

Saroop Chand Vs. Anguri Devi

Saroop Chand Vs. Anguri Devi

SooperKanoon Citation : sooperkanoon.com/694729

Court : Delhi

Decided On : Oct-05-1987

Reported in : 33(1987)DLT272; 1987(13)DRJ316; 1987RLR609

Judge : Yogeshwar Dayal, C.J.

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

Appeal No. : Second Appeal No. 6 of 1977

Appellant : Saroop Chand

Respondent : Anguri Devi

Advocate for Pet/Ap. : B.R. Malik and; J.K. Seth, Advs

Judgement :

Yogeshwar Dayal, C.J.

(1) This is second appeal directed against appellate order of Rent Control Tribunal dated 19-10-76 whereby he accepted the appeal filed by the landlady for eviction of appellant from premises in dispute on the ground contained in Clauses (e) and (h) to the proviso to 14(1) of the Delhi Rent Control Act.

(2) The respondent/landlady had purchased this property in 1965 and after obtaining permission from the Competent Authority under Section 19 of the Slum Areas (1 & C) Act, filed ejectment proceedings against the appellant on the

aforesaid two grounds. The only point agitated relates to purpose of letting.

(3) The premises in dispute consisted of one room measuring 10.2 X 8.4' feet. In the sale deed by which the property in dispute was purchased by the respondent/landlady, the premises in dispute were part of the two adjacent shops. In the sale deed the property in dispute is described as shop but in the plan filed with the ejectment petition the property in dispute was described by the landlady as a room. The learned Additional Controller dismissed the petition on the short ground that purpose of letting has not been prove

(4) The Additional R.C. for coming to the finding regarding purpose of letting was impressed by the testimony of one Ramesh Chand Sharma, who was the Mukhtar-e-Aam of the predecessor-in-interest of the vendor of the property and also by the fact that the premises were let to the appellant at the time when the respondent/landlady was not in the picture since property was let out as far back as 1956.

(5) In appeal Tribunal did not believe the evidence of Ramesh Chand Sharma, Mukhtar-e-Aam when he stated that the property was let out by him for commercial purpose. The Tribunal noticed that there was no provision of electricity, water and bath room in the premises in question. According to the Tribunal structure could not be taken within the category of a residential premises and it is the letting purpose or even the actual user which would matter rather than the structure of the premises. The use of the room as a garage for parking scooter or storing articles would not per se imply that the user is not residential. The Tribunal came to the conclusion that it would depend on as to whether the garage or store is used for commercial or residential purpose. If the garage or store room is attached to a business premises and is being used as a amenity for the same it would be part and parcel of the business set up, whereas if it is attached to the residential premises and it is being used for convenience of the occupant then the use must be termed as residential. Relying upon the observations of V.S. Deshpande, J. in 1971 Plr 1020. 'Whenever a garage is actually used by the resident and used for the parking of his car there would be no dispute that the house as well as garage were being used for a residential purpose', the Tribunal

took the view that the room in dispute cannot be said to be an appurtenant to the residence of the respondent who lives in house No. 7049 and the municipal number of the garage in dispute is 7046. The Tribunal felt that the tenant had himself in the proceedings under the Slum Areas (I & C) Act filed an affidavit Ex. Aa and 318 had stated therein that the garage is used for keeping motor cycles/scooters, some household goods and other material. The Tribunal disbelieved the statement of the tenant to the effect that he was also using the garage for storing fodder which was his main business and it was being carried on in a shop a few miles away in a different locality. He also disbelieved tenant regarding storing of fodder in the room in dispute on the ground that this case had never been put up before the Competent Authority (Slums) where the tenant's consistent plea was that the only business premises which the tenant had was in a different locality. The Tribunal relying upon the statement of the tenant in his own affidavit Ex. Aa accepted the fact that the room in dispute being very close to the residence and admittedly being for garage purpose took the view that the premises in dispute were being used throughout by the tenant as an amenity to his residential use, and thus, it was a case of letting for residential purpose.

(6) Mr. B.R. Malik, learned counsel for the appellant submitted that the findings of the Tribunal are vitiated by the fact that it was not an admission of the tenant as to the purpose of letting on which the Tribunal relied. It was also submitted by learned counsel that admission was neither clear nor conclusive and there was doubt, in fact, about the alleged admission.

