

(1980) 08 DEL CK 0006

In the Delhi High Court

Case No : Civil Revision Appeal No. 798 of 1978

Lajwanti and Others

APPELLANT

Vs

Bahadur Singh and Others

RESPONDENT

Date of Decision : 29-08-1980

Acts Referred:

Citation : AIR 1981 Delhi 67 : (1980) 18 DLT 449 : (1981) RLR 30

Hon'ble Judges : Rajinder Sachar, J;O.N. Vohra, J

Bench : Division Bench

Advocate : Y.K. Sabharwal, Mukul Rohatagi and Ravinder Sethi, for the Appellant;

Judgement

Sachar, J.

(1) This judgment would dispose of Civil Revision Nos. 798/78, 558/78 and 219/79 as common question of law is involved in them.

(2) This matter was admitted to a Division Bench by one of us (Sachar J) because there was a conflict of view between two learned Single Judges of this Court as to whether Section 7(v) of the Court Fees Act, 1870 or Section 7(xi)(cc) of the said Act applies in a suit filed by owner of the house for possession of the premises on the ground that the tenant whose tenancy had been terminated during his life time had died and the premises are now in occupation of his heirs.

(3) The respondent No. 1 has filed a suit claiming that the premises were in the tenancy of one Ram Sunder Bhatia whose tenancy was terminated by notice dated 6th January, 1958. It was further averred that after the termination of tenancy, the said Bhatia continued as a statutory tenant. He is stated to have died on 18th February, 1970. Defendants No. 1 to 9, who are heirs of Bhatia, should have handed over possession of the premises to the plaintiff but they have not done so and are continuing in illegal and unlawful possession of the suit premises. Hence suit for possession. The suit was valued for purposes of court fee at Rs. 5,000, on the value of the tenancy.

(4) The defendants controverted the allegations and maintained that the tenancy was not in the name of Shri Ram Sunder Bhatia but in the names of the Joint Hindu family. The allegation that they were in illegal and unlawful possession is also denied. In fact, they claimed to be the tenants. We are not concerned with the merits of the case because the suit is still pending. A preliminary objection was taken that the suit was not properly valued for the purpose of court fee and jurisdiction. The defendants maintained that the suit should have been valued u/s 7(v)(e) of the Act as in a suit for possession of a house the court fee should have been paid according to the value of the subject matter which according to the defendants would be the market value of the house. This contention is supported by a decision of Avadh Behari J. in the case of Delhi State Cooperative Bank v. Eric etc., 1975 Rajdhani Law Reporter 124 (1) following Gauri Shankar Vs. Smt. Shakuntla Devi and Others, . The plaintiff's case on the other hand was that the suit was to be valued u/s 7(xi)(cc) of the Act which provides that in a suit between landlord and tenant for recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy, according to the amount of rent of an immovable property to which the suit refers, payable for the year next before the date of presenting the plaint. This view finds support from a decision of Dalip K. Kapur J. in the case reported as Chuni Lal v. Sukh Devi etc., (1978 Rajdhani Law Reporter 58)(3). The trial court following Chuni Lal's case has overruled the defendants' objection, who have come up in revision to this court.

(5) We may note that in the lower court the plaintiff had really not strictly invoked section 7(xi)(cc) as had valued for court fee at R.S. 5000 being the market value of tenancy premises while u/s 7(xi)(cc) of the Act the value should have been the annual rent payable i.e. $80 \times 12 = \text{Rs. } 960$). But as the defendants maintained that the court fee should be paid on the market value of the house, the conflict between the decisions in Cooperative Bank and Chuni Lal's cases had to be resolved and that is why the matter had to be heard by a Division Bench.

(6) Mr. Sabharwal, learned counsel for the defendants petitioners contends that the court fee payable u/s 7(xi)(cc) only covers a case where the suit is for recovery of an immovable property from a tenant including a tenant holding over after the determination of the tenancy. The argument is that admittedly the heirs of the deceased tenant like the present defendants are neither the tenant nor are they holding over after the determination of the tenancy, for the obvious reason that they were in fact never tenants. This position, of course, is uncontroverted. From this assertion Mr. Sabharwal jumps to the conclusion that section 7(v)(e) of the Act at once becomes applicable. We are unable to agree. This argument suffers from the infirmity into which Deshpande J. (as his lordship then was) fell when speaking for 3 Judges Full Bench in Krishan Gopal Malhotra Vs. Vijay Kumar, , he held that if possession has to be recovered from the heirs of a deceased statutory tenant, the landlord would have to file a suit based on title as legal representatives do not inherit the tenancy or the statutory protection. This

was the same approach which was adopted by Mehr Singh, C. J. in Gauri Shankar Vs. Smt. Shakuntla Devi and Others, (which case was followed by Avadh Behari J.) when he held that in a suit for possession against the heirs of a deceased statutory tenant, court fee has to be paid u/s 7(v)(e) and not u/s 7(xi)(cc) of the Act is clear from the following observations :

