V. N. Sarin

Vs

Major Ajit Kumar Poplai

Civil Appeal No. 468 of 1965

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

09.08.1965

JUDGMENT

GAJENDRAGADKAR, C.J. –

The short question of law which arises in this appeal is whether the partition of the coparcenary roperty among the coparceners can be said to be "an acquisition by transfer" within the meaning of s. 14(6) of the Delhi Rent Control Act, 1958 (Act No. 59 of 1958) (hereinafter called 'the Act'). This question arises in this way. The premises in question are a part of a bungalow situate at Racquet Court Road, Civil Lines, Delhi. The bungalow originally belonged to the joint Hindu family consisting of respondent No. 2, Mr. B. S. Poplai and his two sons, respondent No. 1, Major Ajit Kumar Poplai and Vinod Kumar Poplai. The three members of this undivided Hindu family partitioned their coparcenary property on May 17, 1962, and as a result of the said partition, the present premises fell to the share of respondent No. 1. The appellant V. N. Sarin had been inducted into the premises as a tenant by respondent No. 2 before partition at a monthly rental of Rs. 80. After respondent No. 1 got this

The appellant contested the claim of respondent No. 1 on three grounds. He urged that respondent No. 1 was not his landlord inasmuch as he was not aware of the partition and did not know what it contained. He also urged that even if respondent No. 1 was his landlord, he did not require the premises bona fide; and so, the requirements of s. 14(1) (e) of the Act were not satisfied. The last contention raised by him was that if respondent No. 1 got the property in suit by partition, in law it meant that he had acquired the premises by transfer within the meaning of s. 14(6) of the Act and the provisions of the said section make the present suit incompetent.

The Rent Controller held that respondent No. 1 was the exclusive owner of the premises in suit by virtue of partition. As such, it was found that he was the landlord of the appellant. In regard to the plea made by respondent No. 1 that he needed the premises bona fide as prescribed by s. 14(1) (e), the Rent Controller rejected the case of respondent No. 1. The point raised by the appellant under s. 14(6) of the Act was not upheld on the ground that acquisition of the suit premises by partition cannot be said to be acquisition by transfer within the meaning of the said section. As a result of the finding recorded against respondent No. 1 under s. 14(1) (e) however, his application for the appellant's eviction failed.

Against this decision, respondent No. 1 preferred an appeal to the Rent Control Tribunal, Delhi. The said Tribunal agreed with the Rent Controller in holding that respondent No. 1 was the landlord of the premises in suit and had not acquired the said premises by transfer. In regard to the finding recorded by the Rent Controller under s. 14(1) (e), the Rent Control Tribunal came to a different

conclusion. It held that respondent No. 1 had established his case that he needed the premises bona fide for his personal use as prescribed by the said provision. In the result, the appeal preferred by respondent No. 1 was allowed and the eviction of the appellant was ordered.

This decision was challenged by the appellant by preferring a second appeal before the Punjab High Court. The High Court upheld the findings recorded by the Rent Control Tribunal on the question of the status of respondent No. 1 as the landlord of the premises and on the plea made by him that his claim for eviction of the appellant was justified under s. 14(1) (e). In fact, these two findings could not be and were not challenged before the High Court which was dealing with the matter in second appeal. The Court which was dealing with the matter in second appeal. The main contention which was raised before the High Court was in regard to the construction of s. 14(6); and on this point, the High Court has agreed with the view taken by the Rent Control Tribunal and has held that respondent No. 1 cannot be said to have acquired the premises in suit by transfer within the meaning of the said section. It is against this decree that the appellant has come to this Court by special leave. Mr. Purshottam for the appel

The Act was passed in 1958 to provide, inter alia, for the control of rents and evictions in certain areas in the Union Territory of Delhi. This Act conforms to the usual pattern adopted by rent control legislation in this country. Section 2(e) defines a "landlord" as meaning a person who, for the time being, is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant. It has been found by all the courts below that respondent No. 1 is a landlord of the premises and this position has not been and cannot be disputed in the appeal before us.

Section 14(1) of the Act provides for the protection of tenants against eviction. It lays down that notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant. Having thus provided for general protection of tenants in respect of eviction, clauses (a) to (1) of the proviso to the said section lay down that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the grounds covered by the said clauses; clause (e) of s. 14(1) is one of such clauses and it refers to cases where the premises let for residential purposes are required bona fide by the landlord for occupation as therein described. The Rent Control Tribunal and the High Court have recorded a finding against the appellant and in favour of respondent No. 1 on this point and this finding

That takes us to s. 14(6). It provides that 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. It is obvious that if this clause applies to the claim made by respondent No. 1 for evicting the appellant, his application would be barred, because a period of five years had not elapsed from the date of the acquisition when the present application was made. The High Court has, however, held that where property originally belonging to an undivided Hindu family is allotted to the share of one of the coparceners as a result of partition, it cannot be said that the said property has been acquired by such person by transfer; and so, s. 14(6) cannot be invoked by the appellant. The question which we have to decide in the present appeal is whether this view of the High Court is right.

