

Jagan Nath Vs. Tribeni Devi

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Court : Delhi

Decided On : Mar-20-1970

Reported in : ILR1970Delhi120

Judge : T.V.R. Tatachari, J.

Acts : [Limitation Act, 1963](#) - Sections 4

Appeal No. : Second Appeal No. 218 of 1969

Appellant : Jagan Nath

Respondent : Tribeni Devi

Advocate for Def. : Shri. S. L. Sethi

Advocate for Pet/Ap. : S.P. Aggarwal,; S.L. Sethi and; Ramesh Chandra, Advs

Judgement :

T.V.R. Tatachari, J.

(1) This Second Appeal has been filed by Jagan Nath, a tenant, against the judgment and order of Shri M. L, Jain, Rent Control Tribunal, Delhi, dated 6th March, 1969, in Rent Control Appeal No, 691 of 1968. whereby the Tribunal reversed the order of the Additional Rent Controller, Delhi, and directed the eviction of the appellant from the premises in dispute under the provision in clause

(e) of the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958.

(2) The premises in dispute consists of 3 small rooms on the ground floor of House No. 504 situate in Katra Neel, Chandni Chowk, Delhi, which originally belonged to one Shri Mukh Ram.' It was purchased by Shri Mukh Ram in the year 1937. Before his death. Shri Mukh Ram made a will, a copy of which is Exhibit A-3, whereby the house in question, along with other properties, was bequeathed to his wife, Shrimati Tribeni Devi, as a limited estate, while full rights of ownership were conferred on his grandsons. Shrimati Tribeni Devi obtained Letters of Administration on the basis of the will. It was provided in the will that Shrimati Tribeni Devi should be the owner in possession of the property, that she would not be entitled to dispose of it, that after the death of Shrimati Tribeni Devi all the four sons of the testator would be co-owners in equal shares, but they would also not be entitled to sell or mortgage or dispose it of in any other way, and that the grand sons of the testator should have the right of disposal over the property. The order granting the Letters of Administration is Exhibit A-1, dated 13th October, 1947, and a copy to the Letters of Administration is Exhibit A-2.

(3) The appellant, Jagan Math, executed a rent deed (Exhibit A-7) in respect of the three rooms in dispute on 15th July, 1942, in favor of Shri Mukh Ram, and the tenancy thus commenced from that date. Shrimati Tribeni Devi filed a petition, registered as suit No. 156 of 1957, in the Court of Shri D. C. Aggarwal, Additional Rent Controller, Delhi, under section 14 of the Delhi Rent Control Act praying for the eviction of the appellant from the said rooms. It was stated in the application that the rent was Rs. 5 per month. It was alleged that the premises were required bona fide for occupation by her and the members of her family, that the appellant had not paid rent from Ashar Badi 1 Samwat 2021, that water charges were also in arrears, that a total sum of Rs. 438.79 paise was due from the appellant and that permission from the Competant Authority (Slum Areas) had been obtained. The appellant filed a written statement in which he pleaded that the rent was Rs. 5.00 per month, that the water charges were being paid at Rs. 2.50 paise per month, that tile premises were not required by the landlady or the members of her family inasmuch as she had li living rooms with her, that rent up lo 31st December, 1965,

had been paid, that the petition was for a partial eviction and as such was not competent, and that the petition was filed in order to invent an excuse for increasing the rent, and may be rejectee.

(4) The Additional Rent Controller, by his order, dated 30th July, 1968, held that Shrimati Tribeni Devi was the owner 'in presenti' and could, therefore, institute the petition for eviction, that the accommodation already in possession of Shrimati Tribeni Devi and the members of her family was quite sufficient for a family of their status in society, and that the prayer for eviction could not be granted on the ground of bona fide requirement for occupation by Shrimati Tribeni Devi and the members of her family under clause (e) of the proviso to sub-section (1) of section 14 of the Act. As regards the arrears of rent, the Additional Rent Controller held that the landlady was entitled to recover rent with effect from Ashar Badi Ekam Samwat 2021 and the appellant herein should pay the balance of the rent within one month from the date of the order failing which a decree under clause (a) of the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act. would be deemed to have been passed against him. He rejected the plea of the tenant that the petition for eviction as for partial eviction. In the result, while holding that the eviction petition failed on the ground of personal requirement, the Additional Rent Controller passed an order that in case the appellant herein pays the balance of the rent within one month, the petition for eviction would be deemed to have been dismissed wholly, and that otherwise an order of eviction would be deemed to have been passed against him under clause (a) of the proviso to sub-section (1) of section 14 of the Rent Control Act.

