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

% *Date of Judgment: 29.11.2011*

+ **RC.REV. 17/2005**

SYED MOHAMMED MAIN NIZAMI
(DECEASED) REPRESENTED BY SYED
MAANZOOR NIZAMI & ORS. Petitioners
Through: Mr.S.H.Nizami and
Mr.S.S.Nizami, Advocates.

versus

QASIMA KHATOON & ORS. Respondents
Through: Mr.Sanjeev Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J (oral)

1. Order impugned is the order dated 10.4.2003 wherein the eviction petition filed by the landlord (Syed Mohd. Mia Nizami) through his legal representatives under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been dismissed. This was after a full trial.

2. In the eviction petition, it has been averred that the premises i.e. the municipal no.107 (old), 67-68 (new), Basti Hazarat Nizamuddin, New Delhi has been tenanted out to the tenant by the landlord Sayed Mohd. Mia Nizami who is also the owner of the suit premises. The premises were residential in

nature and comprised of one big room (hall), two small rooms, two kothris, one tin shed, one kitchen, bath, latrine and courtyard as depicted in red colour in the site plan. Rate of rent was Rs.17/- per month which was exclusive of water, electricity and house tax charges. Terms of tenancy were oral. In the grounds for eviction, it has been pleaded that the petitioner being the owner and landlord of the premises requires the suit property bonafide for his own residence and his family members who are dependent upon him; he has no other reasonably suitable accommodation. Family of the petitioner comprises of himself, his wife six major sons; eldest of whom is married having two children; the second son is also married and has four children; so also another son has two children; petitioner has six daughters and five of whom reside with the petitioner with their husbands and children. The present accommodation available for his family members is insufficient. He has only five rooms in House No.55, Basti Hazrat Nizamuddin, New Delhi which is not sufficient (as depicted in green colour in the site plan). Present petition has accordingly been filed.

3. In the written statement, these facts were disputed. It is denied that the petitioner is the owner and the landlord of the said premises. Contention was that the premises had been let out for

commercial and residential purpose; the plea of bonafide requirement is not available to him; he has mis-led the court by giving a wrong number of his family members; the family members as averred by the petitioner are not dependent upon him; they all are independent; it was contended that the petitioner in fact has 12 rooms which are more than sufficient for his living requirements. The petitioner has concealed this fact and has wrongly stated that he has five rooms only; no cause of action has arisen in favour of the petitioner.

4. Oral and documentary evidence was led. Two witnesses have been examined on behalf of the landlord and one witness has come into witness box on behalf of the respondent.

5. AW-1 S.Manzoor Nizami was the son of the deceased landlord Sayed Mohd. Mia Nizami; he has on oath deposed that the eviction petition has been filed by his deceased father who had thereafter in the year 1986 expired. Ex.A-1 was the sale deed purported to have been executed in favour of his grandfather; this document is in urdu and the english translation is not on record but contents of the same has been read over by the learned counsel for the petitioner (contents not disputed) wherein admittedly although the municipal number of the property has not

been mentioned; the description of the property has been given by boundaries. The petitioner claims this property through his grandfather and it is not in dispute that in Ex. A-1 the name of the grandfather finds mention. Ex.A-5 is the receipt sent by the NDMC to the tenant namely Mohd. Ibrahim claiming tax qua this property; house No.107, finds mention herein; so also the receipt Ex. A-3 and Ex.A-4 where also the number of the property is municipal no.4469 which as per the pleadings and deposition of AW-1 was the earlier municipal number; present number being 66-67. Ex.A-9 is a Revised Assessment issued by the MCD in Form B wherein in the column of owner/assessee the name of Mohd.Nizami i.e. the father of AW-1 finds mention. This document has recognized the father of AW-1 as the owner of the suit property. A-17 in fact clinches this issue on ownership; this is a petition under Section 27 of the DRCA filed by the tenants (all sons of Ibrahim Ali and his widow) seeking deposit of rent in favour of landlord i.e. in favour of Sayed Mohd.Mia Nizami. This document is dated 7.7.1980. It is thus clear that all the tenants had recognized Sayed Mohd.Mia Nizami as their landlord; Ex.A-9, as noted supra, has recognized Sayed Mohd. Mia Nizami as the owner of the suit property; in Ex.A-1 the municipal number of the

property has not been given yet the boundaries have been described. There is also no challenge to this in the cross-examination of AW-1.

6. In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

"There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises."

7. In the instant case also it is not the case of the tenant that he is claiming ownership in the suit property; he has only baldly denied that the petitioner is neither his landlord nor his owner. The imperfectness of the title of the premises cannot stand in the way of eviction petition under Section 14(1)(e) of the DRCA especially in such a case where the tenant has admittedly been paying rent to his landlord, recognizing him as his landlord; there also being no counter

submission to the effect that he is the owner of the suit premises or any other person is the owner of the said premises; the bald submission by itself that the petitioner is neither the owner nor the landlord in such circumstances carries no weight. The finding of the trial court returning a finding that the present petitioner has not proved himself as the owner and landlord; thus suffers from an illegality. This finding is set aside.

