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HIGH COURT OF DELHI : NEW DELHI

CM (M) No.1049/2010 & CM No. 14680/2010 (stay)

% **Judgment reserved on: 17th August, 2010**

Judgment delivered on: 19th August, 2010

Mr.Ashok Kumar Gupta Petitioner
S/o Late Sh. S.L.Gupta,
R/o H-12/14, Malviya Nagar,
New Delhi

Through: Mr. Vijay Tandon, Advocate

Versus

1. Ms. Renu Chawla
W/o Mr. Rajesh Kumar
R/o 2944, Gali No. 41 & 42,
Beadon Pura, Karol Bagh,
New Delhi
2. Mr. Praveen Gupta,
Purporting to be Proprietor,
Mahajan Traders,
2944, Gali No. 41 & 42, Beadon Pura,
Karol Bagh,
New Delhi

.....Respondents

Through: None

Coram:

HON'BLE MR. JUSTICE V.B.GUPTA

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

V.B.Gupta, J.

1. This petition under Article 227 of the Constitution of India has been filed by petitioner challenging the impugned order dated 14th May, 2010 passed by Additional Rent Controller (for short as 'Controller'), Delhi, vide which petitioner's application under Order 1 Rule 10 read with Section 151 of Code of Civil Procedure (for short as 'Code') for being impleading as a party to the eviction petition, was dismissed.

2. In application under Order 1 Rule 10 of the Code, it is stated that premises in question was taken on rent by late Sh. S.L.Gupta, deceased father of the petitioner and petitioner used to go and sit on the shop and was assisting his father in running the business. Even after death of his father, petitioner has been regularly coming and sitting on the shop and is also helping his brother Mr. Praveen Gupta and is in possession of the tenanted shop.

3. After death of his father, petitioner being eldest son has also inherited the tenancy rights in respect of the shop in question. It was the duty of the landlord to have impleaded all the legal heirs of deceased tenant as respondents, but with ulterior motive, petitioner was not impleaded as a party. The rights of the petitioner shall be adversely affected if he is not impleaded as a necessary party.

4. It is contended by learned counsel for petitioner that possession of the shop in question is with petitioner, where he is carrying on his business.

Petitioner being the legal heir of Sh. S.L.Gupta who was the tenant, is a necessary party in the eviction proceedings.

5. In support of his contentions, learned counsel cited decision of Supreme Court, *Mst. Surayya Begum vs. Mohd. Usman & others All India Rent Control Journal (V)-1991 (1) 608*.

6. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

7. In *Waryam Singh and another vs. Amarnath and another, AIR 1954, SC 215*, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

8. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

9. In the entire application under Order 1 Rule 10 of the Code, petitioner nowhere stated that he is a tenant in the shop in question nor it is mentioned since when he is the tenant, and what is the rate of rent and for

which period he has paid the rent and who is his landlord. The application is absolutely silent on these material facts.

10. It is petitioner's own case that, he has been visiting the shop and used to sit in the shop and was assisting his father. After death of his father, he had been going to the shop regularly and is helping his brother Sh.Praveen Gupta (respondent in the trial court) in carrying out the business being run in the shop.

11. Before a person can be impleaded as a party in a suit, it has to be shown that he has got legal right to be impleaded and without his impleadment, court cannot decide the matter effectively. In this regard, finding of the trial court are reproduced as under:-

“7. A perusal of the record reveals that the petitioner before instituting the present petition had sent a notice dated 07.09.2006 to the respondent M/s Mahajan Traders through Sh. S.L.Gupta calling upon the respondent for payment of rent in schedule time and at the revised rate and also for terminating the tenancy of the respondent. The said notice was replied vide reply dated 07.12.2006 by Sh. Praveen Gupta, Proprietor of M/s Mahajan Traders in which it has been claimed that Sh. S.L.Gupta has expired on 14.11.2006 and he has bequeathed all his assets, rights, title and interest in M/s Mahajan Traders in favour of his son Sh. Praveen Gupta by virtue of registered Will dated 25.01.2001.

