

S.A. Satsangi Vs. Prem Kumar

S.A. Satsangi Vs. Prem Kumar

SooperKanoon Citation : sooperkanoon.com/695264

Court : Delhi

Decided On : May-02-2002

Reported in : 2002IVAD(Delhi)829; 98(2002)DLT11; 2002(64)DRJ148

Judge : R.C. Chopra, J.

Acts : Delhi Rent Control Act - Sections 14(1), 25B and 25B(8); Slum Area Clearance Act - Sections 19(1); Evidence Act - Sections 116; MP Accommodation Control Act, 1961; Rent Control Law

Appeal No. : C.R. No. 1172/2000

Appellant : S.A. Satsangi

Respondent : Prem Kumar

Advocate for Def. : V.K. Makhija, Sr. Adv., ; Akshay Makhija and ; Vandana Khur

Advocate for Pet/Ap. : V.B. Andley, Sr. Adv.,; Rajinder Mathur and; Sandeep Kapur

Disposition : Petition dismissed

Judgement :

R.C. CHOPRA, J.

1. This revision petition assails an order dated 25.9.2000 passed by learned Additional Rent Controller, Delhi by which the respondent's petition was allowed and an eviction order under Section 14(1)(e) read with Section 25B of Delhi Rent Control Act (hereinafter referred to as 'the Act' only) was passed.

2. I have heard Sh. V.B. Andley, Senior Advocate for the petitioner and Sh. V.K. Makhija, Sr. Advocate, for the respondent. I have gone through the Trial Court records also.

3. The facts relevant for the disposal of this petition, briefly stated, are that the petitioner is a tenant interest of two rooms, kitchen, WC, common portion of the varandha/bath on the ground floor of Premises No. 71-F, Kamla Nagar, Delhi. The respondent-landlord claimed eviction on the ground that he bonfire required the said premises for his and his family's residential use. According to respondent-landlord his family consisted of himself, his wife and two sons who were of marriageable age at the time of the filing of the petition. It is admitted that during pendency of proceedings both the sons of the respondent-landlord have been married and now they have one child each. The respondent-landlord averred that he and his family were in possession of one drawing room, one dining room and two bed rooms on the first floor and two rooms on the ground floor one of which was study and the other a garrage besides one store in the Mezzanine floor. The respondent-landlord, who was a Senior Executive working as Chief of the Project in Housing Urban Development Corporation, claimed that he had no other suitable residential accommodation and the portion available with him was not at all sufficient for him and his family. He also claimed that he had no room for guests nor he had any proper drawing room. He also pleaded that he had no room for a domestic servant. During the pendency of the proceedings both the sons of the respondent-landlord have been married and as such, the present requirement of accommodation for the respondent and his family is claimed to be far ore than it was at the time of the filing of the petition.

4. The petitioner-tenant after obtaining leave to defend resisted the eviction petition raising a preliminary objection that the premises were situated in a slum area but no permission had been obtained under Section 19(1)(a) of the Slum

Area Clearance Act. This plea has not been pressed by the petitioner and there is nothing on record to show that the premises in question fall in a slum area. The petitioner, however, denied the respondent's case that he bonfire required the premises under the occupation of the petitioner and submitted that the details of the premises as given in Annexure A to the petition were wrong. He admitted the number of the family members of the respondent-landlord. He denied that the respondent was the owner of the premises in question and stated that he merely used to collect rent on behalf of previous owner Smt. Chalti Devi who died in the year 1987. According to him the respondent continued to realise rent in her name but on 10.5.90 Sandeep Garg, the eldest son of the respondent gave two rent receipts to the petitioner, counterfoils of which the petitioner signed without reading the contents thereof, but as soon as he read the contents he asked Sandeep as to why the name of his father had been written in the column pertaining to the owner of the property who fraudulently represented that his father had become the owner. The petitioner asked him to show the title deeds which he could not. It was also pleaded that in the year 1993 one another tenant Shri Dadu who had sublet his premises in favor of one Ramesh Kumar vacated the premises under his tenancy and handed over the ground floor portion to the respondent. It was pleaded that the room which was being used by Sh. Dadu for his residential purpose had been wrongly shown as study room and another room which was being used by him for residential purposes was being shown as a garrage. It was also pleaded that the respondent-landlord was not residing in the house as he was posted at Uttarkhand. It was pleaded that the respondent had an alternative accommodation also available at Motia Khan, New Delhi.

