SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Joginder Singh Vs. Uma Vati

Joginder Singh Vs. Uma Vati

SooperKanoon Citation : sooperkanoon.com/693707

Court : Delhi

Decided On : May-31-1985

Reported in : 28(1985)DLT137

Judge : G.C. Jain, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1)

Appeal No. : Civil Revision Appeal No. 126 of 1984

Appellant : Joginder Singh

Respondent : Uma Vati

Advocate for Pet/Ap. : O.N. Vohra and; I.C. Jain, Advs

Judgement :

G.C. Jain, J.

(1) This revision petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (for short 'the Act') by the tenant is directed against the order of the Addl. Rent Controller dated August 19, 1983.

(2) The dispute is in respect of a flat in property bearing municipal No. 21, Lady Harding Road, New Delhi. It was let out to the tenant by the previous owners Kishori Lal and Rajinder Prasad prior to its purchase by the present landlady on

February 20, 1959. The agreed rent is Rs. 51.00 per month.

(3) The landlady sought the eviction of the tenant under clause (e) of the proviso to sub-section (1) of Section 14 of the Act. It was resisted by the tenant.

(4) Learned Addl. Controller found that the landlady was the owner of the property and it had been let out for residential purposes. He further held that the landlady was in possession of a similar flat in this very property consisting of one room on first floor and a barsati on the second floor. She admittedly required accommodation for herself, her son and his wife. Her married daughters also visited here. Keeping her status in view the accommodation with the landlady was not reasonably suitable and she bonafide required the premises in dispute for residence for herself and members of her family. With these findings he granted an order for the recovery of possession in favor of the landlady against the tenant. Hence this revision petition.

(5) The factum of ownership, though denied in the statement, was not disputed before me. Mr. Vohra, learned counsel for the tenant, however, vehemently assailed the findings of the learned Addl. Controller regarding other ingredients.

(6) The landlady will be entitled to an order for eviction under clause (e) if she was able to prove, inter alia, that the premises in question had been let out for residential purposes. 'The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.' (Section 102 of the Indian Evidence Act). In the absence of evidence regarding letting purpose by the either side in a petition for eviction under clause (e) the landlady was liable to fail. thereforee the burden to prove this fact was on the landlady.

(7) Mr. Jain, learned counsel appearing for the landlady, contended that the tenant had admitted that the letting purpose was residential though be bad added that it was commercial also. In this situation the burden to prove this additional letting purpose was on the tenant. The landlady, argued the learned counsel, was not required to prove a negative fact, namely, that the premises had not been let out for commercial purpose as well.

(8) This submission cannot be accepted. It is implicit in the expression 'the premises let for residential purpose' used in clause (e) that the premises had been let for residential purpose and on other purpose. It was the duty of the landlady, thereforee, to prove that the premises had been let only for residential purpose. It was a positive fact which she was required to prove. The negative was to follow. If it was proved that the letting purpose was residential it would also mean that the premises had not been let out for residential cum commercial purposes or commercial purposes. The burden to prove this fact, thereforee, was on the landlady. The observations of the Addl. Controller to the contrary were erroneous.

(9) Admittedly the premises had been let out to the tenant by the previous owners Kishori Lal and Rajinder Parsad. No lease deed or rent note was executed at the time of letting by them. There is no other documentary providing the purpose of letting.

(10) I have appraised the oral evidence. The landlady (AW 3) deposed that the previous owners had told her in the presence of the tenant that the premises had been let out for residential purpose only. She also stated that the tenant, admitted this fact. The tenant (RW-2) stated that the premises had been let out in 1951 by the previous owners for residential-cum- commercial purposes. The landlady never brought the previous owners and they had never told her that the premises had been let out for residential purpose only.

(11) Neither Kishori Lal nor Rajinder Prasad who let out the premises, was examined by the landlady. No presumption, however, can be raised against the landlady on this ground because their whereabouts were not available. It was so stated by the landlady as well as by the tenant.

(12) The landlady had specifically stated that after the purchase of the property the tenant had admitted to her that the letting purpose was residential. This part of her statement was not specifically assailed in her cross-examination. The tenant in his statement did not specifically deny this fact.

(13) The tenant stated in cross-examination that the tenancy was started by issuing of receipts. He said, 'I do not have the receipts. I have not brought the

same,' This statement does not clearly show that the said receipts were not available. The part of the statement that he had not brought the same, on the other hand, suggests that these were available with him. No Explanationn is forthcoming as to why the receipts by which the tenancy was started were not produced.

