjab reported in *Smt. Kauran Devi v. Lal Chand* held that under section 2(l) of the Delhi Rent Control Act, a tenant who had suffered a decree of ejectment was no more a tenant within the meaning of the Act, that section 2(l) of the Delhi Rent Control Act bars the jurisdiction of a Civil Court to try a suit for the eviction of a tenant, that is to say a tenant as defined in the Act, but that it would not bar a suit for eviction against a person who is not a tenant under the definition under section 2(l) of the Act, and that a tenant who has suffered a decree for ejectment is not considered a tenant even if the decree cannot be executed in view of section 19 of the Slum Areas (Clearance Improvement) Act. Shri Dayal argued that on the ratio of this decision, there was no bar to the landlord to take action against the tenant, and, therefore, if in that situation she accepted rent, it amounts to entering into a new tenancy, and to a

waiver of the decree which she obtained earlier.

(13) As regards the words 'rent' and 'tenant' used in the two receipts, Exs. JDW5/3 & JDW5/4. it cannot be said that they were of any significance. As observed by the Supreme Court in *H. S. Rikhy v. New Delhi Municipality* the word 'rent' may be used in, a generic sense without importing any legal significance. So also the word 'tenant' may be used in a generic sense. I do not think that any legal significance can be attached to the said words in the receipts, particularly in view of the fact that the Respondent is a woman, and there is nothing on the record to show that she was capable of understanding the legal significance of the said words. She cannot be assumed to have used the said words intending them to signify the creation of a new tenancy or the extinction of her right under the decree for eviction passed in her favor.

(14) The main contention of Shri Yogeshwar Dayal, however, was that the amounts were received at a time when the petitioner was not a contractual tenant or a statutory tenant, and at a time when no proceeding was pending against him, and when there was no bar against the decree-holder taking action against the petitioner, and that if in that situation, she accepted the amounts, she must be regarded to have received them as rent from the petitioner as tenant, thereby creating a new tenancy and waiving her right under the decree which she obtained earlier.

(15) In my opinion, the said contention cannot be accepted. As pointed out in the decisions of the Federal Court in *Bai Hushroo v. Bai Jerbai*, and by the Supreme Court in *Ganga Dutt Morarka vs. Kartik Chandra Dass*, where contractual tenancy has expired by efflux of time or by determination by notice to quit or by the passing of a decree for eviction, the tenant continues in possession by virtue of a statutory protection, like the Rent Control Act or the Slum Areas Act, acceptance of rent, in such circumstances from the tenant by the landlord, cannot be regarded as evidence of a new agreement of tenancy. There is, of course no prohibition against the landlord entering into fresh contract of tenancy with the tenant in such circumstances But, as mentioned out by P. C. Pandit, J. in *Smt. Kanta Devi vs Puran Chana*, and others in addition to the acceptance of rent by the landlord,

something more has to be shown by the tenant, i.e. that the landlord accepted the rent from the tenant not because he had no other alternative on account of the statutory immunity enjoyed by the tenant, but because he agreed either expressly or by necessary implication to create the new contractual tenancy. The question thus depends up on the existence of evidence as to the intention of the landlord. Merereceipt of the amount.' of rent itself is not sufficient evidence. In the case of Bapurao v. Waman, the intention of the landlord to waive his right was taken as a fact.

(16) In the present case, it is true that on the date of the second receipt, Ex. JDW5/4, no proceeding was actually pending against the petitioner. It is also true that the petitioner was not a tenant as defined in the Delhi Rent Control Act, because a decree for eviction was passed against him. But, Shri Yogeshwar Dayal was not right in asserting that there was no bar against the taking of action by the respondent against petitioner. Section 19 of the Slum Areas (Improvement & Clearance) Act No. 96 of 1956 has been in force, and it clearly prohibits the eviction of the tenant without the permission of the Competent Authority. The said section, before its amendment in 1964, barred the execution of any decree for the eviction of the tenant. Even after the amendment of the sectionality the Amending Act No. 43 of 1964, which came into force on 26th, December, 1964, the section bars the execution of any decree for eviction. It also bans the filing of a suit for possession in a Civil Court. It is true that the amendment came into force on 20th, December 1964. and therefore, on the date of the receipt of the amount, i.e. on 24th November, 1964, under Ex. JDW5/4, there was no statutory bar against the filing of a suit in a Civil Court, as held by the Supreme Court in Lakshmi Chand Kkema v. Kawan Devi. But, the question is as to whether an inference can be drawn from the receipt of the rent that the landlord intended to create a new tenancy. In the present- case, the respondent obtained a decree, but its execution was barred by section 19 of the Slum Areas Act. She had thus a decree in her hands which requires only the permission of the Competent Authority for its execution she already made an effort to obtain the permission. She again applied for permission on December 15, 1964, i.e. within about Three weeks from the date (21st November, 1964) of the receipt of the amount evidenced by Ex. JDW5/4. these circumstance,, far from showing any intention on her part to create a new

tenancy, clearly indicate that she was anxious to execute the decree for eviction. In such a situation the inference can only be that she accepted this amount on 24th November, 1964, because of the bar against the execution of the decreed. In the circumstances, an intention to create a new tenancy by accepting the amount, cannot be imputed to her, merely because she had a right on that date to file a suit for possession against the tenant in a Civil Court. Moreover, the existence of a right to file a suit was itself a matter of argument and doubt. It was decided by the Punjab High Court on 12th May 1964, in its decision in Kawan Devi v. Lal Chand. The matter went up in appeal to the 'suorome' Court and the question was finally decided by the Supreme Court on 5th November, 1965 in its decision Lakshmi Chand v. Kauran Devi I, therefore, hold that by the acceptance of the amounts evidenced by Exs. J.D w5/3 and Jd w5/4, no new tenancy was created, and there was no waiver by the respondent of her right under the th- decree obtained by her against the petitioner.

(17) Shri F. C. Bedi, the learned counsel for the respondent also pointed out to me that in opposition to the petition, dated 15th December, 1934 filed by the respondent before the Competent Authority for permission to execute the decree, the petitioner filed his objections, but he did not plead the creation of a new tenancy in the said objection. After the permission was granted by the Competent Authority on 31st May, 1966, the petitioner filed a writ petition No. 599 of 1966 in the High Court, against the said Order. I did not raise the question of new tenancy in the said writ petition. Shri Bedi, therefore submitted that the petitioner might and ought to have raised this plea of new tenancy in cy in those proceedings, and not having done so, he is barred by the principle of constructive res judicata, and that he cannot raise the said plea again in the execution petition filed by the Respondent in the lower Court out of which this revision has arisen. This contention is in my opinion, well founded and the plea must be held to have been barred by the principle of constructive res Judicata.

(18) Shri Bedi also pointed out that in the Writ petition filed in the High Court the petitioner gave an undertaking that if the writ petition is dismissed he would vacate the premises within a fortnight of the order of the Court, that the High Court, while dismissing the writ petition, allowed 14 days time to the petitioner to

vacate the premises voluntarily as per his undertaking, and that the petitioner was estopped from resisting the delivery of possession. This contention also is well founded.

(19) For the above reasons, the Revision Petition fails, and is dismissed with costs.

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