5. The respondent-landlord filed a replication controverting the pleas raised by the petitioner and reiterated that the premises in question were bonfire required by him for his residential requirements.

6. Learned Trial Judge, after considering the evidence on record and submissions made by learned counsel for the parties, came to the conclusion that the respondent was the owner/landlord of the premises in question which were let out to the petitioner-tenant for residential use. It was also held that the premises were bonfire required by the respondent for himself and his family members and he had

no other suitable accommodation for his residential use. Accordingly the impugned eviction order was passed.

Learned counsel for the petitioner has assailed the impugned order on following grounds:-

(a) The respondent is not the owner of the premises in question and as such he is not entitled to an order of eviction in his favor.

(b) The respondent has no bonfire need in respect of the premises under the tenancy of the petitioner and the premises already available to him are sufficient for his needs.

(c) The respondent has an alternative residential accommodation available at Motia Khan, New Delhi.

7. Before coming to grips with the controversies raised in this petition, this Court must remind itself that the revisional jurisdiction exercisable by the High Court under Section 25-B(8) is limited and it can not enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it was a Court of facts. The touch-stone of the powers of this Court under Section 25-B(8) of the Act is to test as to whether the order of the Rent Controller is according to law or not and for that limited purpose only it may enter into reappraisal of evidence for ascertaining as to whether the conclusion arrived at by the Rent Controller are so unreasonable that no reasonable person acting with objectivity could have reached those conclusion on the material available on record. In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* reported in : [1999]3SCR1260 , the Apex Court had the occasion of examining the powers of the High Court under Section 25-B(8) of the Act. thereforee, this Court has to examine the controversies raised by the parties strictly within the parameters laid down by the Apex Court.

8. Learned counsel for the petitioner has vehemently argued that the respondent had failed to establish on record that he was the owner of the premises in question and as such was no entitled to the relief claimed by him under Section 14(1)(e) of

the Act. It is submitted that the respondent claimed to be the adopted son of the deceased owner/landlord but in the eviction petition filed by him, it was not pleaded even that he was an adopted son. It is argued that in the absence of pleadings in regard to his being an adopted son, no amount of evidence placed on record by the respondent could enable the Court to hold that he was an adopted son. It is further argued that the Adoption Deed Ex. PW1/4 was not properly proved in as much as none of the parties to the Deed or any attesting witness was examined. It is pointed out that the list of witnesses filed by the respondent showed that respondent's natural father was alive at the time of filing of eviction petition but still he was not examined as a witness to prove the adoption Deed to which he was a signatory.

9. On the other hand learned counsel for the respondent argues that the respondent was under no obligation to plead in the eviction petition that he was an adopted son as the adopted son stands on the same footing on which a natural son stands and by merely pleading that he was the son of the deceased owner, the respondent had pleaded the fact of ownership which alone was an essential ingredient for claiming the relief. It is also argued that in these proceedings the respondent was not required to strictly prove and establish his title to the property in question and if he succeeds in proving on record that he was more than a tenant and his possession as in the nature of owner the burden of establishing ownership stands discharged. Learned counsel for the respondent relies upon the counterfoils of the rent receipts Ex. PW1/R-1 to R-7 and RW1/A2 to A6 which bear the signatures of the petitioner and in which he admits the respondent to be the owner-landlord of the premises in question. Relying upon Section 116 of the Evidence Act, learned counsel for the respondent contends that the petitioner is estopped from denying his title. It is also submitted that no notice was ever given by the petitioner to the respondent challenging his title to the property and he was paying rent to the respondent without any demur. He submitted that adoption deed Ex. PW1/4 was duly proved by respondent while appearing as PW1.

