

**Basi Devi Vs. Faqir Chand**

**Basi Devi Vs. Faqir Chand**

**SooperKanoon Citation :** [sooperkanoon.com/688845](http://sooperkanoon.com/688845)

**Court :** Delhi

**Decided On :** May-26-1970

**Reported in :** 6(1970)DLT519

**Judge :** B.C. Misra, J.

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

**Appeal No. :** Second Appeal No. 202 of 1968

**Appellant :** Basi Devi

**Respondent :** Faqir Chand

**Advocate for Pet/Ap. :** T.N. Sethi and; M.C. Anand, Advs

**Judgement :**

**B.C. Misra, J.**

(1) This seconappeal has been filed under section 39 of the Delhi Rent Control Act 59 of 1958 and is directed against the appellate order of the Rent Control Tribunal dated 17th January, 1968 by which he allowed the appeal and reversed the order of the Additional Rem Controller dated 17th April 167 and finally rejected the petition of the landlord apellant for ejectment on the ground of bona fide personal necessity mentioned in clause (e) of the proviso to sub-section (i) of section 14 of the Delhi Rent - Control Act, 1958

(2) The brief facts of the case are that Smt. Basi Devi appellant before me, is the landlord and owner of property bearing No 1715, Gali Madrasa Mir Jamla, Lal Kuan, Delhi and the Respondent 1s a tenant in respect of the ground floor of the said premises. The appellant brought a petition for eviction against the respondent on the ground of non-payment of rent as well as bona fide personal necessity, being clauses (a) and (e) of the proviso to sub-section (1) of section 14 of the Act. ground mentioned in clause (a) was not pressed before the Controller as notice of demand had not been served and the same did not survive for decision. The parties however, proceeded to trial on the ground mentioned in clause (e) of the proviso to sub-section (1) of section 14 of the Act. In the petition for eviction, the appellant before me urged that she was the owner of the property which had been let out to the respondent for residential purposes by a previous landlord from whom the appellant had purchased the property and she stated that she and her husband were tenants in house No. 1299 Farash Khana, Delhi, and their landlord had obtained a decree for eviction against them and so they bona fide needed the premises for their personal residence.

(3) The respondent before me in his written statement denied all the material allegations of the appellant constituting the grounds of eviction, including acquisition of the ownership of the property by the appellant and the residential letting purpose and her bona fide need. In particular he stated that the appellant before me had in possession of herself or her family house No.1279,(ZeenatMahal) at Farash Khana, Delhi besides first floor of house No. 1712 and house 1716.

(4) The parties proceeded to trial and the learned Additional Rent Controller recorded the finding that there was relationship of landlord and tenant between the parties and that the appellant before me was the owner of the premises and the respondent had become her tenant by operation of law. He further found with reference to each alleged specific property that the appellant did not have any other suitable residence for her and she bona fide needed the premises in dispute for her occupation and he passed an order for eviction of the respondent.

(5) The tenant feeling aggrieved by the said order, filed an appeal before the Rent Control Tribunal and, he upheld the finding of the Additional Rent Controller that the appellant was the owner of the premises, but he reversed the finding with regard to availability of other suitable accommodation and he held that the landlord was in occupation of house No. 1279, Zeenat Mahal and also the first floor of house No 1712. Accordingly he reversed the order of the Additional Rent Controller and dismissed the petition for eviction brought by the landlord as mentioned above-

(6) The learned counsel for the appellant appearing before me has assailed the findings of the Tribunal on the ground that he had not correctly construed or applied the ingredients of the provisions of law. One of the ingredients of clause (e) of the proviso to sub-section (1) of section 14 is that the landlord does not have other reasonably suitable residential accommodation. In my opinion the connotation of the said phrase implies three essential things (1) the landlord must have a legal right to reside in the said accommodation, (2) the residential accommodation must be in fact available for occupation and (a) the same must be reasonably suitable for the landlord.

(7) I would amplify the said ingredients. The first proposition excludes those cases where the landlord does not have a legal right of his own to reside in the premises but lives on somebody else's mercy or sufferance as a licensee invitee or otherwise. The second proposition excludes those cases where the property is in fact occupied by some tenant, licensee or trespasser and cannot be made available to the landlord except by establishing the right to obtain possession from the occupant in a Court of law. In such cases, the landlord has no duty to initiate legal proceedings to dispossess the occupant and then occupy the other premises in preference to the premises in dispute in respect of which he has instituted the eviction proceedings and the landlord is entitled to choose his tenants and select the premises for obtaining eviction. However, if the occupant of such other premises be a care-taker, agent or employee holding the premises for and on behalf of the landlord, such possession will be deemed to be possession of the landlord. On the other hand, if the occupant has an interest in the premises and he has been inducted in the other property by the landlord before or in anticipation

of the institution of the petition for eviction in dispute, the said accommodation cannot be termed as vacant, though the said act of the landlord may cast a doubt on the bona fide nature of his claim for eviction on the ground of personal necessity. The third proposition excludes those cases where the premises be very far of or they be not residential but be commercial or commercial-cum-residential or there be other grounds to reasonably hold that they are, for some good and sufficient reason, not suitable for occupation by the landlord.

