

Kailash Chand Vs. Sakhir Chand

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Court : Delhi

Decided On : Aug-03-1983

Reported in : AIR1984Delhi177; 24(1983)DLT202; 1983(5)DRJ255; 1984RLR58

Judge : M.L. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 39

Appeal No. : Second Appeal No. 285 of 1981

Appellant : Kailash Chand

Respondent : Sakhir Chand

Advocate for Pet/Ap. : M.L. Mehra and; K.K. Sud, Advs

Judgement :

M.L. Jain, J.

(1) The appellant Kailash Chand is the landlord and Sakhir Chand is the respondent tenant. The premises in dispute,, are situated at No.2289-B/VIII, Aqabkalan Masjid, Hinduwara, Bazar Sita Ram, Delhi, An eviction application was filed on the ground of non-filament of rent and personal bona fide requirement. In regard to arrears of rent the learned Additional Controller held that notice of demand has been duly served and a conditional order under Section 15(1) of the [Delhi Rent Control Act, 1958](#) was passed. On the other ground regarding personal

bona fide requirement, the learned Additional Controller rejected the application. The landlord is living with his mother and his case was that he was likely to be married and his mother insisted that he should vacate the premises. His mother entered the witness box and supported him. The learned Additional Controller found that the landlord did not mention the bona fide requirement in his notice. He again failed to specify the other accommodation available with him in Nai Sarak.

(2) The learned Tribunal on appeal found that the appellant had not got married even by the time the appeal was pending. The learned Tribunal found that the landlord was living since his childhood with his mother. He is now 45 years of age. He has no quarrel with his mother, The mother has not served any notice on him to vacate. Merely stating that she wanted the property was not sufficient. Rather she made the statement in order to help the son to have the premises vacated. The learned Tribunal was of the view that it was a case where the mother and the son in connivance with each other are trying to evict the tenant. The learned Tribunal, however, observed that only if the appellant gets married he may get fresh cause of action. Hence this appeal. It is now said that the appellant has since then married.

(3) The leaned counsel for the appellant contended that the learned courts below have misread the evidence. The learned Tribunal has recognised that if the appellant were married, he will require the premises in dispute. He has since then married. It was also urged the learned Tribunal fell into an error when it said that the mother did not take any steps by serving a notice on the landlord so that a threat of eviction could be made out. But there is no such requirement of law that the mother should serve a notice. Oral notice is sufficient. On the other hand, it is argued that it is not a case of the landlord that he was not marrying for paucity of accommodation. He did not even set up any case of marriage in his application. The landlord also failed to disclose the accommodation in his possession and that fact seriously put his bona fides into question. He 'concealed the fact that he has a three storeyed residential accommodation in Nai Sarak which is lying vacant. The appellant is the youngest son in the family and the natural affection for the mother will be to keep him rather than to throw him out. In the notice that the landlord gave to the tenant he said nothing about the requirement. As a matter of fact, no

question of law is involved in these circumstances. The premises were joint family premise, but by a collusive decree obtained in 1964 the property was declared to belong to the mother though here husband is alive and she had five sons.

(4) I have considered over the matter. No doubt, the courts can take into consideration the subsequent events of the marriage of the appellant. But the two facts make the requirements mala fide. Firstly, the accommodation at present with the appellant is sufficient for him and secondly, the suit filed by his mother on 16-6-1964 against her husband and children appears to be a collusive one. It was not contested. The courts below, therefore, rightly held that there was want of bona fides on the part of the landlord. The finding is a finding of fact. I see no substantial question of law involved in this appeal, which is hereby dismissed. No costs.

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