Rup Chand Vs. Shanti Devi

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Court : Delhi

Decided On : Apr-02-1987

Reported in : 32(1987)DLT269; 1987RLR415

Judge : Leila Seth, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1); Code of Civil Procedure (CPC), 1908 - Order 7, Rule 11

Appeal No. : Second Appeal No. 212 of 1986

Appellant : Rup Chand

Respondent : Shanti Devi

Advocate for Pet/Ap. : K.B. Andley and; I.S. Mathur, Advs

Judgement :

Leila Seth, J.

(1) This appeal by the tenant, Mr. Rup Carnd, is directed against the judgment and order of the Rent Control Tribunal dated 27/02/1985 confirming the order of the additional Rent Controller dated 8/07/1985.

(2) The main question in issue before me is whether the tenant has acquired 'vacant possession of, or been allotted, a residence'.

(3) On 26/05/1976, landlady, Ms. Shanti Devi filed a petition under section 14(1)(a) and (h) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Act') to eject Rup Chand. Thereafter, on 27/07/1976,Rup Chand filed his written statement.

(4) The following facts, pertaining to section 14(1)(.h) of the Act, have been pleaded in the petition. In paragraph 18(a)(iii) of the petition, it is stated, 'That the Respondent has acquired vacant alternative accommodation situated opposite Nagar Nigam Middle School, Circular Road, JwalaNagar, Delhi'. In paragraph 4 of the said petition, it is mentioned that the disputed premises being H.No. 591/24, Ram Gali, Block No. 3, Vishwas Nagar,Shahdara, Delhi are residential.

(5) In the written statement, Rup Chand has admitted that the disputed premises are residential. However, he has asserted that paragraph 18(a)(iii)of the petition is :

'ABSOLUTELYwrong, baseless and thereforee denied. The respondent has not acquired any vacant alternative accommodation situated at Nagar Nigam Middle School, Circular Road, Jwala Nagar, Delhi.The said allegation is baseless and the same has been alleged towards the respondent.'.

(6) It appears that Rup Chand's wife purchased a plot of land in 1971and completed construction of a building on the said plot in 1975. She now alleges that she is running a school there, known as Sarva Hitakari ShikshaKendra.

(7) Though the point had been raised by the tenant that acquisition of premises by the wife would not amount to acquisition by the husband, Mr.Andley did not press this point, in view of the settled position, as indicated in the decisions of the Supreme Court and this Court in Prem Chand and another v. Sher Singh, 1981 (2) Drj 287. and V. K. Malhotra and others v.Smt. Ranjit Kaur, 1985 (1) Rlj 250, respectively.

(8) Mr. Andley mainly contended that the petition should have been I !, rejected under Order Vii Rule Ii, Civil Procedure Code, as it did no disclose any cause of action since the essential ingredients of section 14(l)(h) of the Act had not been

pleaded in the petition. He submitted that the land lady had not pleaded that the tenant had acquired vacant possession nonresidential premises and consequently the petition had to be rejected.

(9) Learned counsel relied on a decision of Mr. justice S. Rangaranjan in Abdul Hamid and another v.Nur Mohammad, : AIR1976 Delhi328 . In the said decision while dealing with the question of eviction under section 14(1)(e) of the Act-it has been observed that the landlord has a duty not only to allege and prove that he needs premises for his own use but also to aver and prove that he is not in possession of any other reasonably suitable residentsaccommodation. The learned Judge observed that the tenant expected to make a research and since the necessary ingredients had not been stated, ground had been made out to order eviction.

(10) The other decision relied on by learned counsel for the appellant is in Banke Ram v.Shrimati Sarasti Devi 1977R.C.J. 332. There the Full Bench of the Punjab and Haryana High Court held that it is a well established and salutary principle of law that in any civil proceedings it is essential for a party to plead all the ingredients on which he wants to rely and in proof of which he may produce evidence.

