

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RSA No. 83/2016

%

19th July, 2016

GURMEET SINGH BAWA

....Appellant

Through: Mr. Rajat Aneja and Ms. Chandrika
Gupta, Advocate.

versus

MRS. GURCHARAN KAUR & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the concurrent Judgments of the courts below; of the Trial Court dated 30.4.2013 and the First Appellate Court dated 14.12.2015; by which the suit filed by the appellant/plaintiff for possession against the legal heirs of the deceased tenant Sh. Niranjan Singh has been dismissed.

2. The only issue which arises is as to whether the tenant Sh. Niranjan Singh was only a statutory tenant and whose contractual monthly tenancy was terminated by serving a legal notice during his lifetime, and which if done (once

the tenancy is a residential tenancy), only limited legal heirs who are family members of the deceased tenant and are financially dependent on the tenant would only inherit the tenancy.

3. It is settled law so far as Delhi is concerned, that on expiry of a lease period for which a tenant is inducted, such tenant becomes a tenant month by month in the tenanted premises. The monthly tenancy of such a tenant is terminated by serving a legal notice under Section 106 of the Transfer of Property Act, 1882 terminating the contractual tenancy and whereby the definition of a tenant contained in Section 2(l) of the Delhi Rent Control Act, 1958 (quoted by the first appellate court in para 14 of its judgment) comes in as per which a tenant whose monthly tenancy is terminated continues thereafter only as a statutory tenant and on his death the statutory tenancy is inherited only in a limited manner in view of the Explanations I and II of this Section 2(l) ie statutory tenancy is inherited only by limited legal heirs. Of course, the precondition is that the contractual tenancy must be terminated and so stated in sub-Clause (ii) of Section 2(l).

4. Both the courts below have dismissed the suit by arriving at a finding of fact that the appellant/plaintiff has failed to file documents of termination of the contractual monthly tenancy of the tenant Sh. Niranjan Singh inasmuch as no legal notice terminating the tenancy was filed and proved

showing that the contractual monthly tenancy of Sh. Niranjan Singh was terminated during his lifetime. Counsel for the appellant also could not point out to me any evidence led on behalf of the appellant/plaintiff showing such legal notice terminating the contractual tenancy of Sh. Niranjan Singh has been filed, proved and exhibited.

5. The first appellate court has drawn the correct conclusions from the facts of the present case in para 15 to 17 and 21 of the impugned judgment and the same read as under:-

“15. Section 2(l) of Delhi Rent Control Act reads as below:

[(l) (Note: Subs. by Act 18 of 1976, sec.2, for clause (1) (w.r.e.f. 1-12-1975)) *“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 per-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,-

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.

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:-*

- (a) firstly, his surviving spouse;*
- (b) secondly, his son or daughter, or doth, 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 per-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 the 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];

16. Explanation I regulates the order of succession Explanation II deals with case of successor not financially dependent on the deceased person on the time of his death. Such a successor is given the right to continue in possession for a limited period of one year after the termination of tenancy. Then comes Explanation III, it confers right on enumerated succession to continue in possession after termination of tenancy.

17. Thus, Section 2(1) of Delhi Rent Control Act refers to the rules for devolution of tenancy rights of a statutory tenant. It is well settled that tenancy right of a contractual tenant however, devolve as per Law of Succession without being affected by Section 2(1) of Delhi Rent Control Act.

XXXXX

XXXXX

21. In present case the onus to establish that Late (Sh.) Niranjn Singh was a statutory tenant was on the plaintiff/appellant. The plaintiff has examined only himself as PW1 and in cross examination has admitted the fact that he did not served any notice of termination of tenancy upon Late (Sh.) Niranjn Singh during his lifetime. He has also admitted that he purchased the property from M/s Somnath Mahindernath and Late (Sh.) Niranjn Singh the father of defendant/respondents was already a tenant in the said property. He also admitted that he accepted the father of defendant/respondent as his tenant. He has also admitted that he alongwith his brother were the co-owner in the suit property. The plaintiff/appellant has failed to give any date or year regarding the averment that Late (Sh.) Niranjn Singh started Gurudwara later on and earlier he was using the same as residential premises. There is nothing on record placed by plaintiff/appellant that the tenancy of Late (Sh.) Niranjn Singh stood determined on the service of notice in the manner provided by law. There is nothing on record to suggest that late Sh. Niranjn Singh was the statutory tenant therefore the status of defendants/respondents being the legal heir regarding heritability of tenancy will not be covered by explanation to the definition of tenant as enumerated under Section 2 of the Delhi Rent Control Act. There is no infirmity in the observation made by Ld Trial

Court that once it has been held that Sh. Niranjn Singh was not a statutory tenant but a contractual tenant in respect of tenanted premises, his tenancy rights on his death devolve on all his legal heirs as per General Law of Succession and not in accordance with 2(1) of the Delhi Rent Control Act and the plaintiff/appellant is therefore not entitled to recovery possession of the suit premises. The suit being barred in view of the provisions of Section 50 of Delhi Rent Control Act.”
(underlining added)

6. In view of the above, no substantial question of law arises for this Court to interfere under Section 100 CPC. Dismissed.

JULY 19, 2016
ib

VALMIKI J. MEHTA, J

