APPELLATE CIVIL

Before Prem Chand Pandit, J.

KRISHAN LAL CHOPRA,—*Appellant*

versus

PANNA LAL AND ANOTHER,—*Respondents*

S. A. O. No. 91-D of 1963

1963

Dec., 2nd.

Delhi Rent Control Act (LIX of 1958)—Section 14(1)(e)—Reasonably suitable residential accommodation—Meaning of—Circumstances to be considered for determination of.

Held, that in order to determine whether a landlord has reasonably suitable residential accommodation, circumstances other than the sufficiency of accommodation already in his possession can be taken into consideration, for example, his financial position, his illness, etc. Where it is proved that the landlord is drawing a pension of Rs. 244 per mensem and is paying a rent of Rs. 165 per mensem for his present accommodation and the house in dispute which he purchased and from which he seeks to eject the tenants is giving him a rent of only Rs. 40 per mensem, the Rent Controller was right in concluding that the residential accommodation with the landlord was not reasonably suitable for him and he could, therefore, eject the tenants from the premises in dispute. The Tribunal erred in law in holding that the economic considerations could not be taken into account for determining as to whether the residential accommodation with the landlord was reasonably suitable under the provisions of clause (e) to the proviso to sub-section (1) of section 14 of the Act. The fact that the landlord had not specifically taken up this plea in his ejectment application is of no consequence, because he had only to allege and prove that he had no other reasonably suitable residential accommodation with him, when he was filing the ejectment application on the ground that he *bona fide* required the premises for himself and his family.

Second Appeal from the order of Shri Pritam Singh, Rent Control Tribunal, Delhi, dated 1st April, 1963, confirming that of Shri Asa Singh Gill, Controller, Delhi, dated 19th December, 1962, dismissing the appeal.

VEDA VYASA, ADVOCATE, *for* the Appellant.

R. S. NARULA, HARNAM DASS AND R. L. TANDON, ADVOCATES, for the Respondents.

JUDGMENT :

Pandit, J.

PANDIT, J.—Rai Sahib Krishan Lal Chopra, appellant, was the owner of the premises in dispute, which is house No. 35, on Babar Road in New Delhi. This property belonged to the Ministry of Rehabilitation and was purchased by the appellant in a public auction held on 26th December, 1955. The sale certificate was issued in his favour on 14th November, 1960, wherein it was recited that he had become the owner thereof with effect from 30th July, 1956. It appears that this house was taken on rent by Amar Nath and his cousin, Panna Lal, respondents from the Government at a monthly rent of Rs. 40. After the purchase of the same by the appellant, the respondents attorned to him as tenants. After giving a notice to the respondents on 15th February, 1961, for vacating these premises, the landlord, on 31st July, 1961, filed an application for their eviction under section 14(1)(c) of the Delhi Rent Control Act (59 of 1958)(hereinafter referred to as the Act) on the ground that the premises were required for occupation by himself and his family and he had no other reasonably suitable residential accommodation with him. It was alleged that he was a retired officer of 75 years of age and he and his wife were suffering from heart trouble and high blood pressure. This house, it may be mentioned, consisted of five rooms with a varandah, kitchen, store, bath-room etc. It was further alleged that Amar Nath, respondent, owned three residential houses in Delhi.

This petition was resisted by the tenants, who controverted the allegations made by the landlord and pleaded that the appellant did not require the premises *bona fide* for his own residence. He was a tenant of Rai Bahadur Mathura Dass and the accomodation in his occupation was much more than his requirements. As a matter of fact, the landlord wished to sell the house and even an agreement of sale was made with the respondents. It was agreed that Rs. 42,000 would be paid in cash to the landlord, out of which a sum of Rs. 2,000 was paid in advance and the same remained with him for about one week, but later on, it was returned to the respondents. Rai Bahadur Mathura Dass and Shri Anand Raj Surana, alongwith two other gentlemen, had come to settle this bargain. The motive for getting this house vacated was to sell the same in open market and there was no intention to occupy the same, as it was a very big house and much more than the requirements of the landlord, who were only husband and wife. There was no other member of the family residing with them in Delhi. It was admitted that Amar Nath respondent did own three houses, but they were all in occupation of tenants since a long time. Panna Lal, respondent, however, did not own any house in Delhi.

