

**Ramesh Chand Vs. Uganti Devi**

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**Court :** Delhi

**Decided On :** Nov-03-2008

**Reported in :** 157(2009)DLT450

**Judge :** Shiv Narayan Dhingra, J.

**Acts :** Evidence Act - Sections 116; Delhi Rent Control Act - Sections 14(1) and 23(1)

**Appeal No. :** C.R. 528/1993

**Appellant :** Ramesh Chand

**Respondent :** Uganti Devi

**Advocate for Def. :** V.K. Kalra, Adv.

**Advocate for Pet/Ap. :** Manu Nayyar and; Hameed S. Shaikh, Advs

**Disposition :** Petition dismissed

**Judgement :**

**Shiv Narayan Dhingra, J.**

1. The petitioner is aggrieved by an order dated 11th January 1993 whereby the learned Additional Rent Controller allowed an eviction petition against the petitioner on the ground of bonafide requirement of the landlord (respondent

herein).

2. The eviction petition was filed by two persons namely Smt. Uganti Devi and Smt. Sheela Devi. The petitioner made both of them as respondents. During the pendency of the petition, one of the respondent Smt. Uganti Devi, respondent No. 2 died on 25th February 1994. The petitioner made no attempt to bring on record the legal representative of deceased respondent No.2 and the petition was dismissed. On appeal, the Supreme Court restored this revision petition, however, an issue whether the Civil Revision as a whole would abate on death of Smt. Uganti Devi for not bringing her Lrs on record was left open by the Hon'ble Supreme Court while allowing the SLP of the petitioner. I consider that it would be appropriate to decide this petition on merits.

3. The two landladies had filed an eviction petition contending therein that they were the owners of the premises. Smt. Uganti Devi, the co-owner and her dependent family members had no other reasonable and suitable residential accommodation. Her family included herself, her husband; her unmarried daughter aged about 18 years, 3 unmarried sons, and one married son and his wife and mother-in-law who were living along with her. She along with her family members was staying with her brother in law Shri Narayan in one room divided into three portions with the help of wooden partitions in the factory premises situated at 8744, Gali No. 14B, Karol Bagh and her brother in law and his wife were per force also residing in one room partitioned with the help of wooden ply in the same manner and he required the premises for his own use and had asked the petitioner No. 1 and her family members to vacate the premises. They had no other suitable residential accommodation except the premises in question. She also contended that besides her family members, she had five brothers-in-law and daughters-in-law apart from brothers and sisters and all of them used to visit her on and off and she required guest rooms for the purpose. There was a persistent demand from her brother-in-law to vacate the premises. Hence, the eviction petition.

4. The tenant (petitioner herein) in leave to contest took the stand that the petitioner was neither the owner nor the landlord of the premises under his tenancy. It was denied that the petitioners had purchased the property from late

Shri Ram on 6.6.1985 as alleged. It was further alleged that Shri Ram was not the owner of the premises and it was only HUF who was the owner of the premises. The relationship of landlord and tenant was denied. It was also submitted that no letter was sent by Late Shri Ram to tenant authorizing the landlady to receive the rent. The property still remained in the name of the previous owner/landlord in the property tax record and, therefore, the landladies were not the owner of the premises. The other defence taken was that premises was let out for residential-cum-commercial purposes. The bonafide requirement of the landlady was also denied and it was stated that the landlady and her family were having lot of accommodation in property bearing No. 5490-92, Pahar Ganj consisting of more than 10 rooms. The property bearing No. 8749, Karol Bagh, was also in possession of the landladies which consisting of number of rooms. It was submitted that the rent of the premises was only Rs. 15 and the landladies had an intention to sell the property and they had already entered into an agreement to sell qua the property subject to the condition that they would get the premises vacated from the petitioner and hence the eviction petition filed by the landladies was a mala fide one. The extent of the family of the landlady was also denied. It was submitted that the landlady claimed that she purchased the property in 1985. The petition was filed in 1992. There was no change in the circumstances giving rise to bonafide requirements since 1985. She could happily live as she was living earlier, hence there was no cause of action.

