(1981) 11 DEL CK 0040

Delhi High Court

Case No: Second Appeal No. 87 of 1979

Begum Hamid Ali Khan		APPELLANT
	Vs	
B.H. Zaidi and Another		RESPONDENT

Date of Decision: Nov. 18, 1981

Citation: AIR 1982 Delhi 352 : (1982) 21 DLT 112 : (1982) 3 DRJ 62

Hon'ble Judges: Sultan Singh, J

Bench: Single Bench

Judgement

Sultan Singh, J.

(1) This second appeal on behalf of the tenant u/s 39 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") is directed against the judgment and order of Rent Control Tribunal dated 19th January, 1976 passing an order of eviction in favor of respondent No. 1 against the appellant and respondent No. 2. Respondent No. 1 on 17th March, 1969 filed an application for eviction of the appellant and respondent No. 2 alleging that the appellant was a tenant in a portion of the property at 270, Jamia Nagar (Zaidi Quarters) Okhla, New Delhi, on a monthly rent of Rs. 450.00 ; that the premises were let for residential purposes ; that he requires the same for himself and his family members and that he has no other reasonably suitable residential accommodation. It was further alleged that the appellant bad sublet, assigned or otherwise parted with the possession a part of the demised premises to respondent No. 2 without obtaining his consent in writing. The appellant-tenant and respondent No. 2 filed a joint written statement denying the various allegations. Subsequently respondent No. 1 amended the eviction application by adding the words "the petitioner is the owner of the property in suit" in para 18(a)(2) of the eviction application. The Additional Controller by order dated 21st October, 1975, dismissed the eviction application but on appeal the Tribunal passed the order of eviction u/s 14(l)(e) of the Act. The Tribunal however held that the appellant was cot liable to be evicted u/s 14(1)(b) of the Act. The tenant filed this second appeal.

(2) Learned counsel for the appellant submits that the original application for eviction filed by respondent No. 1 did not disclose any cause of action as there was no allegation that he was owner of the premises and Therefore the same was liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. He further submits that there was no relationship of landlord and tenant between the parties, that respondent No. 1 is not the owner of the suit premises, that the eviction application was premature and was not maintainable in view of Section 14(6) of the Act, that be does not bona fide require the premises in suit, and he has sufficient accommodation in his possession. Learned counsel for respondent No. 1 on the other hand submits that the order of eviction passed by the Tribunal is in accordance with Jaw, that in second appeal the findings of fact are binding on this court. He however does not challenge the order of the Tribunal dismissing his application u/s 14(1)(b) of the Act.

(3) It is admitted that originally the landlord respondent No. 1 had not alleged in the eviction application that he was the owner of the suit premises. In other words, it means that the original eviction application did not disclose cause of action turn claiming eviction u/s 14(l)(e) of the Act. The eviction was also claimed u/s 14(l)(b) of the Act and Therefore it was not a case where plaint did not disclose cause of action for the purpose of Order 7 Rule 11 of the Code of Civil Procedure. Moreover the respondent No. 1 made an application for amendment by adding the words, "the petitioner is the owner of the property in suit" in para 18(a)(2) of the eviction application. Leave to amend was granted on payment of Rs. 50.00 as costs. The costs were paid and accepted by the counsel for the appellant. The tenant is, Therefore, now estopped from challenging the said order allowing amendment.

