

(2005) 02 DEL CK 0089

In the Delhi High Court

Case No : Regular Second Appeal No. 113 of 2003

Yashbir Sharma and Sudesh Sharma

APPELLANT

Vs

Mrs. Sulakshna Lal and Others

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Citation : (2005) 118 DLT 52 : (2005) 80 DRJ 637 : (2006) 2 RCR(Civil) 7 :
(2006) 1 RCR(Rent) 210

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Rakesh Tikur, for the Appellant; Pradeep K. Bakshi, Rajan Navet and H.S. Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Appellants, particularly Appellant No.1, are aggrieved by judgment and decree dated 31st May, 2003 passed by the learned Additional District Judge in an appeal being RCA No.143/2002.

2. The premises in question, namely, the first floor of D-35-A, Nizamuddin East, New Delhi were let out by one Smt. Tara H.K. Lal to Balbir Singh, the father of the Appellants and proforma Respondents No.5 and 6. After the death of Smt. Tara H.K. Lal, the suit premises came to the share of late Lt. Col. Man Mohan Lal, the father of Respondents No.2 to 4 and the husband of Respondent No.1. Another portion of the premises on the ground floor and a servants quarter on the terrace floor went to the share of Respondents No.7 and 8. This portion of the property is not in dispute. The only dispute is with regard to the first floor consisting of a drawing-cum-dining room, three bedrooms, two bathrooms and a kitchen along with one big room, bath and toilet.

3. There is no dispute that Balbir Singh attorney to Lt. Col. Man Mohan Lal or that his tenancy was terminated during his life time by means of a registered notice dated 28th June, 1983. However, even though the tenancy of late Balbir

Singh was terminated, he continued to be a statutory tenant under the provisions of the Delhi Rent Control Act, 1958 (the Act).

4. Balbir Singh passed away on 12th August, 1990. At that time, his wife had pre-deceased him and his two daughters (proforma Respondents No.5 and 6) were living separately in their matrimonial home. Appellant No.2, one of his sons had acquired a separate residence during the life time of his father and it appears that only Appellant No.1 was residing in the suit premises along with his father. After the demise of Balbir Singh, Respondents No. 1 to 4 asked Appellant No. 1 to vacate the suit property by serving him with a notice dated 10th July, 1991. However, he did not vacate the suit property.

5. Lt. Col. Man Mohan Lal passed away on 19th October, 1995. Soon thereafter in March, 1996 Respondents No.1 to 4 filed a suit for possession against Appellant No.1 in which they made Appellant No.2 as well proforma Respondents No.5 and 6 as defendants. According to Respondents No.1 to 4, since Appellant No.1 was not financially dependent on his father late Balbir Singh, he had a right of residence in the suit property only for a period of one year after the death of Balbir Singh, that is, till 12th August, 1991 and so they had served him a notice dated 10th July, 1991 to vacate the suit property. According to Appellant No.1, since he was financially dependent on his father, he had a right to remain in the suit premises during his life time.

6. The suit was contested by the Appellants and on the basis of the pleadings, the learned Civil Judge framed the following issues:-

1. Whether there is any relationship of landlord and tenant between the parties?
2. Whether the suit is barred under the provision of Delhi Rent Control Act?
3. Whether the plaintiff is entitled for the relief of possession and damages? If so, at which rate and for what period?
4. Relief.

7. After recording evidence and hearing learned counsel for the parties, the learned Civil Judge held that Appellant No.1 was not financially dependent on his father. This conclusion was based on the evidence of Appellant No.1 that he was working in a company having an office in Ashoka Hotel, Delhi and that company was closed in the year 1988. At that time, he was earning a salary of Rs.8,000/- per month. He admitted that he had a house in Sunder Nagar, the approximate value of which was said to be Rs.5 crores and that he has daughters who are studying in school and he was paying a fee of Rs.1,500/- per month for them. He stated that he started his career as a film journalist in 1973 and that his father late Balbir Singh had a business of film distribution. Based on this evidence, the learned Civil Judge found that the financial status of Appellant No.1 was sound and it could not be said by any standard that he was financially dependent on his father. Appellant No.1 may have been dependent on his father for his residence but that is something completely different from being financially dependent.

8. The finding of the learned Civil Judge was affirmed by the learned Additional District Judge and in view of this concurrent finding of fact, I am of the view that it must be held that Appellant No.1 was not financially dependent upon late Balbir Singh at the time of his death. It may also be mentioned that learned counsel for the Appellants did not seriously contest this position and the thrust of his arguments was entirely different.

9. The other contention urged before the learned Civil Judge as well as before the learned Additional District Judge by Appellant No.1 in respect of the first issue was that a relationship of landlord and tenant had developed between the parties. It was the contention of Appellant No.1 that he was regularly paying rent to Respondents No.1 to 4 and that a fresh tenancy was created in his favor or in the alternative that he was a tenant holding over u/s 116 of the Transfer of Property Act, 1882. This plea was negatived by both the Courts below and the thrust of the submissions of learned counsel for the Appellants was only on this issue, which I propose to deal with a little later.