(11) In Mr Edwin Brave v. Hari Chand, 1982 (1) R.C.R. 172 Mr Justice Sultan Singh observed that since the petition for ejectment did not disclose that the Tenses were let out for residential purposes, all the essential ingredients on under section 14(l)(e) of the Act had not been pleaded consequently he held that under the provisions of Order Vii Rule 11, Civil Procedure Code which were mandatory, the eviction petition had to be rejected as it did not disclose a cause of action.

(12) In Dr (Mr)ND.Khanna v. M/s Hindustan industrial Corporation,New Delhi' : AIR1981 Delhi305 , Mr. Justice Sultan Singh had also earlier an eviction petition under Order Vii Rule 11, Civil Procedure Code as application did not contain all the necessary ingredients under section 14(l)(e) of the Act.

(13) There does not appear to be any dispute with the proposition of law referred to in the above Mentioned decisions. The only question is have necessary

ingredients been incorporated in the pleadings. In order to obtain an order of eviction under section 14(1)(h) of the Act, it is accessory to plead that the tenant has either (i) built, or (ii) acquired vacant possession of, or (iii) been allotted a residence.

(14) It would appear to me, reading the petition as a whole that the indicates that the averment in Paragraph accommodation situated opposite Nagar NigamChand was vacant, residential accommodation.

(15) Service of a notice is also referred to in the application. The appellant that a letter dated 28/02/1974 was received.In this letter specifically asserted 'you have acquired alternative residential accommodation.'

(16) Further in an application, for discovery under Order Xi Rules 12and 14, Civil Procedure Code filed by the landlady, it has been averred in and 14, Civil Procedure' has acquired vacant alternative residential paragraph .1 that the Nigam Middle School.Circular Road, Jwala respondent has carried out all the construction over and above the said plot.Probably no Municipal Number has yet been allotted'. The landlady prayed that the tenant be directed to produce the said sale deed that stood in hiswife's name. The Additional Rent Controller directed production of the sale-deed, if possible, by 3/07/1978.

(17) In his reply to this application, the tenant admitted that H. No.27/109 (3-B), Jwala Nagar had been purchased by his wife, Shakuntala Sharma.However, he asserted that the property was being used by Sarva Hitkari Shiksha Kendra and the cost of construction and purchase of the property had been borne by his wife and he had not invested any amount. He further asserted that since the property had been purchased by his wife, he was not in possession, of the sale-deed.

(18) Mr. Bal Kishan Dass, A.W. I has stated that this property at JwalaNagar was 'Rehashi'. No objection was taken to this statement. Further no objection was taken in the written statement that the petition did not disclose any cause of action. Only a case of complete denial had been made out is above noticed.

(19) In Mr. Kundul Lal Mehta and others v. Smt. Parkashwati, 1980 (2)RCJ. 551 Mr. Justice Sultan Singh has noted that if all the ingredients constituting a cause of action within the meaning of clause (e) of section 14(1) are not pleaded and proved the landlord is not entitled to an order ofeviction. It is also well known that no evidence can be looked at on a plea which was never raised in the pleadings. But in paragraph 9 of the saidjudgment, the learned Judge has noted 'It is correct that the ingredients 1 to 4required to be pleaded are not pleaded in the eviction application. No objection was taken by the appellants tenants in their written statement that the eviction petition does not disclose any cause of action. It was also never argued before the Controller and the Rent Control Tribunal. When evidence was being led before the Controller, it appears that no objection was raised against the recording of the evidence with regard to whether the premises were let out only for residence or for both residence and commercial purpose in view of the written statement of the tenant. The tenant also filed anapplication before the Tribunal saying that the landlord had reasonably suitable accommodation and sought permission to lead evidence. At the instance of the tenant himself the Tribunal determined the question whether the landlady has any other reasonable suitable accommodation. Should the landlady be non-suited now for not pleading these two material ingredients under section 14(l)(e) of the Act.'. The learned Judge referred to the case of Abdul Hamid v.Nur Mohammad., (supra), Banke Ram v. Smt. SarasvatiDevi (supra) and OnkarNalh.VedVyas, 1978 (2) R.C.J. 158 and observed that the view of this court in Hans Raj Dawar v. Shyam Kishore, the 1977 (2)253, is that 'inadequacy of the pleadings, if any, is, not fatal' if no prejudice has been caused to the parties. The learned Judge also felt that since the party knew the points of controversy and was not taken by surprise, no prejudice was caused to him. The tenant could not be allowed to raise the plea for the first time in second appeal. He also observed that if the objection had been taken in the written statement the landlady could have cured the defect.She is now taken by surprise in the second appeal. As the objection had not been taken at the first instance and evidence had been recorded without anyprejudice, on facts, which were not pleaded, the objection could not be raised.The objection that the plaint does not disclose any cause of action must betaken at the earliest and the court on examination, if it finds the objectionvalid,