(14) In the absence of convincing evidence, documentary or oral, the purpose of letting has to be inferred from the surrounding circumstances namely nature of the premises, extent of accommodation, the location of the building and the dominant use to which it has been put, besides other relevant factors.

(15) The property bearing municipal No. 21, Lady Harding Road, New Delhi, admittedly, has 8 shops on the ground floor and two flats on the first floor with two burs IT is and open space on the second floor. Out of two flats one is in the tenancy of the petitioner. This construction had admittedly been made on a lease hold land Ex. Aw 1/1 is a certified copy of the lease deed executed between the Governor General of Council and the previous owners, Kishori Lal and Rajinder Parsad. The covenant 2(6) prohibits the lessee from using the premises for any purpose otherwise than as shops with residence above. From this term it is apparent that the flats which were above the shops could be used only for residential purpose.

(16) The flat in dispute consists of one room, Verandah store, kitchen, bath Wc with open space on the first floor and a barsati with terrace on the second floor. Nature of construction indicates that the premises were residential.

(17) The landlady in cross-examination deposed that there were several business establishments in or about the Lady Harding area but there was no business activity on the first floor of any building. The tenant is silent on this point in his statement. It is, thus, clear that the premises on the first floor in the locality were being used only for residential purpose.

(18) The tenant is admittedly residing on the first floor portion. He and his witnesses Mala Ram, a retired postman of the area and M.K. Mahajan, a neighbour, deposed that Barsati and terrace on second floor were being used for manufacturing and repairing tents. It has also come in evidence that Ashoka Tent

Industries 21/8, Bhagat Singh Marg, New Delhi had applied to Directorate of Industries and D.D.A. for allotment of an industrial plot. Two telephones were installed at the said address-one in 1960 and the other in 1976. It had also applied to Delhi Small Industries Development Corporation for registration as a business associate for export/domestic marketing scheme.

(19) On careful consideration of the entire evidence I have no doubt that the dominant use was residential. As seen above the accommodation on the second floor is a barsati and a terrace. Barsati measures 14' 2' X 13' 2' and the terrace measures 14' 2' X 8'. Regular manufacturing activity of tents in such a small place was not feasible. Admittedly the appellant had not maintained any employees register as they employed only daily wagers. This itself shows the nature of commercial activity which he was allegedly carrying there. The tenant, though stated that the flat was registered under the Shop and Establishments Act, had not produced the certificate.

(20) It is correct that the tenant in his application for allotment of plots, installation of telephones and associate membership for export/domestic marketing scheme and for the purpose of assessment for income tax, had given his address as 21/8, Bhagat Singh Market. This circumstance however, does not indicate that the flat was being used for commercial purpose as well. It has to be kept in mind that the petitioner was admittedly also a tenant in one of the shops on the ground floor of this very building under the landlady. The landlady had deposed that private number of the flat in dispute was 21/8/2. There is no rebuttal to this fact. The address 21/8 given in the applications, thereforee, does not relate to the flat in question. There cannot be any doubt that its dominant user was residential.

(21) Circumstances noticed above go to prove that the letting purpose was residential. The finding of the learned Addl. Controller on this point, was correct and calls for so interference in revision.

(22) Bonafide need and non availability of any other reasonably suitable accommodation are the two other conditions which the landlady was required to prove. These two conditions, though separate, but are so inextricably linked that in almost all cases a decision on the question of non availability of any other

reasonably suitable accommodation is decisive of question of bonafide requirement.

(23) The expression 'required bonafide' used in clause (e) means an honest need. It is not synonymous to her whims, wish or desire. The claim must be genuine, made in good faith and not for extraneous considerations. The purpose of the Act, inter alia. is to control evictions as is clear from its preamble. It was enacted to provide protection to the tenants from unscrupulous landlords. It is, thereforee, clear that the landlady was not the sole judge of her requirements. It is for the court to determine objectively whether the requirement is genuine or not having regard to the totality of the circumstances such as extent of her family, her living habits, social status and extent of accommodation available with her.

(24) The landlady, at present, is in possession of the other flat in this building. The flat is similar to the flat in dispute. It consists of one room (13' 11' X 12' 10') a Verandah (13' 11' X8' 10') kitchen, store, bath, Wc on the first floor and a barsati 14'2' X 13' 2') besides terrace on the second floor. These facts were not disputed.

