

Jagdish Chander Gulati Vs. Kanta Devi

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Court : Delhi

Decided On : Nov-01-1995

Reported in : 1996(36)DRJ654

Judge : Arun Kumar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Hindu Succession Act, 1956](#) - Sections 14

Appeal No. : Civil Review Appeal Nos. 783 and 784 of 1994

Appellant : Jagdish Chander Gulati

Respondent : Kanta Devi

Advocate for Pet/Ap. : R.L. Kohli,; Keshav Dayal and; R.K. Varshney, Advs

Judgement :

Arun Kumar, J.

(1) This is tenant's revision petition under section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as the Act) against the judgment of the Additional Controller, Delhi dated 5th September 1991 whereby the Additional Controller passed an eviction order in favor of the respondent landlady regarding the suit premises under clause (e) of the proviso to sub-section (1) of Section 14 of the Act. By the impugned judgment the Addl. Controller disposed of two eviction

petitions. Two petitions were filed by the respondent landlady because there were two tenancies with respect to two portions of the same property bearing No.E-357, Greater Kailash-I, New Delhi. The petitioner tenant is common in both the cases. One petition was regarding a room on the ground floor (backside) of the property while the other petition was filed with respect to accommodation comprising of barsati (second floor) having one big room, kitchen, latrine and bath and a small store.

(2) The case of the respondent landlady in the eviction petitions was that she is the owner and landlady of the suit premises. The premises was let out for residential purpose only by the previous owner Shri Krishan Lal Gulati who happened to be elder brother of the tenant in the present case. The suit property bearing No.E-357, greater Kailash-1, New Delhi was purchased by one Navrattan Kumar, father-in-law of the respondent landlady vide registered sale deed dated 18th March 1971. Navrattan Kumar died on 24th June 1983 leaving behind a registered Will with respect to the property in suit whereby the suit property was bequeathed to the respondent landlady. Thus the petitioner tenant became a tenant under the respondent landlady by operation of law. It was further pleaded that the premises was required bona fide for residence by the landlady for herself and members of her family dependent upon her for residence and neither the landlady nor her husband or her son own any other alternative accommodation in Delhi suitable for their residential requirement. The family of the landlady at the time of filing of the petition consisted of herself, her husband, one son named Pankaj Kumar and a daughter. At the time of institution of the eviction petition the husband of the landlady was in government service as Superintending Engineer, Bulandsheher, U.P. Both the eviction petitions are dated 22nd December 1984 and were filed on 4th January 1985. The husband of the landlady was due to retire in November 1986. According to the landlady after retirement of her husband she wanted to settle down Along with her family in the property in suit. The son of the landlady was a Chartered Accountant aged 27 and half years at that time and was due for marriage. Likewise the daughter of the landlady had already done her M.Sc. All these persons were stated to be dependent on the landlady for purposes of residence. She expressed a desire to settle down in Delhi also for the reason that all her near relations were settled in Delhi. The case of bona fide requirement

for the suit premises was pleaded on these lines.

(3) In the eviction petition itself it was mentioned that the father-in-law of the landlady had filed an eviction petition against the present tenant under section 14(1)(e) of the Act. On his death the landlady had applied for substitution in his place. However, the application for substitution was rejected on the ground that the requirement of the landlady had not been pleaded in the said petition. The said petition was dismissed as having abated. The tenant filed written statement in both the petitions more or less on similar lines. He denied the ownership of the property in suit. He denied the factum and validity of the will of Navrattan Kumar by virtue of which the landlady claimed to be the owner of the property in suit. Further he contended that no probate or letters of administration with respect to the alleged Will had been obtained, therefore, the petition was not maintainable. The tenant stated that the premises had been let out for residential-cum-commercial purpose. therefore, the petition under section 14(1)(e) was not maintainable. The tenant also took a plea that in view of the earlier eviction petition filed by Navrattan Kumar having been missed, the present petition was not maintainable as it had become barred by principles of resjudicata. It,was also pleaded that the landlady had filed another eviction petition on the ground of misuse of the suit property by the petitioner tenant At that time the; case of bona fide need was not. set up. In view of this the petition for bona fide need was barred.