(4) Learned counsel for the appellant submits that there is no relationship of landlord and tenant between the parties. Briefly stated the facts are that respondent No. 1 initially let out the suit premises to Hamid Ali Khan, husband of the appellant .After his death the appellant, his widow, became a tenant in the suit premises, ft is admitted that she has been a tenant in the suit premises but the dispute is whether she was tenant of Jamia Milia Islamia or respondent No. 1. Learned counsel for the landlord, on the other hand, submits that the premises were let by respondent No. 1 and that Jamia Milia Islamia wa.s only setting for and on behalf of respondent No. 1 in the matter of collection of rent from the appellant and her husband and whenever the rent was realised it was used to be kept in the account of respondent No. 1 under the head ''Amanat account of Col. B. H. Zaidi''. The appellant produced receipts Exs. R. I to R. 5. These receipts were issued by Jamia Milia Islamia but it was mentioned therein that the amount was to be credited to the said account of respondent No. 1. There is unrebutted evidence on record that Jamia Milia Islamia used to realise rent on behalf of the respondent-landlord. Copies of the accounts maintained by Jamia Milia Islamia pertaining to the account of respondent No. 1 are Exs. A. 1 to A. 7 where all the amounts received from time to time from the appellant were credited. Further there is oral evidence to the effect that respondent No. 1

while, he was Vice-Chancellor of Aligarh University, has instructed Jamia Milia Islamia to realise rent on his behalf and keep the same with it. The receipts Ex. R.1 to R. 5 are no doubt issued by Jamia Milia Islamia but the amount was realised on behalf of respondent No. 1. In other words, it can be said that the Jamia Milia Islamia was acting only as an agent of respondent No. 1. The oral evidence on record conclusively establishes that the appellant after her husband''s death became a tenant under respondent No. 1. The Additional Controller and the Tribunal after appreciating the entire evidence on record concluded that there was relationship of landlord and tenant. Learned counsel for the respondent- landlord has read through the oral evidence on this point and I am of the view that there is no ground for reversing the finding arrived at by the Rent Control Tribunal.

(5) The next dispute is whether respondent No. I is the owner of the premises in suit. Originally the land beneath the property in suit was owned by Jamia Milia Islamia. In 1948 landlord-respondent No. 1 wanted to purchase some land belonging to Jamia Milia Islamia with a view to construct a house for his residence. There have been various resolutions of Jamia Milia Islamia regarding these negotiations for the transfer of a plot of land to respondent No. 1. These resolutions are Exs. A. 8, A. 9, A. 10 and A. 11 wherein it was resolved by the Managing Committee of the Jamia Milia Islamia that the plot of land be transferred to respondent No. I or his nominee. It is also in evidence that the possession of the plot of land was delivered to respondent No. 1 in 1956 and he constructed a house thereon in 1957 and thereafter the premises were let to the husband of the appellant and after his death the appellant became tenant in the premises. This is also in evidence that the structure was raised on the said plot of land with the permission of the Managing Committee of Jamia Milia Islamia. The sale deed with regard to the plot of land Ex. A. 12 was however executed on 27th October, 1966, from which it appears that a sum of Rs. 8492.53 was paid to Jamia .Milia Islamia from 31st March, 1956 to 14th September, 1960. At the instance of respondent No. I this sale deed was executed in favor of. his son Syed Ahmed Raza Zaidi and respondent No. I was a party to the Deed as a confirming party. According to Ex. A. 12 dated 27th December, 1966 Syed Ahmed Raza Zaidi, son of respondent No. I landlord, is the ostensible owner-purchaser. There is however another registered document dated 5th December, 1969 Ex. A.W. 4/1, titled as ''Release Deed'' executed by Syed Ahmed Raza Zaidi in favor of his father Col. Bashir Hussain Zaidi. By this document he declared that he was a benamdar & that the structure constructed on the plot of land belonged to his father and that he had no right, title claim interest or lien in and upon either in the plot or in the premises. In other words, it means that the plot of land and structure belong to respondent No. 1. It is in evidence that the sale consideration for the plot of land in question was paid by respondent No. 1 as detailed in the sale deed Ex. A. 12. Learned counsel for the appellant submits that under the sale deed dated 27th October, 1966 respondent No. I was not the owner and that by execution of the Release Deed dated 5th September, 1969 he is alleged to have become the owner of

the plot. The title for the plot of land was conveyed by means of the sale deed dated 27th October, 1966. Ostensibly, this title was conveyed to the son of the respondent-landlord and by the execution of the release deed which is a declaration, it must be held that respondent No. 1 became the owner of the plot of land on the date when the sale deed was executed i.e. 27th October, 1966. Release Deed is not a document of a transfer. It is only a deed of declaration declaring that the son of the respondent-landlord has no right, title or interest in the plot of land and that respondent No. I alone was the owner of the plot and the structure thereon. Thus I hold concurring with the finding of the Tribunal that respondent No. 1 has been the owner of the suit premises.

