

Ram Swaroop Vs. Sujan Singh and anr.

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Court : Delhi

Decided On : Jan-04-1982

Reported in : 21(1982)DLT192

Judge : Sultan Singh, J.

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

Appeal No. : Second Appeal No. 466 of 1980

Appellant : Ram Swaroop

Respondent : Sujan Singh and anr.

Advocate for Pet/Ap. : Maehswar Dayal,; A.C. Mittal and; R.S. Bakshi, Advs

Judgement :

Sultan Singh, J.

(1) This second appeal under Section 39 of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act') is directed against the judgment and order of the Rent Control Tribunal dated 10th November, 1980 passing an order of eviction in favor of Sujjan Singh, Landlord-respondent No. 1 and against Krishan Lal, tenant-respondent No. 2 and Ram Swaroop appellant. Briefly the facts are that the property situated at 48, Jangpura Road, Bhogal, New Delhi was initially owned by Rajendra Prasad, minor. He became owner by means of a sale deed registered on

24th July, 1951. He sold the property to Inderjit on 28th August, 1973 and Inderjit sold the same to Sujjan Singh, respondent No. I on 17th October, 1978 during the pendency of the eviction proceedings. On 27th March, 1974 Inderjit filed the eviction application against Krishan Lal, tenant and Ram Swaroop, appellant, under clauses (b), (c) & (d) of the proviso to Section 14(1) of the Act alleging that Krishan Lal was a tenant in one Chhapar 15'-6' X 7'-0' and one Kotha 15'-6' X 13'0' of the suit property at the monthly rent of Rs. 8-50 per month, that the premises were let to him in 1951, that he sublet the entire premises to Ram Swaroop, appellant in 1967 without the written consent of the landlord, that the premises were let for residence but neither the tenant nor any member of his family had been residing for more than six months prior to the institution of the eviction application. The eviction was also claimed on the ground of misuse of the premises. Krishan Lal tenant admitted that he was a tenant and that Ram Swaroop was his licensee in the premises. Ram Swaroop appellant in his written statement pleaded that he was a tenant of the suit premises in his own right under respondent No. 1, that Krishan Lal was never a tenant and that the premises were let for residential-cum-commercial purposes to him by Rajendra Prasad who was the original owner-landlord. The landlord Inderjit in his replication pleaded that Ram Swaroop was not a tenant in the suit premises but was a tenant only with respect to the open place of land measuring 1' yard X 1' yard at Rs. 10.00 per month. The Rent Controller by order dated 6th August, 1977 dismissed the eviction application holding that Ram Swaroop appellant was a tenant in the suit premises under the landlord. On appeal the Rent Control Tribunal reversed the judgment and order of the Rent Controller and held that Krishan Lal was tenant in the suit premises and Ram Swaroop was an unauthorised sub-tenant. Hence this second appeal by Ram Swaroop.

(2) The crucial question in this appeal is : Whether Ram Swaroop was ever a tenant in the suit premises and Krishan Lal was not a tenant. The Rent Control Tribunal after discussing the documentary and oral evidence on record concluded that Krishan Lal was a tenant and not Ram Swaroop in the suit premises. Learned counsel for the appellant submits that receipt dated 1st February, 1961 Ex. Rx on account of rent for the month of January, 1961 was issued on behalf of Rajendra Prasad, minor-landlord owner in favor of Ram Swaroop. This receipt shows

payment of monthly rent Rs. 10.00 but no description of tenancy premises is mentioned therein. Similar receipts without disclosing the extent of the portion under the tenancy of Ram Swaroop were issued by Rajendra Prasad in 21st September, 1967 (Ex. R. 5), 1st March, 1969 (Ex. R. 4), 1st September, 1969 (Ex. R. 2) 1st December, 1969 (Ex. R. 1) and 1st March, 1972 (Ex. R. 3). It is admitted on behalf of the respondent-landlord that the appellant has been a tenant in the open space and all the receipts pertain to that open space and not the suit premises. Learned counsel further submits that a notice on behalf of Rajendra Prasad was given to the appellant on 14th October, 1968 (Ex. R2W1) wherein it is stated, 'that you are occupying a portion of House No. 48) Jangpura Road, Bhogal for residential purposes at a monthly rent of Rs. 10.00 '. Learned counsel argues that the premises were in occupation for residential purposes and therefore it must be presumed that it was not an open space but premises. I do not agree with this contention. The original notice is a carbon copy from which it appears that the guardian of Rajendra Prasad minor gave notices to the tenants and the name of the tenant was mentioned in ink while other contents were typed written. It appears that a general notice was given by the landlord to all tenants. The purpose of this notice was to get rent deeds executed from the tenants occupying the different portions under their tenancy. This notice also does not specify extent of the premises under the tenancy of Ram Swaroop. The notice even does not mention that the open space was under the tenancy of Ram Swaroop. The next contention of the learned counsel is that Krishan Lal was never in occupation of the suit premises, and he relies on the notice dated 8th February, 1974 Ex. A.W. 4/1 sent by Inderjit landlord to 'Krishan Lal son of Mehanga Ram, Tea Stall No. T-34, Near Jagan Nath Market, Ashram, New Delhi'. His contention is that the landlord while in the witness box was not in a position to state the residential address of Krishan Lal. He further submits that Krishan Lal executed a power of attorney dated 1st March, 1977 Ex. P.W. 1/1 in favor of his son Banwari Lal wherein Krishan Lal mentioned himself as a resident of Himatpur, Trilokpuri, Delhi. It is correct that the notice dated 8th February, 1974 and the power of attorney dated 1st March, 1977 mention two different addresses with regard to Krishan Lal but it does not mean that he was not a tenant in the suit premises. A person may have different addresses and the landlord may serve a notice at the address at

which the tenant may be available at that particular moment. So this argument does not help the appellant.

