

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RC. REV. 133/2009 and CM No.17344/2009

Decided on 27.01.2010

IN THE MATTER OF :

MR. DAULAT RAM, DECEASED THROUGH LRs
..... Petitioners
Through: Mr. O.P. Gulabari, Adv.

versus

MR. DHANPAT RAI & ORS Respondents
Through: None.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. The present petition is directed against the order dated 18.07.2009 passed by the learned Additional Rent Controller on a petition preferred by the petitioners/tenants under Section 14 (1)(e) read with Section 25-B of the Delhi Rent Control Act, whereunder an eviction order was passed against him and in favour of the respondents/landlords in respect of the tenanted premises, i.e., one hall on the first floor of premises bearing No.2915/13, Bahadurgarh

Road, Teliwara, Delhi-110 006 along with roof thereof and staircase as shown in the site plan(Ex.PW-1/1).

2. The petitioners/tenants have assailed the impugned order on two counts. It is firstly stated by the counsel for the petitioners/tenants that respondents/landlords deliberately failed to place on record the site plan of property bearing No.4013, Gali Barna, Basti Mansa Ram, Sadar Bazar, Delhi-110006 presently under their occupation to show the extent of accommodation available with them. Counsel for the petitioners/tenants states that the aforesaid argument was taken by him before the learned Additional Rent Controller as recorded in para 6 of the impugned order.

3. A perusal of the impugned judgment shows that in the opening paragraph, the learned Additional Rent Controller took notice of the averment of the petitioners (respondents herein) that they were residing in the aforesaid premises at Sadar Bazar, which comprises of one room and kitchen on the ground floor, two rooms on the first floor and two rooms on the second floor with facility of toilet and bathroom. Thereafter, the number of the petitioners (respondents/landlords), their family members and their marital status was taken into consideration, on the basis of the averments made in the eviction petition.

4. In para 11 of the impugned judgment, the learned Additional Rent Controller opined that the petitioners

therein(respondents/ landlords herein) had been able to show the extent of accommodation available with them by giving the testimony of PW-1 and that the respondents therein(petitioners/tenants herein) were unable to assail the testimony of the PW1 by producing any cogent and reliable evidence.

5. On inquiry from the counsel for the petitioners/tenants as to whether the petitioners/tenants had either called upon the respondents/landlords at any stage to produce the site plan of the premises under their occupation or filed any application to the said effect before the learned Additional Rent Controller, counsel for the petitioners/tenants replies in a negative. That PW-1 stated in his evidence the extent of accommodation available with the respondents, is borne out from a perusal of the impugned order itself. PW-1 having stated so in his deposition, the onus shifted upon the petitioners to demolish the said testimony by producing evidence to the contrary, either oral or documentary. Having failed to do so, there was no reason for the Court below to disregard the testimony of PW-1 in that regard. It therefore cannot be held that the respondents deliberately did not file the site plan of the premises under their occupation to establish the extent of accommodation available with them.

6. The second argument urged by the counsel for the petitioners/tenants is that the learned Additional Rent Controller did not take into consideration the fact that two separate tenancies were

created in respect of the premises in question in favour of the predecessor-in-interest of the petitioner, Shri Daulat Ram (Deceased) and Shri Hot Chand, respectively. In this regard, he seeks to rely on the testimony of RW-1, Shri Hot Chand. Pertinently, the petitioners/tenants have not placed on record a copy of the testimony of RW-1. However, the testimony of RW-1 has been dealt with at length in para 7 of the impugned judgment, wherein it was observed by the learned Additional Rent Controller as below :

"7. Now let us discuss first, the issue of relationship of landlord and tenant. In the Written Statement filed on record the respondents have categorically submitted that mother of the petitioner nos.1 to 7 and petitioner no.8 had created the tenancy. The respondents have stated that subsequently a partition took place and thereafter two separate tenancies were created. In this regard, RW1, who is the only material witness examined by the respondents, has submitted in his cross-examination that he has not seen any partition deed in between Shanti Devi and Maya Devi. RW1 has further stated in cross-examination that no partition wall was raised and the premises are in the same situation in which it were let out. RW1 has stated further that he cannot say if the suit premises had never been partitioned in between Shanti Devi and Maya Devi till date. RW1 has admitted it to be correct that for the convenience of both the said ladies they used to pay rent separately @ Rs.50/- per month to Shanti Devi and Maya Devi. As such, I am of the opinion that Ld. counsel for the petitioners has rightly pointed out in written final arguments filed on record that there is no evidence of creating two tenancies and so called alleged partition. It has been further argued that respondents who have admitted about their induction as a tenant are estopped under law

from challenging the title the petitioners by virtue of Section 116 of the Indian Evidence Act. As such, I am of the opinion that relationship of landlord and tenant has been overwhelmingly proved by the petitioners on record.”

7. Counsel for the petitioners/tenants states that the aforesaid deposition of RW-1, Shri Hot Chand was made under some bona fide confusion, he being an elderly person and that as a matter of fact, rent was being paid separately by him and the petitioners @ Rs.50/- each per month. In the teeth of the testimony of RW-1 himself that he was not aware if the suit premises had been partitioned between Smt. Shanti Devi, the predecessor-in-interest of respondents No.1 to 7 and Smt. Maya Devi, respondent No.8, and that it was only for the convenience of the ladies that the rent was being tendered separately to them, the learned Additional Rent Controller was justified in turning down such a plea sought to be raised by the petitioners. He cannot be faulted in concluding that the petitioners/tenants were estopped in law from claiming that there were separate lettings in respect of tenanted premises. This Court finds no reason to differ with the aforesaid conclusion of the learned Additional Rent Controller. The deposition of RW-1 is clear and cannot be brushed aside on the ground of any purported confusion on his part.

8. No other ground has been taken by the counsel for the petitioner/tenant, apart from those noted herein above. It is therefore held that the impugned order dated 18.07.2009 does not suffer from

any illegality, arbitrariness or perversity, which deserves interference. The impugned order dated 18.7.2009 is upheld and present petition is dismissed as being devoid of merits, along with the pending application.

JANUARY 27, 2010
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(HIMA KOHLI)
JUDGE