

Rajinder Kaur and anr. Vs. Uttam Kaur Puri and anr.

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Court : Delhi

Decided On : May-05-1997

Reported in : 1997IVAD(Delhi)573; 68(1997)DLT460; 1997RLR554

Judge : Usha Mehra, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14D; [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 13

Appeal No. : Civil Miscellaneous (Main) Appeal No. 493 of 1996

Appellant : Rajinder Kaur and anr.

Respondent : Uttam Kaur Puri and anr.

Advocate for Pet/Ap. : P.K. Jain and; K.R. Chawla, Advs

Judgement :

Usha Mehra, J.

(1) Late Kartar Singh Puri was the owner/landlord of premises bearing No. 1/59, Double Storey, Jangpura Extn. New Delhi-110014 constructed on an area of 40 sq.yds. This property was allotted to said Kartar Singh by the Custodian of Evacuee property. The said Shri Kartar Singh died in 1982 leaving behind his widow Smt. Uttam Kaur, the respondent No. 1 herein. After the death of her husband, she became the owner/landlord of the premises in question. The

premises consists of one room, one kitchen and Wc on the first floor and common latrine in a separate block. The respondent No. 1. Smt. Uttam Kaur being a aged widow and in need of her premises filed an eviction petition in 1992 against respondent No. 2 Shri Mohinder Pal Singh son of late Shri Joginder Singh under Section 14-D and 14(1)(e) of the Delhi Rent Control Act (here in after called the Act). Her case was that Shri Mohinder Pal Singh (in short M.P. Singh) was her tenant. Since she was in need of the premises for her bona fide requirement, therefore, M.P. Singh should vacate the same. Notices were sent to the said M.P. Singh but were returned. The learned Arc finding that he was deliberately avoiding service ordered substituted service on M.P. Singh. After serving him by proclamation appearing in the newspaper, the learned Arc proceeded ex parte against M.P. Singh. Respondent No. 1 in her petition had pleaded that Shri M.P. Singh was her tenant and that she needed the premises for her requirement. The learned Arc granted ex parte decree of eviction in her favour. Shri M.P. Singh filed a petition under Order 9, Rule 13, Civil Procedure Code for setting aside ex parte decree. That petition was dismissed. Revision filed against the dismissal of his application was also dismissed. This Court while disposing of his revision held that M.P. Singh was properly served and he intentionally did not put in appearance. This Court upheld the order of the learned Arc whereby he passed an ex parte order granting possession to respondent No.1 herein (petitioner in that petition). M.P. Singh filed special leave petition in Supreme Court. The Apex Court dismissed his special leave petition, Smt. Uttam Kaur respondent No.1 filed execution in order to reap the fruit of her decree.

(2) It is at this stage that petitioner No.1 Smt. Rajinder Kaur filed her objections to the execution thereby staking her claim to be the tenant of the premises in question. She alleged that her late husband Shri Joginder Singh who was in fact the tenant of the premises in question. On death of Shri Joginder Singh in April, 1990, all the legal heirs became tenant. She being his widow having been residing with her husband in this premises had a right to challenge the execution on the ground that she was not impleaded as party in the eviction petition, hence decree of eviction was not binding on her. Vide order dated 18th October, 1996 those objections filed by petitioner No.1 were dismissed.

(3) It was the case of the petitioner No.1/objector that the decree passed against M.P. Singh was not binding on other co-tenants because they were not impleaded as party to the eviction petition. That very important question of law as to whether Joginder Singh was a tenant in the premises or M.P. Singh It requires consideration and decision after recording evidence. If it is held that Joginder Singh was the tenant, then order of eviction passed against M.P. Singh is liable to be set aside and binding on the petitioners.

(4) Refuting these arguments, Mr.K.R. Chawla appearing for respondent No. 1 contended that no document has been placed on record to show that late Joginder Singh was the tenant in this premises. Even otherwise Joginder Singh during his life-time was living in the house of his son at Pandav Nagar. He never lived in the premises in question as tenant. Shri Joginder Singh died at Pandav Nagar. Ration card of Joginder Singh as well as his death certificate clearly prove that he was residing at Pandav Nagar with his son. therefore, the learned Arc rightly contended that the objections of the petitioners are having no substance and contrary to record.

(5) That M.P. Singh filed petition under Order 9, Rule 13, Civil Procedure Code on 28th May, 1994 after ex-parte decree was passed. Smt. Rajinder Kaur, petitioner No.1 objector herein admitted that by that time she had come to know that an ex-parte decree of eviction had been passed against M.P. Singh. She never filed any objection in May, 1994 even after having come to know about the ex-parte decree nor sought her impleadment. M.P. Singh's application under Order 9, Rule 13, Civil Procedure Code was dismissed on 22nd March, 1995. Till such time M.P. Singh's application was decided, she kept awaiting the decision of his application and did not raise any objection. It was only when M.P. Singh's application under Order 9, Rule 13, Civil Procedure Code was dismissed that she filed the present objections on 31st March, 1995. Mr. Chawla contended that this conduct would show that the petitioners and M.P. Singh were all in connivance with each other. In order to delay the proceedings and in order to deprive the old land lady who is now over 80 years old of her right to occupy her own house the petitioners filed these objections with mala fide intention to deprive this aged widow of the fruit of her decree. The decree of eviction passed in her favor had been sustained until the

Supreme Court. When Special Leave Petition of M.P. Singh was dismissed, these petitioners got activated and have been successfully delaying the execution since 1992 till date. Mr. K.R. Chawla relying on the observations of J.K. Mehra, J. passed in the revision petition tiled by M.P. Singh, urged that decree having not been set aside and M.P. Singh alone having been declared tenant, in this view of the matter and the decision of the learned Arc and of J.K. Mehra, J. in the revision petition coupled with the dismissal of Special Leave Petition it does not lie in the mouth of the objectors/petitioners to contend that they acquired tenancy right in the premises in question through Joginder Singh. The death certificate placed on record by respondent No. 1 shows that Joginder Singh was resident of D-47-A, Pandav Nagar, Delhi. In the ration card his address was that of D-47-A. Pandav Nagar, Delhi. Photocopy of the same is on record. This shows Joginder Singh was resident of Pandav Nagar where he was drawing his ration.

(6) That the learned Arc while disposing of petitioners' objections took note of all the facts available on record. It was not the case of these objectors that M.P. Singh colluded with respondent No. 1 in any manner, rather the record shows that brother and mother of M.P. Singh refused to accept the notices sent by the Court under Section 25-B of the Act by registered post as well as by ordinary process. Since process sent by Court was refused by the mother i.e. petitioner No. 1 as per process server's report, then she must be knowing about the initiation of eviction proceedings against M.P. Singh by the respondent No. 1. Summons were served on M.P. Singh by substituted service appearing in the newspaper, the copy of which was posted at the premises in question by Upc as well. Inspire of that these petitioners did not bother to raise the objections as to why respondent No. 2 alone was treated as tenant in the premises in question. It is only when M.P. Singh lost upto the Supreme Court that these objections were filed. Learned Arc in these circumstances was justified in rejecting the objections filed by these petitioners. The objection that M.P. Singh being 21 years old at the time of induction as tenant is irrelevant. He was major and could have taken the premises on rent. Moreover, the Court of competent jurisdiction has already held him to be the tenant of the premises in question. For the reasons stated above, I find no merits in this petition. Reasonings given by the learned Arc cannot be faulted. Dismissed.