10. Since Issue No.1 was decided against the Appellants, it was held in respect of Issue No.2 that the suit was not barred under the provisions of the Act and a suit for possession was certainly maintainable. No submissions were urged by learned counsel for the Appellants with regard to Issue No.3.

11. The crux of the matter, Therefore, is whether a relationship of landlord and tenant had developed between Appellant No.1 and Respondents No.1 to 4. Both the Courts below have decided this question against Appellant No.1.

12. It was contended by learned counsel for the Appellants that Respondents No.1 to 4 have been accepting the rent tendered to them and, Therefore, a fresh tenancy had been created in favor of Appellant No.1 or, in any case, it was a case of Appellant No.1 becoming a tenant by holding over in terms of Section 116 of the Transfer of Property Act, 1882.

13. I am afraid the position both on facts and in law does not support the contention of learned counsel for the Appellants.

14. The principal judgment on the subject is Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and another, (1949) FCR 262. It has clearly been held in that case that acceptance of rent must be acceptance of rent as such and in clear recognition of a tenancy right asserted by the person who pays it. This is essentially a question of fact as was noted by the Federal Court on page 277 of the Report where it was found on facts that the money paid by defendants No.2 and 3 therein to the plaintiff therein was not only paid as rent but was also received as rent. On this basis, it was held that a monthly tenancy came into existence under the provisions of Section 116 of the Transfer of Property Act.

15. In Bhuneshwar Prasad and Another Vs. United Commercial Bank and Others, , the Supreme Court accepted the extended principle laid down in Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, that apart from an express

contract, the conduct of the parties may undoubtedly justify an inference that a fresh tenancy has been entered into between the parties. In that case, there was a payment of increased rent and, Therefore, on the facts of that case it was held that a fresh tenancy had been created.

16. Learned counsel for the Appellants also relied upon *Kanta Manocha Vs. M/s. Hindustan Paper Corpn.*, , *Ram Kishore v. Ambika Prasad*, AIR 1966 All 515 , *Gurcharan Singh Jodh Singh Vs. Chairman Delhi Improvement Trust, New Delhi*, and *Tayabali Jaffarbai Tankiwala Vs. Asha and Co. and Another*, in support of his contention. These decisions essentially follow the principle laid down in *Kai Khushroo*.

17. The facts of the present case, Therefore, take on considerable importance for deciding whether a fresh tenancy was created in favor of Appellant No.1 or if Appellant No.1 became a tenant by holding over.

18. The admitted position is that on 10th July, 1991 a notice was given to Appellant No.1 to vacate the suit premises, in view of the fact that the period of one year for which he was entitled to retain the premises was due to expire on 12th August, 1991. In view of this, it cannot be said (unless there is something quite substantial to the contrary) that Respondents No.1 to 4 had any intention of initiating a relationship of landlord and tenant with Appellant No.1.

19. It is true that rent was being paid by Appellant No.1 to Respondent Nos.1 to 4 and that they were unreservedly accepting this amount, but I do not think this fact by itself would indicate that a new relationship had developed between Appellant No.1 and Respondents No.1 to 4. After all Appellant No.1 was using the premises belonging to Respondents No.1 to 4 and he was under an obligation to pay for its user. On the other hand, Respondents No.1 to 4 had no real option but to accept the amount tendered by Appellant No.1 because refusal would have unnecessarily opened a new arena of dispute. It is perhaps in view of this that neither Appellant No. 1 insisted on any rent receipt nor did Respondents No. 1 to 4 issue any rent receipt to him. There was, under the circumstances, no clear intention of the parties to treat the payments made by Appellant No.1 as rent for use and occupation of the suit premises. This is a concurrent finding of fact arrived at by both the courts below.

20. Both the Courts below have also noted that apart from anything else, there was no such plea taken up by the Appellants in the written statement filed by them before the learned Civil Judge. Learned counsel for the Appellants, however, pointed out one solitary sentence in paragraph 1 under the heading "reply on merits" wherein it is submitted that defendant No.2 (Appellant No.1) is occupying the suit premises as a tenant in his own independent right. Necessary facts on the basis of which such a conclusion has been arrived at in the written statement have not been pleaded by the Appellants in their written statement.

21. Consequently, I do not think it appropriate to disturb the concurrent finding of fact arrived at by both the Courts below to the effect that no fresh tenancy or

establishment of a new relationship of landlord and tenant by holding over was pleaded by the Appellants in their written statement. Even if it was so pleaded, the facts of the case do not show any clear intendment on the part of both parties to create a tenancy which would bind them in respect of the suit premises. No perversity that has been brought to my notice in this regard in the conclusion of facts arrived at by both the Courts below.

22. I am of the opinion that the second appeal does not raise any substantial question of law which requires consideration.

23. Dismissed. The Appellant will pay costs of Rs.5,000/- to Respondents No.1 to 4.