

Ram S. Dasta Vs. Gopal Devi

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Court : Delhi

Decided On : Jan-18-1985

Reported in : 27(1985)DLT249

Judge : Yogeshwar Dayal, J.

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

Appeal No. : Second Appeal No. 159 of 1984

Appellant : Ram S. Dasta

Respondent : Gopal Devi

Advocate for Pet/Ap. : Arun Kumar,; S.K. Kaul,; Kapil Sibal and;

Judgement :

Yogeshwar Dayal, J.

(1) This second appeal filed on behalf of the tenant is directed against the order of learned Rent Control Tribunal, Delhi dated 25th April, 1984 confirming the order dated 22nd February, 1984 passed by 7th Additional Rent Controller, Delhi accepting the application of the respondent Smt. Gopal Devi, .landlady, for delivery of possession of the premises in dispute to the landlady which had initially been let out to the appellant, herein, under section 21 of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as the Act).

(2) It appears that the first floor of premises bearing No. B-7, Co-operative Housing Society, N.D.S.E. Part I, New Delhi was let out to the appellant in pursuance of a permission granted by the Additional Rent Controller, Delhi dated 25th October, 1977.

(3) The application for permission to let out the aforesaid premises was filed on or about 24th October, 1977. In this application, it was stated by Mrs. Gopal Devi, the landlady, that she is owner of the premises and her only daughter whose husband is at present transferred to Jullundur on deputation and will be re-transferred back after three years and as such the landlady is desirous to let out the entire first floor of the premises to Shri Ram S. Dasta son of Sh. J.R. Dasta. The address of Sh. Ram S. Dasta was stated as U-30, Green Park, New Delhi. It was also stated that the premises are residential and the respondent shall not use it for any other purpose than for his residence and the residence of his family members. It was also stated in the application that the terms and conditions of the proposed lease agreement are mentioned in annexure 'A' to the application. In the application, it was stated that the tenancy shall be for a period of three years commencing from 25th October, 1977 and that the tenant has undertaken to vacate the premises on the expiry of the period of three years.

(4) This application came up before the Additional Rent Controller, Delhi on 25th October, 1977. Statement of Smt. Gopal Devi was recorded by the Controller on oath and she, inter alia, deposed that she wanted to let out to the tenant for residential purposes for a period of three years with effect from the date of permission of from 1st November, 1977. It was also stated by the landlady that her son-in-law has been transferred to Jullundur for three years and her daughter and her family will return to Delhi after three years and then she would require the premises. Thereafter, the Controller recorded the statement of Sh. Ram S. Dasta, the proposed tenant. He also stated that he wanted the premises for residential purposes for three years with effect from 1st November, 1977. He also stated on oath that he was not in possession / of the premises nor was he a tenant in it. After recording the statements on oath of the tenant and the landlady, the Additional Rent Controller granted the permission under section 21 of the Act to the landlady to let out the first floor of the premises in dispute for residential purposes for a

limited period of three years from 1st November, 1977.

(5) Thereafter a lease deed was executed and registered on 26th October, 1977 mentioning letting out of the premises in dispute with effect from 1st November, 1977. The period for which permission was granted and for which tenancy was created expired on or about 31st October, 1980. It also transpires that son-in-law of the landlady had also been in the meanwhile posted in Delhi in July, 1980 as Deputy Secretary (Administrative Reforms) Ministry of Home Affairs, New Delhi and the family of her daughter and son-in-law came to Delhi. The application for permission was filed at the stage when the son-in-law was posted as Deputy Commissioner, Jullundur. He worked at Jullundur from July, 1977 to February, 1980. From February, 1980 he was on leave and on short posting at Chandigarh and as stated earlier, he came to be posted at Delhi in July, 1980.

(6) As soon as the period expired, the landlady applied for delivery of possession on 1st November, 1980. As soon as notice of this application was given to the tenant, he filed all usual objections. The first objection was that he was already a tenant and moved into the premises in dispute before the grant of permission by the Rent Controller and had, in fact, moved into the premises in dispute on 18th October, 1977. The second objection was that the son-in-law was never posted in Delhi and therefore, mentioning of re-transfer to Delhi in the application for permission showed that the reasons given before the Controller for permission were wrong and this amounted to fraud on the court.