(7) Before examining the submissions of the learned counsel for the tenant/appellant, it would be noticed that before filing the ejectment application, the landlady had to take permission of the Competent Authority to institute proceedings for eviction under Section 19 of the Slum Areas (1 & C) Act. Where the property is situated in the slum area, before any eviction proceedings can be instituted, a permission has to be taken of the Competent Authority (slums). The Competent Authority while granting or rejecting the permission has to consider whether the tenant is in a position to find an alternative accommodation in event of being evicted. Thus the competent authority is to find really the status of the landlord. In such proceedings very often the landlady tries to show that the income

of the tenant is exorbitant and he is in a position to find out alternative accommodation whereas some tenant try to maintain their actual income. In the present case the tenant's plea before the Competent Authority was that his business premises consists of a shop which was earlier being run by his father who deals in the sale of fodder. That shop is situated in Paharganj whereas the premises in dispute are situated in Ghas Mandi, Pahari Dhiraj which is very far from Paharganj. Before the Competent Authority the tenant pleaded that the premises in dispute was Kothri and he has stated that he is using it as garage for motor cycles/now scooters and for storing household articles and construction material. His plea was not that the premises in dispute is any part of the business activity. thereforee the case made out before the Competent Authority was that his business is sale of fodder which he is doing from a shop in Paharganj and not in premises in dispute but when the tenant came in the witness box before the Additional Rent Controller in the eviction proceedings he made a statement as if the premises are being used by him for storing household articles and parking motor cycles and also for storing fodder.

(8) It was in this state of evidence that the learned Tribunal disbelieved the allegations of the tenant as well as his witness Romesh Chand Sharma who was the Mukhtar-e-Aam of Triveni Devi who had sold the property to the landlady. The Tribunal disbelieved the Mukhtar-e-Aam for a good reason, namely, the Mukhtar-e-Aam had never visited the premises as it was let out by Mukhtar-e-Aam from his own residence. The Tribunal felt that Mukhtar-e-Aam who had never visited the premises in dispute could not know the purpose for which the premises were being let out. The finding of the Tribunal in the circumstance is based on peculiar facts of the present case.

(9) Question in dispute in the similar circumstances came up for decision before Sultan Singh J. in the case Satish Samp Gupta v. Messrs Vraj Lal Mani Lal & Co., 1981(1) Rcr 310. There the question was that in the absence of rent note or lease deed where the premises were let out actually and if the premises are to let out for parking motor cycles it does not mean letting out of residential premises within the meaning of Clause (e) to proviso to Section 14(1) of the Delhi Rent Control Act. The words 'let out for residential purpose', according to the learned Judge used in

this clause does not mean the premises let only for dwelling or sleeping having a kitchen. They mean and include also the premises let out for purpose incidental to residence such as drawing room, dining room, store room, and other places which an occupant of a house requires for his comfortable living for storing or keeping the articles. He requires a place for parking his car also. The garage where a person parks his car is thus a part of his residence. Parking of car by an individual would be incidental to his residence. The learned single Judge has also given an example, suppose a tenant was living in a house which had no garage of its own and he took a garage nearby for parking his car the purpose would be commercial simply because only the garage had been taken on rent for parking the car but the tenant had taken the garage for parking of the car which purpose is incidental to actual residence. The facts of the present case are somewhat similar to the case decided by Sultan Singh, J,

(10) It is true that in the sale deed the property was described as shop but the question is of purpose of letting. In the absence of evidence of user it may be assumed that the purpose for letting was commercial but in view of the constant user of the premises in dispute from the very beginning for the purpose of garage in the circumstances of the case, it would lead to infer that the premises were let out for a purpose incidental, more comfortable living by a tenant in his own adjacent house. The learned Tribunal had rightly relied upon the averments of the tenant in his affidavit Ex. Aa where it was not a case of the appellant, it was certainly where the tenant had mentioned the purpose for which he had been using the garage from the very beginning and that the fact that before the Competent Authority it was not pleaded that the garage was part of the business activity of the tenant.

(11) I would agree with the learned Tribunal that the tenant has tried to improve his position in the witness box. The user of the premises in dispute for parking motor cycles or storing household articles is a real purpose which is incidental or a facility to the main residential house for residential purpose. In fact, storage of household goods in the premises in dispute, corroborate the view that the premises has throughout been used for residential purpose as opposed to commercial purpose. It was nobody's case that it was a case for letting for any

other purpose. The dispute centres around the question whether the premises were let for commercial purpose or residential purpose only. In the circumstances , would affirm the findings of the learned Tribunal that the premises were let for residential purposes in the peculiar circumstances of the case and therefore, order of eviction could be passed on the grounds stated in Clauses (e) and (h) to the proviso to Section 14(1) of the Delhi Rent Control Act, Accordingly the order of the learned Tribunal is affirmed and appeal fails and is dismissed. The parties are, however, left to bear their own costs of the present proceedings.

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