

V.S. Sachdeva Vs. M.L. Grover

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Court : Delhi

Decided On : May-30-1997

Reported in : 1997IVAD(Delhi)472; 67(1997)DLT737; 1997(42)DRJ412; 1997RLR439

Judge : Usha Mehra, J.

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

Appeal No. : Civil Revision Appeal No. 924 of 1996

Appellant : V.S. Sachdeva

Respondent : M.L. Grover

Advocate for Pet/Ap. : I.S. Mathur,; Manisha Gupta,; Rajesh Yadav and;

Judgement :

Usha Mehra, J.

(1) In this petition, the petitioner has raised two important questions of law namely :

1. Whether other accommodation which is in exclusive possession of petitioner's brother would amount to suitable alternative accommodation available to the petitioner?

WHETHER non-mentioning of the detailed tenanted portion in the petition though mention of the same was there in the site plan annexed with the petition, would amount to seeking partial eviction.

TO understand the challenge, let us have a quick glance to the relevant facts of the case as set up by the parties in their pleadings.

(2) Petitioner sought eviction of the respondent on the ground of bonafide requirement from the portion shown in red colour in the site plan annexed with the petition including the entire ground floor and the portion shown in green as well as in red colour in the site plan. Basically eviction was sought because accommodation in possession of the petitioner was highly insufficient. The petitioner shifted to Delhi from Dhanbad. He had no other accommodation available except the house in question. He shifted with his family to Delhi and started living in part of this house. His family consists of eight members i.e. he himself, an old man of 60 years, his wife, his married son, daughter-in-law, grand daughter, another married son, daughter-in-law and his daughter. Accommodation in his possession consists of a room on the ground floor, a room above the second floor on the garage block, the front was common. Petitioner had given on rent to the respondent only the portion shown in red colour in the site plan consisting of two rooms, drawing-dining, kitchen, lavatory, back courtyard on the ground floor. However, this respondent forcibly trespassed into part of the green portion as well as the room on the garage block on the second floor and the room on the ground floor and locked the garage. Civil litigation was started by the respondent. His application for injunction was dismissed. Application filed by the petitioner was allowed. In appeal preferred by the respondent it was agreed that without prejudice to the contentions of the parties, room on the second floor above the garage block would continue to be in exclusive possession of the petitioner herein and the room on the ground floor would not be interfered by this petitioner. The accommodation in possession of the petitioner consisting of one room and a small store with a bath room on the first floor and a room on the second floor referred to in the map as servant quarter, petitioner has been forced to live in the servant quarter. Thus the respondent for the purpose of this petition was treated as tenant of the portion shown red colour and red and green colour in the map. It was in this

background that petitioner sought eviction. He had no other suitable residential accommodation available to him in Delhi. He needed minimum four bed rooms beside drawing and dining room and a visitors room. He also needed two rooms in the garage block for the use and occupation of servant and Driver as he was a man of means.

(3) This petition was contested by the respondent on merits. The Additional Rent Controller (in short the ARC) after accepting the petitioner to be the owner of the premises accepting letting purpose to be residential, dismissed the petition on the following two grounds, namely :-

1. That the petitioner did not mention that he had an alternative accommodation available to him, being co-owner of property bearing No.A-323, defense Colony, New Delhi. That the petition was only for partial eviction and the petitioner had not sought eviction in respect of the room shown in red colour in the site plan on the first floor which was in occupation of the respondent petitioner felt aggrieved by this order because according to him the house No.A-323, defense Colony, New Delhi was owned by his mother. His mother executed a 'Will' thereby bequeathing that house to his younger brother. His brother within his family was in exclusive possession of that house No.A-323, defense Colony, New Delhi. Learned Arc ignored oral and documentary evidence on record. Petitioner appearing as PW-2 proved that premises No.A-323, defense Colony, New Delhi was in exclusive possession of his brother and his family. He testified that the said house had been bequeathed by his mother in favor of his brother. That no part of house No.A-323, defense Colony, New Delhi was in occupation of the petitioner, hence according to Mr.Ishwar Sahai the said property was not available to the petitioner. That house could not be called reasonably suitable alternative accommodation available to the petitioner. In the pleadings it was brought on record that house No.A-323, defense Colony, New Delhi belonged to his brother. His mother left a 'Will' thereby bequeathing that house in favor of her younger son. Since the mother left a 'Will' in favor of his brother, therefore, there was no question of petitioner seeing that 'Will'. Exclusive occupation of A-323, defense Colony, New Delhi by the younger brother of the petitioner was admitted by the respondent in his written statement. This respondent admitted that the petitioner was not occupying any portion of that

house No.A-323, defense Colony, New Delhi. To show that the mother had bequeathed the property in favor of his brother, Mr.Ishwar Sahai vide CM.No.1596/97 under Order 41 Rule 27 Civil Procedure Code tried to place on record the certified copy of the registered `Will' executed by his mother in favor of his brother.

