

HIGH COURT OF DELHI : NEW DELHI

C.M. (M) No. 169/2008 & C.M. Appl. No. 1752/2008

Order passed on on: February 5th, 2008

Dal Chand Petitioner
^ Through: Ms. Pratibha, Advocate

versus

! Raj Rani & Anr. Respondents
Through: None.

***CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.

1. This Petition has been filed under Article 227 of the constitution of India to impugn the order dated 23rd November 2007 passed by the learned Additional Rent Controller Delhi whereby the petitioner's application under Order 1 Rule 10 CPC filed for impleadment as a party Respondent in eviction Petition No.493/07/05 filed by the Respondent herein has been dismissed.

2. The father of the petitioner Late Shri Bihari Lal was the

original tenant in respect of the suit premises. The Respondent is the successor in interest of the original landlord. The Respondent filed the eviction Petition impleading one of the sons of Late Shri Bihari Lal, namely, Rajpal as the Respondent. This Petition was filed in the year 2005. While the eviction proceedings were progressing, the petitioner filed an application under Order 1 Rule 10 CPC seeking impleadment on the ground that he is one of the legal heirs of the deceased tenant and has therefore succeeded to the tenancy rights alongwith other legal heirs of the deceased tenant. This application was filed only on 18th September 2007 on the ground that the petitioner became aware of the pending eviction proceedings in the month of September 2007.

3. The case of the petitioner is that he is too, apart from his brother Shri Rajpal, is residing and also carrying on his business from the suit premises. By the impugned order this application has been rejected by learned Additional Rent Controller. The Additional Rent Controller has accepted the contention of the Respondent landlord that Rajpal was the only person who started paying rent to the Respondent landlord after the death of the father/tenant Shri Bihari Lal in the year 1990. Therefore, there was an implied surrender of tenancy right in favour of Shri Rajpal. The learned Additional Rent Controller has relied upon the written statement filed by Shri Rajpal wherein he admitted that he has inherited the shop after the death of his father and started paying rent to the Respondent landlord.

4. The learned Additional Rent Controller relied upon a decision of this court in 1989 (2) RCJ 629 wherein this court has held as follows:

“It is settled principle of law that implied surrender or surrender by operation of law occurs firstly by creation of new relationship or secondly by relinquishment of possession. Implied surrender does not depend on the intention of the parties, like express surrender. It has to be implied from the conduct of the parties. The principle underlying section 111(f) of the Transfer of Property Act is that whatever relationship exists between two parties in respect of particular premises and new relationship arises, if two sets of relationships cannot exist as being inconsistent and incompatible that is to say, if the latter can come into effect only on termination of earlier, that would be deemed to have been terminated in order to enable the latter can come into effect only on termination of earlier, that would be deemed to have been terminated in order to enable the latter to operate. The essence of implied surrender is not change of possession but the doing of an act which is inconsistent with the continuance of the lease or tenancy.

In view of the admitted facts that after the death of Chaman Lal, Sushil Kumar alone was issued rent receipts in respect of the premises by the Respondents – landlords; other heirs never asserted their tenancy rights and could not produce any rent receipts issued by the Respondents landlords in their favour; Sushil Kumar was alone carrying on business in the shop; and other facts, the only inevitable conclusion which can be drawn is that the conduct of the parties is inconsistent with the continuance of lease of the other heirs of Chaman Lal after his death and is in conformity with creation of new relationship of tenant and landlord between Sushil Kumar

and the Respondents. Therefore, I uphold the contention of the learned counsel for the Respondents – landlords and endorse the finding of the learned Tribunal that Sushil Kumar was alone attorned as tenant after the death of Chaman Lal, and by conduct other heirs would be deemed to have surrendered their tenancy rights, if any, impliedly.”

5. I am of the view that the learned Additional Rent Controller was right in dismissing the application filed by the petitioner since the petitioner did not bring before the court any material to show that he had been tendering the rent to the Respondent landlord. From the conduct of the petitioner it appears that the application for impleadment was filed deliberately to delay the disposal of the eviction Petition. Pertinently, the eviction petition was pending since the year 2005 and the application for impleadment was filed only in September 2007, after the pleadings were complete and the parties were preparing to go to trial. Though it is stated that apparently the Respondent No. 1 has filed the eviction petition in collusion with Shri Rajpal, there is nothing pointed out from the record, how such collusion can be inferred. As aforesaid, the eviction petition is being contested by the petitioners brother since 2005, which would not have been the case if there was collusion between the two Respondents. Though it is claimed that Shri Rajpal did not inform the petitioner of the pendency of the eviction petition in order to deprive him of his claim towards the tenancy rights in the property, there is nothing to show that the petitioner and Respondent No. 2

have any ongoing disputes with regard to inheritance of the properties left behind by Late shri Behari Lal. Only a vague averment has been made to state that the petitioner came to know from some "reliable source" about the pendency of the eviction petition. NO further details of the so called "reliable source" has been furnished and the circumstances in which the petitioner allegedly learnt of the said fact have not been disclosed. From these facts, I get the impression that the collusion is not between the two Respondents, but between the petitioner and his brother Shri Rajpal, i.e. Respondent No. 2. The aforesaid application for impleadment was dismissed by the learned Additional Rent Controller on 23rd November 2007 and the certified copy was also obtained by the petitioner on 6th December 2007. The present Petition has been filed merely a few days before the matter is to come up before the learned Additional Rent Controller for recording evidence. From the aforesaid facts, it appears that the endeavour of the petitioner and the other Respondent is to some how delay the disposal of the eviction petition. Moreover, in my view no prejudice would be caused to the petitioner in case he is not impleaded as a party since the interest of the tenant is being sufficiently represented by the elder brother Shri Rajpal, who is contesting the eviction Petition. However, this order and the impugned order shall not impinge on the inter-se rights of the petitioner and Respondent No. 2 Shri Rajpal in relation to the suit

premises.

6. Dismissed.

February 05, 2008
P.K. BABBAR

VIPIN SANGHI, J.