

SUPREME COURT OF INDIA

Smt. Shashi Jain

Vs.

Tarsem Lal (Dead)

C.A.No. 3623 of 2001

(Lokeshwar Singh Panta and B. Sudershan Reddy JJ)

31.03.2009

JUDGMENT

LOKESHWAR SINGH PANTA, J.

1] This appeal by special leave has been filed by Smt. Shashi Jain-landlady, assailing the final judgment and order dated 23.04.1998 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 4062 of 1997.

2] The facts in brief giving rise to this appeal are as follows:-

2.1) On 24.07.1961, the mother of Smt. Shashi Jain-landlady- appellant (hereinafter referred to as the "landlady"] had inducted Tarsem Lal as a tenant in the premises, i.e. House No. 971, Block-1 consisting of three rooms, one verandah, attached courtyard, open space and latrine, etc. situated on Rajpura Road, Civil Lines, Ludhiana, on a monthly rent of Rs.30/- vide written rent deed (Ex.-

AW5/A]. On 12.11.1973, Khushi Ram had submitted application Form D-1 in the office of the Civil Supply Officer for getting ration card to his family members namely Smt. Lajwanti - wife, Tarsem Lal, Janak Raj, Harbans Lal, Kewal Krishan- sons and Avinash Kumari - daughter-in-law who all were living together in the demised premises on 01.04.1970, mother of the landlady suffered a consent decree of the court in regard to the demised premises jointly passed in favour of the landlady and her brother. Because of non- registration of the said decree, ownership rights could not be transferred in the name of the landlady and her brother.

2.2) On 14.03.1974, the mother of the landlady preferred an application for ejectment of Tarsem Lal-tenant on the ground of arrears of rent w.e.f April 1973 to May 1974, which amount later on was tendered by the tenant in the court. Again on 01.10.1974, the mother of the landlady had filed second application for ejectment of the tenant for non-payment of rent from June 1974 to October 1974.

3) It was the case of the landlady before the Rent Controller that the tenant did not tender the arrears of rent as claimed. The Rent Controller, Ludhiana, passed an ejectment order against the tenant. On appeal, the First Appellate Authority set aside the said order and held that since the landlady and her brother had already become the landlords of the demised premises, therefore, Tarsem Lal has to be held a tenant under them. The order of the First Appellate Authority was upheld by the High Court of Punjab and Haryana on 11.04.1980. The special leave petition preferred against the order of the High Court came to be dismissed by this Court.

4) On 22.05.1982, the landlady had preferred an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the "Rent Act"] for the ejectment of Tarsem Lal-tenant, inter alia, on the following grounds:-

[a] That respondent no.1 was in arrears of rent w.e.f. June 1974 onwards.

[b] That the respondent no.1 had converted the demised premises into the residence of the family of his married brother and sister, whereas it was rented out to him for his personal residence.

[c] That the landlady required the demised premises for her own personal use and occupation and also for use and occupation of her aged mother.

It appears from the record that later on by way of amendment, additional ground was also incorporated in the ejectment application, which read as under:

[d] That the respondent no. 1 without the written consent of the landlady had sub-let the demised premises to Rakesh Kumar-respondent no. 2, who is employed in Punjab Agricultural University as a messenger boy.

5] It was also the case of the landlady before the Rent Controller that Rakesh Kumar on 30.08.1983 had given a declaration in writing to his Department that he is paying Rs.150/- as monthly rent of the demised premises. Tarsem Lal the original tenant had shifted his residence in two rooms located at the backside of his 'Dhaba' (Restaurant). Before that, the father of Rakesh Kumar used to reside in the demised premises and was drawing house rent from the Punjab Agricultural University, where he was employed as Tube-well Operator, in regard to the portion of the demised premises.

6) Tarsem Lal-tenant and Rakesh Kumar-respondent no. 2 herein both appeared before the Rent Controller on the date of hearing of the application and tendered arrears of rent which amount was accepted by the landlady. The claim of non- payment of rent, therefore, has been rendered satisfied.

