

S. K. Verma

Vs

Smt. Kamla Kapur

Civil Appeal No. 2356 of 1980

(A. C. Gupta, D. A. Desai JJ)

29.09.1980

JUDGMENT

GUPTA, J. –

1. This is an appeal at the instance of a tenant against the decision of the Delhi High Court dismissing summarily his second appeal on the ground that it did not involve any question of law. The second appeal was from an order of eviction passed by the Rent Control Tribunal, Delhi setting aside the order of the Additional Rent Controller, Delhi who had dismissed the application made by respondent before us under Section 14(1)(e) of the Delhi Rent Control Act for eviction of the tenant.

2. The appellant is a tenant on the first floor of the 132 Jor Bagh, New Delhi, owned by the respondent; and the ground floor of the house is also tenanted. The case made by the respondent in her application under Section 14(1)(e) was that her son who was employed as a mechanical engineer in a Calcutta firm was suffering from cancer and he wanted to come and live with her at Delhi, that she was residing on the first floor of premises No. 535, Defence Colony, New Delhi which was owned by Col. Barkat Narain whose niece was married to the respondent's son. Admittedly the respondent has been living in this flat for the last 10 years or more, and Col. Barkat Narain lives on the ground floor of the house. It is alleged that Col. Barkat Narain had asked her to vacate the flat as he proposed to open a clinic alleged before the Additional Rent Controller that the ground floor of the respondent's own house had fallen vacant on September 19, 1976 and sufficient accommodation was thus available to her. In answer to this allegation, the respondent filed an application stating that ground floor of her Jor Bagh house was let out to Delhi Cloth and General Mills and that one Shri Gupta who had been residing there and who is alleged to have left was only an officer of the company and she had not been given possession of the ground floor. The Additional Rent Controller held that the appellant had stated that possession of the ground floor had been delivered to the respondent and that it could not therefore be said that her need had been satisfied. However, the Rent Controller found that "the story set up in the evidence that the accommodation is required by Barkat Narain and Barkat Narain has asked the petitioner to vacate his house appears to be a ruse to get rid of the respondent". On this view the Additional Rent Controller dismissed the application of the respondent made under Section 14(1)(e).

3. The respondent preferred an appeal to the Rent Control Tribunal. In the meantime her ailing son died. The Rent Tribunal also did not believe that Col. Barkat Narain really proposed to open a clinic and had asked the respondent to quit the premises which she had been occupying. The Tribunal however allowed the application on the view that

... the natural desire of the appellant in the changed facts and circumstance cannot be

ignored. If she has in the past been residing in the house of a close relation when she was alone that by itself cannot be taken to be a permanent abode of the appellant. A landlord has a right to live comfortably and also choose the premises of her own choice.

The basis of the Tribunal's decision is not quite clear to us.

4. The ground on which the Tribunal based its decision that a landlord was entitled to live in the premises of his or her own choice was however not the ground on which the respondent sought eviction of the appellant. If the view taken by the Tribunal means that the changed circumstances justified respondent's claim, there must be some evidence to indicate in what way the change made a difference from the point of view of the respondent's need. On the other question also whether the ground floor being vacated by Mr. Gupta who had been living there, additional accommodation was available to the respondent - there is no firm finding or clear evidence.

5. We are of the view that the High Court should advert to these two aspects of the case. Accordingly, we allow this appeal, remit the case to the High court. There will be no order for costs. The High Court will allow the parties to adduce evidence only on the two aspects of the case we have referred to above and may direct the Additional Rent Controller or the Rent Controller or the Rent Control Tribunal to take such evidence and send it when taken the High Court. The High Court will then dispose of the appeal in accordance with law. The hearing of the appeal may be expedited and, if possible, the appeal may be disposed of within three months from the date our order is communicated to the High Court.

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