inder Saln Gupta and anr. Vs. Sushil Kumar and ors.

inder Saln Gupta and anr. Vs. Sushil Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/692021

Court : Delhi

Decided On : Aug-05-1982

Reported in : 22(1982)DLT389

Judge : Sultan Singh, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1) and 39; Code of Civil Procedure (CPC), 1908 - Order 41, Rule 27

Appeal No. : Second Appeal No. 111 of 1975

Appellant : inder Saln Gupta and anr.

Respondent : Sushil Kumar and ors.

Advocate for Pet/Ap. : R.P. Bansal,; S.P. Pandey,; N.N. Agarwal,;

Judgement :

Sultan Singh, J.

(1) This second appeal under Section 39 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') challenges the judgment and order of the Rent Control Tribunal dated 15th February, 1975 affirming on appeal the judgment and order of the Additional Rent Controller dated 30th July, 1971 passing an order of eviction under Section 14(1)(e) of the Act against the appellants and respondent Nos. 2 to 8.

(2) Briefly the facts are that on 17th August, 1968 Makhan LaI Jain, predecessor of Sushil Kumar, respondent No. 1 (hereinafter referred to 'the landlord') filed a petition for eviction of his tenant, Hira Lal Rustogi (predecessor of respondents Nos. 2 to 8), Inder Sain Gupta (appellant No.

1) M/s. Indra Printing Press, (appellant No.

2) alleging that one garage bearing Municipal No. 4711 forming part of No. 21, Daya Nand Road, Daryaganj, Delhi was let to Hira Lal Rustagi in 1945, that in April, 1968 the tenant sublet, assigned or parted with the possession of the premises without his permission and consent in writing to the appellants. The tenant pleaded that the firm Indra Printing Press (Appellant No.

2) consisting of himself and Indar Sain Gupta (appellant No.

1) was inducted as tenant in the suit premises i.e. the garage in 1947 for running a printing press, that he was not tenant in his personal capacity, that rent of the premises had always been paid by and on behalf of the firm appellant No. 2 from the funds of the firm, that the rent receipts were issued in his favor as partner, that the landlord was estopped from raising the plea of sub-letting, that the said firm was dissolved on 22nd April, 1968 and till then the rent had always been paid by the said firm, that he retired from the firm on that date and the assets and liabilities as well as the tenancy rights vested in appellant No. 1, proprietor of appellant No.

2. The appellants in their written statement pleaded that the firm appellant No. 2 had been a tenant since 1947, that Hira Lal Rustagi was never tenant of the premises in question, that he was partner of the said firm since 1947 along with appellant No. I, that the tenancy from the beginning of 1947 was in the name of the firm Indra Printing Press and there was no question of subletting or assigning or parting with the possession, that the rent receipt was issued in the name of Hira Lal Rustagi for and on behalf of the firm Indra Printing Press, that the rent had always been paid by the firm, that it was dissolved on 22nd April) 1968 when Hira Lal Rustagi retired.

(3) Hira Lal Rustagi, the tenant died on 8th March, 1970, during the pendency of the eviction proceedings before the Additional Controller who byjudgment and order dated 30thJuly, 1971 held that Hira Lal Rustagi alone was tenant in his individual capacity and the appellants never became tenants in the suit premises. The Additional Controller observed that 0m Parkash, R.W. I and Nem Chand, R.W. 2 were procured, tutored and interested witnesses and that the landlord never recognised the appellants as his tenants. On appeal the Rent Control Tribunal confirmed the judgment and order of the Additional Controller. The landlord died during the pendency of the appeal on 27th April, 1973 and his grandson Sushil Kumar (respondent No. 1) was substituted as his heir and legal representative by virtue of a Will dated 15th July, 1970. The appellants have filed this second appeal.