"SO,in so far as the heirs of Om Parkash are concerned, they are tenants of no type, there's is not a case of holding over, and in their case there cannot be reference back to the determination of the original tenancy, as might have been the case if Om Parkash was involved in the litigation after the determination of the tenancy."

This reasoning in these two cases suffers from a misunderstanding of the position in law in assuming that a suit to recover possession from the heirs of a statutory tenant has to be of the same nature as a suit based on title to recover possession from a trespasser. This view was negated in Asutosh Pramanik and Another Vs. Jibandhan Ganguly, wherein it was said :

"A person who claims to be on the land on payment of rent, after the demise of his father who was before his death holding over, for a number of years, after the expiration of the terms of his lease, cannot be held to be in the position, of a trespasser on the land, against whom the landlord has to proceed by way of getting his title established in a properly constituted suit. The landlord can maintain a suit for ejectment and such a suit will be governed by S. 7(xi)(cc), Court-fees Act."

We are in respectful agreement with the said observation. The suits which are contemplated by Section 7(v)(e) are suits based on title where a total stranger and usurper has got into the possession of the house initially by an overt act or claims an independent title. This position was explained in a later Full Bench of 5 Judges in Shri Kedar Nath and another v. Smt. Mohani Devi etc. [2nd (1974) I Del 151] (6) (reversing K. G. Malhotra's case) thus :

" THE respondents concerned, in the present appeals, who are wives and children of the deceased tenants and have come into possession of the premises in dispute, whether by themselves or through the sub-tenants inducted by the deceased tenants, have not acquired possession by any overt act or under any independent title. They can be said to have just come into possession of the premises, whatever its nature may be (whether unprotected or otherwise). Possession just passed into their hands on the death of the tenants and they claimed to have the right to continue in possession as the heirs or successors of the deceased tenants. They, Therefore, are holding possession of the premises as representing the estate of" the deceased tenants and, are, Therefore, legal representatives of the deceased tenants,"

As to the nature and right of the landlord to recover possession in these circumstances it was observed in Kedar Nath's case as follows:

" THE claim of the landlord for possession of the premises was not extinguished with the death of the tenants. The premises are still in existence and their possession is in the hands of the legal representatives, who can be directed to hand it over to the landlord. The death of the tenants, who were liable to put the landlord into possession of the premises, which they had either acquired, would not, Therefore, affect the liability of their estate. The landlord still can follow his claim for recovery of the premises in the hands of the legal representatives of the deceased tenants. Accordingly, his right to sue survives against them."

(7) The Full Bench has. Therefore, clearly laid down that the landlord can claim possession of premises in the hands of the legal representatives of the deceased tenant because the liability to deliver back the premises was not personal to the deceased tenant but was the liability of the estate. Although in form. it may appear to be a personal action against the legal representatives, in substance, it is an action continued against them as legal representatives and the extent of their liability is ultimately decided by the extent of the assets or the estate of the deceased held by them. Their liability would, Therefore, extend to their putting the landlord back into possession. [Vide M.L. Jain, J. in B.P.N. Shrivastava Vs. Poori Bai, (7)]. That is what is really the nature of the suit in the present case. It is not disputed by Mr. Sabharwal that if after terminating the tenancy of Ram Sunder Bhatia the plaintiff had filed a suit for recovery of possession during his life time court fee would have been payable u/s 7(xi)(cc) of the Act. But he says that the fact of the death of Ram Sunder Bhatia makes all the difference. According to him. the heirs of Bhatia are trespassers and have no status in law to remain in possession of the premises and, Therefore, this suit is a suit pure and simple for possession and hence governed by Section 7(v)(e) of the Act. This reasoning is the same which has been rejected in Kedar Nath and Pramanik's cases and for the same reasons must receive short shrift at our hands too. It appears to us that on ground of equity and legislative intention it- could not have been contemplated that suits for the recovery of possession from the heirs of deceased statutory tenant should bear a court fee at the full market value of the property, it should be appreciated that the" landlord in the case of tenanted premises is deemed to be in possession of the premise though symbolically through his tenant. It is for this reason that when a suit is filed for recovery of possession against a statutory tenant court fee is payable u/s 7(xi)(cc). This is very nature of the present suit which has been filed to recover the premises from the heirs of the deceased statutory tenant. Simply because the statutory tenant has died and his heirs are in possession and had, Therefore, to be imp leded to the suit, so that any defense which was open to the deceased tenant could be taken by him, it does not make it into a suit on the basis of title against rank trespassers. It still remains a suit for recovery of premises from a tenant after the determination of his tenancy. Statutory tenant had been inducted into the premises with the permission of the owner, the recovery of possession of that premises. must continue to bear the same colour of the suit even when possession is sought to be recovered from the heirs of the deceased statutory

