

Pal Singh vs Sunder Singh (Dead) By Lrs. & Ors on 10 January, 1989

Equivalent citations: 1989 AIR 758, 1989 SCR (1) 67, AIR 1989 SUPREME COURT 758, 1989 (1) SCC 494, (1989) 1 UPLBEC 300, (1989) 1 JT 21 (SC), 1988 CRILR(SC MAH GUJ) 796, (1989) 2 CRILC 93, (1989) 1 DL 1, 1989 RAJLR 40, (1989) 1 CURCC 302, (1989) 37 DLT 217

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

PAL SINGH

Vs.

RESPONDENT:

SUNDER SINGH (DEAD) BY LRS. & ORS.

DATE OF JUDGMENT 10/01/1989

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1989 AIR 758 1989 SCR (1) 67

1989 SCC (1) 444 JT 1989 (1) 67

1989 SCALE (1) 36

CITATOR INFO :

C 1991 SC1966 (*)

ACT:

Delhi Rent Control Act, 1958 : Sections 14(i)(e) and 39--Tenant-Eviction of--Whether one co-owner of the property can maintain the eviction petition--Bona fide need of land-lord--High Court appointed Advocate as Commissioner to give report--After considering report High Court not interfering with finding by appellate Court--Justified.
Indian Evidence Act, 1872: Section 116--Estoppel in relation to tenants

HEADNOTE:

In 1947 three rooms and a courtyard in an evacuee's property were given on tenancy to the appellant by the Custodian of Evacuee Property. In 1956 the entire property was jointly purchased by the father of the respondent and a lady. The lady died in 1975 and her legal heirs became the co-landlords of the disputed premises. In June 1975, the father of the respondents filed an eviction petition against the appellant on the ground that the premises was required bona fide by the landlord under section 14(1)(e) of the Delhi Rent Control Act, 1958. The legal heirs of the joint purchaser viz the lady, were, however, not impleaded as parties. The appellant contested this petition alleging that the respondent had no locus standi to file the petition, that the respondent was not the sole owner of the premises in occupation of the appellant, that there was no relationship of landlord and tenant existing between the parties, that as other owners were not joined as parties the eviction petition was not maintainable, and further that the permission granted by the Slum Authority was invalid. The Additional Rent Controller held that one of the co-landlords could receive payment on behalf of the other and that receipt of rent by one landlord would not by itself make him exclusive owner when the premises were in fact owned by more than one owner and consequently the respondent alone could not terminate the tenancy of the appellant. He further held that one coowner could not terminate the tenancy when the property was owned by joint owners and that the respondent landlord was not able to prove that there was no reasonable suitable accommodation with him and that his claim for bona fide reasonably requirement was not proved. He accordingly dismissed the suit for eviction.

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Aggrieved by the order of the Additional Rent Controller, the respondent filed an appeal before the Rent Control Tribunal. The Tribunal held that the respondent was entitled to claim the premises on the ground of bona fide requirement for the use of his family, and that the property had all along been used for residential purposes and that it would not be proper to accept the view that the purpose of letting out was residential-cum-commercial. On the question whether one coowner could maintain the suit for eviction the Tribunal held that in the circumstances of the case the respondent landlord as a co-owner alone could have maintained the eviction petition.

The appellant filed a second appeal and the High Court rejected the same on the ground that the action for eviction was justified in view of section 14(1)(e) of the Act, and that the need of the landlord was bona fide, and further the High Court affirmed the view that a co-owner in the facts and circumstances of the case was entitled to maintain an action for eviction.

In the appeal by special leave to this Court it was contended on behalf of the appellant tenant that in the

absence of the other co-owner the suit for eviction was incompetent, and that the bona fide need was not properly proved and the High Court was in error in upholding the order of eviction on this ground.

Dismissing the appeal,

HELD: 1. When the other co-owner did not object to the eviction one co-owner could maintain an action for eviction even in the absence of the other co-owner. [75D]

In the instant case, the direction given by the Court in the suit for specific performance of an agreement to sell filed by Smt. Sham Kaur against the respondent-landlord, was not with respect to the portion of the property which was in the occupation of the tenant--appellant and which was the subject matter of the eviction petition. The three rooms and the courtyard in question, the subject matter of dispute, falls in the share of Sunder Singh--respondent who had filed the eviction petition. Furthermore there is no evidence that Smt. Sham Kaur or her representatives wanted the appellants to continue. [75E-G]

Kanta Goel v. B.P. Pathak and others, [1977] 2 SCC 814; Sri Ram Pasricha v. Jagan Nath [1976] 4 SCC 184 referred to. 69

2. The law is that the estoppel of a tenant under section 116 of the Evidence Act was a recognition and statutory assimilation of the equitable principles underlying the estoppel in relation to tenants. [76D]

In the instant case, the rent had all along been collected by the respondent from the appellant. [76D]

Tej Bhan Madan v. II Additional District Judge and others, [1988] 3 SCC 137, referred to.

