

**T.V. Krishnan Vs. Prativa Devi**

**T.V. Krishnan Vs. Prativa Devi**

**SooperKanoon Citation :** [sooperkanoon.com/692179](http://sooperkanoon.com/692179)

**Court :** Delhi

**Decided On :** May-01-1986

**Reported in :** 1986(11)DRJ327

**Judge :** G.C. Jain, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 14(1)

**Appeal No. :** Civil Revision Appeal No. 645 of 1985

**Appellant :** T.V. Krishnan

**Respondent :** Prativa Devi

**Advocate for Pet/Ap. :** P.N. Bhardwaj,; M.L. Bhargav and; K.M. Sharma, Advs

**Judgement :**

**G.C. Jain, J.**

(1) This is a revision petition under the proviso to Section 25(8) of the Delhi Rent Control Act, 1958 (for short 'the Act').

(2) Shib Nath Mukherjee was the owner of property bearing municipal No. C-192, Sarvodaya Enclave, New Delhi. He let it out to T.V. Krishnan, petitioner herein, on a monthly rent of Rs. 475.00 in February, 1975. Shib Nath Mukherjee died on March 24, 1979 leaving behind his widow Smt Prativa Devi as his sole heir. The

tenant started paying rent to her.

(3) On January 6, 1981 Smt. Prativa Devi brought a petition against the tenant for recovery of possession of the said property on the ground of personal bonafide requirement, i.e. under clause (e) of the proviso to Sub-Section (1) of Section 14 of the Act.

(4) It was admitted by the tenant that the premises in dispute had been let out for residential purpose. He however denied the ownership of Smt. Prativa Devi. Learned Addl. Controller on examining the evidence found that she was the owner of the premises in dispute. This finding was assailed in the revision petition. But in my view there is no merit in the contention raised in this behalf. Admitted facts are that Mukherjee was the owner of the premises in dispute. He died leaving behind his widow Smt. Prativa Devi as his sole heir. She being the sole heir, this property devolved on her and she consequently became the owner.

(5) The tenant in his evidence stated that Shib Nath Mukherjee had told him that he had bequeathed the house in favor of the son of N.C. Chatterjee. This is a hearsay evidence. There is nothing in the statement to suggest that he had seen any such will. Except this vague statement there was no other evidence. His statement therefore had no value and was rightly rejected by the learned Addl. Controller. The finding of the learned Addl. Controller that Smt Prativa Devi, was the owner of the premises in dispute is correct and is affirmed,

(6) The main controversy was about the bonafide requirement and non-availability of a reasonably suitable accommodation.

(7) The landlady was admittedly residing with N.C. Chatterjee in his house No. 4/20, Safdarjung Enclave, New Delhi. Admittedly she had shifted there along with her husband some time in the year 1970 and was living there since then. The plea set up by the landlady in the eviction petition reads as under :-

'THE petitioner had let out the premises to the respondent so that she could payback the loan taken for the construction of the house. The said loan has now been cleared by the petitioner and she wants to live in her own house. The

petitioner is putting ' up as a guest with one of the family friend Shri N C. Chatterjee in house no. 4/20, Safdarjung Enclave, New Delhi and she has no legal right to continue to live there. She has been staying there only as a guest due to good relations of the family with. Shri, N.C. Chatterjee.'

The pleas thus raised were (i) that the premises in dispute had to be let out to clear the loan taken for the purpose of its construction The loan had now been cleared and she wanted to live in her own house : and (.ii) that she was living in house No. 4/20, Safdarjung Enclave as a guest of N.C. Chatterjee, a family friend.

(8) There was not an iota of evidence to prove the first plea. It, therefore, does not survive. As regards the second plea it was held by the learned Addl. Controller that N.C. Chatterjee was in no way related to the landlady. She had no legal right to live there and had therefore no. reasonably suitable accommodation and her claim was bonafide. Learned Addl, Controller said :-

'THERE is no evidence to suggest that the petitioner has a legal right to live in the house of N.C Chatterjee. That must clinch the issue If the petitioner wants to return to her own property, I see no reason to smell mala fide in it.'

(9) The finding of the learned Addl. Controller that the landlady had no legal right to live in the house of N.C Chatterjee, a family friend,. was unassailable and has rightly not been assailed. Mr. P.N. Bhardwaj, learned counsel appearing for the tenant, however, contended that the fact that the landlady had no legal right to live in the house of Chatterjee, by itself, would not make the said accommodation, where she had been residing for more than 15 years, 'not reasonably suitable'.