(8) In the case in hand, one of the ingredients of grounds of eviction is missing, and, in the absence of establishment of the same the landlord would not be entitled to obtain eviction, So far as the accommodation in Zeenat Mahal is concerned, it has not been established that the appellant had any legal right to reside there. Her own case was that she had been inducted in the same as a sub-tenant of, one Arjan Singh who, was under orders of eviction obtained by the owner of, the house, the State of Punjab. The learned Tribunal felt that in the absence of an order of eviction, had been passed in respect of the said property. In my opinion, the learned Tribunal had fallen into an error. The appellant did not have any legal right to stay in the said property and in this context, it was wholly immaterial to determine whether the State of Punjab had or had not obtained orders of eviction against Arjan Dass. Arjan Dass had himself appeared in the witness-box and the Tribunal failed to attach the same weight to his testimony as the Controller had done on the ground that the orders of eviction had not been placed on the file, but assuming for the sake of argument that no orders of eviction had been obtained against Arjan Dass, the same will still not clothe the appellant with any legal right to stay in the property and therefore accommodation in Zeenat Mahal is to be wholly excluded from consideration of the facts of the present case.

(9) The next accommodation canvassed by the Tribunal relates to the first floor of house No. 1712 which is over the premises in dispute. The case set up by the appellant in this respect was that Darshan Singh, Director of Hazar Transport Company, and one P C. Kohli had been inducted on the said floor by the widow of Mohd. Zakaria, a previous tenant, after his death unauthorisedly and she had later on accepted them as her tenants. The learned Tribunal commented upon the fact

that no rent receipts of P. C. Kohli or Hazar Transport Company had been produced on the file and he observed that a copy of the resolution of the Transport Company Exhibit A did not have any evidentiary value and that it could not be believed that the appellant would accept them as her tenants when they had entered the premises in an unauthorised manner and that she would not take proceedings against them and he held that there was no plausible documentary or oral evidence of the tenancy of the said floor of the house on the file of the case In my opinion, the finding of the learned Tribunal is unwarranted. The resolution passed by the company contained in the minute-book of the company regularly maintained, has undoubtedly got a high evidentiary value. The observations of the Tribunal that the appellant would not accept them as tenants and would take proceedings against them is not entirely consistent with human conduct and probable course of events. It is common knowledge that once some persons rightly or wrongly get into possession of the premises, the landlords generally do not always institute legal proceedings to turn them out, which proceedings may cause considerable harassment and loss of time and expense, and quite often they find it expedient to regularise the possession by accepting them as tenants or otherwise. In any view of the matter, the statement of the appellant as well as of Darshan Singh on the subject was against their interests and would ordinarily command a high probative value. However, in my mind, the question whether Hazar Transport Company and Mr P. C Kohli had been true tenants or not is not material It is possible that they were licensees or trespassers, but so long as the premises were in their occupation, it cannot legally be inferred that the said accommodation was vacant and available for occupation by the landlord, unless and until it is found that the premises were in fact and in law vacant and the landlady instead of occupying the same, allowed another person to enter into its possession, a circumstance which as indicated above has different results and may have a bearing on the bona fide nature of the claim of the landlord. But so long as such accommodation is in the physical occupation of some other persons, who rightly or wrongly claim a legal right to stay there, it cannot be said that the said accommodation is on the date of the suit reasonably suitable or available for occupation of the landlord and it is not the duty of the landlord to institute proceedings against such persons whether tenants, licensees or others and

obtain accommodation from them instead of instituting and continuing proceedings for eviction which have given rise to the present appeal. It is entirely the discretion of the landlord who wants the premises for his accommodation to select the tenants or occupants against whom he initiates proceedings for eviction and it is no answer to his claim that he ought to have instituted any legal proceedings against some other persons whether tenants or not.

(10) There is another infirmity attaching to the order of the Tribunal. It has not considered the oral evidence of A. W. 3, A. W. 6 which had been accepted by the Controller and it is not a proper exercise of appellate jurisdiction to state that there was no plausible oral or documentary evidence on the file without coming to grips with the reasons and findings of the Court of first instance in a case where the Court of appeal reverses the judgment and the findings of the first Court and undoubtedly the order of the Tribunal cannot stand and has to be set aside. As a result, I am unable to accept the findings of the Tribunal on the point as correct or binding on this Court. I have given anxious thoughts to the case whether I should decide the appeal finally myself or remand it to the Tribunal for a fresh decision of the case. In my opinion, Justice of the case demands that that the learned Rent Control Tribunal which is the last court of facts, should decide the question raised in the case in the light of my observations I, therefore, set aside the appellate order of the Rent Control Tribunal and remand the case to it for re-decision according to law. Costs of this appeal will abide by the result of the appeal before the Tribunal. Parties are directed to appear before the Tribunal on 27.7.1970.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**