3. The High Court noted that the plea of the appellant that immediately prior to the filing of the petition, the landlord had rented out a few rooms on the ground floor, was not specifically raised in the pleadings nor in the first appeal, and rightly held that it was not proper to raise this question in the second appeal. [76E-F]

4. The High Court appointed an Advocate as Local Commissioner to visit the premises and give his report. The report corroborated the stand of the landlord-respondent. In that view of the matter it was not possible for the High Court to have further interfered with the findings of the Appellate Court. [77B]

Vinod Kumar Arora v. Surjit Kurnar [1987] 3 SCC 711 referred to.

5. The respondent was, therefore, entitled to maintain the eviction petition alone and he had proved the grounds for eviction and that his need was bona fide and that he had no other suitable accommodation in his possession. [77E]

V. Dhanpal Chettiar v. Yesodai Ammal, [1980] 1 SCR 334, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2311 of 1986.

From the Judgment and Order dated 30.1.1986 of the Delhi High Court in S.A.O. No. 326 of 1980.

Rajinder Sachhar, Aruneshwar Gupta and Sunil Malhotra for the Appellant.

D.K. Kapoor, Indu Goswamy and Harish N. Salve for the Respondents.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J: This appeal by special leave is from the judgment and order of the High Court of Delhi dated 30th of January, 1986. The order in question was passed by the High Court in second appeal. In order to appreciate the controversy in this appeal, it is necessary to refer to certain facts. In 1947 three rooms and a courtyard in Premises Nos. 22 16-2222, Gali Inder Chammur Teliwara, Delhi as an Evacuee Property was given on tenancy to the appellant by the Custodian of the Evacuee property. In 1956, the entire property was jointly purchased by the father of the respondent and Smt. Sham Kaur from the Custodian of the Evacuee property. Smt. Sham Kaur had paid 50 per cent of the consideration money, i.e., Rs.25,700 towards the sale amount. It was a joint purchase. Smt. Sham Kaur died in 1975 and her legal heirs became the co-landlords of the disputed premises. In June 1975 the father of the respondents had filed an Eviction Petition against the appellant on the ground that the premises in question was required bona fide by the landlord under section 14(1)(e) of the Delhi Rent Control Act, 1958, hereinafter called the said Act. Legal heirs of Smt. Sham Kaur were, however, not impleaded as parties. On 28th of October, 1976 the First Additional Rent Controller, Delhi dismissed the suit for eviction. Several grounds had been taken in defence by the appellant herein before the First Additional Rent Controller. It was contended, inter alia that the respondent had no locus standi to file the petition and that the respondent was not the sole owner of the premises in occupation of the appellant. It was further contended that there was no relationship of landlord and tenant between the parties in view of the aforesaid contention. Other owners had not been joined as parties and as such the suit was not maintainable, it was submitted. It was further urged that the permission granted by the Slum Authority was invalid. Service of a proper notice dated 12th July, 1972 was denied. The respondent had filed reply to the opposition by the appellant. The First Additional Rent Controller held that there was proper service of the notice. But the validity of the notice was challenged on the ground that the premises were previously evacuee property. A certificate of sale had been issued in favour of one Sunder Singh and the respondent. The respondent had admitted that the sale certificate was issued in the joint name of Smt. Sham Kaur, widow of Sunder Singh and the respondent. It was stated that the premises were let out to the appellant by the Custodian of the Evacuee Property and he had not entered into any separate agreement of lease and the terms of the lease were never settled in the presence of the respondent. In view of this admission it was held that Smt. Sham Kaur and the appellant both became owners of the property in question and both had become landlords of the premises in suit. It was argued that the other co-owner ceased to be landlord of the premises because rent was continuously paid to the respondent. The First Additional Rent Controller held against the respondent in respect of this contention. He was of the opinion that one of the co-landlords could receive payment on behalf of

the other. Receipt of rent by one landlord would not by itself make him the exclusive owner when the premises were in fact owned by more than one owner. The First Additional Rent Controller held that in the premises the respondent alone could not terminate the tenancy of the appellant. The First Additional Rent Controller distinguished the decision of this Court in *Sri Ram Pasricha v. Jagan Nath*, [1976] 4 S.C.C. 184. The First Additional Rent Controller held that one co-owner could not terminate the tenancy when the property was owned by joint owners. The First Additional Rent Controller also found that the landlord being respondent herein was not able to prove that there was no reasonably suitable accommodation with him. It was also held that his bona fide reasonable requirement was not proved.

