

Mohini Badhwar

Vs

Raghunandan Saran Ashok Saran

Civil Appeal No. 1842 of 1981

(CJI R. S. Pathak, M. N. Vankatachaliah JJ)

27.04.1989

JUDGMENT

PATHAK, C. J. –

1. This is a tenant's appeal arising out of proceedings for her ejection.
2. The respondent, as landlord of the premises let to the appellant, filed a petition for her eviction on the ground set forth in Section 14(1)(h) of the Delhi Rent Control Act, 1958, that is to say, that the appellant had "acquired vacant possession of... a residence" after the commencement of the Act, viz. her own house D-196, Defence Colony, New Delhi and was therefore liable to hand over possession of the rented premises occupied by her to the respondent. It was alleged that the appellant had acquired vacant possession of her house on November 20, 1973 after the premises in suit had been let out to her on April 1, 1971. The appellant denied that she was liable to ejection.
3. The Assistant Rent Controller, Delhi, and the Rent Control Tribunal concurrently held that the appellant was owner of house D-196, Defence Colony, New Delhi, that on November 20, 1973 the previous tenant had vacated the premises and handed over vacant possession and that thereafter she had sold it to one Smt. Leela Wati on November 24, 1973. It was observed that during the period November 20, 1973 to November 24, 1973 it must be taken that she was in possession of alternative accommodation. It was also held concurrently that even though on the date the petition for eviction was filed, the house, D-196, Defence Colony, New Delhi, was no longer in the occupation of the appellant it was sufficient for the purpose of Section 14(1)(h) that some time prior to the filing of the eviction petition the appellant had obtained possession of the house. The High Court endorsed the view taken by it in *Hem Chand Baid v. Smt. Prem Wati Parekh* (AIR 1980 Del 1), and in the view that the ground for ejection had been made out when the eviction petition was filed it dismissed the appeal.
4. In this appeal it is urged on behalf of the appellant that before the earlier tenant of the appellant had vacated the house the appellant had already entered into an agreement to sell the house to another person, and that therefore in the presence of that obligation it was not possible to say that when the house was vacated the appellant was entitled to enter into and to continue on possession of the house. It is contended before us that before the original tenant vacated the house there was an oral agreement between the appellant and Smt. Leela Wati to sell the house to Smt. Leela Wati and that the agreement was only formalised in a written document on November 24, 1973. It is urged that when the original tenant vacated the house on November 20, 1973 the appellant was under a legal obligation to sell the house to Smt. Leela Wati, and that in the circumstances, the house cannot be said to constitute alternative accommodation for the purpose of Section 14(1)(h) of the Act. The

Rent Control Tribunal has found against the existence of any such oral agreement. Upon that it would seem that it was only after obtaining possession on November 20, 1973 from the original tenant, that is, four days later, that the appellant executed an agreement for sale with Smt. Leela Wati. It is apparent that on November 20, 1973 the appellant came into the house belonging to her and it was available to her for her occupation. The circumstance that she lost possession on the date when the eviction petition was filed does not protect the appellant against Section 14(1)(h) of the Act.

5. In the result, the appeal fails and is dismissed but there is no order as to costs.

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