

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

% C.R.P. 45/2003

+ Date of Decision: 7th May, 2012

AZHAR AHMED Petitioner

**! Through: Mr. Ashok Gurnani, Mr. S.K.
Chaturvedi & Mr. Ashok Kumar
Verma, Advs.**

Versus

\$ GAJINDER SAWHNEY & ORS. Respondents

**Through: Mr. Harish Malhotra, Sr. Adv.
with Mr. Tanuj Khurana, Adv.**

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

The petitioner had filed this revision petition under Section 25(8) of the Delhi Rent Control Act, 1958 ('the Rent Act' in short) since the Additional Rent Controller ('the Controller' in short) vide its judgment dated 26th November, 2002 in Eviction Petition No. E-6 of 1997 under Section 14(1)(e) of the Rent Act, 1958 had passed an order for his eviction from house no. G-55, Nizamuddin (West), New Delhi ('premises in dispute'), which premises according to

the petitioner's case he was occupying not as a tenant of the respondents but under an agreement to sell dated 30th May,1981 executed in his favour by the respondents' father who was its owner.

2. The respondents, had filed the eviction petition against the petitioner on the ground of their *bona fide* requirement of the premises in dispute in occupation of the petitioner. Eviction petition was filed by the respondents on the grounds that the premises in dispute were gifted to them by their father Shri S.L.Sawhney who had become its owner in pursuance of the Will of their grand-father, who was its original owner. Gift was made in their favour vide gift deed dated 7th February,1991. Before the execution of that gift deed by the respondents' father he had entered into a lease agreement dated 28th April,1981 with the petitioner in respect of the premises in dispute for and on behalf of respondent no.1 Shri Gajinder Sawhney, who was at that time minor. Vide that lease agreement the premises in dispute were let out to the petitioner for a period of two years w.e.f. 10th May,1981. After the expiry of the initial period of two years of the tenancy in his favour the petitioner continued to occupy the premises in dispute.

3. After becoming owners of the premises in dispute in the year 1991 by virtue of the gift deed dated 7th February, 1991 executed in favour of the respondents by their father they filed the eviction petition under Section 14(1)(e) of the Rent Act against the respondent and sought his eviction by pleading in para no.18(a) of the eviction petition that:-

“VI. That the petitioners are large growing family comprising petitioners and their father and mother. The petitioner no.1 is a graduate and is working with his father in his business. The petitioner no.2 is doing his graduation and is simultaneously helping his father in his business. The petitioner no.3 is studying and is also helping his father. The petitioners 1 and 2 are of have already crossed their marriageable age [Date of Birth for 1-2nd February, 1968 (2) 19th March, 1971] respectively. The delay in setting them is only for want of residential accommodation. The petitioners along with their father and mother are living at the tenanted premises bearing No. 484 Sethi Building, Faiz Raod, Karol Bagh, New Delhi, at a monthly rent of Rs. 100/- per month. The premises in which the petitioners are living comprise of two rooms on first floor, one store, kitchen, bath room, latrine with Court yard at first floor and barsati at second floor. The petitioners cannot be huddled in two small rooms. The accommodation available with them is not sufficient moreover the premises in which the petitioner are living with their parents have to be vacated as an eviction petition was filed by the landlord against the father of the petitioners who is tenant in respect of the premises. The father of the petitioners Shri S.L. Sawhney has given undertaking in the Court of Shri D.K. Saini, ARC, Delhi, in the petition titled B.S. Sethi vs. Shri S.L. Sawhney to vacate the premises by 1988. The petitioners father has requested his landlord for further extension of time but ultimately the premises has to be vacated by them. The petitioners are not having any other suitable

accommodation to live therein. The petitioner requires independent rooms as their families are to grow up when they get married in near future and also presently the accommodation available with them is not sufficient for them and moreover they have to vacate the same.

VII. That the accommodation held by the petitioners is not adequate in view of the requirements explained above. The petitioners have no suitable accommodation for them in Delhi. These facts may kindly be taken into consideration while deciding the eviction application filed by the applicants on bona fide requirement of the family.

VIII. That the petitioner Nos. 1 and 2 are of marriageable age and since they do not have adequate accommodation and as such they require the suit premises bonafidely for their personal use and occupation for themselves and their family members and they have no other suitable residential accommodation available to them in Delhi or elsewhere.