7) Tarsem Lal-tenant filed written statement to the eviction application raising inter alia preliminary objections: [i] there exists no relationship of landlady and tenant between them, [ii] Rakesh Kumar was not a necessary party and has been wrongly impleaded in the eviction proceedings, [iii] the eviction petition was bad for partial ejectment, [iv] bad for non-joinder and mis-joinder of necessary parties and [v] that the landlady could not take advantage of her own act and conduct. He denied the averments of sub-letting of any portion of the demised premises to Rakesh Kumar. He stated that Rakesh Kumar was residing as a tenant in a portion of building bearing no. 1138/2 situated in village Rajpura, Tehsil & District Ludhiana and before that, he used to reside with him as a licensee being his sister's son. It was further asserted that since the inception of tenancy, the mother of Rakesh Kumar had been residing with him in the demised premises.

8) On merits, the tenant denied the ownership rights of the property in dispute of Smt. Santosh Kumari, mother of the landlady. He has also denied the averments that mother of the landlady had let out three rooms and a verandah to him on a monthly rent of Rs.30/- from July 1961. According to the tenant, he was in occupation of three rooms, verandah, open space, one bathroom, one latrine and kitchen. It was denied that any suit was filed by the landlady and her brother against their mother Smt. Santosh Kumari for declaration, which was later on decreed. The tenant, however, admitted that the mother of the landlady filed the ejectment application against him, which was allowed by the Rent Controller. The First Appellate Authority set aside the order of eviction passed by the Rent Controller which was upheld by the High Court. He denied the claim of the landlady that she bona fide requires the demised premises for her personal use and occupation alongwith her aged mother. He pleaded that the landlady is a permanent resident of Chandigarh and she is in service of Punjab School Education Board. It was also stated that the landlady has got other residential buildings in Ludhiana town, which are in the possession of her brother and mother. He also submitted that Rakesh Kumar his sister's son was born in the premises in dispute and he has not

sub-let the demised premises to Rakesh Kumar. He denied the averments of the landlady that the father of Rakesh Kumar used to reside in the demised premises when he was an employee of Punjab Agricultural University, Ludhiana. It was, however, admitted that Rakesh Kumar is employed in Punjab Agricultural University, Ludhiana.

9) The landlady then filed re-application controverting and contradicting the averments of the written statement filed by the tenant and reiterating and re-ascertaining the averments made in the application for eviction of the tenant. On the controversial pleadings of the parties, the Rent Controller framed following issues:

[1] Whether the petitioner requires the demised premises bonafide for her own use and occupation? OPA.

[2] Whether the demised premises are being used for the purpose other than for which these were leased? OPA.

[3] Whether respondent no.1 without the written consent of petitioner, has sub-let the demised premises in favour of respondent no. 2? OPA.

[4] Whether there exists relationship of landlady and tenant between the petitioner and respondent no. 1? OPA.

[5] Whether the tender made is invalid? OPA.

[6] Whether the findings of the Hon'ble High Court in Civil Revision No. 1096 of 1977 operate as res judicata to the present petition OPR.

[7] Whether the respondent is estopped from challenging the relationship in between petitioner and respondent no. 1? OPA.

[8] Whether the petition is not maintainable as alleged? OPR.

[9] Whether the petition is bad for partial ejection? OPR.

[10] Whether the petitioner is estopped by her act and conduct to file the petition against respondent no. 2? OPR.

[11] Whether the petition is bad for non-joinder of necessary parties? OPR.

[12] Relief.

10) The parties went to trial and led their evidence. On the main question of bona fide requirement of the demised premises by the landlady for her own use and occupation, the Rent Controller, Ludhiana, had not found the evidence of the landlady appearing as AW-1 and supported by the evidence of her mother- AW-5, reliable and acceptable. Therefore, the first Issue was decided against the landlady and in favour of the tenant. Issue Nos. 2, 3 and 5 were decided in favour of the tenant and against the landlady. Finding against Issue No. 4 was recorded in favour of the landlady and against the tenant. Issue No. 6 was not pressed by the tenant and therefore, it was decided in favour of the landlady and against the tenant. In view of the findings on Issue Nos. 4 and 6, Issue Nos. 7 and 8 were rendered as redundant. Issue No. 9 was not pressed by the tenant and it was, accordingly, decided against him and in favour of the landlady. The Rent Controller in view of the finding on issue no. 3 held Issue No. 10 having become redundant. The tenant did not press Issue No. 11 and therefore, it was decided against him and in favour of the landlady. The Rent Controller, on the basis of the findings recorded on Issue Nos. 1 and 3, dismissed the petition of the landlady for eviction of the tenant leaving the parties to bear their own costs.