tenant. To accede to the contention of Mr. Sabharwal would put a premium on the unauthorised occupation by the heirs because in many cases the high rate of court fee would act as deterrent and be prohibited for filing a suit if the ad valorem court fee has to be paid on the market value of the property. It appears to us that there is no justification for asking the plaintiff to pay court fee on the market value u/s 7(v)(e) of the Act and why he should not pay u/s 7(xi)(cc) of the Act when all that the plaintiff seeks to recover is the premises which had at one time been given on tenancy to the deceased statutory tenant. That is why we are of the opinion that in the present case the court fee would be payable u/s 7(xi)(cc) of the Act.

(8) Mr. Sabharwal cited *Gobinda Ram Aggrawala v. Dulu Pada Dutta and others* (AIR 1928 Calcutta 753) (8) which held that Section 7(xi)(cc) was not applicable in a case where the plaintiff has sued for recovery of possession because the learned Judge held that the tenant or tenant holding over would not include a tenant who had ceased to be one. All we need say while expressing our dissent is that this view is against the view of Privy Council in *Karnani Industrial Bank Ltd. v. Satya Niranjana Shaw and another* (AIR 1928 Privy Council 228) (9) wherein in regard to the provisions of Calcutta Rent Act and allowing appeal their Lordships held that the finding of High Court that Bank was not a tenant at the time of application, as their term had expired by forfeiture or efflux of time adopts too narrow a construction of the words and that in order to give any working effect to the Act it is necessary that the words "landlord" and "tenant" must include as they often do in ordinary parlance ex-landlord and ex-tenant. Mr. Sabharwal can, Therefore, derive no assistance from Calcutta decision.

(9) It will thus be seen that in the case of *Delhi State Cooperative Bank v. Eric etc.* 1975 R.L.R. N 24, *Avadh Behari J.* had merely followed the decision of the *Gauri Shankar Vs. Smt. Shakuntla Devi and Others*, . The error into which *Mehr Singh, C.J.* fell was the same in which *Deshpande J.* speaking for the earlier Full Bench of this Court in *K.G. Malhotra's* case fell. Both these views obviously cannot be held to be laying down correct law in view of later full Bench decision of this Court consisting of five Judges, namely, in *Kedar Nath's* case. *Cooperative Bank's* case consequently must be held to be wrongly decided. *D.K. Kapur J.* in *Chuni Lal's* case has given detailed, elaborate and convincing reasoning for his view to hold that in such a case like the present section 7(xi)(cc) of the Act will apply and we find ourselves in entire agreement with that view.

(10) We may note that *T.P.S. Chawla J.* had by his order dated 15th March, 1979 in Civil Revision No. 558 of 1978 referred the following question for decision by the Division Bench:

"In a suit for recovery of immovable property against the heirs of a deceased tenant, whose tenancy was terminated during his life time, is court fee payable u/s 7(xi)(cc) or section 7(v)(e) of the Court Fees Act?"

Those revisions were also placed before us and are being disposed of today.

(11) For the reasons mentioned above, we would answer the question by holding that the court fee payable in a suit like the above for recovery of immovable property is payable u/s 7(xi)(cc) and not section 7(v)(e) of the Court Fees Act.

(12) We would. in the circumstances ,dismiss the revision petition because the learned trial court has decided the matter following the view taken by D.K. Kapor J. in Chuni Lal's case with which we are in agreement. There will be no order as to costs.