

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

+ **RSA No.10/2009**

% **20th May, 2014**

VINOD KUMAR AGGARWAL Appellant
Through: Mr. B.B. Gupta, Advocate with Mr.
Sarthak Ghonkrokta, Advocate.

Versus

SMT. SHAKUNTALA KAPOOR & ORS. Respondents
Through: Mr. S.K. Dubey, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed by the appellant/plaintiff impugning the judgments of the courts below; of the trial court dated 3.5.2001 and the first appellate court dated 15.3.2008; which have dismissed the suit of the appellant/plaintiff/landlord for possession against the respondents who are the legal heirs of the original tenant Sh. Vishwa Mitter.

2. In Delhi, where premises are governed by the Delhi Rent Control Act, 1958 and the premises are let out only for residential purposes, the tenancy on the death of the original tenant only devolves upon the

limited number of persons as per Section 2(1) of the Act provided and if the contractual tenancy of the tenant had not been terminated during the lifetime of the tenant. As per Section 2(1), where a tenant dies leaving behind a spouse who is dependent on the tenant and is also proved to be living with the tenant at the time of death of the tenant, in such a case the tenancy would be inherited by such spouse, and which would be the respondent no.1/defendant no.1 in the present case. As per Explanation III to Section 2(1) (which defines a 'tenant') in case the person who inherits the tenancy as per Section 2(1) on the death of the original tenant, dies subsequently, then, the person in the subsequent category does not become a tenant thereafter because tenancy is inherited only once by the same category of persons.

3. For the sake of convenience, entire Section 2(1) of the Act with the required underlining is reproduced hereunder:-

“Section 2 (1) "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) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy; and

(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 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 of section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);
 - (B) any person to whom a license, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation1. - 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:-

- (a) firstly, his surviving spouse;
- (b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;
- (c) thirdly, his parents, if there is no surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and
- (d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the

premises as a member of the family of the deceased person up to the date of his death.

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 extinguished shall not affect the right of any other succession 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, develop on any of his heirs.” (underlining added)

4. The facts of the present case are that admittedly Sh. Vishwa Mitter, predecessor of the defendant nos.1 and 2/respondent nos.1 and 2 was a tenant of the suit property being quarter no.8, plot no.69, Block No.205-C, Tansen Marg, New Delhi comprising of two rooms. Sh. Vishwa Mitter was

the husband of the defendant no.1/respondent no.1/Smt. Shakuntla Kapoor. Smt. Shakuntla Kapoor has expired during the pendency of the present litigation. Sh. Vishwa Mitter was the father of the defendant no.2/respondent no.2/Sh. Ashok Kapoor. As per the plaint, tenancy of Sh. Vishwa Mitter was terminated by the appellant/plaintiff vide registered AD notice dated 14.2.1979.

5. Before the courts below, respondents contested the suit by pleading that contractual tenancy of Sh. Vishwa Mitter was never terminated in his lifetime and also that the legal notice dated 14.2.1979 was never served upon Sh. Vishwa Mitter. The respondents/defendants also pleaded that the tenancy was granted for residential-cum-commercial purpose and was not a purely residential purpose tenancy, and therefore, tenancy is inherited by all his legal heirs and not by the limited heirs as specified in Section 2(l) of the Act which applies only to succession of a residential tenancy.

6. I may note that there were other issues in the present case of whether defendant no.1/respondent no.1 was or was not financially dependent upon the deceased Sh. Vishwa Mitter, however, these issues have paled into insignificance because the respondent no.1/defendant no.1/widow has expired, and as already stated above, on her death the tenancy cannot

devolve upon the other legal heirs of late Sh. Vishwa Mitter or the legal heirs of the respondent no.1/defendant no.1/widow.

7. Two issues therefore have to be considered by this Court, and which are whether tenancy of Sh. Vishwa Mitter was terminated in his lifetime by the legal notice dated 14.2.1979 and secondly whether the suit premises were let out only for residential purposes or were let out for residential-cum-commercial purposes as contended by the respondents/defendants.

8. For the purpose of disposal of this Second Appeal, the following substantial questions of law are framed:-

“(i). Whether the courts below have committed a grave illegality and perversity in holding that the legal notice terminating tenancy dated 14.2.1979 was not served upon Sh. Vishwa Mitter in spite of the fact that not only the said notice was sent to the proper address of the tenant Mr. Vishwa Mitter but also the AD card bears the signatures of the receipt of the registered AD notice dated 14.2.1979?

(ii) Whether the courts below have committed a grave illegality and perversity in holding that the legal notice dated 14.2.1979 was not served upon the tenant Mr. Vishwa Mitter in spite of the fact that the signatures on the AD card show that the legal notice was received by the respondent no.1/defendant no.1/Smt. Shakuntla Kapoor on behalf of her husband-Sh. Vishwa Mitter?

(iii) Whether the courts below have committed a grave illegality and perversity in holding that tenancy was for residential-cum-commercial purpose although no evidence whatsoever was led on behalf of the respondents/defendants of a rent deed or a rent receipt showing the premises being let out for residential-cum-commercial purposes or any evidence showing that any of the respondents/defendants ever were carrying on any business or any commercial activity in the suit premises?”

9. The legal notice terminating the contractual tenancy of Sh. Vishwa Mitter is dated 14.2.1979, and the same has been proved on behalf of the appellant as Ex.PW2/4. AD card bearing the signatures of Smt. Shakuntla Kapoor with respect to this notice has been proved as Ex.PW2/6.