(4) Learned counsel for the appellants submits that the judgment and order of the Rent Control Tribunal confirming the order of the Additional Controller is perverse, based on misreading of evidence and is not sustainable in law. He submits that the statements of R.W. 1 and R.W. 2 were not taken into consideration by the Tribunal. Learned counsel further submits that the appellant firm consisting of Hira Lal Rustagi and Indar Sain Gupta, (appellant No. 1) took the premises from Makhan Lal, landlord in January, 1947 for the purpose of running a press, that negotiations took place with him in the presence of R.W. I, R.W. 2 Indar Sain Gupta and Hira Lal Rustagi that rent had always been paid by the firm though the rent receipts were issued in favor of Hira Lal Rustagi, that the firm Indra Printing Press had always been tenant and as such the ground of eviction under Section 14(1)(b) of the Act was not available. Learned counsel has referred to entire oral evidence on record and various documents namely, letters dated 20thJanuary, 1947 (Ex. R.W. 3/1) and 8th March, 1947 (Ex. R.W. 3/2) from Hira Lal Rustagi to the District Magistrate, Delhi, Partnership Deed dated 19th January, 1951 (Ex. R.W. 5/1) beween Hira Lal Rustagi and Indar Sain Gupta, Dissoultion Deed (Ex. R.W. 5/3) dated 15th May, 1968, copies of the entries from the cash book and ledger of the firm for the period from January, 1949 to April, 1968 showing payment of rent to Makhan Lal landlord. He submits that the oral and documentary evidence leads to only conclusion that the firm Indra Printing Press was the tenant) although there is no rent receipt in its favor. Indar Sain Gupta as R.W. 5

admitted that though rent was paid by the firm but all receipts were issued in favor of Hira Lal Rustagi. He admitted that no rent receipt was ever issued either in his favor or in favor of the firm Indra Printing Press, that he never protested for the issue of said receipts, that he never felt any necessity to make any protest, why the receipts were issued in the name of Hira Lal. R.W. 1 and R.W. 2 have stated that in January, 1947 they along with Hira Lal Rustagi and Indar Sain Gupta had gone to Makhan Lal when the landlord was informed that Hira Lal and Indar Sain Gupta were partners in the business of Printing Press, that they required the premises for the purpose of running press, that rent was settled and receipt signed by Makhan Lal landlord was issued that it was scribed by his son, and it was in favor of Hira Lal Rustagi. R.W. 1 is an associate of Indar Sain Gupta as both used to attend Shakha regularly. R.W. 2 has admitted that the receipt has always been issued in favor of Hira Lal, that his son and Indar Sain Gupta are partners in a firm Goel & Sons where Indar Sain Gupta has invested the entire capital, Indar Sain Gupta as R.W. 5 has admitted that all receipts were issued in favor of Hira Lal Rustagi. After reading the entire evidence on record, I am of the opinion that there is no ground to reverse the observations of the Addl. Rent Controller that R.W. I and R.W. 2 were procured, tutored and interested witnesses, that Hira Lal Rustagi alone was tenant, that the appellants were never accepted as tenants by the landlord. I also do not find that the finding of the Controller or the Tribunal is perverse. As a matter of fact there is no evidence on record to hold that the appellants were ever accepted as tenants, by Makhan Lal, landlord. The Partnership deed dated 19th January, 1951 recites that Hira Lal Rustagi and Indar Sain Gupta had become partners on 25th April, 1947 but now the allegation of the appellants is that the premises were taken on rent in January, 1947 by them as partners. There is no evidence oral or documentary that Indar Sain Gupta was ever a partner with Hira Lal Rustagi at any time prior to 25th April, 1947. Learned counsel for the appellants refers to the two letters dated 20th January, 1947 and 8th March, 1947 written by Hira Lal Rustagi to the District Magistrate, Delhi as partner of the firm, Indra Printing Press. These letters do not disclose who were the other partners of the said firm. The terms of the partnership between the two were reduced into writing and are contained in the deed dated 19thJanuary, 1951. Oral evidence, if any, regarding the terms of the partnership deed is excluded

