

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 1053/2007**

% Date of Decision : January 20th, 2009

NIRMALA DEVI (SINCE DECEASED)
AND ANR

Through

..... Petitioners
Mr. J.M. Kalia, Advocate

versus

SMT MOHINI DEVI
(SINCE DECEASED) AND ORS.
Through

..... Respondents
Mr. S.P. Pandey,
Advocate

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

MANMOHAN, J : (Oral)

1. The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 25th May, 2007 passed by the Civil Judge, Delhi in execution proceedings being Ex. No. 66/2007 whereby the objections filed by the petitioners under Section 47 of the Code of Civil Procedure were dismissed. It is pertinent to mention that after filing of the present petition even the appeal filed by the petitioners before the Court of Additional District Judge, Delhi has also been dismissed vide judgment and order dated 29th September, 2007.

2. Mr. J.M. Kalia, learned Counsel for the petitioners submitted that the decree and judgment sought to be enforced was a nullity as it was without jurisdiction by virtue of Sections

14 and 15 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the DRC Act") and, therefore, the execution proceedings were not maintainable.

3. In this connection, Mr. Kalia pointed out that the disputes between Pt. Bhagwat Kishore and Smt. Chawli Devi, the predecessor-in-interest of petitioners stood compromised by way of a settlement-agreement dated 7th December, 1950. The relevant terms of the compromise agreement are reproduced hereinbelow for ready reference:-

"IN RE :

PANDIT BHAGWAT KISHORE PLAINTIFF

VERSUS

SMT. CHAWLI DEVI DEFENDANT

CIVIL SUIT

FIXED FOR TODAY

Sir,

The parties have entered into a compromise in the aforesaid case :-

1. That the suit of the plaintiff is that a decree be passed that plaintiff is a legal heir of deceased Ghaio Mal and Ghaio Mal deceased never adopted any son or he executed any will.

2. That Smt. Chawli Devi being in possession of the entire suit property shall have right to use the same for the purpose of her residence as well as to rent out, during her life time. She will be entitled to recover rent from the tenant and in future she will be liable to pay a total sum of Rs. 10/- p.m. to the plaintiff.

3. That Smt. Chawli Devi shall have no right to mortgage, sale, transfer, gift or to mutate the property in any manner, but she will have a right to induct or evict the tenant from the suit property, to collect rent and to file any suit against the tenant(s) for their eviction and till her life the plaintiff would have no right to interfere in any manner in her possession.

4. That in case the property in question falls under the scheme of Delhi Improvement trust or the property is acquired by the Government in any manner and in those circumstances the plaintiff shall be empowered to receive 2/3 share of the compensation and rest 1/3 will go to the defendant/Chawli Devi.

5. That after the death of Smt. Chawli Devi no other legal heirs of Smt. Chawli Devi shall have right in the house.

6. That the suit be decreed in favour of the plaintiff on the aforesaid terms and the parties be left to bear their own costs."

(emphasis supplied)

4. On the basis of the aforesaid compromise executed between the parties, Sub-Judge passed a judgment and order dated 7th December, 1950. The relevant portion of the said judgment is reproduced hereinbelow for ready reference:-

"Plaintiff filed a suit for possession. It is submitted that the plaintiff is the heir of the deceased Ghaio Mal who was the owner of the suit property and defendant who is in possession has no concern in the suit property. Plaintiff has produced copy of registry also. Now the parties have entered into a compromise. The defendant has admitted the plaintiff as the heir of the deceased Ghaio Mal and as the owner of the suit property. But the defendant shall be entitled to retain possession of the suit property during her life-time she shall be entitled to rent out the property but shall not sell or transfer the property. However, she will pay a sum of Rs. 10/- p.m. out of the rental money. In case the property is acquired by the Improvement Trust or by anybody else, in those circumstances the plaintiff shall be entitled to receive 2/3rd share of the compensation and 1/3rd shall be given to defendant no. 1 Smt. Chawli Devi."

(emphasis supplied)

5. Mr. Kalia drew my attention to three execution petitions filed by the predecessor-in-interest of the respondents, wherein it was specifically mentioned that a certain amount of money has fallen due as rent for various periods @ Rs. 10/- per month. Mr. Kalia also referred to the suit for recovery of possession, damages and mesne profits being Suit No. 57/1985 filed by the predecessor-in-interest of the respondents wherein the following averments were made :

“ii) That Smt. Chawli Devi (defendant no. 1) was to have the right practically to reside in the house, realize rents from the tenants and was liable to pay Rs. 10/- per month as rent to the plaintiff Sh. Bhagwat Kishore Goswami during her life w.e.f. 07-12-50.”

“3.....

a) That in terms of the aforementioned compromise Shri Bhagwat Kishore Goswami became entitled to get Rs. 10/- per month from Smt. Chawli Devi from the date of compromise i.e. from 07-12-1950 which she did not pay regularly to him hence a suit no. 220/1958 was filed by Sh. Bhagwat Kishore Goswami in the court of Shri. O.P. Saini, Addl. Judge, Small Cause Court, Delhi.....”

(emphasis supplied)

6. He consequently submitted that the predecessor-in-interest of respondent had admitted the predecessor-in-interest of petitioners as tenants.

7. Mr. Kalia further submitted that the intent behind the settlement-agreement was to make petitioners as tenants of the respondent and even though a fixed term of tenancy was created, but as during the said period of tenancy, the DRC Act came into force, the petitioners were entitled to its protection and, therefore, could only be evicted on the grounds mentioned in Section 14 of the DRC Act.