11) Being aggrieved against the order of the Rent Controller dated 29.03.1995, the landlady filed appeal before the Appellate Authority, Ludhiana. The Appellate Authority by its order dated 06.02.1997 dismissed the appeal with costs and thereby affirmed the order of the Rent Controller. In addition, counsel fee was assessed at Rs. 1,000/-.

12) Feeling aggrieved thereby, the landlady filed Revision Petition under Section 15 [5] of the Rent Act before the High Court. The learned Single Judge by order dated 23.04.1998 dismissed the said revision petition. The order of the High Court reads as under:

"The petitioner seeks eviction of the respondent on the ground that she bona fide requires the property in question and the other ground pressed is that the tenant-respondent no. 1 has sublet the property to respondent no. 2.

Both the Rent Controller and the Appellate Authority have returned the findings adverse to the petitioner. The findings of facts by the courts are based on evidence. They cannot be described to be erroneous and absurd to permit this court to interfere in the present Revision Petition. In these circumstances, there is no ground to interfere. Revision Petition fails and is dismissed."

13) Now, the landlady has filed this appeal by special leave.

14) During the pendency of this appeal, Tarsem Lal - tenant, who was a bachelor expired on 17.07.1999. I. A. No.1 of 2000 has been filed by Janak Raj, Kewal Krishan - brothers and Satya Devi - sister of deceased Tarsem Lal, praying for bringing them on record as legal representatives of the deceased.

15) We have heard the landlady - appellant appearing in person and argued the appeal and Mr. M.N. Krishnamani, learned Senior Advocate appearing on behalf of Rakesh Kumar- respondent no. 2 herein. Primarily and mainly following two points have fallen for consideration of this Court:

[i] Whether the landlady-appellant has proved on record that she bona fide requires the demised premises for her personal use and occupation? and

[ii] Whether the deceased Tarsem Lal ♦ the tenant without the consent of the landlady had sub-let the demised premises to Rakesh Kumar-respondent no.2.

16) We propose to scrutinize the evidence independently led by the parties before the Rent Controller, before we deal with rival contentions raised before us. This exercise on our part becomes necessary to find out whether the authorities below in exercise of their statutory functions and jurisdiction have appreciated the evidence properly and in right perspective or the vital evidence led by the landlady in support of her case has been ignored which has caused grave miscarriage of justice to her. The above extracted order of the High Court reveals that the Revision Petition of the landlady was dismissed mainly on the ground that the Rent Controller as well as the Appellate Authority both have rendered concurrent findings of facts; therefore, no interference was called for in the said orders of the authorities below. The order of the High Court does not deal with the ground of challenge made by the landlady in her revision petition and the contentions raised by the parties before it, nor does the order contain clear findings on the points in issue. The High Court in exercise of its revisional jurisdiction ought to have recorded its independent findings on merits after considering all points raised by the parties before it based on the assessment of the evidence by the authorities below. POINT NO. 1

