

Lakshmi Devi and ors. Vs. Mamleshwar Pershad and ors.

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Court : Delhi

Decided On : Nov-15-1984

Reported in : 27(1985)DLT26

Judge : R.N. Aggarwal, J.

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

Appeal No. : Second Appeal No. 389 of 1982

Appellant : Lakshmi Devi and ors.

Respondent : Mamleshwar Pershad and ors.

Advocate for Def. : Shri. Ishwar Sahai

Advocate for Pet/Ap. : M.L. Varma,; Suresh Singh and; I.S. Mathur, Advs

Judgement :

Aggarwal, J.

(1) Shri Mamleshwar Prasad, the respondent herein, filed a petition under the Delhi Rent Control Act seeking eviction of the tenant Jagat Narain from premises described as 3173, Phatak NanakChand, Mohalla Dassan, Delhi, inter-alia, on the grounds (a) that the tenant has not paid the rent from 1-7-1967; (b) has sub-let, assigned or parted with possession of the tenanted premises without the consent

in writing of the landlord to Partap Narain Seth, Kailash Narain Seth, sons of Laxmi Narain Seth and Sat Narain Seth, Deep Narain Seth and Raghubir Narain Seth sons of Jai Narain Seth, respondents 2 to 6 to the petition; (e) that the demised premises are required bonafide by the landlord for his own occupation; and (d) that the tenant Jagat Narain had built his own house at Q-7 Model Town, Delhi and he had already shifted to the said house.

(2) The petition was contested by all the respondents. The respondent No. 1 denied to have sub-let or parted with possession of the demised premises to respondents 2 to 6. The respondents pleaded that the demised premises were taken on rent in 1933 by Jagat Narain and his brothers Laxmi Narain and Jai Narain and that since the very inception of the tenancy the respondents are the joint tenants of the suit premises. (Respondents 2 and 3 are the sons of Laxmi Narain who had died sometime in 1944. Respondents 4 to 6 are the sons of Jai Narain who died in 1962). Jagat Narain (respondent No. 1 to the petition) stated that he is a co-owner of the house at Model Town and one of his sons was in possession of the said house. The respondents pleaded that the petitioner-landlord is a permanent resident of Indore and he does not require the suit premises for his own occupation. They further pleaded that the demised premises were let out for business-cum-residential purpose and since the very inception of the tenancy they are being used for the said purpose. The respondents further pleaded that all the arrears of the rent up to the end of November 1970 had been paid to the petitioner-landlord and no rent was due to him. They further pleaded that the rent for December 1970 was sent to him by money order but he had refused to accept it.

(3) The Addl. Rent Controller passed an order for eviction against the respondents on two grounds : (1) that the tenant Jagat Narain had sub-let the premises to respondents No. 2 to 6; and (2) that he had built a house at Model Town and he with his family was already residing in the said house. The petition for eviction on the other grounds was dismissed.

(4) Against the order of the Additional Rent Controller both Jagat Narain and Mamleshwar Prasad went in appeal. Mr. V. S. Aggarwal, Rent Control Tribunal,

dismissed the appeal filed by the landlord. The appeal by Jagat Narain was allowed to the extent that the finding regarding the subletting of the property was reversed and the petition for eviction on that ground was dismissed but the finding that Jagat Narain had built a house at Model Town was upheld and the order of eviction on that ground sustained.

(5) Against the order of the Rent Control Tribunal, Jagat Narain came in appeal.

(6) Shri Jagat Narain (respondent No. 1 to the petition) died on 5th June 1983 leaving behind his widow, two sons and a daughter. An application (C.M. 2207/83) was filed to bring on record the legal heirs of Jagat Narain. The said application was allowed on 9th August 1984. The important aspect of this application which needs mention is that none of the legal heirs of Jagat Narain are shown to be residing in the demised premises. The address given of Laxmi Devi Seth (widow) and Padam Narain Seth (son) is at Q-7, Model Town, Delhi. The address given of the second son Prem Narain Seth is A-I/II, Model Town, Delhi. The daughter is residing at Q-10, Model Town.

(7) There is overwhelming and unimpeachable evidence on the record that Jagat Narain had round about 1970 built or acquired the house Q-7, Model Town and shifted to that house along with his family. Jagat Narain who was examined on commission on 10th November 1980 stated that his son Padam Narain Seth is residing Q-7, Model Town, Delhi and his son Prem Narain Seth was also residing in his own house in Model Town and that his daughter Savitri Khanna is also residing at Model Town in her own house. He further stated that he had telephone No. 225843 at Shish Mahal house (tenanted premises) and that the said telephone was first shifted to Chhipiwara and thereafter to Model Town.