(3) Learned counsel for the appellant next submits that there is nothing on record to show that Krishan Lal was in occupation as a tenant any time prior to 1961. The appellant in his written statement only pleaded that he was a direct tenant under the landlord but never stated since when. He has produced on record the receipt Ex. Rx dated 1st February, 1961 from which it may be inferred that he occupied the said open space in January, 1961. As regards Krishan Lal there is evidence on record that he was inducted in 1951 prior to the filing of the eviction application by Inderjit-landlord. Rajendra Prasad minor landlord and his father Mam Chand on 8th December 1966 had previously filed an eviction application against Krishan Laltenant (Ex. A. 14). Krishan Lal filed a written statement but this eviction petition was dismissed by the Rent Controller vide the order dated 31st October 1967 on the ground that the contractual tenancy was not terminated. From the contents of eviction application Ex. A-14 it is proved that the premises were let to Krishan Lal in 1951 and the premises were shown in Red in the plan Ex. A-15 attached to the previous eviction application. The same premises are in dispute in the present litigation between the parties. It is thereforee clear that Krishan Lal was in occupation as a tenant in 1966 when the eviction application was filed but it was dismissed on the ground that the eviction notice had not been served. In the previous case the landlord had claimed the agreed rent of Rs. 15.00 while in the present petition the agreed rent was claimed at Rs. 8.50.00 . This difference in the rent claimed in the two eviction application is not material to determine the right of the appellant. The previous application was filed on the ground mentioned in clause (d) of the proviso to Section 14(1) of the Act i.e. neither the tenant nor any member of his family had been residing therein for a period of six months before the date of the filing of the application. In the column regarding subletting it was mentioned that there was no sub-tenant. Thus it seems that when Rajendra Prasad minor and Mam Chand filed the previous application the present appellant was not in occupation of the disputed premises. On the contrary from the contents of the application it is apparent that the suit premises were lying locked on the date when the eviction application was filed. Thus it can be inferred that Ram Swaroop, appellant, came in occupation of the suit premises after the filing of the previous

eviction application. Learned counsel for the respondent submits that there cannot be any doubt about the contents of the previous eviction application filed in 1966 by Mam Chand and Rajendra Prasad, previous landlord. He further submits that it cannot be imagined that previous eviction application was filed with a view to fabricate some evidence for the subsequent litigation. He further submits that had there been any third person in occupation of the suit premises in 1966 the landlord would have made him a party and would have taken the ground of eviction as mentioned in Section 14(1)(b) of the Act. Learned counsel for the appellant has not been in a position to point out any evidence that the appellant was a tenant of a portion in occupation of the suit premises except the open space referred to above. In 1962-63, from the property taxes assessment record maintained by the Corporation Ex. A. 14/13 it is apparent that Krishan Lal was a tenant in suit premises on ground floor at Rs. 8.50 per month. The electoral roll of 1961 for election of members to the Lok Sabha shows that Krishan Lal was a voter from the suit premises. The appellant has not filed the voters list of 1961 to show that he was a voter from the suit premises. On the contrary the landlord had filed a copy of the electoral roll for election of the Lok Sabha for the years 1965 and 1971 Ex. A.W. 4/15 and A.W. 4/16 showing that Ram Swaroop appellant and his family members were voters from the house at 7, Sidharath Basti, Block 'A' Hari Nagar Ashram, Jeewan Nagar, Delhi in South Delhi. Thus from the voters list and property tax record it is clear that Krishan Lal was a tenant and the voter from the suit premises while the appellant was not in occupation of the suit premises. Further Rajendra Prasad sold this property on 28th August, 1973. He served a notice Ex. A.I dated 24th September, 1973 upon the appellant mentioning that he was a tenant at Rs. 10.00 per month using a space of 1' X 1' yards only. This notice was served as per acknowledgment card Ex. A. 2. The contents of this notice were never challenged by the appellant at any stage. There was no reply to this notice and there was no written or oral statement of the appellant or anybody else disputing the contents of this notice. Rajendra Prasad had also sent a notice Ex. A. 3 dated 24th September, 1973 to Krishan Lal mentioning that he was a tenant of Chhaper. This notice it appears was not served as he was not residing in the premises. Further the respondent landlord has filed the counter-foils of the receipts issued to Ram Swaroop with regard to the open space. These counter-

foils are Exs. A-5 to A-9. The original of other counter-foil receipt A-5 is R-5 filed by the appellant. The original of other counter-foils Ex. A-6 to A-9 have not been filed by the appellant. These counter-foils mention that appellant was tenant of open space and are signed by the sons of the appellant. The appellant has not filed the original receipts to dispute the correctness of these counter-foils. There is thus sufficient evidence on record to hold that Kishan Lal was a tenant in the suit premises and the appellant was never a tenant at any time in the suit premises. I cannot find any infirmity in the judgment of the Rent Control Tribunal. There is no merit in the appeal and the same is, therefore, dismissed but with no order as to costs.

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