under Section 91 of the Evidence Act. Further the two partners under Section 92 of the Evidence Act are debarred from leading any oral evidence contrary to the written terms of the partnership deed. Thus the story put up by the appellants that Indar Sain Gupta was partner with Hira Lal when the premises were taken on rent in January, 1947 is contrary to record and is not correct. The landlord pleaded ^k, that the premises were let in 1945 while the tenant and the appellant pleaded that the premises were taken on rent in January, 1947. Even if it is accepted that the premises were let in 1947 and not in 1945 it is not possible to hold on the evidence on record that Indar Sain Gupta (appellant No.1) joined Hira Lal Rustagi as partner prior to 25th April, 1947. The negotiations are alleged to have been taken place according to R.W.1 and R.W. 2 and R.W. 5 in January, 1947 when it is alleged that the partnership between the two was disclosed to the landlord. All this appears to be a concocted story. The conclusion is that Hira Lal Rustagi alone had taken the premises on rent and he joined Indar Sain Gupta as partner in the firm, Indra Printing Press on 25th April, 1947 which was dissolved on 22nd April, 1968. According to the dissolution deed the tenancy rights remained with Indar Sain Gupta and Hira Lal Rustagi retired from the firm in consideration of the amount in lieu of the goodwill and other assets of the firm. The dissolution deed recites that thereafter Indar Sain Gupta alone as Sole Proprietor of Indra Printing Press shall have right to use and be tenant of the suit premises. The tenant has no right to assign the premises to Indar Sain Gupta at the time of dissolution. The premises stood assigned to Indar Sain Gupta without the written permission of the landlord. This amounted to sub-letting, assignment or parting with the possession by the tenant within the meaning of Section 14(1)(b) of the Act. Learned counsel for the appellants further submits that if rent is paid from the funds of the partnership, the firm would be deemed to be a tenant and cited M/s. Amar Nath and others v. Mehman Wanti, 1973 R.C.R. 607. In that case Krishan Lal had taken the premises on behalf of the partnership firm. The rent was paid by the partnership firm. The landlord claimed that the firm was the tenant while the other persons pleaded that the firm was not a tenant. In these circumstances it was held that as Krishan Lal had taken the premises on behalf of the firm and the rent was paid by the firm, it was a tenant. The facts of that case do not help the appellants at all. Learned counsel next relies upon Smt. Saraswati Devi v. L. Gian Chand, 1970 R.G.R. 874.

The facts of that case are also not applicable to the present case. In that case it was held that the dissolution of the firm and constitution of a new firm in which two partners of the old firm continued the new business, did not amount to subletting, assignment or parting with the possession.

(5) Learned counsel for the appellants next submits that Makhan Lal landlord has not appeared as a witness. He says that Moti Lal A.W. I son and general attorney of Makhan Lal was not present at the time when negotiations for creation of tenancy took place. During his cross-examination it was not suggested that he was not present at the time of negotiations or that the negotiations for the creation of tenancy did not take place in his presence. The facts deposed by R.W. 1, R.W.2 the two witnesses and Indar Sain Gupta as R.W. 5 were also not suggested to A.W. 1 during his cross-examina- tion. Moti Lal A.W. 1, son and general attorney of the landlord has deposed that he has been general attorney of his father Makhan Lal looking after the suit property, that Hira Lal Rustagi alone was tenant of his father, that rent receipts were always issued in his favor and the counter-foils Ex. A. 2 to Ex. A. 72 during March, 1949 to April, 1968 issued in favor of Hira Lal Rustagi were signed by h''m, that the premises were not let to Indar Sain Gupta or the firm Indra Printing Press, that they were neither treated nor accepted as tenants of the suit premises at any time. In M/s. Chuni Lal Dwwicu Nath v. Hartford Fire. Insurance. Co. Ltd. and another, it has been observed, 'it is a well established rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness. If no such questions are put, the Courts presume that the witness' account has been accepted. If it is intended to suggest, that a witness was not speaking the truth upon a particular point, his attention must first be directed to the fact by cross-examination so that he may have an opportunity of giving an explaination'.