Aggrieved by the aforesaid order of the First Additional Rent Controller the respondent herein went up in appeal before the Rent Control Tribunal, Delhi. The Rent Control Tribunal noticed that the ground for eviction taken up by the respondent was under section 14(1)(e) of the Act. The property in dispute had been let out for residential purpose and was bona fide required by the respondent for himself and members of his family residing with him. The Tribunal noticed that the respondent had a large family comprising of 3 sons and 5 daughters and the accommodation with him was insufficient and he had no reasonably suitable accommodation with him.

The Rent Control Tribunal after taking into consideration the judgment of Shri Jaspal Singh, Additional District Judge, Delhi, in connection with the suit filed by Smt. Sham Kaur for specific performance of the agreement to sell came to the conclusion that the bona fide of the requirement was established. The premises were let out according to Tribunal for the residential purpose and it was bona fide required by the landlord for his requirement and for the members of his family and that he had no other sufficiently reasonable accommodation with him to satisfy his needs. On the question whether one co-owner could institute the suit for the eviction in the facts and circumstances of the case, the Tribunal came to the conclusion that he could. On the question of the property being let out for residential or commercial purposes after analysing the evidence that the use of the property had been all along residential and the property had been used only for residential purpose, the Tribunal was of the view that it would not be proper to accept the position that the purpose of letting was residential-cum-commercial.

On the question of the bona fide requirement the Tribunal took into consideration the members of the family of the respondent and noted that the evidence was that the family consisted of respondent himself, his wife, 3 sons, all of which were married and 5 daughters. Though the daughters of the respondent were married the Tribunal came to the conclusion that the respondent as landlord had a right to ask for accommodation for the daughters occasional visits. It has also not been proved according to the Tribunal that the sons of the respondent were not staying with him and therefore their requirement had also to be taken into consideration. Thereafter, taking into consideration need for a pooja-room, one sitting room and one barsati and keeping in view the large family of the respondent the Tribunal came to that conclusion that the property in view of the present family dependents of the respondent was bona fide required. On the question whether one co-owner being able to maintain the action for eviction, the Tribunal came to the conclusion in view of the decision of this Court in *Sri Ram Pasricha v. Jagannath* (supra) and the decision of this Court in *Kanta Goel v. B.P. Pathak and others*, [1977] 2 SCC 814, in the facts and circumstances of the case that the

respond- ent-landlord as a co-owner alone could have maintained the eviction petition.

Aggrieved thereby there was a further second appeal by the appellant to the High Court. The High Court on 30th January, 1986 dismissed the second appeal. The High Court held that the action for eviction was justified in view of section 14(1)(e) of the Act and the need of the landlord was bona fide and further the High Court affirmed the view that a co-owner in the facts and circumstances of the case was entitled to maintain an action for eviction. The High Court, therefore, rejected the second appeal.

