Krishna Devi Vs. Parmeshwari Devi

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Court : Delhi

Decided On : Jul-11-1977

Reported in : 1977RLR479

Judge : Rajindar Sachar, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 11; Slum Areas (I&C) Act, 1956 - Sections 19; Delhi Rent Control Act - Sections 14(1)

Appeal No. : Second Appeal No. 60 of 1976

Appellant : Krishna Devi

Respondent : Parmeshwari Devi

Advocate for Pet/Ap. : Yogeshwar Prasad,; K.P. Kapoor,; Meera Bali,;

Judgement :

Rajindar Sachar, J.

(1) This is tenant's second appeal against the judgment of the courts below allowing the eviction application filed by the respondent- landlady. The respondent landlady, moved an application under clause (e) of proviso to subsection (1) of Section 14 of the Delhi Rent Control Act, 1958 (hereinafter called the Act). It was pleaded that the tenant was occupying two rooms, bath and kitchen of the house while she was occupying the garage attached to which there was no kitchen, bath

or store. She was not keeping good health and was alone, also there was no no place where her only child, daughter who is married and her son-in-law along with her grand children could come and live with her, and that she bona fide required them to live with her. This was countered by the appellant tenant who pleaded that the need was not bona fide

(2) Earlier an application for eviction was filed on 9.6.1964 claiming the possession of the suit property on the same ground, namely that the premises were required bona fide by the respondent landlady. However an agreement was arrived at between the parties and by deed of 1.8.1964 Ex. R. 2 the appellant tenant agreed to pay the rent of Rs. 40.00 p.m. (it appears that prior to that the rent which had been fixed by the Custodian of Evacuee Property ; the property being evacuee, was Rs. 7.00). As it had also been agreed and in purusance of that on an application filed by the respondent-landlady the eviction application was got dismissed for default on 20.8.1964. This was obviously in pursuance of the agreement whereby the landlady had agreed to withdraw the civil suit against the tenant.

(3) After the lapse of four years in March, 1968, the petitioner applied under the Slum Area (Improvement of Clearance) Act seeking permission to file eviction application against the appellant-tenant which permission was granted on 23.5.1969. The application for eviction was thereafter filed on 30.5.1969 but as there was a formal defect in the notice issued for termination of tenancy the same was withdrawn with liberty to file a fresh one as per court order in July, 1971. Thereafter the present application out of which the present appeal has arisen was filed in December, 1971 seeking eviction of the tenant on the ground of bona fide need. The courts below have found that the need of the respondent landlady was genuine and bona fide inasmuch as she wanted her son-in-law and his family to come and live with her. The courts below have found that the notice of termination of tenancy was sent by post and was also affixed on the premises of the appellant tenant. It cannot, thereforee, be seriously contended that. the notice had not been served on the appellant tenant as had been contended in the courts below.

(4) The first contention of Mr. Yogeshwar Pershad, the learned counsel for the appellant is that the present application for eviction is barred on the principle of res-judicata. The argument being that as the earlier application filed in June, 1964, had been withdrawn in pursuance of an agreement on 1.8.1964 the present application for eviction is barred by the principle of re-judicata. I cannot agree. There was obviously no adjudication in the previous application filed in June, 164. No doubt as it appears from Ex. R. 2 the application was withdrawn on 20.8.64 in pursuance of the said agreement. But as there was no adjudication the question of any re-judicata cannot arise. Of course it is open to Mr. Yogeshwar Pershad to urge that the conduct of the respondent landlady in filing an application [and withdrawing it apparently when the rent was increased should be taken into account in determining whether her needs are genuine or not but that is an argument for determining the genuineness or the bona fide need of the applicant and not a bar of re-judicata in filing the present application in December, 1971. This pica, thereforee, fails.

