B. R. Mehta

Vs

Atma Devi and Others

Civil Appeal No. 1170 of 1987

(Sabyasachi Kukharji, G. L. Oza JJ)

02.09.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. What is the true meaning of the expression tenant has before or after the commencement of the Act, built, acquired vacant possession of or been allotted, a residence in terms clause (h) of Section 14(h) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') is the question raised in this appeal in the backdrop of interesting set of facts. This is an appeal by the tenant against the judgment and order dated April 6, 1987 of the Delhi High Court. To the facts first, however, we must go to appreciate the point. The appellant was at all material times since 1968 a tenant of the ground floor of premises No. 2/14, Kalkaji Extension, New Delhi. The premises had been let out in April 1968 to the appellant at a monthly rent of Rs. 340 per month by one Shri R. N. Kurra, deceased husband of respondent 1 and father of respondents 2 to 8. The premises consist of two bedrooms, one drawing room, one dining room, one kitchen, two bathrooms and courtyard at the back and porch in the front and one store and also one verandah. It is the case of the appellant that originally the appellant had occupied these alongwith his wife, his aged mother, his son, daughter, brother and sister-in-law. However, the brother and sister-in-law have since moved out and since 1979, the appellant's wife Smt. Santosh Raj was only staying with family off and on for short periods usually when the appellant was on tour. In the meantime on or about July 20, 1977 the landlord filed eviction petition against the appellant on the ground of bona fide requirement. On or about September 25, 1978 the appellant's wife Smt. Santosh Raj was allotted Flat No, 93, Sadiq Nagar, i.e., a government quarter was given to her due to her employment as a teacher in the Government Girls Higher Secondary School No III, Kalkaji, New Delhi. She goes to live there leaving the rest of her family in the premises in dispute. It is the case of the appellant as made out in appeal before us that one Shri P. R Arya and his family were asked to share with the appellant's wife on a joint-allotment basis because it was not safe for a lady to live alone. The case of the appellant was that the relationship between the appellant and his wife Smt. Santosh Raj was not very good. There were differences of opinion. The appellant wanted his wife to give up her job and concentrate on the upbringing of the children. The lady was reluctant. She wanted to pursue her own avocation and career. It is highlighted before us that in those circumstance the wife of appellant had applied for government accommodation and had gone to live in the said premises. However, by force of circumstances as the children have grown up and daughters became of marriageable age she was induced to give up her job and allotment and she has to the husband's premises being the premises in dispute. On March 17, 1986 respondent 1 filed in the court of the Rent Controller, Delhi a petition on the ground that the wife of the appellant Smt. Santosh Raj had been allotted on September 25, 1978 a residential quarter from the Directorate of Education, Delhi by virtue of her employment in Government Girls Higher Secondary School No III, Kalkaji, New Delhi. The appellant therefore

came within the mischief of clauses (h) of Section 14(1) of the Act. Written statement was duly filed in which it was stated that appellant had acquired any house but that the landlord had tried to take advantage of the strained relationship between the tenant and his wife. It was state that the state tenant had strained relationship with his wife and on account of the same only she had acquired a separate accommodation and started staying there and got her ration card prepared at the same address but since the appellant had grown up children and remained on touring job, therefore, in order to provide the required protection and care, the wife of the appellant came to the house in question temporarily. It was state that this fact is well within the knowledge of the landlord and other members of the family. It was denied that Smt. Santosh Raj, the tenant had sublet the quarter No. 93. On the other hand it was apparent that the department had allotted the house to the wife of the appellant alongwith one other colleague jointly, who had now surrendered the same. It was further stated that this joint allotment had been made to the appellant's wife on compassionate grounds. The appellant was therefore, not liable to be evicted from the premises in question it was asserted. The case was proceeded under Section 37 of the Act. It was the contention of the appellant that he wanted to substantiate by production of evidence both oral and documentary that the flat allotted to his wife was on compassionate grounds in recognition of her special need to live apart from him. It could not be an alternative accommodation for the appellant and his family. It was further stated that the wife was allotted Flat No. 93, Sadiq Nagar on September 25, 1978. A few months later, the appellant's wife was all alone in the flat and felt the need for some company, and she arranged one of her colleagues Mrs. P. R. Arya along with her family should come to stay with her in this flat. Mrs. Arya's husband Mr. P. R. Arya was entitled to such accommodation in his own right as a teacher in Government Boys Higher Secondary School, Hari Nagar Ashram, New Delhi and accordingly the appellant's wife arranged to have the flat jointly allotted to herself and Mr. P. R. Arya with his family entered the flat on or about April 28, 1979 and continued to share the flat with the appellant' wife for three years only. In 1982 they moved out of the flat and since then the appellant's wife has continued in the flat. In 1978 when she first occupied the flat, the appellant's wife had a separate ration card giving the flat as her address and had drawn ration on that basis and not with her family in the suit premises. It was further stated that the appellant should have been permitted to adduce evidence both oral and documentary on all the above facts. But the learned Additional Rent Controller directed that no evidence need be necessary as the matter could be decided on admitted facts. In view of the provisions of law as the tenant had acquired vacant possession for residence became disentitled to retain the premises in question, he, therefore, passed an order of eviction.