(8) R.W. 3 Shri Kailash Narain Seth son of Laxmi Narain Seth gave evidence that the house Q-7, Model Town is in the name of Jagat Narain and Prakash Narain and that no child of Jagat Narain is residing in the suit premises. R.W. 4 Raghubir Narain son of Jai Narain gave evidence that it is correct that now no family member of Jagat Narain is residing in the suit premises. There is further evidence (A.W. 1 and A.W. 3) that some time in 1970 or 1971 Jagat Narain and his wife were taken ill and were admitted in a hospital and their home address given in the

hospital records was of Q-7, Model Town, Delhi.

(9) The above evidence establishes beyond doubt that Jagat Narain had built or acquired the house Q-7 at Model Town and he, had shifted with his family to the said house.

(10) The next crucial question that requires determination is whether Jagat Narain Seth alone was the tenant of the suit premises or he along with the other respondents was the joint tenant of the suit premises.

(11) The case of the landlord is that Jagat Narain (respondent No. 1 to the petition) was the tenant and respondents No. 2 to 6 are sub-tenants. The case of the respondents is that from the inception of the tenancy they and their predecessors (Laxmi Narain and Jai Narain) have been residing together in the demised premises and that all of them are tenants in their own right. The learned Tribunal rejected the contention that respondents No. 2 to 6 were sub-tenants. This finding of the learned Tribunal has not been assailed by the landlord before me. I, therefore, need not labour on this aspect of the case. There is further clear and convincing evidence on the record that at least since 1950 the respondents and their predecessors (Laxmi Narain was dead at that time) were residing together in the tenanted premises. From the above fact, in my view, it will not be wrong to presume or draw an inference that from the very inception of tenancy in 1938 Jagat Narain, his brothers and the families were residing together in the suit premises. The fact that the respondents have been residing together in the suit premises at least since 1950 has not been challenged before me.

(12) The question arises whether on the above facts it can be concluded that all the respondents are tenants in the suit premises in their own right. A certified copy of the rent note dated 12th November 1938 is on the record. It shows that Jagat Narain had taken the suit premises on rent 12th November 1938 at a rent of Rs. 50.00 per month. The rent note provides that the landlord could have the premises vacated after giving one month's notice and similarly the tenant could vacate the premises after giving one month's notice. From time to time there has been litigation between the landlord and the tenant Jagat Narain. In a suit between the landlord and the tenant in 1955 there was a compromise; Ex. A-8 is a certified

copy of that compromise. The said compromise evidences that Jagat Narain had given up a portion of the tenanted premises and the rent was reduced from Rs. 68.00 to Rs. 58.00 (it seems that sometime after 1938 the rent was increased to Rs. 68.00). Thereafter, there was another suit between the landlord and Jagat Narain Seth some time in 1964.- Ex. A-7 is a certified copy of the written statement filed by Jagat Narain Seth in the said suit. Jagat Nirain in para 3 of the written statement pleaded that he was a tenant under the plaintiff for the last 26 years. Ex. C-1 and B-2 are the rent receipts. Ex. C-1 is .dated 11th August 1964 and C-2 is dated 20th March 1954. Both the receipts show only Jagat Narain Seth as the tenant. R.W. 3 has given evidence that the rent receipts after 1955 continued to be in the individual name of Jagat Narain. R.W. 4 in cross-examination stated that he could not produce any receipt showing the joint Hindu family as a tenant.

(13) All the documentary evidence produced on the record only shows Jagat Narain as the tenant. There is not a Single document suggesting that all the brothers and their families were joint tenants.

(14) I may say that during the ..trial there was an attempt on the part of the respondents to improve upon their case. The respondents' case, as earlier observed, was that all of the trial gave evidence that Jagat Narain and his brothers and their families constituted a joint Hindu family and that the suit premises were taken on rent by the joint Hindu family. There is no convincing material on the record that Jagat Narain and his brothers constituted a joint Hindu family. Jagat Narain who was examined on commission does not say that he took the premises for joint Hindu family. He has in clear words stated that he hired Shish Mahal in 1938 at the rate of Rs. 50.00 per month.

(15) Shri Ishwar Sahai, learned counsel for the respondent-landlord, contended that even if it be assumed that Jagat Narain had taken on rent the disputed premises for the benefit of his family and the family of his brothers that would not mean that Joint Hindu family as such has become a tenant. The counsel in support of his contention relied on Hemraj v. Jagdish Singh 1967 P.L.R .Del 142 and Om Parkash and others v. Mahinder Kumar MaShotra 1971 R.C.R.552. I have perused the said authorities and I find that they fully support the contention of Mr.

Sahai, in Hemraj (supra) Mr. Justice Dua held :

'THAT even if a tenant obtains lease of a given premises for the benefit of the joint family, that would not mean that the joint family as such is clothed with the status of a tenant. The tenant may have in view the benefit of a large number of his family members when he takes on rent the premises consisting of residential accommodation. But the mere benefit of the tenant's family even if they are considered as constituting a joint family, would not by itself, as a matter of law, constitute all the members as tenants of the tenanted property, clothed with all the rights and liabilities of a tenant'.