Aggrieved thereby the tenant is before this Court in appeal under Article 136 of the Constitution. Two conten- tions were urged by Mr. Rajinder Sachhar appearing on behalf of the tenant. It was submitted that in the absence of the other co-owner, Smt. Sham Kaur, the suit for eviction was incompetent. It was secondly urged that the bona fide need was not properly proved and the High Court was in error in upholding the order of eviction on this ground. The first question was gone into by this Court in the decision of *Sri Ram Pasricha v. Jagannath (supra)*. There the plain- tiff-respondent was a co-owner of the suit properties. He had filed a suit for the eviction on grounds of default in payment of rent and personal requirement. The Trial Court and the Lower Appellate Court decreed the suit having held that the plea of reasonable requirement by the members of the family for whose benefit the premises were held was established. A single Judge of the High Court reversed the decision but the Division Bench restored the Trial Court's order. There was an appeal by the tenant-defendant. This Court held that the co-owner was as much an owner of the entire property as any sole owner of the property was. This Court reiterated that jurisprudentially it was not correct to say that a co-owner of the property was not its owner. He owned every part of the composite property along with others and it could not be said that he was only a part-owner or a fractional owner of the property. The position would change only when partition would take place and therefore, this Court found that it was not possible to accept the submis- sion that the plaintiff in that case who admittedly was a landlord and co-owner of the premises was not the owner of the premises within the meaning of section 13(1)(f) of the West Bengal Premises Tenancy Act, 1956. It may be mentioned incidentally that in essential respects the provision of section 13(1)(f) of the West Bengal Premises Tenancy Act is similar or *pari materia* to section 14(1)(e) of the Act. It is not necessary, this Court reiterated, to establish that the plaintiff was the only owner of the property for the purpose of section 13(1)(f) of the West Bengal Act as long as he was the co-owner of the property being at the same time the acknowledged landlord of the defendants. This plea of the defendant-tenant, this Court found, could not there- fore be accepted. This Court was of the opinion that the plea pertained to the domain of the frame of the suit as if the suit was bad for non-joinder of other plaintiff such a plea should have been raised, according to this Court, for whatever it was worth at the earliest opportunity. It was not done in that case. This however is not the position in the instant case before us. This plea was taken in defence and raised as an issue before the Additional Rent Control- ler. Secondly, it was held by this Court that the relation- ship between the parties being that of the landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under section 116 of the Evidence Act. He could not deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property was irrelevant. It is, therefore, inconceivable to throw out

the suit on account of non-pleading of other co- owners as such. There had been clear acknowledgment and admission in that case of the defendants and on concurrent findings of this Court held the action was valid. The same principle was reiterated by this Court in *Kanta Goel v. B.P. Pathak* (supra). In that case a portion of the first floor of a building was let out by the owners to the appellant before this Court. The owner died leaving 3 sons and a daughter. The first respondent who was in occupation of a government allotment was required by government to vacate these premises. He took proceedings under section 14A of the Delhi Rent Control Act, 1958, against the tenant of the other portion of the first floor and after evicting that tenant kept those premises vacant. Thereafter, he again took proceedings under section 14A against the appellant. The other respondents did not join with the first respondent. The first respondent claimed that he became the sole owner of the first floor under the will of his father followed by a partition between himself and his brother. The appellant contended that the respondent was not the sole owner and that the other respondents should have been made parties to the proceedings. The Rent Controller overruled the appellant's contention and ordered eviction. The High Court impleaded the other respondents and confirmed the order of eviction.

In appeal to this Court, it was contended that, (1) the 1st respondent was not the appellant's landlord; (2) the premises were not in the 1st respondent's name and had not been let out by him; (3) the co-heirs should have been impleaded before the Controller; (4) the Controller should have allowed the appellant to contest the owner's will; and (5) Section 14A could be used twice over for eviction of tenants from more than one premises. Allowing the appeal, this Court held that on reading in the context of the Rent Control Law, the simple sense of the situation was that there should be a building which is let out, a landlord who collected rent and a tenant who paid it. The appellant, as the tenant, had been paying rent to the 1st respondent. The latter, together with the other respondents constituted the body of landlords and by consent, implicit or otherwise, the 1st respondent was collecting rent on behalf of all. He therefore functioned as a landlord and was entitled to institute proceedings qua landlord. 'In his name' and 'let out' by him read in the spirit of the provision and without violence to the words of the section clearly convey the idea that the premises must be owned by him directly and the lessee must be under him directly, which is the case, where the 1st respondent as heir steps into the shoes of his father who owned the building. He represents the former owner and lessor falls within section 14A of the Act. The accent on 'name' is only to pre-empt the common class of benami evasions. It was further held that a co-owner is as much the owner of the entire property as any sole owner. Therefore, there was no substance in the contention that the absence of the other co-owners disentitled the other co-owners from suing for eviction. In the High Court, the other co-owners who were parties did not object to the claim of the 1st owner to the first floor on the strength of the will. The objection to the will was not a serious objection. The other finding is not relevant for the present purpose.

