

S.L. Sehgal Vs. Om Parkash Mittal

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Court : Delhi

Decided On : Nov-12-1986

Reported in : 31(1987)DLT349; 1987(12)DRJ207; 1987RLR1

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 21

Appeal No. : Second Appeal No. 311 of 1984

Appellant : S.L. Sehgal

Respondent : Om Parkash Mittal

Advocate for Pet/Ap. : M.L. Kapur,; V.B. Andley and; Rajinder Mathur, Advs

Judgement :

Sultan Singh, J.

(1) On 27/7/1977 the appellant and the respondent made an application under Section 21 of the [Delhi Rent Control Act, 1958](#) (for short 'the Act') before the Rent Controller, Delhi for permission to let out the ground floor of House No. E-239, Naraina Vihar, New Delhi to the appellant for a period of three years. On 28/7/1977 statements of the appellant and the respondent were recorded and the Additional Controller granted permission to the respondent to let out the said premises to the appellant for residential purposes for a period of three years with

effect from 28/7/1977.

(2) On 20/1/1981 the respondent filed an application for obtaining possession of the said premises. On 27/3/1981 the appellant filed objections. He has alleged that the respondent was not entitled to possession of the suit premises : his son P.K. Sehgal was tenant in the premises on a monthly rent of Rs. 500.00 from 1/8/1974 to 13/11/1976 when he was transferred to 'Nasik and from 14/11/1976 the appellant was accepted as a tenant on a monthly rent of Rs. 700.00 by the respondent ; the appellant had paid rent for the period 14/11/1976 onwards(c) Rs. 700.00per month and he has been in possession of the ration card showing that he and his family has been in possession ; the respondent played fraud ; the appellant wanted to continue as tenant in the premises as his second son Vijay Kumar Sehgal had been running chemist shop in Shop No. I, Central Market, Naraina, New Delhi and he was made to make a statement in court; after expiry of the period of three years the respondent demanded enhanced rent at Rs. 900.00 per month i.e. Rs. 700.00 by cheque for Rs. 200.00 without receipt ; the appellant issued a cheque for Rs. 4,900.00 in favor of the respondent for the period August, 1980 to February, 1981 but the respondent refused to accept ; the respondent in order to show that the appellant was not in possession of the premises at the time of application under Section 21 of the Act had given the address of the appellant as resident of E-11, Naraina Vihar, New Delhi belonging to a relation of his though the appellant never resided there and has been continuously residing in the suit house as a tenant under the respondent.

(3) The respondent in reply denied the allegations of the appellant. He has pleaded that the, objections were barred by principles of estoppel and waiver ; the premises were never let to the appellant prior to the grant of permission dated 28/7/1977.

(4) The Additional Controller after recording evidence by order dated 18/5/1984 held that the appellant was deemed to have handed over the vacant possession of the premises at the time when he came to the court and agreed to take the premises on rent for a limited period with permission of the Controller and thus dismissed the objections. On appeal the Rent Control Tribunal by judgment dated

10/9/1984 held that the appellant had not vacated the premises when the application under Section 21 of the Act was made and the permission was granted ; the present case of the appellant was not covered by the decision in Re : S.B. Noronah v. Prem Kumar, : [1980]1SCR281 the permission dated 28/7/1977 was valid and was not obtained by playing fraud.

(5) The appellant in this second appeal submits that the appellant has been a tenant in the suit premises since 14/11/1976 at Rs. 700.00 per month and has been regularly paying rent to the respondent against receipts Ex. J.D. 1 to J.D. 45 for the period from 14/11/1976 to 31/3/82 ; the suit premises were never, available to the respondent for letting under Section 21 of the Act as the appellant had been a tenant in the premises for an indefinite period ; the respondent suppressed the fact of previous tenancy from the Rent Controller and made a false statement that the appellant was neither a tenant nor in possession of the suit premises. Learned counsel for the appellant further submits that the alleged permission dated 28/7/1977 under section 21 of the Act was never acted upon.

(6) Learned Counsel for the respondent-landlord on the other hand submits that the appellant was not a tenant on 27/7/1977 under the respondent when the application under Section 21 of the Act was made ; in any case mere acceptance of rent from 14/11/1976 onwards at Rs. 700.00 per month from the appellant does not create relationship of landlord and tenant ; no agreement of tenancy was ever arrived at between the parties prior to 28/7/1977; if there was any oral tenancy prior to 28/7/1977 the same was deemed to have been surrendered when the permission under Section 21 of the Act was granted; no fraud was played by the respondent at the time of obtaining permission under Section 21 of the Act.

