

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

% *Date of Judgment: 25.05.2012*

+ CRP No.684/2003

MALLO DEVI Petitioner
Through Mr. Hamid S. Shekh, Adv.
versus

NARAINI DEVI THR.L.R'S Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 11.3.2003; eviction petition filed by the landlady Mallo Devi seeking eviction of her tenant Narainee Devi under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been dismissed.

2 Record shows that the present eviction petition had initially been filed on the ground under Section 14D of the DRCA but thereafter with the permission of the court it had been converted to a petition under

Section 14(1)(e) of the DRCA. The need of the landlady was her bonafide need; contention was that one room was let out to the husband of Narainee Devi for residential purpose; this was in House No.1300, Bagichi Ramchnader, Gali Santrason, Paharganj, Delhi. After the death of the original tenant namely Jawla Prasad, Narainee Devi his widow and her two sons and four daughters continued to occupy the property. After the death of Narainee Devi her aforementioned children have been brought on record; her two sons are in possession of the tenanted property (depicted in red colour in the site plan). The bonafide need has been disclosed in para 8 of the eviction petition. Contention is that the petitioner/landlady is a widow; premises had been let out by her husband; she has become the exclusive owner of the said property. The landlord has no issue of her own but during the life time of her husband she had custody of two of her nephews namely Prem Chand and Deep Chand (sister's sons) with her; they were assisting her husband in his who used to drive a "ghora gari"; these two children namely Prem Chand and Deep Chand had been brought up by the landlady and her husband and since then they have been living with them; after the death of her husband the landlady along with her two sons who are her support

system continued to live with her; the sons have since got married and each of them has two children; accommodation presently available with the landlady is only one room, one store room and one kitchen; this has been depicted in yellow colour in the site plan. The family of the petitioner has grown comprising of herself, her nephews Prem Chand and Deep Chand; their wives and their four children. One room is required for herself; two rooms are required for Prem Chand and his children; two rooms are required for Deep Chand and his family; the family also require a drawing room, baithak room and pooja room; present accommodation is insufficient. Accordingly the present eviction petition has been filed on the ground of bonafide requirement.

3 Leave to defend had been granted and written statement had been filed by the tenant; preliminary contention was that there is no relationship of landlord and tenant; all the legal heirs of late Jawla Prasad had not been joined and as such the petition is bad for non-joinder of necessary parties; contention being that the accommodation presently available with the landlady is four rooms and not one room and kitchen as has been alleged by her; this accommodation is sufficient for them; she also owns two other properties; one in Mandwali and the

another in Mohalla Nabi Karim which are lying vacant.

4 Oral and documentary evidence was led by the respective parties. Five witnesses were examined by the petitioner. AW-1 was the landlady herself; she has reiterated that she is the owner of the suit premises; her mother was the previous owner and after the death of her mother her father became the owner of the suit property and he had transferred the property in her name by a Sale deed (Ex.AW-1/1) which has been proved in her testimony. Site plan had been proved as Ex. AW-1/2. Ration Card Ex.AW-1/3 to Ex. AW-1/4 had been proved on record to show that Prem Chand and Deep Chand are living with her; her contention was that there are three rooms in the property; her need is three rooms for herself and two rooms each for her two sons and their family, a pooja room and a baithak are also required; present accommodation available with her is insufficient; she has no other residential accommodation suitable for her requirement. In her cross-examination she admitted that she had brought up Deep Chand and Prem Chand; Prem Chand sells tea and Deep Chand is doing work of a helper and sometime works with the horses. She denied the suggestion that her husband was not doing the work of “ghora gari”; she deposed

that her family comprises of Prem Chand and Deep Chand who are both married; Prem Chand has one daughter and one son so also Deep Chand who has one son and one daughter; after the filing of the eviction petition four more children had been born into the family of the Prem Chand who are all daughters; similarly three more children had been born in the family of Deep Chand who are two daughters and one son. The birth certificates of children of Deep Chand and Prem Chand AW-1/1 to AW-1/7 had been placed on record; so also school certificates of the other children namely Jitu, Reena (children of Prem Chand) and Suraj and Nirmala (children of Deep Chand). She had deposed that on the ground floor there are two rooms and one store of which one room is in her possession; store is used for storing household articles; the second room is in possession of Deep Chand and his family; on the first floor there are two rooms marked L and M which are in possession of Prem Chand and his family and herself. AW-2 was a neighbor; he had deposed on the lines of the petitioner; in his cross-examination he has stated that there are four to five rooms in the premises i.e. three rooms on ground floor and two rooms on the first floor. AW-2 (re-numbered as AW-2 again), AW-3, AW-4 were summoned witnesses who had

