
(1976) 02 DEL CK 0023

In the Delhi High Court

Case No : Second Appeal No. 176 of 1977

Kanhiya Lal Bansal

APPELLANT

Vs

Raj Nath Sharma and Others

RESPONDENT

Date of Decision : 22-02-1976

Acts Referred:

Citation : (1978) 14 DLT 69 : (1978) RLR 294

Hon'ble Judges : V.D. Misra, J

Bench : Single Bench

Advocate : S.N. Chopra, Arun Kumar, I.S. Mathur and G.N. Aggarwal, for the Appellant;

Judgement

V.D. Misra, J.

(1) This second appeal u/s 39 of the Delhi Rent Control Act is directed against the order of Mr. P.K. Bahri, Rent Control Tribunal, upholding the order of the Additional Controller.

(2) The relevant facts, in brief, are these. One Raghu Nath Sharma was the owner of house No. 21, Bazar Lane, Babar Road, New Delhi. He rented it to Kanhiya Lal Bansal (the tenant), the present appellant. He served a notice dated December 2, 1955 (Exhibit AW5/9) on the tenant terminating his tenancy. On the failure of the tenant to vacate, he filed a eviction petition on the ground of bona-fide requirement for his residence. On the basis of a compromise, eviction order allowing time to the tenant up to December 31, 1958 to vacate the premises was passed. The tenant refused to vacate and challenged the order as a nullity. During these proceedings, Raghu Nath Sharma died and his legal representatives (the landlords), the present respondents, were brought on record. The matter went up to the Supreme Court which upheld the contention of the tenant that the order of eviction was a nullity. Kaushalya Devi and Others Vs. Shri K.L. Bansal, . Soon thereafter the landlords served a fresh notice dated May 12 1969 again terminating the old contractual tenancy of the tenant. This notice is Exhibit

AW5/5. On the failure of the tenant to vacate, the land-lords filed a petition on October 18, 1969 for eviction of the tenant u/s 14(1)(e) of the Delhi Rent Control Act on the ground of bona-fide requirements for their residence and the members of their families. The additional Controller passed an order for eviction of the tenant. The tenant's appeal to the Tribunal, as already stated, was dismissed.

(3) The only question raised by Mr. S. N. Chopra, learned counsel for the tenant-appellant, is that notice Exhibit Aw 5/5 terminating the tenancy of the tenant, is defective because it was not given on behalf of Jatinder Nath Sharma, a co-owner, who was a minor. In order to appreciate the contention it is necessary to note some more facts. Jatinder Nath Sharma is one of the sons of the deceased, RaghuNath Sharma. He was a minor in May, 1969 when notice Ex. AW5/5 was given. Raj Nath Sharma is the eldest son of Raghu Nath Sharma. He instructed the lawyer on his behalf as well as guardian of Jatinder Nath Sharma and as attorney of other co-owners to send the notice (Exhibit AW5/5) to the tenant. The parties do not dispute that Raj Nath Sharma could not act as guardian of Jatinder Nath Sharma since the minor's mother, is a natural guardian, was alive.

(4) Mr. Chopra also submits that by serving a subsequent notice (Exhibit Aw 5/5) terminating the tenancy the previous notice (Exhibit Aw 5/9) was waived and so the landlords cannot fallback on it. Mr. Ishwar Sahai, learned counsel for the landlords-respondents, submits that in case the subsequent notice (Exhibit Aw 5/5) is not found to be valid because it was not given on behalf of the minor, then it follows that the minor has not waived the previous notice Ex: AW5/9. According to him, before there could be an effective waiver of the previous notice all the co-owners must jointly waive the same. He also submits that even the second notice is valid.

(5) In my opinion the first part of the contention of Mr. Ishwar Sahai is irrefutable. The appellant cannot blow hot and cold at the same time. In case the subsequent notice (Exhibit AW5/5) is invalid on the ground that this notice was not issued on behalf of the minor, it cannot be held that the minor has waived the previous notice (Exhibit AW5/9) which validly terminated the tenancy. Mr. Chopra could not controvert the proposition that for a waiver to be valid it is necessary that all the co-owners must join in the waiver and that waiver by only some of the co-owners cannot be a valid waiver. If any authority is needed on this point it is Moti Lal Vs. Basant Lal and Another,), where a Division Bench held that "a waiver to be effective and binding must be made by the entire body of joint owners and it is not open to one of the joint owners to waive notice." Therefore, the tenant cannot contend that the first notice Ex. AW5/9 stands waived.