8. In view of above, as vide reply dated 07.12.2006 Sh. Praveen Gupta claimed the sole proprietorship of M/s Mahajan Traders and thereafter, the petitioner has filed the present petition against M/s Mahajan Traders through Sh. Praveen Gupta. As such, it is apparent that Sh. Praveen Gupta who is son of Sh. S.L.Gupta is sole proprietor of M/s Mahajan Traders and he has been carrying out the business in the suit shop. The applicant also admits in the application that after

the death of Sh.S.L.Gupta on 14.11.2006, he has been regularly coming and sitting on the shop and is also helping his brother Sh. Praveen Gupta for carrying out the business being run in the shop under the name and style of M/s Mahajan Traders.

9. As such, it is not the case of the applicant that he is in possession of the suit shop when he himself admits that he is only helping his brother Sh. Praveen Gupta in running the business and he sits in the shop. Further, admittedly M/s Mahajan Traders was sole proprietorship of Sh. S.L.Gupta who has expired and Sh. Praveen Gupta is one of the legal heir of Sh.S.L.Gupta and also sole proprietor of M/s Mahajan Traders and he has been impleaded by the petitioner in the present case. It is a settled law that after the death of original tenant, the tenancy devolves upon his legal heirs as joint tenants and all the legal heirs are not required to be impleaded in a petition filed by the landlord. It has been held in ***Rajender Kumar Sharma & Ors. vs. Leela Wati & Ors., 155 (2008) DLT 383*** that *Impleadment of Legal Heirs-Death of original tenant, legal heirs inherit the tenancy as joint tenants – Occupation of one of the tenants is occupation of all the joint tenants not necessary for landlord to implead all legal heirs of deceased tenant, whether they are living in property or not – Sufficient for landlord to implead only those persons who are living in property as party –An eviction petition against one of the joint tenants – All Joint tenants are bound by order of Rent Controller as joint tenancy is one tenancy and is not tenancy split into different legal heirs.*

10. Moreover, by virtue of Will dated 25.01.2001 all assets, rights, title and interest in M/s Mahajan Traders has been inherited by Sh. Praveen Gupta. The applicant also admits that he is only helping his brother Sh. Praveen Gupta for carrying out the business being run in the shop under the name and style of M/s Mahajan Traders and there is nothing in the application that the respondent is in collusion with the landlord or the respondent is acting adversely to the interest of the other LRs of late Sh. S.L.Gupta. It has been held in ***Tahira Begum vs. Sumitar Kaur and Anr. 166 (2010) DLT 443*** that *one heir of the tenant is capable of representing the entire estate unless shown to be in collusion with the landlord.*

11. In view of above, in the absence of any collusion between the petitioner and Sh. Praveen Gupta who is one of the legal heir of Sh.S.L.Gupta, the said Sh.Praveen Gupta is capable of representing the entire estate of Sh. S.L.Gupta more so when he is the sole proprietor of M/s Mahajan Traders and, therefore, presence of the applicant is not necessary for effective adjudication of the present case. Furthermore, it is a settled law that the petitioner is dominus litus of his case and he cannot be compelled to fight against those against whom he does not wish and against those he has not claimed any relief.”

12. Admittedly, there is no collusion or clash of interest between the petitioner and Sh. Praveen Gupta, who is one of the legal heir of the deceased tenant and is also respondent in the case. Moreover, the interest of petitioner is being duly represented by his real brother, Sh. Praveen Gupta, the respondent. *Mst. Surayya Begum vs. Mohd. Usman & others (supra)* cited by learned counsel for petitioner is also to this effect that there should be no collusion or clash of interest between the legal heirs.

13. Under these circumstances, no illegality, infirmity or irrationality can be found in the impugned order. Thus, present petition under Article 227 of the Constitution of India is not maintainable and same is hereby dismissed.

August 19, 2010
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V.B.GUPTA, J.