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brought the school certificates of Suraj, Kumari Reena, Kumari Pooja, Jitender @ Jitu, AW-2 had proved the result card of Sangeeta, Nirmla and Geeta all documents evidencing the fact that the children of Deep Chand and Prem Chand were residents of House No.1300, Bagichi Ramchnader, Gali Santrason, Paharganj, Delhi i.e. the place where Mallo Devi, the landlady is living; substantiating her submission that her family is living with her. AW-5 has proved the site plan as Ex. AW-1/8. Per contra, respondent had produced one witness in evidence. His testimony was to the effect that the suit property is a trust property; Deep Chand and Prem Chand are not the children of Mallo Devi but they are tenants in the premises; his contention is that the accommodation presently available with the landlady is sufficient as there are four rooms on the ground floor and two rooms on the first floor.

5 On the basis of the aforementioned evidence adduced before the trial court, the trial court had returned a finding that the accommodation presently available with the petitioner is sufficient for her need; court had noted that the requirement of the petitioner is seven rooms and she has sufficient accommodation with her; her petition was accordingly

dismissed.

6 Vehement arguments have been addressed by the petitioner. None has appeared for the respondent; none had appeared on the earlier date as well.

7 Record has been perused. The ARC has returned all findings in favour of the landlady except the issue on the sufficiency of the accommodation.

8 On the question of ownership (which has been contested by the tenant) the court had noted that the deposition of AW-1 (landlady) that after the death of her mother her father became the owner of the property who had transferred the same in her favour by way of sale deed Ex. AW-1/1 establishes her status as owner/landlady. The letting out purpose was also residential. The submission of the tenant that Prem Chand and Deep Chand had not been adopted by the landlord but were tenants in the property also did not find favour with the ARC who had returned a fact finding that these two sons are a part of her family; Court had also taken into account the family members of the two sons namely Prem Chand and Deep Chand yet had held that the accommodation presently available is sufficient for her need.

9 Record shows that no dispute has been raised about the members of the family of the landlady, landlady is a widow; she has two sons Prem Chand and Deep Chand; both of whom are married and had two children each on the date of the filing of the eviction petition. It is also not in dispute that after the filing of the eviction petition certain subsequent events have taken place which include the fact that Deep Chand was blessed with three children and Prem Chand was blessed with four daughters; grand children of the landlady who were initially four in number have now swelled to 11. These subsequent happenings are admitted facts; thus the family of the landlady has enlarged. One room is required for herself and two rooms for each of her two sons, a guest room and baithak is also a necessity. Trial court had in this eventuality had wrongly noted that the need of the landlady is only seven rooms; even as per the calculation it would be eight rooms. The family of Deep Chand (besides himself and his wife) includes five children for which a minimum of two rooms is the requirement; similarly the family of Prem Chand comprises of six children of one son and five daughters; a minimum of three bed rooms is required for them. Thus the family of the landlady requires a minimum

six bed rooms besides a drawing room/a baithak/a guest room and a pooja room. Fact finding returned by the trial court is that the landlord has seven rooms; presuming this to be the factual position even then this accommodation falls short. That apart the trial court had clearly mis-read the evidence. It had mis-calculated the figures. The landlord has categorically stated that she has two rooms, one store on the ground floor of which the store is used for storing household articles which factum is not in dispute. Thus she has only two rooms on the ground floor. The third room on the ground floor ('D' and shown as colourless in the site plan) is with a tenant. Her further deposition is categorical to the effect that there are two rooms on the first floor one room of which is with the family of Prem Chand and the other is only a tin shed. On both the floors there are improvised areas which are being used for bath room/ latrine and kitchen. The rooms ('H', 'I' and 'J' shown as colourless in the site plan) are with the tenant. Accommodation available with the landlady is thus four rooms of which are is a tin shed and a store. This is clear from her deposition whose credibility has not been destroyed in the cross-examination. This is also clear from the site plan Ex. AW-1/8.

10 In this background eviction petition having been dismissed suffers from an infirmity. Eviction petition decreed.

11 Petition disposed of.

INDERMEET KAUR, J

MAY 25, 2012
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