

Shakuntala Devi and ors. Vs. Jagdish Chander and ors.

Shakuntala Devi and ors. Vs. Jagdish Chander and ors.

SooperKanoon Citation : sooperkanoon.com/898951

Court : Jammu and Kashmir

Decided On : May-26-1998

Reported in : AIR1999J& K36

Judge : G.D. Sharma, J.

Acts : Jammu and Kashmir Houses and Shops Rent Control Act, 1966 - Section 11; ;Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 - Section 100

Appeal No. : C.S.A. No. 36 of 1997

Appellant : Shakuntala Devi and ors.

Respondent : Jagdish Chander and ors.

Advocate for Def. : M.S. Bhat, Adv.

Advocate for Pet/Ap. : D.K. Khajuria, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

G.D. Sharma, J.

1. This is a Second Civil Appeal against the judgment and decree dated 25-11-1997 passed by the learned Addl. District Judge, Jammu whereby the appeal of

the appellants against the judgment and decree dated 31-5-1997 of the Court of first instance i.e. City Judge, Jammu was dismissed. The substantial questions of law formulated in the memo of appeal are to the following effect:

(1) Whether the service of notice of ejectment on one of the legal heirs of the original tenant can be a service of notice on all the tenants and in this manner the tenancy stands terminated?

(2) In a suit for ejectment whether without examining the person for whom the premises are required a decree passed for personal requirement is valid?

(3) Whether the suit for ejectment can be filed in respect of only one room when the tenancy comprised of rooms, terrace, kitchen as well as bath room.?

2. The relevant facts of the case are that respondents No. 1 & 2 instituted a suit for ejectment against respondent No. 3, Pardeep Singh for vacation of one room measuring 12 x 15' situate in first floor of the house from the demised premises as delineated in the plaint and on the grounds of personal necessity, three defaults and re-construction. The arrears of rent were also claimed to the tune of Rs. 280/- at the rate of Rs. 20/- PM w.e.f. January, 1988 till February, 1989. In the plaint it was averred that respondents No. 1 & 2 had let out the room in question at a monthly rent of Rs. 20/- to respondent No. 3 who had been paying regular rent up to December, 1987 but stopped paying the rent w.e.f. Jan., 1988 till date. He was served a notice but even after committing three defaults of two months each in the payment of rent he did not vacate the premises and neither paid the rent. The premises were required for personal use and occupation and the requirement of respondents was reasonable and much greater as compared to the requirement of respondent No. 3. The premises were stated to be in dilapidated condition which required re-building and the respondents had the capacity to construct the same.

3. The appellants herein approached the trial Court to be impleaded as party and they were arrayed as defendants (vide order dated 16-8-1990). Respondent No. 3 (Pardeep Singh) had already filed the written statement before appellant No. 1 (Shakuntala Devi) filed her written statement. Respondent No. 3 Pardeep Singh had pleaded that the suit was bad for non-joinder of the appellants as a party and

respondents No. 1 & 2 were not the owners, the suit was wrongly valued. He had also pleaded that before receiving the notice he had paid the rent till August, 1988 and only one month's rent i.e. for September, 1988 was outstanding. Respondents No. 1 & 2 had approached him for compromise and accepted the rent till ending February 1989 and thus no rent was payable. It was also denied that room was required for personal necessity by respondents No. 1 & 2. He had pleaded that he is a poor Conductor in S.R.T.C. and his necessity to have the room was much more than that of respondents No. 1 & 2. The re-construction of the room in question was also denied. The appellant Shakuntala Devi in her written statement had pleaded that the demised premises along with the stair-case, terrace, kitchen, bath-room and a Khurra had been obtained on rent by her husband Gulab Singh and she denied that only one room was taken on rent. The rent was sent w.e.f. January, 1988 till March, 1990 through Moneyorder but respondents No. 1 & 2 had refused to receive the same. She had also taken the plea that there was no personal necessity and she had not been served with a notice of ejectment and no defaults were committed. It was also denied that room was in a dilapidated condition and require re-building.

4. The trial Court on 1-12-1992 framed the following 10 issues:

1. Whether the defendant has committed three legal defaults of two months each within a period of 18 months in the payment of rent and as such is liable to be evicted from the suit premises? Opp
2. Whether the plaintiff required the suit premises for his personal use and occupation and the requirement of the plaintiff for suit premises is greater than that of the defendant Opp
3. Whether the partial eviction from the suit premises will satisfy the needs of the plaintiff in the case? Opp
4. Whether the suit premises is in a dilapidated condition and the same is required to be reconstructed for which the plaintiff has the required funds? OPD

