

(1973) 11 DEL CK 0018
In the Delhi High Court
Case No : Second Appeal No. 36 of 1971

Parmeswari Das

APPELLANT

Vs

G.R. Kohli (deceased) by his Legal Representative

RESPONDENT

Date of Decision : 24-11-1973

Acts Referred:

Citation : (1973) 9 DLT 13

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : S.P. Mahajan and P.N. Talwar, for the Appellant;

Judgement

D.K. Kapur, J.

(1) This appeal is at the instance of the tenant, Parmeshwari Dass and relates to House No. 117-A, defense Colony, New Delhi. An eviction petition was instituted by the Late G.R. Kohli, Landlord, claiming eviction on the ground of bona fide personal requirement. The case of the respondent was that he was in military service outside Delhi but was later transferred to Delhi on 5th August, 1968 and was due to retire on 1st March, 1969. It was further stated that the landlord was staying with a relative but the landlord of that relative had also initiated eviction proceedings. The petitioner claimed that he required the premises bona fide for his own residence and the residence of his family. The tenancy of the appellant was terminated by a notice dated 12th October, 1968 and this eviction petition was instituted on 23rd November, 1968. The appellant contested the petition on the ground that there was no cause of action and the petition was premature and also on the ground that the respondent was not the owner of the premises. It was also contended that the premises were let for both residential and commercial purposes and, hence the claim was not tenable.

(2) The landlord was successful before both the Additional Rent Controller and the Rent Control Tribunal. The tenant then appealed to this Court u/s 39 of the Delhi Rent Control Act, 1958. The respondent landlord died during the pendency

of this appeal on 26th March, 1971 and his heirs, namely his widow Mrs. Savitri Devi, and his sons Ashwani Kumar Kohli and Anjani Kumar Kohli, have been impleaded as his legal representatives. One of the questions which arises in this appeal is as to what is to happen in a case based on bona fide personal requirement when the landlord dies during the pendency of a second appeal under the Act in this Court.

(3) I shall first deal with the appeal without reference to the altered circumstances resulting from the death of the landlord. As far as the case on merits is concerned, the claim of the appellant is that there is no proof of the ownership of the property and without proof of the ownership no claim u/s 14(l)(c) is maintainable. The case regarding the lack of proof of ownership is based on the fact that a certified copy of the lease granted by the Government was exhibited without objection in the absence of the counsel of the appellant. It was submitted that secondary evidence was not admissible when the original document was available. However, there is no doubt that the original lease-deed was also filed on record subsequently. The appellant's counsel urges that this evidence is not sufficient for the purpose of proving that the deceased respondent was the owner of the premises. It is submitted that the landlord had necessarily to prove the execution of this lease-deed before he could be held to be the owner. Reliance for this proposition is placed on Section 67 of the Evidence Act. It is submitted that the lease-deed cannot be treated as proved unless the original lease-deed is produced and signatures on it are also proved. Though the original lease-deed has been filed, it is submitted that the signature on it has not been proved. The next submission on the merits is that it has not been established that the premises were let out for residence. On this aspect of the case, it is submitted that the courts below have misread the evidence.

(4) On the question of ownership, the Additional Rent Controller held that a certified copy of the lease deed had been produced as well as receipts of payment of house tax. There was also a statement on oath by the landlord himself stating that he was the owner. This evidence was treated as sufficient to prove ownership. On appeal before the Rent Control Tribunal, it was held that as no objection had been taken to the mode of proof when the certified copy of the lease deed was exhibited, no objection regarding the mode of proof could be taken later. I may mention that in cross-examination, the landlord was asked to produce the original lease-deed which he did.

(5) The lease deed in question was executed by the Government in favour of the landlord. There is a presumption u/s 60(2) of the Indian Registration Act, 1908 about the correctness of the endorsements made on the document. It has been held by the Privy Council in *Gopal Dass and another v. Siri Thakurji and others*, that an objection like the present should be taken before the document is admitted on the record. Following the said judgment, I hold that the ownership of the landlord has been proved as far as is necessary for this case. Section 67 of the Indian Evidence Act would only apply if there was a dispute about the

signatures or the writing on the lease-deed. As no dispute was raised at the time of exhibiting the document, there was no necessity for the landlord to produce the officer of the Government who executed the lease-deed. I thus affirm the decision of the Tribunal holding that the ownership of the landlord has been established. This question is basically one of fact which is not open to attack in second appeal.