(5) The next argument urged by the counsel is that the application for eviction is incompetent as it was filed without obtaining the prior permission of the competent authority. The argument is misconceived. Permission was granted on 23.5.1969 by the Competent Authority. It was however, urged that when the application for eviction filed on 30.5.1969 was withdrawn on 17.7.1971 the permission granted on 22.5.1969 had exhaused itself and was not available for the present application filed in Dacember, 1971. Now it will be seen that former application was withdrawn in July, 1971 because of formal defect in issue of notice for termination of tenancy. There had been no adjudication on merits. Thus the permission granted on 23.5.1969 had not exhaused itself and was available to support the present application for eviction filed in December, 1971. This precise argument had been raised by the tenant and was rejected by this court in 1970 R.C.R. 259. This contention thereforee fails.

(6) The next contention of the counsel for the appellant is that it had not been established that the respondent landlady requires the suit premises bona fide for herself. Now whether the requirement of the landlady fur the premises is bona fide or not is a question of fact and both the courts having found the said fact against

the appellant, the said finding would be immune from being re-opened in second appeal. Mr. Yogeshwar Pershad had sought to urge that the reason for the finding by the courts below that the landlady was ill or that the she was suffering from heart attack is not proved. He had referred me to the evidence of the doctor and certain other witnesses on that point. There is no doubt that the evidence on point had been led by both the patties, whereas the landlady's evidence is that she was suffering from cataract of the eyes and was finding it difficult to move, about, the evidence led by the appellant-tenant seems to suggest that she was able to move out on her own and go to temple. Evidently it is for the courts below to assess the evidence to come to a finding of fact and sitting in second appeal, I find no reason to interfere with the finding of fact as there is no misreading or perversity.

(7) The real argument of the counsel for the appellant is that even if it was established as the courts below have held that the accommodation with the landlady was not sufficient because she wanted her son-in-law, her daughter and her children to come and live with her, it will not avail her and her case will not be covered by proviso (e) of sub-section (1) of Section 14 of the Act. The argument is that the Premises could only be got vacated if they are required bonafide by the landlady for occupation as residence for herself or for any of the member of her family dependent on her. Admittedly the married daughter is not dependent on the landlady and, thereforee, requirement for their occupation as such would not satisfy the statute. But the requirement pleaded by the landlady is that she requires the family of her married daughter to come and live with her, as she is unable to look after herself and thus the requirement she is pleading is for 'herself which is covered by the clause in the word 'himself. In the present case the finding of the courts below is that the landlady who is of 55 years age and is finding it difficult to move about requires her only daughter who Chhotey etc. v. Mohd Yasin 484 is married along with her family to come and live with her. Considering her condition the question that has obviously to be answered is Is this need a bona fide or sham one. Once the facts are, as have been found by the courts below it is pointless to urge that the requirement put forth by the landlady to have the married daughter and her family live with her are not genuine. Mr. Yogeshwar Pershad would, however, give a very restricted meaning to the word 'himself and limit it only to the person concerned and not even to minor children and wife whom he would

put in the category of any member of family dependent on the landlord. A similar argument to read the word 'himself in such a restricted measure was rejected by me in H. L. Mehta v. Smt. Hira Devi 1970 D L.T. 484. It has been held in that case that the test in each cash is whether the landlord requires the premises is to See whether person for whom premises are required is coming to live as a member of the family so as to fulfill the need of the landlord himself. It was also held that the word 'himself cannot be taken to exclude the sous and earning member of the family. Nothing has been urged before me to change my view which I had taken in that case and if the son- in-law as held by the courts below is coming to live with the landlady to fulfill her requirement it is really required for occupation for herself. Surely there is no reason to hold that the married daughter and her family if they are required to come and live with the landlady to serve her need and look after her, the same will not be covered by the word 'himself. Mr. Yogeshwar Pershad urged that the married daughter cannot be considered a member of the family. The point here is not whether a married daughter is a part of the family but that accommodation required for bringing in of the married daughter to serve the needs of the mother is the requirement of the landlady herself. As a matter of fact it is immaterial what is the relationship of the person for whose requirement the landlady or the land lord seeks to have the accommodation provided of course it is proved that the requirement is a genuine one and will serve the need of landlord or landlady.