

(1996) 10 DEL CK 0049

In the Delhi High Court

Case No : Regular Second Appeal No. 62 of 1986

Kedari Singh

APPELLANT

Vs

Delhi Cloth and General Mills and Others

RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Easements Act, 1882 — Section 52

Transfer of Property Act, 1882 — Section 105

Citation : (1997) 65 DLT 903 : (1997) 115 PLR 51

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Vinay Sabharwal, Ravinder Sethi and Sanjeev Anand, for the Appellant;

Judgement

Usha Mehra, J.

(1) The present appeal has been preferred against the order of the First Appellate Court whereby the Court held that the appellant was merely a licensee. His license stood terminated on his retirement from the service of respondent. He had no vested interest in the property. The document Exhibit Public Witness Pw 3 /1 dated 18th October, 1955 is the allotment letter issued by the respondent. It does not create any tenancy in favor of the appellant.

(2) Aggrieved by this order the present appeal has been preferred, inter alia, on the ground that the suit filed by the respondent for possession was barred u/s 50 of the Delhi Rent Control Act. That agreement dated 18th October, 1955 Exhibit Public Witness PW. 3 /1 had been misconstrued by the Courts below. The respondent while allotting the quarter to the appellant clearly mentioned that it was creating a tenancy infavour of the appellant. Since document ExhibitPW3/1 has been misconstrued hence his appeal raises a very important question of law.

(3) In order to appreciate the relevant contentions of the parties, brief facts as have come on record, are that the appellant deceased Kedari Singh was allotted

a quarter No. 343, Line No. 9, Gaushala Marg, Kishan Ganj, Delhi on 18th October, 1955 by the respondent-Delhi Cloth Mills (in short DCM). The occupational charges were to be deducted from his salary. He was given this quarter for residential purposes and that too on account of his being in employment of the DCM. He was prohibited from inducting any one in this premises. He was to vacate the premises on his retirement. He could not keep any cow, buffalo or any other animal nor could make any additions, alterations in the premises without the consent of his employer. He was to abide by the rules framed by the Company concerning allotment of quarters to its employees.

(4) The only question to be decided in this appeal, Therefore, is whether agreement Exhibit Public Witness Public Witness 3/1 dated 18th October, 1955 was one of lease or license. Mr. Vinay Sabharwal, appearing for the appellant contended that exclusive possession of the quarter was given to the appellant. In consideration of this exclusive possession rent was deducted from his salary. Therefore, the essential ingredients to prove that it was a lease stood satisfied in this case. Mr. Sabharwal further contended that Exhibit Public Witness Public Witness 3/1 does not militate against the concept of tenancy. In fact to bye-pass the social legislation, the respondent Company chooses to institute this suit for possession instead of filing a petition for eviction under the Delhi Rent Control Act. Prior to filing the petition under the Delhi Rent Control Act the Company had to seek permission under the Slum Areas (Improvement & Clearance) Act. In order to avoid that process this suit was filed. Moreover, the Full Bench did not deal with the relationship of landlord or tenant, whereas this is the precise issue in this case. The lease agreement Exhibit Public Witness Public Witness 3/1 is quite distinct from the license agreement executed by the Company with its other employees who were applicants before the Full Bench. Dcm did not execute same license agreement with the appellant instead issued allotment letter which is nothing but a lease.

(5) Mr. Sabharwal contended that definition of a "tenant" shows that the appellant being in exclusive possession and consideration passed for the use and occupation of this quarter, hence the intention of the parties was to create a tenancy in favor of the appellant. From the reading of the document Exhibit Public Witness Public Witness 3/1 it cannot be construed as a license. One of the terms of Exhibit Public Witness Public Witness 3/1 states that this tenancy could not be terminated on any other ground except when the appellant commits any breach of the terms of this allotment letter Exhibit Public Witness Public Witness 3/1. This tenancy was in perpetuity. It is also the term of this agreement that in case Municipal Committee levies any other expenses it shall be borne by the appellant besides paying the rent. Therefore, the salient term of the agreement fully establish that it is a lease and not a license.

(6) On the other hand Mr. Ravinder Sethi, Senior Advocate with Mr. Sanjiv Anand, appearing for the respondent contended that exclusive possession is not a decisive test. This may be a relevant consideration. The agreement Exhibit

Public Witness Public Witness 3/ I did not create any interest in. the property in favor of the appellant. The realities and substance of the transaction and not merely the deed become the basis for determination of the legal nature of the relationship. Agreement Exhibit Public Witness Public Witness 3/1 was merely a piece of evidence. The intention of the parties was a paramount consideration. In deciding whether grant amounted to a lease or only a license, regard must be had more to the substance-than the form of the deed. It is determined by the law and not by the label the parties choose to put on it as held by the Supreme Court in the case of Smt. Rajbir Kaur & Anr. v. M/s. Chokesari & Co., Jt 1988 3 523.

(7) The "lease" has been defined u/s 105 of Transfer of Property Act (in short T.P. Act) to mean : "transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on "such terms". In fact money which is paid by the lessee to the Lesser is called the rent. The lease comes into operation as per the definition given in the Transfer of Property Act when the right to enjoy such property is transferred.

(8) Section 52 of the Indian Easement Act, defines the "license" as:

"a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property"

There is a mark distinction between the lease and license. The distinguishing features are:

1. to ascertain whether a document creates a license or lease, the substance of the document must be preferred to the form; 2. the real test is the intention of the parties whether they intended to create a lease or license; 3. if the document creates an interest in the property, it is a lease, but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and 4. if under the document a party gets exclusive possession of the property prima facie, he is considered to be a tenant, but circumstances may be established which negatives the intention to create a lease.