(6) On the second submission, namely, that there is no proof that the property in question was let out for residential purposes, I come to the conclusion that this question is also one of fact which is not open to challenge in this appeal. The landlord himself has appeared in the witness box and stated that he constructed the premises in question for residential purposes and also let out the same to the appellant for such purposes. On the other hand, the tenant examined witnesses to show that when he took the property he made it clear that business would be done in the premises. The learned Kent Control Tribunal accepted the evidence of the landlord, (a) because of the nature of the premises let to the tenant and (b) because the Government of India had only permuted the premises to be used for a residence as per the lease-deed. The oral evidence led by the tenant to show that business was actually done in the premises was rejected as being unsatisfactory. Even if business had been done in the premises, this would not show that this had been done by reason of the premises being let for business. The entire evidence was oral and therefore had to be read consistently with the lease of the Government which was in writing. The premises are residential and are situated in the defense Colony Area and I see no legal ground for setting aside the conclusions of the Controller and the Tribunal that the premises were let out only for residence. My conclusions on these two submissions made on the merits by the appellant, would have normally been sufficient to dispose of this appeal. However, in view of the death of the landlord during the pendency of this appeal another controversy has arisen, as to whether the bona fide personal requirement of the landlord, which was the basis of the ejectment application, has come to an end with his death.

(7) On the question of the rights of the legal representatives, I have been referred to the conclusions of both the Additional Rent Controller as well as the Tribunal to the effect that the deceased landlord required the premises bona fide for himself and for his family. I have also been referred to the various affidavits filed before me regarding the requirements of the parties. The appellant's contention is that I should hold that the cause of action has come to an end the landlord's legal representatives should institute fresh proceedings if they still require the premises bona fide. Alternatively, it is submitted that I should remand the case for redetermination so that the present requirements of the landlord's legal representatives might be determined. Reference has also been made to the fact that part of the same building which was formerly with another tenant has been vacated and possession thereof has been delivered to the legal representatives. The case of the legal representatives, however, is that no material difference has taken place in the circumstances of the case on account of the landlord's death.

According to them the requirement of the landlord was for his own use and also for the use of this family and the latter need still remains. As regards the vacation of a part of the premises, it is stated that portion vacated is a very small portion and is not sufficient for the requirements of the legal representatives I have, Therefore to determine the legal principles to be applied at the stage of second appeal, in these altered circumstances.

(8) It has been held by me in *Naubat Rai Ahluwalia v. Shrimati Phool Rani and others* that when the landlord dies, his bonafide personal requirement dies with him. I also held that the bona fide requirement of the landlord's family is a requirement of the landlord and not of the legal representatives themselves. If that decision is applied to the present case I would have to hold that the claim of the landlord's legal representatives should fail. However, there is a marked difference between that case and this case. In that case, the landlord had died before the case was adjudicated upon by the Rent Controller. In other words, the cause of action had disappeared before the trial was completed. The trial court had no jurisdiction to take subsequent events into consideration. I there held that it was necessary for the ejectment application to be amended so as to introduce the new cause of action which was provided by the personal requirement (if any) of the legal representatives. The legal representatives in a given case may have the same requirement as the landlord or they may have different requirements. Instead of remanding the case for re-trial I held that it was better that the new landlords should institute a fresh application according to their own requirements. In the present case the deceased landlord's requirements have fructified into a decree which has been upheld by the Rent Control Tribunal. The landlord has died at the stage of second appeal before this Court. In a second appeal and indeed in a first appeal. Order 41 R. 33 of the CPC enables an appellate Court to pass such order as ought to have been passed or to pass such further decree or other order as the case may require. This provision has been interpreted to mean that an appellate Court can in suitable cases take cognizance of subsequent events and give its judgment accordingly.

