

Moti Lal Vs. Manjit Singh Etc.

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Court : Delhi

Decided On : Jul-19-1977

Reported in : 1978RLR228

Judge : Rajindar Sachar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Civil Revision Appeal No. 311 of 1977

Appellant : Moti Lal

Respondent : Manjit Singh Etc.

Advocate for Pet/Ap. : M.C. Anand and; H.R. Khanna, Advs

Judgement :

Rajindar Sachar, J.

(1) This is a revision under proviso to S. 25B(8) the Delhi Rent Control Act (hereinafter called the Act).

(2) One Jaswant Singh filed an application for eviction under Section 25B on the allegation that he required bonafide the premises with the petitioner tenant. But before the matter could be concluded he died on 31-7-76. The present application has been filed by Manjit Singh. Inderpal Singh who are sons of Jaswant Singh and

Narinder Kaur his widow. This application was filed on 12.10.76. The petitioner tenant filed an application under Sec 25B(4) and (5) for leave to contest the application for eviction. Objection was taken that in view of the earlier application filed by Jaswant Singh the present application was incompetent. Objection was also taken that there was sufficient accommodation to meet the needs of the landlords. It was also pleaded that Narinder Kaur was riot owner and was merely the landlady and not owner and right under the will was given to her merley to collect the rent whereas Manjit Singh and Inderpal Singh were not landlords, but merely owners and as the application for eviction cannot be maintained because'the same must be filed by the owner- landlord. Objection was also taken that there were four rooms with the applicants and this was sufficient accommodation and the requirment was thereforee not bona fide;

(3) The trial court by the impugned order has refused leave. In its order refusing leave it has discussed in detail that the right given to Narinder Kaur under the will to collect reat is in the nature of owner and thereforee her position is that of an owner. The trial Court has also noticed that though in the latest decision of the Supreme Court in 1976 RLR 605 the applicants who are the legal representatives of Jaswant Singh could maintain the petition and has held that the mere fact that the aplication could have continued does not mean that a fresh application is malafide. He has also pointed out that the acceptance of rent on 1-10-76 after the tenancy had been determined with effect from 30-9-76 could not amount to withdrawal of notice. As for sufficiency of the accommodation he has proceeded on the assumption that even if four rooms were there with the landlords, as total number of the family are seven, the accommodation is not sufficient.

(4) In my opinion it is not necessary to opine on each one of the reasons given by the Rent Controller to negative the pleas put forth by the petitioner tenant. The reason is that I am not considering the merits of the petition. Before me the short point is whether the tenant should have been granted leave, which he is entitled to obtain if an affidavit filed by him discloses such facts as to disentitle the landlord from obtaining an order for the recovery of the premises on the ground specified in clause (e) of sub-section (1) of Section 14. It is true that merely because an objection has been taken by the tenant does not mean that the requirment of sub-

section (5) of Section 25B are fulfilled and leave must be given for as held in Kanta Goel v. Bp Pathak etc. 1977 R L R 202 an objection for the sake of objection which has no realistic foundation cannot be entertained seriously. It is also true that the requirement of Sec. 25 B(5) cannot be approximated to Order 37(3) Civil Procedure Code and that the requirement in the former is more stringent than in the requirement in Order 37 Rule,3. (See 1977 R LR 283. If the questions of fact have been raised by the petitioner which cannot be outright said to be objections for the mere sake of objections, these need consideration. Whether the right to collect rent given by the will makes Narinder Kaur in the nature of the owner, as observed by reference to the various provisions of the Hindu Law can not obviously be a matter which without giving leave to the tenant can be disposed of satisfactorily. Not only that the sufficiency of the accommodation with the respondent-landlord and the allegation of the petitioner that only a little earlier to the filing of the present eviction application first floor had been let out to other tenants are all questions of fact which can be decided only by taking evidence. To decide all such matters on the basis of affidavits is hazardous and is certainly not permitted by the statute. That such disputed questions of facts should be set down for hearing and not decided on the basis of affidavits was held in Fateh Singh v. Hukam Chand (1977)(1) R L.R. 852=77 R.L.R. 244 and V L Kashapa v. R. P. Kapur (1977 Rent Control Reporter 449 (1) RL 828 Ram Chand etc. v. Gokal Chand etc. 1977 R.L.R.74 Mool Chand v. Ganda Ram 1977 RL R 240. I am not suggesting nor I am trying to anticipate what the decision of the trial court on merits is going to be. Trial Court may ultimately hold after taking evidence whether to order eviction or not. Petition allowed.