Smt. Jamna Devi And Ors. vs Kude Ram And Anr. on 26 August, 1982

Equivalent citations: AIR1982SC1456, 1982(1)SCALE815, (1982)3SCC376, 1982(14)UJ850(SC), AIR 1982 SUPREME COURT 1456, 1982 (3) SCC 376, 1985 SCFBRC 381, (1983) 1 RENTLR 346, 1982 UJ(SC) 850, (1983) 1 RENCR 114

Bench: D.A. Desai, E.S. Venkataramiah

ORDER

1. Petition for special leave is granted.

2. This is a case under the Delhi Rent Control Act wherein the land-lord approached the Court seeking possession of the premises occupied by tenant on the ground that the landlord requires the premises bonafide for his own use and occupation as provided in Section 14(1) proviso (e)

3. After the summons in the prescribed form was served, the tenant appeared and filed an affidavit as envisaged by Section 25B(4). The learned 5th Addl. Rent Controller did not grant leave to defend and proceeded to decree the eviction of the tenant. The matter went to the High Court at the instance of the tenant, the appellant before us, which was dismissed in limine. Hence this appeal by special leave.

4. Section 25B(5) enjoins a duty on the Rent Controller to grant leave to contest the petition, if the facts disclosed in the affidavit of the tenant are such as would disentitle the landlord to obtain an order of eviction Therefore, ordinarily while examining the application for leave to contest one has to confine to the facts disclosed in the affidavit and that is certainly not a stage for a full fledged trial of the issues arising from the facts stated in the affidavit. That stage is yet to arrive now first consider what has happened here. The respondent-landlord contended that he has one room in her possession. The tenant contended that the landlord has two rooms in her possession and that provides sufficient accommodation and no additional space is necessary. At that stage a sketch map was prepared on behalf of the respondent-landlord and was shown to the Court and it was disclosed that there is a room and a kitchen in possession of the landlord. Against this Mr. Mehta, learned Counsel for the respondent-landlord told us that the petitioner-tenant has in her possession two rooms. The dimension of the two are set out in the petition and can be found in para 2 of the petition presented by the landlord.

The petitioner-landlord's case is that respondents are tenant in respect of one room measuring 13' x 9' with attached verandha of 13'X7'8". There is also reference to one tinshed-barsati measuring 12' x 7' on the top floor of the house described therein.

It is not suggested that these facts are established but it does appear that in slum area both the landlord and tenant are in small premises. The need had to be judged after evaluating facts

established on evidence her untested affidavit. Was that sufficient to enable the learned Pent Controller to refuse leave. We have no doubt in our mind that these disclosed facts necessitated examination, either by cross-examination evaluation and adjudication. The unilateral declarations have no evidentiary value as such. What is considered improper is converting the stage of granting or refusing to grant leave into a full fledge trial circumventing the prescribed procedure. Even Documents are not properly proved and yet decision is followed thereon. We are, therefore of the view that there is a case in which leave to contest ought to have been granted. We accordingly set aside the decision of the learned 5th Addl. Rent Controller as well as of the High Court. We giant leave to the tenant to contest the eviction petition. He must file his written statement within 2 weeks from today. The parties must appear before the learned 5th Addl. Rent Controller, Delhi on 15th September, 1982. As the landlord seeks possession of the premises on the ground of personal requirement, the matter be disposed of as expeditiously as possible. We hope that the learned 5th Addl. Rent Controller will give priority to this matter and dispose it of on merits as early as possible and not later than 6 months from today. There will be no order as to costs.