

(1998) 01 DEL CK 0093
In the Delhi High Court
Case No : S. No. 774 of 1993

Chander Prakash Gupta

APPELLANT

Vs

Pushpa Gupta

RESPONDENT

Date of Decision : 06-01-1998

Acts Referred:

Easements Act, 1882 — Section 52
Specific Relief Act, 1963 — Section 6

Citation : (1998) 71 DLT 242 : (1998) 44 DRJ 434

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Sugriva Dubey, for the Appellant; C.J. Gupta, for the Respondent

Judgement

J.B. Goel, J.—This is a suit for possession u/s 6 of the Specific Relief Act filed by the plaintiff against the defendants. Parties are relations. Deceased Smt. Kiran Wati was the owner of property Ho. 64, Gobind Park, Gali No. 22, Krishna Nagar, Delhi. She died on 26-3-1992 leaving behind a son Komal Krishan Gupta and two daughters, namely, Mayawati and Vijay Bansal. Komal Krishan also died on 12-5-1992 and defendants are his heirs, defendant No. 1 is widow and defendants 2 to 4 are his sons. Plaintiff is the son-in-law of the deceased Smt. Kiran Wati being the husband of her daughter Mayawati.

2. Case of the plaintiff is that he was a tenant of the deceased in part of the aforesaid property at a monthly rent of Rs. 200; he had been in possession and paying rent to Smt. Kiran Wati. He had also deposited rent in her name in the Court of an Additional Rent Controller, Delhi and the rent for subsequent period up to February, 1992 was tendered to the deceased by money orders and after her death he paid rent for the months of March to July, 1992 to Smt. Archana Singhal against receipts who became the owner of the property by virtue of a Will of the deceased in her favour; that the defendants had unsuccessfully tried to dispossess him on several occasions; however, on 18-7-1992 when he was out of station, he has been dispossessed and his goods and valuables removed in

collusion with the police, and the police has not taken action on his complaints. He accordingly filed the suit for restoration of the possession.

3. Defendants have filed written statement denying the averments made in the plaint. It is denied that the plaintiff was a tenant or any rent was paid by him to the deceased or he was in possession or was dispossessed from the premises on 18-7-1992 or his goods were lying there and removed as alleged; the deposit of rent was made on false grounds and objections were filed denying the relationship of landlord and tenant and this deposit u/s 27 of the Delhi Rent Control Act does not create the relationship of landlord and tenant. Payment of rent to the deceased by money orders is also denied. It is claimed that the deceased had executed in Will on 13-11-1991 in favor of her son, Komal Krishan Gupta to the exclusion of other heirs and the defendants are heirs of Shri Komal Krishan Gupta; the alleged Will in favor of Smt. Archana Singhal is false; she is not entitled to receive any rent and receipts, if any, issued by her are collusive and meaningless. The defendants are owners and are in exclusive possession of the suit property after death of Shri Komal Krishan Gupta on 12-5-1992. This suit is false and filed in collusion with Smt. Archana Singhal to usurp the property unlawfully, no cause of action arose and is not maintainable. That on 10-7-1992 Shri V.D. Singhal (husband of Smt. Archana Singhal) had hired Goondas to take possession forcibly for which FIR No. 230/1992 was registered against him. On 11-7-1992 Smt. Archana Singhal and her husband had tried to break open the locks; defendants are in possession of the premises.

4. Replication was filed reiterating the pleas taken in the plaint. The following issues were framed on 9-8-1994:

1. Whether the plaintiff was a tenant in the premises and was in settled possession of the premises in question? (OPP)
2. If issue No. 1 is proved, whether the plaintiff is entitled to the possession of the premises in question? (OPP)
3. Whether the present suit has been filed in collusion with Smt. Archana Singhal in order to grab the property in question? (OPD)
4. Whether the plaintiff was a lawful tenant and in lawful possession of the property in question? (OPP)
5. Relief.

The following additional issue was framed on 24-1-1996:

1. Whether the present suit is barred on account of the plaintiff filing the earlier Civil Suit No. 544/91 in the Court of Senior Sub-Judge, Delhi, which has been dismissed in default?

