

Before N.K. Agrawal, J.

NAND KISHORE, *Petitioner*

versus

VED PARKASH & OTHERS, *Respondents*

C.R. No. 3693 of 1998

4th December, 1998

Haryana Urban (Control of Rent and Eviction) Act, 1973—S.13—Bona fide dispute regarding title—Jurisdiction of Rent Controller determined on such a dispute—Report of Local Commissioner—No corroborate evidence—Whether sufficient to make out a ground for eviction.

Held that the question of relationship of landlord and tenant involved a basic question of title. There is no denial to the assertion made by the tenant that no rent was ever paid by him to Mool Chand earlier. He, however, paid the arrears of rent after the eviction petition was filed so as to avoid his eviction on the ground of non-payment of arrears of rent. But, that would not create an estoppel against the tenant. The relationship of landlord and tenant was denied on the basis of title to the property. The dispute regarding title to the land could not be a subject matter for decision by the Rent Controller. The same could be decided by a Civil Court only.

(Para 25)

Further held that it is not clear whether the Local Commissioner was a qualified engineer and an expert for ascertaining the damage to and condition of the shop. It is also not found as to what other evidence showed that the shop was unfit and unsafe for human habitation. In these circumstances, the finding that the shop was unfit and unsafe for human habitation, arrived at by the authorities below does not appear to be correct and sustainable.

(Para 26)

R.K. Jain, Advocate, *for the Petitioner.*

Adarsh Jain, Advocate, *for the Respondent*

JUDGMENT

N.K. Agrawal, J.

(1) This is a revision petition by the tenant against the order of his eviction dated 8th August, 1995, passed by the Rent Controller and against the appellate order date 4th August, 1998, passed by the Appellate Authority, whereby the order of eviction was affirmed.

(2) An application under Order 22, rule 4, Code of Civil Procedure, has been filed by the tenant to bring on record legal representatives of the deceased landlord, Mool Chand. After hearing learned counsel for the parties, this application (Civil Misc. No. 10300-CII of 1998) is allowed. The legal representatives of the deceased landlord, Mool Chand, are brought on record.

(3) A petition was filed on 30th July, 1991, by Mool Chand before the Rent Controller, Palwal, seeking eviction of the tenant, Nand Kishore (petitioner) under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. It was stated in the petition that Nand Kishore was a tenant in the shop in dispute on a monthly rent of Rs. 10 but had failed to pay the rent since 1st December, 1989. Besides the non-payment of rent, eviction was also sought on the grounds that the tenant had materially diminished the value and utility of the shop and that the shop had become unfit and unsafe for human habitation.

(4) Following issues were framed by the Rent Controller :—

1. Whether there is a relationship of landlord and tenant between the parties as alleged ?
2. If issue No. 1 is proved, whether the respondent is liable to be ejected on the ground mentioned in para no. 3 of the petition ? OPP
3. Whether the suit property is a part of Khasra No. 649 ?
4. If issue No. 3 is proved, whether respondent is a co-sharer by virtue of sale deed dated 28th July, 1986 ? OPR.
5. Relief.

(5) The tenant, in his reply to the eviction petition, stated that Mool Chand was not the owner nor the landlord of the shop in question. He, thus, denied the relationship of landlord and tenant.

Nand Kishore further claimed that he was a co-sharer under the sale deed dated 28th July, 1986 (Ex. R. 1). He, however, tendered the arrears of rent alongwith the House-tax and costs as assessed by the Court.

(6) The learned Rent Controller noticed that the Sale Deed produced by Nand Kishore did not pertain to the shop in question, but related to some other property bearing Khewat No. 211, Khata Nos. 295 and 296 and Khasra No. 649. The shop had been constructed on part of Khasra No. 649, but its Khewat number was 260 and Khatoni Nos. 342 and 343. the Rent Controller, therefore, took the view that the sale deed, relied upon by Nand Kishore, was not a document of title relating to the shop. He gave a finding view that there was no evidence to show that the shop formed part of Khasra No. 649. Nand Kishore had, in his statement before the Rent Controller, admitted that earlier his father was the owner-in-possession of the shop. The Rent Controller, in the light of this admission, developed suspicion on the veracity of the sale deed and the defence version. He, therefore, held that if the father of Nand Kishore owned the property as owner-in-possession, there was no reason to purchase the property under a sale deed.

(7) The landlord relied upon the entries in the House-tax Assessment Register maintained by the Municipal Committee Register maintained by the Municipal Committee for the years 1978-79 to 1988-89. The name of Mool Chand was recorded as owner in columns 4 and 5 of the House-tax Assessment Register and the name of Nand Kishore had been shown as occupier. The Rent Controller accepted the entries in the municipal register.

(8) The issue on the relationship of landlord and tenant was decided by the Rent Controller against the tenant after rejecting the sale deed produced by the tenant and accepting the entries in the municipal register.

