

(1980) 12 DEL CK 0027

Delhi High Court

Case No: Second Appeal No. 188 of 1980

S.R. Dutta

APPELLANT

Vs

Chunni Lal Bhatia

RESPONDENT

Date of Decision: Dec. 11, 1980

Citation: (1981) 2 DRJ 43 : (1981) ILR Delhi 58 : (1981) RLR 172

Hon'ble Judges: Sultan Singh, J

Bench: Single Bench

Advocate: F.C. Bedi, S.K. Puri, Honey Grover, S.L. Bhatia and Indu Talwar, for the Appellant;

Judgement

Sultan Singh, J.

(1) This is an appeal u/s 39 of the Delhi Rent Control Act, 1958 (hereinafter called "the Act") on behalf of the tenant challenging the order of eviction passed by the Rent Control Tribunal dated 23rd April, 1980 confirming the order of eviction dated 11th October, 1979 passed by the Controller, Delhi u/s 14(l)(e) of the Act. The respondent-landlord claimed eviction of the appellant on the ground that he required the suit premises for his personal bona fide necessity and for bona fide need of his married daughter Smt. Kamlesh Bhatia for whose benefit he was holding the premises. It is desirable to quote the exact plea taken by the respondent in para 18(a) of the eviction application :

"THE eviction of the tenant-respondent is sought on the ground that the petitioner requires the premises for his own personal bona fide necessity and for the bona fide need of Smt. Kamlesh Bhatia, wife of Shri Prakash Narayan, the petitioner's daughter for whose benefit the petitioner is holding the said premises. The petitioner landlord-owner of the premises has no other reasonably suitable residential accommodation. The said daughter of the petitioner has also no other reasonably suitable residential accommodation at her disposal".

(2) The appellant in the written statement denied that the respondent was holding the premises for the benefit of his married daughter Smt. Kamlesh Bhatia. He alleged that her husband was gainfully employed, that she would stay with her husband, that there was no question of her staying with the respondent-landlord, that the accommodation in possession of the respondent was more than sufficient looking to his requirement and status in life. The appellant further pleaded that the respondent did not require the premises bona fide, the intention being to let out at higher rent, that the alleged requirement was mala fide as standard rent had been fixed at Rs. 222.50 per month by the Controller whereas the contractual rent was Rs. 450.00 per month. In replication the respondent pleaded that he required the premises bona fide for his own need and for his daughter and son-in-law for whose benefit the premises were kept by him, that the daughter of her daughter had been living with him since she was only one-month-old and that she was attached to him and to his wife. The respondent further pleaded that his daughter got herself transferred from Jullundur to Delhi to live with her child. He further stated that he and his wife were old and their daughter would stay to look after them as their only son was posted at Bombay, and that his daughter had already been transferred to Delhi and she was staying with them along with her husband. The Controller and the Tribunal passed an order of eviction, as already stated, u/s 14(l)(e) of the Act holding that the respondent required the premises for her daughter to look after him and his wife in old age. It was further held that the grand daughter of the respondent was also residing with him and that his daughter would not only be with him but also with her child. The appellant tenant being dissatisfied with the judgment and order of the Tribunal and the Controller has filed this second appeal.

(3) During the pendency of the appeal in this court, Smt. Kamlesh Bhatia, married daughter of the respondent-landlord, died on 25th July, 1980. The appellant in his application, (C.M. No. 2530 of 1980) prayed that on account of unfortunate death of the married daughter of the respondent for whose requirement the eviction order was passed by the tribunal, the alleged requirement of the respondent disappeared and that the subsequent event that has taken place after the impugned judgment and order of the Tribunal be taken into consideration at the time of hearing of the appeal. The respondent in reply to this application states that though the married daughter Smt. Kamlesh Bhatia is dead but the bona fide need of the respondent-landlord has not disappeared on account of her death. He alleges that his son-in-law and his minor granddaughter are residing with him and that he and his wife who are aged 74 years and 70 years, respectively, need their presence in this house as nobody else in Delhi is there to look after them in their old age.

