

Ashok Kumar Vs. Premvati and anr.

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Court : Delhi

Decided On : Sep-28-2004

Reported in : 115(2004)DLT62

Judge : R.S. Sodhi, J.

Acts : Delhi Rent Control Act - Sections 14(1)

Appeal No. : Civil Revision Petition 399/2002

Appellant : Ashok Kumar

Respondent : Premvati and anr.

Advocate for Def. : Niraj Chaudhary, Adv.

Advocate for Pet/Ap. : A.K. Singh and; Sanjay Kumar Singh, Advs

Judgement :

R.S. Sodhi, J.

1. CM.No.870/2002:

Delay condoned. Application stands disposed of.

2. C.R.P. 399/2002 & CM.No.869/2002:

CRP 399/2002 is directed against the judgment dated 6.10.2001 of the Additional Rent Controller, Delhi whereby the learned Additional Rent Controller has passed an eviction order in favor of the respondent herein under Section 14(1)(e) of the Delhi Rent Control Act.

3. Brief facts of the case as noted by the Additional Rent Controller are as follows:-

'.... the relevant facts of the case, as stated by the petitioner are that she is the owner/landlady of the property in question i.e. property bearing No.4270, Gali No.9A, Ajit Nagar, Gandhi Nagar, Delhi - 31 and she let out one room measuring 15' x 25' out of the said property to the respondents Along with common latrine as shown in site plan at a monthly rent of Rs.700/- excluding electricity and water charges. Petitioner further stated that the tenanted premises were let out to the respondents on 22.8.92 but no written agreement was executed between the parties. Petitioner further stated that she requires the tenanted premises bonafide for the purposes of her residence. Petitioner further stated that she is an old lady and there is no one to look after her as such she wants to keep her niece i.e. daughter of real brother to look after her. Petitioner further stated that she is in possession of one small room on the 1st floor of the suit property as such the accommodation available with her is not sufficient to meet her requirements for the purposes of residence. Petitioner further stated that she does not have any other alternate accommodation in Delhi. Hence the present petition.

Summons were issued in the prescribed proforma as provided under IIIrd Schedule of the act against the respondents and respondents after service put their appearance and filed application for leave to defend.

Vide order dated 5.2.1999, leave to defend was granted to the respondents. Both the respondents filed their respective written statements. Respondent No.1 in the written statement stated that there is no relationship of landlord and tenant between petitioner and respondent No.1 as such the petitioner is liable to be dismissed. Respondent No.1 further stated that there is no privity of contract between the petitioner and respondent No.1 and the present petition has been filed by the petitioner in collusion with respondent No.2. Respondent No.1 further stated that he is the owner in respect of room under his occupation by virtue of

adverse possession and he is in possession of the said room for the last more than 20 years back. Respondent No.1 further stated that he never paid any rent or license fee to the petitioner or anybody else. Respondent No.1 further stated that respondent No.2 i.e. his father purchased the property in question in the name of petitioner on 16.7.74 and for this purpose respondent No.2 arranged money by disposing off his ancestral property in Distt.Badaun, U.P. Respondent No.1 further stated that respondent No.2 thereafter constructed two rooms in which both the respondents, mother of respondent No.1 and petitioner started to reside therein. Respondent No.1 further stated that in the year 1987, he got married and three children were born and due to this reason he started feeling accommodation available with him insufficient for the purpose of residence. Respondent No.1 further stated that thereafter he demolished the entire property and constructed two rooms on the ground floor and one room on the first floor in the year 1993 and incurred expenses about 90,000/- rupees on the construction from his own pocket. Respondent No.1 further stated that thereafter he Along with his family members started to reside in the room in dispute situated on the ground floor and another room on the ground floor was let out to a tenant by the petitioner. Respondent No1 further stated that the petitioner Along with respondent No.2 started to live in the room situated on the ground floor of the property in dispute. Respondent No.1 also controverted other allegations of the petitioner.

Respondent No.2 in written statement more or less admitted the contents of the petition and stated that the tenanted premises were let out to the respondents for the purposes of residence only at a monthly rent of Rs.700/- excluding electricity and water charges.

Petitioner filed replication -s to the respective written statements of the respondents wherein reasserted and reaffirmed the previous stand and denied the pleas taken by respondent no.1.'

4. Counsel for the petitioner submits that the landlady has not been able to prove that she is the owner of the premises in question and that the tenanted premises was let out for composite purposes, for residential and commercial and that there is not bona fide requirement of the landlady as also she has an alternative

reasonable accommodation.

5. Heard counsel for the parties and have gone through the judgment under challenge. The landlady in order to establish her case examined herself as PW-1, Ram Kumar as PW-2, Sarla Devi as PW-3. PW-1 proved on record the General Power of Attorney, Exhibit PW-1/1, the site plan PW-1/2, notice PW-1/3 as also another notice as PW-1/4, postal receipt PW-1/5, medical report pertaining to her health condition as PW-1/6 to PW-1/12 while the petitioner herein examined himself as R-2W1.

6. On the question of ownership the Controller returned a finding that the landlady has been able to prove that she is recorded as owner in the municipal records and is assessed to municipal tax in respect of premises in question. She has also been able to prove on record the General Power of Attorney, PW1/1 which is obtained for consideration. The ownership of the landlady is not disputed by the second respondent father of the petitioner. To augment her case the landlady has produced Raj Kumar PW-2, Sarla Devi PW 3. They support her version that the premises was purchased by her from Jokhni Devi and that it was let out to the second respondent.

7. It is settled law that in rent proceedings ownership means something more than the 'tenant', which according to me the landlady has been able to prove. Reference may be had to Shanti Sharma v. Ved Prabha 1987 All India R.C.J. 382 as also Sushil Kanta Vs . Rajeshwar Kumar, : AIR2000 Delhi413 .

8. The petitioner's case has been that he is in possession of the premises in dispute for over 20 years and claims adverse possession. The landlady on the other hand has deposed that the petitioner herein is a tenant, which is also deposed to by PW-2 and PW-3 as also admitted by the second respondent. The petitioner on the other hand has not been able to show that he is in adverse possession and that he is in possession of the premises in his own right. Except for the bald assertion of the petitioner herein no documentary evidence or corroborative evidence has been led to dispel the oral testimony of PW-1, PW-2 and PW-3 as also the admission of the case of the landlady by respondent no.2.

9. The Controller has carefully gone into this question and returned a finding that the petitioner herein is a tenant. The purpose of letting out has not been seriously contested. thereforee, the Controller returned a finding that it was let out for residential purposes only. On the bona fide requirements the landlady has deposed that she requires the tenanted premises bona fide for the purposes of residence for herself and other relatives and guests. She further states that she is an old lady with a number of ailments and requires someone to take care of her. The daughter of her brother would be staying with her. The accommodation available with her is far too inadequate and, thereforee, needs the room let out to the petitioner herein. There is nothing on record to dispel the version of the landlady and the Controller after careful analysis of the material on record returned a finding that the landlady has been able to prove her bona fide requirements. I find no reason to defer with the same.

10. Even on the question of alternative accommodation the petitioner herein has only thrown in this argument as a red herring. In any event the Additional Rent Controller has gone into this aspect and on reappraisal of the material, I find no ground to defer from his findings.

11. In this view of the matter, having gone through the material on record and reappraised the same, I am satisfied that the judgment under challenge suffers from no infirmity, perversity, impropriety or jurisdictional error.

12. C.R.P. 399/2002 & CM.No.869/2002 are dismissed.

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