

(1985) 04 DEL CK 0024

In the Delhi High Court

Case No : Regular Second Appeal No. 54 of 1984

Nawab Bashirudin

APPELLANT

Vs

Mirza Ahmed Beg

RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:

Citation : (1986) RLR 134

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : D.S. Marwah and D.P. Jain, for the Appellant;

Judgement

S.B. Wad, J.

(1) plaintiff, Defts, 2 to 4 are sons and daughters of Qamrudin. Deft. 1 sued Deft. 2 and obtained eviction order. plaintiff" filed objections u/s 25 of Rent Act and then filed suit for injunction claiming that they were cotenants and as they were not imp leaded, eviction order was not binding on them. Trial Court held that it was a case of joint tenancy and plaintiff & (Defts. 3, 4) did not inherit same. He dismissed the suit. After losing 1st appeal, plaintiff filed RSA] After detailing above, judgment proceeds:

(2) Only question in 2nd appeal is regarding nature of tenancy and right to inherit tenancy rights from father. Trial Court on the basis of statements made before Rent Controller by the plaintiff in proceedings u/s 25 of Rent Control Act has held that the tenancy was joint. I must say that it is difficult to understand the considerations that weighed with the trial court and his reasoning in this regard Similar is the case regarding the occupation and possession of the plaintiff of the sao. property. On the one hand there is an evidence of the electoral rolls from 1961 to 1981 showing that the plaintiff was staying in the suit premises and on the other hand his ration card had a different address. But here again, as in the case of mai trainability ,the learned Judge was more influenced by the other proceedings. When the question of the title was raised u/s 25 of the Rent Control

Act and incidentally the question of possession has been discussed, the findings of the Rent Controller can be conclusive. They are better decided in a separate suit where these questions are primarily and specifically raised. The question raised here, Therefore, should be decided on the basis of the evidence in the present suit and not in any of the earlier proceedings. I must say that there are other proceedings also The landlord had filed a suit for eviction against defendant No. 2 Mohd. Din in which he had secured an order for eviction. The landlord filed a suit only against defendant No. 2 without joining any of the legal heirs. That led to the objections filed by the plaintiff u/s 25 of the Act. Since the plaintiff was no party in those proceedings, those proceedings cannot be looked into the present suit.

(3) That takes me to the main question regarding the character and nature of the tenancy between Qamar-ud-din and Mohd. Din. Originally the suit property belonged to the mother of the plaintiff. This property was mortgaged by her to one Mohd. Suleman who subsequently became the owner as the mortgagor failed to redeem the property. Thereafter plaintiff's father Qamar-ud-din and Mohd. Din defendant No. 2 executed a rent note in favor of Suleman in 1955 of suit premises. This background is very necessary for properly appreciating new legal relationship that was created between the parties. In other words the owners became the tenants. Qamar-ud-din died in 1957. Mohd. Suleman sold the property to defendant No. 1 in 1967. So in 1967 the original tenancy continued. By this time the Qamar-ud-din had already died and it must be presumed that the entire family continued to stay in the suit premises after the death of Qamar-ud-din. Thereafter, ensued the litigation between the present landlord and Mohd. Din as stated earlier. The plaintiff filed the suit in 1978.

(4) The position of law, as regards joint tenancy as against tenancy-in-common, is clarified through several decisions starting from the Privy Council. The Privy Council showed the awareness of the fact that Hindu Joint Family and joint family property is sue generis. In English Law joint tenancy was a rule. Privy Council pointed out that there cannot be a presumption in the Indian law. In Mahomed Jusab Abdulla Vs. Fatmabai Jusab Abdulla, Justice Chagla held that in India, the Courts must strongly lean against holding any particular bequest or grant as a joint bequest or a joint grant. The presumption in India must always be in favor of a tenancy in common rather than a joint tenancy. But there is nothing to prevent the Court coming to a contrary conclusion if that presumption is displaced by clear and cogent language to the contrary. In that case the property was purchased by mother and the daughter. The sale deed however made the character of the rights clear. It was stated "to have and to hold the here ditaments and premises hereby granted or expressed so to be up to and to the use of purchasers for ever as joint tenants and not as tenants in common". It would thus be seen that the normal presumption in favor of tenancy in common was displayed by express words to that effect in the sale deed. So is the case under the Bombay Rents Hotel and Lodging House Rates (Control) Act 1947 Kanji Manji Vs. The Trustees of The Port of Bombay, . The lease was created in favor of

certain persons by the Bombay Port Trust and the question was whether the notice served on one of such tenants was a sufficient notice in law. In that context question for decision was whether it was a joint tenancy or a tenancy in common. The exact words in the deed of assignment were"....the Assignors do and each of them doth hereby assign and assure with the Assignees as joint tenants....."(Page 471) These two illustrations are sufficient to demonstrate that the normal rule in regard to tenancy in India is of tenancy-in-common. For establishing the relationship in the nature of the joint tenancy more positive, express and categorical assertion is necessary. While discussing a similar question under the Delhi Rent Control Act, the Division Bench of has followed the same principle *Vidyawanti vs. Tokan Dass* 1974 Rlr 471974 RaJ LR. 23

(5) The Lease Deed was executed by Qamar-Ud-Din as well as Mohd. Din. They had undertaken to pay the rent individually or jointly. Both of them would be responsible to pay the same personally or out of their property. They had undertaken jointly and severally to vacate the premises if the landlord expressed his need for that purpose. The lease deed further stated that it was for a period less than a year. The lease deed was executed on 14th July 1985. I do not find any express term or a word to show that either the tenants or the landlord wanted that the tenancy should be a joint tenancy. The obligation to pay the rent & vacate premises in the language stated above, is consistent both with the tenancy-in-common and joint tenancy. I have no hesitation in holding that the lease deed does not create the joint tenancy. The presumption of the law would prevail. The tenancy between, Qamar-Ud-Din and Mohd. Din was tenancy-in-common.

(6) Once it is held that the tenancy in question was the tenancy-in-common the plaintiff would inherit the tenancy as other legal heirs. It is not relevant whether the other legal heirs had joined the plaintiff or not. They may or may not be interested at the given time but that does not change the position in law.

(7) Another small aspect of the matter is whether the tenancy was for an indefinite period or was for a limited period. If it was for a limited period, after efflux of time Qamar-Ud-Din would become a statutory tenant. The Supreme Court in *Shri Rattan Lal Vs. Shri Vardesh Chander and Others*, . has held that where the tenancy is described as tenancy for a period of less than one year, it is a tenancy for an indefinite period and it cannot be brought to an end by efflux of time. It comes to an end only by express termination of lease u/s 106 of the T.P.A. Admittedly, tenancy in the present case was for less than a year. Qamar-Ud-Din was not a statutory tenant. No further question arises with regard to possession at the time of death of Qamar-Ud-Din. The electoral roll up to 1981 is sufficient to establish appellant's possession for securing relief of finunction. Appeal allowed