
(1982) 01 DEL CK 0024

In the Delhi High Court

Case No : Second Appeal No. 270 of 1978

Radhey Shyam Khanna

APPELLANT

Vs

Amar Nath Khanna and Others

RESPONDENT

Date of Decision : 29-01-1982

Acts Referred:

Citation : (1982) 21 DLT 273

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : Vijay Gupta and Sham Kishore, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) One of the tenants has filed this appeal against the judgment and order dated 10th July, 1978 of the Rent Control Tribunal whereby the tribunal has dismissed the appeal against the order of eviction which has been passed by the Rent Controller, Delhi.

(2) One Dropati Devi was the landlady of House No. 673 Katra Ned, Delhi. A portion of the house on the ground floor and on the second floor was let out to Radhey Shyam, appellant herein and Shyam Sunder. The landlady filed an application u/s 14(1)(e) of the Rent Control Act for eviction of the tenants on the ground that she required the premises bona- fide for her own residence and for the residence of other members of her family dependent upon her and who had been living with her as members of one family. The members of the family referred to above included the landlady's two sons, namely, Prem Nath and Amar Nath and of their respective families as well as a widow daughter-in-law of the landlady.

(3) The tenants contested the eviction petition. They denied that the landlady was the owner of the premises in question. They also denied that the premises were required bonafide by her. It was also contended by " the tenants that the premises had been let out for residential-cum-commercial purposes.

(4) The parties led evidence before the Rent Controller. By order dated 21st January, 1974 the Rent Controller, Delhi held that Dropati Devi was the owner of the premises, the said premises had not been let out for residential-cum-commercial-purposes and the premises were required bonafide by the landlady for her own use and for the use of members of her family who were dependent upon her. It was found by him that, considering the extent of the family, the accommodation available with the landlady was highly insufficient.

(5) An appeal was filed against the aforesaid order of the Rent Controller. Though in the written statement a number of pleas have been taken, some of which were argued before the Rent Controller, before the Tribunal the counsel for the tenants confined his arguments only on the question of bonafide requirement for additional " accommodation which had been set up by the landlady. The Rent Control Tribunal, however, looked into the other grounds which had been raised before the Rent Controller and he came to the conclusion that, on merits, the decision of the Rent Controller was correct. With regard to the ownership it was observed that the property admittedly belonged to one Damodar Dass, who, by a registered gift deed had transferred the same in favor of Dropati Devi. It was evident that she was a owner, having become so by virtue of the said gift deed. It was also found that the premises had been let to the tenants on the death of one Hargovind, who was the tenant earlier, and Dropati Devi had been accepted as the landlady as per the rent receipts which had been issued by her in favor of the tenant. It was also found that the premises in question had been let only for residential purposes. During the pendency of the appeal before the Tribunal Smt. Dropati Devi died. Her two sons and the widow daughter in- law were brought on record as legal heirs of the deceased. A contention was sought to be raised on behalf of the tenants that on the death of Dropati Devi the cause of action had come to an end. Relying upon the decision of ShantiLal v. Chunni Lal, 1976 R.C.R. 28, the Tribunal repelled the said contention. In the aforesaid Supreme Court judgment it had been laid down that if a landlord seeks eviction of the tenant on the ground of bonafide requirement for himself and for his family members dependent upon him then, on the death of the landlord, the benefit of that particular ground can be availed of by the said family members. The aforesaid ratio was applied by the tribunal to the present case. In my opinion the decision of the Tribunal on this ground is clearly unassailable. The Tribunal further found that the accommodation in the occupation of the respondents-landlords was of one room, a store and a small kothri on the ground floor, whole of the first floor comprising of three rooms, two small stores and two kitchens and one room; and an open terrace on the second floor which also had a small tin shed. It was further held that the family members of the respondents were Amar Nath, his wife, three grown up sons) three married daughters out of whom one deserted daughter with her child was living with her parents, and the family of Prem Nath was stated to be consisting of himself, his wife, one married son with a child and another son of marriageable age. Besides this the widow daughter-in-law of Dropati Devi was also residing in the said premises. The

Tribunal affirmed the finding of the trial court and held that these premises were insufficient to meet the bonafide requirements of the landlords.

(6) During the pendency of the appeal two applications had been filed for leading additional evidence. By one application the tenant wanted to show that Prem Nath had shifted to Himachal Pradesh, where some new business had been started by him. In the other application it was alleged that Amar Nath had built another house in village Maujpur where he has shifted and was now residing. The said applications were allowed by the Tribunal and additional evidence was led. The aforesaid evidence was considered but the finding of the Tribunal was against the petitioner. He found that the assertion of the tenants that Prem Nath had gone to Himachal Pradesh was false. Prem Nath was an employee of the Delhi University and the tenant had led no evidence to show that he had gone over to Himachal Pradesh. With regard to Amar Nath, a Local Commissioner was appointed to visit the house stated to have been constructed in Village Maujpur. The Local Commissioner gave a report mentioning that there were six rooms in that house out of which two were lying vacant. No objections were filed to the said report by any of the parties. Relying upon the said report the Tribunal came to the conclusion that there was no evidence that Amar Nath had actually shifted to that house at Maujpur. It was further held by the Tribunal that the said house was admittedly at a distance of 7 kms from the house at Katra Neel and furthermore the house had been constructed in an unauthorised colony. In any event considering the extent of Amar Nath's family the two rooms which were lying vacant in that house could not be regarded as sufficient or suitable alternative accommodation. The Tribunal further held that Amar Nath and Prem Nath were living and messing together and they could not be compelled to split up their families.

