
(1993) 03 DEL CK 0090

In the Delhi High Court

Case No : Second Appeal No. 205 of 1988

Kartar Kaur

APPELLANT

Vs

L. Walia and Others

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1993) ILR Delhi 575

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : A.K. Sood, Ameeta Verma and J.R. Goel, for the Appellant;

Judgement

P.K. Bahri. J.

(1) This Second Appeal is brought against judgment of the Rent Control Tribunal dated August 8, 1988 by which he had dismissed the appeal brought by the landlady against the judgment of Additional Rent Controller dated March 24, 1986 by which he had negatived the ground of eviction covered by clause (c) of proviso to sub-section I of Section 14 of Delhi Rent Control Act.

(2) Facts in brief in are that Mehtab Singh, husband and. predecessor in interest of the appellant, was the owner of double storeyed house No. 2/10, West Patel Nagar, New Delhi. Somewhere in the year 1962, Mehtab Singh had inducted, the respondent as tenant in the complete ground floor of the said house at the rental of Rs.600 per mensem besides water and electricity charges He had. brought the eviction petition on the ground of bonafide requirement for residence of the landlord and his family members and on the: ground of substan.ti3l damage covered by clause (e) & (j). Mehtab Singh died during the pendency of the proceedings and Kartar Kaur was substituted as petitioner and other legal heirs of Mehtab Singh were impeached as respondents who did not claim any interest in the property.

(3) The ground ol" substantial damage covered, by clause (i) was made out and

in view of Section. 14(10) of Delhi Rent Control Act the respondent /tenant was given time of one month for restoring the damage wall to its original condition. It is now admitted that the gate which was opened in the wall intervening the properties No. 219 and 2110, West Patel Nagar was removed and the wall was restored, to its original position and that ground no longer survives for decision in this appeal.

(4) Admittedly , before taking the premises in question, on rent, the respondent/tenant. Smt. L. Walia, has been. running a primary school under the name and style of Toll bridge English School and she is the sole proprietor of the said school

(5) Regarding the ground of bonafide requirement for residence, the appellant had set up the case that the demised premises have been let out to the tenant for residential purposes only and she is the owner /landlady of the same and she bonafide requires the same for occupation as residence of herself and she is not in a possession of any reasonably suitable accommodation. It appears that earlier Mehtab Singh and. his family were living in Nairobi and due to uncertain conditions prevailing in that place, the husband and wife had shifted to Delhi and first floor of the house, which was earlier in occupation of another tenant, was vacated and thus started living there and admittedly the said accommodation is now in: occupation of the landlady and she is residing therein, The landlady had set up the need for the ground floor in possession, of the tenant taking the plea that she is suffering from High Blood Pressure and Heart Trouble and had been advised by the doctors not to climb the stairs. She had mentioned that due to some accident in 1991, she had suffered multiple injuries and there was "fracture of her knee bones of the left leg and despite treatment taken in England and operation performed. she cannot walk properly without the support "of the stick and doctors have advised her not to climb the stairs which is quite a painful experience for the landlady.

(6) The two court below, on merits, have found that the appellant is the owner/landlady of the demised premises and bonafide requires the ground floor of the demised premises for occupation as residence of herself and she is not in possession of any reasonably suitable accommodation. The residential accommodation available to her on the first floor was treated as reasonably not suitable accommodation inasmuch as the physical. condition of the landlady required that she should live in the ground floor. However", both the Courts below gave a finding of fact that the appellant has not been able to prove that the demised premises have been let out for residential purposes only and thus. they negated the said ground of eviction.

(7) There is no document of letting execute between the parties from which the letting purpose could be called out. Mehtab Singh, who had let out the premises, had died before the evidence commenced in the case.

(8) The case of the respondent/tenant was that she had taken the demised premises not only for residential purposes but also for running her school and

she has been using the said demised premises for both purposes since the inception of the tenancy without any objection, from the landlord/landlady. She had also taken the plea that in fact the tenancy was created in the name of her sole proprietorship school and rent is also being paid from school account by way of cheques, all along.

(9) The findings of the two Courts below on other ingredients of the ground of bonafide requirement are no longer challenged before me. So only question to be decided by this Court in the second appeal is whether the two Courts below were right in giving a finding that the demised premises have not been proved to be let out for residential purposes only.

(10) In Second Appeal, the Court is not in law entitled to reverse the findings of fact arrived at by the two Courts below unless and until it is shown that those findings of facts are perverse or have been arrived at by misreading the evidence or by omission to take into consideration any important piece of evidence.