(9) I consider that the present case is one which should be decided on the basis of the existing facts as varied by subsequent events. There is no necessity in a case like the present for an amendment of the ejectment application. It will be noticed that if the case was at the trial stage, the Rent Controller would have had to ask for an amendment of the ejectment petition. However, at the appellate stage, evidence which has been recorded already can be considered as well subsequent events and the rights of the parties determined accordingly. I, Therefore, come to the conclusion that my previous decision in S.A.O. No. 178 of 1970 has no application to this case and has to be restricted only to a case where the landlord dies at the stage when the case is still pending before the Rent Controller. The present case is covered by the decision in *Anil Kumar v. Jai Narain Gautam*, where in similar circumstances, this court held that the case had to be decided after the death of the landlord on an ascertainment of the requirement and bona fide necessity of the legal representatives. I, Therefore,

proceed to analyze the changed facts.

(10) What are the subsequent events in the present case ? The landlord has died. Possession of a portion of the same building has also been obtained by the legal representatives. What is that portion? In connection with the subsequent events, I had passed an order on 19th August, 1971, calling upon the parties to file affidavits in relation to the events arising after the institution of the appeal. The facts to be ascertained were: (1) the present requirements of the legal representative: (2) of nature and extent of the premises i.e., the upper flat in the premises which had fallen vacant and of which possession had been obtained by the legal representatives.

(11) An affidavit has been filed by Shrimati Savitri Kohli. widow of Shri G. R. Kohli, the landlord, stating that the family now consisted of herself, her two sons, Ashwani Kumar Kohli and Anjani Kumar Kohli, Smt. Sudesh Kohli and Manish Kohli, wife and son of Aswani Kumar Kohli and Shrimati Rukmani Devi mother of Shrimati Savitri Kohli. It was also stated that Ashwani Kumar was formerly at Kuwait hut had returned to India in October, 1970, and farther it was claimed that all these persons had no other residential accommodation but were living in House No. 484 Double Storey. New Rajinder Nagar, New Delhi, along with the deponent. It was further stated that an ejectment decree had been passed with respect to, that House No. 484 against Joginder Pal Tandon the deponent's brother. It was also stated that the family had stayed for one week with Rajinder Pal Bhalla her cousin, in 18/17, Old Rajinder Nagar, New Delhi, as his guest but had no legal right to reside there. It was also stated that the ejectment decree passed against Joginder Pal Tandon granted him time till 31st October, 1971 to vacate the house As regards the first floor accommodation that had fallen vacant A 117, defense Colony, New Delhi, it was stated that the tenant. A.N Roy Chowdhary. had vacated the same and gone to the United Kingdom. These premises were described as a Barsati measuring 12"X15" with an open lavatory and a bath room. An affidavit was also filed by Joginder Pal Tandon stating that he was the brother of Shrimati Savitri Devi, widow of the landlord and he was posted in Chandigarh. It was stated than an ejectment order had been passed against him by the Rent Controller and he had gone in appeal to the Rent Control Tribunal but had withdrawn the appeal on being granted time to vacate the premises till 31st October, 1971. A certified copy of the order of the Rent Control Tribunal was filed. A copy of the ejectment petition was also filed, showing that the ground of ejectment against Joginder Pal Tandon was that he had been transferred to Chandigarh. It was alleged therein that the tenant, i.e., Joginder Pal Tandon had built his own house in Kirti Nagar Another affidavit filed by the legal representatives, is of Rajinder Pal Bhalla to show that Shrimati Savitri Kohli was his cousin sister and he had permitted the family to stay at his guests in his house for a short time i.e., a week. The affidavit of Ashok Negpal, resident of House No. 486. New Rajinder Nagar New Delhi, has also been filed in which it is stated that Joginder Pal Tendon had shifted to Chandigarh and the legal representatives of Shri G. R. Kohli were living in house No. 484, as licensees of

