

**Karam Chand Vs. Oma Devi**

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**Court :** Delhi

**Decided On :** Oct-11-1979

**Reported in :** 17(1980)DLT221; 1980RLR332

**Judge :** Rajinder Sachar, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 27

**Appeal No. :** Second Appeal No. 42 of 1979

**Appellant :** Karam Chand

**Respondent :** Oma Devi

**Advocate for Def. :** Mr. Tandon

**Advocate for Pet/Ap. :** G.S. Vohra,; S.L. Choudhry,; R.L. Tandon and;

**Judgement :**

**R. Sachar, J.**

(1) This is second appeal by the tenant against' the judgment of the Rent Control Tribunal by which he allowed the appeal of the landlord-respondent and passed an order or eviction against the appellant on the grounds covered by clauses (d) and (h) of proviso to Section 14(1) of the Delhi Rent Control Act (hereinafter to be

referred to as the Act). The appellant was admittedly a tenant in a room located on the ground floor of house No. 7048 on a rental of Rs. 61- p.m. The present premises were purchased by the respondent sometime in 1970. An application for eviction was brought on the ground that the premises were let for residential purpose and that neither the tenant nor his family has been residing therein for six months before the filing of the application and also on the ground that the appellant had acquired vacant possession of a house No. 22 F.J.J. Colony. The case of the tenant however was that the premises had been let out for commercial purpose and therefore neither clause (d) nor clause (h) was applicable.

(2) The acquiring of another house No. 21 F.J.J. Colony and also having shifted to that house prior to six months before the filing of the eviction application was not disputed. The main controversy therefore between the parties is whether the premises in dispute had been let out for residential or commercial purpose. It is a common case that if it is found that the premises had been let out for residential purpose then the respondent-landlord is entitled to have an order of eviction. Now the Tribunal has found that the premises were let out for residential purpose and not for commercial one. Normally this is a finding of fact and would be immune from challenge in the second appeal. Mr. Vohra and Mr. Choudhary learned counsel for the appellant however contended that the order of the tribunal was liable to be set aside on the ground that it had allowed additional evidence to be produced before him and that this has vitiated the whole proceedings.

(3) In the application for eviction it had been alleged that the premises had been let out to the appellant by the previous landlord. This was admitted in the reply by the tenant who had however pleaded that he was in occupation of a jhuggi in front of the shop in dispute and had been allotted a quarter No. 22-F.J.J. Colony in lieu of jhuggi and not the premises in dispute. During the course of evidence however the appellant took the stand that he was in possession of the premises in dispute since 1957 from the Custodian. This apparently put the respondent-landlord to search the record of the Custodian from that period so as to show the nature of the letting out of the premises to the appellant. That is why he made an application under 0.41 Rule 27 Civil Procedure Code before the Tribunal seeking to place on record the documents from the Rehabilitation department like survey registers and

the occupation register showing the nature of letting out by the department. The Tribunal apparently felt that these documents which were undoubtedly from government and public office and finding that there was ambiguity in the evidence and the circumstances attending upon the occupation of the premises by the tenant prior to the purchase by the present respondent allowed the production of evidence in the interest of justice on payment of costs of Rs. 100.00 . The costs were paid by the respondent and accepted by the appellant. Mr. Tandon counsel for the respondent raised objection that it is not now open to the appellant to raise any objection to the permission to lead the additional evidence after having accepted the costs. In my view the objection is well founded. If the appellant wanted to make a grievance of the order of the production of additional evidence he should not have accepted the costs but when he did so he had estopped himself from challenging this part of the order. Mr. Vohra had urged that the production of the additional evidence could not be allowed to fill up the lacuna and referred to Parsotim Thakur and others v. Lal Mohar Thakur and other A.1.R. 1931 P.C. 143 and Natha Singh and others v. The Financial Commissioner Taxation Punjab and others : [1976]3SCR620 . The principal propounded is unexceptionable but the tribunal felt that there was ambiguity in the situation as to the circumstances in which the property was occupied by the appellant and permitted the record to be produced were undoubtedly from the public office and if the tribunal has exercised its discretion and allowed the production of the additional evidence it is not for this court in second appeal to review it, and any objection on this score is thereforee futile.

(4) The next contention is whether the premises were let for commercial or residential purposes. The case of the landlord was that it was only in 1970 that he had converted the user of the premises in dispute to commercial. The tribunal has however found that at least since 1965 the appellant had been using the premises for commercial purpose round about the same time he got allotment of the residential premises in J.J. Colony. The finding that since 1965 the tenant was using the premises in dispute as a shop must be accepted. But that by itself would not advance the case of the appellant because what has to be determined is as to the purpose for which the premises were let out to him in 1957. As the premises were let out to him by the Custodian, the best evidence obviously would be the