17] In support of her claim of bona fide requirement of the demised premises, the landlady in her deposition as AW-1 has categorically stated that Tarsem Lal - tenant had shifted his residence from the demised premises finally to a new residence consisting of two rooms located at the back side of his 'Dhaba'. AW-5 the mother of the landlady corroborated her testimony. The Rent Controller and the Appellate Authority rejected the claim of requirement of the premises in dispute made by the landlady on flimsy and untangible ground holding that the landlady was residing at Mohali the place of her posting as a teacher in Education Board. It was the specific case of the landlady that she in fact was residing at Mohali in one room because of her employment as a Government Servant and occasionally she used to visit Ludhiana to look after her mother. It was established by the landlady that had she got the possession of the demised premises from the tenant when he had shifted to his new residence located at the back side of the 'Dhaba', she could have immediately occupied the premises and started living along with her old mother therein. It is her evidence that had she got the vacant possession of the demised premises, she would have commuted from Ludhiana to Chandigarh to attend her official duties as the distance between these two places is neither far-off nor time consuming. The tenant could not rebut and controvert the acceptable evidence of the landlady on any material aspect. On the contrary, it finds stated in paragraph 10 of the order of the Rent Controller that the tenant and his brothers who appeared as RW - 7 and RW 8 respectively, have admitted the said statement of AW landlady. The Rent Controller and the Appellate Authority rejected the claim of the landlady on the point of bona fide requirement, on the other ground holding that the mother of the landlady is the owner of one more house at Ludhiana, which was in occupation of the brother of the mother of the landlady and the house could be shared by the landlady and her mother. During the course of the hearing of this appeal, the landlady has admitted before this Court that she has since retired from the Government Service and presently she is residing with her sister at Chandigarh and now she intends to reside in her own house at Ludhiana. It has been proved by the landlady that her mother being an old woman has to be looked after by her in her house at Ludhiana. The evidence led by the landlady clearly proves that Tarsem Lal, had stopped living in the demised premises and as noticed above he had shifted to his new residence located at the back of his 'Dhaba'. The landlady categorically stated in her statement that a house owned by her parents located in Field Ganj, Ludhiana is unfit and unsafe for habitation of landlady and her aged ailing mother. The house is in dilapidated condition and there exist no open space, no sun light and air in that part of the area as the house is located near railway line and daily smoke and dust of running trains will be very harmful and injurious for the health of her mother who is a chronic patient of Asthma and high blood pressure. It is also proved on record that the landlady's mother's house situated at Shahpur is in industrial area and is in possession of the tenants inducted by the maternal uncle of the landlady. It is also proved on record that the Rent Controller, Chandigarh has passed ejection order in regard to one room on the first floor of House No. 454, Sector 15-A, Chandigarh, which was occupied by the landlady at the time of her employment in Government job at Mohali.

18] It is not in dispute that Tarsem Lal - tenant was an unmarried man and during the pendency of this appeal he has died. The landlady has pleaded and proved by leading reliable, positive and acceptable evidence that she is in urgent need of the demised property for her bona fide use and occupation in terms of Section 13 (3)(a)(i)(a) of the Rent Act. POINT NO.2

19] In support of this point, the landlady has proved on record that Shri Satpal, father of Rakesh Kumar-respondent had shifted in the demised premises along with his family members about ten years after Chinese aggression in the year 1973-74 and then Shri Satpal got employment in Punjab Agricultural University at Ludhiana as Tubewell Operator. The Rent Controller as well as the First Appellate Authority have not properly appreciated the evidence of the landlady and wrongly concluded that Rakesh Kumar - respondent became sub-lessee in the year 1973 without appreciating and considering the fact that in the year 1973 Rakesh Kumar was a minor and could not execute agreement of tenancy. It was the specific case of the landlady that Rakesh Kumar was inducted as sub-tenant by Tarsem Lal in the year 1983 after Rakesh Kumar on the death of his father Satpal got employment in Punjab Agricultural University, Ludhiana. It is proved on record that Tarsem Lal had parted with the possession of two rooms and verandah of the demised premises to Rakesh Kumar - respondent for a consideration of Rs. 150/- per month as rent. The landlady has proved on record pro forma D-1 prescribed for the employees of Punjab Agricultural University, Ludhiana, for drawal of the house rent allowance (Ex. AW/1a) which would prove that Rakesh Kumar - respondent has been drawing a sum of Rs. 150/- per month as rent for unfurnished accommodation of the demised premises. Application Form D-1 dated 12.11.1973 prescribed for distribution card of food grain and sugar submitted by Khushi Ram father of Tarsem Lal was acknowledged on 29.07.1975 by a Clerk in the Office of the Food Supply, Ludhiana. On bare perusal of Ex. AW-1/1 produced on record by the landlady, it becomes crystal clear that Khushi Ram, his wife Lajwanti, Tarsem Lal, Janak Raj, Kewal Krishna - sons and one Avinash Kumari - daughter in law of Khushi Ram were living in the demised premises. Further document - D1 would show that Rakesh Kumar - respondent was not residing with his mother in the demised premises since the inception of the tenancy as held by the Rent Controller in his order. The Appellate Authority, in our view, has failed to apply its independent mind and merely stamped the order of the Rent Controller without giving independent reasons for upholding the said order. The statement of Tarsem Lal that his sister and her son Rakesh Kumar - respondent were living with him at the time of inception of the tenancy has been wrongly relied upon by the Rent Controller which is contrary to the documentary evidence Form D-1 attached with (Exhibit AW 1/1). The Rent Controller and the Appellate Authority as well as the High Court have gravely erred in not appreciating and considering the fact that payment of rent by a sub-tenant to the tenant is always a secret arrangement between them and as stated above, Rakesh Kumar - respondent has been receiving a sum of Rs. 150/- per month as rent from his employer of the demised premises. The statement of Smt. Satya Devi - RW 5, sister of Tarsem Lal that she was residing with her son in the demised premises since 1961 has been wrongly accepted by authorities below as her statement too is wholly contrary to the documentary evidence Form D1 placed on record and proved by the landlady along with Ex. AW1/1. Satnam Rai - RW 7, the Sub Inspector of Food and Supplies Department has proved on record Form Ex. RW 7/1, Certificate Exhibit RW 7/2, entries from register Ex. RW 3, Exhibit RW 7/4 and ration card Exhibit R-8 which would prove that in the year 1973, Tarsem Lal- tenant was residing in the demised premises along with his father and brothers etc. whose names find mentioned in form D-1. Thus, the documentary evidence on record, belies the oral version of Tarsem Lal and his sister Satya Devi-RW 5 that Rakesh Kumar was residing in the house in dispute along with her right from the day of his birth

