

Pal Singh Vs. Sunder Singh

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Court : Delhi

Decided On : Jan-30-1986

Reported in : 29(1986)DLT385; 1986(10)DRJ258

Judge : Charanjit Talwar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Section14(1)

Appeal No. : Second Appeal No. 326 of 1980

Appellant : Pal Singh

Respondent : Sunder Singh

Advocate for Pet/Ap. : D.L. Malhotra,; Sunil Malhotra and; D.K. Kapur, Advs

Judgement :

Charanjit Talwar, J.

(1) By this second appeal Pal Singh seeks setting aside of judgment passed on 14th April, 1980 by Shri V.S. Aggarwal, Rent Control Tribunal, Delhi whereby while reversing the order of the Additional Rent Controller the tenant-appellant herein was directed to be evicted under Section 14(1)(e) of the Delhi Rent Control Act.

(2) The landlord namely Sunder Singh had filed the application for eviction of his tenant from three rooms and a courtyard in premises No. 2216 to 2222, Gali Inder

Chammar, Teliwara, Delhi on the ground that the said portion of the premises which had been let out for residential purposes was bonafide required by him for himself and members of his family residing with him. The eviction petition was contested by the appellant-herein and a preliminary objection was raised that as he was not the sole owner of the property in question the landlord. Sunder Singh, had no locus standi to file the petition. On merits it was urged that the property had been let out for residential-cum-commercial purposes. It was denied that the premises in dispute were required by the landlord. It is useful to quote the ground for which the eviction of the tenant was sought. This ground is contained in paragraph 18 (a) of the petition:-

'THE premises let for residence are bonafide required by the petitioner for himself and the members of the family residing with him. The petitioner has a large family comprising of three sons and five daughters. The accommodation with him is inadequate and he has no reasonably suitable accommodation with him. The petitioner is owner of the premises.'

(3) In reply to this paragraph the tenant-appellant herein averred :

'18(A)PARANO.18(a) of the petition is wrong and is denied. As already stated above the petition is not maintainable and there is no cause of action for filing this petition. The petitioner even has no locus standi to file this present petition. The premises were never let for residential purposes alone. The premises were let out to the respondent for residential-cum- commercial purposes and the same are being used for the same very purpose. therefore, the ground as mentioned in this para of the petition is not available to the petitioner at all and the petition merits dismissal. The petitioner is not owner of the premises in the occupation of the respondent and even is no occupation of a suitable residential accommodation. The petition has been filed wrongly'.

(4) The learned Additional Controller on assessment of the evidence brought on record by the parties in support of their respective -claims found that the eviction petition was not maintainable since the appellant was not the sole owner of the property. It was observed that it was necessary to have joined Smt. Sham Kaur co-owner as a party either as the petitioner or as a respondent. On facts it was

held that the landlord had sufficient accommodation with him. The result was that the eviction petition was dismissed. It appears from the judgment of the learned Tribunal that the main question raised before it was regarding the maintainability of the eviction petition without impleading Smt. Sham Kaur the other co-owner of the property in dispute. It is not in dispute that vide Ex. AW2/1 which is the certificate of sale Smt. Sham Kaur was one of the associates of the petitioner and was a co-owner of the property. The learned First Appellate Court after noticing the law laid by the Supreme Court in *Sri Ram Pasricha v. Jagan Nath* : [1977]1SCR395 and *Smt. Kama Kaur v. B. P. Pathak* : [1977]3SCR412 held in the facts and circumstances of the present case that the landlord who was the co-owner of the property in question was competent to file the eviction petition. In *Pasricha's case* (supra) the submission made before the Supreme Court was that unless the landlord was the absolute owner of the property he could not evict the tenant under Section 13(1)(f) of the West Bengal Premises Tenancy Act. The plea was that the landlord means landlord under the appropriate General Clauses Act and, therefore, as there are other co-sharers the plaintiff alone could not file the suit for eviction. This contention was negated. It was held:

'THERE are two reasons for our not being able to accept the above submission. Firstly, the plea pertains to the domain of the frame of the suit as if the suit is bad for non-joinder of other plaintiffs. Such a plea should have been raised, for what it is worth at the earliest opportunity. It was not done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such'.

(5) It is the second reason which is applicable in the present case. Their Lordships further held in paragraph 29 of the report:

'JURISPIUDENTIALLY it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants.'

(6) As has been noticed by the learned Tribunal this decision was followed subsequently in the case of Smt. Kanta Kaur (supra).

