

Kartar Singh

Vs

Chamanlal and Others

Civil Appeal No. 661 (N) of 1966

(J.C. Shah, A.N. Grover JJ)

14.03.1969

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Punjab High Court (Circuit Bench at New Delhi) dismissing a petition for revision directed against the concurrent judgments of the courts below dismissing the action for eviction filed by the appellants against the respondents from a permission on Ajmal Khan Road, Karol Bagh, New Delhi.

2. The facts may be succinctly stated. By means of a rent deed, dated February 13, 1950, the appellant, who is the owner of the suit premises inducted as a tenant Labha Mal Arora, now deceased, who was a practising Advocate. Clauses (2) and (6) of the rent deed were in the following terms :

"2. That the tenant agree to use the property for his residence.

6. That the tenant shall not assign or sublet the above said property or any part thereof without the written consent of the landlord, of utilise the property for any purpose other than that mentioned above."

On the same date a letter Ext. D-2 was written by the appellant to the late Labha Mal Arora saying :

"As per our oral talk regarding your tenancy for my house No. 6/64, I have no objection to your having your professional office 'alongwith residence' there provided it is not inconsistent with the provisions of Delhi Improvement Trust Act."

It appears and it has been so found that Labha Mal Arora who had his office at a different place shifted the same to the suit premises where he was residing with his family. He died in the year 1952. Till 1952 the premises were being used only for residence by his sons and widow. In August 1957, Chamanlal respondent No. 1, who qualified himself as a legal practitioner, started having an office in the premises. It would appear that the other son respondent no. 3 also started practising as a lawyer in the same premises some time later. On 21-11-1957 the appellant served a notice on the sons and widow of the deceased Labha Mal Arora that it had been learnt that they had constructed a double-storeyed building in Naiwala Karol Bagh and that since the suit premises were required bone fide for the personal residence of the appellant they should shift to their house and vacate the rented premises. This was followed by a second notice to the same effect.

3. As the possession of the premises was not delivered, the appellant instituted a suit for ejection against the respondents under the Delhi and Ajmer Rent Control Act, 1952 (hereafter called the old Act). Two grounds were taken for seeking eviction. One was that the respondents had built a large residential house and were liable to be ejected under Section 13(1)(h) of the old Act. The second was that the premises were required bona fide for personal use. It may be mentioned that the second ground was abandoned in the trial court. The suit was contested by the respondents on the ground that the late Labha Mal Arora had taken the premises on rent for residence as well as for an office for professional purposes and the premises had been used as residence-cum-office. For this reason it was asserted that the construction of a residential house by the respondent did not furnish a ground for eviction.

4. During the pendency of the suit the Delhi Rent Control Act, 1958 (hereafter called the new Act) came into force. Section 14(1)(h) which was equivalent to Section 13(1)(h) of the old Act contained the word 'suitable' which was omitted as it appeared before the word "residence" in Section 13(1)(h). The relevance and significance of this omission will be noticed presently. The trial court relied inter alia on three alia on the letter Ext. D-2 and the statement of Chaman Lal respondent according to whom two rooms were used by the late Labha Mal Arora as his office and another one room was being used by his clerk and held that the premises had been let for "residence-cum-business purposes". The argument that the late Labha Mal Arora had only been granted a licence to use the premises for professional purposes and that the licence came to an end on his death, was repelled. It was found that the respondents had built a residential house, and since the premises in suit had been let out to their predecessor-in-interest not for residential purpose alone but also for business purposes no eviction could be ordered under the provisions of Section 13(1)(h) of the old act or 14(1)(h) of the new Act. The Additional Senior Sub-Judge dismissed the appeal preferred by the appellant in agreement with the decision of the trial court. The following portion from his judgment relating to the finding with regard to the purpose for which the premises had been let out to the late Labha Mal Arora may be reproduced :

"It is in evidence that prior to taking the premises in suit on rent from the appellant, Labha Mal, deceased, was having his professional office as an advocate in Sadar Bazar, Delhi, and on taking the premises in suit on rent he had shifted his office in the suit premises. This fact is fully supported by the statement of Shri Chaman Lal, respondent No. 1, and the notices, Ext. D.W. 9/1, and D.W. 9/2 issued by Shri Labha Mal from the suit premises. Shri Chaman Lal has stated that out of the five rooms of the suit premises, two rooms were used by his deceased father as office. From the above also it is proved that the suit premises were let by the appellant to Shri Labha Mal deceased for residence-cum-business purposes."

On the question of the ambit and scope of Section 13(1)(h) of the old Act the learned Judge expressed the opinion that it would be unreasonable to hold that a tenancy which had been created both for purposes of residence and carrying on of a profession could be successfully terminated merely by showing that the tenants had acquired a suitable residence.

5. The appellant approached the High Court on the revisional side. J. S. Bedi J. considered the rent deed Ext. P-3 and the letter Ex. D-2 as also the other evidence and came to the same conclusion at which the courts below had arrived. Reliance was placed on the additional fact that when the suit was instituted the premises were being used by Chaman Lal both for purpose of residence and office.