i.e. 27.11.1962 till the application for eviction of the tenant was filed by landlady before the Rent Controller in the year 1982.

20] In the backdrop of the above stated evidence led by the landlady, the plea of the appellant that Tarsem Lal had sublet the premises in dispute to Rakesh Kumar without her written consent has

been proved by her by leading reliable and convincing evidence. In the facts and circumstances, Rakesh Kumar - respondent is held to be liable to be evicted from the demised premises in terms of the provisions contained in Section 13(2)(ii)(a) of the Rent Act. The Rent Controller as well as the First Appellate Authority have failed to appreciate the evidence of the landlady in right perspective. The High Court in exercise of its revisional jurisdiction has power to satisfy itself as to whether the question of subletting which is a question of law was properly decided by the courts below based on the evidence, but the order shows that the High Court has legally failed to exercise its revisional jurisdiction in dismissing the revision petition of the landlady without assigning independent reasons and also not taking into consideration the perversity and infirmity of the order of the Rent Controller as confirmed by the Appellate Authority based upon misreading and mis-appreciation of the evidence on record. This Court in exercise of its jurisdiction in this appeal will not be over-reaching its power in appreciating the evidence on record to find out whether the order of the authorities below as confirmed by the High Court are perverse not based upon proper and legitimate appreciation of the evidence on record led by the landlady which orders have caused miscarriage of justice to the landlady.

21] The contention of Mr. M.N. Krishnamani, learned senior counsel appearing for Rakesh Kumar - respondent that this Court shall not be obliged to interfere with the concurrent findings of fact arrived at by the three courts below cannot be accepted for the aforesaid reasons.

22] In the result, this appeal deserves and it is, accordingly, allowed. The order of the Rent Controller, Ludhiana, dated 24.03.1995 passed in RA No. 71 and order of the Appellate Authority, in Rent Appeal No. 2/21-4/1995 dated 6.2.1997 as well as the unreasoned order of the High Court dated 23.4.1998 passed in Civil Revision No. 4062/1997 are all quashed and set aside. As a consequence thereof, the application for eviction of Rakesh Kumar - respondent, son of Satpal filed by the land lady - appellant under Section 13 of the Rent Act is accordingly, allowed on the grounds available to her under Section 13(3)(a)(i) (a) and Section 13(2)(ii)(a) of the Rent Act.

23] The landlady, therefore, is held entitled for eviction of Rakesh Kumar - respondent from the suit premises. Rakesh Kumar and/or any other person claiming any right, title or interest in the demised premises are directed to hand over the vacant possession of the premises in dispute to Ms. Shashi Jain, the landlady on or before 31st May, 2009. In default thereof, Rakesh Kumar - respondent shall pay a sum of Rs. 500/- per day as mesne profits for unauthorized use and occupation of the demised premises after the stipulated day of 31st May, 2009 till the day the vacant possession is not handed over to the landlady.

24] Rakesh Kumar - respondent shall also pay costs of Rs. 5000/- to the landlady. I. A. No. 1 of 2000

25] In view of the final disposal of the appeal on merits, no order is required to be passed on this

application seeking substitution of the legal representatives of Tarsem Lal - deceased.