(4) After hearing arguments on petitioner's application under Order 41 Rule 27 Civil Procedure Code I found that the said registered `Will' cannot be allowed to be produced at this stage. Petitioner could not explain why this certified copy of the registered `Will' could not be produced before the Trial Court. Petitioner was aware about the bequeathing of the property by his mother in favor of his younger brother by virtue of the `Will' and yet he took no step to produce the said `Will' on record. Contention of Mr.Ishwar Sahai that the petitioner did not have cordial relation with his brother and, therefore, could not get a copy of the same. This argument has no force. If the petitioner could obtain certified copy of the `Will' now, why could not be obtain the same when he stepped into the witness box or when he filed the petition. Petitioner was not diligent in producing this document earlier hence he cannot be now permitted to produce and prove the same. To arrive at this conclusion support can be had from the following decisions i.e. State of U.P. Vs . Manbodhan Lal Srivastava, : (1958)ILLJ273SC Union of India Vs . Maj. K.K.Taneja, : 43(1991)DLT227 , Trilochan Singh Vs . Usha Dhir, : 51(1993)DLT534 , Parbati Vs . Duryodhan Samantaray, : AIR1990 Ori184 and Arjan Singh Vs . Kartar Singh & ors, : [1951]2SCR258 .

(5) Contention of Mr.Ishwar Sahai that in the interest of justice additional evidence should be allowed has no force. Reliance by him on the decision of the Supreme Court in the case of Billa Jagan Mohan Reddy & anr. Vs . Billa Sanjeeva Reddy & anr., : [1994]1SCR429 is misplaced. Petitioner miserably failed to show due diligence in producing this document at the appropriate stage particularly when he knew that such a `Will' existed and yet did not bother to produce the same. Having failed to do so the `Will' cannot be now allowed to be produced on record. I also find no force in the submission of Mr.Ishwar Sahai that even if no cognizance is taken of this registered `Will' or the fact that the mother bequeathed the property in favor of the other son, but the fact remains that petitioner appearing as PW-1

proved that the entire house A-323, defense Colony, New Delhi was in occupation of his younger brother and his family. He was not subjected to any cross examination on this part of his testimony. He denied the suggestion that he was the co-owner with his brother of house No.A-323, defense Colony, New Delhi. Thus, from the testimony of the petitioner read with admission made by the respondent in his written statement that the house No.A-323, defense Colony New Delhi was in exclusive possession of petitioner's younger brother and his family fully establish that house No.A-323, defense Colony, New Delhi was not available to the petitioner.

(6) Even for the sake of argument it is presumed that petitioner was the co-owner of house No.A-323, defense Colony, New Delhi still it cannot be said that house was available to the petitioner because the same was in exclusive occupation of his younger brother. The petitioner even as co-owner could not ask the co-owner to vacate the premises. It is well settled principle of law that if the alternative accommodation is in exclusive occupation of his brother then it cannot be said that accommodation is available to this landlord. To my mind, the learned Rent Controller fell in error in concluding that petitioner concealed the availability of alternative accommodation. Since house No.A-323, defense Colony, New Delhi was not available to the petitioner hence it could not be called suitable alternative accommodation available, nor the non-mentioning of the same would amount to concealment. Respondent could not from the lengthy cross examination of this petitioner could prove that he had any right in the property A-323, defense Colony, New Delhi. Mere mentioning of the petitioner that he had not seen the 'Will' left by his mother does not prove that his mother did not bequeath the property to his younger brother. To support this conclusion reliance can be placed on the decision of the Supreme Court in the case of Meenal Eknath Kshirsagar Vs . M/s Traders & Agencies & anr., : AIR 1997 SC59 . In that case the appellant's husband was a tenant of an 'Olympus' flat. Her husband had allowed his brother to occupy the same. She mentioned in the petition that she was not in possession of any premises even as a tenant in Bombay. Since the fact of her husband having Olympus flat as tenant coming on record the High Court of Bombay dismissed her petition holding that she concealed about the Olympus flat. The Apex Court setting aside the High Court's decision observed that non-mentioning of Olympus flat in

which her husband was a tenant and which was not available to her for occupation as her husband had given the same to his brother and his family members, hence it was not necessary for her to record this fact in her plaint.