2. Aggrieved by the aforesaid order the appellant went up in appeal being R. C. A No. 957 of 1986. The learned Rent Control Tribunal negatived the appellant's plea that he should have been allowed to produce evidence in support of his averment of strained relations with his wife and that on account of these strained relations he could not in any way avail of the allotment of the flat to his wife. The Rent Control Tribunal dismissed the appeal of the appellant.

3. Being aggrieved thereby the appellant approached the High Court in second appeal. The High Court by its impugned judgment dated April 6, 1987 summarily rejected the appeal. Being further aggrieved the appellant has come up to this Court as mentioned hereinbefore.

4. The short question is whether under clause(h) of Section 14(1) of the Act allotment of a house to a wife who is a government employee in all circumstances disentitled the tenant to retain the tenanted premises. We are unable to accept the view of the Delhi High Court. We have noted the provisions. The purpose of the Act is to control rents and eviction, in other words, to control unreasonable evictions and to ensure that in an atmosphere of acute shortage of accommodation,

there is proper enjoyment of available spaces by those who want and deserve. In other words, to ensure that there is no unreasonable and unnecessary spaces in the hands of one tenant and other tenants and landlord's need of occupation of spaces remains unsatisfied, clauses (h) of Section 14(1) is an attempt in a way to ration out accommodation between tenants and landlords. Looked at from the point of view unless there is acquisition of a premises or a flat or allotment of a premises or part of a premises by the tenant in which he has domain which he can reasonably and alternatively use as a substitute for the place he is using in the tenancy it cannot lead to a forfeiture of his right to occupy his tenanted premises. The case would be otherwise, however, it a tenant comes into possessions of a premises or is allotted a piece of residence or acquires vacant possession of the premises then such a tenant cannot prevent, if other conditions are fulfilled under Section 14(1)(h) of the Act being liable to forfeiture of this tenancy. But counsel for the respondent heavily relied on a decision of this Court in Prem Chand v. Sher Singh (1981 Delhi Rent Judgment 287 (SC). That was a case under the Delhi Rent Control Act, 1958 and Section 14(1)(h) of the Act came up for consideration. The respondent-tenant was out of possession since October 9, 1976. He was dispossessed during the pendency of the appeal before the Rent Control Tribunal. The respondent's son was a business executive, who was, at one time, allotted a flat by his employers. On December 12, 1980, the respondent's wife purchased a flat at Saket from the Delhi Development Authority, at a cost of about Rs. 1,20,000. The flat was available to the respondent though his explanation is that it had been let out by his wife to their son. The respondent thereafter had now no case to be put back in possession of the flat in dispute. Chandrachud, C. J. delivering the judgment of the Court observed that the court had allowed the appellants to amend their applications for possession by pleading that the respondent had acquired possessions of a vacant residence within the meaning of Section 14(1) (h) of the Delhi Rent Control Act, 1958. Having considered the averments of the parties on the point at issue it was held in that case that the respondent had through his wife acquired vacant possession of a residence in Delhi and in that view of the matter was held not entitled to retain old tenanted premises. Mr. Avadh Bihari Rohtagi, learned counsel strenuously contended before us that (sic) this proposition that acquisition of a flat by the wife was acquisition by the tenant and such acquisition in all circumstances would be within the mischief of Section 14(1)(h) of the Act and would disentitle the tenant to retain his flat in question. We are unable to accept this reading of the said Act. The said decision rested on the facts of that case. There in that case, these Court found that the respondent's wife had purchased a flat in Saket and further found that the flat was available to the respondent. In those circumstances it was held that there was acquisition of vacant possession of a residence and as such Section 14(1)(h) of the Act would be attracted. It cannot however be laid down as a general proposition of law that acquisition of flat by the wife in all circumstances would amount to acquisition of flat by the tenant. This position has been very properly highlighted in the decision of the Delhi High Court in Smt. Revti Devi v. Kishan Lal (1970 RCJ 418) where Deshpande, J. as the learned Chief Justice then was held that the mere occupation of a new residence by the tenant without any legal right to do so would not covered by proviso (h) to Section 14(1) of the Delhi Rent Control Act. If he goes to stay in the house of his wife, legally speaking, he has no right as such to stay and can be turned out from the house at any time by its legal owner, namely, the wife. There was no law according to which the husband and the wife could be deemed to be one person. Therefore, where proviso (h) required that the tenant himself should acquire vacant possession of another residence before he can become liable to eviction, the effect of its language cannot be whittled down by arguing that proviso (h) would apply even if it is not the tenant himself but his wife or his other relation were to acquire such other residence. Therefore, as a general proposition of law, the acquisition of other residence must be by the tenant himself before proviso(h) to sub-section (1) of Section 14 of the Act would apply. The learned Judge dealt with this and observed that in construing the above provision, it has to be borne