(9) The ground that the tenant had diminished the value and utility of the shop was not pressed by the landlord before the Rent Controller.

(10) The only ground, which survived for the purposes of eviction, was whether the shop was unfit and unsafe for human habitation. The landlord placed before the Court a report of the Local Commissioner dated 30th July, 1991, according to which the shop was in a very bad condition. There was no roof on the bays of the shop. The report further disclosed that the walls and the floors

of the shop were in a bad condition. Mortar was falling from the bricks and the bricks had developed "rehae". The Local Commissioner expressed opinion that the shop was in a dilapidated condition. Order of eviction was passed by the Rent Controller on this ground alone.

(11) Shri R.K. Jain, learned counsel for the tenant, has argued that the Rent Controller had no jurisdiction to decide the question of title. The relationship of landlord and tenant was denied by the tenant on the basis of his own title. It was admitted by the landlord that no rent had ever been paid by Nand Kishore to him. No evidence was brought on record to show that Mool Chand was the owner of the property. The entries in the municipal register were not sufficient to prove title. It was also not disputed that the shop was situated on the land bearing Khasra No. 649. The sale deed in favour of Nand Kishore also showed the sale of land bearing Khasra No. 649. It is, therefore, not clear as to how the learned Rent Controller reached the conclusion that the shop did not belong to Nand Kishore though it was situated on the land bearing Khasra No. 649. No steps were taken for demarcation of the land. In these circumstances, it is argued by the learned counsel that the pleas raised by the tenant challenging the relationship of landlord and tenant was based on the factum of title to the land. The tenant, Nand Kishore, had brought on record the sale deed in respect of the land bearing Khasra No. 649. Since there existed a dispute of civil nature about the ownership of the land, it was not within the jurisdiction of the Rent Controller to decide the question of title or ownership. It was within the jurisdiction of a Civil Court to decide a question of title.

(12) Learned counsel for the petitioner-tenant has placed reliance on the following two decisions of the Andhra Pradesh High Court :—

- (i) *Bibijan v. M/s Chintakridi Narasimham and Sons* (1);
and
- (ii) *Kilambi Vijayalakshmi v. M.V. Seetha Devi (Died) per LRs*, (2)

(13) In the first case, it was held that where the tenant denied the title of landlord or claimed right of permanent tenancy and the Rent Controller found that the denial was *bona fide*, then in such a case, the Rent Controller will have no jurisdiction and the Civil Court will have the jurisdiction. In the second case also, it was held

(1) 1997 (2) R.C.R. 627,
(2) 1998 (1) R.C.R. 84

that where the tenant raised dispute as to the title of the landlord, the Rent Controller had no jurisdiction to decide whether the landlord had title to the property or not. The Rent Controller has to decide whether the denial or the claim by the tenant is *bona fide* or not. There cannot be finality to any decision on title that may be given by the Rent Controller, because he can decide only incidentally and not finally.

(14) Learned counsel for the petitioner-tenant has further placed reliance on two decisions of this Court in :—

- (i) *Maj. Parkash Gupta v. Sat Parkash Arora of Chandigarh*, (3)
- (ii) *Inder Lal v. Babu Lal* (4)

(15) In the first case, the tenant had specifically denied the ownership of the landlord. He was paying rent to another person from the very inception of the tenancy. It was held that the onus to prove the issue of relationship of landlord and tenant was on the landlord, who had moved the application for ejection. In the second case also, it was held that the Rent Controller has no jurisdiction to decide the question of title.

(16) Learned counsel for the petitioner-tenant has also placed reliance on two more decisions of this Court so as to challenge the conclusion drawn by the Rent Controller on the rights of the landlord on the basis of the entries in the House-tax Register of the Municipal Committee. In *Naurata Ram v. Mam Chand and Ors* (5), the facts were similar to those which are in the present case. There also, there was no documentary evidence to prove the relationship of landlord and tenant between the parties except the entries in the municipal records. The tenant had produced the sale deed, on the basis of which he claimed himself to be the owner of the site under the shop in dispute. It was observed that the real dispute between the parties was as to the ownership with respect to the premises in dispute, which matter could only be decided by the Civil Court. In *Jagdish Chander v. Ram Bilas and others* (6), it was held that copies of the entries in the assessment registers of House-tax, at the most, can give an indication that a particular person was occupying the premises at the relevant time. Thus, entries do not support the relationship of landlord and tenant between the parties.

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- (3) 1985 H.R.R. 465
 - (4) 1998 (1) R.C.R. 590
 - (5) 1987 (2) R.C.R. 106
 - (6) 1988 H.R.R. 144

(17) Learned counsel for the petitioner-tenant has, on the strength of the aforesaid decisions, contended that the entries in the municipal register were not sufficient to show that Mool Chand was the owner and landlord of the shop in question. Moreover, the denial of relationship of landlord and tenant by the tenant was based on a sale deed, which related to the same Khasra number on which the disputed shop was constructed. Therefore, it was not a case of simple denial of relationship of landlord and tenant, but a case where the tenant claimed himself to be the owner of the land on the basis of a sale deed. Therefore, it was incumbent on the part of the Rent Controller to ask the parties to settle the dispute regarding the ownership in a competent Civil Court.

