

Bhagirathi Devi Vs. Premnath and ors.

Bhagirathi Devi Vs. Premnath and ors.

SooperKanoon Citation : sooperkanoon.com/688748

Court : Delhi

Decided On : Sep-11-1970

Reported in : ILR1970Delhi744

Judge : S. Rangarajan, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 15

Appeal No. : Second Appeal No. 166 of 1968

Appellant : Bhagirathi Devi

Respondent : Premnath and ors.

Advocate for Pet/Ap. : R.M. Lal,; Arun Mohan,; R.L. Aggarwal and;

Judgement :

S. Rangarajan, J.

(1) The short question for decision in this second appeal against order is whether the doctrine of suspension of rent will apply against the appellant-landlady by reason of her taking possession of a part of the demised premises from one of several tenants alone without the consent of the other tenants. The Rent Control Tribunal differing from the Additional Rent Controller found against the appellant.

(2) The brief facts are that in 1949 the appellant-landlady let out two flats in the first floor of the building bearing Municipal No. VI/4918, Sham Lal Road (7B Darya Ganj) Delhi jointly to five persons, including Lalta Parshad. The lessees were the father and four brothers. Each flat consisted of three room with Barsati, latrine and roof thereon. The total monthly rent was Rs. 150.00. The landlady filed an eviction petition against all the five tenants staling that she required the same for her bonafide requirement; this was in addition to her relying on other grounds as well. The said application dated 25th September 1963 seems to have been presented to the Court on 3rd October 1963. It was further stated in the eviction petition that the father Lakshmi Narain (respondent No. 1) had renounced the world and had became an ascetic more than six months prior to the petition. Another brother Om Parkash (respondent No. 3) had shifted his residence to another property (84 Darya Ganj) said to belong to the family of the brothers about a year prior to the petition. Yet 1

0.Nilkanta Pati Vs . Kshitish Chand a Satpati and others : AIR1951 Cal338 .

11.Syed Mubarak Hussain. v. The Custodian General of Evacuee Property New Delhi. 1957 Plr 399.

12.Sh. Bhagwan Dass and others v. Sh. Shri Chand and others in S.A.O. 93-D of 1963 decided on 11-3-1965.

13.Hakim Sardar Bahadur v. Sh. Tej Parkash Singh 1962 Plr 538.

14. Dalip Narayan Singh v. Suraj Narayan Missir and another. Air 1935 Patna 38.

15.Meenakshi Sundara Nachiar v. S.A. RM. CH. Chidambaram Chetty 15 Indian Cases 711.

16.B. Ahmed Maracair Vs . Muthuvalliappa Chettiar : AIR1961 Mad28 .

S. Rangarajan, J.

(3) The short question for decision in this second appeal against order is whether the doctrine of suspension of rent will apply against the appellant-landlady by

reason of her taking possession of a part of the demised premises from one of several tenants alone without the consent of the other tenants. The Rent Control Tribunal differing from the Additional Rent Controller found against the appellant.

(4) The brief facts are that in 1949 the appellant-landlady let out two flats in the first floor of the building bearing Municipal No. VI/4918, Sham Lal Road (7B Darya Ganj) Delhi jointly to five persons, including Lalta Parshad. The lessees were the father and four brothers. Each flat consisted of three room with Barsati, latrine and roof thereon. The total monthly rent was Rs. 150.00.

(5) The landlady filed an eviction petition against all the five tenants stating that she required the same for her bona fide requirement; this was in addition to her relying on other grounds as well. The said application dated 25th September 1963 seems to have been presented to the Court on 3rd October 1963. It was further stated in the eviction petition that the father Lakshmi Narain (respondent No. 1) had renounced the world and had become an ascetic more than six months prior to the petition. Another brother Om Parkash (respondent No. 3) had shifted his residence to another property (84 Darya Ganj) said to belong to the family of the brothers about a year prior to the petition. Yet another brother Ved Parkash (respondent No. 4) who was unmarried, joined military service and left Delhi more than a year prior to the petition. Six months A prior to the petition Lalta Parshad (respondent No. 5), also had shifted his residence to 84 Darya Ganj, Delhi with the result that Shri Prem Nath (respondent No. 2) was in occupation of half the premises, the remaining half (comprising of one complete flat on the first floor and one Barsati on the second floor) lying unoccupied and locked.