(11) The learned counsel for the appellant has vehemently argued that in absence of any document of lease showing the letting purpose, the Court should have taken into consideration the nature of the building, the locality where the same is situated, the purpose for which the building is predominantly used and taking cumulative effect of all these factors in the present case, should have held that the premises have been let out only for residential purposes. He has argued that tenancy in the present case cannot be treated to be in the name of the school which is solely owned by the tenant and the two courts below were wrong in holding that tenancy is in the name of the school. He has argued that mere issuance of cheques in payment of rent from the account of the school would not lead to any inference that the tenancy was created for composite purposes. He has urged that only a very small portion of the demised premises is proved to have been used for school purposes and thus, the substantial portion of the demised premises admittedly having been used for residential purposes, the Court should have held that the letting purpose in the present case is residential only and not composite in nature,

(12) Learned counsel for the tenant has, on the other hand, vehemently argued that two Courts below have appraised the evidence and come to right conclusion that the demised premises have been let out for composite purposes. He has argued that from evidence discussed by the two courts, as available on the record, it was quite evident that the demised premises have been used for composite purposes to the knowledge of the landlord/landlady since very inception of the tenancy and at no point of time, any objection had been raised and thus, keeping in view all the facts the two courts rightly held that the premises have not been let out for residential purpose only and his finding of fact cannot be interfered by this Court in second appeal.

(13) The appellant had appeared in the witness box as AW1 and deposed that the premises had been let out to the tenant only for residential purposes. In

examination-in-chief, she does not say that she was present at the time of letting of the premises. She had also not disclosed as to how she knew about the letting purpose. She had not stated that nature of the premises is residential and that the locality where the said premises is located is residential by and large. She admitted her signatures on a photocopy of the rent receipt, Ex. R-1, which shows that the demised premises have been taken by school. She explained in the cross examination that she had signed; the receipt as having received the rent without understanding the contents of the said receipt which were in English language but she had not made any categorical statement on oath that she was not literate and was not having knowledge of English language. She admitted that to her knowledge the premises have been used for running the school for the last 718 years. She made this statement in the year 1979 and; so she admits that she had knowledge about the demised; premises being used for school purposes since about 1970 or 1971.

(14) An offer was given to her that if she really bonafide. requires the demised premises, she could exchange the Same with the first floor but she declined the said option.

(15) AW3, Kuldeep Singh, who was earlier acting as attorney of Mehtab Singh, deposed that the premises had been used only for residential purposes which fact is obviously not correct because even the landlady admitted in her testimony that premises had been used for school purposes, at least for the last 7 or 8 years. The witness deposed that in! fact according to the terms and conditions of the Lease Deed contained from the President of India in respect of the plot in question, the property in question could be used only for residential purposes. This testimony of the witness is not admissible, if the contents of the Lease Deed were to be relied upon, it was incumbent for the appellant to have produced the Lease Deed. No oral evidence with regard to the contents of the document could be adduced to prove the terms and conditions incorporated in. the said document. The witness has not stated that the property in question is residential in nature and is located in a residential locality. According to him, he had come to know about the letting purpose only from Mehtab Singh and the appellant. So, this witness has also no personal knowledge about the letting purpose.

(16) AW5 was a clerk of the Land & Development Office who brought the file and deposed about the factum of Lease Deed having been executed in favor of Mehtab Singh. He also was not required to produce and prove the Lease- Deed and his testimony that the case Deed provided for construe" corporation of a residential house was also not admissible in evidence.

(17) In rebuttal, the tenant/respondent No.1 deposed that the premises had been taken on rent by her for composite purposes and they have been used for both purposes since the inception of the tenancy and tenancy was taken in the name of her sole proprietorship school and the cheques in the shape of rent have been issued in the account of the school.

(18) It is true in law that the tenant in the premises has to be considered respondent No. 1 and not her school because a sole proprietorship school is not a legal entity but here the question which is of importance is that the demised premises have been used for running the school as well and the cheques have been issued admittedly from the account of the school and even rent receipts Ex. R-1 (photocopy) also issued by the appellant depicts that the demised premises had been taken by the school. It is true that at the time original of R-1 was issued, she was not the landlady, but admittedly she had received the rent on behalf of the landlord and given the receipt. If she had the authority to receive the rent on behalf of the landlord, her husband, she had definitely the authority to issue the rent receipt. At any rate, it is admitted" by her that to her knowledge the demised premises have been used for running the school for 7/8 years, if that is so, keeping in view the Cumulative "facts of this case, it cannot be said that the two Courts had given any perverse finding in holding that the demised premises have not been proved" to have been let out for residential purposes only.

(19) In Smt. A.N. Kapoor Vs. Smt. Pushpa Talwar, , the question which arose for decision was with regard to letting purpose of the demised premises. In that case also, there was no document of letting but on facts it was found that the premises have been used for lodging the foreign guests to the knowledge of the landlady. The Supreme Court held that though it is not disputed that the premises had been let out for residential purposes, but it is also beyond doubt that to the knowledge of the landlord, the premises have been regularly used by the tenant not only for her own residence but also for lodging of the foreign guests and landlord was aware of this fact all along. So, it would be presumed that the landlord, who did not object to such user of the premises, had consented to the said user and thus, it was held that letting purpose of the premises was not residential only.