(7) Mere omission to state such facts could not disentitle her from claiming a decree of eviction, if otherwise she was able to prove that she required reasonably the suit premises for her occupation. Relying on the above observations of the Supreme Court, it can safely be said that this petitioner did not conceal any accommodation available to him and in particular premises No.A-323, defense Colony, New Delhi. Non-mentioning of accommodation A-323, defense Colony, New Delhi, to my mind, could not disentitle the petitioner from the order of eviction particularly when the petitioner in the replication specifically mentioned and clarified that property No.A-323, defense Colony, New Delhi belonged to his brother. His brother was exclusive owner of the same. Neither he nor his family had any interest in that property. He denied that he was in occupation of house No.A-323, defense Colony, New Delhi. Thus the petitioner through his pleading as well as testimony made it clear that house No.A-323, defense Colony, New Delhi was not available to him. The occupation of that house being with his brother and the house being not available to the petitioner, non-mentioning of the same, by no stretch of imagination would amount to concealing the fact. Reference can be made to the decision of the Supreme Court in the case of *Phiroze Bamanji Desai Vs . Chandrakant M.Patel & ors.*, : [1974]3SCR267 wherein it has been held that for the purpose of determining whether the requirement of the landlord for the premises in question is reasonable and bonafide, what is necessary to be considered is not whether the landlord is juridically in possession of other premises, but whether that was available to him for occupation so that he cannot be said to need the premises in question. If a person is in occupation of the other premises on leave and license basis, they obviously that premises is not available to the landlord for occupation and cannot be taken into account for negating the need of the landlord for the premises in question. The ratio of *Phiroze Bamanji Desai's* case (supra) on all force apply to the facts of this case. Even when the 'Will' is not taken account of still it cannot be said that the premises No.A-323, defense Colony, New Delhi was available to him because the same was in exclusive occupation of his younger brother. Admittedly, the case of the parties

was known to each other. Respondent/tenant knew that the petitioner's brother and his family was exclusively living in house No.A-323, defense Colony, New Delhi. This fact was admitted by the parties in their pleadings as well as in the testimony of the petitioner.

(8) The house No.A-323, defense Colony, New Delhi being in possession of petitioner's brother cannot be called suitable alternative accommodation available to the petitioner. The mere fact that two rooms in that house could be made available to the petitioner by his brother as and when needed did not mean that house was available to the petitioner or two rooms even if given by the brother could not meet the need of the petitioner. For argument sake even if it is presumed that petitioner's brother would give him two rooms, it cannot be expected that petitioner should split his family. Part of his family should stay in this house and part should shift in two rooms to be provided by his brother in A-323, defense Colony, New Delhi. This cannot be called suitable alternative accommodation nor it could be the intention of the Legislature. That is why in the case of Phiroze Bamanji Desai (supra) the Apex Court observed that juridical possession of the premises is not a relevant factor. It is the actual physical possession of the other house which is a relevant consideration. Moreover that house should be sufficient to accommodate the landlord. In the case in hand, the possession of other house A-323, defense Colony, New Delhi admittedly in possession of the younger brother of the petitioner, hence not available to this petitioner. thereforee, it cannot be said that he had any suitable alternative accommodation available which he concealed from the Court. On this count for the reasons discussed above the impugned order cannot be sustained.

(9) Now turning to the need of the petitioner, taking into account his family members, the petitioner requires minimum four living rooms beside drawing-dining room. But that accommodation is not available to him nor the petitioner can be asked to split his family so that some of his members could occupy two rooms with his brother at A-323, defense Colony, New Delhi and other to occupy the house in question. For this reason also the house at A-323, defense Colony, New Delhi cannot be called suitable alternative accommodation available to the petitioner. thereforee, non-mentioning of the said accommodation which was non suitable to

the landlord did not amount to concealment.