5. Whether the suit suffers from non-joinder of parties and as such deserves to be dismissed? OPD.
 6. Whether the defendant has paid the rent of the suit premises to the plaintiff up to Feb., 1989 and there is nothing balance on that account? OPD
 7. Whether the plaintiffs are not competent to file the instant suit as they are the agents of the owners of the suit premises'? OPD
 8. Whether the plaintiffs have no cause of action for filing of the instant suit against the is plaintiffs? Opp
 9. Whether the suit is not maintainable in the present form, if so, how? OPD
 10. Relief?
5. After the parties led their evidence the trial court decided all the issues in favour of respondents Nos. 1 & 2 and decreed the suit as stated above.
6. Before the First Appellate Court the judgment and decree of the trial Court was challenged on the following grounds:
- i) That in the decree-sheet the appellant; have not been shown as party to the decree but as they are aggrieved by the impugned judgment and decree, so they have a right to present the appeal.
 - ii) That impugned judgment and decree is against law and facts of the case;
 - iii) That so far as the issue of personal necessity was concerned, the trial Court has not appreciated the facts and evidence appearing in the case.
 - iv) That the trial Court has also committed an error in holding that the requirement of the plaintiffs is much more than that of the appellants.
 - vi) That the finding of the trial Court that the plaintiffs needed the demised premises for reconstruction was without evidence and there was no evidence produced by the plaintiffs that by reconstruction the accommodation would increase to the benefit of general public and the plaintiffs had sufficient funds and

sought the permission from the Municipality for reconstructing the same.

vii) That the trial Court has mis-directed itself and it had not been proved that the building was required for re-construction.

vii) That the finding of the trial Court that the defendants had made two contradictory statements was incorrect and the case of the appellants was that respondent No. 3 had joined hands with respondents No. 1 & 2 deliberately.

viii) That no notice was served upon them and so no default was committed by them.

7. The 1st Appellate Court decided all these points against the appellants and dismissed the appeal.

8. Aggrieved by the judgment and decree of the courts below this appeal has been filed wherein the above stated substantial questions of law have been framed.

9. Heard the arguments.

10. The learned counsel for respondents No. 1 & 2 has contended that no substantial question of law is involved in this appeal and it should not be admitted. The counsel for the appellants has at the out-set contended that service of notice of ejectment on respondent No. 3 namely, Pardeep Singh is not valid in the eyes of law because this is not a case of joint-tenancy but a case of cotenancy because after the death of original tenant, namely, Gulab Singh, the sons appellants Randhir Singh & Shiv Darshan Singh and respondent Pardeep Singh became cotenants. All these tenants should have been served with a notice of ejectment and tenancy should have been validly terminated which has not been done in the present case. In support of this contention the learned counsel has cited the case of Ishwarlal Pranjivandas v. Labhshankar Hargovinddas Bhatt, AIR 1982 Guj 152. The counsel for respondents No. 1 & 2 has vehemently contended that after the death of original tenant his heirs succeeded to the tenancy as joint tenants and not as tenants in common. In support of this contention he has cited the case of H.C. Pandey v. G. C. Paul, (1989) 3 SCC 77: (AIR 1989 SC 1470). He has further contended that respondent Pardeep Singh had been paying the rent and had

received the notice and in view of the law laid down by the Apex Court in the case of Rameshwar Lal v. Raghunath Das (1990) 4 SCC 729 it was a valid service of notice.

11. After considering the respective contentions of the learned counsel for the parties, it is found that the law laid down by the Gujarat High Court in a Division Bench case, AIR 1982 Guj 152 (supra) wherein it has been held that when heirs get certain property of a deceased under the rule of inheritance, they get the property in 'defined' and 'definite' shares i.e. they are 'tenants-in-common', and one co-tenant is not the agent or the representative of the other co-tenant or co-tenants and in case the landlord has to terminate, the 'interest' of all those people and notice is required to be served on all is not a good law. As such a principle already laid down by the Allahabad Court in the case of Ramesh Chand Bose v. Gopeshwar Prashad Sharma, AIR 1977 All 38 has been overruled. The Apex Court in 1989 (3) SCC 77: (AIR 1989 SC 1470) (supra) has clearly held that, 'On the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession; the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. The heirs succeed to the tenancy as joint tenants.' In the present case it appears that respondent Pardeep Singh had acted on behalf of the tenants as he himself had been paying the rent and he accepted the notice also. In the case of 1990 (4) SCC 729 (supra) notice was received by the younger brother of the appellant-tenant who used to sit in the demised shop. The Apex Court had held that under Section 106 of the Transfer of Property Act the notice was validly served. In the instant case also the notice served upon respondent No. 3 was sufficient and no substantial question of law arises on this count.

12. The second substantial question of law which is stated to have arisen is that respondents No. 1 & 2 had brought the suit for their personal necessity which was spelled out that son of respondent No. 1 (Jagdish Chander) was idle and had to be settled in life, but he was not examined as a witness. This argument has been controverted by the counsel for the respondents by stating that case was based for

personal requirement of respondents No. 1 & 2 which was not solely dependant upon the rehabilitation of son of respondent No. 1. Both the respondents required the room in question for their personal occupation and use and son of respondent No. 1 had not to carry any business therein. That both the courts below had gone into the evidence and having appreciated the same came to the findings of fact that personal necessity of respondent No. 2 was more than that of the appellants and this finding cannot be characterised to be based on surmises. Such a concurrent findings of fact cannot be termed as a substantial question of law. After considering the respective contentions it is found that there is force in the argument of the counsel for the respondents and no substantial question of law regarding the personal necessity has arisen in the present appeal.

13. Also no substantial question of law arises that suit was not filed for ejectment of whole demised premises but only in respect of one room because partial eviction is a recognized mode under the J & K Houses and Shops Rent Control Act and by no stretch of reasoning it can be termed as a substantial question of law arising in the case.

14. On the views taken in the above stated discussion, it is found that no substantial question of law arises in this appeal which cannot be admitted and is dismissed in limine.