(4) The Addl. Controller rejected all the pleas raised by the tenant and found that the landlady had succeeded in making out a case under section 14(1)(e) of the Act and accordingly both the petitions were allowed and an order was passed in both the petitions by a common judgment which is under challenge in the present revisions.

(5) At the outset I may deal with the objections regarding resjudicata and the present petitions being, barred in view of an earlier petition on the ground of misundr. It is not disputed that after the death of Navrattan Kumar who filed the previous eviction petition under section 14(1)(e) of the Act against the present tenant, the landlady had applied for being substituted in place of Navrattan Kumar. The application of the landlady had been dismissed by the,then Ad clause

Controller holding that the right to sue did not survive in her favor. The Addl. Controller holding observed that 'if she needs the disputed premises for her own requirement and for the requirement of her family members then she shall file a separate eviction petition x x x x.' In view of these facts the bar of resjudicata does not arise. Similarly the other petition was filed previous petition. The present landlady was never made a party in the said proceedings the question of resjudicata does not arise. Similarly the other petition was filed on the ground of misuse of the premises by the tenant. The tenant stopped the misuse and made a statement in that behalf before the Controller. The said petition was filed was disposed of on the basis of the statement of the tenant. The present petition in these circumstances cannot be said to be barred for any reason.

(6) Coming to the merits of the case so far as the finding of the Addl. Controller on the question of ownership of the property in suit of the landlady is concerned there is no merit in the pleas raised on behalf of the tenant. The landlady claims ownership on the basis of registered will in her favor. The death of NavrattanKumar, previous owner, is not in dispute. The tenant is nobody to challenge the factum and validity of the Will. There is similarly no requirement for obtaining letters of administration or probate of a Will when a Will relates to an immovable property. It is also to be borne in mind that the use of the word 'ownership' in clause (e) of the proviso to sub-section (1) to section 14 of the Act does not mean that the landlord has to prove title to the property as if it is a case of dispute of title to property. The tenant simply denies ownership of the landlady. He has not claimed that he is the owner of the property. The landlady is not required to prove ownership of the property in absolute terms as in a case relating of the property. The denial of ownership of the respondent landlady of the property in suit by the tenant is frivolous and mala fide The plea has been raised only for the purposes of prolongation of trial which normally. happens in all the cases under Section 14(1)(e) of the Act once leave to contest is granted. In denying ownership of the landlord in such cases, the only intention of the tenants normally is to ensure that they are able to prolong on the trial of the sit. By this method they try to threat the possibility of an immediate eviction order being passed against them. The Rent Control Authorities have to keep this aspect in mind while dealing with the cases under the said proviso. Of course genuine cases of absence of

ownership will be a class apart and for such cases the statutory provision has to be given effect to. So far as the present case is concerned I have no hesitation in accepting the finding of the Addl. Controller that the landlady has been able to satisfy the requirement of ownership as contained in clause (e) of the proviso to sub-section (1) of section 14 of the Act.

(7) One more aspect needs to be mentioned in this connection. Learned counsel for the petitioner tenant submitted that the Will on the basis of which the landlady derives title to the property, only grants a life estate in favor of the landlady regarding the property in suit and, therefore, she is not entitled to extinguish the existing lease in favor of the tenant with respect to the property. She is not a full fledged owner of the property. This argument, to my mind, is also totally devoid of any merit. Even a life estate in a property will include the right to enjoy the property during the life time of the legatee. The right to enjoy the property will include the right to let out portions of the property, and also right to evict the tenant from the let out portions of the property.