Both the parties have led oral and documentary evidence. plaintiff has examined seven witnesses, PW 1 to PW4 had produced certain records only. PW. 5 Shri C.P. Gupta is the plaintiff, PW 6, Smt. Archana Singhal is his daughter and PW 7 Shri

Hari Ram, LDC Record Room, Civil Courts, Delhi has proved Ex. P.W. 7/1 copy of the plaint filed by defendants 2 to 4 against Smt. Kiran Wati Bansal and Mayawati Gupta. On behalf of defendants also seven witnesses have been examined DW 1 Rajiv Gupta is one of the defendant. DW 2 Ashok Kumar, DW 3, Shri Ram Dass and DW 6 Smt. Anjana Bhardwaj are public witnesses, who have deposed that the deceased alone was in possession of the premises and the plaintiff after living for a short period as a son-in-law of Smt. Kiran Wati had shifted to another house DW 3 (renumbered as 3) Mr. S. Chauhan is ASI, Vigilance Cell, Police Head quarters proved the vigilance inquiry report Ex. DW 3/1 on the basis of a complaint filed by Smt. Archana Singhal DW 4, Shri C.S. Rawat, clerk from the office of Sub-Registrar Seelampur has produced Mark A, copy of the Will registered in that office. DW 5, Shri R.C. Sharma, Clerk, Record Room, Civil Court, Delhi has proved mark B to Mark E from file of DR 253/91, decided on 20-3-1992 and Mis. 5/92, decided on 15-1-1993 of the Court of Additional Rent Controllers. DW 7, Shri Satya Narain, Clerk from the court of Additional Sessions Judge, Delhi has produced Mark F, copy of the criminal revision petition No. 11/96 and Ex. DW 7/1 to DW 7/4, copies of various orders.

5. Learned Counsel for the parties besides addressing oral arguments have also filed written submissions. The findings on the issues are as under:

Issue No. 1

plaintiff appeared as PW 5 and has stated that he was tenant of Smt. Kiran Wati in this property since 1987 at a rent of Rs. 200 per month. He had deposited the rent in the court of Additional Rent Controller u/s 27 of Delhi Rent Control Act and thereafter had sent rent to the deceased till February, 1992 vide money order receipts Exs. PW 5/14 to PW 5/17. After her death on 26-3-1992, he paid rent to Smt. Archana Singhal in whose favor a Will was executed by the deceased, vide receipts Exh. PW 5/3 and PW 5/4. In support of his possession he has also relied on suits, (Ex. 5/5) filed by Smt. Kiran Wati against him, Ex. PW 5/8 suit filed by his son-in-law Shri V.D. Singhal, Ex. PW 5/10, copy of the driving licence, Ex. PW 5/11, copy of the domestic gas consumer card record, Ex. PW 5/11, his pension book, Ex. PW 5/12, telephone registration in his name in PW 5/13, copy of car registration certificate in his favor and some letter/reports, correspondence received at or addressed from the suit premises. He has also stated that on 18-7-1992 he was disposed to admit that when he came to Delhi he had a plot of land in Noida and he wanted to raise construction on that plot. But no construction was raised. It was suggested to him that after his retirement he had started living with the deceased, his mother-in-law as he had to make construction on his plot in Noida and he was allowed to live in the premises on account of relationship as her son-in-law and not as a tenant. He had also stated that rent receipts were issued to him by the deceased and he could produce the same but he did not produce any rent receipts inspite of opportunity given to him. He admitted that at present he is residing at A-111, Nirvana Apartment, Delhi with his family and the marriage of one of his son had also taken place

from there. His daughter Smt. Archna Singhal appeared as PW 6 and deposed that she was living with the deceased, her maternal grand mother since 1981-82 in the property in question and after retirement of his father, her maternal grand mother had asked him to reside with her in that house and then he came and the three families started living together in that house having common kitchen. She has also stated that her father was a tenant and had paid rent to the deceased a number of times in her presence at the rate of Rs. 200 per month and that Smt. Kiran Wati had bequeathed the house to her and so after her death the rent is being paid to her. Suggestion has been put to her that her father had never paid any rent to Smt. Kiran Wati or to her and he had lived in the house as son-in-law of the deceased and not as a tenant.