In Om Parkash and others (supra) Mr. Justice D. K. Kapur held :

'THE definition of tenant in Section 2(1) [Delhi Rent Control Act, 1958](#) is that a tenant is a person by whom or on whose account or behalf the rent is to be paid for the premises. As long as the landlord never agreed to accept rent from the joint family those other members of the joint family cannot claim to be tenants. The landlord only agreed to accept rent from the tenant and if the tenant was entitled to use the premises for the benefit of others that would not make those other persons tenants either under the Transfer of Property Act or under the Delhi Rent Control Act.'

(16) I have earlier discussed the documentary evidence produced on the record and the said evidence puts it beyond doubt that the landlord had only accepted Jagat Narain as his tenant and all through he only treated Jagat Narain as the tenant. The mere fact that the brothers of Jagat Narain along with their families also resided with Jagat Narain in the tenanted premises cannot make the brothers and their families co-tenants or joint tenants along with Jagat Narain.

(17) For the reasons stated I hold that only Jagat Narain was the tenant of the suit premises. As already observed, the respondents and their predecessors were residing along with Jagat Narain in the suit premises at least since 1950 Mr. Verma, learned counsel for the appellants, contended that respondents No. 2 to 6 as members of the family of Jagat Narain would be considered in law as tenants and, therefore, would have a right to stay on in the suit premises as tenants. The

counsel in support of his contention relied on Baldev Sahai Bangia v. R.C. Bhasin : [1982]3SCR670 . In the said authority Mr. Justice Fazal Ali, speaking for the court, held :

'A beneficial provision must be meaningfully construed so as to advance the object of the Act, and curing any lacuna or defect appearing in the same. The word 'family' has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. More particularly, in our country, blood relations do not evaporate merely because a member of the family- the father, the brother, or the son -leaves his household and goes out for some time. Proviso (d) to section 11(1) of the Act is a special concession given to the landlord to obtain possession only where the tenanted premises have been completely vacated by the tenant if he ceased to exercise any control over the property either through himself or through his blood-relations. Any member of the family residing therein for a period of six months immediately before the date of the filing of the action would be treated as a tenant. The stress is not so much on the actual presence of the tenant as on the fact that the members of the family actually live and reside in the tenanted premises. In the present case the Rent Controller had given a clear finding that the mother, brother and sister of the tenant-appellant were residing in the disputed premises along with the main tenant and continued to reside there even on the date when the action for ejectment was brought. In these circumstances the essential ingredients of proviso (d) to Section 14(1) are not fulfilled and, therefore, the landlord is not entitled to evict the members of the family of the main tenant.'

(18) I have carefully gone through the said authority and, in my view, the said decision is on its own facts and has no application to the case in hand. The tenant, admittedly, has built or acquired residence at Q-7, Model Town. He along with his wife, sons and daughter had shifted to the newly acquired residential premises. Respondents No. 2 to 6 as members of the family of Jagat Narain must also go with the tenant. This view finds support from the decision in Hemraj (supra) wherein it was held :

'THAT, even if the tenant obtains a lease of certain premises for the benefit of the joint family, he may have in view the benefit of a large number of his family members when he takes on rent the premises, but provisions of section 14(l)(b), 54 and 57 of the Delhi Rent Control Act do not take this factor into account when they provide for the eviction of the tenant on an allotment of a residence to him. All the members of the family must be evicted along with the tenant when another accommodation is allotted to him.'

(19) The fact that respondents No. 2 to 6 have a large family would not be a relevant consideration. The object of introducing clause (h) clearly is that after a tenant acquires alternative accommodation for residence he is not entitled to retain the tenancy premises. There is no allegation or proof that the premises at Q-7, Model Town are not sufficient for the whole family.

(20) Shri Verma lastly contended that the respondents No. 2 to 6 with their families are staying in the suit premises for the last over 30 years and it would be very hard on them to order their eviction and that the court, in the circumstances of this case, should refuse to pass an order of eviction. The counsel in support of his contention referred to Chinnamarkathian alias Muthu Gounder and another v. Ayyavoo alias Periana Gounder and others, : [1982]2SCR146 and Shyamacharan Sharma v. Dharamdas, : [1980]2SCR334 . This contention of Mr. Verma is wholly without merit. I have perused the authorities referred to by him and I find that they have no application to the case in hand. After Jagat Narain had built or acquired Q-7, Model Town, Delhi and shifted to that house along with his wife and children, respondents No. 2 to 6 are left with no legal right to stay in the suit premises.

(21) No other contention was urged at the bar.

(22) This appeal is dismissed with costs. Counsel fee is assessed at Rs. 1000.00 . Respondents 2 to 6 are allowed one month's time to vacate the suit premises.