In *Kanta Goel* case (supra) this Court followed the decision in *Sri Ram Pasricha v. Jagannath* (supra). This Court left open the question as to what would happen if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the claimant co-owner. Relying on the two aforesaid decisions in the facts of this case, in so far as the ratio of the two decisions was concerned, Mr. Rajinder Sachhar contended that as yet there is no principle established by this Court that any one of the co-owners could maintain an action for eviction. In the instant case, it was contended that

it was on record that a suit had been filed by Smt. Sham Kaur against the respondent for specific performance of an agreement to sell a portion of the property and for direction to him to execute the sale-deed with respect to a portion of the premises bearing Nos. 22 16 to 2222. That suit was decreed by Shri Jaspal Singh, Additional District Judge, Delhi and Sunder Singh was ordered to execute the sale-deed in favour of the co-owner Smt. Sham Kaur. The High Court however recorded that the case of the parties was that there was an appeal against the judgment and decree and the same was pending and the portion with respect to which the direction has been given was not the portion which is in occupation of the tenant and which is the subject-matter of this eviction petition. It appears that even according to the decree this portion, i.e., 3 rooms and the courtyard in question which is the subject-matter of dispute in the instant case, falls in the share of Sunder Singh who had filed the eviction petition. Furthermore, there is no evidence that other cotenant the widow, Smt. Sham Kaur or her representatives wanted the appellant to continue. This in our opinion falls within the ratio of *Kanta Goel v. B.P. Pathak* (supra) where this Court clearly held that when the other co-owner did not object to the eviction one co-owner could maintain an action for eviction even in the absence of other co-owner. Here also Smt. Sham Kaur and her heirs did not object to the claim for eviction made by the respondents herein. In that view of the matter and in the circumstances of this case, we are of the opinion that the ratio of the said case will apply and this suit will be maintainable even in the absence of all the owners to the eviction proceedings. In *Tej Bhan Madan v. II Additional District Judge and others*, [1988] 3 SCC 137 this Court reiterated that there can be a denial of the title by the tenant of his landlord without the tenant renouncing his character as such where, for instance, he sets up a plea of *jus tertii*. But the implication of the ground on which the denial of the title was made was that if the tenant-appellant could not have denied the vendor's title by virtue of the inhibitions of the attornment, he could not question the vendee's title either. The tenant did himself no service by this stand. This Court reiterated that the principle that the tenant cannot deny the title of the landlord in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. The law is that the estoppel of a tenant under section 116 of the Evidence Act was a recognition and statutory assimilation of the equitable principles underlying the estoppel in relation to tenants. In this case the rent had all along been collected by the respondent.

On the question of bona fide it was contended before us by Mr. Sachhar that in the High Court, immediately prior to the filing of the petition the landlord had rented out a few rooms on the ground floor, as such it pleaded that there was no bona fide. This point, the High Court noted, was not raised in the first appeal. Furthermore, it was not specifically raised in the pleadings. Therefore, the High Court found that it was not proper for the parties to raise this question in the second appeal. The High Court was right and we cannot interfere on this ground. The High Court was also invited to interfere with the findings of fact as to the bona fide nature of the need of the landlord. The High Court's attention was drawn on the finding of the 1st Addl. Rent Controller contained in paragraph 11 of the judgment wherein it was held that the landlord was having reasonably suitable accommodation. That plea had been reversed, it was contended, without going into the merits of the case by the Tribunal. The High Court however noted that during the pendency of the second appeal an application was filed on behalf of the appellant-tenant seeking that certain events subsequent to the passing of the impugned judgment may be permitted to be brought on record. The application was directed to be considered at the time of the hearing of the appeal before the High Court. The

High Court appointed one Advocate as the Local Commissioner to visit the premises and give his report regarding three rooms on the ground floor of the premises in dispute which according to the appellant had fallen vacant and was then in the occupation of the landlord. The landlord's case was that the rooms were in occupation of the legal heirs of the tenants. It was pleaded that those rooms could not be used for residential purposes as they were merely meant to be used as stores. The Commissioner appointed by the High Court filed a report which corroborated the stand of the landlord-respondent. The High Court had considered all this. In that view of the matter it was not possible for the High Court to have further interfered with the findings of the appellate court. Our attention was drawn to certain observations of this Court in *Vinod Kumar Arora v. Surjit Kumar*, [1987] 3 Supreme Court Cases 711. We do not find that the High Court has committed any error in following the principles enunciated in that decision. Indeed, interference by the High Court with the finding recorded by the First Appellate Court would have in this case been unwarranted.

There was nothing so far as the service of notice was concerned. In view of the principle enunciated by this Court in *V. Dhanapal Chettiar v. Yesodal Ammal*, [1980] 1 SCR 334 we are of the opinion that in the facts and circumstances of the case, the respondent-appellant was entitled to maintain this eviction petition alone and he had proved the grounds for eviction and that his need was bona fide and that he had no other suitable accommodation in his possession. In the premises, there is no merit in this appeal. The appeal fails and is accordingly dismissed with costs.

N.V.K.

Appeal dismissed.