(10) The expression 'has no other reasonably suitable accommodation' was interpreted by B.C. Misra, J. in Smt. Basi Devi v. Faqir Chand, 1971 P.L.R. (Delhi Section) 19 in these words :-

'ONE of the ingredients of clause (e) of the proviso to Sub-section (i) of Section 14 is that the landlord does not have other reasonably suitable residential accommodation. In my opinion the connotation of the said phrase implies three essential things (1) the landlord must have a legal right to reside in the said

accommodation, (2) the residential accommodation must be in fact available for occupation and (3) the same must be reasonably suitable for the landlord.'

In *M/s. Jagatjit Industries Ltd. v. RaJiv Gupta*, 1980, D.R.J. 147, Sultan Singh, J. held:

'BEFORE determining whether a landlord has accommodation for his residence it must be determined whether he has a right to remain in occupation of the existing premises. If he had no right it cannot be said that he has suitable accommodation with him.'

Similar view was taken by Sultan Singh, J in *Gurbachan Singh v. Raj Paul*, 1981, D.R.J. 109 and *M/s. J K. Industries Ltd. v.Lt. Col M .M .Lal*, 1981, D.R.J. 218.

(11) However, In *Satpal v. Nand Kishore & Another*, I. L.R.1983(1) Delhi 73 T.P S Chawla, J. on examining the dictionary meaning of the word 'has' used in the expression 'has no other reasonably suitable accommodation' the purpose for which the Act was enacted and the various decisions including *Smt. Basi Devi's* case, *Gurbachan Singh's* case and *JK. Industries'* case (Supra) and the Supreme Court decision in *Phairose Bamanji Desai v. Chandrakant M. Patel and Ors.* : [1974]3SCR267 , held :

'I think, the true test is whether, on an overall and reasonable view, it can be said that the landlord has suitable accommodation 'available for his use'. In deciding this question one should certainly have regard to the fact that the landlord has no legal right to the other accommodation: but, that is only a factor and not the end of the matter. For instance, if a landlord had been residing with his father for decades, and there is no cogent reason for the discontinuance of that arrangement, I think that in actually the landlord's need is met. He 'has' other a commotion 'available' for his use', though the erotically he can be turned out at any time My answer would be the other way if it were shown that there had been an estrangement and the father had asked the son to fend for himself so. It all depends on the facts, similar reasoning and considerations would hold if the landlord happened to be a father living with his son. '

(12) I am in respectful agreement with the interpretation laid down by T.P.S. Chawla, J. in the above mentioned decision. Any other interpretation, as observed in Satpal cafe would lead to unjust results. The accommodation where a landlord is residing, may be as a licensee that is at the sufferance of some other person, would not at his whim become unsuitable. Some reason, must be established to prove that it had since become unsuitable.

(13) In the present case the landlady was living with N.C Chatterjee, a family friend, since 1970. As a matter of fact her husband Shiv Nath .Mukherjee shifted there in his life time. The landlady was included in the ration card of N.C. Chatterjee, obviously as his family member. No reason has been given in the eviction petition as to why the said accommodation where she had been living for the last more than 15y ears had suddenly become unsuitable In her cross-examination she stated that she was not in good term with Mrs. Chatterjee. N.C. Chatterjee, who appeared as her witness, however, is silent on this point. He, on the other hand, stated that because of the residence of the landlady in his house he was feeling shortage of accommodation and he wanted the landlady to go to her own house. This evidence, in the absence of any pleadings, cannot be accepted. The plea regarding clearance of loan, as discussed above, has not been established. Thus there was no reason whatsoever to show that accommodation where the landlady had been residing all these years had now become unsuitable.

(14) Mr. M.L. Bhargava, learned counsel for the landlady, contended that in Sat Paul's case the landlord was living in the house of his son. There was some resemblance of right to live which was lacking in this case.

(15) In law, a father has no legal right to live in the house owned by his son I find no difference between the status of a landlord who was living as a licensee in the house of his son and the landlord who is living as a licensee in the house of friend. Often relations between friends are on strong footing than the relations between father and son.

(16) The landlord was also required to prove that she bonafide required the premises in dispute. The word 'bonafide' in the context means in good faith not for sham or colourable purpose invented for the purpose of evicting the tenant. It must

be honest in fact and circumstances. 'The word 'required' means that the premises are needed by landlord. There must be an element of need and not mere desire. The landlady in the present case is more than 70 years of age. She has no issue. There is no body to look after her. She has no income except the rental income from the premises in dispute. In these circumstances it is highly improbable that she would be able to vacate the premises in dispute and establish a separate dwelling. Her claim is not bonafide.

(17) For all these reasons the order of the learned Addl. Controller, being not according to law, was liable to be reversed. I consequently accept the petition, set aside the impugned order and instead dismiss the application of the landlady. Parties are however left to bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**