

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

% Judgment reserved on: 20.05.2011
Judgment delivered on: 24.05.2011

+ **RSA No.61/2009**

SH. GHANSHYAM DASS GUPTA & ANR. Appellants
Through: Mr. Yogesh Chhabra,
Advocate.

Versus

SH. PREM CHAND Respondent

Through: Mr. Faiz Ahmad, Advocate

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1 This appeal has impugned the judgment and decree dated 05.03.2009 which has reversed the finding of the trial Judge dated 03.07.2008. Vide judgment and decree dated 03.07.2008 the suit filed by the plaintiffs Ghanshyam Dass Gupta & Anr seeking possession of the suit property (i.e. two rooms with common latrine and open and covered verandah on the ground floor of property bearing No. 2918, Aryapura Subzi Mandi, RSA No.61/2009

Delhi-110007) had been decreed. The impugned judgment had reversed this finding; suit of the plaintiffs stood dismissed.

2 The case of the plaintiff is that his father Baishakhi Ram Gupta was the owner of the aforementioned suit property. He had tenanted the suit premises to Ram Sharan. After the death of Ram Sharan his widow Khazani Devi had inherited the tenancy which tenancy was terminated during her lifetime. Defendant who is her son is an unauthorized occupant. Rent has also not been paid. Legal notice dated 03.10.2006 (Ex.PW-1/7) had been served upon the defendant terminating his tenancy but to no avail. Present suit was thereafter filed seeking possession of the suit property as also damages.

3 The defendant refuted the claim of the plaintiff. His case was that all the legal heirs of Ram Sharan were dependent upon him; they had inherited the tenancy; the defendant being the son of Ram Sharan is a tenant in his own right; rate of rent being below Rs.3,500/- per month, protection under Section 50 of the Delhi Rent Control Act (DRCA) is available to the defendant; he could not be evicted.

4 On the pleadings of the parties, the following seven issues were framed:-

1. Whether the tenancy of Sh. Ram Sharan was duly and validly terminated. If so, its effect? OPP

2. Whether the tenancy of Smt. Khazani Devi was duly and validly terminated. If so, its effect? OPP
3. Whether the suit has been properly valued for the purpose of court fees and jurisdiction? OPP
4. Whether the suit of the plaintiff is barred by section 50 of DRC Act 1958? OPD
5. Whether the suit is without cause of action? OPD
6. Whether the plaintiff is entitled to recover arrears of rent and damages as prayed for in para B of the Relief? OPP
7. To what relief(s) the plaintiff is entitled to?

5 Oral and documentary evidence was led. Issue no. 1 was decided against the plaintiff. It was held that the tenancy of Ram Sharan had not been validly terminated. Issue No. 2 was decided in favour of the plaintiff. The trial Judge was of the view that the tenancy of Khazani Devi has been validly terminated vide notice Ex. PW-1/3 dated 18.11.1996 terminating her tenancy w.e.f. 31.12.1996; the postal receipt Ex. PW-1/4 and certificate of posting Ex. PW-1/5 had been adverted to; the original A.D. Card bearing her thumb impression Ex. PW-1/6 was also noted. This issue was decided in favour of the plaintiff. The trial Judge while dealing with issue No. 4 had noted that the bar of Section 50 of the DRCA is not applicable; the provisions of Section 2 (l) of DRCA had been expounded; the Court had held that the averment of the plaintiff was specific to the effect that Khazani Devi was the only legal heir of Ram Sharan who was financially

dependent upon her; her tenancy had also been validly terminated during her lifetime; no other legal heir inherited the tenancy; the defendant was an unauthorized occupant; suit of the plaintiff was accordingly decreed.

6 This finding was reversed in appeal. The appellate court was of the view that the notice dated 18.11.1996 sent to Khazani Devi has no sanctity in law as all the legal heirs of the Ram Sharan were protected under the DRCA; jurisdiction of the civil court was barred. Civil suit was not maintainable.