10. The Apex Court in a recent case of Sheela and Ors. v. Firm Prahlad Rai Prem Prakash reported in : [2002]2SCR177 , while dealing a rent matter under MP Accommodation Control Act, 1961, discussed the case of an adopted son

regarding ownership of let out premises. His lordship Hon'ble Mr. Justice R.C. Lahoti, speaking for the Bench, categorically held in para 10 of the judgment, that though eviction petition could be maintained by owner-landlord and not merely by a landlord the concept of ownership in a landlord-tenant litigation governed by the Rent Control law has to be distinguished from the one in a title suit. According to his lordship ownership is a relative term, the import whereof depends on the context in which it is used. His lordship held that in Rent Control legislation, the landlord can be said to be the owner if he is entitled in his own legal right as distinguished from, for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. It was added that what may suffice and hold good as proof of ownership in a landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. His lordship was of the view that the burden of proving ownership in a suit between landlord and tenant, where the landlord-tenant relationship is admitted or proved, is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the plaintiff.

11. Applying the aforesaid principle of law to the facts of the present case, this Court has no hesitation in agreeing with the learned Trial Judge that the respondent was the landlord/owner of the premises in question. The respondent was under no obligation to plead in the eviction petition that he was an adopted son for the reason that the law does not countenance any distinction between an adopted and a natural son. It is also worth mentioning that in our society, in most of the cases of adoption, the adoption is kept as a guarded secret and under wraps so that the adopted child does not suffer any psychological trauma on learning that he is not natural but an adopted child in the family. thereforee, neither the adoptive parents nor the adopted child are under any obligation to go around and beat drums about adoption and tell the whole world that the child is not a natural but an adopted child only. The pleading required to be made was that the respondent was the owner/landlord of suit premises and it was made. Thus, the absence of pleading in eviction petition that respondent was an adopted son is inconsequential as it was not required to be made.

12. This Court does not agree with the submissions made by learned counsel for the petitioner that Ex. PW1/4 Adoption Deed has not been properly proved. PW1 had identified the signature of his adoptive father late Shri Mansa Ram on this adoption Deed. Nothing could be brought out in his cross examination to falsify him. The counterfoils of the rent receipts mentioned above completely demolish the petitioner's plea that the respondent is not the owner/landlord of the premises in question. In these counterfoils the name of the respondent was mentioned as owner of the property. The plea that the signatures of petitioner, on these counterfoils, were obtained by the son of the respondent by playing a fraud is frivolous on the face of it and deserves to be rejected. If the petitioner had come to know that his signatures had been obtained on these counterfoils by playing a fraud, he ought to have issued a written notice to the respondent lodging his protest but nothing was done. The letter Ex. PW1/13 which is admitted by the petitioner establishes that the petitioner was admitting the respondent to be the owner/landlord of the premises under his tenancy. therefore, in view of the evidence on record and the presumption under Section 116 of the Evidence Act, this Court has no hesitation in agreeing with the findings of the learned Trial Judge that the respondent is the owner/landlord of the premises in question.