IX. That the petitioners had earlier instituted a petition under Section 14(i)(e) of the Delhi Rent Control Act and the same was withdrawn in view of the provisions of Section 14(6) of the Delhi Rent Control Act and the Hon'ble Court of Shri P.C. Ranga, ARC, Delhi, permitted the petitioner to withdraw the said petition with a liberty to file the same afresh with the same cause of action and as such the petitioners are filing the present petition within their legal rights for their personal, bona fide use and occupation. Even otherwise the premises are required bonafide by the petitioners for their residence."

4. The respondent had contested the eviction petition after obtaining necessary leave from the Controller. His defence in his leave to defend application and in his written statement also which was virtually the same defence, that he was never a tenant in the premises in dispute but in fact he had come in

possession on 30th May, 1981 under an agreement to sell dated 30th May, 1981 executed in his favour by the respondents' father Shri S.L.Sawhney who was its owner by virtue of the Will of his father late Shri Kanshi Ram Sawhney, the original owner of the house in dispute. It was also the stand of the petitioner before the Controller that that since there were some family disputes in respect of the premises in dispute the respondents' father had at that time directed him to make the payments under the agreement to sell in the name of his son Gajinder Sawhney, respondent no.1 herein who was minor those days. It was further pleaded that the petitioner had been put into possession of the premises in dispute on 30th May, 1981 in part performance of the agreement to sell dated 30th May, 1981 by Shri S.L. Sawhney and not under any rent agreement and so his possession was protected under Section 53-A of the Transfer of Property Act. He denied the very existence of the lease deed dated 28th April, 1981 which was being relied upon by the respondents in support of their case that the petitioner was inducted into the premises in dispute as a tenant and that the rent agreement was executed by Shri S.L.Sawhney on behalf of his minor son Gajinder Sawhney. It was also claimed by him that since the respondent no.1 had, as per his own case,

become the owner of the premises in dispute in the year 1991 when his father had gifted it to him and his three other sons, all of whom are now the respondents here, no lease deed could be executed by him in the year 1981 and the so called lease deed was a sham document.

5. The learned Controller after trial came to the conclusion that there existed relationship of landlord-tenant between the parties and the petitioner's defence that he was in possession of the premises in dispute under the alleged agreement to sell was rejected. The *bona fide* requirement of the respondents in respect of the premises in dispute in occupation of the petitioner was also accepted and consequently vide judgment dated 26th November, 2002 the Controller ordered eviction of the petitioner from the premises in dispute. However, he was given six months time to vacate the premises.

6. The relevant portions from the eviction order passed by the learned Controller are re-produced below:-

“10. While the respondent conceded that prior to sale agreement Ex.RW1/1, lease deed Ex.AW2/1 had been executed between the parties. He however put a rider that it was bogus document prepared only to satiate the contention of Sh.S.L. Sawhney of there being a dispute in his family about the property. Petitioners on their part canvassed about the execution of the lease deed. They are insisting that agreement

to sell is a forged and fabricated document. It can legitimately be culled out that rider put by the respondent regarding execution of lease deed has no foundation in pleadings. No suggestion of AW2/1 being a bogus document.... nor was it suggested to them that respondent had been given possession of the suit premises in part performance of said agreement. It has been held in that 'there is an age old rule that if you dispute the correctness of a witness, you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue otherwise you cannot impeach his credit.' The irresistible conclusion, therefore, is that respondent has raised the averments regarding lease deed being bogus by way of afterthought.

12. *It has been argued on behalf of the respondent relying upon that promise to perform an existing contract with third person can be good and valid consideration for another contract and that consideration for a promise need not necessarily move from the promise but may move from the third party, that cheques Ex.RW2/A2 to Ex.RW1/A6 got issued by respondent from his other family members were towards discharge of his liability and in furtherance of the agreement. There can be no quarrel with the proposition of law cited but it is misplaced in the given facts and circumstances. Even if these cheques were issued towards part payment of the amount of consideration mentioned in sale agreement Ex.RW1/1, none of them was issued in favour of the proposed transferer but were given in the name of son of the transferer. By no stretch of interpretation it can be said that consideration moving from a third party to an utter stranger and in fact minor, to the deal can be said to be in furtherance of the agreement.....*

13. *Sh. Aggarwal has strenuously put forth that after the date of sale agreement and after it was performed in part by consideration being paid, the possession of respondent, even if he is taken to have been inducted as tenant initially, acquired new status in the agreement Ex.RW-1/1.....that even if*

respondent's suit for specific performance of sale agreement has been dismissed by the District Court as barred by limitation, it does not prevent him from defending or protecting his possession of suit premises u/s 53- A of the T.P.Act.

