

Thakur Dass Vs. Parbati Devi

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Court : Delhi

Decided On : Oct-08-1993

Reported in : 1993IVAD(Delhi)385; 52(1993)DLT212

Judge : V.B. Bansal, J.

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

Appeal No. : Civil Revision Appeal No. 817 of 1992

Appellant : Thakur Dass

Respondent : Parbati Devi

Advocate for Def. : Shri. N.N. Aggarwal

Advocate for Pet/Ap. : P.K. Nayar and; N.N. Agarwal, Advs

Judgement :

V.B. Bansal, J.

(1) Shri Thakur Dass has filed this revision petition against the order dated 2/09/1992 of Shri M.K. Gupta, Additional Rent Controller, Delhi, thereby dismissing the application of the petitioner for leave to defend and thus, passing an eviction order in favor of Smt.Parbati Devi, under Section 14(l)(e) read with Section 25B of the Delhi Rent Control Act (hereinafter referred to as 'the Act') from the premises,

shown in the site plan Ex. A-1, with a further direction that the order shall not be executable for a period of six months.

(2) Smt. Parbati Devi (hereinafter referred to as 'the owner') filed a petition for eviction against Thakur Dass (hereinafter referred to as 'the Tenant') under Section 14(l)(e) read with Section 25B of the Act, inter alias pleading that she was the owner of House No. 265, Block-U, Street No. 4, Mangol Puri, Delhi, which was let out to the tenant in 1984 for residence on a monthly rent of Rs.125.00 per month excluding water and electricity. It was also claimed that the said house was allotted to the petitioner by the Dda for residential purposes under the Special Housing Scheme on Hire Purchase basis, in accordance with the terms and conditions, stipulated in the Dda (Management and Disposal of Housing Estates) Regulations, 1968 and being the only allottee, who has been regularly paying installments to (lie DDA. It has also been claimed that she has been residing on the first floor of tenanted portion, comprising of one small room along with temporary tin-shed kitchen and common verandah in premises No. 351, Dhawan Street, Subzi Mandi, Delhi along with her daughter's sons Narain Dass (aged 29 years) and Bhagwan Dass (aged 26 years) It has also been claimed that Narain Dass is marriage wife Smt. Raj Kumari and they have two children, who are also residing with her as members of the family. Further averments made in the petition have been that the premises in question are residential which are required for residence and she has no other reasonably suitable accommodation in Delhi.

(3) After the receipt of the notice of this eviction petition, an application along with an affidavit was filed by the tenant that the tenanted premises were let out to him for residential-cum-commercial purposes and he has been using the same, both for residence and for the purposes of manufacturing card-board boxes and supplying the same to the shopkeepers. Further averments made in the affidavit have been that the owner has with her another house bearing Municipal No. 951, Dhawan Street, Subzi Mandi, Delhi, which she has been using for her residence for the last 30 years and that there was no dependent on the petitioner who may require additional accommodation. It was also claimed that she was neither the owner nor the land-lord and thus, prayer was made for leave to defend the proceedings as several tribal issues have been raised. 'A reply-affidavit was filed

by Smt. Parbati Devi, controverting the averments made by the tenant.

(4) After hearing the arguments of the learned Counsel for the parties, the learned Additional Rent Controller passed the impugned judgment, thereby directing the eviction of the tenant/petitioner.

(5) I have heard Shri P.K. Nayyar, learned Counsel for the petitioner and Shri N.N. Aggarwal, learned Counsel for the respondent and have also carefully gone through the record.

(6) Learned Counsel for the petitioner has submitted that the petitioner had raised many triable issues, which could be decided by the learned Additional Rent Controller only, after giving opportunity to the parties for leading evidence, and that grave injustice has been done to the petitioner by refusing to give permission to defend. He has also submitted that the grounds pleaded by the petitioner have clearly indicated that neither the respondent is the owner or the land-lord and she was not in need of the premises for her own residence or for the residence of the members of her family. It has further been submitted that the premises were let out to the petitioner for residence-cum-commercial purpose and thus, no case was made out for straight away passing an order of eviction. A prayer has, therefore, been that the order may be set aside and the petitioner may be given an opportunity to defend the petition for eviction.