(7) Mr. Malhotra learned counsel for the appellant, however, sought to distinguish the above two decisions by urging that it was apparent that the co-owners in the said two cases had no objection to the filing of the eviction petition by one of the co-owners. In the present case, he says that it is, on record that a suit had been filed by Smt. Sham Kaur against Sunder Singh for specific performance and for direction to him to execute the sale deed with respect to a portion of the premises bearing No. 2216 to 2222. That suit was decreed by Shri Jaspal Singh, Additional District Judge, Delhi and Sunder Singh was ordered to execute the sale deed in favor of the co-owner Smt. Sham Kaur. It is, however, admitted case of the parties that an appeal against that judgment and decree is pending and that the portion with respect to which the direction has been given is not the portion which is in occupation of the tenant. Even, according to the said decree this portion i.e. three rooms and the courtyard in question fall in the share of Sunder Singh who had filed the eviction petition. In my view the plea urged by Mr. Malhotra is misconceived. The law has been correctly noticed and followed by the learned Tribunal. I agree with its findings that in the present case the petition for eviction was maintainable without implicating Smt. Sham Kaur who is co-owner of the property. I may notice that in Mohan Lal Goela v. Shri Sri Krishan & Ors. : AIR1978 Delhi92 , it was observed by Avadh Behari.J. that a co-owner was as much an owner of the property as any sole owner. In the said case the facts were

that a suit was filed for possession by co-owner-landlord against heirs of a statutory tenant. A preliminary objection was taken that the suit was liable to be dismissed for non-joinder of necessary party. The learned Judge held 'suit cannot be thrown out on account of non-impleading of other co-owners as such. The absence of other co-owners on record does not disentitle co-owners-landlord from suing'.

(8) Mr. Malhotra strenuously urged that as the Appellate Court has ignored the evidence on record while reversing the judgment of the learned Additional Rent Controller, this court on the facts and circumstances of the case ought to re-assess the facts. He particularly drew my attention to the findings of the learned Controller contained in paragraph 11 of the judgment wherein it has been held that the landlord had sufficient reasonably suitable accommodation already. The plea is that this finding has been reversed without going into the merits of the case by the learned Tribunal. At this stage I may note that during the pendency of the second appeal an application was filed on behalf of the appellant-tenant seeking that certain events subsequent to the passing of the impugned _ orders may be permitted to be brought on record. G.C. Jain, J. vide his order dated August 29, 1985 directed that the application be considered along with the appeal. During the course of arguments learned counsel for the parties agreed that Mr. Vimal Goel, Advocate be appointed as local commissioner to visit the premises and give his report regarding the three rooms on the ground floor in the premises in dispute, which according to the appellant had fallen vacant and were now in occupation of the landlord. The landlord's case, however, in reply to the application was that those rooms were in occupation of the legal heirs of the original tenants. It was also pleaded that those three rooms in any event could not be used for residential purposes as those were merely meant to be used as stores. Mr Goel filed his detailed report on 31st October, 1985 and corroborated the stand of the landlord-respondent. As per my directions he recorded the statements of the neighbours. He inspected the premises on 26th October, 1985 at about 12 noon in the presence of the representatives of the parties. From his detailed report it is apparent that the said three rooms which are situate on the ground floor of the premises in dispute; two of the rooms are in occupation of the legal heirs of Sat Pal and Dhanna Mal and the third room was in occupation of one Gurjeet Singh

who normally resided at Bombay but visited Delhi once or twice a month. From that report I am satisfied that the rooms are not in occupation of the respondent-herein. I may notice another fact that the landlord Sunder Singh died during the pendency of the second appeal and his legal heirs have been brought on record with the permission of the court. The objection of Mr. Malhotra that the learned Tribunal has not considered whether the portion from which the tenant-appellant is sought to be evicted is actually required bonafide is also not borne out. In paragraph 15 of the impugned judgment the learned Tribunal has noticed that the family of the landlord consists of himself, his wife, three sons, all of whom were married and five married daughters. It was found that the married sons were living with their father. Their bonafide requirement was considered to be the requirement of the appellant. In paragraph 16 of the judgment the learned Tribunal noticed the accommodation in occupation of the landlord. It was observed that one room in his occupation was being used as Pooja room. It was further noticed by that court that on this aspect no question was asked in cross-examination. After discussing the evidence on record, it was held thus "in the present case, keeping in view the large family of the appellant and the fact that it is only during the pendency of the petition that two of the sons have been married, in my opinion, the landlord certainly requires the property in view of the present family dependent upon him and I consequently hold that the appellant bonafide requires the property and now does not have suitable alternative accommodation'.

(9) I agree with the above findings.

(10) I may note that some attempt was made by Mr. Malhotra learned counsel for the appellant to show that immediately prior to the filing of the petition the landlord had rented out a few rooms on the ground floor. This point, it appears, was not raised before the first Appellate Court. At the outset I have quoted the relevant portions of the pleadings. This fact was not even raised therein. I do not consider appropriate to allow the appellant to raise this question at this stage. The result is that the appeal is liable to be dismissed as it is without merits. Ordered accordingly. No order as to costs.