

Kundan Lal
and another
v.
Hanuman
Chamber of
Commerce
Limited
—
Kapur, J.

company can be wound up. The dispute is within a narrow compass, namely, whether it can be wound up without first getting the dissolution vacated? In this view, the appeal must succeed and is allowed. There will, however, be no order as to costs. The matter will now be taken up by the appropriate Court for disposal on merits.

B.R.T.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

MELA SINGH,—Appellant.

versus

HIRA LAL KAPUR AND OTHERS,—Respondents

S.A.O. 10-D of 1965.

1965
September, 3rd

Delhi Rent Control Act (LIX of 1958)—S. 2(i)—Premises—Part of the compound of residential building let out for selling wares on a rehri—Whether amounts to premises—Suit for ejectment of the tenant—Whether maintainable in a civil Court.

Held, that the proper construction to be placed on clause (i) read with sub-clause (i) of section 2 of the Delhi Rent Control Act, 1958, is that a garden, ground or an out-house, if it appertains to the building which has been let, would be included in 'premises' and not if such a garden or ground or a portion of garden or ground is let out independently. Consequently a small portion of the compound of a house or bungalow let out for carrying on the business of selling wares on a *rehri* is not 'premises' and the suit for the ejectment of the lessee from that portion of the compound is cognisable by a civil Court as the Delhi Rent Control Act is not applicable thereto.

Second Appeal (under Order 43, Rule 1, C.P.C.) from the Order of Shri G. R. Luthra, Additional S.S.J. (with enhanced Appellate Powers), Delhi, dated the 6th October, 1964, reversing that of Shri B. M. Aggarwal, Sub-Judge, 3rd Class, Delhi, dated the 30th May, 1963, accepting the appeal with costs and remanding the case for disposal on merits.

CHET RAM MITTAL, ADVOCATE, for the Appellant.

JUGAL KISHORE SETH, ADVOCATE, for the Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—This is an appeal of Mela Singh, defendant, directed against the appellate judgment of the Senior Subordinate Judge, Delhi, remanding the suit to the trial Judge for disposal on merits.

Shamsher
Bahadur, J.

The suit is in respect of a small area of land measuring 9' × 4½' in house No. 8294, Park Area, Karol Bagh, New Delhi, and was brought by Shadi Lal Kapur, who now being dead is legally represented by his heirs, respondents Nos. 2 to 7, and his brother Hira Lal Kapur, for ejectment and recovery of arrears of rent against Hari Ram, whose successor-in-interest Mela Singh is. It was objected in the first instance that the suit did not lie before a civil Court as it related to 'premises' and should have been brought before the Rent Controller. A preliminary issue framed with regard to the jurisdiction of the Court was decided by the Court of first instance in favour of the defendant. In appeal, however, the learned Senior Subordinate Judge found the matter in favour of the plaintiffs and the defendant feeling aggrieved from this order has come to this Court in appeal.

The defendant admittedly has been carrying on business of selling wares on a *rehri* in a small parcel of land which had been leased about 10 or 12 years ago. This land is part of the compound of a *kothi* which has not been leased to the defendant. The rent note shows that the land was intended to be used for *rehri* and as would be manifest is an extremely small area. The question which falls for determination is whether the demised property falls within the definition of "premises" in clause (i) of section 2 of the Delhi Rent Control Act, 1958. "Premises" so defined under the clause means:—

"any building or part of a building which is, or is intended to be, let separately for use as residence or for commercial use or for any other purpose and includes—

- (i) the garden, grounds and out-houses, if any, appertaining to such building or part of the building;
- (ii)

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It is contended by the learned counsel for the appellant, who has argued this case with extreme fairness, that the word 'premises' has to be given a very ample meaning and should be construed liberally. Reliance is placed on a Supreme Court decision in *Karnani Properties Ltd. v. Miss Augustine and others* (1). It was observed by their Lordships of the Supreme Court that in order fully to give effect to the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, which are similar to the Delhi Rent Control Act, the Court has to give them the widest application possible within the terms of the statute. That proposition of law cannot be contested. It is, however, to be borne in mind that the case before the Supreme Court related to a set of rooms in a building and that would clearly fall within the ambit of the word "premises". To a similar effect is a decision of the Special Bench of the Calcutta High Court in *Burdwan Real Properties Private Ltd. v. Lal Behari Kapuria* (2), which incidentally is also a case of residential accommodation. There can be no manner of doubt that any building, or a part of building would constitute 'premises' within the meaning of clause (i) of section 2. Sub-clause (i) mentions gardens, grounds and out-houses, if any, appertaining to any such building or part of the building, and the learned counsel for the appellant contends that being included in the building any portion of the ground or garden should also fall within the meaning of 'premises'. The proper construction to be placed on clause (i) read with sub-clause (i) is that a garden, ground or an out-house, if it appertains to the building which has been let, would be included in 'premises' and not if such a garden or ground or a portion of garden or ground is let out independently. Reference may be made to a Single Bench decision of Pandit, J., in *Ram Saran and others v. Harbhajan Singh and others* (3), where it was held by the learned Judge that:—

"For the purpose of determination as to whether the property included in the tenancy is 'premises' or not it has to be seen as to what was actually let by the landlord in a particular case. Where the landlord had only leased out a vacant piece of

(1) A.I.R. 1957 S.C. 309.

(2) A.I.R. 1961 Cal. 398.

(3) I.L.R. 1964 (2) Punj. 62=1964 P.L.R. 377.

land, the mere fact that some temporary constructions have been raised by the tenant for his own use would not in any way convert the same into a building.”

With this construction of the word ‘premises’ I am in respectful agreement and, in my opinion, the present case is on a much stronger footing for the respondents than the one with which Pandit, J., was dealing. Concededly, there is no kind of construction built on the small piece of land which has been leased with the defendant-appellant. The lessee of the vacant site only brings a *rehri* to this piece of land and sells his wares. There is a decision of Falshaw, J. (as the Chief Justice then was) in *Dr. Kanwal Nain, v. Sardari Lal* (4), where it was held that a vacant plot of land containing no building at all, but only a platform or *chabutra* and forming part of the compound of the landlord’s house, did not constitute ‘premises’ within the definition of the word in the Delhi and Ajmer-Merwara Rent Control Act, 1947. The respondents appear to be still better placed according to the ruling of this decision as even a platform or *chabutra* has not been constructed on the site.

I am of the view that the learned Senior Subordinate Judge has taken the right view of the matter and I would accordingly dismiss this appeal, but would leave the parties to bear their own costs. The parties will appear before the trial Judge on 2nd of November, 1965, which date is already fixed for this purpose.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, Chief Justice and Mehar Singh, J.

HIRA LAL,—Plaintiff-Appellant.

versus

SHRIMATI SHARBATI DEVI AND ANOTHER,—Respondents

Letters Patent Appeal No. 36 of 1964.

Hindu Succession Act (XXX of 1956)—S. 14—Widow of a pre-deceased son getting half of the land mutated in her favour on the death of her father-in-law, other half being mutated in the name of his other son who was minor—After attaining majority the son suing for possession of the land with the widow—By compromise in 1951 she was allowed to retain land in lieu of maintenance—Widow—Whether becomes full owner of the land under sub-section (1) of section 14.

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(4) 1952 P.L.R. (Short Notes of cases), page 14.

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