

Kamla Devi and ors. Vs. Satya Parkash Goel and ors.

Kamla Devi and ors. Vs. Satya Parkash Goel and ors.

SooperKanoon Citation : sooperkanoon.com/691951

Court : Delhi

Decided On : Feb-28-1986

Reported in : 33(1987)DLT151; 1988(14)DRJ237; 1986RLR391

Judge : D.K. Kapur, C.J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 2(1)

Appeal No. : Regular Second Appeal No. 124 of 1972

Appellant : Kamla Devi and ors.

Respondent : Satya Parkash Goel and ors.

Advocate for Pet/Ap. : B.S.C. Singh and; A.B. Dayal, Advs

Judgement :

D.K. Kapur, C.J.

(1) This is a Regular Second Appeal arising from a suit for possession. Dr. Walaiti Ram was a tenant in shop No. 53, Panchkuian Road, New Delhi. He also had a residential flat just above the shop. The two premises were independently let out at Rs. 23/13.00 Annas and Rs. 28/2.00 Annas per month but the tenancy was consolidated and the standard rent of the property was fixed at Rs. 50.25 np per month by the Court. In other words. Dr. Walaiti Ram was a tenant, in commercial-cum-residential property half of which being commercial and half of it being

residential.

(2) It appears from the facts found by the Court that the tenancy of Dr. Walaiti Ram was terminated by a notice to quit dated 22-7-1956. The case of the plaintiff was that Dr. Walaiti Ram became a statutory tenant. Later on Dr. Walaiti Ram died on 11th November, 1959. So, the stand of the plaintiffs was that the statutory tenant having died and there being no inheritable interest left in the property, the property had to be vacated as there was no tenant in the same within the meaning of Section 2(1) of the Delhi Rent Control Act, 1956.

(3) Undoubtedly, the legal position accepted by the Courts at one time was as on the death of the statutory tenant, the property would pass back to the landlord as there was one inheritable interest of the statutory tenant. There was later an amendment regarding the position of residential premises. That is contained in Section 2(1)(3) with its various Explanations. It was sought to protect certain heirs of the tenants in residential premises from being evicted on this ground, i.e. if a statutory tenant died, certain persons who were dependent on him would nevertheless either get a life tenancy or be protected from eviction. At the time this case was decided, 1976 Amendment had not come. So, the trial court decided this case on the footing that the tenancy would come to an end but it held that the tenancy had not come to an end but it held that the tenancy had not come to an end because the tenancy was not validly terminated. In appeal the learned Additional District Judge held that the termination to the tenancy was valid and the suit was decreed. The appellate decree was passed in 1972 before the amendment of Section 2(1) introduced by the Delhi Rent Control (Amendment Act No. 18) of 1976 which gave certain protection to persons who were heirs of a statutory tenant in residential premises.

(4) Since then judgment of the Supreme Court in *Gian Devi v. Jeewan Kumar*, : AIR 1985 SC796, has come and it has been held that heirs of a statutory tenant are protected. In other words, statutory tenancy is also inheritable like any other tenancy and heirs are protected from eviction. This is particularly true of commercial premises. The Court pointed out the anomaly resulting from 1976 Amendment in the Delhi Rent Control Act whereby in the case of residential

property a lesser protection was given, i.e., if a person who was tenant in a commercial premises died, the heirs would enjoy the same rights but if the tenant in residential premises died then only some of the heirs would get some protection and that too only limited.

(5) Learned counsel for the appellant contended that the present case is fully covered by the Supreme Court's judgment as the property is residential-cum-commercial, and as the property cannot be divided, the suit has to fail because the heirs become tenants. On the other hand the learned counsel for the respondent states that the property has to be treated as residential property in view of the judgment of a single Judge of this Court in *Bhoomitra Sharma v. Dev Raj Sood & Ors.*, (1982) 1 Delhi 440. I am afraid I cannot accept the stand of the learned counsel for the respondent. The fact of the matter is that the Supreme Court judgment, no heir of a tenant in commercial premises can be evicted because the definition of Section 2(1) has been extended to include a tenant or his heir. In other words, if a tenant dies, his heir also becomes a tenant. So, the heirs of Dr. Walaili Ram become tenants within the meaning of Section 2(1).

(6) I now quote the relevant portion of Section 2(1) : 'tenant' means any person by whom or on whose account or behalf the rent of any premises is, or but for a special contract, would be, payable, and includes :- (i) (ii)

(7) If this definition includes an heir also, then the heirs of Dr. Walaiti Ram are protected. The third clause would apply if the property is residential when the case reported in *Bhoomitra Sharma v. Dev Raj* (1982) 1 Delhi 440 was decided, the view was that a statutory tenant is not protected at all. So, in the case of residential-cum-commercial, premises, it was held that the protection available under Section 2(1)(ii) i.e. as available to residential property would be available to the heirs of the tenant. This was on the footing that if there is a shop-cum-residence, if a tenant cannot be evicted from residential premises he cannot be evicted from the shop. Now the position has been reversed and under the position as held by the Supreme Court, you cannot evict from the shop therefore you cannot be evicted from the residence. The result would be that the heirs of Dr. Walaiti Ram cannot be evicted at all because they have succeeded to the estate of

Dr. Walaiti Ram stepped into his shoes as tenant. To clarify the true legal position it may be said that the premises which are partly residential and partly commercial are protected to the extent that protection is available to the heirs of the statutory tenant both on account of the premises being residential as well as being commercial. If the property was purely residential, then the heirs are protected only to the extent indicated by the amendment to the Act, i.e., only some of the heirs are protected and that also partly as specifically provided in the Amendment Act of 1976. If the premises are commercial, then the protection is complete, i.e. the heirs step into the shoes of the deceased tenant. When the premises are partly residential & partly commercial the entire protection available to commercial premises is available to the entire/premises. The contention that only that protection is available which would apply in the case of residential premises is not well founded, because giving effect to it would remove the protection qua the commercial premises upheld by the judgment of the Supreme Court.;

(8) It, therefore, follows that this appeal has to succeed and the suit for possession has to be dismissed on the ground that the appellants have become tenants in the property in place of their predecessor, Dr. Walaiti Ram. Keeping in view the circumstances of the case and the changes in law at various times, I leave the parties to bear their own costs.