(6) Learned counsel for the appellants next submits that R.W. 1 and R.W. 2 were not crossexamined on the facts deposed by them regarding creation of tenancy. The cross-examination of these two witnesses suggests that the landlord never accepted their version as correct, their veracity was challenged by various questions. R.W. I admitted that he was an associate of Indar Sain Gupta as he used to attend Shakhas regularly, besides other questions. R.W. 2 admitted in

cross-examination that his son was a partner with Indar Sain Gupta who had invested the entire capital in the firm Goel & Sons. Statemen of R.W. 1 and R.W. 2 suggest that they were interested in Indar Sain Gupta. Moreover, all the witnesses have admitted that the receipts were issued in favor of Hira Lal Rustagi. According to the landlord, Hira Lal Rustagi was tenant. According to the appellants the firm Indra Printing Press consisting of Hira Lal Rustagi and Indar Sain Gupta became tenant. Thus the dispute was whether Indar Sain Gupta partner of Indra Printing Press ever became tenant under the landlord. The onus was upon the appellants. They have failed to discharge the same. On behalf of the landlord, there is evidence that Hira Lal Rustagi alone was tenant and appellants were never his tenants. In these circumstances it was not necessary for Makhan Lal to appear as a witness. If the appellants ever considered necessary the appearance of Makhan Lal as a witness they ought to have taken steps. If the appellants had desired to examine Makhan Lal, then it would have been the duty of Makhan Lal to appear as a witness. But no such desire was ever expressed on behalf of the appellants. There is no infirmity on the ground that Makhan Lal landlord did not appear as a witness. It is also stated by the learned counsel for the appellants that statements of R.W. 1 and R.W. 2 were not considered by the Tribunal. It is correct that there is no specific mention in the judgment about the deposition of these two witnesses But reading the entire judgment as a whole it appears that evidence brought to its notice was taken into consideration before confirming the judgment of the Additional Rent Controller.

(7) Learned counsel for the respondent-landloid submits that the finding to the fffect that Hira Lal alone was the tenant and the appellants were not tenants, is concurrent finding of fact, not. to be disturbed by this court in second appeal under Section 39 of the Act. He further submits that this court cannot re-assess the evidence and that tenancy is created by an agreement between the parti, s and not by mere payment of rent. There is substance in his submissions. The tenancy is created by a contract entered into between the parties. It may be oral or in writing. Payment of rent alone is not sufficient to create tenancy. In Manoharlal v.Ramratan, 1924 Nagpur 67 it has observed that a person paying rent is not necessarily a tenant, and whether a person is a tenant depends on the original agreement between him and the landlord. In Mohinder Kunwr Madam v. Madan

Mohan Lal and another, 1972 R.C.R. 112 it has been held that mere fact that brother of tenant paid the rent on behalf of tenant would not show either that brother had become tenant or that tenant had ceased to be the tenant. In Sheodhari Rai and others v. Suraj PrasadSingh and others, : AIR 1954 SC758 it has been held that payment of rent does not necessarily establish relationship of landlord and tenant and such payment may only prove permissive occupation not amounting to any right, or title to possession. In Trilok Singh v. Ram Prasad and another, 1971 R.C.J. 420 the premises were let to an individual who entered into partnership and the rent was paid out of the partnership funds. The firm was dissolved subsequently leaving the premises with a new partner. It was observed by A.P. Sen, J. (as he then was) that it was futile to contend that the partnership firm was in reality the tenant of the landlord merely because rents weie paid out of the partnership business. In that case there was nothing on record to substantiate that the landlord had assented to the transfer of the lease and the transfer of the lease-hold right to the new partner was held to be sub-letting of the premises without the consent of the landlord. Thus I am of the considered view that though the rent was paid out of the partnership funds to the landlord and all the receipts Ex. A. 2 to A. 72 for such payment were issued in favor of Hira Lal Rustagi and signed by him does not create relationship of landlord and tenant between the appellants and respondent No. 1. The tenant initially took the premises on rent prior to 25th April, 1947. He entered into partnership with Indar Sain Gupta. The firm was dissolved in April, 1968 and the suit premises were left with Indar Sain Gupta. This amounted to subletting, assignment or parting with the possession within the meaning of Section 14(l)(b) of the Act.