may reject the plaint under Order Vii Rule 11. Civil Procedure Code.However, the court can before rejecting the plaint allow the same to beam ended if an amendment is applied for.

(20) In Arvind Berry v. Rear Admiral A.P.S. Bindra. A.I.R. 1985 Del 249 the same learned Judge observed that no part of evidence can be looked into on a plea which was never raised, but the facts of each case have to be considered. It has to be seen whether any prejudice was caused to a party in case of failure of proper pleadings. If a plea is not specifically raised and it is known by implication to the parties, the mere fact that the plea was not specifically taken in the pleadings would not necessarily disentitle the party, if it is satisfactorily proved by evidence and no prejudice has been caused. It was once again reiterated that plea of non-disclosure of cause of action within the meaning of Order Vii Rule J I, Civil Procedure Code,out to be raised at the earliest. It had not been raised it is deemed to have been waived. The court felt that a party could not be allowed to raise such a plea in second appeal or revision at the time of execution after seven years of the institution of the eviction case. Mr. Justice Sultan Singh dealtwith all his earlier decisions while disposing of the second appeal.

(21) In Rattan Lal v. Vardesh Chander and others. : [1976]2SCR906 , Mr. Justice V.R. Krishna Iyer speaking for the court opined in paragraph 10:

'The Rent Act contemplates no elaborate pleadings but filling out of particulars in a proforma which takes the place of a plaint. No specific averment of forfeiture and consequent determination of the lease is found in the petition. Having regard to the comparative informality of these proceedings and the quasi-judicial nature of the whole process, such an omission cannot be exaggerated into a lethalinfirmity.'

(22) In S.B. Noronah v. Prem Kumari Khanna, : [1980]1SCR281 , once again Mr. Justice V.R. Krishna Iyer, speaking for the bench has opined :

'Pleadings are not statutes and legalism is not verbalism. Commonsense should not be kept in cold storage when pleadings are construed. It is too plain for words that the petition for eviction referred to the lease between the parties which undoubtedly was in writing.The application, read as a whole, did imply that and we

are clearthat law should not be stultified by courts by sanctifying little omissions as fatal flaws. The application for vacant possession suffered from no verbal lacunae and there was no need to amend at all. Parties win or lose on substantial questions, not 'technicaltortures' and courts cannot be 'abettors'. '

(23) In Brigadier Pritain Pal Singh (Retd) v. Shri V. P. Roman,1982(2) Rcr 227 Mr. Justice Yogeshwar Dayal, quoted the view of Chief Justice Gajendragadkar that it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations ofsubstance. If a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties so the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it. The learned Judge after referring to a catena of authorities observed that the test is whether parties in spite of something missing in the pleadings go to trial with full knowledge of the issues involved and both parties lead evidence in that behalf and there is no prejudice caused to either party,it would not prove fatal to the suit.

(24) In Man Mohan Mehra v. J.S. Butalia, : AIR1984 Delhi32 , Mr.Justice M.L. Jain referred to the earlier decisions and was of the view that an application cannot be thrown out if the cause of action can be implied or if it is partly pleaded. The omission can be rectified by supplying better particulars or in the replication or by way of amendment. In that case the learned Judge was of the view that the application could not be rejected or dismissed even though it failed to allege all the ingredients of section 14(l)(e) of the Act and even though the objection was taken in the written statement because all the grounds are implied in the various facts

stated in the application and there was no need of any amendment, and at any rate, the replication specifically contained all the averments and is a part of the pleadings.