7 This is a second appeal. It has been admitted and on 15.11.2010, the following substantial question of law was formulated:-

“Whether the impugned judgment dated 05.03.2009 holding that the provision of Section 50 of the Delhi Rent Control Act, 1958 is attracted is not a perverse finding and if so its effect?”

8 On behalf of the appellant, it has been urged that the impugned judgment dismissing the suit is a perversity. The trial court had failed to appreciate Section 2(l) of the DRCA which had been incorporated by the amendment of 1975. It is pointed out that Khazani Devi was in the first category of inherited tenant; her tenancy was also validly terminated during her lifetime; this finding of the trial Judge has in fact not been upset

in the impugned judgment. The impugned judgment had proceeded on the wrong assumption that all the legal heirs were liable for protection under the DRCA. The judgment suffering from a perversity is liable to be interfered with.

9 Arguments have been rebutted. It is pointed out that the impugned judgment calls for no interference.

10 The Delhi Rent Control Act, 1958 is a statute which had been promulgated for providing for the control of rents and evictions. Section 2 (l) of the DRCA is relevant and it reads as under:-

2. In this Act, unless the context otherwise requires,-

(l) 'tenant' means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes-

(i)

(ii).....

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in *Explanation I* and *Explanation II* to this clause, such of the aforesaid person's-

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,-

(A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened

under the proviso to section 3 of the Delhi Rent Control (Amendment) Act, 1976. 18 of 1976.

(B) XXXXXXXX

Explanation 1.-The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows;-

Explanation II.-If the person, who acquires, by succession, the right to continue in possession after the, termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III.-For the removal of doubts, it is hereby declared that,-

(a) where, by reason of *Explanation II.*, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor specified in any lower category or categories, as the case may be;

(b) the right of every successor, referred to in *Explanation I* to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs;]

11 The category of succession has been detailed. After the death of original tenant, the tenancy would devolve first upon the spouse and then upon the children i.e. son or daughter; as in this case first upon the widow & then upon his son and daughter; explanation II states that where the legal heir was not financially dependent upon the deceased, the tenancy would be

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inheritable for 1 year only; explanation III clause (a) & (b) explains that the successor of each category shall not pass on this inheritance to the next lower category; thus right of every successor to continue in possession will be personal to him and shall not on his death devolve upon any other heir. Khazani Devi was the spouse of the original tenant i.e. Ram Sharan. In the plaint, it has been specifically averred that Khazani Devi was the only person financially dependent upon Ram Sharan and her tenancy had been terminated vide a legal notice during her own lifetime. This had been adverted to while dealing with issue no. 2; the trial Judge had returned a fact finding that the tenancy of Khazani Devi had been validly terminated vide Ex.PW-1/3. The impugned judgment had rejected this finding on the legal proposition that the tenancy had devolved upon all the legal heirs i.e. upon the spouse and the children together. This was incorrect. The impugned judgment had upheld the finding of trial Judge on issue No. 1 holding that tenancy of Ram Sharan had not been validly terminated but had gone on to proceed that all the legal heirs of Ram Sharan had become tenants after the death of Ram Sharan by operation of law; the notice dated 18.11.1996 (Ex.PW-1/3) issued to Khazani Devi had no sanctity in the eyes of law as all children were also tenants along with

Khazani Devi.

12 This was a wrong legal proposition and against the purport of section 2 (l) of the DRCA which has categorized the manner in which the tenancy has to devolve after the death of statutory tenant. It first has to devolve upon the widow of the statutory tenant who in this case was Khazani Devi; she was the only heir financially dependent and living with the deceased at the time of his death. The impugned judgment had not set aside the fact finding that Ex.PW-1/3 had terminated the tenancy of Khazani Devi; it had proceeded on the assumption that since all the legal heirs of Ram Sharan had become tenants, termination of tenancy of Khazani Devi by itself was not sufficient; other legal heirs had also become tenants. This as already noted was an incorrect proposition.

