

Jitendar Singh Vs. Manmohan Lal

Jitendar Singh Vs. Manmohan Lal

SooperKanoon Citation : sooperkanoon.com/686349

Court : Delhi

Decided On : Aug-22-1977

Reported in : 1977RLR522

Judge : Rajindar Sachar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1); Delhi Rent Control (Amendment) Act, 1976

Appeal No. : Civil Revision Appeal No. 408 of 1977

Appellant : Jitendar Singh

Respondent : Manmohan Lal

Advocate for Def. : Mr. Andley

Advocate for Pet/Ap. : N.R. Suri and V.B. Andley, Advs

Judgement :

Rajindar Sachar, J.

(1) After hearing the counsel the revision petition is admitted to hearing.

(2) This revision petition by the tenant has been filed against the order of the trial court refusing him leave to contest the application filed by respondent-landlord.

(3) The eviction was filed by the respondent-landlord. The landlord is an old man of 74 years. His case in the eviction application is that he had been living with his son at Hardwar for the last number of years. But that be cause of the heart trouble he is required to shift for medical attention and treatment at Delhi. His case further is that he requires the ground floor premises in suit for his personal need, because he is advised not to climb the stair case. It appears that on the first floor of the said property landlord's daughter who is alleged to be his tenant is living.

(4) In response to the summons of the eviction application the petitioner-defendant filed an application under section 25B for leave to contest. Apart from other objections it was disputed that respondent landlord was a heart patient. It was maintained that he was living on the first floor premises in question and he is doing normal duties of coming and going out and attending the social functions. It was pleaded that the respondent-landlord is living with his son for the last 6 years and his requirements was not bona fide. Along with an application an affidavit was filed stating that the contents of the application are correct to the best of his knowledge and belief. The trial court thought that the affidavit was not proper inasmuch as it did not specify which porton was true to the knowledge of the deponent and which portion was true on information. Nevertheless it went into the matter on merits and refused leave to contest The trial court though noticed that the tenant had disputed that the landlord is not a heart patient still curiously it observed that the sickness of the landlord is not a material fact. In fact he has obviously misdirected himself because the claim of the landlord for the premises was based on the specific fact that he was a heart patient and requires the premises bona fide. This point has been put in issue by the tenant and could not be said that it was a vague objection for the sake of objection. No doubt Mr. Andley, learned counsel for the respondent urged that the landlord has filed the medical certificates indicating that the landlord is a heart patient. But it is obvious that this is a matter of evidence and could not be decided summarily without giving an opportunity to the tenant. In my view the Additional Rent Controller was in serious error in refusing leave to contest the eviction application I would, thereforee, set aside the impugned order dated 15th March, 1977 and grant leave to the tenant I would, however, make it clear that the leave is being granted to the petitioner tenant restricted to the objection whether the landlord bona fide requires the premises for himself. So far as the objections

regarding validity and sufficiency of notice for termination of tenancy or the objection regarding the ownership of the respondent-landlord are concerned, there is no merit in those objection. The petitioner tenant is not being given leave to raise these points.

(5) In para 8 of the eviction application it has been stated that the tenancy included a common use of the courtyard. This, however, was controverted by the petitioner-tenant who maintained that the courtyard was in exclusive tenancy of the tenant but he has been deprived of the exclusive possession by the landlord. It appears to me this defense has no relevancy to the application for eviction brought on the ground of bona fide requirement. Whether the courtyard was in exclusive tenancy of the tenant or was a part of the common use would be of no consequence in these proceedings. In either case if the eviction application was to be allowed the petitioner has to be evicted from the premises including the courtyard whether it is a common tenancy or exclusive tenancy. If the eviction application fails the question of common user and exclusive tenancy is not material in these proceedings; and being not relevant, this defense cannot be permitted to be raised.