(5) Against that order, Shrimati Tribeni Devi preferred an appeal, Rent Control Appeal No. 691 of 1968, to the Court to Shri M. L. Jain, Rent Control Tribunal, Delhi. It appears that the arrears of rent were paid by the tenant as required by the order of the Additional Rent Controller. So, the only question that remained to be considered was as regards the bona fide requirement of the landlady. The Tribunal,^ an order, dated 6th March, 1969, held 'that the landlady was in bona fide requirement of the rooms in dispute, and the appellant herein was, therefore, liable to be evicted from the same under clause (e) of the proviso to subsection (1.) of section 14 of the Act. The Tribunal accordingly allowed the appeal and

directed the eviction of the appellant herein from the rooms in question. It is against that order that the present second Appeal has been preferred to this Court by the tenant, Jagan Nath.

(6) Shri S. L. Sethi, learned counsel for the respondent raised a preliminary objection that the second appeal was barred by limitation. For a proper appreciation of the objection, a few dates have to be mentioned. The order of the Tribunal was pronounced on 6th March, 1969. The appellant filed an application turn a certified copy of the judgment and order of the Tribunal on 17th March, 1969, and the certified copy was ready on 26th April, 1969. The period of limitation for filing a second appeal under section 39 of the Rent Control Act was 60 days, and it is common ground that the last date on which the second appeal was to be filed was 14th June, 1969. The second appeal was filed on 3rd July, 1969. The High Court was closed from 2nd June, 1969, for summer vacation and was re-opened on 12th July, 1969. According to Shri S. P. Aggarwal, learned counsel for the appellant, since the last date for filing the second appeal fell during the vacation, the second appeal could be filed on 12th July, 1969, the date on which the High Court re-opened, and in fact the second appeal was filed even on 3rd July, 1969 i.e., during the vacation itself, and thereforee the second appeal should be held to have been filed within time. On the other hand, according to Shri Sethi, although the High Court was stated to have been closed for summer vacation, the office of the High Court was kept open for filing of appeals etc., and thereforee there was nothing standing in the way of the appellant for filing his appeal, and the second appeal should have been filed on 14th June, 1969, itself. Shri Sethi referred to the notification which was issued regarding the closure of the High Court for summer vacation. It runs as follows :

'HIGHCourt of Delhi at New Delhi.

Notification

NO.92/Genl./III A3 dated. New Delhi, the 16111

November,

IT is hereby notified for general information that the High Court of Delhi shall remain closed for summer vacation from Monday the 2nd June, 1969. to Friday the 11th July. 1969, both days inclusive. The Court will resume its sittings from Monday the 14th July, 1969.

THE offices of the Court will remain open during the period and will receive from parties or persons such petitions and other filings as they may choose to present. All petitions and applications falling under the Civil Jurisdiction of the Court, as cannot be disposed of at once, will be posted on a date after the re-opening of the court. Criminal appeal applications etc. shall continue to be heard during this period.

BY Order of Hon'ble the Chief Justice and Judges of the Court.

SD. Guru Datta.

Registrar.'

(7) The first paragraph in the Notification stated that the High Court of Delhi would remain closed from Monday the 2nd June 1969 to Friday the 11th July, 1969, both days inclusive, and that it would resume its sittings from Monday the 14th July, 1969. The High Court was thus 'Closed' from 2nd June, 1969, and it was re-opened on Saturday, the 12th July. 1969. The reference to the resumption of the sittings from Monday the 14th July 1969, was made to indicate that the actual sittings of the High Court would be resumed from Monday the 14th July. 1969, as the High Court does not sit for hearing cases on Saturday. Shri Aggarwal, therefore, contended that for purposes of limitation the High Court should be regarded to have been closed till 11th July, 1969, and to have been re-opened on 12th July, 1969, and that by virtue of the provision in section 4 of the Indian Limitation Act No, 36 of 1963. the second appeal could be filed even on 12th July, 1969. without any bar of limitation. The said section provides as follows :-

'WHERE the prescribed period for any suit, appeal or application expires on the date when the Court is closed, the suit. appeal or application may be instituted preferred or made on the date when the Court re-opens.'