Before construing s. 14(6), it may be permissible to enquire what may be the policy underlying the section and the object intended to be achieved by it. It seems plain that the object which this provision is intended to achieve is to prevent transfers by landlords as a device to enable the purchasers to evict the tenants from the premises let out to them. If a landlord was unable to make out a case for evicting his tenant under s. 14(1) (e), it was not unlikely that he may think of transferring the premises to a purchaser who would be able to make out such a case on his own behalf; and the legislature thought that if such a course was allowed to be adopted, it would defeat the purpose of s. 14(1). In other words, where the right to evict a tenant could not be claimed by a landlord under s. 14(1) (e), the legislature thought that the landlord should not be permitted to create such a right by adopting the device of transferring the premises to a purchaser who may be able to prove his own individual case under

Mr. Purshottam, however, contends that when an item of property belonging to the undivided Hindu family is allotted to the share of one of the coparceners on partition, such allotment in substance amounts to the transfer of the said property to the said person and it is, therefore, an acquisition of the said property by transfer. Prima facie, it is not easy to accept this contention. Community of interest and unity of possession are the essential attributes of coparcenary property; and so, the true effect of partition is that each coparcener gets a specific property in lieu of his undivided right in respect of the totality of the property of the family. In other words, what happens at a partition is that in lieu of the property allotted to individual coparceners they, in substance, renounce their right in respect of the other properties; they get exclusive title to the properties allotted to them and as a consequence, they renounce their undefined right in respect of the rest of the property. The process of

Mr. Purshottam, however, strongly relies on the fact that there is preponderance of judicial authority in favour of the view that a partition is a transfer for the purpose of s. 53 of the Transfer of Property Act. It will be recalled that the decision of the question as to whether a partition under Hindu Law is a transfer within the meaning of s. 53, naturally depends upon the definition of the word "transfer" prescribed by s. 5 of the said Act. Section 5 provides that in the following sections, "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons. It must be conceded that in a number of cases, the High Courts in India have held that partition amounts to a transfer within the meaning of s. 53, vide, for instance, Soniram Raghushet & Others v. Dwarkabai Shridharshet & Another, and the cases cited therein. On the other hand, there are some decisions which hav

In this connection, Mr. Purshottam has also relief on the fact that under s. 17(1) (b) of the Indian Registration Act, a deed of partition is held to be a non-testamentary instrument which purports to create a right, title or interest in respect of the property covered by it, and his argument is that if for the purpose of s. 17(1) (b) of the Registration Act as well as for the purpose of s. 53 of the Transfer of Property Act, partition is held to be a transfer of property, there is no reason why partition should not be held to be an acquisition of property by transfer within the meaning of s. 14(6) of the Act.

In dealing with the present appeal, we propose to confine our decision to the narrow question which arises before us and that relates to the construction of s. 14(6). What s. 14(6) provides is that the purchaser should acquire the premises by transfer and that necessarily assumes that the title to the property which the purchaser acquires by transfer did not vest in him prior to such transfer. Having regard to the object intended to be achieved by this provision, we are not inclined to hold that a person who acquired property by partition can fall within the scope of its provision even though the

property which he acquired by partition did in a sense belong to him before such transfer. Where a property belongs to an undivided Hindu family and on partition it falls to the share of one of the coparceners of the family, there is no doubt a change of the landlord of the said premises, but the said change is not of the same character as the change which is effected by transfer of premises to which s. 14(6) refers

In this connection, we may refer to a recent decision of this Court in the Commissioner of Income-tax, Gujarat v. Keshavlal Lallubhai Patel. In that case, the respondent Keshavlal had thrown all his self- acquired property into the common hotch-pot of the Hindu undivided family which consisted of himself, his wife, a major son and a minor son. Thereafter, an oral partition took place between the members of the said family and properties were transferred in accordance with it in the names of the several members. The question which arose for the decision of this Court was whether there was an indirect transfer of the properties allotted to the wife and minor son in the partition within the meaning of s. 16(3) (a) (iii) and (iv) of the Indian Income-tax Act, 1922. This Court held that the oral partition in question was not a transfer in the strict sense and should not, therefore, be said to attract the provisions of s. 16(3) (a) (iii) and (iv) of the said Act. This decision shows that having regard to the contex

In the result, the appeal fails and is dismissed with costs. Before we part with this appeal, we would like to add that on the appellant undertaking to vacate the suit premises within three months from the date of this decision, Mr. Sastri for respondent No. 1 has fairly agreed not to execute the decree during the said period.

Appeal dismissed.

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