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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 17.10.2008

Date of Order: 24.10.2008

RC. REV. No. 44/2008

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Madan Lal

... Petitioner

Through: Mr. O.P.Vaish, Advocate

Versus

Vijay Rani & Ors.

... Respondents

Through: Mr. S.K.Bhaduri, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

The petitioner is aggrieved by an order dated 24.1.2008 of the learned ARC whereby an application seeking leave to contest the eviction petition was dismissed.

2. The landlady/respondent filed an eviction petition in respect of property no. 10258 Gali Ambale Wali, Manakpura, Karol Bagh, Delhi in

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occupation of the petitioner on the ground of bona fide requirement. The landlady submitted that she was presently living in a rented accommodation in property no. N-151, Vishnu Garden. The petitioner in leave to defend did not challenge the bona fide requirement of the landlady but only raised objection that the petitioner was in possession of a Will dated 08.09.1972 executed in favour of his father Ram Singh by the erstwhile owner Smt. Javitri Devi and by virtue of this Will, his father became owner of the property and there was no relationship of landlord and tenant. In the counter affidavit, the landlady placed on record counterfoils of the rent receipts from 1983 to 1991 showing payment of rent by Ram Singh. It was also contended that thereafter the rent was paid by the petitioner.

3. The learned ARC considered the documents filed by both the parties and came to the conclusion that there was an existing relationship of landlord and tenant. Learned ARC observed that Smt. Javitri Devi, the erstwhile landlady had died on 12.9.1972. If there had been a Will dated 8.9.1972 in favour of the petitioner's father, there would have been no reason for the petitioner or his father Ram Singh to keep on paying rent to the landlady. It was also found that the property was duly mutated in the name of the landlady in the MCD record and she was paying house tax.

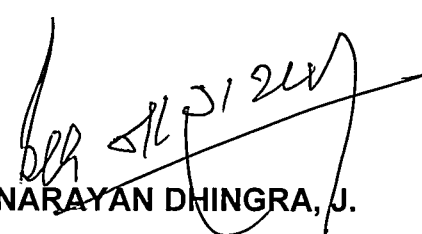
4. The Counsel for the petitioner has submitted that the respondent/landlady had also claimed ownership on the basis of Will of Smt.

Javitri Devi. Since there was one Will in favour of the petitioner and other in favour of the landlady, the petitioner had raised a triable issue in respect of ownership and the learned ARC should not have dismissed the application of the petitioner.

5. I consider that the argument is a fallacious argument. The alleged Will in favour of Ram Singh was stated to have been executed in 1972. Ram Singh himself had not acted on this Will and continued paying rent. The payment of rent is not denied. The counterfoils of rent receipts were not denied. Even the widow of Ram Singh i.e. the mother of present petitioner, had continued paying rent. In view of this factual situation no dispute regarding relationship of landlord and tenant arose nor could have been entertained by the Court of ARC.

6. I find no infirmity in the order of the Trial Court. The petition is liable to be dismissed and is hereby dismissed.

October 24, 2008
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SHIV NARAYAN DHINGRA, J.