

Rattan Devi Vs. Bal Krishan

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Court : Delhi

Decided On : Feb-08-1978

Reported in : 14(1978)DLT183

Judge : V.D. Misra, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25

Appeal No. : Second Appeal No. 164 of 1977

Appellant : Rattan Devi

Respondent : Bal Krishan

Advocate for Pet/Ap. : R.N. Tikka and; S.B. Jain, Advs

Judgement :

V.D. Misra, J.

(1) Rattan Devi, apellant, \$(1.)\$ obtained an order of eviction against one Bal Kishan Dass in respect of shop No. 508, Chhota Bazar, Chhata Hinga Mal, Shahdara, Delhi. In execution of that order, Parmeshwari Dass. respondent was thrown out of the shop and vacant possession was given to Rattan Devi. Parmeshwari Dass filed an application before the Controller for restoration of the possession on the ground that he was the real tenant of Rattan Devi who had obtained a collusive decree by falsely showing Bal Kishan Dass as the tenant.

This application was made under section 151, Civil Procedure Code, read with section 37 of Delhi Rent Control Act. However, the learned counsel for the applicant made a statement before the Controller that the application be treated as one under Order 21 Rule 100, Civil Procedure Code. The Controller found in favor of Parmeshwari Dass and ordered the restoration of possession. Rattan Devi went in appeal to the Tribunal which dismissed the appeal. She has now come up in second appeal.

(2) It is not disputed by Mr. Satya Bhushan Jain, learned counsel for Parmeshwari Dass respondent that unless the respondent is able to prove his tenancy he has no right to ask for the restoration of the possession. I find that under section 25 of the Delhi Rent Control Act any person found in possession of the premises in respect of which the interest of the tenant has been determined and the recovery of possession in favor of the landlord ordered, has to be thrown out unless the person in possession can show an independent title to such premises. Mr Jain does not deny that the Tribunal has nowhere given a finding that Parmeshwari Dass was the tenant. The only finding given is that he was in possession of the demised premises since long and a fraud has been played by Rattan Devi in securing the ex parte eviction order against a fictitious tenant Bal Kishan Dass.

(3) It was the duty of the Tribunal to give a clear finding whether Parmeshwari Dass was a tenant in respect of the premises in dispute at the time when the application for eviction was made by Rattan Devi against Bal Kishan Dass. A mere possession of the shop cannot save Parmeshwari Dass from eviction in view of Section 25 of the Delhi Rent Control Act

(4) In the view I have taken of this matter, the order of the Tribunal is hereby set aside and the case is remitted to the Tribunal for fresh decision. Parties are directed to bear their own costs.

(5) At this stage I may point out that the appellant has moved an application for additional evidence. It has been registered as Civil Miscellaneous No. 1724 of 1977. Some documents, in original, have also been placed on record. Reply has also been filed by the respondent Parmeshwari Dass. I need not decide this application which stands disposed of in view of the decision in this appeal. Rattan

Devi will, however, be entitled to withdraw the documents filed by her and will be at liberty to file a fresh application on the same grounds. Needless to add that in case any such application is made by Rattan Devi, it shall be decided by the Tribunal before disposing of the appeal. The parties are directed to appeal before the Tribunal on March 13, 1978.

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