

Sarwati Devi Vs. Birbal Singh

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Court : Delhi

Decided On : Dec-12-2012

Judge : M. L. Mehta

Appellant : Sarwati Devi

Respondent : Birbal Singh

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + R.C. REV 276/2010 Date of Decision:

12. 12.2012 SARWATI DEVIPetitioner Through: Mr.B.S.Chowdhary, Ms.Chitra Gosain, Advocates. Versus ...Respondent BIRBAL SINGH Through: In person. CORAM: HONBLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J.

1. This revision petition, u/S 2.B (8) of the Delhi Rent Control Act (for short the Act) read with Sections 115 and 151 of the Civil Procedure Code (for short the Code), assails the order dated 04.09.2010 passed by the Ld. ARC, Karkardooma Court, Delhi.

2. The petitioners case is that she is the landlady/owner of premises bearing no. C-345-B, Gali No. 15, Bhajanpura, Delhi-53. The respondent is a tenant in respect of four rooms, one latrine and one bathroom (hereinafter referred to as the tenanted premises) at a monthly rent of Rs. 1500/-, excluding electricity and water charges. She stated that the tenanted premises were let out to the respondent

tenant in 1997. After the death of her husband, his entire properties were divided among his sons through oral partition and the tenanted premises were left for the use of the petitioner. She also submitted that she has been paying house tax and water charges to the Departments. Claiming to be the owner of the tenanted premises, she has filed eviction petition u/S 14 of the Act, on the ground of her requirement of the tenanted premises for residential purpose. It is stated that she was currently staying with her son Sh. Gyanendra Sharma at C-345, Gali No. 16, Bhajanpura, Delhi and her son was compelling her to vacate his house. She further submitted that she has no other premises except the one occupied by the respondent.

3. The respondent filed his leave to defend on 28.11.07 and being granted the same, filed a written statement. He alleged that relationship of landlord tenant had not existed between him and the petitioner and thus, she had no locus standi to file an eviction petition. The respondent contended that he was a tenant under Sh. Jai Kishan, the son of the petitioner and that he had been paying rent to him, but rent receipts had not been issued since 27.06.2007. It was denied that the petitioner was residing in the house of her son Sh. Gyanender Sharma and that she has no other suitable premises available to her. The respondent submitted that she has more than 20 rooms vacant in the property No. 39/2, Sanjay Mohalla, Bhajanpura, Delhi. He further contended that she has another property bearing No. C-345, Gali No. 16, Bhajanpura. In this property, the respondent submitted that she has 18 rooms, out of which 14 are occupied by other tenants and four rooms were left for her use. In the reply, the petitioner denied all the above averments of the respondent. She submitted that her son, Sh. Jai Kishan had made a statement before the Civil Court at Karkardooma in suit titled, Birbal v. Jai Kishan, that he was not the owner of the tenanted premises and that his mother was the landlady and owner of the same.

4. Before proceeding to examine the facts and the documents on record, it is pertinent to maintain that the jurisdiction of this Court, u/S 25.(8) of the Act read with Sections 115 and 151 of the Code is of a limited nature. It is confined to seeing whether the lower courts order was passed within proper jurisdiction and also whether any grave injustice or miscarriage of justice would occur if the

impugned order is allowed to stand. Keeping the above legal principle in mind, I have heard the Ld. Counsels for the parties and perused the records.

5. In an eviction petition filed u/S 14 of the Act, it is relevant that the disputed property was let out by the widowed landlady or her husband. The term let out by him/her has been examined in detail in the case of Nathi Devi vs. Radha Devi Gupta, (2005) 2 SCC 271. The Supreme Court explained the legislative intent in using the specific words let out by him/ her as under: 28. Section 14-D confers a right on a widow of the landlord to seek immediate possession of the premises let out by her, or by her husband. The scheme of these sections appears to be that where the landlord is alive and the premises have been let out by him, only he can make an application for immediate possession of the premises for his own use. Only in the case of his death his dependant under Section 14-A, and his widow under Section 14-D can seek immediate possession of the premises. The use of the expression let out by him in Sections 14-B and 14-C and the expression let out by her, or by her husband in Section 14-D have significance. If it was unnecessary in the scheme of these sections as to who had actually let out the premises, the legislature would not have used the term let out by him or let out by her, or by her husband. In interpreting a provision one cannot assume that the words employed by the legislature are redundant. Section 14-D gives a right to file an application under that provision only to a widow who had let out the premises or whose husband had let out the premises. Consequently, if the premises had been let out by someone else, Section 14-D will not apply. As pointed out in Surjit Singh Kalra [(1991) 2 SCC 87] the expression used in Section 14-B is the premises let out by him, unlike the expression used in Section 14(1) (e) where the legislature employed the expression the premises let out for residential purposes. Thus in the case of a landlord belonging to the general category it was immaterial whether the premises were let out by him or by someone else, as long as he was the landlord of the premises at the time of making an application seeking eviction of the tenant. But the expression let out by her, or by her husband conveys a different meaning altogether. The widow's right to recover immediate possession of the premises arises only if the premises were let out by her or by her husband, and not by anyone else. It appears to us that the legislature has purposely employed a different expression in Section 14-D as also in Sections 14-B and 14-C. We are

here concerned with an application filed under Section 14-D which specifies in clear terms that a widow can invoke the provisions only if she has let out the premises, or if her husband had let out the premises.