15. *It has been held in AIR 1999SC that where the alleged proposed transferor utterly failed to prove that he was ever ready and willing to perform his part of contract and to have the purchase materialized but had filed suit for specific performance by way of counter blast to the ejectment proceedings of the transferor, invocation of the protection of Section 53-A of T.P. Act is misconceived. In AIR 1996 SC 910 it was held that "where suit for specific performance of contract of the party in possession of suit property pursuant to sale agreement has been dismissed and become final then the question is whether he is entitled to retain the possession under the agreement. It has been answered in the words 'Once he lost his right under the agreement by dismissal of the suit, it would be inconsistent and incompatible with his right to remain in possession under the agreement....."*

16.*The proposition is further stated in V. Veerappa Vs. M.A. Mohd. Amanulaha, AIR 1996 SC 2917 that where a sale agreement came to an end due to non compliance of the terms of the agreement by the tenant, pre-existing rights of transferee as tenant stand revived. Merely because he had entered into an agreement his tenancy rights cannot be said to have merged with rights of an agreement holder as such ejectment proceedings against such transferee would lie.*

18..... *For letting out a premises, the landlord did not require to show himself to be the owner of said property at that time. Even if, therefore, petitioner no. 1 was minor and did not own the suit premises in 1981, he through his father was competent to let it out. Isolated clause of rent agreement cannot be segregated to find out its sum and substance. The whole of it will have to be read for its true effect. Read as such, Ex. AW2/I is nothing but a lease deed. Since the deficiency in stamp duty*

has been made up by the petitioners along with the penalty, the document is competent to be seen for collateral purposes. Respondent thus being a tenant is estopped from denying the title of petitioner no. 1. After execution of Gift Deed Ex. AW1/1 all the petitioners acquired ownership rights and got the property mutated in their favour in the records of municipality without any murmur from respondent. they have thus become owners/landlords of the property.

19. Having come to the conclusion of the relationship of landlord and tenant between the parties, the evidence be shifted for seeking whether the variables of Section 14(1)(e) of D.R.C. Act have been met.

20. There is no dispute that suit premises are residential in nature and have been used as such. No evidence contrary to the assertion of petitioners that it had been let out for residential purposes, has been laid. There is no evidence regarding petitioners owning reasonably suitable alternative residential accommodations. As has already been held above, the petitioners have no right to remain in occupation of property at Faiz Road. Their need for suit premises is utmost bona fide and has emerged from natural, honest, real and since desire.”

7. Feeling aggrieved, the petitioner filed the present revision petition and challenged the judgment of the Controller on the ground that his case that he was never a tenant of the respondents and in fact he had come in possession under an agreement to sell was wrongly rejected.

8. It was argued by Shri Ashok Gurnani, learned counsel for the petitioner, that the findings of the learned Controller to the effect that agreement to sell relied upon by the

petitioner did not stand proved since Shri S.L. Sawhney(AW-2) as well as his son Shri Gajender Sawhney(AW-1) had both not been confronted with that document was not correct inasmuch as actually it had been suggested to both of them in their cross-examination that there was an agreement to sell in respect of the premises in dispute executed by AW-2 Shri S.L. Sawhney in favour of the petitioner herein and further that when the petitioner Azhar Ahmed had appeared in the witness box as RW-2 and had deposed that he had come into the possession of the premises in dispute under the Agreement to Sell dated 30th May, 1981, Ex. Rw-1/1, no suggestion was given to him in cross-examination on behalf of the respondents that their father had not executed that agreement to sell and, therefore, its execution in any case stood admitted by the respondents. It was also submitted that the respondents' case that the petitioner had been inducted as a tenant in the premises in dispute by virtue of rent agreement dated 28th April, 1981, which purported to have been signed by AW-2 Shri S.L. Sawhney as the father of AW-1 Shri Gajender Singh, could not be considered to be a valid and lawful agreement constituting relationship of landlord and tenant between Shri Gajender Sawhney and the petitioner since Shri Gajender Sawhney in April, 1981 was a minor and

