
(1969) ILR Delhi 761

Delhi High Court

Case No: Regular Second Appeal No. 298 of 1967

Kanwar Bhan

APPELLANT

Vs

Shrimati Somawanti

RESPONDENT

Date of Decision: Jan. 28, 1969

Citation: (1969) ILR Delhi 761

Hon'ble Judges: V.S. Deshpande, J

Bench: Single Bench

Advocate: Y. Dayal, K.K. Mittal and Mela Ram, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) This is a defendant's second appeal against a decree passed against him for possession in favor of the plaintiff-respondent by the Trial Court and confirmed by the first appellate Court.

(2) The property in dispute is Shop No. Xii 3911, which is a part of a bigger property, which was a composite property within the meaning of Section 2(d) of the Evacuee Interest (separation) Act, 1951, meaning that a part of the property had been declared to be evacuee property. u/s 11 of the Evacuee Interest (Separation) Act, 1951, the whole of the property or as the case may be, the evacuee interest in the property vested in the Custodian and the Custodian was entitled to manage the same, u/s 10 of the Administration of Evacuee Property Act, 1950. It is well knowal Chand and 15 others had applied in May, 1958 for the transfer of property to them claiming to be the sitting allottees, and the sale of the property was stayed on 10-6-1958. On 3-7-1958, the Custodian filed his reply stating that only 12 persons out of 17 occupants were sitting allottees. These 12 sitting allottees chose to purchase the entire property, including those portions which were in the occupation of unauthorized occupants. One of the unauthorized occupants was the appellant, Kanwar Bhan. He was heard during the enquiry and it was found that the order transferring the composite property to the sitting allottees was passed on 3-6-1958, while the first receipt produced by Kanwar Bhan for

rent paid to the Custodian for the shop in his possession was dated 25-9-1958. Kanwar Bhan was not, Therefore, accepted as even an occupant of the property, not to speak of being a sitting allottee.

(3) Exhibit Pi is an order passed by the Assistant Custodian on 21-10-1963, stating that on 16-5-1958 the then Assistant Custodian, Shri R.K. Kaira, has declared Kanwar Bhan and two others as unauthorized occupants. Their later prayer for the regularisation of their occupation was also dismissed.

(4) The claim of the respondent Sona Wanti, to the possession of the shop in dispute was based on her title as the purchaser of the property under Rule 11-B of the Evacuee Interest (Separation) Act, 1951. The defense by the appellants was that appellant No. 1 had become a tenant of the shop in dispute inasmuch as he was paying rent for the same to the Custodian. Alternatively, appellant No.1 claimed to be a person in authorised occupation of the shop in dispute. By virtue of Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, appellant No. 1 being in lawful possession of the suit property, was deemed to have become a tenant of the same. The respondent became the landlord of appellant No. 1 by virtue of the purchase of the property. She could not, however, evict appellant No. 1, except after compliance with the provisions of the Delhi Rent Control Act, 1958. She was not entitled to bring a suit for possession in the Civil Court, whose jurisdiction in the matter was excluded by Section 50 of the Delhi Rent Control Act, 1958.

(5) The question for decision is whether appellant No. 1 was a tenant of the suit property and as such not liable to be evicted by the respondent.

(6) The persons in actual occupation of the Evacuee property was classified by law in an ascending scale according to the quantum of their interest in the property. At the bottom of the scale was an "unauthorized person" defined in Section 2(j) of the Administration of Evacuee Property Act, 1956. He was a person (whether duly empowered in this behalf by the evacuee or otherwise), who after the 14th day of August, 1947, has been occupying supervising or managing the property of an evacuee without the approval of the custodian. Appellant, Kanwar Bhan falls into this category as a contract of lease has been entered into by an authority competent to grant a lease of the evacuee property.

(7) The appellant Kanwar Bhan has paid rent to the Custodian after the order of transfer of the composite property to the sitting allottee had been passed. The effect of the payment of such rents has, Therefore, to be considered. Sub-section (4) of Section 8 of the Administration of Evacuee Property Act, 1950 states that where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf. The mere occupation of evacuee property by a displaced person, thus, did not confer any right on him and he was bound to surrender possession to the Custodian on