6. Thus the Supreme Court has made it very clear that unless the landlady herself lets out the disputed property, or the same was let out by her husband, she cannot avail of the benefit u/S 14 of the Act. Applying the above legal principle to the present case, the main question was whether there existed a landlord-tenant relationship between the petitioner and the respondent. The respondent denied the same stating that he was paying rent to the petitioners son Sh. Jai Kishan and that the tenanted premises was let out by him.

7. The petitioner examined herself as PW-1 and Sh. Jai Kishan as PW-2. The respondent examined himself as RW-1. In her deposition as PW-1, the petitioner herein, submitted that the tenanted premises had been let out by her husband and rent was being paid to him and after his death, the rent was being paid to her. She further deposed that through oral partition, the tenanted premises had been left to her, for her residence. She further deposed that the partition was reduced in writing in notebooks which was at her house. She also deposed that after the death of her husband, she has been paying house tax charges to M.C.D and water charges to Delhi Jal Board. The Ld. ARC disregarded the statement of the petitioner landlady on the ground that she had contradicted herself by stating that the partition was oral, and that then she had records of it in note books. She did not produce any such record before the court. As regards the payment of house tax and water charges, the Ld. ARC disregarded the same stating that they did not prove that the landlady was the owner and that she had let out the tenanted premises to the respondent.

8. PW-2, Sh. Jai Kishan also deposed that his father was owner of property bearing no C-345 Bhajanpura and that after his death, it had been orally divided into three portions, out of which one was meant for the petitioner. He further stated that the portion C-345-B was never let out by him, but was let out by his father in the year 1997. He deposed that he never claimed ownership of the said property, but during his cross-examination he admitted that the electricity connection in the

tenanted premises was in his name and that he paid the electricity charges claiming to be the owner and that the property was his ancestral property. The fact that an electricity connection existed in the name of PW-2 was also admitted by PW-1, the petitioner landlady. When asked about the suit filed against him u/S 4. of the Act by the respondent tenant, wherein it was established that he was the landlord of the tenanted premises, he claimed that he did not know of the same. The respondent deposed that he had been paying rent to Sh. Jai Kishan and not to the petitioner, but the rent receipts upto 27.06.2007 had not been issued by him. Further, it has been admitted that electricity connection had been obtained by Sh. Jai Kishan on his claiming to be the owner of the tenanted premises. In addition to this, in the suit filed by the respondent against Sh. Jai Kishan u/S 4. of the Act, the fact has been established that there existed a landlord relationship between the respondent and Sh. Jai Kishan and not the petitioner. Observing all these facts, the Ld. ARC came to the conclusion, and rightly so, that the tenanted premises had not been let out to the respondent by the petitioner and as no landlord-tenant relationship has been established, the petitioner has no locus standi to file for eviction u/S 14. of the Act.

9. The second contention raised by the respondent was that the petitioner had four vacant rooms, which were available to her and that the eviction sought for was not for her bonafide requirement. She submitted that she had been living with her son Sh. Gyanendra, but as he is compelling her to vacate his house, she needs the tenanted premises. In her cross-examination however, she clearly admitted that she was not residing with her son. She further deposed that four rooms were lying vacant in the property, of which the tenanted premises form a part. Thus there was unambiguous admission on the part of the petitioner that she had vacant rooms at her disposal. Thus, it is evident that the petitioners requirement is not of a bonafide nature. Though the words bonafide does not appear in Section 14D of the Act, it has been held in the case of K.L Malhotra vs. Smt. Prakash Mehra, AIR 199. SC 99. that the benefit availed by the widow u/S 14. is at par with the general benefit conferred on the landlord u/S 14(1)(e). Further in the case cited by the Ld. ARC of S.N Kapoor v. Basant Lal Khatri, RCR (Rent) 217 SC, the Apex Court held that In adjudging the claim under Section 14-D what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence

and that the claim by her is bona fide and not a feigned one. So far as a claim under Section 14(1)(e) is concerned, the very requirement has to be shown not only to be bona fide but the move of the landlord/landlady to seek the eviction of the tenant must be genuine. As far as the claim under Section 14-D is concerned, the widow-landladys need for her own residence is recognized statutorily to be a valid one, but the move or request made to avail of the special benefit must be shown to be a bona fide and not a pretext only to get rid of the tenant.

10. In the present case, the need of the petitioner landlady of the tenanted premises was not a bonafide one as she admittedly owned four other vacant rooms. So even if the landlord-tenant relationship had been established, the petition would fail on the ground that the requirement of the tenanted premises for her residence was not of a bonafide nature.

11. In view of the facts of the case and the application of legal principles to them, I find no infirmity or illegality in the impugned order. The petition is hereby dismissed. M.L. MEHTA, J.

DECEMBER 12 2012 rmm

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