(25) The landlady has two sons Naveen Prakash and Ajay Prakash and two daughters. All of them are married. Ajay Prakash and his wife are living with the landlady. Naveen Prakash is admittedly posted at Hyderabad and was residing there with his wife. The contention of Mr. Jain, that he was liable to be transferred to Delhi and, thereforee, his requirement was also to be taken into consideration, cannot be accepted for the simple reason that there was nothing on record indicating his transfer to Delhi in the near future. The landlady, thereforee, required accommodation for herself, her son Ajay Prakash and his wife. It has also been proved from the unrebutted statement of the landlady that her daughters were married outside Delhi and they often visited her. Duration of their stay, however, has not been given.

(26) The Contention of Mr. Vohra, learned counsel for the tenant, is that the Verandah and barsati were regular rooms. The landlady was thus in possession of three rooms which accommodation was reasonably suitable for three members of her family. It was pointed out that from 1960 to 1973 she lived in the family house in Dariba Kalan along with her mother-in law and two sisters-in-law in somewhat

similar accommodation and there was no reason as to why she could not live in the three roomed accommodation now.

(27) Mr. Jain, learned counsel for the landlady, on the other hand contended that the Verandah was not a regular room. On one side there was a galvanised tin wall and on two sides there were big windows with glass panes Access to this Verandah was from the room only. On the second floor there was on lavatory or water tap and the second floor could not be used as a living room with convenience. The landlady thus had one room only which accommodation could not be considered reasonably suitable or sufficient.

(28) The landlady is a widow. Her husband late Sh. Suraj Prakash was an advocate. Her son Naveen Prakash is B.Sc. (Engineering). The other son Ajay Prakash is M.A. (Economics). She had fixed deposits of Rs. 55,000.00 and had shares of the value of about Rs. 50,000.00 . Earlier she owned a house along with her brother-in-law Dr. Anand Prakash in Dariba Kalan. She also owned a house in Pahar Ganj. Both these properties have since been sold.

(29) Suraj Prakash and his brother Dr. Anand Prakash owned a house in Dariba Kalan. Suraj Prakash lived in that house along with his family members including the landlady till 1960 when he took on rent a flat at Rajpur Road and shifted there. He died soon after. The landlady being unable to pay the rent of that flat shifted to the family house in Dariba Kalan. It had two rooms, two stores and a Baithak on the ground floor and two rooms and two stores on the first floor. Some portion of the house was with a tenant. Her mother-in-law and two sisters-in-law also lived with her. She Jived there up to 1973 when her son Naveen Prakash took on rent a three roomed flat in Model town and the family shifted there. There were two flats in this building with two tenants, namely the present petitioner and one H.N. Coondoo. She filed eviction petitions against both of them. She obtained order for eviction against Coondoo and thereafter shifted to the flat where she is now residing.

(30) On a careful consideration of the status of the landlady, her living habits and all other relevant circumstances, I am of the considered view that the requirement of the landlady was neither fanciful nor whimsical. There is no evidence on record

to suggest that the application had been filed with any extraneous consideration. As noticed above she obtained an order of eviction against her other tenant Coondoo and immediately occupied the flat vacated. by him. Her intention is to occupy the flat in dispute for her own residence Her requirement for this additional accommodation is that of a reasonable person and bonafide.

(31) Verandah though covered on all sides, has no separate access. The only access is from the room. For this reason alone it cannot be used as a proper bed room or drawing room. On the second floor there is no lavatory or bath room. Mr. Jain pointed out during argument that Ajay Prakash's wife was in family way and living in barsati was causing her great inconvenience. There is merit in this submission. The barsati in the circumstances could not be used as a regular bed room conveniently. In ID. Rajpat v. Ramji Das 1983 Rlr 365 there was a toilet on the second floor which is not the case here. It may be added that there is no separate store for keeping wearing apparels etc. The store in the flat of the landlady is adjacent to the kitchen which measures 4'7" X 4' 8' and is hardly sufficient for storing the kitchen goods. It is correct that the landlady was forced to shift back to Dariba Kalan house due to unfortunate death of her husband. Immediately her son got employment the family shifted to a three roomed flat in Model Town which was taken on rent.

(32) There is, thereforee, no jurisdiction for reversing the findings of the learned Additional Rent Controller.

(33) In conclusion I find no merit in the petition and dismiss the same. The petitioner, however, is allowed six months' time to vacate the premises. Parties are left to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com