

(1985) 01 DEL CK 0056**Delhi High Court****Case No:** Second Appeal No. 1 of 1974

Sampati Devi

APPELLANT

Vs

Ram Pershad

RESPONDENT

Date of Decision: Jan. 2, 1985**Acts Referred:**

- Delhi Rent Control Act, 1958 - Section 9

Citation: (1985) 27 DLT 390**Hon'ble Judges:** N.N. Goswamy, J**Bench:** Single Bench**Advocate:** Vijay Kishan, for the Appellant;**Judgement**

N.N. Goswamy, J.

(1) This second appeal by the appellant-landlady is directed against the order dated November 1, 1973 passed by the Rent Control Tribunal, Delhi whereby the Tribunal held that the respondent was a tenant in the premises in dispute and remanded the case to the Rent Controller for fixation of standard rent.

(2) The respondent filed a petition for fixation of standard rent. He alleged in the petition that he was a tenant in the premises in dispute and the premises as described are under the stair case whose area is given to be 4 sq. yds. with an open platform in front measuring another 4 sq. yds.

(3) It was alleged that the respondent took the said premises on rent w.e.f. 1-1-1967 from the appellant under an oral agreement of tenancy on a monthly rental of Rs. 60.00 . According to the respondent the rent was excessive and as such he pleaded that a fair rent should be fixed for the premises in dispute.

(4) This petition was contested by the appellant-landlady. As a preliminary objection it was pleaded in the written statement that there was no relationship of landlord and tenant between the parties. It was further pleaded that the respondent was

only a licensee inasmuch as he had been kept as "chokdar" when the premises were under construction. After the completion the respondent illegally continued to occupy the premises and turned the same into a tea shop.

(5) The respondent filed replication wherein he reiterated the relationship of landlord and tenant and also went to the extent of pleading that the tenancy was created by way of document which was executed on a stamp paper. He also pleaded that at the same time, he had paid a rental of Rs. 720.00 for the entire year i.e. till 31-12-1967.

(6) In order to prove the relationship of landlord and tenant, the respondent examined two witnesses besides making his own statement. AW1 is one Ganga Ram. He deposed that the talks of tenancy took place in his presence. The landlord wanted Rs. 701- per month as rent while the respondent was willing to pay Rs. 50-per month .Finally it was settled at Rs. 50.00 per month. In cross-examination, he stated that he had worked during the construction of the building in dispute for 5-7 days and according to him, this talk took place 3" years or 3-3/4 years prior to the date of his deposition. He appeared as a witness in September 1969. So according to evidence, the tenancy relates back to early 1966 while according to the respondent it was on 1-1-1967. The next witness is AW2. He tried to pin point the month and the year but again stated Rs. 720.00 were paid to the appellant and a writing was executed on stamp paper which was written in Urdu. This evidence is clearly contradictory to the evidence of the respondent himself who has appeared as AW4. He has deposed that the document was got typed by the appellant in English and he was made to sign the same. In any case both these witnesses i.e. AW1. and AW2. were disbelieved by the Rent Controller as also by the Tribunal and in my opinion rightly. The learned Rent Controller further came to the conclusion that there was nothing to show that the tenancy was created by way of a deed on a stamp paper inasmuch as the respondent had neither summoned the said document from the appellant nor even put it to her that any such document was executed. He also did not produce the Stamp Vendor through in his evidence he stated that he had purchased the same from a Stamp Vendor in Parliament Street on 28-12-1966. If he was sure of the date and the place from where he purchased the same there could be no difficulty in his producing at least the Stamp Vendor in order to show that any such stamp paper was in fact purchased. The Rent Controller was further of the opinion that in the main . petition it was specifically pleaded that the tenancy was oral and the respondent could not be allowed to turn stand in the replication and in his statement and take different stand. The Rent Controller accordingly held that there was nothing to show that any tenancy was created by any deed written on a stamp paper. This finding has also been upheld by the Tribunal. The admitted case of the respondent is that he had paid Rs. 720.00 at the time when he was inducted in the premises which was the entire rent for one year ending on 31.12-1967 and thereafter he had not paid any rent. It is also an admitted fact that the building was under construction in 1966 and 1967. The respondent has failed to produce any

receipt or any cogent evidence to prove that he had ever tendered or paid any rent to the appellant but for his bald statement that he had paid Rs. 720.00 in cash at the time of execution of the lease deed. This story put up by the respondent was completely disbelieved by the Rent Controller and it was held that there was no relationship of landlord and tenant between the parties. Consequently the petition for fixation of standard rent was dismissed as not maintainable.

(7) . In appeal, the learned Tribunal upheld all the findings recorded by the Rent Controller i.e. the. findings regarding the execution of the lease deed, payment of any rent but in spite of that the Tribunal came to the conclusion that since the respondent was in exclusive possession of the premises in dispute it was for the appellant to prove that he was not a tenant. The approach, in my opinion, is illegal and unsound. It is an admitted case of the parties that the building in dispute was under construction during 1966 and 1967. The case of the appellant is that the respondent was inducted as "chowkidar" and he continued to look after the premises till they were rented out. This fact further finds support from the notice of the respondent issued to the appellant in December 1967. in the said notice, the respondent had alleged that his belongings were being thrown out by the appellant and he was being dispossessed illegally. In reply to the said notice, the appellant had intimated to the respondent that he was only a licensee and had no right to continue in the premises. The reply was sent as far back as in January 1968. In spite of that, no steps were taken by the respondent to establish his tenancy rights till December 1968 when the present petition was filed for fixation of standard rent. It is true that ordinarily an exclusive possession may lead to an inference of some sort relation between the parties. The relation can either be of a tenant or of a licensee. The circumstances, in the present case, lead to the only conclusion that the relationship between the parties was that of a licensor and a licensee inasmuch as the respondent was inducted in the premises when the premises were at the initial stage of construction. At that stage there can be no question of the appellant letting out the premises to the respondent. It is well known that during the construction period the landlords normally employ somebody to look after the material lying on the premises and to safeguard his other interest. Mere failure of the appellant to show the receipts or the account books regarding the payment of salary to the respondent cannot be taken as conclusive evidence of the fact that the respondent was not employed as a "chowkidar". Such persons are ordinarily employed on meagre salaries and no receipts etc. are taken for the payment of salary. It is a small building and no regular account books can be expected to be maintained by such landlords. Besides the exclusive possession ,the learned Tribunal has not found any other material on record to hold that the respondent was inducted as a tenant.

(8) For the reasons recorded above, the impugned judgment passed by the learned Tribunal is set aside and that of learned Rent Controller is restored The appeal is allowed accordingly. Since there is no appearance for the respondent I leave the parties to bear their own costs.