6. On behalf of defendants, defendant No. 1 Shri Rajiv Gupta (grandson of Smt. Kiran Wati) has deposed that the plaintiff had come to live in the suit premises after his retirement from service in 1989; as he wanted to construct his house in Noida, and so his grand mother had asked him to come and stay with her instead of taking a house on rent; and afterwards plaintiff had taken a house in Nirvana Apartment and shifted there with his family in 1990 and his younger son Prabodh was also married at Nirvana Apartment; plaintiff had lived in the suit premises as son-in-law of the deceased and not as tenant and no rent was received from him, nor any rent receipt was issued by the deceased to him, no money order was also accepted by her; and the plaintiff was never accepted as a tenant. After plaintiff had shifted from the suit premises, his son-in-law V.D. Singhal who used to reside in adjoining house No. 63 had tried to take possession of the house for which FIR was lodged on 10-7-1992; V.D. Singhal had broken open the locks of the house and an inquiry was made by the Vigilance Branch of Delhi Police and the possession was got restored to the defendants. He has also deposed that the deceased had executed a Will in favor of his father and probate proceedings thereof are pending. In cross examination he has further stated that Smt. Kiran Wati was living in this house till September, 1991 (wrongly typed as 1992) and thereafter he had taken her to their house in Krishna Nagar, after staying with the deceased in this house for about a month in July and August, 1991 Along with his family and at that time the entire house was with the deceased. He has also deposed that she was living separately from her husband and his grand father used to pay Rs. 800 per month to meet her expenses and after his death his father used to pay this amount and also met all her expenses. He denied that any expenses used to be borne by the plaintiff or by Smt. Archna Singhai. At one stage, it is suggested to him that an injunction was operating against dispossession of Smt. Archna Singhai when the possession was given to the defendants after Vigilance inquiry was made by the police.

7. The case of the plaintiff thus is that he was a tenant and according to the defendants he had lived for sometime with the deceased as a licensee being her son-in-law on his retirement as he wanted to construct his own house in Noida.

8. plaintiff has not placed on record any rent deed. Rent receipts alleged to have

been issued to him by the deceased also have not been produced inspire of opportunity given to him. Rent receipts if issued by the deceased would have been available with him. Non production of any rent receipts gives rise to the inference that no rent was paid by the plaintiff to the deceased. By application Ex. PW 5/1 dt. 12-11-1991 a sum of Rs. 200 is sought to be deposited as rent in the name of Smt. Kiran Wati for the month of October, 1991. It is stated in column No. 9 of this application that last rent was paid for the month of August, 1991. There is no Explanation about the rent for the month of September, 1991. This deposit seems to be an attempt to create evidence of tenancy. It appears from the court order dt. 20-3-1992 (Ex. PW 5/2) that notice of this application was served on the deceased but no one had appeared on her behalf and this application was consigned. Defendants, however, have sought to show that objections against this deposit were filed subsequently with an application for condensation of delay denying the relationship of landlord and tenant, copies of which have also been placed on record. It is not the case of the plaintiff nor so proved that the deceased Kiran Wati or the defendants have withdrawn this amount from the court of Addl. Rent Controller DW 1 has denied that any rent was paid to the deceased Kiran Wati. The fact thus remains that this amount of deposit has been accepted or withdrawn by the deceased or the defendants. Mere deposit of an amount u/s 27 of the Delhi Rent Control Act does not prove the relationship of landlord and tenant. Whether or not any objection has been filed against the deposit is immaterial as the determination of dispute about the relationship of landlord and tenant, if denied does not fall within the scope of enquiry or jurisdiction of the Rent Controller on application u/s 27 of that Act.

9. PW 5 has also stated that he had sent rent by money orders Exhs. PW 5/14 to PW 5/17 to the deceased but neither in the plaint nor in the statement made in court he has stated that these money orders were actually accepted by the deceased or what happened to those money orders. Apparently concealment of this fact is an attempt to mislead the court to show as if these money orders had been accepted by the deceased. He has not produced the receipts that would have been obtained from the payee if the amounts of money orders were paid to her. These, if existed, must be in possession of the plaintiff and their non production also gives rise to the inference that no such receipt exists and this obviously proves that the amounts of these money orders were not paid to or accepted by the deceased payee.