Joginder Pal Tandon Anjani Kumar Kohli one of the sons of the landlord has stated that he is employed in Delhi and has been living in House No. 484. Double Storey ,New Rajinder Nagar with his maternal uncle. Joginder Pal Tandon. On account of the eviction decree it is stated that now there is no accommodation available with the family, Other documents have been filed to show that Anjani Kumar was employed as a sales representative of M/s. Weikfield Products Company (India). New Delhi and he has been so employed from December, 1965 to July, 1969. it was "further shown that after that the said Anjani Kumar joined the service of M/S. Industrial Cables (India) Ltd., New Delhi, as sales representative. Subsequently v. Anjani Kumar had set up his own business under the name of M/S. Kohli Electric Store in Bhagirath Palace, Chandni Chowk. Delhi. An affidavit of Ashwani Kumar Kohli, the other son of the deceased landlord has been filed to show that he is married and has a son. It is stated that he was earlier employed at Kuwait but is now living in India since October, 1970. An affidavit of Shrimati Rukmani Tandon, mother-in- law of the deceased landlord has also been filed to show that she has always been living with her daughter. Affidavits in reply have also been filed on behalf of the tenant consisting of his own affidavit and the affidavits of Harjeet Singh and Rajinder Singh. One of the Chief points taken up on behalf of tenant is that Ashwani Kumar is not living in Delhi at all but lives in Bombay. It is claimed that he came from Kuwait only to get films for exhibition in the Persian Gulf area. Further, it is claimed that the litigation with respect to Joginder Pal Tandon's house in New Rajinder Nagar is a collusive one and he has nothing to do with House No. 484. According to the Affidavit of Harjeet Singh, who claims to be running a shop in House No. 478, New Rajinder Nagar, only Shrimati Savitri Devi and her son Anjani Kumar reside in House No. 484, and Ashwani Kumar does not reside there. Earlier some other affidavits had been filed on behalf of the tenant. There was an affidavit of Rajinder Singh showing that even Anjani Kumar did not reside with his mother at House No 484, Double Storey, New Rajinder Nagar. According to him Anjani Kumar only occasionally came to New Rajinder Nagar. An earlier affidavit of the tenant himself stated that the first floor in A-117, defense Colony consisted of a room measuring 16" X 10", a kitchen, a bath, and lavatory and a terrace .It was also stated that a store measuring 8" X 8" is also in possession of the landlord.

(12) From these various affidavits it quite clearly emerges that the legal representatives have at the most an illusory and transient accommodation in House No. 484, Double Storey, New Rajinder Nagar. They are either licensees or guests. They have no legal right to live there. Even if Ashwani Kumar was not residing in Delhi and was at Kuwait or in Bombay, the needs of the widow and her son Anjani Kumar could, in my opinion, not be met by the vacation of the Barsati on the first floor of A-117, defense Colony. After all, they are now the owners of the property as heirs of the landlord of the house, they cannot be expected to live in one room especially in view of the fact that the son seems to have his own firm in Chandni Chowk and was even otherwise quite decently employed previously. The fact that the other brother has been working in Kuwait

and is engaged, even according to the tenant, in exporting films for exhibition to the Persian Gulf area would indicate that the legal representatives are people of substance. It is indicated from the affidavit of Joginder Pal Tandon that he is a Superintendent of Central Excise. The landlord was in military service and was the owner of a house in defense Colony. Unfortunately, he died before the appeal could be decided in this Court. I am of the view that unless there is some legal impediment preventing this Court from granting relief to the legal representatives, they should be entitled to enjoy the fruits of the decree obtained by the deceased landlord for himself and his family. As the ejectment was based on personal requirement as well as the requirement of the family, I come to the conclusion that the legal representatives are entitled to continue the ejectment case at the stage of second appeal for reasons, I have already set out above. From the facts set out above, I come to the conclusion that the legal representatives do require the accommodation in question and have no other suitable accommodation. They are, Therefore, entitled to the fruits of the order of ejectment passed in favor of the deceased landlord. This appeal has, Therefore, to be dismissed.

(13) In the circumstances of this case, however, I leave the parties to bear their own costs in this court.