

**(1968) 01 DEL CK 0005**

**Delhi High Court**

**Case No:** Second Appeal No. 117D of 1964

Rattan Lal

APPELLANT

Vs

Gajanand

RESPONDENT

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**Date of Decision:** Jan. 24, 1968

**Citation:** (1968) 4 DLT 486

**Hon'ble Judges:** Hardayal Hardy, J

**Bench:** Single Bench

**Advocate:** P.S. Patter, A.C. Sehgal and Daya Krishna, for the Appellant;

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### **Judgement**

Hardayal Hardy, J.

(1) This order will dispose of two connected appeals viz S.A.O No. 117 D of 1964 and S.AO No. 20 D of 1985 which raise the same point.

(2) The only point urged by the learned counsel for the appellant in this case is that on the admitted findings of the authorities constituted under the Delhi Kent Control Act, 1955 (hereinafter to be referred to as the Act), the respondent-landlord's application for eviction of the tenant-appellant merits dismissal

(3) It is contended by the learned counsel for the appellant that Gaja Nand respondent has been held to be a coowner of the property from which the appellants eviction in both the cases was claimed by him. His applications for eviction of the appellants under section 14(1)(e) of the Act have been allowed by the Rent Controller as well as by the Rent Control Tribunal on the basis of Single Bench decision of Chief Justice Falshaw (as he then was of the Punjab High Court in Vir Bhan v. Avlar Krishan etc, holding that : -

"Where out of a number of persons Constituting the body of the landlords, one landlord bona fide requires the building for his own use and occupation that should be considered to amount to a requirement on the part of all the landlords".

(4) Learned counsel for the appellants does not challenge the correctness of that decision, In fact he has pointed out that one other Judge of the Court (P. D. Sharma J.) has also taken the same view in Madan Gopal Sehgal v. Om Parhash. What he submits however, is that where a property is owned by several co" owners ,one of the co owners alone is not competent to file a suit or application to recover possession of the property and that this question was neither raised nor decided in Vir Bhan"s case.

(5) In support of his argument, the learned counsel has relied upon a Bench decision of the High Court of Bombay in Rama Mtoibhai v. Daliwadi Tupodo Ram" and on a decision of Mr. Stanyon, A. J. C. of the Court of Judicial Commissioner Nagpur in Dhanoolal v. Ram Lal. Rama Mtoibhai"s case is under the Bombay Tenancy and Agricultural Lands Act (67 of 1948). In that case an application to recover possession of land from his tenant for bonafide personal cultivation was filed by one of the co sharers in the land. The application was rejected by the subordinate Revenue Authorities and their decision was up hold by the Bombay Revenues Tribunal. The landlord moved the High Court by an application under Articles 226 and 227 of the Constitution. The application was opposed on behalf of the tenant inter alias on the ground that the applicant-landlord was admittedly not the sole owner of the land and Therefore, an application for eviction was not competent by him alone. It was held:-

"Where a landlord and certain other parsons are co sharers. than the landlord alone is not competent to file the application under 34 of the Bombay Tenancy and Agricultural Lands Act to recover possession of land from his tenant for bona fide personal cultivation."

The learned Judges further held that:-

"As against a trespasser one co owner on behalf of all the co owners can maintain in action. But if an action is to be filed against a tenant then all the co-owners must be joined."

(6) The decision of the learned Additional Judicial commissioner of Nagpur is also to the same effect.

(7) There seems to be a great deal of force in the contention urged by the learned counsel for the appellant. Learned counsel for the respondent has, however, urged in reply that no such objection was raised or considered by the Kent Control Authorities below and that the contention has been raised fir the first ti:ne in this Court in a Second Appeal from Order. Learned counsel for she respondent submits that second appeal under the Rent Act of 1958 lies to this Court only when the appeal involves a substantial question of law. According to the learned counsel no question of law can be said to be a substantial question of law unless it has been raised and considered by the Rent Control Authorities below and their decision is erroneous in law.

(8) Learned counsel for the appellant has attempted to show that the question was raised before the authorities under the Act. But this does not appear to be correct. He has, Therefore, urged that at all events the question is a pure question of law which arises on the facts proved on the record. There is a clear finding of fact that Gaja Nand respondent is a coowner of the property and while deciding his claim for eviction the Rent Controller and the Tribunal have expressly held that it is his requirement as such that was being considered by Them as amounting to the requirement of all the landlords. It is also not disputed that the other co-owners of the property have neither joined as co-petitioners with Gaja Nand nor have they been impleaded as respondents in the petition for eviction filed by him.

(9) It is no doubt true that the question raised by the learned counsel for the appellants is a pure question of law and it is not necessary to investigate any facts for deciding it. It is however, not every question of law in which facts are not required to be investigated, that must be allowed to be raised in a second appeal. The petitions for eviction of the tenants were filed before the Rent Controller several years ago and their appeals before the Tribunal were also disposed of in the case of Rattan Lal in February, 1964 and in the case of Kaghunath Pershad on 16th October, 1964. If the objection as to nonjoinder of the other co-owner-landlords had been raised either at the stage of the original petitions or at the stage of appeals before the Tribunal, the respondent landlord might have amended his petitions and joined his co-owners as respondents or co-petitioners with himself as he might have been advised. He might have even sought leave of the authorities below to withdraw his petitions with liberty to bring fresh petitions. The case of the respondent landlord throughout has been that there was a private partition between him and his co-owners and that as a result of that private partition the premises in dispute fell to his share. He has also alleged that the tenant-appellants had been paying rent to him. In these circumstances it would be wholly unjust to allow the appellants to raise this question at this late stage of the proceedings.

(10) The result is that both the appeals fail and are dismissed but there will be no order as to costs.