in mind that the scheme of the Act had to be appreciated. Tenancy is a right vested in the tenant. The main purpose of the Act is the protection of tenants from eviction. The various provisos to sub-section (1) of Section 14 laid down the exception to this rule. The learned observed that when proviso (h) made tenant liable to eviction, its effect was to divest the tenant of his right of tenancy. of the legislature in divesting the tenant of his right was based upon the fact that the tenant had legally acquired another residence as of right. There is no law according to which husband and wife could be deemed to be one person. Therefore, the correct position must be that if a wife or a husband acquires a property and the other spouse if he/she is the tenant has as a legal right by virtue of such acquisition to go and stay there, then only can such acquisition or allotment of premises disentitle or attract the provisions of clause (h) of Section 14(1), otherwise the whole purpose would be defeated. In other words if for all practical and real sense the tenant, acquired, built or was allotted another residence then his need for the old tenanted residence goes and the tenant loses his right to retain his tenanted premises. That is the rationale behind the scheme.

5. Dr. Roxna Swamy drew our attention to the various aspects of the case where no proper opportunity was given to the tenant to show that in fact the husband would not and did not have any right at all to come to the premises allotted to the wife which was taken because of the strained relation of the husband and wife regarding the career of the wife. In such a house the husband will not come, he will certainly have no legal right or access for either staying or coming in the premises acquired by the wife. If it defeats the husband's tenancy then it would be mockery of justice. Mr. Rohtagi tried to submit that there was no evidence before the trial court as well as the High Court of the alleged strained relationship between the parties. What is necessary is that unless there is a positive evidence and here there is none of acquisition of property prima facie in the name of the tenant or allotment of flat to the tenant, it cannot be said to have been by or allotted to some members of the tenant's family other than the wife. That cannot defeat the tenant's right under clause (h) of Section 14(1). If there is such an acquisition by or on behalf of the tenant then the tenant and members of the tenant's family would have dominion over the acquired residence. Such acquisition would bring to the tenant the mischief of Section 14(1)(h) of the Act. In the case of this nature the appellate court had ample power in our opinion to have taken additional evidence. Our attention was drawn to a decision of the learned Single Judge in the case of Raj Kumar v. Vedprakash (1982 Jab LJ 451). Our attention was drawn at the bar that a judgment can be given on admission, that is to say, in this case that is to say, in this case that an allotment had been made in favour of the wife or the tenant. Our attention was drawn to Mulla's Code of Civil Procedure. Vol. II, 14th edition, page 1148 which highlights that such oral admission must be definite and unambiguous and must be satisfactorily established. In our opinion, from the fact that the wife of the tenant was allotted a temporary government accommodation, it cannot be said that there was admission by virtue of which the tenant could lose his tenancy that the wife had acquired a house which is available to the husband over which the husband has a domain which could be a substitute to the tenanted premises. In that view of the matter we are of the opinion that there was no admission at all.