10. DW 1 Shri Rajiv Gupta has deposed that no rent sent by plaintiff by money order was accepted by his grand mother and she had also so told him. He was not confronted by the plaintiff on this assertion. Thus it is also not proved that any amount sent by the plaintiff by money orders as rent was accepted by the deceased.

11. It is thus proved that neither any lease deed was executed in favor of the plaintiff nor the deceased had obtained or. accepted any rent in cash, by deposit in court or through money orders from the plaintiff.

12. Then PW 5 has stated that the deceased had executed a Will in favor of his daughter Smt. Archna Singhal and thereby she became the owner and he had paid rent to Archna Singhal after her death on 26-3-1992 against receipts Ex. PW 5/3 and PW 5/4; his daughter Archna Singhal as Pw 6 has supported him in this. Execution of that Will has not been proved DW 1 has deposed that the deceased was last residing with them since about September, 1991 till her death on 26-3-1992 and she had executed a Will dt. 13-11-1991 in favor of his father for which probate proceedings have been filed.

13. It is not disputed that the deceased had left behind two daughters and a son as her heirs besides the children of her son alive, and she was living with her son at the time of her death. Bequest of the house to the daughter to the exclusion of her own heirs from inheritance is a suspicious circumstance which needed proof to dispel it. No evidence has been led by the plaintiff to prove due execution of the Will. Mere ipse dixit of the plaintiff and his daughter is not sufficient to prove the Will. In the absence of proof no reliance can be placed on the Will alleged to have been executed in favor of Smt. Archna Singhal. Archna Singhal is the daughter of the plaintiff and rent receipts could be easily procured from her to support the father. In the circumstances, reliance cannot be placed on the rent receipts alleged to have been issued by Smt. Archna Singhal (PW 6) in favor of the plaintiff.

14. This circumstance thus also cannot be relied as proof of tenancy of the plaintiff in the premises.

15. PW 5 has admitted in cross examination that he was last employed at and retired from Haridwar in January, 1989 and he came to Delhi after retirement, Though he had not so stated in the plaint but as PW 5 he has stated that his family had come earlier in 1987. In cross examination he has admitted that when he came to Delhi he had a plot of land in Noida and he wanted to raise construction thereon. It is not his case that any steps were taken or were under process or contemplation for construction of the house in 1987 or before his retirement and till he came to reside in Delhi. No Explanation has been given as to why his family would have shifted to Delhi about two years before his retirement leaving him alone for no valid reason.

16. His daughter Smt. Archna Singhal as PW 6 has deposed that after retirement his father was asked by her maternal grand mother to reside with her in that house and thereafter he came and started living with the deceased. She has not stated that the deceased needed the company of the plaintiff or his family. She thus also does not support the plaintiff that the family of plaintiff had shifted to the suit premises before his retirement. On the other hand, DW 1 Rajiv Gupta has deposed that the plaintiff had come to live in the suit property after his retirement in 1989 as he wanted to construct his house in Noida and the deceased had asked him to stay with her instead of taking a house on rent. It is not disputed that plaintiff owned a plot of land in Noida. In these circumstances, there is no reason to disbelieve him (DW1). It is thus not proved that the

plaintiffs family had shifted at his house in 1987 or before his retirement. He thus would not have become a tenant in 1987.

17. It appears that the deceased landlady was living in the suit properly alone separate from her husband and her son. Smt. Archna Singhal has deposed that she was living with her grand mother since 1981-82. If Smt. Archna Singhal is married and Along with her husband Shri V.D. Singhal has been living either with the deceased or in the adjoining house No. 63 and looking after the deceased, the deceased, the deceased would not have needed any help of the plaintiff nor it is shown that the deceased needed the support or help of the plaintiff.

18. Smt. Archna Singhal has also deposed that she was living with her maternal grand mother and his father came to Delhi after his retirement, and then these three families started living together having a common kitchen. This means that the plaintiff was not given any independent accommodation to live in commensality was allowed to live jointly with the deceased as a temporary arrangement. In that case he would be a licensee and not a tenant.

