

Agan Lal Vs. Kapuri Devi

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Court : Delhi

Decided On : Sep-24-1973

Reported in : 1974RLR63

Judge : H.L. Anand, J.

Acts : Delhi Rent Control Act - Sections 14

Appeal No. : Second Appeal No. 113 of 1973

Appellant : Agan Lal

Respondent : Kapuri Devi

Advocate for Pet/Ap. : S.P. Attri and; I.D. Ahluwalia, Advs

Judgement :

H.L. Anand, J.

(1) This second appeal U/S 39 of Delhi Rent Control Act, 1958, must be dismissed on the short ground that what the appellant seeks to raise are concluded by the concurrent findings of facts by the court below which could not be allowed to be reargued in the circumstances of this case in second appeal.

(2) The facts leading to the appeal lie in narrow compass. The appellant has been a tenant in the premises in dispute for the last about 30 years. The respondent had

purchased the property from the previous owner who in turn had purchased it from the. owner who had let out the premises to the appellant. The respondent sought the ejectment of the appellant, inter alias on the ground that premises in dispute had been let out to the appellant for the use as a residence and that since that appellant and members of his family shifted their residence to a house built by the appellant's wife, neither the appellant nor any member of his family has been residing in the premises in dispute, for a period of six months immediately before the date of the institution of the action for ejectment thereby rendering the appellant liable to ejectment under clause (d) of proviso to sub-section (1) of Section 14 of the Act. The allegation was denied by the appellant and on the trial of the application, the controller returned the finding that the appellant and other members of his family had shifted their residence to that house and that neither the appellant nor any member of his family has been residing in the premises in dispute during the requisite period and accordingly made the order for ejectment of the appellant from it under clause (d) aforesaid repelling the contentions of the appellant (a) that the Premises in dispute had been let out to the appellant both for residential and commercial purpose (b) that notwithstanding the shifting of the appellant's residence and that of other members of his family to the new house, the appellant had been carrying on business in a portion of the premises, (c) that an employee or the appellant in relation to his business had been residing in the premises, (d) that the appellant used the premises for rest and lunch during lunch time and (d) that the appellant should be deemed, therefore, to have been residing in the premises. The order was upheld by the Tribunal in appeal. The other grounds on which ejectment of the appellant was sought were turned down by the Controller and the finding of the Controller having not been challenged before the Tribunal do not survive for the purpose of the present appeal.

(3) The impugned orders have been assailed on behalf of the appellant on two grounds, namely : (a) the premises in dispute were not let out to the appellant for, the purposes of residence-cum-business and clause (d) of proviso to sub-section (1) of Section 14 would have no application and (b) the appellant would be deemed to have been residing in the premises in dispute inasmuch as the appellant has been, carrying on some business operation in a portion of it and/or using the premises for the residence of an employee and for his own rest and it

could not, therefore, be said that the appellant had not been using the premises for the purpose of residence.

(4) On the first question, the learned counsel for the appellant urged that before the respondent could successfully invoke clause (d) of proviso to sub-section (1) of the Act, it was incumbent on the respondent to establish that the premises in dispute had been let out to the appellant for the purpose of a residence and urged that inasmuch as respondent failed to establish the aforesaid fact, the condition precedent to the application of the said clause had not been satisfied and the order of ejection of the appellant on the ground envisaged by clause (d) could not be made.

(5) Learned counsel for the respondent however, contended that although there was no direct evidence from either side as to the purpose for which the premises were let out to the appellant by the then owner of the property, there was sufficient evidence consisting of consistent user of the premises as residence by the appellant over the years, the nature of the construction, the locality in which it was situated and other surrounding circumstances which would justify the concurrent finding of fact by both the courts below that the premises were let out to the appellant for the purposes of a residence and urged that the condition precedent to the application of clause (d) of proviso to sub-section (1) of section 14 of the Act had been fully satisfied.

(6) Learned counsel for the respondent further contended that the appellant had himself admitted in cross-examination that the premises in dispute had been let out to the appellant for the purpose of a residence but merely contended that the appellant had been incidentally using a part of it for the purpose of business and that even on the appellant's own showing, the premises had been let out for the purpose of a residence and may have been used subsequently substantially for purpose of a residence and incidentally for the purpose of business and that requirement of clause (d) of proviso to sub-section (1) of Section 14 would still be satisfied. It appears to me that the contention of the respondent must prevail.

(7) While it is true that there is a clear distinction between the 'purpose' for which a premises may be let by a landlord to a tenant and the 'actual use' to which a

premises may be put by the tenant after it has been so let but if primary evidence such as the instrument of lease or the statement of the landlord as to the purpose for which the premises were let out or of the receipt executed by the landlord in favor of the tenant is not available, and in the present case neither party has led evidence as to the terms of the initial letting, it is open to the landlord to produce other evidence to show that the premises were let out for a residence and this evidence may be of the actual user to which the premises may have been put by the tenant, the purpose for which the premises in dispute could, having regard to normal course of events taking into account the type of the structure and the area in which it is located and in such a case, the Court would be entitled to consider such evidence for the purposes of determining the question as to the purpose for which the premises were let out to the tenant.

(8) In the present case, the respondent has led evidence to show that the appellant has been using the premises throughout for the purpose of a residence and has never conducted any business in any part of it and the Courts below, after considering the aforesaid evidence and the statement of the appellant that the premises were let out to him for residence but he had been using a part of it, incidentally for the purpose of business, have returned a concurrent finding that the premises were let out to the tenant for the purpose of a residence and the appellant has not been able to make out a case for the aforesaid question being re-opened in Second Appeal.

(9) Even otherwise, on the appellant's own showing the premises were let out for a residence and had been primarily used for the purpose of a residence and it was only incidentally that a part of it was used for 'business deals', the appellant throughout having a separate premises for the purpose of his business, the premises were in any event substantially used for the purpose of a residence and the condition precedent for the application of clause (d) of proviso to sub-section (1) of section 14 had, therefore, been fully satisfied. The first contention of the appellant must, therefore, fail.

(10) On the second question, it was argued on behalf of the appellant that in as much as the appellant though not residing in the premises, had been using it for

the purpose of (a) maintaining accounts, (b) the residence of his employee in relation to his business and (p) for his rest and for lunch during lunch interval, the appellant would be deemed to have been residing in the premises notwithstanding that the appellant and members of his family had taken up residence in the new house..

(11) While there is no doubt that where a tenant incidentally uses a part of the residential premises for the purpose of maintenance of accounts of his business or where only an employee of the tenant in relation to his business resides in the premises, it could not be said on any reckoning that the tenant has been 'residing' in the premises within the meaning of the expression used in clause (d) of proviso to Sub-Section (1) of Section 14 of the Act, the contention of the appellant that he would be deemed to be residing in the premises even though he may be using the premises only during lunch hours for the purpose of lunch and rest; does raise a question the decision of which would depend on the true construction and correct interpretation of the term 'residing' appearing in the said clause, these questions, however, unfortunately for the appellant, do not survive in the present case because the Courts below have returned a concurrent finding of fact against the appellant which are a necessary foundation for these questions, and have held that the contention of the appellant that the part of the premises was being used for maintenance of accounts or for the residence of the employee or for lunch and rest during lunch interval, by the appellant are false and no case has been made out by the appellant for reopening these questions of fact in Second Appeal

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