5. The landlady in the counter affidavit to the leave to defend placed on record a copy of the sale deed and the counterfoils of rent receipts duly signed by the petitioner showing that the petitioner had attorned to the landladies and had been paying rent of the premises to them. The documents showing that the property had been mutated in the name of the landladies in the record of the House Tax authority were placed on record. It was denied that the premises was let out for residential-cum-commercial purposes. Ms. Uganti Devi also denied the ownership of the premises 8799 and 5490-92, Pahar Ganj. It was also denied that the landlady had entered into an agreement to sell.

6. Considering the contentions and documents of both the sides, the learned Additional Rent Controller came to conclusion that in view of registered sale deed

dated 6.6.1985 qua the property in favour of the landladies and in view of the payment of rent by the petitioner to the landladies, no dispute qua the ownership of the premises could be raised by the tenant i.e. the petitioner. It was not the concern of the tenant as to how the landlady acquired the property or whether the sale deed in their favour was a valid one or not. Thus the learned ARC held that the ownership and the relationship of the landlord and tenant were wrongly disputed by the tenant (petitioner herein) and no triable issue, therefore, arose in this respect. Regarding purpose of letting the premises, the learned ARC observed that the allegation about the premises having been let out for residential-cum-commercial premises was very vague and it was nowhere mentioned in the application for leave to defend as to what commercial use of the premises was being done. In view of the vague assertions and general allegations made by the petitioner, the learned ARC held that no triable issue arose in the eyes of law. Regarding bonafide requirements, the ARC observed that though the petitioner had denied the family members of the landlady but it was not disclosed by the petitioner as to who, out of those mentioned in the petition, was not part of the family of the landlady. Per contra, the landlady placed on record copies of her ration card showing the extent of her family to be the same as pleaded by her. Considering that merely a vague denial was no denial in the eyes of law, the extent of family, as pleaded by the landlady was upheld. Thereafter, the learned ARC considered the accommodation available with the landlady and found that the requirement of the landlady was bonafide and she genuinely required the premises. Learned ARC came to conclusion that the landlady had no legal right to stay in the accommodation belonging to her brother-in-law where she was staying at that time. Her bonafide requirement was not because of insufficiency of accommodation but in fact it was because of non availability of the accommodation with the landlady. The averments made by the petitioner that there were lot of rooms at the disposal of the landlady at Pahar Ganj premises was also of no help to the petitioner since it was his own averments that these 10 rooms were in possession of the petitioner No. 2 i.e. Smt. Sheela Devi and her family members. The eviction petition was not filed for the requirement of the petitioner No. 2 before the learned ARC but for requirement of petitioner No. 1. The sufficiency or insufficiency of the accommodation was not in question. The

learned ARC concluded that there was no alternative accommodation available, the petitioner No. 1 namely Smt. Uganti Devi had no premises of her own to live with her family and she bonafidely required the premises for the purpose of her and her family members' residential purposes. The allegations of malafide and availability of alternative accommodation were found baseless and the learned ARC allowed the eviction petition.

7. It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly. I, therefore, find that there was no infirmity in the order of learned ARC in this respect. As far as letting purpose is concerned, in view of the judgment of Hon'ble Supreme Court in *Satyawati Sharma (dead by Lrs. v. U.O.I. and Anr. : AIR 2008 SC3148* , this ground is not available to the petitioner.

8. The petitioner has failed to show how the bonafide requirement of the landlady was not genuine or justified or how the learned ARC failed to consider the facts placed before it. It is not in dispute that the landlady was not the owner of the premises where she was residing at the relevant time i.e. with her brother-in-law. She had a right to live in her own premises. If she had not asked the tenant to vacate the premises immediately after purchasing the same, that cannot be a ground to deny her, her legal right. Even otherwise, there is a legal bar of 5 years on any landlord who purchases the premises, from filing an eviction petition on

ground of bonafide requirement. She could not have filed an eviction petition for a period of 5 years from the date of purchase of the property and it is evident that she filed the eviction petition within two years after expiry of the period of 5 years. Since she was living with some of her relative and wanted to live in her premises owned by her, the bonafides of her requirement cannot be doubted. The extent of her family is not material as she had no other premises to live in.