(7) Learned Counsel for the respondent has, on the other hand, submitted that no triable issues have been raised by the petitioner in the application for leave to defend. It has prima facie been proved that the respondent is the owner and land-lord of the premises, which were let out to the petitioner, only for residence and she is in bona fide requirement of the same for her residence and the residence of other family members. A prayer has, therefore, been made that the petition may be dismissed.

(8) Before going into the matter, it would, at this stage, be appropriate to quote Section 14(l)(e) of the Act, which reads as under :-'Section 14(l)(e):that the premises let out for residential purposes are required bonafide by the landlord for occupation as a residence for himself or for any member of his family dependent

on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;'A perusal of the aforesaid provision makes it abundantly clear that in order to succeed in obtaining an order of eviction, a landlord has to plead and prove the following ingredients : (1) that he is the owner/landlord of the premises ; (2) that the premises were let for residential purposes ; (3) that he required the premises for himself or for any member of his family, dependent upon him; and (4) that he has no other reasonably suitable residential accommodation.

(9) The plea of the respondent had been that she was allotted these premises by the DDA under the DDA (Management and Disposal of Housing Estates) Regulations, 1968 being the only allottee and has been paying installments regularly to the DDA. She has also claimed to have given these premises to the petitioner on rent at the rate of Rs. 125.00 per month. These facts are not controverted by the petitioner in the affidavit, filed by him, for claiming leave to defend the proceedings.

(10) Submission of learned Counsel for the petitioner has been that the respondent being not the owner can not claim the benefit of Section 14(1)(e) of the Act as she does not fulfill the requirements of being the owner, though, she may be the landlord. I do not agree with this submission. As already referred to, the premises were let out to the petitioner by the respondent who has claimed herself to be an allottee from the DDA. Even if, the respondent has not paid all the installments to the DDA, does not give any right to the tenant to take up the defense of denying the ownership so as to avoid the order of eviction. The respondent in fact, has a good title against every body in the world excepting the DDA. The petitioner having been induced by the respondent she no doubt has the right to dispossess the petitioner/tenant and occupy the premises herself. She, in these circumstances, is certainly covered by the term 'owner' appearing in Section 14(1)(e) of the Act. I find support for this view from the case *Kanwal Kishore Chopra, Petitioner v. O.P. Dwivedi and Another, Respondents*, Reported as : AIR 1978 Delhi 53 .

(11) Learned Counsel for the petitioner has also submitted that the owner/respondent had no cause of action inasmuch as it has not been pleaded by her in the petition for eviction that she does not have reasonably suitable residential accommodation and on this account, the petition ought to have been rejected. Reliance has been placed on case Dr. (Mrs) N.D. Khanna, Petitioner v. M/s. Hindustan Industrial Corporation, New Delhi, Respondent, (Reported as : AIR1981 Delhi305). It has been held in this case that for obtaining an order of eviction under Section 14(l)(e), a land-lord has to plead and prove the following ingredients: (1) that he is the owner land-lord of the suit premises; (2) that the premises were let for residential purposes; (3) that he requires the premises for himself or for any member of his family dependent upon him; (4) that he has no other reasonably suitable residential accommodation and if there is any omission in the eviction application of mentioning any of the aforesaid ingredients, the petition is liable to be rejected. There can possibly, be no dispute with regard to the legal proposition. The question, however, for consideration is as to whether there is any default on the part of the respondent/land-lord in pleading the facts. A reading of the contents of the whole petition for eviction makes it abundantly clear that Smt. Parbati Devi has claimed that she is the owner and the respondent has been in possession of the same as a tenant on payment of Rs.125.00 per month which were let out to him for residence. It has also been pleaded by her that she was residing in a tenanted premises and she needed the premises for her own residence and the residence of her family members, having no other reasonable suitable accommodation in Delhi. There is no doubt that while stating that she had no other reasonable suitable accommodation in Delhi, it has not been mentioned that she did not have reasonably suitable residential accommodation. However, the petition has to be read as a whole and while doing so, it is clear that all the facts have been pleaded by the owner and no case has been made out for the rejection of the petition.