(8) Learned counsel for the respondent-landlord also submits that this court would not reassess evidence in second appeal. In Smt. Krishnawati v. Hans Raj, : [1974]2SCR524 a case under Section 14(1)(b) of the Act, it has been held that the finding of subletting was a finding of fact and under Section 39 of the Act the High Court can interfere in second appeal only if there was a substantial question of law. It has been observed that where there is no question of law, much less a substantial question of law, the High Court would be in error in interfering with concurrent findings of fact of the Rent Control authorities. In Mattulal v. Radhe Lal, : [1975]1SCR127 it has been held that 'a finding of fact,.....could not beinterfered

by the High Court in second appeal unless it was shown that in reaching it a mistake of law was committed by the Additional District fudge or it was based on no evidence or was such as no reasonable man can reach'. The Supreme Court in that case after referring to the evidence on record observed, "The Additional District Judge was clearly in error in relying on these two circumstances in support of the finding of fact reached by him. But that would not entitle the High Court to interfere in second appeal and set aside this finding of fact so long as there was some evidence to support it and it could not be branded as arbitrary, unreasonable or perverse. There is no doubt that here there was evidence to sustain the finding of fact arrived at by the Additional District Judge'. In the instant case before me there is sufficient evidence on record that Hira Lal Rustagi alone was the tenant and that there is no reliable evidence to hold that the appellants were ever accepted as tenants by the landlord. In Vinod Kumar v. Ajit Singh Ahluwalia , it has been held that the High Court was incompetent to re-assess evidence afresh and that on question of fact the High Court was bound by the decision of the Tribunal. In Maharaj Krishan v. Janendra Kumar Jam and others, 1969 R.C.R. 347 which was a case under Section 39 of the Delhi and Ajmer Rent Control Act, 1952 it was held that the High Court erred in reversing the finding of fact about subletting arrived at by the lower courts. This court in Des Raj and other v. M/s. Ramji Lal Kundan Lal, 1969 R C.R. 54 has observed that the High Court cannot appraise the evidence at appeal stage and come to independent conclusion under Section 39 of the Act.

(9) Thus I hold that the finding of the Addl. Controller and the Rent Control Tribunal regarding subletting, assignment and parting with possession of the suit premises in favor of the appellants is a finding of fact not to be disturbed by this court under Section 39 of the Act. Although I have gone through the entire evidence on record with the help of the learned counsel for the parties but I do not find any ground to reverse the finding. The appellants have failed to prove the alleged contract of tenancy between them and Makhan Lal, landlord.

(10) Learned counsel for the appellants has made an. application (C.M. No. 2458 of 1982) under Order 41 rule 27 read with Section 151 of the Code of Civil Procedure saying that there is ambiguity on record, that the landlord Makhan Lal

did not file the letter written by Hira Lal Rustagi to Makhan Lal with copy to the appellants intimating about his requirement from the partnership and that it was necessary to examine again Moti Lal A.W.1 son of Makhan Lal, landlord, Om Parkash R.W. 1, Nem Chand, R.W. 2 and Indar Sain Gupta, R.W. 5. Learned counsel for the appellants, as already stated, has read the entire evidence on record and I find that there is no ambiguity. A copy of the letter written by Hira Lal Rustagi to the landlord was sent to the appellants which they placed on record but did not prove the same. Even this letter does not improve the case of the appellants. There is no ground to re-examine the said witnesses as prayed for by the appellants' counsel. Provisions of Order 41 rule 27 of the Code of Civil Procedure are not at all applicable to the facts of the case Additional evi- dence cannot be permitted to be led to enable one of the parties to the litigation to fill up gaps. In State of U.P. v. Manbodhan Lal Srivastava, 1958 S.G.R. 533 the Supreme Court observed, 'It is well settled that additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting its case at the proper stage, and to fill in gaps. Of course, the position is different where the appellate court itself requires certain evidence to be adduced in order to enable it to do justice between the parties'. Thus the application for additional evidence is dismissed.

(11) This second appeal does not involve any substantial question of law. It is dismissed with no order as to costs.

(12) The appellants have been carrying on their business of running a press in the suit premises. I, thereforee, grant two months to vacate the premises and hand over vacant possession thereof to the landlord-respondent No.1 failing which respondent No.1 would be entitled to execute the order of eviction.