(8) This brings me to the question of letting purpose. For this plea it has to be noted that it has been raised only regarding the ground floor room. The plea has not been raised with respect to the accommodation on the barsati floor. Admittedly there is no written lease deed or rent note with respect to the creation of the tenancy: It is also clear from record that the petitioner tenant had been inducted in the premises long before its purchase by Navrattan Kumar, therefore, the respondent landlady cannot be said to be a witness about the letting of the premises nor the facts as pertaining to that time can be said to be within her personal knowledge. The controversy has to be resolved on the basis of other evidence on record. The learned counsel for the tenant strongly relied on certain rent receipts in which the portion in question has been described as shop. The Explanation on behalf of the landlady in this behalf is that these are old rent receipts pertaining to the year 1972-73. It has been strongly urged on behalf of the landlady that the court should rely on a better piece of evidence in this behalf which is the tenant's own admission in previous proceedings. The previous proceedings were the proceedings regarding misuse of the property instituted before the Addl. Controller under the Delhi Rent Control Act. In those proceedings

this very tenant categorically stated (EX.AW 4/2) that the premises had been let for residential purpose alone but was misused for some time by him. He gave an undertaking and assurance to the court that he will never misuse the premises and will use the same .only .for purposes of residence. The learned counsel for the tenant in a bid to get out of, this admission submitted that the said statement by way of admission was made by the tenant only to ward off an eviction order in those proceedings. It was made for a particular purpose and, therefore, the admission contained in the said statement should not be held to be binding on the tenant. I am afraid, this Explanationn cannot be accepted particularly for the reason that even if the intention of the tenant was to ward off an eviction order in those proceedings he could have said that he never misuse the premises nor will he ever misused the premises in future. There was no need to say that the premises was let for residential purpose only. The tenant has categorically stated so and cannot be allowed to wriggle out of the admission.

(9) The tenant has tried to describe this accommodation as garage. This cannot be sustained on the basis of facts on record. For a garage there has to be a drive-way though which a car can reach the garage. The plan of the property shows that there is no drive-way. The approach to this portion is only through the service lane. This portion cannot be called a garage. Secondly in the sale deed of the property this portion is described as a room. This description is a pointer in the direction that it is a room and not a shop.

(10) In this connection the learned counsel for the tenant laid stress on the statement of the landlady in her cross-examination to the effect that she could not say whether the premises was let out for commercial purposes. From this the tenant tried to cull out an admission of letting purpose being commercial. I cannot accept this. This argument has to be considered in the light of the fact. that the premises was let out much before the landlady came on the scene. Learned counsel for the tenant also submitted that he nature of the premises was such that it could not be used for residential purpose. There is no toilet or bathroom attached to it. it is on the backside of the ground floor accommodation in the property. Absence of a toilet or bathroom alone cannot be considered to be determinative of the fact that the premises was let for commercial purpose, though it may be an

important factor. The landlady herself pleaded while making out a case. for bona fide requirement that she would use the second floor accommodation for sleeping purposes and for purposes of cooking and having food while the ground floor room would be used as a drawing room. The tenant is admittedly residing on the barsati floor. He could also have been using the ground floor room as a drawing room. Moreover when we look to the nature of the premises this fact has to be kept in mind that the room in question is on the backside and can be approached only through the service lane. Further it has to be noted that the landlady placed reliance on a letter EX.AW 4/1 said to have been written by the present tenant to the previous owner asking him to let out the ground floor room, i.e. the room in question to him for residential purpose only. The tenant has denied his signatures on the said letter. Besides this the Addl. Controller has discussed at length the oral evidence led by the parties in this behalf and has come to the conclusion that the letting purpose of the ground floor premises cannot be said to be residential- cum-commercial. He has disbelieved the oral testimony led by the tenant in this behalf and has come to the conclusion that the premises was let out for residential purposes only. I have no reason to disturb the finding of the Addl. Controller on this point.

