

Hari Ram Vs. Rukmani Devi

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Court : Delhi

Decided On : Oct-29-1996

Reported in : 1996VAD(Delhi)777; 64(1996)DLT662; 1997(40)DRJ808; 1996RLR522

Judge : J.K. Mehra, J.

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

Appeal No. : Second Appeal No. 219 of 1979 and Civil Miscellaneous Appeal No. 1706 of 1996

Appellant : Hari Ram

Respondent : Rukmani Devi

Advocate for Pet/Ap. : Baldev Raj,; V.B. Andley,; Rajinder Mathur and;

Judgement :

J.K. Mehra, J.

(1) This is an appeal against the order dated 16.7.1979 passed by the Rent Control Tribunal, Delhi dismissing the appeal of the appellant and affirming the eviction order passed by the Additional Rent Controller, inter-alia, under clause (b) of the Proviso to Section 14(1) of Delhi Rent Control Act and under clause (j) of Proviso to Section 14(1) further granting one month's time to the appellant to

restore the premises to its original condition and repair the damage caused to the premises and further directing that if the damage is not repaired and the premises are not restored to its original condition within the time granted, the eviction order would be deemed to have been passed on the ground covered by clause (j) of the proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act as well. As regards ground under clause (a) of the said proviso, the Trial Court had passed the requisition order for the deposit of arrears of rent from 6.3.1973 to 5.7.1973 and had granted benefit of Section 14(2) subject to the tenant depositing the arrears of rent within time allowed by the Additional Rent Controller.

(2) The facts giving rise to the filing of the present second appeal, in brief, are that the respondent/landlady filed an eviction petition against the appellant on the grounds of eviction covered by clauses (a), (b) and (j) of the proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act. The present appeal has been admitted only on the ground of eviction covered by clause (b), i.e., assigning, subletting or parting with possession of the premises in dispute to Balbir and Jagmal Singh without written permission of the respondent/landlady.

(3) With regard to the ground of subletting or parting with possession of the premises in dispute, the case of the respondent/landlady is that a shop, a verandah located in property No.2031, Tri Nagar, Delhi had been let out to the appellant since 1967 and he has sublet, assigned, or otherwise parted with possession of the whole shop in favor of Balbir and Jagmal, who were joined as respondents in the eviction petition. The landlady has further alleged that they have been inducted in the premises since 1970 without the written consent of the landlady. The appellant denied and disputed the contentions and allegations of the respondent/landlady on this point and has contended that the premises are with him and Balbir is working with Mool Chand, who appeared as RW1. He has further contended that Balbir is his nephew and Jagmal is his brother. He has further stated that he sometimes remains in the village and sometimes in Delhi and in his absence, Balbir looks after his business. The respondent/appellant had examined a number of witnesses apart from RW1. RW1 had stated that he had never seen any business board displayed on the premises in dispute. RW1, apart from bold statement to the effect that Balbir is working with him, has failed to produce any

documentary evidence to substantiate this oral statement and no relationship of employer - employee could be established on record. This witness, RW1 comes from the same village as the appellant. RW2 has stated having seen the appellant always in the shop. According to him also, there was never any business board displayed outside the shop in question. He also comes from the same village as the appellant. Jagmal, who claims to be the brother of appellant, had also tried to support the appellant, but a look at their parentage will show that they are not brothers. While Jagmal has recorded his father's name as Uma Ram, the appellant gave his father's name as Handu Ram. Balbir has also not given any detail of the relationship with the appellant. On the other hand, the respondent/landlady got a Local Commissioner appointed immediately after institution of the petition for eviction and the said Local Commissioner had given his report, which is Exhibit AW1/2 in which he has mentioned having found Balbir present in the shop in dispute conducting the business and he also found out the board displayed outside the shop under the name and style of 'Shankar Mithan Bhandar' and the proprietors shown on that board were Balbir and Jagmal Singh. Not only that, certain photographs were also taken of the shop and the business sign - board which was existing outside the property in dispute wherein it was shown that the business was being run under the name and style of 'Shankar Mithan Bhandar' and it further had shown the names of the proprietors as Balbir Singh and Jagmal Singh. Name of the appellant did not appear on the said board. There are two photographs which have been proved on record by the photographer taken on two different dates, each one showing the board displayed outside the shop in dispute having the same description, as mentioned above. The said photographs are AW2/3 and AW2/4. Negatives of the said photographs were also proved. The appellant also got a Local Commissioner appointed on filing the present appeal by this Court, who gave a report that the board on the shop bears appellant's name as proprietor. This inspection had taken place at the stage of second appeal. Both the Commissioners reports belie the testimony of the respondents witnesses that they had never seen any board outside the shop in dispute. Mr. Baldev Raj has placed a lot of stress on his objection to the report of the Local Commissioner being read into evidence because he went for the site inspection without giving notice to the parties. I need not go into this question in view of the fact that the

photographs taken on two different dates showing the signboard had been placed on record and proved by an independent witness, AW2. I may further be noticed that a perusal of the Trial Court record had shown that the summons of the case issued by the Trial Court were served on both Balbir and Jagmal at the shop in dispute only. It is also in evidence that Balbir and Jagmal's son - Jagraj were signing the receipts regarding sale of sugar. In this relation, one Manohar Lal, AW3 also appeared as a witness for the landlady and proved that Balbir was running the business at the shop in dispute and that the appellant was not there. Most of the objections of the appellant were on findings of facts. Mr. Baldev Raj has not been able to show as to how the said finding of fact was perverse or based on no evidence at all. In the absence of this, the concurrent finding of the two Courts below cannot be interfered with. Lastly, Mr. Baldev Raj contended that onus of proving subletting was on the landlady which she has failed to discharge. The relationship of sub - lessee and the lessee is a matter of knowledge which is confined to those two parties alone. All that the landlord can do in such circumstances is to prove the circumstances which would reasonably lead to the inference of subletting or parting with possession or assigning the premises or any part thereof. In the present case, enough evidence has been brought on record to discharge this onus and now it was for the appellant to prove with the help of best evidence to prove to the contrary. The witnesses produced by the appellant are interested witnesses and their testimony does not inspire confidence.

(4) In the light of what is discussed above, it is not possible for me to hold that any substantial question of law arises in the present case, which merits interference with the findings of the Courts below. On the basis of the facts already proved, I do not find any reason to interfere with the impugned judgment, which is upheld. The result is that this appeal fails and is dismissed. In the circumstances of the case, there will be no order as to costs.

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