

Delhi High Court

Life Insurance Corporation Of ... vs Hari Singh And Sons And Anr. on 30 May, 1968

Equivalent citations: 4 (1968) DLT 559

Author: I Dua

Bench: I Dua

JUDGMENT I.D. Dua, J.

(1) The life Insurance Corporation of India has presented this revision under Section 35 of the Delhi and Ajmer Rent Control Act 38 of 1952 hereafter called the Act) against the order of the Additional Senior Subordinate Judge with enhanced appellate powers dated 5th April, 1961 whereby he allowed the appeal from the order of a learned subordinate Judge 1st Class dated 24th September, 1959 and dismissed the life Insurance Corporation's suit for ejectment which has been decreed by the trial Court.

(2) The only question which fell for determination by the trial Court was whether P. Surie, the original tenant of the Life Insurance Corporation, had, by the agreement Exhibit D. 2, sublet, assigned or otherwise parted with possession of the whole or any part of the premises in question so as to have become liable to be evicted from the tenanted premise under section 13(1) proviso (b)(i) of the Act. The trial Court on a consideration of the evidence, came to the conclusion that Shri Surie had parted with possession of the whole of the tenancy premises except the balcony. On account of this finding, the learned trial Court felt that the question whether Shri P. Surie had, without obtaining the consent of the Life Insurance Corporation, sublet the tenancy premises to M/S. Hari Singh and Sons, did not arise for decision.

(3) On appeal, the learned Additional Senior Subordinate Judge disagreed with the conclusion of the trial Court and found that Shri P. Surie had forfeited his tenancy rights by any subletting or parting with possession of the premises in favor of M/s. Hari Singh and Sons. It appears that during the pendency of the appeal, Shri P. Surie had died and it was unsuccessfully contended on behalf of the life Insurance Corporation that the proceedings in the appeal could not be continued for the benefit of the legal representatives of the deceased. It was "however conceded", to quote the exact language of the Court below, "that the tenancy in favor of P. Surie was a contractual tenancy and a contractual tenancy is certainly heritable, vide Nihal Chand v. Shive Narain and Nidre v. Nanneh P. Surie's death after the institution of the appeal will not, therefore, "affect the decision of the case. It is then urged that since P. Surie has died the tenant cannot be taken to be in control of the sub-agency business and the premises should be held to have passed into the exclusive possession of M/s. Hari Singh and Sons. It is stated by the appellant's counsel at the bar that P. Surie's widow has assumed the functions connected with the sub-agency which were being performed by her husband previously and the business of sub-agency is being carried on as before. Any way, this is a matter for adjudication after recording evidence and cannot be made the subject of a finding at the hearing of the appeal." I have reproduced this part of the order before me also, Shri Bhagwat Daval, the learned counsel for the Life Insurance Corporation, has contended that the appeal in the Court below could not continue after P. Surie's death. Having held that the plaintiff corporation had failed to establish that P. Surie had sublet or parted with the possession of the premises, as alleged in the plaint, the lower appellate Court allowed the appeal and dismissed the suit.

(4) On revision before me Shri Bhagwat Dayal has with his usual industry and research, taken me through the entire relevant material on the record and drawn my attention of the decided cases in support of his submission that the terms of the document Exhibit D. 2 read in the light of the evidence on the record, lead to the only inference that P. Surie had parted with possession of a part of the premises in question and indeed he has gone a step further and submitted that the relation ship between P. Surie and M/s. Hari Singh and Sons was that: of a landlord and tenant, with the result that P. Surie and M/s Hari Singh and Sons are liable to be evicted in these proceedings. Reliance by Shri Bhagwat Dayal has been placed on *Addiscombe Girden Estate*", Ltd. v. *Crabb Associated Htoel's of India Ltd.*, v. *R N. Kapoor and G.D. Choudhary v. shri Anand Sarup*'. As observed earlier, the learned counsel has also contended that after P. Surie's death, continuation of the possecssion by M/s Hari Singh and Sons clearly reveals the true nature and substance of the agreement embodied in Exhibit D. 2 and the subsequent events can legiti- mately be taken into account oil appeal. Shri Bhagwat Dayal has of course in addition questioned the right of P. Surie's heirs to continue the appeal in the lower Appellate Court and has contended that the lease being only for a period of 11 months, thereafter, it was a case of a tenant holding over, which status, could nto be inherited by the heirs of the deceased. The argument of the original lease being for 11th months and thereafter the position having become of atenant holding over, is a new point and has nto been allowed by me to be developed as it had nto besn raised in the Court below.

