

K.K. Dhawan Vs. Promila Suri

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Court : Delhi

Decided On : Jul-25-1997

Reported in : 1997VIAD(Delhi)165; 69(1997)DLT643; 1997(43)DRJ427; 1997RLR608

Judge : Usha Mehra, J.

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

Appeal No. : Second Appeal No. 1 of 1997

Appellant : K.K. Dhawan

Respondent : Promila Suri

Advocate for Pet/Ap. : Shyam Kishore,; S. Paul and; K.R. Chawla, Advs

Judgement :

Usha Mehra, J.

(1) The respondent's predecessor in interest i.e. their mother Smt.Nirmal Kanta Suri filed a petition seeking eviction of M/s Morarji Gokuldass Spg. & Wvg. Co. Ltd. (hereinafter referred to as `The Company') under Section 14(1)(b) of the Delhi Rent Control Act (in short the Act) premises bearing No. 29 (1st Floor), Babar Road, New Delhi on the ground that the company sub-let the same to the present appellant Shri K.K.Dhawan. This present appellant was subsequently imp leded

as respondent No. 2. Smt. Nirmal Kanta Suri died during the pendency of that petition. Present respondents were brought on record as her legal heirs. That the learned Additional Rent Controller (in short ARC) on the basis of oral and documentary evidence produced and after analysing the same the learned Arc concluded that the Company sub-let the premises to the present appellant. He accordingly passed a decree of eviction under Section 14(1)(b) of the Act against this appellant and the company.

(2) This appellant preferred an appeal. His appeal was dismissed by the Rent Control Tribunal (in short the Tribunal) vide the impugned order. The Tribunal confirmed the finding of the learned Arc, thereby holding that the relationship of landlord and tenant existed between those respondents and the Company. No relationship of landlord and tenant existed with Mr.K.K.Dhawan, therefore, concluded that the company sub-let the tenanted premises to this appellant.

(3) Aggrieved by the impugned order this second appeal was preferred. The question of law raised are that there existed oral agreement thereby creating lease between Mrs.Nirmal Kanta Suri and this appellant on 1st June, 1980 i.e. when she accepted the rent and gave possession of the premises to him. Secondly the appellant became direct tenant of Mrs. Nirmal Kanta Suri because she accepted the rent from him and recognised him as a tenant. This conduct of the landlady of accepting the rent from him with the knowledge of his occupation of tenanted premises lead to only one conclusion that the intention of the parties was to create a relationship of landlord and tenant. The appellant also raised the question that at no point of time he surrendered the possession or the lease of the premises. Moreover, there is no absolute prohibition against sub-letting under the Act.

(4) On the other hand Mr.K.R. Chawla appearing for the respondent contended that the point raised by Mr.Shyam Kishore touches the merits and facts of the case. These do not raise any legal issue. Mere issuing of rent receipt in the name of the appellant by no stretch of imagination created relationship of landlord and tenant between the parties. To create a relationship of landlord and tenant it requires contract which in this case was missing. therefore, the Controller as well as the Tribunal on the basis of evidence placed on record rightly concluded that

there did not exist any relationship of landlord and tenant between the appellant and the respondents. Moreover, question raised being question of fact this Court cannot interfere the same in second appeal. An inference of fact is not open to review in the second appeal.

(5) In order to appreciate the points raised by both the counsel, it would be expedient to know in brief the facts of the case. Mrs.Nirmal Kanta Suri, mother of the present respondents was the owner of the premises bearing No. 29 (1st Floor), Babar Road, New Delhi. She let out the first floor of the said premises to the Company on 1st June, 1983 for the residence of its employee i.e. the present appellant. Rent Agreement was executed on 16th July, 1983 which is Exhibit `A-2'. As per the term of Exhibit `A-2' the tenancy was created in favor of the Company for the residence of the present appellant Mr.K.K.Dhawan till such time he remained in the employment of the company. The appellant herein ceased to be in the employment of the company from January, 1984. The appellant continued in possession of the premises in question without the consent of the landlady. Accordingly landlady served notice on the company on 18th March, 1984 calling upon it to vacate the premises because it had sub let the premises Mr.K.K.Dhawan who was no longer in the service of the company. The company vide reply letter dated 26th March, 1984 admitted that Mr.Dhawan was no more in its service. The company also directed Mr.Dhawan to handover vacant possession of the premises to the landlady. The company could not get the vacant possession nor could deliver the same to the landlady, therefore, the landlady filed the eviction petition under Section 14(1)(b) of the Act.