19. The deceased also did not need any financial help from outsiders which may have necessitated her letting the house on rent to her son-in-law DW 1 Shri Rajiv Gupta has deposed that his grand father and after his death his father used to meet the expenses of Smt. Kiran Wati and used to pay her Rs. 800 per month and also used to meet other expenses required by her. A suggestion was put to him that entire household expenditure of the deceased used to be borne by the plaintiff and by Smt. Archna Singhal which he has denied. This is not the case of the plaintiff in the plaint or in the statements of PW 5 and PW 6 that he or his daughter used to meet the expenses of the deceased. On the other hand a suggestion has been put to DW 1 that plaintiff and Archna Singhal used to go to bank to withdraw money from the account of Smt. Kiran Wati. This also shows that the deceased had a bank account and obviously was not financially dependent on the plaintiff or his daughter.

20. DW 1 has further stated that the plaintiff had taken a flat in Nirvana Apartment and shifted with his family in the year 1990 where the marriage of his second son had also taken place after shifting there. It is admitted by the plaintiff that he had taken the premises at A-111, Nirvana Apartment and was living there with his family and his one son was married there. It is not the case of the plaintiff that the house in Nirvana Apartment was taken as a temporary measure or that was vacated and he had shifted back to the suit premises thereafter. It is also admitted by him that he has got a ration card at Nirvana Apartment house. That ration card has not been produced which would have shown when he had actually shifted there. After acquiring new house in Nirvana Apartment, the plaintiff would not require the suit premises to live.

21. DW 1 Shri Rajiv Gupta has deposed that had taken the deceased Kiran Wati to live with them in their house at Krishna Nagar in September, 1991 and he Along with his family had also lived with the deceased in the premises for a

month in July/August, 1991 and at that time entire property was in possession of the deceased. It was not suggested to him that he had not so lived with the deceased or that the plaintiff was living in the suit premises or was in occupation of any portion of the house at that time. There would have been no necessity for the deceased being taken to the house of her son with whom she had lived for about two decades if the plaintiff with his family was living at the suit premises and they were looking after her. The inference is that due to old age, the deceased was unwell and nobody was thereto look after her in her own house. The plaintiff must have shifted from the suit premises sometime prior to July-August, 1991.

22. plaintiff has produced some documents i.e., driving license Ex. PW 5/10, Domestic Gas Card Ex. PW 5/1.1, Pension Book, Ex. PW 5/11, Telephone Registration Ex. PW 5/12 and car registration certificate Ex. PW 5/13, some correspondence and also reports made to the police to show that in these documents his address is of the suit premises. None of these documents are proof of the tenancy of the premises in the suit premises. The plaintiff had admittedly lived in the suit premises after his retirement and at that time in the absence of his any other address in Delhi, he would have given this address where he received correspondence and used as his address. The plaintiff himself has admitted that his ration card has been issued from Nirvana Apartment residence. Obviously he had shifted there. It is not shown that the gas connection was being operated from premises or any telephone was installed at the suit premises. A person having mala fide intention will generally try to create some false evidence/circumstance to support his case. The plaintiff had acquired a house at Nirvana Apartment. His continuing to use the said premises for correspondence must be for some ulterior motive. He had not maintained two houses. plaintiff had not sated that he had not removed his household goods when he acquired a house at Nirvana Apartment and started living there nor any suggestion was put to DW 1 to this effect. Obviously, plaintiff was not residing in the suit premises and was not in occupation of the same after he had shifted to Nirvana Apartment.

23. DW 6, Smt. Ranjana Bhardwaj who was living in front of the house of the deceased Smt. Kiran Wati has deposed that the plaintiff had lived in the suit property for 4-5 months after his retirement as son-in-law of the deceased and thereafter he had left the house. To her also it was not suggested that the plaintiff had not shifted from the suit premises or any household goods of the plaintiff were left in the suit premises after he had left the house or he had re-shifted to the suit premises. She had denied the suggestion that the police had evicted the plaintiff from the premises and handed over the possession to the defendants. This was not the case pleaded in plaint. On the other hand it was suggested to DW 1 that it was Archana Singhal who was dispossessed after vigilance enquiry and not plaintiff. This witness is not shown to have any special interest in the defendants. She is an independent witness and there is no reason to disbelieve her testimony to this effect.