(5) On the toher hand, Shri A. N. Monga, the learned counsel for M/s Hari Singh and Sons, has submitted that the conclusion of the lower appellate Court is one of fact and this Court has no jurisdiction on revi- sion to re-open this conclusion. He has also submitted that there is no parting with possession on the part of Shri P. Surie in favor of M/s Hari Singh & Sons. He has relied on *Anantpal Ram v. KamaRhya Narain*", *G. Rangamannar v. Desu Rangiah*", *Darshan Singh v. Kulwant Rai*'. *Ajit Parshad v. Gian Singh*', *S. R. Mitroo v. Youngmen's Christian Association*^", *Nandu Mal v. Ramji Lat*, *Shmt Pragowati Devi v. Bhawemi Shankir Basrurker*, and *Bari Shankar v. Rao Gtrdhciri Lal*", in support of his submission.

(6) Due to acute shortage of accommodation in Delhi, which is fast developing. Coarts are often faced with situations in -which, on the one hand the landlords try to evict the tenants on the slightest pretext so that they may either force the tenants to agree to pay enhanced rent or they may be able' to lease it out to a new tenant and thereby make more money, whether visible or concealed, and on the toher, the tenants try to make money by subletting a part or whole of the premises by adopt' ing various devices and subterfuges in order to avoid the consequences of the violation of the provisions of rent legislation. The ingenuity on the part of the tenants in this respect takes various forms. In such cases, the landlords are normally handicapped in the matter of proof because the best evidence is beyond their reach and is often kept secret from them. Snob evidence is usually in the exclusive knowledge of the tenant and the alleged subtenant. The true nature of the transaction between the tenants and. .the alleged sab-tenants has to be spelled out by the Courts from the attending cirenstances, and the canduct of the parties by drawing reasonable inferences and presumptions, keeping in view .the common course of human conduct. It is again seldom that events happen which may serve to bring out and reveal the true character of the arrangement known only to the tenant and his alleged sub tenant. When such events happen, it is, in my opinion, .in the larger interests of lustice that Courts should take. due and proper ntoice of them in accordance with

law and it would be inappropriate, in the absence of special circumstances, to ignore such events and allow violation of the provisions of the Rent Acts by subterfuges or colourable devices and transactions. The Rent Acts are meant not only for the protection of honest tenants but they also protect the landlords against colourable transactions and illegal devices adopted by unscrupulous or dishonest tenants to the prejudice of the honest landlords.

(7) Keeping in view this aspect, in my view, the learned Additional Senior Subordinate judge was wrong in not taking into account the death of P. Surie and in declining to consider the position of the parties on his death. If there was no subsequent independent arrangement between Mr. Surie and M/s Hari Singh & Sons and the latter had continued in possession of the premises, it would have thrown useful light on, and revealed to some extent, the true nature and character of the arrangement embodied in Exhibit D. 2.

(8) There has since been further development in this case. Mrs. Asha P. Surie, widow of late Mr. P. Surie, has also since died on 19th April, 1967, as is evident from the application under Order 22, Rules 4 and 11 read with section 151. Civil P. C., filed in this Court. I would in the circumstances consider it more in accord with justice to set aside and quash the impugned order of the learned Additional Senior Subordinate Judge and send the case back to his Court for considering the subsequent developments in the case. It would be open to the parties, if so advised, to adduce further evidence, as to in what circumstances, if at all, M/s Hari Singh & Sons are continuing in possession of the premises after the death of Shri P. Surie and again after the death of Mrs. Surie. I must not be deemed to have expressed any opinion on the merits of the points in controversy.

(9) Parties are directed to appear in the Court of the learned Additional Senior Subordinate Judge on 15th July, 1968 when a short date would be given for further proceedings in accordance with law and in the light of the observations made above. Costs of this Court would be costs in the cause.