(6) What amounts to a waiver, will depend upon the circumstances of each case. According to Woodfall's Law. of Landlord and tenant, .27th Edition Paragraph 2040 "Generally speaking, giving a second notice to quit does not waive a notice previously given unless, with other circumstances, it is the basis for inferring an

intention to create a new tenancy after the expiration of the first. A second notice to quit given to expire before the first is valid. A good parole notice to quit will not be waived by a subsequent insufficient notice in writing." A Full Bench of the Punjab & Haryana High Court in Shivjit Singh v. Charan Singh, 1973 Rcj 14, held that "the issuance of a second or third notice to quit the leased property, by the Lesser to the lessee, person does not amount to a waiver of the first such notice within the meaning of section 113 of the Transfer of Property Act." It was further observed:

"At wofold requirement is visualised, namely, an act of one party showing an intention to treat the lease as subsisting and the express or implied consent of the other party. It is, evident, Therefore, that the intention to treat the lease as subsisting has not to be merely a unilateral one but has to be bilateral. At one particular point of time, there must exist a mutual intention of the Lesser and the lessee to continue the lease despite its earlier determination by a notice u/s 111(h) of the Act. Equally clear it is from the language of the provision itself that this intention may be inferred from conduct (i.e., it need not necessarily be express) or as the statute says from any act of the party. Similarly the consent of the other party may-be express or implied." Now there is nothing on record of this case to show that there was the required mutual intention of the parties. The tenant never attorney to the landlords after the demise of their father. For this reason also, it cannot be held that, in the circumstances of this case, the second notice to quit (Exhibit Aw 5/5) waived the first notice (Exhibit Aw 5/9) terminating the tenancy.

(7) Before the enactment of the Hindu Minority and Guardianship Aqt, 1956, a de facto guardian had the same power of alienating the property of his ward as a natural guardian. As long as the alienation was for the benefit of the estate of the minor and was effected with due regard to his interest, it could not be impeached on the sole ground that merely a de facto guardian had alienated the property. (See Mulla's Hindu Law, 14th Edition, Paragraph 538.) However, section 11 of the Hindu Minority and Guardianship Act expressly took away this right of a de facto guardian. Section 11 reads thus "After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the defacto guardian of the minor".

(8) Now giving a notice to quit does not amount to disposing of the property. Does it amount to "dealing with" the property in terms of section 11 when the property is required for the residence of the minor ? I find that a similar question arose before the Allahabad High Court in K. Kumar Vs. Onkar Nath, , wherein it was held that it does not amount to disposing of or dealing with the property. With respect I agree with that decision.

(9) To recapitulate the facts, Shrimati Kaushalya Sharma, mother of Jatinder Nath Sharma, was admittedly the natural guardian. She had executed a General Power of Attorney in favor of Raj Nath Sharma in respect of the premises in

question and empowered him to file suit for eviction of tenants and do all lawful acts necessary for this purpose. It is true that while executing the power of attorney the mother has described herself as one of the co-owners and not as guardian of the minor. But, in my opinion, it is not reasonable to presume that while she was empowering her eldest son, Raj Nath Sharma, to get the premises vacated from the tenant, she had no intention of conveying her powers as guardian of the minor. It has been found that Raj Nath Sharma, the eldest son of the deceased, was managing the property inherited by the co-owners from their father. Management of the property, which included the consent of Shrimati Kaushalya Devi, shall be deemed to include her consent also as guardian of the minor. Any other construction, in my opinion, will lead to absurdity. Therefore, the description of Raj Nath Sharma as guardian of the minor, which he was not, will not affect the validity of the notice on behalf of the minor.

(10) Now where a co-owner is managing the property on behalf of other co-owners, he has the implied consent to terminate the tenancy and evict the tenant. A full Bench of the Gujrat High Court in *Nand Lal Girdhari Lal and another v. Gulamnabi Pambalbai and others*, 1972 Rcj 889, held : "Where a co-owner is, by common consent of all co-owners, entrusted with the management of the leased property he may give notice to quit in his own name and the notice to quit need not show on the face of it that he is acting as agent on behalf of the co-owners." It was also held :

"WHEN it is said that the notice to quit must be given by all co-owners, it is not necessary that it should be signed by all co-owners. It is sufficient if it is given by some one acting as agent on behalf of the co-owners. The agent may be one of the co-owners himself or he may be one of the co-owners himself or he may be a third person such as, for example a solicitor or an advocate. Such an agency may be expressed or implied. So long as the agency is established, notice to quit given by the agent would be valid notice determining the tenancy."

Similar was the view taken by a Single Judge of Patna High Court in *Indu Bhusan Bose Choudhary Vs. Hari Bhajan Singh and Others*, . The Supreme Court in *Kanta Goel Vs. B.P. Pathak and Others*, , after referring to its earlier decision in *Sri Ram Pasricha Vs. Jagannath and Others*, , that a co-owner is as much an owner of the entire property as any sole owner of the property is, held that where a co-owner functioned for all practical purposes as the landlord he was entitled to institute proceedings of eviction under the Delhi Rent Control Act against the tenant.

(11) In the instant case, as already stated, it has been found that Raj Math Sharma was managing the property on behalf of all the co-owners which includes the guardian of the minor, and it cannot be said that he could not terminate the tenancy and take proceedings for the eviction of the tenant. The appeal, Therefore, is dismissed with costs.