(25) In the present case, as already noted, the house at Jwala Nagar is the property of the tenant's wife. The plot was purchased in 1971. The construction was completed in 1975. The wife is allegedly running a school known as Sarva Shiksha Kendra in the said premises. The sale-deed pertaining to the said premises was not produced despite an application for production asit was stated that the property belonged to the tenant's wife. A plan of the property was also not produced. The assertion that the property was let out to a school in 1972 does. not appear to be correct as it is the case of the tenant himself that the construction was only completed in 1975. Admittedly, the school is run by the tenant's wife. There is nothing on the record to indicate that it is let out to any one else. The fact that the building is being used for a school is not relevant if the building was built for residence. If thetenant's wife is using it for a school, it will not take it out of the purview of the vacant residential accommodation. As observed in Sh. Ganpat Ram v. Smt.Gayatri Devi, 1980(2) Rcj 624 by Mr. Justice Sultan Singh, if a tenant hasa house and does not occupy it and allows others to occupy the same, he cannot be protected. The Act provides that building of a house by a tenant or allotment of a residence to him is a ground available to the landlord, to ejecthim.

(26) In view of the facts and for the reasons outlined above, it is clear that on a reading of the petition, as a whole, it is apparent that the words' vacant alternative accommodation' refer to vacant residential accommodation because it was alternative to the residential accommodation mentioned in paragraph 4 of the petition. It is also clear from the notice dated 28/02/1974, that the parties knew from the start what was the point at issue as the notice clearly referred to residential accommodation.

(27) The application for discovery, while referring to the eviction petition,mentioned that the petition had been filed on the ground of vacant alternative residential accommodation acquired by the tenant.

(28) It is, thereforee, clear that the word 'residential' has been omitted from paragraph 18(a)(iii) by inadvertence but from the tenor of the petition it is apparent that it referred to residential accommodation as it used the word'alternative'. An innocuous omission of this type cannot result in the petition being rejected under Order Vii Rule Ii, Civil Procedure Code, as the cause of action is apparent from a full reading of the petition and was dear to thetenant, as is obvious from the written statement. Further the fact that the objection was not raised in the written statement, nor before the Rent Controller is significant. It was raised from the first time before the Tribunal.Counsel for the tenant contends that since the point was raised before the Tribunal and not for the first time in second appeal, as in the cases mentionedearlier, the petition should be rejected under Order Vii Rule 11, Civil Procedure Code, I do not agree. First, because I am of the opinion that the petition itself, read as a whole, does disclose a cause of action ; and secondly, even if it didn't, the objection must be taken at the earliest stage so that an opportunity to cure the defect can be given, if requested. As such, the fact that the point was raised before the Tribunal and not for the first time in second appeal is not of much relevance.

(29) The next point urged by counsel for the tenant is, that, assuming but not admitting, that residential accommodation had been acquired by him,the petition should have been rejected as being belated, since admittedly it was filed in May. 1976. Reliance was placed on a decision of Mr. Justice Avadh Behari in Gian Singh v. Tarlok Singh, 1975 Rlr 340. In that case the learned Judge had observed that if a tenant is allotted a residence, the landlord,if he wishes to file a petition under section 14(1)(h) of the Act, must suesoon. The learned Judge however, did not follow a Division Bench decision of this Court in Batto Mal v. Rameshwar Nath, 1970 Rcr 532 wherein it had been held that the tenant was liable to be ejected if he- had once been allotted a quarter and it did not matter if he surrendered possession thereof before the institution of the suit. However, the learned Judge held that if before the institution of a suit, the tenant surrenders the allotted premises, then he can not be sued under section 14(1)(h) of the Act.

