

Mohd. Aslam and ors. Vs. Mohd. Ajmal and ors.

Mohd. Aslam and ors. Vs. Mohd. Ajmal and ors.

SooperKanoon Citation : sooperkanoon.com/708673

Court : Delhi

Decided On : Apr-16-2009

Reported in : (2009)155PLR38

Judge : Manmohan, J.

Acts : [Delhi Rent Control Act, 1958](#); Mahammedan Law - Sections 40(1); Code of Civil Procedure (CPC) - Sections 151

Appeal No. : R.C. Rev. No. 101 of 2008 and C.M. Nos. 17039-17040 of 2008

Appellant : Mohd. Aslam and ors.

Respondent : Mohd. Ajmal and ors.

Advocate for Def. : Jabbar Hussain, Adv. for Respondent No. 1

Advocate for Pet/Ap. : J.K. Jain, Adv

Disposition : Petition dismissed

Judgement :

Manmohan, J.

1. Present revision petition has been filed against order dated 18th July, 2008 by virtue of which petitioners/tenants, leave to defend application has been dismissed.

2. Mr. J.K. Jain, learned Counsel for petitioners submitted that Additional Rent Controller (in short ARC), had not considered the effect and impact of Muslim Personal Law in the present case, as here a Muslim landlord/owner died leaving behind two sons and four daughters. According to Mr. Jain, the principle that one co-owner can file and maintain an independent eviction petition without impleading the other co-owners applies to Hindus and not to Muslims. He submitted that after death of a Muslim owner/landlord all his legal heirs become owners in common and not co-owners as in Hindus. According to him, all heirs are necessary to be impleaded in eviction petition and as respondent No. 1/landlord failed to do so, eviction petition was liable to be dismissed. In this context, Mr. Jain referred to and relied upon a judgment in the case of *Mt. Fardosjahan Begum w/o Syed Alay Rasul and Ors. v. Kazi Shafiddin s/o Kazi Shujatali Musalman and Ors.* : A.I.R. (29) 1942 Nagpur 75, wherein it has been held as under:

The legal position as regards Mohammedans is *prima facie* that when the owner dies leaving a number of heirs those heirs take the estate as tenants in common. They have each a separate right and at any moment any one can demand administration of the estate so as to demarcate the property that falls to that one's share. But until that is done they hold, not as joint tenants as will be the case were they Hindus which joint tenancy is broken up by partition, but as tenants-in-common which co-tenancy is broken up by severance of the shares normally done by means of administration or by partition. Administration is normally the better course because then all questions of indebtedness of the deceased, priority of claims and so forth can be properly adjusted. However, no such point here really arises. What we are concerned with is whether the appellants have, as a consequence of the operation of law relating to ouster, lost the title which they have *prima facie* established. In our opinion, a Mohammedan *prima facie* establishes title when he shows that the estate in question was in A, that he is in the line of heirs from A and nearer heirs are dead and that there has been no administration which starts a new line of descent not from A but from (say) X, in which case he will then have to establish that he is the line of heirs from X. He, though establishing that *prima facie* case, may be defeated by his opponent (say) M if M can establish that the claimant has been ousted. Here therefore, the plaintiffs having shown that they are in the line of descent from Babar Ali, having

shown that there has never been an administration of this estate or a splitting of the co-tenancies into a number of separate shares demarcated and assigned, have established a prima facie case. It is then for the defence to establish that the prima facie title has been lost as a consequence of ouster. This case has hitherto been approached along the lines that defence is established once it is shown that there has been adverse possession for 12 years. In our opinion that is a misunderstanding of the legal position....

3. Mr. Jain further stated that Additional Rent Controller has erroneously dismissed petitioners' leave to defend application without deciding petitioners' application wherein it had been prayed that petitioners be allowed to bring on record the fact that the alleged partition deed on which respondent No. 1 is relying upon to be owner of the suit property is absolutely illegal, uncalled for and having no force in the eyes of law as petitioners have already challenged the ownership of respondent No. 1 in their application for leave to defend.