(12) Learned Counsel for the petitioner has submitted that the premises were let out to the petitioner for residential-cum-commercial purposes and that the petitioner has been using the same for his business purpose of manufacturing cardboard boxes and supplying the same to his customers from the premises in dispute. He has further submitted that the persons claimed by the respondent to

be her family members, are not the family members and she did not require the premises for her own use or for the use of her family members, it has also been submitted that the sons of the daughter of the respondent out of which, one is married and has wife and children, cannot be the family members of the respondent and in fact, their parents are residing in Delhi in their own house. He has, thus, submitted that triable issues have been raised by the petitioner with regard to the purpose for which the premises was let out and whether the respondent has any need of the premises for her own residence and the residence of her family members. It has, thus, been submitted that the learned Trial Court has erred in declining to give permission to contest the eviction petition.

(13) Learned Counsel for the respondent has submitted that the respondent is an old lady and that one son along with his wife and children and another son of her daughter have been residing with the respondent who assuch, are her family members and it cannot be said that she is not in need of the premises. It has also been submitted that there is no material on record to indicate that the premises were let out to the tenant for residential-cum-commercial purpose or that he has been carrying on the business of manufacturing cardboard Boxes. It has, thus been submitted that the leave has correctly been declined.

(14) I have given my thoughtful consideration to these submissions. It is not disputed that no Rent Note was ever executed and the respondent had never issued Rent Receipts to the petitioner in respect of the premises inquestion. The most important question for consideration, at this stage, is about the ambit and scope for granting leave to contest to the tenant or to refuse the same. The basis authority on the point is a judgment of the Supreme Court in case Precession Steel and Engineering Works and Another,Appellants /Tenants v. Prem Deva Niranjana Deva Tayal, Respondent /Land-lord(Reported as 1982 (2) AIRCJSC 643.It has been held in this case that the Controller cannot ask the parties to produce the documents or other evidence and where it has been produced,the Controller cannot look into them. However, the affidavit must give the facts in support of the contentions raised and bare averments not supported by facts, would not be sufficient. It has also been held that where the tenant pleads that the persons referred to by the owner are not the members, it must be shown

specifically as to how they are not the members. In the case *Wing Comm.R.P.Jaiswal v. Hans Raj*, (Reported as 1979 Rlr 17) it has been held that where the tenant pleads that the persons claimed by the landlord to be the family members were not so, then important and triable issue is raised and permission to contest should be given to the tenant. In the instant case. it has specifically been pleaded by the petitioner that the premises were let out for residence-cum-commercial purposes and that the daughters sons and their wife and children are not the family members of owner. Can it be said that this plea of the tenant is not a bona fide plea and answer is certainly in the negative. The questions raised by the tenant are specific, positive and bona fide inasmuch as it has been pleaded that the persons claimed by her to be the family members are not the family members and that she is the owner of another house mentioned in the affidavit. keeping in view these averments. I am clearly of the view that a case was made out by the petitioner for leave to defend. The learned Trial Court has committed an error in refusing to grant permission on account of which, the petitioner has suffered. The petition, thus, deserves to be allowed.

(15) In view of my foregoing discussion, the revision petition is accepted , the impugned order is set aside and the petitioner is granted permission to defend the petition for eviction. The learned Additional Rent Controller, Delhi would take steps for the expeditious disposal of the petition. Parties to bear their own costs. Parties are directed to appear before the learned Trial Court on 27/10/1993.