(7) Another plea which was raised before the Tribunal was that one room measuring 10" X 7", which was located on the ground floor, had been let out to one Prabha Enterprises during the pendency of the appeal. The landlords controverted this assertion. Evidence was led on this point. The Tribunal found that the said room was not habitable and, in any case, the tenant had failed to prove that the possession of the said room had been given to Ramesh Kumar, who was alleged to be running Prabha Enterprises.

(8) Being aggrieved, the present appeal had been filed by only one of the tenants, namely, Radhey Shyam. During the course of hearing Mr. Shyam Kishore had contended that Radhey Shyam had purchased a residential house at No. 400 Ram Nagar, Shahdara and that he along with the members of his family, had shifted there. Mr. Vijay Gupta, the learned counsel for the petitioner had stated that his client was still in physical possession of the ground floor of the premises in question and that members of his family were residing there. He was, however, unable to admit or deny whether the aforesaid house had been purchased at Ram Nagar, Shahdara. A Local Commissioner was appointed by me on 25th January, 1982. He went to the premises in dispute. His report has been

filed in court on 27th January 1982. As per the said report all the three doors of the premises in question and also the door of the kitchen were found to be locked. A neighbour who was residing in House No. 674 informed the Local Commissioner that nobody was residing in the premises in question. The other neighbours were mostly shop keepers and they could give no information in this regard. I see no reason as to why the information given by the resident of House No. 674, Katra Neel should not be accepted. Prima facie, it appears, Therefore, that the appellant has shifted from the premises in question. In any case even on merits, I find that there is no force in this appeal. It was contended by Mr. Vijay Gupta that the Tribunal has erroneously found that the room on the ground floor had not been let out to Ramesh Kumar of Prabha Enterprises. I am unable to agree with this contention. The finding in this regard is a pure finding of fact. Mr. Gupta has not been able to show that I the said finding has been arrived at without there being any evidence on record. The finding of the Tribunal in this behalf cannot be called perverse. The Tribunal has referred to the evidence led by the parties and has come to the conclusion that the tenant had not been able to prove that the possession of the room on the ground floor had been given to Ramesh Kumar for business purposes or for any other purpose. In any event, what is important to note is that the said room was regarded as inhabitable. The finding that the said room was inhabitable has not been challenged in the appeal. If a room is not habitable then, even if it be assumed that the same has been let out to a stranger, the fact of that letting would be of no assistance to the tenant. By letting out a inhabitable room it cannot be presumed that the landlord does not have bonafide need for additional residential accommodation because that inhabitable room could not be converted for purposes of residence.

(9) Another contention which has been raised by the learned counsel is that there is a partition suit which is pending amongst the landlords and the property in question is going to be sold and, Therefore, it cannot be said that the landlords bonafide need the premises in question. It is admitted that Smt. Dropali Devi died leaving behind a Will. As per the said Will the property in question is to be divided amongst Prem Nath and Amar Nath in equal shares. The widow daughter-in-law of Dropati Devi was, however, given a right of residence in one room and one kothri in the house as long as she was alive. The appellant had filed G.M. 1789/78 seeking leave to adduce additional evidence with regard to the partition suit. The existence of the partition suit was admitted by the counsel for respondents 1 to 3. By order dated 26th October, 1978 the counsel for the respondents was directed to file the pleadings in the said suit, as well as the preliminary and the final decree ^ or the copy of the report of any Local Commissioner which may be appointed by the court in the said suit. While giving liberty to the parties to seek further directions, with regard to the production of additional evidence, the application C.M.I 789/78 was disposed of. As directed, the Commissioner's report has been filed. According to the report the property in question can be divided with some difficulty. Mr. Shyam Kishore informs me that both the parties have filed objections to the report and none of them has

accepted the suggestion of the sale of the property in question. As regards the appellant herein no additional documents relating to the suit have been filed and neither has any application been filed for summoning of any records from the trial court. Mr. Gupta sought to contend that the property was going to be sold as a result of the partition suit. I find that there is no basis for his making such a submission. The evidence on record in the present case does not show that the said property is going to be sold. Admittedly) Amar Nath and Ram Nath along with the members of their families as well as the widow daughter-in law of Dropati Devi are still residing in the premises in question. I find it difficult to accept the contention that they would agree to the property being sold, specially when, though possibly with some difficulty, the property can be partitioned.

(10) Mr. Gupta lastly sought to contend that on the evidence on record the courts below ought to have come to the conclusion that the respondents I to 3 had not been able to show that more accommodation was required by them bonafide. In this connection he also contended that Shyam Sunder, one of the tenants against whom eviction decree has been passed, had not filed any appeal with the result that the respondents would be entitled to get the premises in the occupation of Shyam Sunder vacated. Shy am Sunder was in the occupation of only one room and a kothri on the second floor. It is true that the respondents I to 3 would be entitled to get the decree executed in respect of the said premises, Shyam Sunder not having filed any appeal against the eviction order passed against him. I, however, find that considering the number of members of the family even that extra room and a kothri and a kitchen) which the respondents would be able to get, would not be enough to meet the requirements or the needs of the landlords. The size of the room is small, and the number of the rooms in their occupation, even after taking the aforesaid room on the second floor into consideration, comes to only six. To my mind, the aforesaid accommodation is not sufficient for bonafide needs of the respondents-landlords. With regard to the contention that the trial court as well as the Tribunal ought not have come to the conclusion that the bonafide need had been established, the simple answer is that the said finding is a pure finding of fact. Mr. Gupta has not been able to point out that the said finding of fact is perverse. I find that neither the Rent Controller nor the Tribunal have ignored any material evidence, and in my opinion the conclusion arrived at by them is the only possible conclusion which could have been reached.

(11) No other contention has been raised before me.

(12) For the aforesaid reasons the appeal is dismissed with costs. Counsel's fee Rs. 500.00 .