8. In this connection, learned Counsel for the petitioners referred to and relied upon the following judgments of the Hon'ble Supreme Court :-

A) ***Capt. B.V. D'Souza Vs. Antonio Fausto Fernandes*** reported in ***AIR 1989 SC 1816***, which according to Mr. Kalia is relevant as it lays down the test to be adopted as to whether a document is a lease or a licence.

B) ***Laxmidas Bapudas Darbar & Anr. Vs. Smt. Rudravva &***

Ors. reported in **AIR 2001 SC 3738** which deals with interpretation of a non-obstante clause and states that on expiry of a fixed term lease, a tenant would be liable to be evicted only on the grounds as enumerated in Clauses (a) to (p) of sub-section (1) of Section 21 of the Karnataka Rent Control Act.

C) **Mani Subrat Jain Vs. Raja Ram Vohra** reported in **(1980) 1 SCC 1** wherein it has been held that the expression 'tenant' includes a tenant continuing in possession after the termination of the tenancy in his favour and the fact that a decree or any other process extinguishes the tenancy under the general law of real property, does not terminate the status of a tenant under a special law, which in the present case is the DRC Act.

9. Mr. S.P. Pandey, learned Counsel for the respondents submitted that the legal heirs of Smt. Chawli Devi had no right to contend that they are tenants in respect of the suit premises as from the compromise agreement dated 7th December, 1950 it would be apparent that Smt. Chawli Devi had only been given a right to use the suit premises in her lifetime. He submitted that though she was entitled to recover rent from tenants, she was only liable to pay a sum of Rs. 10/- per month as use and occupation charges. He further pointed out that even in the civil suit for recovery of possession, damages and mesne profits filed by the grandmother of the present respondents, the predecessor-in-interest of the petitioners had not taken a defence that the petitioners were tenants in the suit premises. Mr. Pandey referred to the various issues framed by the trial court and pointed out that even the trial court in the said suit came to the conclusion that the possession of the predecessor-in-interest of

petitioners in respect of the suit property became unauthorised and unlawful after death of Smt. Chawli Devi on 4th May, 1980 and as the legal heirs of Smt. Chawli Devi failed to hand over the vacant peaceful possession of the suit premises to the predecessor-in-interest of respondents, the respondents would be entitled to recover damages for use and occupation of the said premises.

10. Mr. Pandey further submitted that the said findings have become final and binding upon the parties and in accordance with the principle of *res judicata* and constructive *res judicata*, the petitioners are not entitled to urge in this Court that they are tenants. In this regard, Mr. Pandey referred to and relied upon the following judgments of the Hon'ble Supreme Court :-

- A) ***Y.B. Patil and Ors Vs. Y.L. Patil*** reported in ***AIR 1977 SC 392***.
- B) ***Vijayabai & Ors. Vs. Shriram Tukaram & Ors.*** reported in ***AIR 1999 SC 431***.
- C) ***The Workmen of Cochin Port Trust Vs. The Board of Trustees of the Cochin Port Trust and Anr.*** reported in ***AIR 1978 SC 1283***.
- D) ***State of Uttar Pradesh Vs. Nawab Hussain*** reported in ***AIR 1977 SC 1680***.

11. I have heard the Counsel for parties and have perused the various documents, pleadings and agreement filed by the parties. I am of the view that the petitioners were not and cannot claim to be tenants of the said premises as by virtue of a settlement agreement dated 7th December, 1950, the predecessors-in-interest of the petitioners, Smt. Chawli Devi, had only been given a right to use and occupy the premises in her lifetime and collect rent from tenants and pay a sum of Rs. 10/- per month to the predecessor-in-interest of the respondents. In fact, the amount of

Rs. 10/- per month paid by her was not by way of rent. The order of the Sub-Judge dated 7th December, 1950 clarifies that Smt. Chawli Devi would pay a sum of Rs. 10/- per month out of the rental money collected by her from the tenants.

12. I am further in agreement with Mr. Pandey's submissions that since tenancy was not claimed by the petitioners in civil suit for possession filed by the predecessor-in-interest of the respondents, the petitioners are estopped and barred in law from contending that they are tenants in the suit premises.

13. It is pertinent to mention that the entire edifice of the petitioners' argument is built on the foundation that the petitioners are tenants in the said premises and once I have reached the conclusion that the petitioners are not tenants, then the entire edifice build by the petitioners collapses and the judgment cited by the petitioners cease to be of any relevance.

14. Moreover, the fact that a decree for damages and mesne profits has been passed by a court of competent jurisdiction and further the fact that the said decree has been upheld by the appellate court, I am of the view that the petitioners cannot impugn the findings of the competent court in a proceeding initiated under Article 227 of the Constitution, specially when there is no allegation of fraud having been perpetrated by the respondents. Consequently, as the petitioners are not tenants, petitioners are not entitled to protection of the Delhi Rent Control Act and the judgments passed by the Civil Judge and the Additional District Judge are neither a nullity nor without jurisdiction.

15. In fact, after hearing the parties at length, I am of the view that the present proceeding is not only a gross abuse of process of law but a part of a 'legal misadventure' embarked upon by the petitioners to somehow retain possession of the premises even after competent courts had passed a decree of possession and damages and that too after a bitterly contested litigation spanning nearly fifty years. Therefore, I dismiss the present petition with costs of Rs. 1,00,000/- (Rupees One Lakhs) to be paid to the respondents.

MANMOHAN,J

JANUARY 20th, 2009
rn