II. This brings me to the main question involved in the case; i.e. bona fide requirement of the premises by the landlady. It has to be noted that in the replication filed before the Addl. Controller the landlady had stated that the accommodation on the first floor of the property in suit was likely to fall vacant. Infact the first floor accommodation did fell vacant and its possession was obtained by the landlady. It is not disputed that since then the landlady is occupying the first floor of the property in suit and is residing therein Along with her husband. Her daughter has been married in the meanwhile and is stated to be visiting her of and on. The landlady's son has also been married in the meanwhile and he has got two children. It was not disputed that the sons of the landlady was working on an assignment in Nairobi (Kenya). According to the landlady her husband is a professional having retired as a Chief Engineer in the Irrigation Department and he requires accommodation for his consultancy work which he is doing after retirement. There are only two bed rooms on the first floor of the property besides a drawing-dining room and kitchen, toilet etc. This

accommodation is not sufficient for the requirements of the landlady according to her. At least one bed room is required by the landlady and her husband, another bed room is being used by the husband of the landlady for purposes of his profession as an Engineering Consultant. The landlady further submits that her son even though presently working in Nairobi, keeps on visiting her and on each visit he stays for long duration. She needs accommodation for her son on his visits. Further her son is likely to return to India shortly after completion of his assignment in Nairobi when full fledged accommodation would be needed for him. The daughters of the landlady also have to be accommodated on their occasional visits to their parents. Thus two bed room accommodation which is presently available with the landlady is not sufficient for her requirements. Learned counsel for the tenant submitted that the landlady had pleaded a case for accommodation on the barsati floor and the room on the ground floor occupied by the tenant. She has got more accommodation on the first floor as compared to what she could have got from the present tenant if he was to be evicted. thereforee, the need of the landlady should be taken to be satisfied. In this context it has to be noted that in cases under section 14(1)(e) of the Act the facts regarding family members keeps on changing. They. are never static. There are births and deaths in the family. Some of the family members get married. If it is a son, the daughter-in-law comes in. If it is a daughter, she goes out of the house. After marriage the son's family starts growing. The Court has to take into consideration thee facts as they exist at the time of passing the judgment. Moreover so far as the argument regarding need as pleaded in the eviction petition having stood satisfied after possession of the first floor became available to the landlady, the answer is that in the eviction petition the landlady could only ask for the accommodation which was with the tenant. She could not ask for more. thereforee, merely for the reason that she laid a claim for the tenancy premises, the petition cannot be dismissed on the ground that she got other accommodation from another tenant in the meanwhile. The landlord/landlady's need may be much more than the accommodation with the tenant. This fact has to be kept in mind.

(12) It is no more open for consideration as to whether the landlady would shift to Delhi or not, nor any controversy has been raised during the course of hearing of this petition on this aspect. The landlady has already admittedly shifted Along with

her family including her husband to the property in suit and is residing on the first floor thereof. The question is whether the said accommodation is sufficient for her requirement. Considering the number of family members of the landlady including the fact that temporarily her son Along with his family is out of the country, I am of the view that the accommodation presently available with her in the property in suit is not sufficient for the requirements of herself and her family. Nothing has been alleged or shown that the family owns any other residential accommodation in Delhi. The accommodation presently available with the family in the shape of two bed rooms and a drawing-dining room is just sufficient for the requirement of the landlady and her husband who is a professional and requires one room for his professional work. She has no accommodation for her visiting married daughter. She has no accommodation for her son and son's family. The son is stated to be due to return to India shortly. As and when he returns to India there is no place for housing his family. Assuring for the sake of argument that the son is not likely to return in the near future, this fact can not be denied that the son would keep on visiting his parents with his family from abroad and he would be staying for a reasonably sufficient duration. The question will arise, where he and his family should be accommodated on such visits? There is no space in the property in suit for him at present. For all these reasons. I am of the view that the accommodation available with the landlady in the property in suit is not sufficient to meet her family's requirements for residential purpose. Thus I find no reason for interfering with the findings of the Addl. Controller contained in the impugned judgment. Both the revision petitions are dismissed leaving the parties to bear their respective costs.

C.MS.2839-40,2846-47/94, & 289/95

(13) In view of the above judgment, these applications stand disposed of.

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