13. On the question of bonfire requirement of an owner/landlord in terms of Section 14(1)(e) of the Act the Apex Court has repeatedly observed that while weighing the rival contentions of the parties on this issue the Courts must adopt a balanced approach to ensure that no tenant succeeds in defeating the object of the Act, by compelling the owner/landlord to remain without sufficient accommodation and at the same time no unscrupulous owner/landlord should be able to throw out his tenant on the pretence of bonfire need. The sufficiency of the accommodation available to an owner/landlord has to be seen from the point of view of the owner/landlord and his family by taking into consideration the totality of the circumstances including his profession, vocation, style of living, habits and background. In the case of *M.L. Prabhakar v. Rajiv Singhal* reported in (2001) 2 SCC 355 the Apex Court laid down in no uncertain terms that the intendment of Rent Control law was no to compel the landlord to squeeze himself into lesser accommodation so that the tenant's occupancy is protected. In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* reported in : [1999]3SCR1260 , the Apex Court

examined and explained in detail the meaning and import of 'bonfire need' in following words in para 13:-

'Chambers 20th Century Dictionary defines bona fide to mean 'in good faith : genuine'. The word 'genuine' means 'natural : not spurious : real : pure : sincere'. In Law Dictionary, Mozley and Whiteley define bona fide to mean 'good faith, without fraud or deceit'. Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bona fide' is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to

satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.'

In *Sarla Ahuja v. United Insurance Co.* reported in : AIR 1999 SC100 , the Apex Court emphasised that in a case based on bonfire need the Rent Controller should not proceed on the presumption that the requirement is not bonfire and while deciding the question of bonfire of the requirement of the landlord it is quite unnecessary to make and endeavor as to how else the landlord could have adjusted himself. therefore, a tenant has no business to suggest as to how and in what manner the landlord and his family should adjust themselves in the premises available to them so that he is not evicted from his tenanted portion. The question of sufficient and need has to be left to the satisfaction of the owner/landlord with the only qualification that it should be bonfire and should not be a mere ploy to throw out the tenant by invoking the provisions to Section 14 (1)(e) of the Act.

14. Admittedly, the respondent-landlord now has in his family himself (his wife having expired) and two married sons who are having one child each. They are in occupation of one drawing-dining and two bed rooms on the first floor besides two rooms on the ground floor one of which is stated to be a study room but can be conveniently used as a bed-room and the other a garage which also, according to the petitioner, was always used as a bed room by the earst while tenant Dadu. The respondent has one store also in the Mezzanine floor besides a kitchen on the first floor and toilet etc. on the first floor as well as ground floor. If the study room on the ground floor remains with the respondent as a bed room his two married sons have the availability of first floor which comprises of drawing-dining and two bed rooms. The store in the mezzanine floor cannot used as a bedrooms. The petitioner has raised a lot of controversy in regard to the use of room 'C' as shown in Ex. PW1/A/1/1. According to the respondent this was a sanctioned garage as per the sanctioned building plan but according to the petitioner, this room was always used as a living room by the previous tenant of the respondent and as such the respondent and his family too can use it as a bed room.

15. Before coming to question of the bonfire need of the respondent and the accommodation available to him, this Court would like to examine the plea of the petitioner that room 'C' is living room and not a garage. The respondent has proved on record the sanctioned plan of the building as Ex.PW2/3 to show that as far back as in the year 1947 itself when this building was constructed, this room was sanctioned as a garage only. The mere fact that the previous tenant of the respondent was using this room as a living room would neither convert it to a living room nor would be enough to compel the respondent also to use it as a living room and not as a garage. The fact that after the eviction of his previous tenant Dadu the respondent brought about certain changes in the door etc of this garage so as to make it usable as a garage does not speak of any malafide on the part of respondent but rather shows that he intends to use this room as a garage only. Parking of a Car outside one's house is not at all safe and wherever a garage is available the parking of the vehicle has to be inside the garage only. It has also come in evidence that in this room there is a water booster pump also which totally negates the plea of the petitioner that this room is usable as a living room. therefore, this Court does not agree with the submissions of learned counsel for the petitioner that the room 'C' aforesaid is a bed room/living room available to the respondent and his family. It is a garage only.