(10) Turning to the second ground i.e. partial eviction, Mr.Verma's contention that since petitioner in the petition did not mention one room on the first floor on the garage, hence his petition seeking partial eviction was rightly rejected. To my mind, this argument has no force. In the eviction petition itself the petitioner clearly mentioned that eviction was sought in respect of the portion shown in red colour and of the portion shown in green and red colour. In the red colour the said room on the garage block was shown in the map. The room on the first floor above the garage was shown in red colour. In the petition it was specifically mentioned that he was seeking eviction of the portions shown in red colour as well as two rooms shown in green colour and one room on the second floor on the garage block. According to the petitioner the two rooms shown in green colour do not form part of the tenanted premises. These were in possession of the petitioner. Respondent forcibly occupied the portion shown in green colour. The portion shown in red colour was given on rent. Hence in the petition he mentioned both the portions in occupation of the respondent as shown in the map Exhibit PW-1/2. Map Exhibit PW-1/2 was proved without any contest.

(11) No site plan was filed by the respondent hence as held by this Court if the tenant failed to file any site plan, then the site plan filed by the landlord should be accepted. Since the site plain is admitted to be correct, thereforee, the Rent Controller fell in error to conclude that the petitioner was seeking partial eviction. This is contrary to the facts on record. In the written statement, the respondent took preliminary objection that one room on the first floor over the garage block as well as front Court yard had not been shown to be part of the tenancy. It was clarified that eviction was sought of the entire portion in occupation of the respondent which included first floor over the garage as well as front Court yard in possession of the respondent shown in red and green colour in the map filed with the petition. Possession of tenanted portion in occupation of the respondent having been made clear in the pleadings it cannot be said that the petitioner sought partial eviction. Pleadings cannot be construed in a hyper technically manner nor the claim of the petitioner could be thrown out on a mere technicality when the matter in its entirety was before the Court and no prejudice had been

caused to either side as held by the Supreme Court in the case of Bhagwati Prasad Vs . Chandramaul, : [1966]2SCR286 . In this case Apex Court observed that if a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleading would not necessarily disentitle a party from relying upon it if it is specifically proved by evidence. In this case also it was specifically pleaded that the portions shown red, red and green colour in the plan eviction was sought which included one room on the first floor on the garage block as well as Court yard. This was further clarified in the replication filed by the petitioner. thereforee, it cannot be said that the petitioner sought only partial eviction.

(12) To my mind, the learned Arc did not construe the pleadings properly nor the evidence of PW-1 which remained unrebutted and uncontroverted on record on this account. It was clearly mentioned that the portion shown red in Exhibit PW-1/2 is in occupation of the respondent and this red portion of Exhibit PW-12 also included a room on the first floor of the garage block and the open Court yard in front. The learned Arc erroneously concluded that partial eviction was sought. In fact the Controller could have passed a decree of eviction for a larger premises so claimed by the tenant. Since the respondent submitted he was in occupation of larger accommodation, on his admission the Rent Controller could have granted decree for the same. To arrive at this conclusion support can be had of a decision of this Court i.e. S.B. Khanna v. Trilok Nath, 1980 Rlr 187.

(13) Mr. Verma then raised legal objection to the maintainability of this petition. According to him, since the findings of the Rent Controller are based on facts, this Court in its revisional jurisdiction cannot interfere with the same. To support his argument, he relied on the following decisions namely, Kamla Tandon Vs . Brij Kishore Kapoor, : AIR1984 Delhi62 , M/s Castrol Ltd. Vs . Smt.Vimla Lamba, : 1985(9)DRJ188 , Dr. (Mrs.) Dhanwanti v. Delhi Administration & anr., 25 (1984) Dlt 5. There is no quarrel with this proposition. But in the case in hand the Controller misconstrued the facts and the legal position as set out above hence this Court in its revisional jurisdiction has power to set the same right. Rent Controller's conclusion that suitable alternative accommodation was available to

petitioner or that he sought partial eviction, both these findings being contrary to facts available on record and law, this Court would be failing in its duty not to interfere in such an erroneous order. The finding of the Controller being against the facts hence I find it is a fit case where this Court must exercise its revisional jurisdiction.

(14) So far as the contention of Mr. Ajay Verma that petitioner failed to prove his bonafide, I find no merits in this argument. Learned Arc accepted the bonafide need of petitioner. The finding of fact on this count cannot be interfered by this Court in its revisional jurisdiction particularly when the respondent did not lead any evidence to rebut the same.

(15) For the reasons stated above, the impugned order cannot be sustained. The same is accordingly set aside. Order of eviction under Section 14(1)(e) of the Act is hereby passed in favor of the petitioner and against the respondent giving him six month's time as stipulated under Section 14(1)(e) of the Act.

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