(4) The first contention of the learned counsel for the appellant is that the Controller and the Tribunal erred in passing an order of eviction against the appellant although no finding was given whether the respondent was holding he suit premises for the benefit of his married daughter Smt. Kamlesh Dhatia. The Tribunal and the Controller passed the order of eviction on the ground that the respondent

and his wife were aged and they needed to be looked after by their married daughter whose only child was already living with them and that this order was passed on account of emotional attachment between the respondent and the granddaughter, and that the married daughter was deemed to be a member of the respondent's family. His contention is that the respondent cannot be granted any order of eviction on a plea which was not raised in the eviction petition. The respondent- landlord claimed eviction on the ground that he required the premises for his need and for the need of the married daughter for whose benefit he was holding the premises. It has not been proved on record and no finding has been given either by the Controller or the Tribunal that the respondent was holding the suit premises for the benefit of his daughter Smt. Kamlesh Bhatia. Learned counsel further asserts that in any case Kamlesh Bhatia is dead and as such the alleged need disappeared and Therefore the respondent is not entitled to any order of eviction. On the other hand, the learned. counsel for the respondent submits that after the death of his daughter Smt. Kamlesh Bhatia. the granddaughter and son-in-law of the respondent have been living with him and as such the requirement has not disappeared and that the eviction order passed by the Controller and the Tribunal be confirmed in spite of the death of the married daughter.

(5) To appreciate the argument of the learned counsel for the appellant regarding the contention that no evidence can be looked on a plea which has never been raised, it is necessary to state further facts. It is admitted that the family of the respondent consists of himself and his wife. Their ages are 74 years and 70 years, respectively. When the eviction petition was filed there was no plea that the daughter or the granddaughter of the respondent was residing with him. There was also no plea that the premises were required for any member of his family dependent upon him. There was also no plea that the daughter was required to reside with the respondent to look after her aged parents. There was also no plea that the premises were required for the residence of his son-in-law. In replication also the plea was that the premises are required for the daughter and son-in-law for whose benefit the premises were held by the respondent. Strictly speaking, replication is not a part of the pleadings. The appellant-tenant never had any opportunity to file a written reply to the additional allegations made in the replication. If there was any additional plea available to the respondent- landlord he ought to have amended the eviction application but it appears that no step was taken. Section 14(1)(e) of the Act reads as under ;

"S. 14(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant : Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :- (e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or

for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation. Explanation : For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes".

(6) Under this clause the following conditions must be satisfied before an order of eviction can be passed :

(A) that the premises were let for residential purposes; (b) that the premises are required bona fide by the landlord for occupation as a residence for: i) himself, or any member of his family dependent on him, if he is the owner thereof; or (ii) for any person for whose benefit the premises are held. (c) the landlord or such person for whose benefit the premises are held has no other reasonably suitable residential accommodation.

(7) Thus it would be seen that a landlord may claim eviction for himself or for any member of his family dependent upon him. He may also claim eviction if the premises are required for a person for whose benefit the premises are held by him.

"TA, claim eviction the landlord has to plead facts in support of his alleged requirement .He has to prove those facts if denied by the tenant. The landlord has to plead the members of his family and their requirement together with status and other facts on the basis of which he claims eviction. He has to allege the existing accommodation preferably supported by the plan of premises available to him for residence. In the present case, the respondent only pleaded that he required the premises for his daughter for whose benefit he was folding the premises. He did not plead that he required the premises for his daughter as a member of his family or as a dependent on him. He did not plead that he required the premises for his grand daughter or son- in-law. He did not plead that the daughter or granddaughter were residing with him. He did not plead that the daughter and/or son-in-law were required to stay in the house to look after him and his wife in old age. Evidence recorded on these facts, not pleaded, cannot be looked into In *Siddik Mahomed Shah v. St. Saran and others* AIR 1980 P C 57(1) it has been held, "where a claim has not been made in the defense presented no amount of evidence can be looked into upon a plea which was never put forward". In [Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another](#), which was an appeal arising out of the suit for ejectment by the landlord against the tenant, it was held, "the defendant denied that he sub-let the two shops. The courts below concurrently found that this denial was false and that he sub-let the two shops to his brother-in law Ram Gopal. There was no pleading nor any issue that the sub-letting of the two shops was made with the permission of the landlord. It was not the case of the defendant at any stage of the trial that he had obtained the permission of the landlord for sub-letting the two shops. In the absence of any pleading and any issue on this point the first two

courts were in error in holding that the two shops were sub-let with the permission of the landlord". It was further observed by the Supreme Court that in the absence of any pleading and issue on the said question, the High Court was in error in recording the finding that the two shops were sub-let. In *Prem Sheel Malhan v. R.P. Chawla etc.* (L.Rs.). Som Nath Katyal, Chand Kumari, D.N. Abbi 1974 R. L R 522 eviction was claimed u/s 14(l)(e) of the Act and it was held that the requirement of joint family can be allowed to be proved only if it is expressly alleged. The landlord in that case had not pleaded that the premises were owned by the Joint Hindu Family and were required for the members and Therefore he was not allowed to take up that plea.