(6) The present appellant took the defense that he became a direct tenant under the landlady after his leaving the company. The company in its written statement admitted the execution of the Rent Agreement, Exhibit `A-2' and the letting out of the premises by the landlady to the Company for the residence of Mr.K.K.Dhawan, an employee of the Company. It was also admitted by the Company that Mr.K.K.Dhawan was no more in service of the Company and admitted that notice was served on him to handover vacant possession of the premises to the landlady. Mr. Dhawan in his written statement besides asserting that he became a direct tenant of the landlady denied the date of letting and the agreement with the

company. He, however, alleged that if there was any rent agreement with the company, the same was a sham and illegal document. He also took the plea that he was inducted as a tenant in the premises in question by the landlady in the year 1980. She issued the rent receipts in his favour.

(7) That the parties went to trial and led evidence. Mrs.Promila Suri, respondent herein appeared as AW-1. Mr.Rajiv Kumar Sabharwal was examined by her as AW-2. So far as the testimony of Mr.Rajiv Kumar Sabharwal is concerned, the Controller did not take that into consideration because he failed to turn up for cross examination. So far as the company is concerned, it did not produce any evidence. The present appellant examined himself as R2W1 and one Shri B.S.Taneja as R2W2.

(8) The Rent Agreement was proved on record as Exhibit `A-2'. The same is unstamped and unregistered. However, during the course of proceedings the learned Arc allowed the same to be taken on record subject to the said document being impounded and on payment of penalty. The document was accordingly impounded and the penalty paid. In this view of the matter, the objection of the appellant that Exhibit `A-2' cannot be read in evidence has no force. Since the respondents paid the penalty and the document was got impounded, the same now could be read in evidence as per the decisions of our High Court. I, therefore, find no substance in the contention of Mr.Shyam Kishore that the document Exhibit `A-2' be ignored. This Court in the case of Mangal Single Vs . Tek Ram & ors., : AIR1975 Delhi267 held that even when the document which is compulsorily registerable has not been registered, still it can be admitted in evidence for collateral purpose of showing nature of possession subsequent to execution of document. Reliance can also be placed on the decision of the Supreme Court in the case of Mst.Kirpal Kuar Vs . Bachan Singh & ors., : [1958]1SCR950 and Padma Vithoba Chakkayya v. Mohd.Multani & anr. Air 1963 Sc 70. Further in the case of J.S.Bhalla v. G.J.Bhawani, SAO.No. 336/1910 decided on 18th October, 1982 reported in 1983(1) Rcr 327 it was been held that the document becomes admissible in evidence after payment of stamp duty and penalty. In the case of A.N.Pareekh v. N.H.Jaqvi, 1988(1) All I R C J 700 , the case pertained to a unregistered document of lease. This Court after analysing