(6) The next question is : Whether the eviction application u/s 14(l)(e)of the Act is premature within the meaning of Section 14(6) of the Act. It is not disputed that the suit premises were let to the husband in 1957 i.e. prior to the execution of the sale deed dated 27th October, 1966. Section 14(6) of the Act reads as under :

"SECTION 14(6): Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1) on the ground specified in clause (e) of the proviso thereto, unless a period of five years has elapsed from the date of the acquisition".

(7) Learned counsel for the appellant submits that even if it is assumed that the respondent became the owner on 27th October, 1966 the eviction application was premature as the same was filed on 17th March, 1969 i.e. before the expiry of five years from the date of acquisition of title by respondent No 1. Learned counsel for the respondent-landlord however submits that Section 14(6) of the Act is not applicable as the appellant''s husband became tenant under respondent No. 1 before the transfer of plot of land by Jamia Milia Islamia. He submits that if a person becomes a landlord after acquisition of the premises by transfer, then he is governed by Section 14(6) of the Act but if a person was already a landlord with respect to any premises in occupation of a tenant. Section 14(6) of the Act was not applicable to such a landlord. In the instant case it is not disputed that the appellant or her husband was in occupation of the premises as a tenant prior to sale deed dated 27th October, 1966. In B. K. Khanna v. M. R. Batra, 1966 D.L.T. 306 it has been held that the language of Section 14(6) of the Act shows that a person must become a landlord by acquisition of the premises before the sub-section would be attracted. In that case the person was a landlord before the formal transfer was effected in his favor by the Government and it was held that he was not hit by provisions of Section 14(6) of the Act, In the instant case also the appellant, as already observed, was a tenant of respondent No. 1 with respect to the suit premises prior to the formal execution of the deed dated 27th October, 1966. In these circumstances Section 14(6) of the Act is not applicable to the facts of the present case. Reference in this connection may also be made to B. K. Sarin v. Major Ajit Kumar Poolai and another, 1966 P.L.R. 164 wherein it was held that a partition deed is not a transfer. Again in

Shiv Dutt Sharma v. Prem Kumar Bhatin, 1963 R.C.J. 555 it has been observed that Section 14(6) of the Act applies only when the person acquiring the premises by transfer becomes landlord thereof by virtue of the transfer. Thus I hold that Section 14(6) of the Act is not attracted to the facts of the present case.