(7) In order to substantiate the first submission, the tenant examined Balbir Singh as OW-2 and Harjit Singh as OW-3. Balbir Singh, who was previous landlord, was examined with a view to depose that the tenant had vacated his previous premises on 17th October, 1977 and occupied the premises in dispute on 18th October, 1977. But the previous landlord on oath merely stated that the tenant left his house on 17th October, 1977 but he did not know where he went after that. Harjit Singh who was examined as OW-3 categorically stated that he never shifted luggage of the tenant to the premises in dispute and the tenant has merely procured a receipt from him to show the transportation of the luggage to the premises in dispute on or about 18th October, 1977.

(8) The landlady on the other hand examined Sh. Kulwant Rai as AW-1 who deposed that the tenant occupied the house on 1st November, 1977 and not on 18th October, 1977. This witness even attended the function at the house of the landlady on 18th October, 1977 when the daughter of the landlady was having her wedding anniversary party. The landlady also examined one Vinod Kumar as AW-2 who was occupying a room on the ground floor and was staying with the landlady and he also supported landlady's version. The landlady also examined her son-in-law Mr. J.L. Sareen who supported the case of the landlady and deposed about his various postings.

(9) The courts below noticed the earlier statement made by the tenant before the Controller when the permission was granted and also the terms of the registered lease deed and found that the premises have been let out to the tenant only with effect from 1st November, 1977 and that the versions of the tenant were incorrect. It will be noticed that even while giving statement on oath on 25th October, 1977, the tenant has given his address of Green Park, New Delhi. It appears to me that this objection had been taken merely to gain time in court and the tenant succeeded in this behalf only. There was no turn in this version at all. In any case, it is pure finding of fact of the courts below that the tenant was not in occupation of the premises in dispute before 1st November, 1977.

(10) Coming to the next objection, it will be noticed that apart from the emphasis on the expression 're-transfer' appearing in the application for permission, the landlady has been examined by the Controller and she categorically stated that at present her son-in-law is posted at Jullundur and was likely to be transferred to Delhi after three years.

(11) Even in the case of S.B. Noronah v. Prem Kumari Khanna : [1980]1SCR281 , the Supreme Court has observed :

'THE first condition is that the landlord does not require the demised premises 'for a particular period' only. This means that he must indicate to the authority before which sanction is sought for letting what is the particular period for which he can spare the accommodation. The Controller must be satisfied that the landlord means what he says and it is not a case of his not requiring the property

indefinitely as distinguished from a specific or particular limited period of say one year, two years or five years. If a man has a house available for letting for an indefinite period and he so lets it, even if he specifies as a pretense, a period or term in the lease, section 21 cannot be attracted. On the other hand, if he gives a special reason why he can let out only for a limited period and requires the building at the end of that period, such as that he expects to retire by then or that he is going on a short assignment or on deputation and needs the house when he returns home it is good compliance.'

(12) It is clear from the statement of the landlady before the Controller before the grant of permission that she was able to spare the first floor of the flat for a limited period i.e. a period by which her son-in-law was likely to be posted to Delhi. The son-in-law was, in fact, transferred to Delhi and he came to Delhi in July, 1980. Under these circumstances, it cannot be said that any fraud was committed by the landlady while obtaining the permission.

(13) Learned counsel for the tenant submitted that in . the application for permission to let the expression used was 'that son-in-law will be retransferred to Delhi' which suggested that the landlady was representing to the Controller as if the landlady's son-in-law was posted in Delhi. I am afraid, if the entire statement of the landlady is read Along with the application, there was no mis-representation. Her case was very clear that at that time son-in-law was posted at Jullundur and was likely to be posted at Delhi after three years. Merely expression like 're-transfer' being used in the application for permission does not show any mis-representation which may be called half truth as observed by E.S. Venkataramiah.J.in the case of V.S.Raghi and another v. Smt. Ram Chambeli : [1984]2SCR290 .

(14) There does not appear to be any fraud in the sense V.R. Krishna Iyer.J. had thought in the aforesaid of S.B. Noronah (supra).

(15) It appears to me that the tenant took these objections and succeeded in postponing his eviction for practically five years. This was the only merit in this objection. The appeal consequently fails and is dismissed with costs. The Rent Controller is directed to issue warrants of possession forthwith.

(16) I was inclined to give one month's time to the tenant to vacate the premises providing he was willing to undertake to hand over the possession peacefully after one month but the petitioner-tenant declined to give any such undertaking. I would, therefore, show no indulgence to grant him any further time.

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