It was found by the Controller that the landlord was residing on the first floor in a flat, which consisted of 3/4 rooms and was paying a rent of Rs. 165 per month. It was further found that there was no convincing evidence in support of the plea of the landlord that he and his wife were suffering from heart trouble and high blood pressure. No cardiogram had been produced. It had not been established that the present accommodation with the landlord was insufficient for his purposes, because his three sons and four daughters were well-settled in life and were living separately. One of his sons was

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employed in the Army and when he was posted to non-family station, his wife and children could be accommodation in the present flat of the landlord. The Controller, however, came to the conclusion that the landlord was a retired P.C.S. Officer, drawing a pension of Rs. 244 per mensem. The rent of Rs. 165 per month, that he was paying for the present accommodation, was too much for him. He was getting only Rs. 40 per mensem as rent for the house in dispute which he had purchased. For economic reasons and for financial advantage, he wanted to leave the flat and occupy suit premises. As the rent of the present accommodation was high the landlord did not consider the same suitable for his purposes. According to the Controller, the landlord had purchased the present house and he could occupy it for living comfortably and independently. He was entitled to give up his present flat, which was rented at a high rate. Under these circumstances, a case for the eviction of the tenants on this ground had been made out. The Controller also found that the landlord's petition was not *mala fide* because of the fact that he had accepted Rs. 2,000 as earnest money for this house, which he later on returned. He further found that although the sale certificate was issued on 14th November, 1960, it declared the petitioner to be the owner of this property with effect from 30th July, 1956. Since this petition was filed on 31st July, 1961, therefore, five years had been completed from the date of the transfer, and it could not, consequently, be dismissed on this ground under the provisions of section 14(6) of the Act. As a result of these findings, the Controller passed an order for the recovery of possession of the suit premises in favour of the landlord under the provisions of clause (e) of the proviso to sub-section (1) of section 14 of the Act.

Being aggrieved by this order, the tenants went in appeal before the Rent Control Tribunal. He con-

firmed the finding of the Controller that the landlord had become owner of the property with effect from 30th July, 1956 and his application for ejectment, having been filed after the expiry of five years, that is, on 31st July, 1961, was not premature. He further held that the family of the landlord consisted of three sons and four daughters, besides himself and his wife. All his four daughters were married. His one son was employed in the Army and was drawing Rs. 1,000 per mensem as pay. His other son was doing business at Dehra Dun and was residing there with his family. His third son was residing in Delhi in a rented house and was doing his own work. Since none of his seven children was dependent on him, the family of the landlord, therefore, consisted of himself and his wife only and it was their needs that had to be looked to. It was also held that the present accommodation in possession of the landlord consisted of two rooms, one drawing-cum-dining room and one store-room, besides a bath and a latrine. It was on the first floor and the landlord was paying Rs. 165 per mensem for the same. According to the Rent Control Tribunal it was quite sufficient and reasonably suitable for the needs of the landlord and his wife. He confirmed the decision of the Controller and rejected the plea of the illness of the landlord and his wife. He, however, reversed the finding of the Controller to the effect that the landlord should be allowed to occupy the premises in dispute for economic reasons and for financial advantage. According to the Rent Control Tribunal, firstly, no such ground of economic reasons was raised in the ejectment application and, secondly, there was no provision in section 14 of the Act for directing ejectment on such a ground. It was also found that the eviction application was not made *mala fide* on the ground that some 2½/3 years ago, the landlord had accepted Rs. 2,000 as earnest money for the sale of this house, and later on he had changed his

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mind. Since the landlord had got a reasonably suitable accommodation for himself and his wife, who was the only dependent member of his family, the Rent Control Tribunal accepted the appeal, set aside the order of the Controller and dismissed the ejectment application filed by him. Against this order, the present appeal has been filed by the landlord.

Learned counsel for the appellant submitted that the finding of the Rent Control Tribunal that the plea of illness of the landlord and his wife had not been established was incorrect. In arriving at this finding, the learned Tribunal has misread the evidence, drawn erroneous conclusions therefrom and misapprehended the legal position. He further submitted that the learned Tribunal erred in law in holding that economic and financial reasons of the landlord had not to be taken into consideration in determining the suitability of the residential accommodation. Under these circumstances, his finding that the landlord had got a reasonably suitable accommodation in his possession and he was, therefore, not entitled to seek ejectment of the tenants, was wrong in law.

The relevant provisions of the Act for the determination of this case are as under—

> "S. 14(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or controller in favour of the landlord against a tenant:
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> Provided that the controller may, on an application made to him in the prescribed manner, make an order for the recovery of the premises on one or more of the following grounds only, namely:—
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> * * * *

(e) that the premises let for residential purposes are required *bona fide* by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

* * * * *
* * * *

(6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1) on the ground specified in clause (e) of the proviso thereto, unless a period of five years has elapsed from the date of the acquisition."