(8) The last question is whether the requirement of respondent No. 1 is bona fide & he has no other reasonably suitable residential accommodation. Respondent No.1 was a member of Rajya Sabba and was allotted No. 6, Dr. Rajendra Prasad Road, New Delhi, It is in evidence that there were five bed rooms besides drawing room etc. Respondent No. I has since ceased to be a member of Rajya Sabha. When the eviction application was filed he was in occupation of the Government accommodation but during the pendency of the petition in the court of the Additional Controller he constructed three bed rooms, one dining-cum-drawing room etc. in a portion of the land adjacent to the suit premises and it is also admitted that respondent No. 1 has since occupied the said premises built by him. The trial court, as already observed, dismissed the eviction application u/s 14(1)(e) of the Act. While the matter was pending before the Tribunal the tenant made an application under Order 41 Rule 27 of the CPC alleging that the requirement of the landlord was satisfied as he had constructed building on the adjoining plot of land. The respondent-landlord also filed an application bringing to the notice of the Tribunal subsequent events and requesting the Tribunal to take into consideration those facts to mould the relief. Replies to these two applications were filed. The respondent-landlord and his son filed affidavits in support of the additional facts and both were cross-examined by the learned counsel turn the appellant-tenant. After taking into consideration the additional facts the Tribunal concluded that the requirement of respondent No. 1 and his family was bona fide. The family of respondent No. 1 after taking into consideration the subsequent facts consists of himself, his second son with wife and a child, elder son and his wife. Learned counsel for the appellant-tenant submits that subsequent events can be considered to mould the relief but not to add cause of action. At the time when the eviction application was filed in 1969, the family of the respondent consisted of himself and his son. His elder son was in U.S.A. but when the proceedings were pending before the Tribunal the elder son and his wife had returned to India. In Pasupuleti Venkateswarlu Vs. The Motor and General Traders, it has been observed that the High Court is bound to take note of subsequent events in disposing of proceedings under the Rent Control Act by a landlord against his tenant. The Supreme Court 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 courts can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed". In the instant case, on the application of the respondent- landlord subsequent events have been taken into consideration by the Tribunal after notice to the tenant-appellant and allowing the

tenant to cross-examine the landlord and his son. The tenant made a statement before the Controller not to lead additional evidence. Thus it seems that fair opportunity was given to the parties to substantiate their respective cases on subsequent facts. The well known principle is that relief should be founded on pleadings made by the parties. In other words, no amount of evidence can be looked into on a plea which was never raised by the applicant. There are however exceptions to the general principle and that exception is provided in Order 41 Rule 33 of the Code of Civil-Procedure. In Bhagwati Prasad Vs. Shri Chandramaul, it has been observed, "If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the court cannot do injustice to another". Thus for taking into consideration the subsequent events at the stage of appeal it is not necessary to formally amend the pleadings. The additional facts can be taken into consideration on the basis of an application that may be made by a party and after affording opportunity with regard to the subsequent facts. In the present case, as already observed, sufficient opportunity was granted to the parties. On evidence on record it is clear that respondent No. 1 is in possession of the premises consisting of three bed rooms, one drawing-cum-dining room etc. on the adjoining plot. He has not been in possession of any other promises. The promises at 6, Dr. Rajendra Prashad Road, New Delhi were surrendered to the Government. Considering the family and status of respondent No. 1 the Tribunal concluded that he required the suit premises bona fide for the residence of himself and his family members. This is a question of fact. The evidence in second appeal is not to be re-appreciated. In Mattulal Vs. Radhe Lal, it has been held that High Court in second appeal cannot re-appreciate the evidence and interfere with the findings of fact reached by the lower appellate court. The lower appellate court is final so far as findings of fact are concerned. It has been further observed that the only limited ground on which the High Court can interfere in second appeal is that the decision of the lower appellate court is contrary to law.

It has been observed that if the finding recorded by the lower appellate court is one of law or of mixed law and fact, the High Court can certainly examine its correctness, but if it is purely one of fact, the jurisdiction of the High Court would be barred and it would be beyond the ken of the High Court unless it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or was arbitrary, unreasonable or perverse. I do not find any ground to reverse the finding of the Tribunal in this second appeal. Lastly it was argued that respondent No. 1 inducted Mrs. Naqvi in a portion of the building on an adjoining plot. The case of the respondent is that a portion of the adjoining plot was given to Mrs. Naqvi who constructed a quarter with her own funds. There is no evidence on record to show that respondent No. 1 constructed this building and then inducted Mrs. Naqvi. There is, Therefore, no merit in this submission of the learned counsel for the appellant.

(9) I, Therefore, do not find any infirmity in the judgment of the Rent Control Tribunal. The appeal is, Therefore, dismissed with no order as to costs. Learned counsel for the appellant lastly submits that time be granted to her to vacate the premises. Considering the shortage of accommodation in Delhi, I grant the appellant two months'' time to vacate the premises during which period the order of execution will not be executable.