(8) Shri Aggarwal submitted that the second paragraph in the Notification, however, stated that the 'offices' of the Court would remain open during the period of vacation and would receive from parties or persons such petitions and other filings as they may choose to present, and that was why the second appeal was filed on 3rd July, 1969, even though it could be filed on 12th July, 1969. On the other hand, Shri Sethi argued that since the offices of the Court were open throughout the period of vacation, the High Court cannot be said to have been closed within the meaning of section 4 of the Limitation Act, and no party or person who wanted to institute, prefer or make any suit appeal or application could claim the benefit of section 4 of the Act and postpone the institution etc. till the date of the re-opening of the High Court, if the period of limitation for such suit etc. had expired on an earlier date during the vacation. According to him, if the last date of limitation for the institution etc. of any suit, appeal or application fell within the period of the vacation, the institution should have been made on that date and could not be postponed till the date of the re-opening of the High Court. The contention of Shri Sethi cannot be accepted. The first paragraph of the notification clearly states that the High Court was closed during the period from 2nd June, 1969 to 11th July, 1969. No doubt, the second paragraph of the notification states that the offices of the High Court would remain open and would receive from parties or persons such petitions and other filings as they may choose to present. Reading the two paragraphs together, it is clear that while the High Court was closed for summer vacation from 2nd June, 1969. to 11th July, 1969 both days inclusive it was open to parties or persons who wanted to file any suit or appeal or application to do so during the vacation, if they so choose. The words 'as they may choose' used in the second paragraph are significant. The said words left the choice to the parties to file any suit or appeal or application during the period of the vacation. Apparently, the idea was to provide facilities to parties or persons who wished to file any suit, appeal or application during the vacation either for obtaining urgent orders or for 'avoiding the risk involved in waiting till the date of reopening or for the sake of convenience. In my opinion, [the effect of the Notification was that the High Court was closed within the meaning of section 4 of the Limitation Act from 2nd June, 1969, to 11th July, 1969. and any suit, appeal or application for which the prescribed period of limitation expired on a date during this period could

be instituted, preferred or made on the date on which the High Court reopened i.e. on 12th July, 1969] Reference was made by Shri Sethi to Tata Industrial Bank Limited v. Abdul Husain Hakim Ji, A.I.R. 1924 Bom 144 Dharamsi Morarji Chemical Co. Ltd. v. Occhavilal Hargovindas Shah, Air 1927 Bom 480, Bachivappa Modali v. Ayyasami Ayyar, I.L.R. 5 Mad 189. The British India Steam Navigation Co. v. H. M. Sharafally Marchand, A.T.R. 1923 Mad 435, Ramani Raji Mohli v. Todapouri Maniah A.T.R. 1959 A.P. 103, Petloh Muhammad v. Chothu Ram, Air 1921 Lah 237, Hira Lal v. Sojan Chand, Air 1933 Lah 239 , Babu Lachmeshwar Prasad v. Babu Girdhari Lot, : AIR1939 Pat667 . Kishan Lal v. Tansukh Rai, A.T.R. 1941 Nag 261, Akhtari Bibi v. Raj Laxmi, Dehi, 59 C.W.N. 684, and Rambir Narhargir Gosai v. Prabhakar Bhaskar Gadhwai and others, A.T.R. 1955 Nag 300.. An un-reported Judgment of a Division Bench of this Court (Hardayal Hardy and Jagjit Singh, JJ.) in Municipal Corporation Delhi v. Chaman Dass, Criminal Appeal No. 125 of 1967, pronounced on 16th August, 1969, was also referred to by Mr. Sethi. In some of the decisions, the view was taken that if the 'offices' of the Court remained opened during the relevant period, the 'Court' could not be regarded as closed for purposes of section 4 of the Limitation Act. A different view was taken in the other decisions. Whether a Court is closed or not for the purposes of section 4 of the Limitation Act has to be decided in each case according to the language used in the Notification issued by the High Court. It is not necessary to consider the above decisions in detail in the view taken by me regarding the interpretation of the Notification issued by this Court in the present case, that the words 'as they may choose' meant that the Court would be closed during the period mentioned in the Notification for 'all purposes including that of limitation but that the offices of the Court would, however, remain open to receive petitions and other filings, so as to enable parties to file petitions etc. if they so choose for any reason. The preliminary objection is. therefore, rejected. the second appeal is held to have been filed within the period of limitation.