4. Mr. Jabbar Hussain, learned Counsel for respondent No. 1 at the outset submitted that provision regarding inheritance of tenancy in respect of Muhammedans and Hindus was not different. In this context, he relied upon a judgment of this Court in Mohd. Usman v. Mst. Surayya Begum 1990(2) R.C.R. 408 wherein this Court has held as under:

4. ...The tenancy right which is inheritable devolves on the heirs under the ordinary law of succession. Learned Counsel, therefore, submitted that under Section 40(1) of the Principles of Mahammedan Law applicable to Mahammedans in India, the heirs succeed to the estate of a deceased Mahammedan in common in Specific shares. Thus, the observations of the Supreme Court in H.C. Pandey's case (supra) are not applicable in the case of Mahammedan tenants. Learned Counsel further submitted that the respondents ought to have been given an opportunity to prove that the documents were not fabricated. Mst. Surayya Begum as a daughter of Khalil Raza was entitled to inherit the tenancy right in the premises in dispute and since she was not a party to the previous litigation, her possession could not be disturbed.

5. I find no force in the contention raised by the learned Counsel for respondent No. 1. The provision regarding inheritance of tenancy in respect of Mahammedans and Hindus is not different. The Supreme Court in Gian Devi Anand's case (supra) has no doubt observed that tenancy right which is inheritable devolves on the heirs under the ordinary law of succession. It only means that only those heirs who would be entitled to inherit the property of a deceased tenant under the ordinary law of succession would be entitled to inherit even the right of tenancy after the death of the tenant....

5. Mr. Hussain further stated that petitioners' application for bringing on record the fact that respondent No. 1 was not the sole owner of property had, in fact, been dismissed by ARC vide a separate and independent order dated 17th July, 2008. The said order is reproduced hereinbelow.

File is taken up today on an application of RI under Section 151, C.P.C. and by virtue of this application, respondent No. 1 wants to place on record the fact that the petitioner is not the sole owner of this property and has concealed the fact that his father late Shri Mohd. Wasi has six LRs including the petitioner and it has been stated that even in the partition deed relied upon by the petitioner four married daughters of the father of the petitioner has even not been disclosed and this being an important fact that should be brought on record. I have heard the submission. It is settled provision of law that even one of the co-owner can file or institute a petition for eviction on the ground of bona fide requirement and admittedly the partition deed is a registered document and further if the petitioner has not disclosed that his married sister that is an issue only among the petitioner and other LRs of his father and the respondent being a tenant has no ground to challenge the same. Argument heard on leave to defend application put up for order on the date already fixed.

6. After hearing the parties, I am of the opinion that [Delhi Rent Control Act, 1958](#), makes no distinction between Hindus and Muslims. As held by this Court in Mohd. Usman's case (supra), the provision regarding inheritance of tenancy in respect of Mohammedans and Hindus is not different. Moreover, the principle that one co-owner of a suit property can file and maintain an eviction petition is based on the

doctrine of agency which has no concern with Muslim Personal Law. In *India Manufacturing Co. and Anr. v. Bhagabandei Agarwalla (Dead) by L.Rs. Savitri Agarwalla (Smt.) and Ors.* : A.I.R. 2004 S.C. 1321 : (2004) 3 S.C.C. 178, it has been held as under:

6. ...It is well settled that one of the co-owners can file a suit for eviction for a tenant in the property generally owned by the co-owners (see *Sri Ram Pasricha v. Jagannath and Dhannalal v. Kalawatibai*). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement....

7. In any event, petitioner-tenants have no locus standi to raise dispute regarding share of other brother and sisters in the tenanted premises as that is an issue between the legal heirs of late Mohd. Wasil. It is not for petitioner-tenants to agitate the same.

8. The second grievance of petitioners that their application for bringing on record the fact that respondent No. 1 was not the sole owner of property had not been disposed of is misconceived on facts as the said application had in fact been dismissed by a separate and independent order dated 17th July, 2008 which has been reproduced hereinabove.

9. Consequently, present petition and applications being devoid of merits are dismissed but with no order as to costs.