(8) In [Rajendra Singh Yadav Vs. Chandra Sen and Others](#), it was observed, "what is not pleaded cannot be allowed to be subject-matter of evidence". In view of this statement of law, it appears that as there was no plea by the respondent that the premises were required by him for his daughter to look after him and his wife in their old age or that the premises were required for the son-in-law cannot be taken into consideration. Learned counsel for the respondent has referred to *Nagubai Ammal and others v. B. Shama Rao and others* 1956 SC. 593. In that case no specific plea that the sale in favor of the defendant was affected by the doctrine of lis pendens was raised in the pleading of the plaintiff and no specific issue was framed but the defendants went to trial with full knowledge that the question of lis pendens was in issue, had ample opportunity to adduce their evidence thereon, and fully availed themselves of the same. There was no question of any prejudice to them on account of the absence of the pleading and it was, Therefore, held by the Supreme Court that the absence of a specific pleadings on the question was a mere irregularity. The facts of this case are not applicable to the instant case. Learned counsel for the respondent then referred to *Mrs. Kundan, Lal Mehta and others v. Smt. Parkashwati* 1980(2) R.C.J. 551. In that case the landlord in his application for eviction u/s 14(l)(e) of the Act had not pleaded the purpose of letting and had also not pleaded that he had no other reasonably suitable residential accommodation. The tenant, however, had raised those pleas in the written statement. He stated that the premises were not let for residential purposes and that the landlord was in possession of suitable residential accommodation. The landlord and the tenant had led evidence on the two points, no prejudice was caused either to the landlord or to the tenant, in that case and Therefore it was held by this court that the tenant was not entitled to raise the plea that the eviction application did not disclose a cause of action.

(9) The respondent appearing as A.W. 1 deposed, "I had kept the disputed premises for the benefit of the daughter Smt. Kamlesh Bhatia". He also deposed on other points for which there was no plea in the eviction application. Similarly, the respondent's daughter Smt. Kamlesh Bhatia appeared as A.W. 2 and deposed, "My father has not made any Will in my favor but there is a domestic settlement under which the first floor has been given to me for my use for my life. There is no writing

to this effect". She also deposed about facts for which there was no plea in the eviction application. From these statements of the respondent and his daughter, the plea that the respondent was holding the first floor premises in suit for the benefit of his daughter is not proved and Therefore rightly the Controller and the Tribunal did not rely upon it and no finding was given. In view of the statement of law as discussed above, it seems to me that the Controller and the Tribunal erred in law in passing an order of eviction against the appellant on the basis of evidence on facts which were never pleaded by the respondent.

(10) Learned counsel for the appellant next contends that the daughter and son-in-law of the respondent were not dependent upon him, that they were keeping their own establishment, that the daughter of the respondent was earning Rs. 2450.00 while the son-in-law was earning Rs. 1500.00 being employed in Steel Authority of India at Ghaziabad. He further says that the daughter was not living with the respondent at the time of the institution of the eviction application and there was no such plea. The daughter as such cannot be treated as a member of the respondent's family and the son-in-law is also not a member of the respondent's family. In any case, he submits that the daughter is now dead and Therefore her requirement should not be taken into consideration at all As regards son-in-law he asserts that he is independent and not dependent upon the respondent and he being an earning member in his own right is not entitled to be provided for by the respondent. He further says that there is no plea in the eviction application that the premises were required by the respondent for the residence of his son in-law. I find force in this argument. The daughter is dead and Therefore it is not necessary to decide whether the married daughter was or was not a member of the respondent's-family whether she was dependent upon him. It has not been proved that the premises in suit were held by the respondent for the benefit of the daughter.

