

* **HIGH COURT OF DELHI : NEW DELHI**
+ **C.M. (M) No. 188/2007 & C.M. Appl. No. 1794/2007**
% **Dated : February 20, 2008**

Shri Bhagwan Singh & Ors. Petitioners
Through: Mr. Charanjit, Advocate

versus

Shri Rakesh Kumar Respondent
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? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.(ORAL)

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1. This Petition has been preferred to impugn the order passed by the Additional Rent Control Tribunal (ARCT) Delhi in R.C.A. No.497/2005 dated 3.10.2006. By the impugned order, learned Rent Control Tribunal has dismissed the appeal filed by the petitioners against the order passed by the learned Additional Rent Controller (ARC) dated 30th September 2005. The ARC had by the aforesaid order dismissed the application under Order 7 Rule 11 CPC and another application under Order 1 Rule 10 CPC filed by

the petitioner No.3 Shri Bhagirath Singh.

2. Petitioner No.3 Shri Bhagirath Singh is father of petitioner No.1 and 2. The Respondent filed an Eviction Petition impleading the petitioner Nos.1 and 2 herein as the Respondent tenants under Section 14(1)(a) of the Delhi Rent Control Act. The petition was founded upon a rent agreement dated 8th January 2004 claimed to have been executed between the Respondent and petitioner No.1 and 2. The Respondent landlord claimed title to the property on the basis of registered General Power of Attorney and registered Will stated to have been executed by petitioner No.3 (the applicant under Order 1 rule 10 CPC) in favour of the Respondent in respect of the suit premises. In his applications under Order 1 rule 10 CPC and under Order 7 Rule 11 CPC, the case set up by petitioner No.3 was that the documents on the basis of which the respondent landlord was claiming title to the suit property had been obtained by fraud. He further stated that he has already filed a suit to seek a decree of declaration and cancellation in respect of the said documents including the agreement to sell and the rent deed. By order dated 30th September 2005, the learned Additional Rent Controller dismissed both the applications and as aforesaid, the appeal has also been dismissed by the Additional Rent Control Tribunal by the impugned order dated 3.10.2006.

3. The submission of the petitioner is that petitioner No.3 ought to have been impleaded as a party respondent in the eviction

petition and the eviction petition itself ought to have been dismissed since the dispute with regard to the title of the respondent, his claim of ownership and as landlord of the petitioner No.1 and 2 in respect of the suit premises is pending adjudication before the Civil Court. His argument is that unless and until the title of the respondent as the owner and landlord is established before the Civil Court, he cannot maintain or proceed with the eviction petition.

4. Learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court in ***Rajendra Tiwary vs. Basudeo Prasad & Anr.***, 2002 (1) RCJ 47 (SC). He has also relied on the decision of this Court in ***M.C.D. Vs Harish Chander & Ors.***, 115 (2004) DLT 481.

5. In my view, there is no error in the order passed by the learned ARC or by the learned Tribunal. Both the Courts below have acted within the bounds of their respective jurisdiction. Prima facie, the title of the respondent in respect of the suit premises, and the relationship of the landlord and tenant between the respondent on the one hand and petitioner No.1 and 2 herein, on the other hand, stood established. Until the title of the respondent and tenancy agreement claimed by the respondent are set aside on the ground of fraud as alleged by the petitioners, by a competent Court of law, the Rent Controller and the Tribunal are entitled to rely upon the same, particularly, when the case of the petitioners is not that the said documents do not bear their thumb impressions, but only that the

documents have been obtained fraudulently by the respondent. Therefore, the onus clearly lies on them to make good their plea of fraud against the respondent.

6. I do not agree with the submission of the petitioner that until the title of the respondent as the owner-landlord is not established, he could not maintain or proceed with the eviction petition. Prima facie, both the title and the relationship of landlord and tenant stands established by the documents placed on record and relied upon by the respondent. What is not yet established is the plea of fraud set up by the petitioners. If the argument of the petitioners were to be accepted, then in every case, it will be very easy for any tenant to defeat and delay the eviction petition filed by the landlord by merely setting up an independent title to the property and by initiating a civil proceedings in that respect. This will completely defeat the object of the Act, which is, inter-alia, to enable the Controller to expeditiously decide an eviction petition filed by a landlord. Since it is the petitioners who are challenging the title of the respondent, both as the owner and landlord, it is for them to prosecute their suit and seek a declaration from the Civil Court. Unless and until a declaration as sought by them is made in favour of the petitioners, there is no reason for the Rent Controller not to proceed with the eviction petition, when, prima facie the landlord has established his title to the property and also his relationship of landlord and tenant with petitioner Nos.1 & 2, on the basis of the

documents placed before him by the landlord.

7. ***Rajendra Tiwary (supra)*** has no application in the facts of the present case. In that case the trial court as well as the first appellate court had returned a finding of fact that there was no landlord-tenant relationship between the plaintiff and the defendants. In spite of that, the High Court in Second Appeal on equitable considerations, passed a decree for eviction. It was on account of the fact that there were concurrent findings of the fact to the effect that there was no relationship of landlord and tenant between the parties, that the Supreme Court upset the decision of the High Court passed in second appeal.

8. In ***Harish Chander (supra)***, there was a dispute inter-se between different persons claiming title to the property which had been let out to the tenant. The tenant had no concern with that inter-se dispute. In these circumstances, this court was of the view that an order under Section 14(2) of the Act should not have been passed by the Rent Controller or the Tribunal since the title of the petitioner in the eviction petition was in dispute inter-se between the different claimants. This judgment is also not applicable in the facts of the present case, since, as aforesaid, prima-facie the title of the respondent landlord stands established with the execution of registered documents, which are sought to be disputed by the petitioners on the ground of fraud. For the same reasons, the decision relied on by the petitioner in ***Mani Ram vs. Ratan Lal Saini***, 2003

IV AD (Delhi) 46 has no application to the facts of this case.

9. In view of my aforesaid discussion, I find no merit in this petition. However, it is made clear that no observation in this Order shall have any bearing on the determination of the issues of title and relationship, or of the alleged fraud, by the Courts below.

10. Dismissed.

VIPIN SANGHI, J.

February 20, 2008
P.K. BABBAR