(30) A Division Bench of this court in Hem Chand Baid v. Smt. PremWati Parekh, : AIR1980 Delhi1 observed that the decision of the Division Bench in Battoo Mal's

case (supra) was a direct authority on the interpretation of sub-clause (h) of section 14(1). It also observed that a decision of a Division Bench is a binding precedent for a Single Judge of the Court. The Judgment in Battoo Mal's case (supra) was pronounced on 6/05/1973.On 20/07/1970, Mr. Justice P.S. Safeer pronounced a Judgment in Ved Prakash v. S.H. Chuni Lal, 1971 Delhi L.T. 59 wherein he took a contrary view as the decision of the Division Bench had not been brought to his notice.Five year later in Gian Chand's case (Supra), Mr. Justice Avadh Behari again took a contrary view to the Division Bench agreeing with the view taken byMr. Justice P.S. Safeer in VedPrakash's case (supra). He reiterated his view once again in Shri Muni Lal v. Shri Dulara Si ugh and another, 1976R.C.R. 220. The Division Bench observed that Single Judges were bound by the decision of the Division Bench in Battoo Mal's case (supra). Mr. JusticeS.B. Wad speaking for the Bench stated in paragraph 9 as follows :

'TWO propositions appear to be well settled by the Division Bench in Battoo Mal's case.

I, once protection is lost by atenantbyhisdefault,underclause (h), it is lost for ever and cannot be revived at any point of time or under any circumstances;

2.that the landlord's right of eviction might get defeated by application of general principles of waiver or laches in exceptional cases.

THE first proposition is a direct authority on interpretation ofcl, (h) of the proviso to S. 14(1) of the Act. The second propositions a reiteration of a general principle of law, which the D.B. was careful in pointing out was of no application to the facts of Battoo'sMal's case. The learned single Judge in Gian Singh's case held thatBattoo's Mal's case was a decision on the particular facts of thatcase. With respect we do not agree. A pure question of law regarding the interpretation of clause (h) of the proviso to S. 14(1) of the Act was referred by a learned single Judge for the decision of the Division Bench in that case and, the decision, thereforee, is not restricted to the facts of that case. We also do not agree with the learned single Judge that the general principle of waiver or laces referred to in Battoo Mal's case is the 'Quintessence' of BattooMal's case.'

(31) Consequently, as far as the proposition of interpretation is concerned there can be no doubt that if the tenant has acquired alternate vacant possession of a residence then he comes within the purview of section 14(l)(h) of the Act.

(32) On the factual aspect also there is nothing, in the present case, to indicate why the landlord's right to eviction should be defeated on the principle of waiver or laches that it is an exceptional case. In fact, as stated by Mr.RupChand, in his evidence, his wife purchased the plot in 1971 and the construction was completed only in 1975. The petition was moved in May, 1976. It cannot be said to be a case of laches of an exceptional nature. Further, it is also the tenant's case that his wife is running a school in the said premises.

(33) In T.N. Idnani v. A. D. Khanna, : AIR1988 Delhi66 , Mr. Justice Sultan Singh opined that it is well known that there is no estoppels against statute. He also observed that there was no question of waiver and in any case, facts relating to waiver had not been pleaded. In that case a tenant had admittedly acquired residential accommodation in 1972, but the application was moved in 1984 and the learned Judge observed that the knowledge of the construction of the residential house was immaterial. If the conditions prescribed under section 14(l)(h) of the Act were fulfillled, then the landlord was entitled to an order of eviction against the tenant. The only requirementbeing, 'that the tenant has, whether before or after the commencement of the Act, built, acquired vacant possession of, or been allotted, a residence'.

(34) As already noticed earlier the tenant Rup Chand has acquired vacant possession of a residence through his wife. This is available to him. As such the case come within the purview of section 14(l)(h) of the Act. Further,as noticed above, there is nothing on record to establish that this is an exceptional case where the landlady's right of eviction has to be defeated by the application of general principles of waiver or laches.

(35) Consequently, the appeal is dismissed. There will be no order asto costs.