(11) Learned counsel for the respondent submits that if a landlord requires that her married daughter should live with him then he is entitled to evict the tenant. He cites Krishna Devi v. Parmeshwari Devi 1977 R. L R 479 wherein the following observation is made :

"THE point here is not whether a married daughter is a part of the family but that accommodation required for bringing in of the married daughter to serve the needs of the mother is the requirement of the landlady herself. As a matter of fact it is immaterial what is the relationship of the person for whose requirement the landlady or the landlord seeks to have the accommodation provided of course it is proved that the requirement is a genuine one and will serve the need of landlord or landlady."

(12) In the instant case the daughter is dead. But the learned counsel for the respondent submits that the respondent and his wife require the presence of the son-in-law. No case was pleaded and, Therefore, this plea cannot be taken into

consideration.

(13) Learned counsel for the respondent further submits that this is second appeal u/s 39 of the Act and there is no substantial question of law, that there is a concurrent finding of fact to the effect that the respondent requires the premises for the residence of his daughter. I do not agree. The daughter is dead. The subsequent events are to be taken into consideration. The question of law arises whether the order of eviction passed in favor of the respondent can be sustained after the death of his daughter, specially when there is no other plea in the eviction application to claim eviction against the appellant. As already stated, the only plea was that the premises.

(14) In suit were held for the benefit of the deceased daughter. Thus the substantial question of law does arise in this present appeal. The concurrent finding of fact that the premises were required for the respondent and for his daughter is of no avail when the person for whose requirement the eviction order was passed has ceased to exist.

(15) The question Therefore is what is the effect of the death of Smt. Kamlesh Bhatia, daughter of the respondent. In AIR 1941 5 (Federal Court) it is held that the hearing of an appeal under the procedural law of India is in the nature of re-hearing and Therefore in moulding the relief to be granted in a case on appeal, the appellate court is entitled to take into account even facts and events which have come into existence after the decree appealed against, and its powers are not confined only to see whether the lower court's decision was correct according to the law as it stood at the time when its decision was given. In *Chunilal Khushaldas Patel v. R. K. Adhyaru and others* 1956 S C 655 after referring to the said judgment of the Federal Court it is observed that though the courts in this country could take into account the facts and events which had come into existence after the decree appealed against, but it could be only for moulding the relief to be granted in the appeal. In *Surinder Kumar and others v. Gian Chand and others* AIR 1951 S.C. 875 it is observed that in deciding the appeal the court has to take the circumstances as they were at the time when the appeal was being decided. In [Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others](#), it is observed that it was open to a court (including a court of appeal) to take notice of events which had happened after the institution of the suit and afford relief to the parties in the changed circumstances where it was shown that the relief claimed originally had by reason of subsequent change of circumstances become inappropriate or where it was necessary to take notice of the changed circumstances in order to shorten the litigation or to do complete justice between the parties. In [Pasupuleti Venkateswarlu Vs. The Motor and General Traders](#), it is observed :

"WE affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and

developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed".

(16) In Abdul Rehman Khan Ismail Khan (deceased) by his heirs and legal representatives v. Smt. Indirabai Ramchandra Bapat (deceased) by her heirs 1980 (2) R.C.J. 337, a suit for possession of the premises let out to the tenant on the ground of reasonable and bona fide requirement of the landlady and her husband under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1942 was filed. The trial court held that the requirement was not reasonable and bona fide and dismissed the suit. On appeal, the appellate court held that the requirement of the landlady was reasonable and bona fide and reversed the decision of the lower court. The revision was filed in the Bombay High Court. During pendency of the revision petition, the landlady and her husband died. As a result of their demise nothing survived in the suit and Therefore the decree for eviction passed by the appellate court was set aside and the suit was dismissed. In the instant case, as already stated, the respondent filed the present eviction application for the benefit and need his married daughter Mrs. Kamlesh Bhatia. The order of eviction was passed by the Controller which was confirmed by the Tribunal but during the pendency of the second appeal in this court unfortunately his daughter died. It Therefore seems that nothing survives to the respondent and he is not entitled to an order of eviction of the appellant on the ground pleaded by him in the eviction application. I may also mention that the eviction petition was also filed on the ground of personal bona fide necessity of the respondent. But it is not disputed before me that the entire ground floor of the" suit premises consisting of two bed rooms, drawing-cum-dining kitchen etc. is sufficient for the requirement of the respondent and his wife.

(17) Under the circumstances, I accept this appeal and set aside the impugned order of the Controller and the Tribunal and dismiss the eviction application. In the circumstances of the case, parties are left to bear their own costs throughout.