24. DT 1 Shri Rajiv Gupta had deposed that Shri V.D. Singhal (son-in-law of the plaintiff) used to live in the adjoining property No. 63 along with his wife and children, he had come along with two Goondas to take possession of the property and suits have also been filed by him in respect of the property in question in order to grab this property, for his such attempt a FIR was lodged on 10-7-1992 but again was able to take possession after breaking open the locks, and after an inquiry was made by the vigilance branch of police the possession was got restored to the defendants. It is not disputed that Shri V.D. Singhal and Archna Singhal have been living in adjoining house No. 63. Suggestion has been put to DW 1 that V.D. Singhal and Archna Singhal were dispossessed from property in question and also from property No. 630, 18.7.1992. There is no question of dispossession of V.D. Singhal or Archna Singhal from the suit premises when they were not in occupation of the same. This probabilises the statement of DW 1 that V.D. Singhal and Archna Singhal had been trying to take possession of the premises for which FIR was lodged on 10-7-1992 and when they broke open the locks, the possession was restored to the defendants.

25. plaintiff has also relied on some suits which were filed by one or other of the parties. In none of the suits any finding was given by any court that the plaintiff was a tenant or was in occupation of the premises. Ex. PW 5/5 is copy of plaint in Suit No. 395/90 filed on 16-7-1990 by defendants 2 to 4 against, (1) Kiran Wati, (2) Vijay Bansal, (3) Maya Gupta for partition of the suit property. In this plaint address of defendants 1 to 3 are shown as 63/64, Govind Park and it is alleged that defendant No. 3, the wife of plaintiff was served at this address. Mere mention of the address of the suit property will not prove tenancy of the plaintiff nor his independent possession thereof. He had been living with the deceased in the suit property for sometime after his retirement and may be so living when this suit was filed.

26. Ex. PW 5/6 is copy of Suit No. 464/91 filed by Smt. Kiran Wati on 25-11-1991 against, (1) Tirlok Chand Bansal, (2) Chander Parkash Gupta, and (3) Vishwa Nath Dass Singhal for injunction against threat of dispossession of the deceased from the suit premises. plaintiff is defendant No. 2 and his address given is A-111, Nirvana Apartment which shows that the plaintiff was not residing at the suit premises at that time. This also does not help the plaintiff.

27. Ex. PW 5/D1 is copy of plaint in suit No. 445/91 filed by the present plaintiff against the deceased Kiran Wati on 14-11-1991 for permanent injunction from interfering in his possession of the suit premises. This suit was dismissed in default on 27-1-1992 prima facie it cannot be said that it was a bona fide suit.

28. Ex PW 5/8 is copy, of suit No. 1886/91 filed by V.D. Singhal against Komal Krishan and (2) MCD seeking permanent injunction against raising of unauthorised construction in property No. 63, Govind Park. It does not relate to the suit premises. Some reports/complaints made to the police have also been relied. Simply exhibiting the reports do not prove their contents.

29. As discussed above, the plaintiff has thus failed to prove that he was inducted as a tenant in any portion of the suit premises. It is also not proved that the plaintiff was at any time in exclusive possession or in possession before 18-7-1992 of the premises. He was accommodated in the premises and lived in commensality with Smt. Kiran Wati as a licensee being her son-in-law for sometime after his retirement as he wanted to construct a house at Noida. He had acquired a house at Nirvana Apartment and shifted there sometime before July-August, 1991 and with that his license also had come to an end.

Issue No. 1: Is accordingly decided against the plaintiff.

Issue No. 2 : In view of finding on issue No. 1 this issue is also decided against the plaintiff.

Issue No. 3 : In view of the discussion on issue No. 1, this suit is not bona fide and obviously has been filed for ulterior motive and in all probability in collusion with Smt. Archana Singhal. This issue is decided accordingly.

Issue No. 4: In view of finding on issue No. 1, this issue is also decided against the plaintiff.

Additional Issue : This issue is not proved and is decided against the defendants.

In view of these findings, the suit of the plaintiff is misconceived and the same is hereby dismissed with costs.