16. Learned counsel for the petitioner relying upon a judgment reported in 1980 RLR 463 has contended that a landlord cannot include in his requirement the need of domestic servant. He also argues that the respondent has not been able to prove on record that he had ever employed a domestic servant on full time basis. To the contrary learned counsel for the respondent relies upon the judgment *Prabhu Chaudhary v. Hira Lal Kapoor* reported in 1986 (2) RCR 242 and *Manohar Singh v. Kanshi Ram & Sons* 1967 DLT 590 to contend that the requirement of a room for a servant should be considered as a bonfire need. After considering the submissions made by learned counsel for the parties and the law laid down in the aforesaid judgments, this Court is of the considered view that in spite of the fact that the respondent may not have earlier employed any domestic servant on full time basis, his demand now for a room for a servant whom he may employ cannot be termed malafide specially in view of the fact that his family has increased in number and there are two infants also who need regular care and attention. The

respondent/landlord himself having lost his wife needs the assistance of a domestic servant. The requirement of a room for a servant therefore is a bonfire need of the respondent-landlord.

17. The two sons of the respondent even if accommodated on the first floor in one bed room each with common drawing/dining room and the respondent getting adjusted in the 'room 'Z' on the ground floor, it is clear that the respondent has no guest room nor any separate room for the children who are growing up and would be requiring some accommodation for their studies etc. The respondent is now having three families in one house in as much as on is respondent himself and two families are of his two married sons. Fairness demands that both the married sons should have atleast two separate rooms for themselves and their children besides the common drawing/dining which too at times may be a source of discord and disharmony. There is no room for accommodating a servant. inspire of this tight living arrangement the respondent-landlord would be having no space on the ground floor for entertaining his relatives and guests. He has retired as a Senior Executive from Hudco and as such is a man of status having position in society. It would be unfair to expect him to attend and entertain his friends and relatives in his bed room itself or to take them to the first floor where his daughters-in-law and sons are living. He needs an additional room for domestic servant also. therefore, considering the size of respondent's family and the accommodation available to him, this Court fully agrees with the learned Trial Court that the plea of bonfire need as raised by the respondent was justified. Merely for the sake of protecting the interests of petitioner-tenant, the respondent and his family cannot be asked to suffer inconvenience in the matter of living accommodation.

18. Learned counsel for the petitioner has vehemently argued that the respondent inspire of having an alterative accommodation available at Motia Khan chose to file this eviction petition and acted malafide as he did not disclose about the same in the petition and failed to raise any plea that the said accommodation was not suitable for him. He argues that the petition filed by the respondent is liable to be rejected on this short ground itself. Learned counsel for the respondent on the other hand has argued that the flat at Motia Khan is only a 800 ft. flat and the petitioner cannot insist that for the sake of protecting his tenancy thHe relies upon

the judgments in Shiv Sarup Gupta v. Dr. Mahesh Chand (supra) and Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon reported in 72 (1998) DLT 629.

In M.L. Prabhakar's case (supra) the Apex Court was directly dealing with the question of non-disclosure of alternative accommodation by a landlord. It was urged before the Court that there was suppression of facts on the part of the landlord and as such the petition filed by him was not bonfire. Relying upon the case of Ram Narain Arora v. Asha Rani reported in : AIR 1998 SC3012 it was held that the omission to disclose the availability of other residential accommodation by a landlord would not be fatal to an eviction petition if both the parties understood the case and placed material before the Court. In this case also the availability of the flat at Motia Khan has been considered by the Trial Court as well as by this Court. Relying upon M.L. Prabhakar's case this Court has no hesitation in holding that the respondent-landlord cannot be asked to split his family for the sake of his tenant and as such the availability of flat to him at Motia Khan is of no consequence whatsoever.

19. In the result this Court is of the considered view that this petition is without any merit. There are no grounds for interfering with the impugned order. Learned ARC has appreciated the evidence on record and the pleas of the parties in their proper perspective. The view taken by the learned Rent Controller does not suffer from any legal or jurisdictional error and the conclusions arrived at by the Trial Court are in accordance with law. The impugned order is therefore upheld.

20. The petition stands dismissed.

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