(20) In D.C. Oswal Vs. V.K. Subbiah and other, , it was found as a fact that the premises have been used for non-residential purposes for seven years without any objection from the landlord and: so the Court held that the premises have ceased to be let out for residential purposes only.

(21) The learned counsel for the appellant has made reference to R.B. Kapoor Vs. Manik N. Dastoor, wherein this Court had laid down the well settled principle of law that where there is no document of letting executed between the parties, the letting purposes has to be determined keeping in view the nature of the premises, the locality and the dominant purpose for which the premises have been used by the tenant. In the said case, even the Lease Deed granted by the President of India was proved to show that the building to be constructed on the land could be used only for residential purposes. There is no dispute about this principle laid down in this judgment but the judgment proceeds on its own facts.

(22) Same principles were laid down by this Court in Kidar Nath Sodhi Vs. T. R. Kapoor (2), 1989(1) RCJ 112. In the said case, again there was no document of

letting and the letting purpose was determined on the basis of residential nature of the premises, locality and user to which the premises had been put. Mere fact that address of the demised premises had been used for correspondence purposes with the customers was held to be not a material fact to show that the letting purposes was not residential atone. Again, this judgment is distinguishable on facts but the principles laid down in this judgment admit of no dispute.

(23) In Anil Kumar Jauhar Vs. Atlas Cycle industries, 1989(5) RCJ 466, again similar principles were laid down as mentioned above in other judgments.

(24) In Y. Rajeshwari Vs. Bombay Tyres International Ltd., , same principle of law was laid down for" determining the letting purposes where there was no written document showing the letting purpose. In that case, the plea was that the Resident Director was using the premises turn personal office. It was held that it would not charge, the nature of the premises from residential to non-residential

(25) Reference was also made by learned counsel for the appellant to Babu Lal Vs. Satya Narain 1977(1) RCJ 92. Same principles were enunciated in this judgment. The premises were found to be residential in nature, located in a residential locality and dominant user was also residential and only "fact pleaded was that the tenant was bringing certain watches from certain "hop-keepers and repairing them in his house and returning the same to the shop-keepers. It was held that the premises were let out for residential purposes. On facts, the case is distinguishable

(26) Same principle was laid down by this Court in M/s. Indian Paper Machinery and Engineering Works Ltd. Vs. Sarwarth Lal Jaini, 1988. (2) RCJ 100. Besides the factors noticed above, in this case, the tenant had used the premises for giving address of his company for correspondence purposes. It was held that it would not mean that the premises had been advised for non-residential purposes

(27) Counsel for the appellant has also relied upon Prem Nath Vs. Ganesh Dass. 1987(9) RCJ 310. In the said case, the letting of the premises was in the name of" partnership firm. It was held that mere creation" of tenancy in the name of a. partnership firm is not enough to show that the premises had been let out for commercial purposes. There is no dispute about the correctness of such proposition of law. It depends upon facts of each case to determine whether the premises had been let out for residential purposes or not.

(28) In Kamal Arora Vs. Amar Singh, 1985 (10) RCJ 466, the Supreme Court proceeded to decide the case keeping in view the peculiar facts. The question: which arose for decision was when the there could be any letting in violation of the provisions of Capital of Punjab (Development. & Regulation) Act 1951 read with Section 11 of East Punjab Urban Rent; Restriction Act 1949. Under the provisions of the " said Act, even if the premises are let out turn running a school, the same are to be treated as non-residential building. The High Court had, keeping in view the provisions of the two Acts. held that there was a

prohibition of the statute for conversion of residential building into "non-residential building and by mutual consent, the parties cannot convert the residential building into a non-residential building which is against the statute. So. the Supreme Court dismissed" the appeal against such a finding of the High Court but that is not the question which arises for decision in the present case. Nothing has been brought out in evidence that the building in question could not be used for non-residential purposes like running a school", and no statute has been shown have been violated by such user of the premises for running the school.

(29) I may mention that a local commissioner was appointed to visit the property and he found that out of the whole, of the premises, on the ground floor a garage 18" X 9" 3". two servant rooms 10" X 9" 3" and 7" X 9" . a kitchen -and a toilet, a dressing room 9" X 7" 3", part of the bed room, verandah 10" and an open platform 12" X 19" 6" were being used for running the. school. Measurements I have taken. from the map proved in the case. The local commissioner has, however. not given the measurements but has indicated the portions which have been found for running the school. The other portion which was found to be used for residential purposes, comprises of two bed-rooms, drawing-cum-dining room, kitchen, toilet, stairs and two verandahs. So, it cannot be said that only an insignificant portion of the demised premises was being used for non-residential purposes.

(30) Keeping in view that facts of this case. I hold that two Courts below rightly came to the conclusion that the landlady has failed to prove that the demised premises had been let out for residential purposes only and thus. they were right in negating the ground of bonafide requirement for residence.

(31) I find no merit in this appeal, which hereby dismiss with no order as to costs.