(9) Coming now to the merits of the case, the only question which arises for consideration in this second appeal, as already stated. is as to whether the Tribunal was right in holding that the premises in dispute was bona fide required by Smt. Triberi Devi and the members of her family for their occupation. It appears from the evidence that Smt. Tribeni Devi has four sons, namely, Beni Pershad,

Ramesh Chand. Roshan Lal and Daya Krishan, and a daughter named Maya Devi. Beni Pershad has his wife and three children. Ramesh Chand has his wife and one child. It appears that Roshan Lal has been missing since 1958 and nothing has been heard of him since then. Daya Krishan is employed in Banaras University. Maya Devi was married and has been living in Banaras. Thus the persons in the household of Smt. Tribeni Devi who were residing in the house No. 504 on the date of her application for eviction were Tribeni Devi, Beni Pershad, his wife and three children, and Ramesh Chand his wife and one child. A plan of the house has been filed as Exhibit A-10. It shows that there are three rooms, one small room and three kothas on the ground floor, three rooms and four kothas on the first floor, and one room and two kothas on the second floor. Out of the rooms and kothas on the ground floor, the appellant, Jagan Nath, has been in occupation of the small room and two kothas. One room and one kotha are stated to have been in a state of dis-repair and unfit for being used for residential purposes. Shri Ramesh Chand, who is an Advocate has been using the remaining two rooms on the ground floor as his office. As regards the first floor, Shri Ramesh Chand, his wife and child have been using one room and one kotha, while Shri Beni Pershad, his wife and three children have been using the remaining two rooms and three kothas. As regards the second floor, Smt. Tribeni Devi has been using the room and the two kothas on the second floor. The Additional Rent Controller took the view that the accommodation which was already in the possession of Smt. Tribeni Devi and the members of her family was quite sufficient for them, and they were not in genuine need of any further accommodation. It appears to have been argued before him that the family had no drawing and dining rooms, and that the small room and the two kothas which the appellant has been in occupation could be converted into and used by the family as a drawing-dining room. The Additional Rent Controller observed that if the two rooms, marked as 'P' and 'Q', on the ground floor which have been in a state of disrepair are got repaired and renovated, they could be used for the purpose for which the family need accommodation. He also added that Shri Ramesh Chand was not paying any income-tax, while his brother Shri Beni Pershad was earning only Rs. 200.00 per month, and that a family of their status did not need any further accommodation. On the other hand, the Tribunal took the view that an Advocate does not lose his