(6) Respondents 1 to 4 filed a written-statement contending inter alias that Lalta Parshad had surrendered a part of the possession of the demised premises to the landlady without their permission, consent and authority; his rights as a joint tenant vested in the other four respondents. Lalta Parshad (respondent No. 5) surrendered the demised premises, which he was occupying, to the landlady on the evening of 28th October, 1963. The 4th respondent who was in the defense Service, lived in the demised premises whenever he came to Delhi. It was admitted that Lakshmi Narain had renounced the world and was no longer living in

the premises. It was still further admitted that Om Parkash (respondent 3) was occupying a portion of 84, Darya Ganj since the demised premises was not sufficient to accommodate all the brothers. On 7th October, 1965 the landlady applied under section 15(2) of the Delhi Rent Control Act 1958 stating that out of the demised premises comprising two equal and complete flats (as described in the plan attached to the main application for eviction); the respondents (without specifying any particular respondent) surrendered possession of one complete flat to the landlady on 28th October, 1963: the tenants were thereafter in occupation of only one complete flat, i.e., one half of the entire premises in dispute. The landlady demanded the arrears of rent at the rate of Rs. 75.00 per month (one half of Rs. 150.00 which is the total rent) with effect from 1st October, 1963. It was asserted that Prem Nath (respondent No. 2) was alone in possession of that half of the premises. He was bound to pay the entire arrears of rent for the whole premises. To this petition respondents 1 to 4 filed a reply contending, inter alia, that since the landlady was contumaciously withholding a part of the premises she was not entitled to any rent who declared that she was the owner and as such she was not liable to be dispossessed from the same in execution of the decree in Suit No. 413 of 1964. She further prayed for restoration of one room, Barsati roof and latrine, possession of which had already been taken in execution of the decree. This suit which was dismissed for default was subsequently restored to file and is pending the sides have referred me at length to a number of decided cases on the doctrine of suspension of payment of rent. The earliest Indian decision on the subject is Peary Mohun Mondal and others v. Radhika Mohun Hazara and others 8 Cal WN 315 which held that a relinquishment made in favor of the landlord by some of several tenants of a joint occupancy holding does not operate by way of enlarging the right of the other co-sharers who did not relinquish and depriving the landlord of what ordinarily would belong to him. This decision was followed later by a Division Bench of the Calcutta High Court in Sheikh Kubir Munshi v. Baikunta Chandra Shaha 11 IC 382. A relinquishment made in favor of a landlord by one of two or more tenants was held valid for the purpose of affecting the share of that tenant. Judicial Committee of the Privy Council which had occasion to consider this doctrine of suspension of payment of rent in Sm. Katyayani Debi v. Uday Kumar Das, applied the same to a case where there was a lump rent for the

whole land leased and the same was treated as an indivisible Subject.

(7) *Dhirendra Nath Roy and others v. Bhahatarini Devi and others* : AIR1929 Cal395 Page and Mallik JJ. held that when the tenancy was indivisible providing for a lump sum rent to be paid for the whole of the demised premises it was not open to the landlady to claim any portion of the rent when he interferes with the due enjoyment of the premises or any part thereof by his tenants by evicting them there from. Judicial Committee of the Privy Council drew a distinction between cases of eviction by the Lessers and their failure to give possession, in *Ram Lal Dutt Sarkar v. Dhirendra Nath Roy and others* in that case possession of a relatively small portion of the demised land had not been given when the tenancy was created; successive lessees had not insisted on getting back possession of that small area; for more than 50 years the tenants had paid the entire rent. The Calcutta High Court found, on the above facts, that the doctrine of suspension of payment of rent, as found in English cases, could not be rigidly applied in this country and that it 'could be regarded only as a rule of equity justice, and good conscience. The High Court was influenced by the fact the area which had not been delivered was comparatively speaking very small but yet the full rent had been paid for a very long time without objection. It was considered inequitable, therefore, to allow the tenant to hold a very large area free of rent as there, was no reasonable chance of the landlord being compelled, at that distance of time, to deliver the small area of which possession had not been initially given. In confirming the decision of the Calcutta High Court (with the further limitation of the appeal being heard *ex parte*) the judicial Committee confined itself to the law applicable to the case of landlord failing to give possession initially but not to the case of depriving the lessee of possession of even a portion later. The judicial Committee observed as follows:-

'WHETHERit (the doctrine of suspension of payment of rent) should be applied at all to cases of eviction of the lessee by the Lesser from a part of the land 'and if so, whether it is limited to rents reserved as a lump sum, and whether it is a rigid or discretion rule-these questions will call for careful review when they are presented by the facts of a particular case.'

