

(2001) 01 DEL CK 0065

In the Delhi High Court

Case No : Regular Second Appeal No. 183 of 1981

Satya Pal Jain

APPELLANT

Vs

Khushi Ram Ram Kishan Seth and Company and Others

RESPONDENT

Date of Decision : 08-01-2001

Acts Referred:

Delhi Rent Control (Amendment) Act, 1976 — Section 3
Delhi Rent Control Act, 1958 — Section 2(1)
Easements Act, 1882 — Section 50, 52

Citation : (2001) 5 AD 231 : (2001) 90 DLT 621

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : J.K. Seth and Shalini Kapur, for the Appellant; V.K. Makhija and Vandana Khurana, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—One Mr. Hira Lal was tenant in the premises. The premises was let of r commercial purpose with effect from 1st May, 1954. Mr. Hira Lal dies in October, 1971. BY an amendment made in the Delhi Rent Control Act, the definition of tenant in Section 2(1) was amended to mean:

"any person by whom or on whose account or behalf the rent of any premises is, or, ut for a special contract, would be, payable, and includes:

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy; and

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person"s

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of this pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,-

(A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976.

(B) any person whom a license, as defined by Section 52 of the Indian Easements Act, 1882 has been granted.

Explanation I: The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:

(a) firstly, his surviving spouse.

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death.

(c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse son, if there is no surviving spouse son, daughter or parents of the deceased person, or if such surviving spouse son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II: If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year, and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III: For the removal of doubts, it is hereby declared that, --

(a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category

or categories, as the case may be;

(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to his and shall not, on the death of such successor, devolve on any of his heirs;"

2. Under the unamended Delhi Rent Control Act, 1958 tenant included any person continuing in possession after the termination of his tenancy. There was no distinction in the unamended Act between the tenants occupying the premises for residential and commercial purposes.

3. A suit for possession was, Therefore, filed by the landlord against the legal heirs of deceased Hira Lal. Learned Trial Court after holding that in view of an amendment in the Delhi Rent Control Act, the legal heirs of a tenant whose tenancy was terminated during his lifetime, in respect of a premises let for commercial purpose were not entitled to protection under the Delhi Rent Control Act, passed a decree for possession against the legal heirs of the deceased Hira Lal.

4. Being aggrieved by the judgment and decree of the Trial Court, the appellant filed an appeal before the Additional District Judge. By the impugned judgment and decree, the learned first Appellate Court confirmed the decree of the Trial Court after holding that the legal heirs of a tenant whose tenancy was terminated during his lifetime in respect of commercial premises were not entitled to protection under the Delhi Rent Control Act. The present appeal was preferred by the appellant on being aggrieved by the judgment and decree of the first Appellate Court.

5. It is admitted by the parties that the Supreme Court in a judgment reported as *Gian Devi Anand Vs. Jeevan Kumar and Others*, , has held that the amendment to the definition of tenant with retrospective effect introduced by the Delhi Rent Control Amendment Act, 1976 to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the so-called statutory tenant in respect of commercial premises did not imply that those heirs do not enjoy and protection under the Act. It was held that the Act did not create any additional or special right in favor of the heirs of the so-called statutory tenant on his death but seeks to restrict the right of the heirs of such tenant in respect of residential premises. It was further held that in respect of a commercial premises, the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the so-called statutory tenant on his death and the heirs of such tenant would be entitled to protection under the Rent Act. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only established that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act.

6. In view of the clear observation of the Supreme Court in the aforesaid judgment, in my opinion, the commercial tenancy of the deceased was heritable and the appellants were entitled to protection under the Act. Since the appellant was entitled to protection under the provisions of the Delhi Rent Control Act, the suit was barred by Section 50 of the Act and was not maintainable.

7. I, accordingly, allow this appeal and set aside the judgment and decree of both the Courts below and dismiss the suit with no orders as to costs.

8. Appeal allowed.