status of being a respectable person merely because he is not an income-tax assessed and that the suggestion of the Additional Rent Controller that if the room and the kotha which have been in a state of dis-repair are renovated they could be used by the family for the purpose for which they wanted further accommodation was not correct. The Tribunal, on a consideration of the circumstances and the evidence in the case come to the conclusion that Smt. Tribeni Devi and the members of her family required bona fide further accommodation. The question as to whether the landlady required bona fide further accommodation for occupation by her and the members of her family is no doubt a mixed question of law and fact as observed by the Supreme Court in *Kamla Soni v. Roop Lal*, Civil Appeal No. 2150 of 1966, pronounced on 26th September 1969. But, the Question has to be considered and decided according to the facts in each case. It is true that the need of the landlady and the members of her family is not to be unreasonable or fanciful. But, in the present case the requirement of further accommodation by Smt. Tribeni Devi and the members of her family for their personal occupation cannot be regarded as either fanciful or unreasonable. Shri Aggarwal argued that the actual purpose was not specified in the notice (Ex. A-11) issued to the appellant by the landlady, and that there was no evidence to show that the landlady and members of her family were accustomed to having a dining room and a drawing room. The argument has no force. There is no legal requirement that the actual purpose for which the landlady would use or utilise the portion in the occupation of the tenant should be specified in the notice issued by her. Nor is it reasonable to suggest that because the family was not accustomed to having a dining room and a drawing room previously, they should continue with their old habit and should not cultivate a new habit of setting apart a portion of the house for using the same as drawing and dining room or rooms. Shri Ramesh Chand is an Advocate and, as pointed out by the Tribunal, his status and respectability cannot be regarded as any the less merely because he was not an income-tax assessed. The desire of the landlady and the members of her family to have a drawing room and a dining room cannot be said to be an unreasonable or whimsical or capricious desire. It is in the evidence of A.W.3 and A.W.7 that the family is a respectable family, and that the members of the family have no separate drawing room and dining room, and they require the portion in dispute as

the accommodation is not sufficient. Further, the landlady is stated to be aged about 70 years, and it is admitted by R.W.I that she comes down from the second floor when it is hot. It is also in the evidence of A.W.I, A.W.3 and A.W.7 that the children of Shri Beni Pershad are school-going children and have no separate study room. Thus, the plea of the landlady that the portion in the occupation of the appellant is required by her and the members of her family for their occupation cannot be regarded as not bona fide. This is also borne out by the fact that she got vacated three portions earlier, and did not let them out again.

'In deciding the question as regards the bona fide nature of the requirement of the landlord, the Controller has to see whether the landlord, in fact, desires possession and genuinely intends to occupy the premises in question, whether there is no collateral or ulterior object in getting the premises vacated, and whether the alleged requirement is not a device or a subterfuge.'

(10) In *Om Parkash Singal v. Roshan Lal Khanna*, 1969 D.L.T. 366 I.D. Dua, Cj, observed as follows :-

'The word 'bona fide' as used in proviso (e) has been considered judiciously in a number of decisions and this interpretation is no longer in controversy. It means. genuinely or in good faith and it conveys an idea of absence of intent to deceive. If the owner-landlord is not considered to be seeking eviction on false pretext of acquiring additional accommodation with some collateral purpose or oblique motive and his requirement cannot be considered to be inspired by a pure fanciful whim, the plea of bona fide requirement put forth by the landlord- owner deserves ordinarily to be upheld. As a broad workable rule, the landlord must be left to assess his requirements in the background of his position, circumstances, status in life and social and other responsibilities and other relevant factors.'

(11) Again, in *Punjn Mal v. Smt. S. L. Keshwari*. 1969 D.L.T. 264.D. Dua. CJ. held as follows :-

'THE expression 'bona fide requires' has been used designedly. Neither the word 'desires' nor the word 'needs' has been used and this should negative the two extreme views which are not infrequently canvassed in cases arising under this

clause. Mere desire or absolute need or necessity are both erroneous approaches on the plain language of this provision. For the purpose of finding the bona fide requirement of the landlord, all relevant facts and circumstances including his status, position, social obligations, etc. have to be taken into account as reasonably influencing the individual landlord's requirements. It is neither feasible nor desirable, and indeed I find it highly impracticable to exhaustively enumerate such facts and circumstances as may apply to all cases, serving as a straight racket because each individual landlord has his own problems and requirements. His bona fides seems to me to be the crucial test and this, broadly speaking, must be a question of fact in each case.'

(12) The Tribunal has found that Smt. Tribeni Devi and the members of her family required bona fide the small room and the two kothas in the occupation of the appellant for their personal occupation. The said finding cannot be regarded as one which calls for interference by this Court in second appeal under section 39 of the Rent Control Act. The second appeal, therefore, fails and is dismissed. The landlady, however, shall not be entitled to obtain possession of the portion of the premises in the occupation of the appellant before 20th September, 1970, as provided in sub-section (7) of section 14 of the Delhi Rent Control Act. In the circumstances of the case, the parties are directed to bear their own costs in this second appeal.