(8) In *Surendra Nath Bibra v. Stephen Court Ltd.* : [1966]3SCR458 the Supreme Court had occasion to consider the case of a landlord failing to give possession of one out of the three bed rooms of the demised premises. The tenant was held not entitled to suspend the payment of rent but must pay a proportionate part of the rent. Sikri J., speaking for the Supreme Court, observed as follows:-

'WE are unable to agree with Mr. Chatterjee that the decision of the Privy Council in *Ram Lal Dutt's case* , can be distinguished on the ground urged by him. It is no doubt true that the Privy Council was concerned with an agricultural tenancy but, the Privy Council decided the appeal on a matter of principle, the principle being that the doctrine enunciated in *Neale v. Mackenzie* (1836) 150 ER. 6350, should not be regarded as a rule of justice, equity and good conscience in India in all circumstances. It is interesting to note that the subject-matter of the lease in (1836) 150 ER 635 was a dwelling house and land attached to it, and it was eight acres of the land which was attached to the house that the tenant had been kept out of possession. Be that as it may, in our opinion, the doctrine laid down in (1836) 150 ER 635, is too inflexible and cannot be applied to all cases. As observed by Sir George Rankin, the doctrine cannot be justified as a dependable rule to be adhered to notwithstanding hard cases. On the one hand it does not seem equitable that when a tenant enjoys a substantial portion of the property of the landlord, leased to him, without much inconvenience, he should not pay any compensation for the use of the property; in other words, to borrow the language of Sir George Rankin, that he should enjoy a wind fall. On the other hand it is unfair that if a tenant is not given possession of a substantial portion of the property, he should be asked to pay any compensation for the use of the property while he is taking appropriate measures for specific performance of the contract. It seems to us that it will depend on the circumstances of each case whether a tenant would be entitled to suspend payment of the rent or whether he should be held liable to pay proportionate part of the rent. On the facts of this case we are of the opinion that the tenant is not entitled to suspend the payment of rent but he must pay a proportionate part of the rent.'

(9) We may make it clear that like the Privy Council in *Ram Lal Dutt's case* 70 , we are not deciding that the doctrine of suspension of rent should or should not be

applied at all to cases of eviction of the lessee by the Lesser from a part of the land, and if so, whether It is limited to rents reserved as a lump sum, and whether it is a rigid or discretionary rule-these questions will call for careful review when they are presented by the facts of a particular case.' In view of this we need not consider cases like Hakim Sardar Bahadur v Tej Parkash Singh, : Jatindra Kumar Seal v Rajmohan Rai, AIR. 1961 Assam 52 and Nilkantha pati v Kshitish Chandra : AIR1951 Cal338 '.

(10) The Supreme Court thus expressly left open the question whether the doctrine of suspension of payment of rent. could be applied to cases of eviction of the lessee by the Lesser from a part of the demised premises: The Calcutta High Court had occasion To consider this question again in Nilkantha Pati v Kshifish Chandra Satpati and others : AIR1951 Cal338 .R.P.Mookerjee, J., speaking to: the Division Bench, distinguishing the above said decision of the judicial Committee in Ram Lal Dutt observed that where the rent was a lump rent for the whole land leased and the landlord has dispossessed the tenant in a high handed manner from a portion of the land, the landlord is not entitled to claim any rent on the basis of the contract with the tenant, as the former has acted tortiously in not allowing the tenant to hold the land peacefully.

(11) Bishan Narain J, held in Syed Muharak Hussain v .The Custodian General of Evacuee Proper - New Delhi (1957 Plr 399) that joint tenants are not only tenants in respect of their snares but they are tenants of the entire area and that one-co-tenant cannot surrender the 'lease rights so as to bind the other co-tenants. D.K. Mahajan J. held in Shri Bhagwan Dass and another v Shri Shri Ghand and others (S.A.O. No. 93-D of 1963 decoded on I I-3-65) on the file of the Circuit Bench of the Punjab High Court at Delhi, while dealing with an application under section 15(2) of the Delhi Rent Control Act, that where there was tortious deprivation of a portion of the demised premises by the landlord it would result in total suspension of rent. But on the facts he found thatthe deprivation of a part of the possession of the rented premises in that case was not tortious. The previous decision of Falshaw CJ. in Hakim Sardar Bahadur v. Shri Tej Parkash Singh 1962 Plr 538 was also referred to. Observing that the principle of suspension of lent has been accepted to a great extent in India, but with modification, Falshaw CJ. observed

that in a case where the landlord tortiously deprives a tenant of the use of a part of the demised premises, so long as the deprivation continues the landlord cannot even claim the rent for the rest of the premises which the tenant still continues to occupy. The decisions discussed above, both of the Privy Council and some of the Calcutta High Court, were considered. Generally the said doctrine of suspension of payment of rent had been upheld in cases of eviction from some part of the premises but there was a modification of that doctrine in cases of no delivery. Falshaw Cj also noticed the decisions of the Patna and Assam High Courts, vide Dalip Naryan Singh v. Suraj Narayan Missir and another AIR 1935 Pat 38 and Jatindra Kumar Seal v. Raimohan Rai A.I.R. 1961 Ass 52 applying the said doctrine in cases where there had been eviction of the tenants from a part of the demised premises.