(7) In S.B. Noronah (Supra) the Supreme Court observed as follows :-

'It is altogether wrong to import the idea that the tenant having taken advantage of induction into the premises pursuant to the permission, he cannot challenge the legality of the permission. As between unequals the law steps in and as against statutes there is no estoppel, especially where collusion and fraud are made out and high purpose is involved.....

We hold that it is perfectly open to the Controller to examine whether the sanction under Section 21 is a make believe, vitiated by fraud and collusion.

(8) In *V.S.Rahi and another v. S.R. Ram Chambeli*, : [1984]2SCR290 , it has been observed that the court should proceed with the initial presumption that the order under Section 21 of the Act was a regular one, it should still examine the material placed before it by the tenant inducted under that provision in order satisfy itself that there has not been any misuse of the said provision by the landlord taking advantage of the helpless situation in which the tenant was placed at the time when such order was obtained. The court further observed as follows :

'IT is however, urged that the appellants who had colluded with the respondent when permission was granted under Section 21 of the Act should not be now allowed to resile from the stand they had taken then. It is true that the appellants who were the weaker of the two parties did not question the truth of the statements made ' by the respondent when the permission was granted. But such collusion, if any between the two unequal parties does not confer any sanctity on the transaction in question. In cases of this nature it is always open to the weaker of the two parties to establish that the transaction was only a camouflage used to cover its true nature. Collusion implies the existence of two or more parties who can deal with each other independently with the object of entering into an arrangement which may serve as a cloak to cover up the real state of affairs. When one party can dominate over the will of the other, it would not be a case of collusion but 'one of compulsion The above view is fully in consonance with the spirit behind the rule of oppression which is recognised as an exception to the doctrine that a party, cannot recover what he has given to the other party under an illegal contract.'

(9) The question is whether the appellant was tenant in the suit premises from 14/11/1976.atRs.700.00 per month. This question has not been dealt with the all either by the .Additional Rent Controller or the Rent Control Tribunal but it has been disposed of,on the basis that if there was any such tenancy the same was deemed to have surrendered when the permission under. Section. 21 of the-Act was granted. The Additional Rent Controller and the Tribunal have dealt with the

present case in a mechanical way and have failed to apply correctly the ratio of the said decisions of the Supreme Court to the facts before them.

(10) It is admitted that Mr. P.K. Sehgal son of the appellant was tenant in the suit premises up to 13/11/1976 under the respondent at-Rs.500.00per month. The appellant has placed on record rent receipts issued by the respondent-in his favor, for the period from the November, 1976 to 31/3/1982 (Ex-. J.D.I-to Ex.J.D.45) showing payment of rent.atRs. 700.00 per month. The first receipt Ex. J.D. I is for Rs. 396.65 on account of rent .for the period of 14/11/1976 to 30/11/1976 at Rs. 700.00 per month. Receipts Ex. J.D. 2 to J.D. 8 are for the period from 1/12/1976 to 30/6/1977 at Rs. 700.00 P.M. Ex. J.D. 9 is the rent receipt dated 7/9/1977 on account of rent for the period from 1/7/1977 to 31/7/1977 while the permission was granted on 28/7/1977. The appellant has been shown as tenant under the respondent in all these receipts. Again receipts Ex. J.D. 10 to J.D. 45 are for the period from 1/8/1977 to 31/3/1982 at Rs. 700.00 per month. All these receipts for the continuous-period from 14/11/1976 leave no doubt in my mind that the appellant has been a tenant under the respondent since 14/11/1976 at Rs. 700.00 per month.

(11) Learned counsel for the respondent submits that there is no plea of oral agreement and there was no tenancy within the meaning of Section 107 of the Transfer of Property Act and as such the appellant was never a tenant under the respondent prior to 28/7/1977. His submission is that the appellant's son was no doubt a tenant up to 13/11/1976 and the appellant was in possession as a, member of his family, that the appellant continued to remain -in possession but actual physical possession was never delivered by the respondent to the appellant on 14/11/1976 at the time of alleged creation of tenancy. His argument is that oral agreement of tenancy can be made only delivery of physical possession of the premises and as physical possession was not delivered there was. no tenancy. There is no substance in this argument, in *Molwn Lal v. Ganda Singh* Air 1943 Lah 127 it was held that it was not necessary that delivery of possession must be physical, at the time of agreement of tenancy and that delivery of constructive possession is quite sufficient for the purpose of Section 107 of the Transfer of Property Act. Similar observations were made in *Uda Ram v. Tej Karan* and

others, . Learned counsel also submits that the appellant has not pleaded in his objections that there was an oral agreement of lease between the parties accompanied by delivery of possession. The appellant in his objections had pleaded as follows:-

'That Shri P.K. Sehgal .continued as a tenant under the decree-holder on a monthly rent of Rs. 500.00 from 1/8/1974 to 13/11/1976 when he was transferred to Nasik and the decree-holder then accepted the objector as a tenant on a monthly rent of Rs. 700.00 and the objector paid him rent for the period 14/11/1976onw.....'.