he was not legally capable of entering into any contract and otherwise also he had no right to create a tenancy in favour of the petitioner herein as admittedly in April, 1981 neither he nor any of his three brothers had acquired ownership of the premises in dispute which as per their own case they had acquired in the year 1991. Learned counsel further argued that in the afore-said circumstances, the possession of the petitioner was protected under Section 53-A of the Transfer of Property Act despite the fact that the suit which he had filed after the institution of the present eviction petitioner for the specific performance of the agreement to sell dated 30th May, 1981 had been dismissed as being time barred by the learned Additional District Judge as that dismissal of that suit did not have the effect to extinguishing the right of the petitioner to retain possession of the premises in dispute under Section 53-A.

9. On the other hand, Shri Harish Malhotra, learned senior counsel for the respondents, submitted that there is no infirmity whatsoever in the impugned order of the learned Controller justifying any interference by this Court in exercise of its limited revisional jurisdiction. Mr. Malhotra contended that as far as relationship of landlord and tenant is

concerned, the petitioner himself had clearly admitted that the relationship in another eviction proceedings which had been initiated against him on the ground of non-payment of rent under Section 14(1)(a) of the Rent Act. It was further contended that in those proceedings the petitioner had filed an appeal against the order passed by the Rent Controller in that petitioner accepting the respondents' case that he was their landlord and was in arrears of rent. The petitioner had challenged that order dated 28th September, 2007 in eviction case no. 55/92 by filing an appeal before the Rent Control Tribunal (being RCA 34/07) and in that appeal the petitioner had made a categorical statement on 28th September, 2007 to the effect that he was accepting the respondents as his landlords. My attention was drawn to that statement copy of which was placed on record by the respondents along with application being CM No. 3590/2008/

10. Learned counsel for the petitioner had not disputed the fact that the petitioner had made such a statement before the Rent Control Tribunal in the earlier eviction proceedings that he was accepting the respondents as his landlords but submitted that in the making of that admission by the respondent a fraud was played on the petitioner by his

counsel who was representing him in that petition and because of the fraud having been played by his counsel not only the matter was reported to the Delhi Bar Council but a police case was also got registered against the advocate. All this was stated in writing also by the petitioner when he was called upon by this Court to explain that admission about the landlord-tenant relationship and the contradictory stand taken in this case that he was not a tenant.

11. In view of the fact that the petitioner had categorically admitted the respondents to be his landlords in the earlier eviction proceedings there remains nothing in the present revision petition. The petitioner had not taken any steps for the withdrawal of the admission made by him regarding the relationship of landlord and tenant between the parties in his appeal before the Rent Control Tribunal and the explanation now being given in the present proceedings cannot be considered to be a genuine one which could be accepted by this Court. Not only that, when the present eviction case was going on even then the petitioner had not himself brought on record the fact that he had already made an admission regarding relationship of landlord and tenant between him and the respondents in the earlier eviction petition which he

could have very well done since the present eviction case came to be disposed of on 26th November, 2002.

12. In view of the afore-said position, this Court need not go into the questions as to whether the alleged agreement to sell dated 30th May, 1981 relied upon by the petitioner had been proved by him during evidence or not and whether with the dismissal of his suit for specific performance of that contract he still had a right to hold on to the premises in dispute under Section 53-A of the Transfer of Property Act.

13. As far as the findings of the learned Controller to the effect that the requirement of the respondents for the premises in dispute was *bona fide* is concerned, the same was not challenged on behalf of the petitioner by his counsel during the course of hearing of this revision petition. The respondents had sought eviction of the petitioner on the ground that they were residing in the property which their father had taken on rent and the landlord of that house was compelling him to vacate that house and since they had no other alternative residential accommodation in Delhi they required the premises in dispute *bona fide* for their own residence. That case of the respondents could not be demolished by the petitioner during the trial.

14. This revision petition is, therefore, dismissed. However, considering the fact that this litigation has been going on from the year 1996 during which period the petitioner-tenant has remained in possession of the premises in dispute he is granted six months time to vacate the same.

P.K. BHASIN, J

May 7, 2012