(12) A Division Bench of the Madras High Court dealt with this doctrine in Meenakshi Sundara Nachiar v. S.A. RM. CH. Chidambaram Chetty 15 IC 711. After observing that 'the Transfer of Property Act did not in reality deal with the question of the lessee's right to withhold the payment of the whole or part of the rent, where his possession of the premises has been seriously obstructed by the landlord', the Division Bench held that 'the Act had made no change in the rule that no delivery of possession of the premises was a good answer to a suit for rent'. 'The basis of the defense, where the Lesser had obstructed the lessee's enjoyment', explained the Division Bench, 'is that in cases of continuous relationship involving mutual rights and obligations, a party who repudiates and acts in violation of his obligations cannot claim to enforce his own rights against the other party'. If after putting the tenant in possession of the property leased, the landlord obstructed his enjoyment of the portion thereof, it was open to the tenant to say that he was not willing to enjoy a portion of the premises, paying proportionate rent, but would treat the whole lease as 'rescinded during the period of such obstruction; but, in that case, it was his duty to restore to the landlord the part of the premises still remaining in his occupation and not retain possession of it until he was again put in possession of the whole of the leased property. This was further explained by the Division Bench as being based upon the landlord's entitlement to rent for that portion either on the contract of lease or as compensation for use and occupation. In such cases the tenant was estopped

from pleading that he was not liable for the rent of that portion. This decision was referred to by Ramaswami J, sitting singly, in *B. Ahmed Maracair v. Muthuvalliappa Chettiar* (: AIR1961 Mad28 . It is seen that on the facts of that case the lessee was prevented from collecting rent from sub-tenants for the entire year and, therefore, it was considered right and proper that the Lesser should be made to bear the consequences brought about by his own unauthorised and highhanded action of collecting the rents from the sub-tenants: if he was not able to collect the entire rents from them he could not look to the lessee to make good the uncollected portion

(13) The view taken in the above said Division Bench case of the Madras High Court that if the tenant is deprived of the portion of the demised premises he could put an end to the contract of tenancy by surrendering possession of the entire demised property is one which is likely to work great hardship in the present situation where there is scarcity of accommodation, particularly in busy towns. The tenant has to be relieved from the hardship imposed upon him by a landlord who puts himself in the wrong vis-a-vis his tenant by forcibly or tortiously evicting him from a portion of the premises. It would impose a greater hardship on the tenant, in that situation, if he is not only required to put up with the wrong done to him by his landlord taking possession of a part of the property demised but in addition made to pay the total rent for the property even for the diminished area in his possession. In the modern context, therefore, when tenants have to be protected against unjust and unlawful eviction even from a part of the demised premises it becomes obligatory to apply the rule of equity, justice and good conscience in the tenant's favor and not permit the landlord to recover any rent at all from his tenant, whom he has thus wronged until he places the tenant in possession of the portion of which he is deprived. The near consensus of judicial opinion in the country seems to be in favor of the applicability of the doctrine of suspension of rent to a situation where the landlord either forcibly or tortiously obtains possession of a portion of the demised premises.

(14) The next question for consideration is whether the taking of possession by the landlady of nearly a moiety of the premises is tortious in this case. S Ramaswamy Iyer in his 'The Law of torts' (Fifth Edition, Page 1. states that the French word 'tort'

means in its etymological sense, a 'twisting out' and in a popular sense, a crooked act, a transgression from straight or right conduct, a wrong. In its generic sense, it was introduced into the terminology of English law by the French-speaking lawyers and judges of the courts of the Norman and Angevin Kings of England. Ramaswamy Iyer also points out (page 2) that it is an interesting coincidence that the Sanskrit word 'Jimha' which means 'crooked' was used in an ancient Hindu Law text in the sense of tortious or fraudulent conduct. (The reference is to a text of Narada cited in Priyanath Sen, Hindu Jurisprudence page 211).

(15) Lalta Parshad, from whom the landlady says she got possession, was not entitled to any specific portion or much less a moiety under the tenancy; this was not the case of the landlady. The other tenants, the brothers of Lalta Parshad, filed a suit for recovery of possession of the portion thus taken possession of by the landlady. They succeeded but the matter is still being litigated, it is common ground that the landlady obtained stay of execution of the decree in suit No. 413 of 1964 (under section 6 of the Specific Relief Act). In these circumstances, I have no difficulty in agreeing with the finding of the Rent Control Tribunal that the act of the landlady in taking possession of a moiety of the premises from Lalta Parshad was tortious.

(16) In the result the appeal fails and is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com