demand. The numerous displaced persons had, however to be allowed to continue in possession as they had no other shelter, pending adjudication of rights of the various occupants of evacuee property. In the meanwhile, every occupant has to pay some rent or damages for use and occupation to the Custodian. This is why it was provided by Section 10-A of the Administration of Evacuee Property Act, 1950, that the Custodian was empowered to recover rent or damages for use and occupation from every occupant of evacuee property even if he was in unauthorized occupation as appellant No. 1 was, (vide Sub-Section (3) of Section 10-A). An official act is presumed to be regularly done. Section 10-A(3) empowers the Custodian to recover only damages for use and occupation from an unauthorized occupant. Kanwar Bhan was such an unauthorized occupant. The Custodian was, Therefore, entitled to recover such damages for use and occupation from him. The printed receipt. Exhibit D-I, given to him for the payment of rent of Rs. 18.00 says that the money was being recovered on account of rent/license fee/lease money, these words having been printed on the receipt. In view of the admitted fact that Kanwar Bhan was an unauthorized occupant, the money must have been accepted from him as damages for use and occupation u/s 10-A(3). Though the printed words in the receipt did not refer to such damages for use and occupation, the character of the payment under law could not be otherwise. The officer accepting the money was bound by the above legal provision and the nature of the payment could not, Therefore, be otherwise than by way of damages for use and occupation.

(8) The appellant having been expressly declared to be an unauthorized occupant by the Custodian as well as by the competent authority as stated above, an express order under a provision of law was required to convert him later into an authorised occupant. The collection of damages for use and occupation from an unauthorized person having been authorised by Section 10-A(3) of the Administration of Evacuee Property Act, 1950, the acceptance of the payment from him by the Custodian must be presumed to have been made u/s 10-A(3).

(9) The learned lower appellate Court seems to have given a literal effect to the printed words in the receipt, Exhibit D-1, for payment made by the appellant. The payment therein is said to be either by way of rent/license fee/lease money. It may be that in the printed forms of receipt the words "damages for use and occupation" were not included as cases in which such damages were recovered were not many and the majority of the cases were of recovery of rent or license fee. But this form cannot override the express provision of law like Section 10-A(3). The use of a wrong form of receipt for payment u/s 10-A(3) cannot change the status of the appellant from that of an unauthorized occupant to that of an authorised occupant, as the learned lower Court seems to have thought. The status of an authorised occupant could be conferred on Kanwar Bhan only by a positive act of the concerned authority making him an authorised occupant in supersession of the previous orders of the Assistant Custodian and the competent officer, which had held that he was an unauthorized occupant. In view of the orders of the Assistant Custodian and the competent officer declaring Kanwar Bhan as an unauthorized person and the

authority of the Custodian to recover damages from an unauthorized occupant u/s 10-A(3), the Government cannot be estopped from saying that Kanwar Bhan continued to be an unauthorized occupant. For, it is well known that there is no estoppel against the provisions of a statute. Secondly, an unauthorized act by a government servant of accepting rent/license fee would also not estop the Government from regarding Kanwar Bhan as an unauthorized occupant all the same.

(10) There is no evidence that the occupation of Kanwar Bhan was with the approval of the Custodian within the meaning of Section 2(j) or there was an allotment in his favor within the meaning of Section 2(a) of the Administration of Evacuee Property Act, 1950. The acceptance of the payment from Kanwar Bhan has to be presumed to be u/s 10-A(3) inasmuch as the presumption u/s 14(f) of the Evidence Act is that official acts are done regularly.

(11) The whole emphasis of the learned counsel for the appellant was on the fact that the payment for occupation having been accepted from Kanwar Bhan, his occupation has been recognised as legal and authorised by the Custodian. I am unable to draw such a presumption, in view of the fact that the Custodian was required to collect payment for occupation even from an unauthorized occupant u/s 10-A(3). This is what he seems to have done. In view of this position, the following decisions cited by the learned counsel for the appellant, are not applicable to the facts of the present case. The decisions are: Govindaram v. Takat Mal (1), Kartar Singh v. Barkat Ram. (2) and Kasar Das v. Jaisa Ram. (3) None of these decisions dealt with the case of an unauthorized occupant. The occupants in those cases being in lawful possession of the evacuee property, the principle of Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1964 was held to apply and the authorised occupants were deemed to be the tenants. Kanwar Bhan not being an authorised occupant, cannot be deemed to be a tenant even if the principle of Section 29 of the Displaced Persons (Compensation & Rehabilitation) Act, 1964 is held to apply to an authorised occupant of the composite property under Evacuee Interest (Separation) Act, 1951.

(12) FOR the above reasons, the appeal is dismissed with costs.