6. Before dealing with the contentions raised on behalf of the appellant it is necessary to refer to Section 13(1)(h) of the old Act and Section 14(1)(h) and Section 57 of the new Act. Section 13(1)(h) of the old Act contained a provision that if the Court was satisfied inter alia that the tenant had, whether before or after the commencement of the Act, built acquired vacant possession of or been allotted a suitable residence it could order ejectment. In Section 14(1)(h) of the new Act the only change that was made was that the word "suitable" before the word "residence" was omitted. Under Section 57 of the new Act notwithstanding the repeal of the old Act all suits and other proceedings pending under that Act were to be continued and disposed of in accordance with provisions of the old Act. According to the first proviso to sub-section (2) the court or other authority "shall have regard to the provisions of this Act". In *Karam Singh Sobti and Another v. Shri Pratap Chand and Another* ((1994) 4 SCR 647) this Court had to consider the effect of what was contained in Section 57 of the new Act. It was held that the effect of the first proviso to Section 57(2) was that pending proceedings would continue under the old Act with this addition that where the new Act had slightly modified or clarified the previous provisions, those modifications and clarifications would govern the case. Similarly in *Brij Kishore and others v. Vishwa Mitter Kapur and Others* (AIR (52) 1965 SC 1574) it was laid down that the first proviso to Section 57(2) of the new Act must be read harmoniously with the substantive provisions of sub-section (2) and the only way of harmonising the two was to read the expression "shall have regard to the provisions of this Act" as merely meaning that where the new Act had slightly modified or clarified the previous provisions those modifications and clarification should be applied. These words did not take away what was provided by sub-section (2) and ordinarily the old Act would apply to pending proceedings.

7. It has been contended by Mr. S. C. Manchanda for the appellant that the new section would be applicable as no radical departure has been made in Section 14(1)(h) by omission of the word "suitable" and that there was only slight modification or clarification of the previous provision, namely, Section 13(1)(h). In our opinion whether Section 13(1)(h) of the old Act or Section 14(1)(h) of the new Act is applied the result, as will be presently seen, will be the same in the instant case.

8. Coming to the question whether the suit premises were taken by the late Labha Mal Arora for residence only or for residence as well as for use as office for carrying on his professional work of a legal practitioner, it may be observed that the concurrent finding of the court below is that the premises had been taken for residential-cum-business or professional purposes. That finding being one of fact must be accepted as final. It would, therefore, seem that the decision of this Court in *Dr. Gopal Dass Verma v. Dr. S. K. Bhardwaj and Another* ((1962) 2 SCR 678 at p. 685) can be appositely applied. In that case it was held that a tenant could not be ejected under Section 13(1)(h) because the tenancy of premises let out or used for residence and carrying on of profession could not be terminated merely by showing that the tenant had acquired a suitable residence. There the premises had been let out to a doctor who was an ear, nose and throat specialist. It was found that the premises had been used by the tenant for professional as well as residential purposes with the consent of the landlord. The case, therefore, fell outside Section 13(1)(e) but even under Section 13(1)(h) eviction could not be ordered. This is what was said in that connection :

"If the premises from which ejectment is sought are used not only for residence but also for profession how could Section 13(1)(h) come into operation ? One of the purposes for which the tenancy is acquired is professional use, and that cannot be satisfied by the acquisition of premises which are suitable for residence alone, and it is the suitability for residence alone which is postulated by section 13(1)(h).

Therefore, in our opinion, it would be unreasonable to hold that the tenancy which has been created or used both for residence and profession can be successfully terminated merely by showing that the tenant has acquired a suitable residence."

In the above case this Court further held that Section 2(g) of the old Act which defined the word "premises" referred to three kinds of user to which the premises can be put to i.e. residence, commerce and any other purpose. This necessarily included residence and commerce combined. Since it was shown that the premises had been let both for residence and for commercial purposes it did not follow that the premises ceased to be premises under Section 2(g); they continued to be premises under the last clause of that provision. The definition of 'premises' in the new Act is contained in section 2(i) and it is the same as in Section 2(g) of the old Act. The word 'tenant' is defined by section 2(1) of the new Act to mean "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". Having regard to Section 14(1)(h) of the new Act the original tenant in the present case was one who was in occupation of premises which were used for a composite purpose, namely, residence and profession. There could, therefore, be no eviction merely by acquisition of vacant possession of a residence by such a tenant and the position would be the same with regard to his heirs and legal representatives, the present respondents. It is quite clear that Section 14(1)(h) can apply only where a tenant is in occupation of a premises which is only residential; then alone he would have to go if he acquires or has residential accommodation of his own.

9. Mr. Manchanda has next contended that the decision of this Court in Dr. Gopal Dass Verma's case ((1962) 2 SCR 678 at p. 685) is distinguishable because it appeared from various facts that the dominant intention was to use the premises as a nursing home. He submits that in the present case the dominant intention was to use the premises as residence and the late Labha Mal Arora was merely given permission or licence which was of a personal nature to have his office as well there. We are unable to find that any test of dominant intention was applied in Dr. Gopal Dass Verma's case((1962) 2 SCR 678 at p. 685) .

10. The position in England is different where premises are let partly for business purposes and partly for residence. There the statutory provisions lay down that where a dwelling is let partly for business purposes and partly for residence, the Rent Act applies to the whole. Moreover where there is no covenant as to user and the question is what user was contemplated, the Court will infer what use was contemplated by the tenancy agreement; the test was the "main purpose" or "predominant intention" or "the prevailing contemplation" or "a propenderating contemplation" for the letting ((1962) 2 SCR 678 at p. 685). (Ibid p. 69). We are unable to derive any assistance from the English cases on the point.

11. Lastly Mr. Manchanda sought to raise the question of the permission contained in the letter Ext. D-2 being a licence which was personal to late Labha Mal Arora and which should be deemed to have come to an end on his death. It is further pointed out that after his death for a number of years the respondents used the premises purely for residence. In view of the finding of the courts below that the premises had been let to the predecessor-in-interest of the respondents or residence-cum-business or profession, this submission cannot be entertained.

12. For all the above reasons this appeal fails and it is dismissed with costs.

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