various provisions of law held that unregistered document of lease can be looked to know the purpose of letting because the said term can be deemed to be collateral purpose. The Supreme Court in the case of Rai Chand Jain v. Miss Chandra Kanta Khosla, 1991(1) Aircj 5 held that unregistered lease deed can be looked into for collateral purposes. In that case, the averment of the tenant was that the corrections in the lease deed though signed by both the parties had no relevance because there was an oral agreement of letting out the premises to the tenant and the landlady got his signatures on the rent note subsequently to avoid her liability. Rejecting this objection the Court held that such an argument is wholly without foundation. The deed itself clearly proves that the corrections of dates were signed by both the parties. In the case in hand, the rent deed Exhibit `A-2' was executed and signed by all the three parties on the letter head of the company. Exhibit `A-2' was signed by the present appellant acknowledging therein that the relationship of landlord and tenant existed between the landlady and the Company and that the company took the tenanted premise on lease for his residence so long he remained company's employee. Since the document Exhibit `A-2' i.e. the rent agreement was signed by the present appellant, therefore, it does not lie in his mouth now to contend that he was already a tenant. That the relationship of landlord and tenant never existed between Mrs.Suri and the Company nor he can challenge the rent agreement Exhibit `A-2' now. In view of the authoritative pronouncements referred to above, particularly when the landlady has paid the stamp duty by getting the document impounding and by paying the penalty, the document Exhibit `A-2' can be read in evidence to find out the collateral purpose i.e. the relationship of landlord and tenant in this case. It becomes clear from the reading of Exhibit `A-2' that premises was let out to the Company for the residence of the present appellant so long as he remains in the company's service. therefore, on this aspect, I find no infirmity in the conclusion arrived at by the Tribunal.

(9) Exhibit `A-2' also makes it clear that the present appellant occupied the tenanted premises in the capacity of an employee of the company. His occupation was through the company and not in his individual capacity.

(10) The contention of Mr. Shyam Kishore that oral agreement was brought about between Ms. Nirmal Kanta Suri and the appellant subsequent to the appellant's leaving service did not find favor with the Courts below. By evidence this fact the appellant could not substantiate. I see no reason to disagree with the reasoning given by the Court below because I find no fault in the same. Moreover, the question raised in this second appeal by the appellant are questions of fact and an inference of fact is not open to review in the second appeal. The finding of the Tribunal as well as of the Controller that the Company parted with possession of the premises i.e. of the first floor of house bearing No. 29 (1st floor), Babar Road, New Delhi to the appellant is based on evidence. There is no perversity in the reasoning of the Courts below. No substantial question of law has been raised in this petition. The question of sub-letting is a question of fact the decision of which would depend on the evidence. This Court is incompetent to re-assess the evidence as held by this Court in the case of Abdul Aziz v. Mohd. Yaqub, 1971 Rcj 492. Similarly in the case of Duli Chand v. Jagminder Dass, 1982 Drj 258 this Court dismissed the second appeal because it was found that appreciation of fact was not permissible in the second appeal. In the present case the company admitted itself to be the tenant in the premises in question. It also admitted the execution of Exhibit 'A-2'. While writing a letter to the present appellant to vacate the premises and handover vacant possession, the company admitted that the tenancy was created in its favor for the residence of its employee i.e. the present appellant. Burden, therefore, had shifted on the present appellant to prove that he was in occupation of the premises as a direct tenant, to my mind, he miserably failed to discharge.

(11) The contention of Mr. Shyam Kishore that the landlady issued rent receipts in the name of the appellant Exhibit AW.1/R.1 to R.23 and accepted him as the direct tenant is also without substance. In the case of Kailash Kumar & ors. Vs . Dr. R.P. Kapur, : 54(1994)DLT342 this Court after analysing various provisions of law held that mere issuing of rent receipt in the name of the occupier of the premises would not amount to creation of relationship of landlord and tenant. It requires a contract which, to my mind, in this case is missing. The Supreme Court in the case of Sheodhari Rai & ors. v. Suraj Prasad Singh & ors., Air 1956 Sc 758 held that mere payment of rent does not necessarily establish relationship of

