

Pushpa Rani And Ors. vs Bhagwanti Devi And Anr. on 7 September, 1993

Equivalent citations: AIR1994SC774, 1994SUPP(3)SCC76, AIR 1994 SUPREME COURT 774, 1994 AIR SCW 80, 1994 (3) SCC(SUPP) 76, 1995 SCFBRC 193, 1995 HRR 116, 1994 SCC (SUPP) 3 76, (1995) 1 RENTLR 392, (1994) 2 RENC R 298, (1994) 1 APLJ 59

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Bench: M.N. Venkatachaliah

ORDER

1. Special leave in S.L.P. (C) No.4105/89 granted. The two appeals arise out of the common Judgment dated 28th November, 1988 of the High Court of Delhi in S.A.O. Nos. 374 and 375 of 1978 (reported in 1989 Rajdhani LR 61). The appeals before the High Court arose out of proceedings for eviction under the Delhi Rent Control Act, 1958 (for short 'the Act') pertaining to shop No. 29/3943, Reharpura, Karol Bagh, New Delhi.

2. The eviction proceedings commenced as far back as in the year 1972. The respondent-Bhagwanti Devi is admittedly the house-owner. And a certain Chaman Lal was the original tenant on a monthly rent of Rs. 58.44p. According to the Respondents, after the death of Chaman Lal on 11th January, 1965, his elder son Sushil Kumar continued as tenant and there having been a default in payment of rents, respondents instituted Eviction Petition No. 667 of 1972 under Section 14(1)(a). It would appear that in those proceedings Sushil Kumar tendered the arrears of rent and relief against forfeiture having been granted the eviction petition came to an end.

3. Thereafter, in the year 1975 the respondents alleging a repetition of default in the payment of rents instituted a fresh Eviction Petition No. 668 of 1975 under Section 14(1)(a) read with Section 14(2) of the Act.

In the said proceedings appellants in Civil Appeal No. 5012 of 1989, who are the widow and the other heirs of Chaman Lal sought to have themselves impleaded on the ground that after the death of Chaman Lal the tenancy respecting the premises was inherited by all the heirs of Chaman Lal and that Sushil Kumar was not the only or exclusive tenant. That application was dismissed by the Additional Rent Controller by his order dated 24th April, 1976. The order of dismissal not having been challenged in further proceedings by the heirs has assumed finality. Thereafter on 17th July, 1976 the Additional Rent Controller proceeded to make an order of eviction against Sushil Kumar. Sushil Kumar preferred an appeal before the Rent Control Tribunal in R.C. A. No. 790 of 1976.

4. In the meanwhile the respondents put the order of eviction dated 17-7-1976 into Execution in Ex.

P. No. 54 of 1976. In those proceedings the other L.Rs. of Chaman Lal whose impleadment was refused on the original side sought to raise the same objection that the order of eviction made against Sushil Kumar alone was not binding on the other heirs of Chaman Lal. The executing Court by its order dated 21-2-1978, upheld those objections and dismissed the execution application. Aggrieved by that order, respondents preferred an appeal before the Rent Control Tribunal in RCA No. 399 of 1978. As the earlier appeal RCA 790/1976 of Sushil Kumar against the order of eviction was also then pending, the Rent Control Tribunal, heard and disposed of the appeals by two separate orders both dated 23rd October, 1978. The appeal of the respondents-arising out of Execution Petition No. 54 of 1976 was allowed and that of Sushil Kumar preferred against the order of eviction was dismissed.

5. Against these two orders of the Tribunal both Sushil Kumar and the other heirs brought up two second appeals before the High Court, the former in SAO No. 374 of 1978 and the latter in SAO No. 375 of 1978. These two appeals were dismissed by the High Court by its common Judgment dated 28th November, 1988 Reported in 1989 Rajdhani LR 61 : (1989) 1 Rent LR 287. The present appeals before us emanate from the dismissal of these appeals by the High Court.

6. We have heard Sri Aruneshwar Gupta, learned Counsel for the appellants and Sri R.K. Kaura, learned Counsel for the respondents.

7. The contention strenuously urged by Sri Aruneshwar Gupta in support of these appeals is that it is a settled law that even a non-residential tenancy is heritable, that the heirs of a deceased tenant inherit the tenancy and that the decree against Sushil Kumar alone was insufficient to denude the rights of the appellants who are the other heirs.

On a consideration of the evidence, the High Court concurring with the findings of fact on the point recorded by the Rent Controller and the Tribunal, held that after the death of Chaman Lal it was Sushil Kumar alone who continued in occupation of and was carrying on the business in the premises and that in the circumstances of the case the other heirs must be held to have surrendered their rights of tenancy. This implied surrender was inferred from the evidence as to the conduct of the other heirs. The principle in Gian Devi's case as to the heritability of a non-residential tenancy relied upon by Sri Gupta does not detract from, and is not inconsistent with, the principle of implied-surrender. The finding on implied-surrender, in our opinion, is supported by the evidence on record. Both the Rent Control Tribunal and the High Court, in our opinion, were right in not countenancing the claim of the heirs which incidentally came through the challenge on the executing side. So far as the appeal of Sushil Kumar is concerned, there is hardly anything that can be said in support of it.

8. We, accordingly, find no merit in these appeals which are dismissed with costs.