13 After the termination of the tenancy of Khazani Devi during her lifetime and her right to inherit the tenancy being personal; after her the other legal heirs did not get a right to inherit the tenancy; it was also not the case of the defendant that he was financially dependent upon his deceased father and was entitled to the tenancy on that count. This was never his defence (as is evident from the written statement) that he was living in the premises with his father or was financially

dependent upon him. The defendant had thus become an unauthorized occupant. His unauthorized occupation had also been terminated vide legal notice dated 03.10.2006 (Ex.PW-1/7). There is no dispute about this fact. The defendant having become an unauthorized occupant, he was liable to be evicted.

14 In the judgment of ILR (1980) II Delhi 854 Krishna Prakash & Ors. Vs. shanta Sinha Chinoy & Anr.) the Division Bench of this Court had noted as follows:-

“.....The amended section 2(1) has been reproduced above. Briefly, the relief given is that the most preferable legal representative who was living with the family of the tenant at the time of his death and who was financially dependent on his death would be regarded as the successor of the tenant enjoying the statutory protection which had been enjoyed by the tenant prior to the death of the tenant. On the contrary, if such a heir was not financially dependent on the tenant on the death of the tenant, than such a successor would acquire the right to continue in possession of the leased premises only for a period of one year and on the expiry of that period this right to continue in possession would come to an end.

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.....Broadly speaking, there are two-fold remedies which are available to the landlord against the legal representatives of the tenant. If the legal representative who continues in occupation of the premises was living with the landlord at the time of his death and was also financially dependent on the date of his death; then such a legal representative would inherit the tenancy or the statutory protection of the tenant and would be a tenant for the purpose of the Act. The proceeding for eviction against such a person can be filed by the landlord only under the Act, and, therefore, before the Controller. During the relationship between the landlord and the tenant the landlord would have to take recourse to the proceeding under the Act and

would have to prove one of the causes of action which would entitle him to evict the tenant under the Act. If is the order of the Controller upholding the contention of the landlord which would secure the eviction of the. tenant in favor of the landlord. On the contrary, if the landlord fails to prove the facts Constituting the cause of action, the eviction petition would stand dismissed and the leased premises would continue to be held by the legal representatives of the tenant who are in the same position as the deceased tenant was. Such a successor of the deceased tenant can be evicted by the landlord .precisely in the same way as the deceased tenant would be evicted and no other manner and in no other forum. On the other hand, if the landlord avers that the particular heir of the deceased tenant who is continuing in possession after the death of the tenant was not ordinarily living in the premises with the tenant, as a member of his family up to the time of the death of the tenant and/or was not financially dependent on the deceased tenant on the date of the death of the tenant then such a successor under Explanation II to section 2(1) acquired a right to continue in possession of the demised premises only for a period of one year and on the expiry of that period or on his death whichever is earlier the right of such a successor to continue in possession becomes extinguished. On the averment of such facts, there would be no relationship of landlord and tenant between the owner of the premises and a person Who is in unlawful possession of the premises because he has not inherited the tenancy or the statutory protection of the deceased tenant. The proceeding for the eviction of such a person would be a proceeding for the eviction of a trespasser. The forum for eviction would, therefore, be-a civil court and a suit for possession on the ground of title against a trespasser would have to be filed by the landlord on these facts. Such a proceeding would not be under the Act but would be outside it. It is true that for success of such a suit the landlord would have to prove the facts showing that the person in possession is not entitled to the tenancy or the statutory protection which could be inherited from the tenant in terms of the amended definition of tenant in section 2(1) of the Act. But the decision of the averments made by the landlord would have to be by the civil court because the averments amounted to saying that the person to be evicted is not a tenant at all."

applicable; there was no relationship of landlord and tenant between the parties. The period of one year available after the death of statutory tenant to heirs who are not financially dependent upon the deceased was long since over. The defendant being an unauthorized tenant was rightly ordered to be evicted. The finding in the impugned judgment is perverse.

16 Substantial question of law is answered in favour of the appellants and against the respondent. Appeal is allowed. Suit of the plaintiffs stands decreed.

INDERMEET KAUR, J.

MAY 24, 2011

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