10. In my opinion, the courts below have not only misdirected themselves but have caused grave injustice and committed grave perversity by holding that the legal notice is not served merely because the signatures on the AD card show receipt by ‘Shakuntla Devi’ and not by ‘Shakuntla Kapoor’. In my opinion, nothing much turns on the difference in the word ‘Devi’ and ‘Kapoor’ inasmuch as the first name is Shakuntla and which is the first name of the respondent no.1/defendant no.1. Also the fact of the matter is that the notice has been correctly addressed to the correct address of the tenant Mr. Vishwa Mitter. Once that is so and the AD card bears the signatures of receipt of the postal article the self-serving denial on oath

cannot mean that the courts are bound to hold that the legal notice Ex.PW2/4 was not served upon the tenant Mr. Vishwa Mitter through the respondent no.1/defendant no.1. I may note that the respondents/defendants did not summon any official from the post office to show that legal notice Ex.PW2/4 (and with respect to which AD card Ex.PW2/6 is signed showing receipt) was not got received at the address of the tenant-Mr. Vishwa Mitter as stated in the legal notice. The aforesaid aspects are to be taken with the fact that it is not as if the appellant/landlord/plaintiff is living in around the premises or has a floor above or below the tenanted premises so that he could have in any manner manipulated receipt of the notice. Clearly therefore the courts below have committed a perversity in holding that the legal notice Ex.PW2/4 was not served upon the tenant Mr. Vishwa Mitter. I therefore set aside the findings of the courts below and answer the questions of law nos.1 and 2 in favour of the appellant/plaintiffs/landlord and hold that the legal notice Ex.PW2/4 was served upon Mr. Vishwa Mitter during his lifetime and consequently contractual tenancy of Mr. Vishwa Mitter stood terminated during the lifetime of Sh. Vishwa Mitter.

11. Once the tenancy of the tenant Mr. Vishwa Mitter stood terminated in his lifetime, the tenancy was inherited only by his spouse as per Section 2(1) (iii) and who was the respondent no.1/defendant no.1. After
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the death of the spouse/defendant no.1/respondent no.1/Smt. Shakuntla Kapoor, the son of Sh. Vishwa Mitter and Smt. Shakuntla Kapoor being the defendant no.2, falling in one category below than Section 2(1)(iii)(a) ie in category 2(1)(iii)(b), hence by virtue of Explanation III(a) of the definition of a tenant as contained in Section 2(1), the respondent no.2/defendant no.2 being of a different and lower category will not inherit the tenancy after the death of the defendant no.1/respondent no.1/spouse/Smt. Shakuntla Kapoor.

12. In view of the above, it is clear that the respondent no.2/defendant no.2 is illegally and arbitrarily holding on to the suit property of the appellant/plaintiff and in all fairness he after the death of the respondent no.1 on 22.10.2008, ought to have handed over possession of the suit property to the appellant/plaintiff/landlord.

13. That takes us to the issue as to whether the suit premises have been let out for residential purposes or were let out for residential-cum-commercial purposes. The courts below have held that since the appellant did not summon the original owner who had originally let out the suit premises to Mr. Vishwa Mitter (appellant/plaintiff being subsequent purchaser) there is hence no sufficient evidence to deny the stand of the respondents/defendants that the premises were let out for the residential-cum-commercial purposes. Nothing can be more further from the truth and

the law as is concluded by the courts below inasmuch as merely because the original landlord does not come into the witness box does not mean that the tenancy will automatically be taken as having been created for residential-cum-commercial purpose. In law purpose of letting a tenancy is shown either by rent deed or a rent receipt in the first instance, and which admittedly does not exist in the present case. When the first situation does not exist, then, it is settled law as per catena of judgments of this Court as also the Supreme Court that one has to look at the nature of the premises, user thereof, and the surrounding circumstances to determine the purpose of letting.

14. In the present case, the tenanted premises are not a shop or are a premises situated in a commercial property, and the nature of the premises is hence undoubtedly a residential premises. Further, the case of the respondents/defendants that the premises were let out for commercial purposes, had to be proved by them, because, as per Section 106 of the Evidence Act, 1872, a fact in the special knowledge of a person must be proved by that person. If the premises were let out for commercial purposes it was not difficult to establish the use for commercial purposes because use of the premises for commercial purposes can easily be established by the respondents/defendants by payment of house tax at commercial rates, or

payment of income or sales tax (or filing of tax returns) showing the address of the premises which would hence be used for a commercial use. The respondents/defendants could also have filed a certificate issued under the Delhi Shops and Establishments Act, 1954 if the tenancy premises were put to non-residential/commercial use. All these documents and facts were in the special knowledge of the respondents/defendants, but admittedly they have filed no documentary evidence on record to establish the alleged commercial use, and therefore the self-serving statement of the respondent/defendant of the premises being let out for residential-cum-commercial purpose have wrongly been taken by the courts below to hold letting out for residential-cum-commercial purposes and hence resulting in gross perversity and illegality in the findings of the courts below so far as the letting out of the suit property is concerned. I accordingly hold that the suit premises were let out for residential purposes and not for residential-cum-commercial purpose as contended by the respondents/defendants.

15. Counsel for the appellant points out that actually the respondent no.2/defendant no.2 is not living in the suit property but someone else is living in the suit property, however, I need not go into the aspect because nothing will turn upon the same though the counsel for the appellant states

that this Court should look into this aspect which shows the malafides of the respondent no.2.

16. In view of the facts of the present case, the appeal is allowed and appellant/plaintiff is granted a decree of possession of the suit premises being Quarter No. 8, Plot No. 69, Block No. 205-C, Tansen Marg, New Delhi. Appellant/plaintiff will also be entitled to costs of Rs.1 lakh. Impugned judgments of the courts below are set aside. I may note that the Supreme Court in the judgment in the case of *Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249* has held that it is high time that in certain litigations, appropriate costs be imposed. I am empowered to impose actual costs in terms of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*. Costs be paid within a period of six weeks from today.

MAY 20, 2014
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VALMIKI J. MEHTA, J.