9. A tenant who alleges that the landlord has at his disposal other accommodation has to place before the learned ARC some material to show that the landlord has a specific alternative accommodation at his disposal. Mere assertion that the landlady/landlord was the owner of various properties without placing on record even a single piece of document of the fact that such property was available to the landlord or landlady, no triable issue is raised. If these kinds of bald assertions are entertained by learned ARC, then every tenant would assert about the ownership by the landlord of any property owned by a stranger and would go away with leave to defend. That is not the intent of the legislature. Only in those cases leave to defend can be granted where learned ARC finds some substance in the issues raised by the tenant. To find out if there was substance into the assertions made by the tenant, learned ARC has to scrutinize the material placed before him by both the parties and come to a conclusion.

10. While exercising jurisdiction under Article 25(B)(8), this Court does not act as a Court of appeal. This Court has only to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it. I find no irregularity in the order passed by learned ARC.

11. In the case in hand, the landlady had died during pendency of this petition but her family members who inherited the property are entitled to the eviction for their bonafide requirement since the eviction petition filed by the landlady was for her own requirement also for the requirements of her family members.

12. In *Usha P. Kuvelkar v. Ravndra Subrai Dalvi* 2008 (1) RLR 63, the Supreme Court observed as under:

It was tried to be argued by the learned counsel for the respondent that since the landlord had died, the need had expired with him and that the question will have to be examined again regarding the bonafide personal need of the landlord. The question is no more res integra and is covered by the decision of this Court in Shakuntala Bai and Ors. v. Narayan Das and Ors. : AIR 2004 SC3484 . This Court has observed:..The bonafide need of the landlord has to be examined as on the date of institution of the proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.' In the same decision a contrary note expressed by this Court in P.V. Papanna v. Padmanabhaiah : [1994]1SCR642 was held to be in the nature of an obiter. This Court in Shakuntala Bai and Ors. (supra) referred to the decision in Shantilal Thakordas v. Chimanlal Maganlal Telwala : [1977]1SCR341 and specifically observed that the view expressed in Shantilal Thakordass case did not, in any manner, affect the view expressed in Phool Rani v. Naubat Rai Ahluwalia : [1973]3SCR679 to the effect that where the death of landlord occurs after the decree for possession has been passed in his favour, his legal heirs are entitled to defend the further proceedings like an appeal and the benefit accrued to them under the decree. Here in this case also it is obvious that the original landlord Prabhakar Govind Sinai Kuvelkar had expired only after the eviction order passed by the Additional Rent Controller. This is apart from the fact that the landlord had sought the possession not only for himself but also for his family members. There is a clear reference in Section 23(1)(a)(i) of the Act regarding occupation of the family members of the landlord. In that view the contention raised by the learned counsel for the respondent must be rejected.

13. In 2007 (2) RLR 481 Carona Ltd. v. Parvathy Swaminathan and Sons the Hon'ble Supreme Court had consider the impact of subsequent events on the eviction decree and held as under:

37. In our judgment, the law is fairly settled. The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit. Thus, if the plaintiff has no cause of action on the date of the filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising

subsequent to the filing of the suit. Conversely, no relief will normally be denied to the plaintiff by reason of any subsequent event if at the date of the institution of the suit, he has a substantive right to claim such relief.

14. I consider that merely because the landlady has died, the eviction order passed by learned ARC cannot be buried or set at naught. The LRs have a right to reap the benefits of the decree. In the instant case, the requirements considered by the learned ARC were of the landlady and her family.

15. In view of above facts and circumstances and the legal position, the petition is liable to be dismissed and is hereby dismissed as such. In the facts and circumstances of the case, the parties are left to bear their own costs.

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