There is no doubt that in the present case, the landlord can get the present house vacated from the respondents if it is proved that he has no other reasonably suitable residential accommodation with him. The question for decision, therefore, is whether the accommodation, which the appellant has got at the present moment with him, can be called reasonably suitable. In order to determine this, is it that one has only to see to the sufficiency of the accommodation and nothing else? The learned Tribunal seems to be under the impression that under this clause one has only to find out if the residential accommodation already in possession of the landlord is sufficient for his needs and no other consideration, financial or otherwise, can be taken into account. If this was the intention of the Legislature, then it could have easily used the expression "sufficient residential accommodation" instead of the words "reasonably suitable residential accommodation".

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In my view, there can be other circumstances, besides the sufficiency of the accommodation, to determine as to whether the accommodation already in possession of the landlord can convince the Controller on so many grounds, as for example, his financial position, his illness etc. In the present case, the Controller has found that the appellant was a retired officer drawing a pension of Rs. 244 per mensem. The rent that he was paying was Rs. 165 per month, which was too much for him. The premises in suit, which he had purchased were giving him only Rs. 40 per mensem. The accommodation therein was much more than what was in his possession. Under these circumstances, he rightly came to the conclusion that the residential accommodation with the landlord was not reasonably suitable for him and he could, therefore, eject the tenants from the premises in dispute. The Tribunal had, in my opinion, erred in law in holding that the economic considerations could not be taken into account for determining as to whether the residential accommodation with the landlord was reasonably suitable under the provisions of clause (e) to the proviso to sub-section (1) of section 14 of the Act. The fact that the landlord had not specifically taken up this plea in his ejectment application is of no consequence because he had only to allege and prove that he had no other reasonably suitable residential accommodation with him, when he was filing the ejectment application on the ground that he *bona fide* required the premises for himself and his family. This had been done by the appellant in the present case.

In this view of the matter, it is not necessary to go into the other questions raised by the learned counsel for the appellant.

Learned counsel for the respondents, however, urged that the findings of the learned Tribunal that the application for ejectment was not premature and it was *bona fide* were incorrect and, consequently, this eviction application should be dismissed.

There is a concurrent finding of both the Courts below against the first contention of the learned counsel for the respondents. It is true that the sale certificate was issued to the landlord on 14th of November, 1960, but it was clearly mentioned therein that the appellant had become the owner of this property with effect from 30th July, 1956. That being so, the ejectment application filed on 31st July, 1961 was after the expiry of five years from the date of the acquisition of the property, that is, 30th July, 1956, and was, therefore, not premature within the meaning of section 14(6) of the Act.

As regards the question whether the ejectment application filed by the appellant was *bona fide* or not, it was stated by him in evidence that about 2½ years ago he had approached the respondents for vacating the premises in dispute. They demanded Rs. 10,000 for this purpose. He had no money. His friends advised him that if he wanted to save himself from litigation, he should pay the respondents Rs. 10,000 or accept their offer and sell the property in dispute to them and purchase other property for himself. He accepted their advice. The respondents gave him Rs. 2,000 as advance and promised to pay Rs. 3,000 more as earnest money. They did not pay him Rs. 3,000 and he therefore returned the amount of Rs. 2,000 to them. Both the Courts below have accepted this statement of his and have held that, under these circumstances, it could not be said that the present application was made *mala fide*. The learned Tribunal has further held that, according to section 19 of the Act, if the landlord did not occupy the premises in suit, then the tenants could recover possession from him within three years. Consequently, I am unable to disturb the finding of fact arrived at by the learned Tribunal on this point.

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In view of what I have said above, this appeal succeeds, and the order of the learned Tribunal is set aside and that of the Controller is restored. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout. The respondents are, however, given six months' time to vacate the premises.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J. and Harbans Singh, J.

FIRM BUTA MAL-DEV RAJ,—*Appellant*

versus

CHANAN MAL AND OTHERS,—*Respondents*

Letters Patent Appeal No. 304 of 1960.

Partnership Act (IX of 1932)—Section 69—Firm registered with the Registrar of Firms but one of the partners not shown as a partner—Suit by firm through a partner whose name shown in the register—Whether competent.

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Held, that the phrase "the persons suing" occurring in section 69(2) of the Indian Partnership Act, 1932, must mean the partners in the firm. The use of the plural "persons" is obviously deliberate, since while a singular may also mean the plural, the plural can never mean the singular. The firm is obviously not meant to be covered by the word "persons" in this context, and although a firm may bring a suit through a manager who is only an employee and not a partner, though authorised by the partners to institute the suit on behalf of the firm, such a person cannot be regarded as covered by the word "persons" since under no circumstances would his name be included as a partner in the Register. All that Order XXX rule 1 does is to authorise the institution of a suit by or against two or more persons in the name of a firm of which they were partners at the time of accruing of the cause of action, and it empowers any party to the suit so instituted to apply for and to be furnished full particulars of all the partners in the firm at the material time. Obviously when a suit is instituted in the name of a firm the suit is on behalf of all the partners and not only such of them as are