landlord and tenant. To the same effect are the observations of this Court in the case of Khushbir Singh v. Ajaib Singh, Air 1983 76 (Delhi) where it was held that relationship of landlord and tenant is created by a contract, mere payment of rent does not necessarily establish relationship of landlord and tenant. therefore, on the ground that landlady Mrs.Suri had issued rent receipts in the name of Mr.K.K.Dhawan would not make him a direct tenant of Mrs.Nirmal Kanta Suri. In fact the appellant failed to produce any contract establishing the relationship of landlord and tenant. On the contrary Exhibit `A-2' is a rent agreement entered into between the landlady and the company to which present appellant was a signatory. Thus, by signing Exhibit `A-2' he admitted that he occupied the tenanted premises as an employee of the tenant i.e. the company. He was to remain in the premises so long as he was the employee of the company. That is the reason, the company issued notice to him to vacate and handover the tenanted premises to the landlady as he was no more an employee of the company. These facts having been proved on record, I see no perversity in the conclusion arrived by the Courts below. The documentary and oral evidence placed on record show that the company was the tenant and not the appellant. This Court in the case of M/s Karam Chand Thapar & Bros. v. Prem Kumar & ors., 1985(1) R C R Del 676 while dealing with almost identical facts concluded that even though the earlier tenancy was not terminated it does not grant tenancy in favor of the employee of the company. In that case the premises was taken on rent by a limited company for the residence of his General Manager. Subsequently the landlord addressed letters to the General Manager and issued rent receipts in his favour. This Court on the basis of the defense taken up by the General Manager of the Company held that the tenancy in favor of the company was not terminated nor it would amount to creation of tenancy in favor of the General Manager. In this case also vide Exhibit `A-2' tenancy was created in favor of the company, therefore, by mere occupation of the premises by the present appellant would not mean termination of tenancy in favor of the company nor would mean creation of tenancy in favor of this appellant. The lease in favor of the company did not stand terminated nor by accepting the rent from the appellant the tenancy was created in his favour. For creating a tenancy and permitting the sub-letting consent of the landlord in writing is a must. But in this case, no writing was obtained nor produced

on record by the appellant. Mr.K.R.Chawla drew my attention to the reply sent by the appellant to the letter issued by the company directing him to vacate and handover possession of the premises. In this reply of 26th May, 1984 appellant admitted the company to be a tenant. The said letter written by the appellant is on record though not exhibited, but since it is a letter written by the appellant himself, therefore, it can be read against him. In this reply letter he stated as under:- 'However, for your information please note that the landlady has entered an agreement with me subsequently to the signing of the company lease whereby she accepted me as a Direct tenant.'

(12) This is a clear admission on his part that the company was the tenant. He became tenant subsequent to his leaving the company. To prove the same he did not produce any evidence whatsoever. In the absence of the same the Courts below rightly concluded that he never became a direct tenant of the landlady after he ceased to be an employee of the company.

(13) The contention of Mr.Shyam Kishore that the conduct of the landlady is relevant because from May, 1980 till 1984 she never made any reference to any company lease. The rent was paid by the appellant and she had been issued the receipt in his favour. These arguments have been considered by the Courts below and, to my mind, rightly rejected. In view of the above discussion, I find no merits in this contention.

(14) Reliance by Mr.Shyam Kishore on the decision of the Supreme Court in the case of Dwarka Nath Prasad Atal Vs . Ram Rati Devi, : AIR 1980 SC192 is also of no help to him because in the case in hand the appellant was occupying the premises as an employee of the company with whom the landlady had a lease agreement. He appellant could not prove any oral agreement with the landlady to prove that he created the relationship of landlord and tenant with him after he left service with the company. On the contrary, the reply submitted by the appellant to the company on 26th May, 1994, as quoted above, show that he was relying on some written agreement entered into subsequently with the landlady after he ceased to be the employee of the company. That he failed to produce and prove hence inference was rightly drawn that he never became a direct tenant of the

landlady. therefore, the observation of the Supreme Court in the above cited case has no relevance to the facts of this case. The appellant has failed to establish that sub-letting was with the consent of the landlady.

(15) For the reasons stated above, I find no merits in the appeal. The same is accordingly dismissed.

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