record of the Custodian Department showing the nature of the letting out to the appellant at the relevant time. Ex. Ax 4 is the evacuee premises survey report which shows the occupation of the premises in dispute by various persons and shows that appellant in occupation on 26 8.57. Ex. Ax 5 is the extract of the evacuee property register in respect of the property in dispute. It gives names of the various persons who occupied it starting from Choudhary Ram and bears the name of the last occupant and shows the appellant in occupation since 1957. The designation of the property is shown to be residential. Mr. Choudhary had urged that the designation of the property as residential is only relateable to Choudhary Ram and not to the appellant. This is mis-reading of the term. The designation of the property continues to be residential and only various occupants are mentioned in the order of their occupation. Ex. AW3/1 is the rent receipt which bears the signatures of the appellant and shows the nature of letting for residential. Mr. Choudhary had sought to urge that the appellant was not well read man and his signatures were obtained under mis-apprehension. I cannot agree. His signatures are in Urdu and therefore it cannot be suggested that the appellant did not know what was being signed by him; the inference is obvious that he knew that the letting purpose of the premises was residential. Again AW7/4 are the copies of the rent receipts and bear the signatures of the appellant and a discription the nature of the letting 'residential'. It is significant to note that these receipts are of January, 1972 and May, 1972 that is under the landlordship of the present respondent Admittedly at that time the appellant had shifted to his new premises in J.J. Colony. If the appellant's case is that the premises had been taken on rent from the beginning For commercial purpose it is not understood why he was willing to put his signatures on a document to show that the premises in dispute had been taken for residential purpose. An effort of Mr. Choudhary to get out of the straight evidence which shows that the purpose of letting was residential and was shown as such right from 1957 onwards is of no avail. AW1 also produced the record from the office of the Municipal Corporation Inspection Register of the year 1961-62 and 1974-75. This also shows the appellant in occupation of the property in dispute and the user is shown as residential.

(5) The only argument made by Mr. Choudhary was that the appellant had been given the alternative accommodation in J.J. Colony in lieu of the residential

premises and refers to the evidence of RW5 who proved that the allotment in J.J. Colony was made to the appellant in lieu of jhuggi and has also stated that if the squatter is displaced from the residential accommodation he is allotted the residential plot. The argument of Mr. Choudhary is that as the appellant was occupying the property in dispute and jhuggi as it was a lieu of residential accommodation that the residential quarter was allotted to him it would show that residence was in jhuggi and business in the premises in dispute. No such conclusion follows as a matter of course. It is in evidence that in front of the property in dispute appellant had constructed a jhuggi. The tribunal has observed and in my opinion there seems lot of logic in that it is hard to accept that the appellant was living in jhuggi and using the premises in dispute as shop and not the other way round. It is relevant to note that in examination in chief the appellant had stated that he had constructed jhuggi in front of the premises in dispute in 1960 from one Mr.Katyal; the suggestion obviously being that he had moved in jhuggi for his residence and later on the premises in dispute had been taken for business purpose. This stand of his collapsed in cross-examination when he admitted that he had taken the premises in dispute in 1957 from the Custodian. The record also clearly shows the appellant in occupation of the premises in dispute since 1957. If thereforee the appellant built the jhuggi in 1959 while he was in occupation of the premises in dispute since 1957 it is obvious that the finding of the Rent Control Tribunal that the premises in dispute were taken on rent for residential purpose cannot be faulted. Admittedly in 1957 the premises in dispute were being used for residential purpose and when the jhuggi came into existence sometime in 1959 the premises were used for business purpose by the appellant. The original letting indisputably was for residential purpose so far as the premises in disputes was concerned. The nature of the property is residential its user throughout has been residential and this also would support the finding of the tribunal about the letting purpose. I have discussed the evidence because the argument was made on that point and I can find no reason to disagree with the findings of the Tribunal. I must also note that whether the premises were Jet for residential purpose or business purposes is a finding of fact and would not be capable of being re-opened in second appeal (see Kartar Singh v. Chaman Lal and Others : 1962 R.C.J, 349;). I find no merit in the appeal and would dismiss it

without any costs. Two months' time is granted to the tenant to vacate the premises.

(6) I may note that during the course of hearing I had adjourned the matter a number of times so as to enable the parties, if it was possible to come to any compromise. Considering that the rent of the premises were Rs. 61- and that if the premises were again to be let out by the respondents I had asked them whether they would be willing to allow the appellant to continue in the tenancy if the appellant was agreeable to pay a rent of Rs. 150.00 or 200.00 p.m. The appellant had expressed his willingness to pay that much amount but the respondent found themselves unable to accept it. Though the ground of bona fide need had not been taken but it was urged by Mr. Tandon the learned counsel for the respondent that the family of the respondent was a large one and that they were short of accommodation and their need was genuine. Considering that the rent of Rs. 150.00 as against Rs. 6.00 was being offered but the same was not acceptable to the respondent would appear to show that their need seems to be really genuine for personal occupation. I had also asked the respondent whether in view of the fact that if the appellant was willing to voluntarily surrender possession whether they would be agreeable to pay some kind of cash compensation to make it easy for the appellant to find alternative accommodation though in law there was no responsibility of the respondent; Mr. Tandon had offered on behalf of the respondent to pay Rs. 5000.00 to 6000.00 and to further grant time between four months to six months to the appellant to vacate the premises and to enable him to find alternative accommodation. Though the counsel for the appellant had at one time indicated that the appellant would be willing for such an arrangement but after sometime expressed his helplessness and stated that the appellant was not willing for any such settlement. In that situation effort at settlement was given up. It is for this reason that the matter had been adjourned for a number of times and could not be decided earlier. Ultimately as no settlement took place the matter was heard and is being disposed of now.

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