This plea pre-supposes that there were oral negotiations for tenancy and thereafter respondent accepted him as tenant from 14/11/1976. Receipts Ex. J.D. I to J.D. 45 disclose the name of the appellant in the receipts as tenant under the respondent. The appellant is not liable to be riori*s'uited merely because he has riot said in so many words that there was an oral agreement between the parties accompanied by delivery of possession. Admittedly the appellant was in possession on 14/11/1976 and the rent' was increased from Rs. 500.00 to 'Rs. 700.00 per month. It is pertinent to note that the rent receipts Ex. J.D. I to Ex. J.D. 8 is Send by the respondent in favor of the appellant do not bear any date while receipts Ex. J.D. 9 to J.D.II were issued under the date 7/9/1977. It is obvious that the respondent never wanted to disclose the date of issue of these receipts with some ulterior motive because these are the receipts for the period prior to the date of-grant of permission under Section 21 of the Act. The allegations of the appellant in his objections arc clear that he was accepted as a 'tenant by the respondent with effect from 14/11/1976. I, thereforee, hold that the appellant has been a tenant in the suit premises under the respondent at Rs. 700.00 per month since 14/11/1976 for an indefinite period, that on 27/7/1977and 28/7/1977when the application for permission was made, their statements were recorded and the Additional Rent Controller granted the permission, he was already a tenant under the respondent not. liable to be evicted except on the' grounds mentioned in the Delhi Rent. Control Act, 1958.

(12) It is apparent from the facts of the case that a fraud was played on the Additional Rent Controller by concealing material facts from him. The respondent-landlord in his statement dated 28/7/1977 before the Additional Rent Controller, stated that the appellant was not in possession of the premises ; that he was not a tenant. The appellant also made a similar statement before the Additional Rent Controller on 28/7/1977 although it stands proved beyond doubt that he has been in possession of the premises tenant since 14/11/1976. These statements were made in collusion with each other with a view to obtain permission under Section 21 of the Act.

(13) Section 17 of the Indian Contract Act defines 'Fraud' as follows:-

'FRAUD' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;
2. the active concealment of a fact by one having knowledge or belief of the fact ;
3. a promise made without any intention of performing it ;
4. any other act fitted to deceive ;
5. any such act or omission as the law specially declares to be fraudulent.

Explanation N:- Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person, keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

The respondent at the time of his statement for the grant of permission under Section 21 of the Act stated that the appellant was not a tenant and was not in possession which were not true to his knowledge. He concealed these facts. False representation and active concealment of these facts by the respondent from the Additional Rent Controller, at the time when the application for the grant of

permission was made amounted to fraud on his part. It was a willful suppression by the respondent with a view to obtain the permission. I am therefore of the opinion that permission granted under Section 21 of the Act on 28/7/1977 by the Additional Controller is vitiated by fraud.

(14) In the instant case the appellant was a tenant protected under Section 14 of the Act. He was in possession of the suit premises as a tenant for an indefinite period. The premises were not available with the respondent- landlord for letting. If a landlord is not in possession of the premises he must disclose in his application under Section 21 of the Act as to how he would be entitled to let out the same after permission of the controller and in such circumstances the controller is entitled to determine whether the landlord would be entitled to possession of the premises in his own right before creation of tenancy under Section 21 of the Act. If the landlord is not entitled to possession no permission to let the premises in occupation of the person other than the landlord could be granted under Section 21 of the Act. I am of the opinion that as the appellant was already in possession as a tenant under the respondent the premises were not available for letting to the respondent under Section 21 of the Act ; the respondent concealed material facts of existing tenancy in favor of the appellant when he applied for permission under Section 21 of the Act. The appellant tenant is entitled to challenge the permission granted on 28/7/1977.

(15) I am of the view that on the facts and in the circumstances of the case the respondent was not entitled to permission under Section 21 of the Act and he is not entitled to invoke the remedy under the said section to recover possession of the premises from the appellant.

(16) The judgments of the Additional Controller and the Rent Control Tribunal being contrary to said decisions of the Supreme Court and this court, are liable to be set aside. This appeal is therefore, accepted setting aside the impugned order dated 10/10/1984 of the Rent Control Tribunal confirming the order dated 18/5/1984 of the Additional Rent Controller dismissing the objections of the appellant. The objections are allowed and the application of the respondent for obtaining possession of the premises in question from the appellant is dismissed

with costs throughout. Counsel fee Rs. 500.00.

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