(18) Sri Adarsh Jain, learned counsel for the landlord has, on the other hand, contended that the dispute about the relationship of landlord and tenant was within the jurisdiction of the Rent Controller. In support of his contention he has placed reliance on a decision of this Court in *Balbhadar and ors v. Hindi Sahitya Sadan (Registered Body) Mandi Dabwali (7)*, wherein it was held that, in a case of dispute over the relationship of landlord and tenant, the Rent Controller had jurisdiction to decide the issue of relationship in ejection proceedings. The decision of Rent Controller may not, however, operate as *res judicata* in a regular civil Court.

(19) In *Tilak Raj v. Shrimati Kailash Wati and another*(8), a similar view was taken by this Court.

(20) Learned counsel for the landlord has also placed reliance on the following two decisions of the Supreme Court.

- (i) *Om Parkash Gupta v. Dr. Rattan Singh and another* (9), and
- (ii) *M/s East India Corporation Ltd. v. Shree Meenakshi Mills Ltd.* (10).

(21) In the first case, it was held that where the relationship of landlord and tenant is denied, the authorities under the Delhi Rent Control Act had to determine that question also, because a simple denial of the relationship cannot oust the jurisdiction of the

(7) 1980 (1) R.C.R. 80

(8) 1991 (1) P.L.R. 313

(9) 1963 P.L.R. 543

(10) A.I.R. 1991 S.C. 1894

Tribunals under the Act. True, they are Tribunals of limited jurisdiction, the scope of their power and authority being limited by the provisions of the statute. But, a simple denial of relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act.

(22) In the second case, the matter had arisen under the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. After examining the second proviso to Section 10(1) of the said Act, it was held that the Civil Court has been invested with jurisdiction in the matters of eviction in a situation stipulated in the second proviso. Where the tenant denied the title of the landlord or claimed right of permanent tenancy, the Controller should, on such denial or claim by the tenant, reach a decision whether such denial or claim is *bona fide*. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a Civil Court.

(23) Learned counsel for the landlord has also placed reliance on a decision of this Court in *Sher Singh v. Anil Kumar* (11), wherein it was held that the entry in the assessment register of a municipal committee is of great value in weighing the oral evidence.

(24) Learned counsel for the landlord, has, on the strength of the aforesaid decisions, argued that the landlord had shown, by sufficient evidence, that the relationship of landlord and tenant did exist between the parties. The entries in the municipal register were produced in support of the oral evidence and, therefore, the entries were relevant and admissible.

(25) On a consideration of the controversy, it is found that the question of relationship of landlord and tenant involved actually a basic question of title. There is no denial to the assertion made by the tenant that no rent was ever paid by him to Mool Chand earlier. He, however, paid the arrears of rent after the eviction petition was filed so as to avoid his eviction on the ground of non-payment of arrears of rent. But, that would not create an estoppel against the tenant. The relationship of landlord and tenant was denied on the basis of title to the property. As has been seen, a sale deed was

produced by the tenant so as to show that he was the owner of land bearing Khasra No. 649. The shop was constructed on the land bearing Khasra No. 649. Therefore, there appears to be a dispute of civil nature between the parties regarding title to the land bearing Khasra No. 649. It cannot be said at this stage whether it was a dispute regarding demarcation of land or otherwise. The denial of relationship of landlord and tenant based on a dispute regarding title to the land could not be a subject-matter for decision by the Rent Controller. The landlord did not produce any documentary evidence except the entries in the municipal register to show that he was the landlord. As has been seen, such entries could be relevant for the purposes of corroboration of other evidence on record. In this light also, the challenge put forward by the tenant to the relationship of landlord and tenant assumed significance and was not a simple denial. A question of title did arise in the matter, which could be decided by a Civil Court only.

(26) On the issue whether the shop had become unfit and unsafe for human habitation, the learned Rent Controller and the learned Appellate Authority were swayed by the report of the Local Commissioner. It is not clear whether the Local Commissioner was a qualified engineer and an expert for ascertaining the damage to, and condition of the shop. It is also not found as to what other evidence showed that the shop was unfit and unsafe for human habitation. In these circumstances, the finding arrived at on this issue by the learned Courts below does not appear to be correct and sustainable.

(27) In the result, the revision petition is allowed. The order of the Rent Controller, dated 8th August, 1985 and that of the Appellate Authority dated 4th August, 1998 are set aside. The landlord may, if so advised, prove his title in respect of the shop in question in a competent Civil Court and, thereafter, proceed afresh against Nand Kishore seeking his eviction according to law. No order as to costs.

S.C.K.