(9) The question whether a personal privilege granted to a servant to occupy the accommodation of the employer for the greater convenience for his work came before the Supreme Court in the case of, Commissioner of Income Tax, Mysore Vs. Bangalore Transport Company Ltd. (In Liquidation), looked into the facts of that case where quarter was allotted to a servant as a personal privilege to stay in that house, it was held by the Apex Court that such a personal privilege granted to an employee is nothing but a license. It is only when he gets interest in the land, separate and distinct from his contract of service, this alone could be a lease. Since personal privilege and enjoyment of employer"s house did not

create an interest in the land, Therefore, it was held to be a license. The allotment of the quarter to the employee in that case was considered to be only a personal privilege or a license to the servant to occupy the premises for the greater convenience of his work. The observations of the Supreme Court in the said case on all force apply to the facts of this case. The Predecessor-in-interest of the appellant Shri Kedari Singh was allotted the quarter in question vide Exhibit Public Witness Public Witness 3/1 for his personal use as an employee of the DCM. His occupation was to come to an end on his retirement. Except using this quarter as an employee no other interest in the land or distinct from the allotment has been established on the record. The contention of Mr. Vinay Sabharwal, Counsel for the appellant that one of the clause in Exhibit Public Witness Public Witness 3/1 indicates that rent was to be deducted from the salary of Shri Kedari Singh, Therefore, it amounted to lease. This contention has no force. It is not mere terms of deed which has to be looked into, but in fact the substance of the transaction as a whole is important. The intention of the parties has to be gathered in deciding whether grant amounted to a lease or a license. From the testimony of Dw 1 it is proved on record that a Line Zamadar was appointed by the Company to look out and keep check on the quarters allotted to its employees. This evidence gives credence to the fact that the constructive possession of the quarter remained with DCM. The possession of Shri Kedari Singh employee of the Dcm was under the control of the Company. Even otherwise, the exclusive possession is not the decisive test, it becomes relevant if it is coupled with an interest in the property. But that is missing in this case. Interest in the property would mean a right to have the advantage accruing from the premises or right in the nature of property in the premises but less than title. From the reading of Exhibit Pw 3/1 one cannot infer that the right to have advantage from this premises vested with Shri Kedari Singh. In fact from the tenor of the agreement, one can infer the intention of the parties at the time of allotting this quarter. By no stretch of imagination it can be inferred that the quarter was allotted in perpetuity or that any right or interest of the appellant vested in this quarter or that he acquired any advantage of this quarter. What was given to late Kedari Singh was only personal privilege to use this quarter so long as remained in the employment of the DCM. Therefore, it cannot be said that the said personal privilege created any interest in the quarter in question in favor of Kedari Singh or his legal heirs, though in fact the use continued far beyond the period stipulated in the agreement. The express intention of the agreement was that deceased Kedari Singh would vacate the facility of this quarter on his retirement. By virtue of his continuous occupation of the quarter it would not constitute a tenancy. The use by the appellant was only permissive one. Question whether Allotment to employees of Dcm was by way of lease or license came up for consideration before the Full Bench of this Court in the case of Delhi Cloth Mill Limited Vs. Lt. Governor, Delhi and Others, . The Court considered the terms of the deed and construed it to be a license. The salient features of deed Exhibit Public Witness Public Witness 3 /la re to a great extent similar. The salient terms of Exhibit Public Witness Public Witness 3/1 are

reproduced as under:

"1. You have been let out the quarter for your residential purposes because of your employment with the Company. You cannot keep any outsider even though he may be your relative, except for your dependents. You shall have to vacate the quarter on your retirement. 2. You cannot keep cow, buffalo or any other animal in the quarter or around it. 3. You cannot sublet or otherwise give any portion of the quarter to any one else. 4. You shall have to abide by all such rules which are framed by the Company regarding the quarters from time to time. 5. You cannot make any alteration in the quarter of the Company without any written permission of the Company."

(10) Reading of the resilient terms of the agreement Exhibit Public Witness PW3/1 show that the predecessor-in-interest of the appellant, deceased Kedari Singh, was only having permissive use of the quarter. The legal possession of the quarter continued to remain with the Company. This fact finds support from the testimony of late Kedari Singh himself appearing as Dw 1. He admitted that the quarter was to be handed over to the Company by the employee at the time of his retirement. Only certain employees who did not vacate the quarters. Company filed suits against them. That the Company engaged the services of a Line Zamadar, though he never reported to the Line Zamadar. But the job of Line Zamadar was to have check on these quarters. He also admitted that he was to handover the possession of this quarter on his retirement from the Company. Dw 5 Tilak Raj admitted that Shri Kedari Singh was allotted the quarter in question during the course of his employment and by virtue of his being an employee of the Company. Dw 3 Shri Gurcharan Singh admitted that after his retirement he handed over Company's quarter to the Company. Similarly any one who was allotted the quarter during his employment with the Company was to hand back the possession of the quarter to the Company after his retirement. In view of these admissions of DWs 1,2 and 3 that the quarter was allotted as a personal privilege to stay in the quarter of the Company for greater convenience of his work. The intention of the parties become clear that the allotment was only a license and not lease. As soon as the services were dispensed with on account of retirement the employee was required to hand back the quarter to the employer. No right vested in the land separate and distinct from the contract of service. Thus, the agreement Exhibit Public Witness Public Witness 3/1 did not create any interest in the quarter, it only gave personal privilege or license to the appellant to occupy the premises for the greater convenience of the work of the Company. For the reasons stated above, I hold that the interpretation given by the Courts below to Exhibit Public Witness Public Witness 3/1 in conformity with the judicial pronouncements made by the Apex Court as well as by the Full Bench of this Court in the case of D.C.M. (supra). The appeal is accordingly dismissed with no order as to costs.