

Muni Lal Vs. Dulara and anr.

Muni Lal Vs. Dulara and anr.

SooperKanoon Citation : sooperkanoon.com/686763

Court : Delhi

Decided On : Oct-29-1975

Reported in : 12(1976)DLT123

Judge : Avadh Behari, J.

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

Appeal No. : Second Appeal No. 255 of 1972

Appellant : Muni Lal

Respondent : Dulara and anr.

Advocate for Pet/Ap. : Bishamber Dayal and; G.N. Aggarwal, Advs

Judgement :

Avadh Bchari, J.

(1) This is an appeal against the order of the Rent Control Tribunal dated July 29, 1972.

(2) These are the facts. On March 19, 1969, the respondent landlord brought a petition for the eviction of the tenant appellant. The sole ground of eviction was that the tenant had sublet, assigned or parted with the possession of the premises to one Bhagwan Das respondent No. 2 without the written consent of the landlord

after the commencement of the [Delhi Rent Control Act, 1958](#) (the Act).

(3) The Rent Controller dismissed the petition on the ground that the cause of action did not subsist on March 19, 1969 when the eviction petition was filed as the sub-tenant had vacated the premises in February 1967. Consequently, the Controller held that the landlord was not entitled to claim eviction.

(4) The landlord appealed to the Tribunal. The Tribunal took a view different from the Controller, It passed an order of eviction in favor of the landlord on the ground that once subletting had taken place the tenant was liable to eviction. In its view it did not matter that the sub tenancy had ceased to exist long before the filing of the eviction petition. The Tribunal followed a division bench decision of this court in *Battoo Mal v. Rameshwar Dass*, in preference to a single bench ruling in *Ved Prakash v. Chum Lal*, where a contrary view had been taken.

(5) The tenant now appeals to this court under section 39 of the Act.

(6) The facts in this case are reasonably clear. The landlord let the shop in dispute to the tenant on a monthly rent of 20.00 on August 21, 1965. The defendant sublet the premises to Bhagwan Dass in October, 1 '66. This is the finding of the Controller as well as the Tribunal. It is based on the report of the head clerk dated January 14, 1967 which was made to the Competent Authority when the landlord applied for permission to file eviction case against the tenant.

(7) The Competent Authority granted permission on November 28, 1967 under section 19 of the Slum Areas (Improvement and Clearance) Act 1956. Thereafter, the landlord served a notice dated December 1, 1967 on the tenant terminating his tenancy. This was a notice under section 106 of the Transfer of Property Act. He thereafter filed the eviction petition on March 19, 1969, as I have said.

(8) Before the rent control authorities, it was not disputed that Bhagwan Dass, the sub tenant, vacated the shop in January/February, 1967. When the landlord served the notice and brought the petition the subtenant was not in occupation of the premises Even then the tenant has been ordered to be evicted by the Tribunal, Is that right

(9) The crucial fact in the case is that on March 19, 1969, when the eviction petition was filed, the subtenant had vacated the premises. He was not there even when the notice of termination of tenancy dated December 1, 1967 was served. The sub-tenant had, in fact, been removed in January/February, 1967. For what the tenant did in the period between October, 1966 to February, 1967 he has been ordered to be evicted. This is the sum and substance of the whole case. 10. Clause (b) of the proviso to section 14(1) of the Act reads'

'(B)that the tenant has, on or after the 9th day of June, 1972, sublet assigned or otherwise parted with possession of the whole or any part of the premises without obtaining the consent in writing of the landlord.'

(10) The basic issue in the appeal is : If before the date of the service of notice determining the tenancy of the 'tenant, the sub-tenant vacates the premises will the Court even then pass an order of eviction against the tenant on the ground of clause (b)

(11) The counsel for the tenant has referred me to two cases. One is Ved Parkash v. Chuni Lal. The other is my own decision in Gian Singh v. Tarlok Singh. In Gian Singh's case I have had occasion to consider the import of word 'has' as used in clause (h) of the proviso to section 14(1) of the Act. There I took the view that if the tenant had acquired a residence long before the eviction petition was filed against him on ground (h) and had surrendered the same before he was sued he could not be ordered to be evicted. I said that a landlord cannot store causes of action for future use. Remote grounds of eviction having no proximity in time cannot be sued upon. 'Justice', said Lord Bacon, 'is sweetest when it is freshest'. This saying is as true today as when Bacon penned those words.

(12) I take the same view here. Since the sub-tenant had been removed in January/February, 1967 and the notice of termination of tenancy was served on December 1, 1967 and the eviction petition was filed even much later, that is, on March 19, 1969, the landlord is not entitled to sue upon the unlawful sub letting which took place in the period between October, 1966 to February, 1967. If the sub-tenant had been in occupation of the premises on the date of service of notice, that is, December 1, 1967 there could be no doubt that the tenant would

have been liable to eviction But the distinguishing feature of this case is that on the date of the service of notice, the sub-tenancy had ceased to exist and the petition itself was brought after more than a year of the service of the notice.

(13) Till recently law on this point was far from settled. It was even foggier when in Battoo Mal's case the judge said that the answer depended on 'the individual nature of each case of section' under the various provisos of section 14(1) of the Act. On this vexed question now there is an authoritative pronouncement the Supreme Court.

(14) In Gajanan Dattatraya v. Housang Patel and others the Supreme Court decided this point. In that case of the four rooms in his tenancy the tenant had sublet two rooms to one Desai. The landlord served a notice on the tenant terminating his tenancy on April 1, 1967. Desai vacated the premises in suit on April 14, 1967. The trial court passed a decree for possession against the tenant on the ground of sub-letting. The tenant filed an appeal to the District Court. The appeal was dismissed. Thereafter the appellant filed a revision petition in the Gujarat High Court. The High Court dismissed the revision petition. The tenant appealed to the Supreme Court after obtaining special leave. His appeal was dismissed.

(15) On behalf of the tenant it was argued that since he had removed the sub-tenant he was not liable to eviction. Ray C. J. speaking for the Court said :-

'THE language (of section 14(l)(e) of Bombay Rents, Hotel and Lodging House Rates Control Act. 1947) is that if the tenant has sublet, protection ceases. To accede to the contention of the appellant would mean that a tenant would not be with the mischief of unlawful subletting if after the landlord gives a notice terminating tenancy on the ground of unlawful sub-letting the sub tenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful sub-letting. In that way the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction arises once the fact of unlawful subletting is proved. At the date of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted'.

The court explained its earlier decision in *Goppulal v. Thakurji Shriji Dwarkadheeshiji*.

(16) The relevant date, it would therefore appear, is the date of the notice. If it is proved that on that date there was unlawful subletting the tenant is liable to be evicted. In this case admittedly on the date of notice there was no unlawful subletting. The tenant is therefore not liable to be evicted.

(17) The counsel for the landlord has argued that though there was no subletting on the date of the notice there was subletting at any rate on the date when the landlord applied for permission to the Competent Authority. He relies on the report of the head clerk dated January 14, 1967 which establishes subletting.

(18) In my view this is not the relevant point of time. We are here concerned with the Rent in order to determine whether the tenant is liable to be evicted. We are not concerned with the Slum Areas Act to determine whether a tenant should be evicted because he had once created subletting which was in existence when the case was going on before the Competent Authority. The Rent Act does not make any reference to the Slum Areas Act. The Rent Act determines the conditions under which the tenant shall be protected and the conditions when that protection ceases.