8. The second finding which has been returned against the landlord was that he has concealed material facts and has also not disclosed the actual accommodation which was in his possession; reliance has been placed by the trial court on the testimony of AW-1 where in his cross-examination he has admitted that the suit property is a three storied building but the site plan filed along with the eviction petition has depicted only the ground floor and first floor; finding on this count also suffers from illegality.

9. This eviction petition has been filed by the father of the petitioner namely Sayed Mohd. Mia Nizami. In this petition it has been stated that Sayed Mohd. Mia Nizami has six sons; of whom three are married and have two children each; he

has six daughters; he has a family comprising of 22 members and the present accommodation available with him comprises only of five rooms and to substantiate this plea he had filed a site plan of ground floor and first floor depicting the aforementioned property; this site plan is Ex.A-11. In his cross-examination AW-1 has admitted that this property is a three storied building but the three floors had not been shown in the site plan because the same had been constructed only after the death of his father and after filing of the present petition. Petition was filed in the year 1985 and father of the petitioners had expired in the year 1986. AW-1 has also on oath has categorically deposed that a family settlement had been arrived at between the legal representatives after the death of their father Sayed Mohd. Mia Nizami and in terms of this settlement the petitioner i.e. AW-1 had no share left in the property at No.55, Basti Hazrat Nizamuddin, New Delhi where he was residing; he has further stated that he was admittedly residing in this property in two small rooms which are not sufficient for his residence and his family members; his elder son is doing bachelors in computer application; his elder daughter is mentally retarded and his second daughter

is studying in the 7th class; he has no other residential accommodation; in terms of the family settlement he has no interest left in the property No.55, Basti Hazrat Nizamuddin, New Delhi; he has been permitted to live there in terms of this family settlement only till the time he could get the present property vacated. This family settlement was admittedly arrived at during the pendency of the petition i.e. in the year 1986. There is no dispute that this is a oral settlement and no written document has been produced to substantiate this; but otherwise there is no challenge to the family settlement. Except for a bald suggestion that there is no family settlement, AW1 has not been cross-examined on this point. Relevant would it be to also state that AW-2 who is neighbor and known to the parties had also deposed on oath that the property in dispute has fallen to the share of AW-1 and after this family settlement AW1 has no interest left in property No.55, Basti Hazrat Nizamuddin, New Delhi where he is residing temporarily. No cross-examination has been effected of AW-2. The GPA by the other legal representatives marked Ex.R-1 had also been placed on record substantiating a submission that other legal heirs

were in conformity with this family settlement. In this factual scenario it was no longer open to the tenant to challenge this family settlement even if it was an oral settlement. This part of the testimony of AW-1 which remained undisputed and unrebutted was thus not a ground for refusing relief to the petitioner.

10. In this context the Supreme Court in the judgment reported in 1976 (3) SCC 119 Kale Vs. Deputy Director of Consolidation on the authenticity of a family settlement had noted as follows:

“10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary

mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not fall within the mischief of Section [17\(2\)](#) (sic) (Section [17\(1\)\(b\)](#)?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

11. It is thus clear that a family settlement may even be oral. A tenant cannot challenge this family settlement nor can he ask the court to ignore this part of the deposition of AW1, which was unchallenged. In view of this family settlement AW-1 had no right or interest left in the property No.55, Basti Hazrat Nizamuddin, New Delhi which he was occupying temporarily which comprised of two rooms only. It is also not in dispute that his family comprises of five members and he has no other residential accommodation in his name. Bonafide need of AW-1 clearly stood established.

12. There is also no concealment of fact as has been noted supra by the trial court; Ex.A-11 was the site plan depicting the suit property as on the date of the filing of the petition which was in the year 1985; in fact it is admitted at the time of the filing of the eviction petition the suit property comprised only of a ground floor and first floor and this also finds mention in the written statement filed by the tenant wherein he has stated that House No.55, Basti Hazrat Nizamuddin, New Delhi is a double storied structure. It is thus clear that up to the date of the filing of the written statement which was on 10.3.1986 there was only a double storied structure at 55, Basti Hazrat Nizamuddin, New Delhi. In the cross-examination on a specific question put to AW-1 he has admitted that thereafter, that is after the filing of this petition this property has been raised to a three storied structure.

13. In these circumstances it cannot be said that there has been any concealment of any fact by the petitioner; AW-1 has categorically in his deposition stated that this third floor was constructed after the filing of the present petition and after the death of their father which was in the year 1986.

14. It suffers from a manifest illegality. The evidence oral and documentary has not been appreciated in the correct perspective. The petitioner has proved the ingredients of Section 14(1)(e) of the DRCA; the petitioner has proved his ownership as also landlordship qua the suit property; he has no other reasonably suitable accommodation; need for the present accommodation is bonafide. Impugned order is accordingly set aside. Eviction petition is decreed.

15. Petition disposed of.

INDERMEET KAUR, J

NOVEMBER 29, 2011

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