Dr. Vijay Kumar And Ors. vs Raghbir Singh Anokh Singh on 22 May, 1973

Equivalent citations: AIR1973SC2254, (1973)2SCC597

Author: S.N. Dwivedi

Bench: P. Jaganmohan Reddy, S.N. Dwivedi, Y.V. Chandrachud

JUDGMENT

S.N. Dwivedi, J.

1. The first appellant, Dr. Vijay Kumar, is the father of the second and third appellants, Ajay Kumar and Ashok Kumar. Dr. Vijay Kumar was the tenant of the shop No. 2855, Guru Nanak Building, Kashmiri Gate, Delhi. The respondent is the owner of the shop. On January 12, 1965 he applied for ejectment of the appellants from the shop. The application was made to the Rent Controller under proviso (b) to Sub-section (i) of Section 14 of the Delhi Rent Control Act, 1958. The application alleged that the first appellant has sub-let, assigned or otherwise parted with a part of the shop to the other appellants. The application was contested by the appellants. By his order, dated December 6, 1966, the Rent Controller allowed the application and directed ejectment of the appellants. Their first appeal against his order was dismissed by the Rent Control Tribunal on April 25, 1968. Their second appeal was dismissed by the High Court of Delhi on October 29, 1971. They have preferred the present appeal by special leave.

2. The Rent Controller has found that the appellants have partitioned the shop in two portions. The two portions are demarcated by a wooden partition wall. In one portion there is the clinic of the first appellant. In the other portion the other appellants are carrying on the business of sale and purchase of motor cars. The wooden partition wall has divided the single door of the shop in two parts, so that there are now two doors, one in the portion in the occupation of the first appellant, and the other in the portion in the occupation of the other appellants. One cannot go directly from one portion to the other on account of the wooden partition wall. The first appellant locks his portion. The other appellants lock their portion separately. On these findings the Rent Controller has held that the second and third appellants are in exclusive possession of their portion. Hence he has come to the conclusion that the first appellant has parted with possession of their portion to them. The Rent Controller did not accept the plea of the appellants that the business which was being carried on in their portion was the joint business of all the appellants. The first appellant is assessed to Income-tax. He has never shown the income from the motor business in his Income-tax returns. The appellants did not produce the account books of the motor business. The Rent Controller accordingly held that the plea of joint business has not been established.

3. The findings of facts and the conclusions reached by the Rent Controller were confirmed by the Rent Control Tribunal. The High Court agreed with the appellate authority. These findings cannot be impeached before us. In the result, we would accept the conclusion of the Rent Controller that half of the shop was exclusively occupied by the second and third appellants and that the first appellant has parted with possession of that portion to them. The rejection by the Rent Controller of the plea of joint business also cannot be disturbed by us. It is a well reasoned finding.

4. Counsel for the appellants has urged before us that the first appellant, being the father of the other two appellants established them in the business and permitted them to occupy a half portion of the shop for that purpose. As a father it was natural for him to establish them in life. In short, the argument is that the second and third appellants were occupying a half portion of the shop with his permission.

5. It is a plausible, argument, but we are unable to entertain it at this stage. Such a plea was never taken in their written statement. It was not pressed even during the hearing be fore the Rent Controller or the Rent Control Tribunal or the High Court. It has been taken for the first time in the special leave petition. The plea is inconsistent with the plea taken in the written statement. In the written statement, the plea, in substance, was that the first appellant was in possession over the entire accommodation. The plea now sought to be raised is that the second and third appellants were in possession of the half portion of the shop exclusively but with his permission. The new plea is not a pleading of law; it is a pleading of fact. The respondent had no opportunity of confuting the plea. If we allow the appellants to take the new plea now, it is likely to cause him prejudice.

6. No presumption can be drawn from mere relationship of the father and son or from joint living and joint messing that the second and third appellants were' in permissive possession of the half portion. If the appellants had taken this plea in their written statement, the respondent would have got an opportunity of proving that the plea was false.

7. Having regard to these circumstances, we are not permitting the appellants to raise the new plea. It is now too late.

8. There is no force in this appeal and accordingly it is dismissed. In the circumstances of this case, there will be no order as to costs.