6. Our attention was drawn to certain observations of Bhagwati, J., as the learned Chief Justice then was, in Phiroze Bamanji Desai v. Chandrakant M. Patel ((1974) 3 SCR 267 : (1974) 1 SSC 661 : AIR 1974 SC 1059, where dealing with certain facts whether premises given on a licence could be considered in considering the bona fide requirement of the landlord to the allotment or acquisition. In our opinion, this principle is wholly irrelevant for the point in controversy before this Court. We are not concerned here whether there was ground for bona fide requirement of the landlord for which a suit had been filed and which is pending appeal. This fact of acquisition or allotment of flat in the name of wife (which incidentally she has lost having given her job) can be in certain circumstances a factor in judging the bona fide needs of the landlord : but the same indisputably

cannot be any ground it evict the tenant on the ground that he has acquired vacant possession or been allotted residence in terms of clause (h) of Section 14(1). Mr. Rohtagi drew our attention to certain observations of this Court in Gajanan Dattatraya v. Sherbanu Hosang Patel where this Court held that the tenant's liability to eviction arises when the fact of unlawful sub-letting is proved. The fact that subsequently the other tenant had left the premises does not cure the mischief done. Mr. Rohtagi placing this decision tried to urge before us that the allotment itself of a residence or acquisition to attract clause (h) of Section 14(1) of the Act. The fact that subsequently the tenant had left the premises was irrelevant and did not affect the position. It was further submitted that the tenant had acquired a premises or was allotted a residence which could be considered to be so in terms of clauses(h) of Section 14(1) but the flat in question allotted to the wife of the tenant could not by any stretch of imagination be considered to be a matrimonial home. In England the rights of the spouses be it the husband or the wife to the matrimonial home are now governed by the provisions of Matrimonial Homes Act, 1967. Halsbury's Laws of England, 4th Edition. Vol. 22, page 650 deals with the rights of occupation in matrimonial home and paragraph 1047 deals with and provides that where one spouse is entitled to occupy a dwelling house by virtue of any estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then the spouse not so entitled has the certain rights(known as "rights of occupation") that is to say if in occupation a right not to be evicted or excluded from the dwelling house or any part of it by the other spouse except with the leave of the court given by an order, if not occupation, a right with the leave of the court so given to enter into and occupy the dwelling house. But such rights are not granted in India though it may be that with charge of situation and complex problems arising it is high time to give the wife or the spouse a right of occupation in a truly matrimonial home, in case of marriage breaking up or in case of strained relationship between the husband and the wife. We, however cannot for the purpose of this case get much assistance from the principle adumbrated in paragraph 1047 of Halsbury's Laws of England. In England cases before 1968 established that occupation of the matrimonial home by a tenant's wife after the tenant had left counts as occupation by the tenant so as to preserve the statutory tenancy for as long as the marriage itself subsists. In those circumstances in England the landlord could not properly be granted an order for possession against the husband unless there were available grounds for possession against husband and wife. The tenant cannot abandon his rights while his wife remains; nor can the landlord evict the wife even if the tenant consents or purports to surrender his statutory tenancy. This is the result of the case law in England and much social awareness and the case laws have been given statutory expression in the Matrimonial Homes Act, 1967. We have no such law. The premises in question which the wife occupied was indisputably not the matrimonial home. It is nobody's case. The husband would not therefore have any statutory or legal right against the government to use and enjoy the premises allotted to the wife of the tenant because of her job. Looked at from any point of view the tenant cannot be made to lose his tenancy because of the wife acquiring possession of a flat or allotment of a flat because of her official duties over which the husband has no right or domain or occupation.

7. In the premises we are unable to sustain the judgment under appeal. To complete the story the wife of the tenant had resigned and has joined the husband at 2/14, Kalkaji Extension, New Delhi. We hope there will be no more strained relationship in the family. Hereafter they will live happily provided the landlord permits so. We shall try to ensure that they so permit.

8. The appeal is allowed and the judgment and order of the High Court and the courts below are set aside. The eviction petition under Section 14(1)(h) of the Delhi Rent Control Act, 1958 is dismissed. In the facts and circumstances of the case the parties will bear and pay their won costs. This, however will not in any manner prejudice the rights, if any, if the parties in the other eviction

petition on the ground of bona fide need of the landlord which we are told is still pending.

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