

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

% *Date of Judgment: 25.05.2012*

+ C.R.P. 207/2004

SHAMBHOO SINGH VERMA Petitioner
Through: Mr.V.K.Sharma, Adv.
versus

TRILOKI NATH SHARMA Respondent
Through: Ms.Kusum Lata Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned is the order dated 12.01.2004; the eviction petition filed by Triloki Nath Sharma (hereinafter referred to as the 'landlord') seeking eviction of his tenant Shambhoo Singh Verma (hereinafter referred to as the 'tenant') under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed.

2 Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement. Premises comprise of one room and dalan in front of premises No.9961/XVI, Ram Behari Road, Sarai Rohilla, Delhi; contention was that the premises had been let out to the tenant for a residential purpose; there was no written

agreement; tenancy was oral; the petitioner now requires the premises bonafide for his own residence; his family consists of himself, his wife, his three sons ages 48 years, 42 years and 38 years; elder son is also married and has three children; the second son is also married with two children and the third son is also married and has two daughters. The petitioner also has three daughters all of whom are married. The accommodation presently available with the petitioner is in the same property i.e. property bearing No. 9954/A, street No. 5, Sarai Rohilla, Delhi which comprises of three rooms, one kitchen, one bathroom and one store room out of which one room is in occupation of his youngest son Raj Kumar Sharma and his family; these premises are required by the petitioner for the residence of his eldest son who has a family of three children aged 20 years, 15 years and 10 years; the petitioner is the owner of properties bearing No. 9954 to 9956/XVI and 9961 to 9965/XLI, Ram Behari Road, Sarai Rohilla, Delhi; this was by virtue of a Will; all the aforementioned properties are occupied by different tenants except property bearing No. 9954/A in which the petitioner is residing with his family members who are dependent upon him. Accommodation presently available with the petitioner is highly insufficient. The

petitioner's three married daughters along with their husbands and children often visit him; he cannot entertain his relatives and guests; he also has no separate pooja room; for all the aforementioned reasons, the eviction petition was filed.

3 Leave to defend had been granted to the tenant. Written statement was filed. Relationship of landlord-tenant was disputed; it was denied that the landlord is the owner of the disputed premises; contention was that the Will purported to have been executed in favour of the petitioner is not a valid document; the property belongs to Mahant Budha Dass who is the owner of the said premises; there being no relationship of landlord-tenant, present eviction petition is liable to be dismissed. Further contention was that the bonafide requirement of the landlord has not been depicted and for all the aforementioned reason, the eviction petition is liable to be dismissed.

4 Oral and documentary evidence was led.

5 PW-1 was the landlady Kusum Lata Sharma; she was the legal representative of deceased Triloki Nath Sharma who had been brought on record; she was his daughter; she has proved the Will Ex. PW-1/A by virtue of which her father had become the owner of the suit property;

mutation letter whereby the property had been mutated in the name of her father Triloki Nath Sharma was proved as Ex. PW-1/B; house tax receipts were proved as Ex. PW-1/C to Ex. PW-1/D; she had on oath deposed that elder brother Rajeshwar Nath Sharma is residing in a rented accommodation in the same locality along with his wife, two sons and one daughter of whom Manish is now marriageable age; her mother is handicapped; she needs two attendants to look after her; her brother Rajeshwar Nath visits his mother regularly both in the morning and evening but because of paucity of accommodation he is not in a position to stay with his mother and to look after her; PW-1 has also deposited that she also visits her mother along with her three children frequently and even during emergency, she has to return home but because of paucity of accommodation, they cannot stay with their maternal grandmother; her other brother is also living in a rented accommodation; he is 47 years of age and has a wife and two daughters; he also cannot stay with his mother (although she is unwell and requires help) for the same reason that there is not enough accommodation; her mother Vidyawati is a religious lady; she never accepts food without offering pooja; there is no separate room to perform pooja. In her cross-

examination she has admitted that as far as he knows the earlier owner of the property was one Mahant Buddha Dass; she does not know if Mahant Buddha Dass has left behind him his widow and a daughter; she has admitted that Ex. PW-1/A was not executed in her presence; she denied the suggestion that her father is not the owner of the premises. PW-2 has produced the summoned record showing the mutation of the property in favour of Triloki Nath Sharma as Ex. PW-2/A. Per contra, the respondent has produced one witness namely Shambhu Singh Verma, the tenant. He had reiterated his stand which he adopted in the written statement. In his cross-examination he has admitted that Raj Kumar, the youngest son of Vidyawati is staying with his mother along with his wife and children; he was not in a position to state how many children Raj Kumar had; he denied the suggestion that the family of the landlady is falling short of accommodation; he had admitted that he had never paid rent to Mahant Buddha Dass or after his death to the legal heirs of Mahant Buddha Dass; he has in fact admitted that he has never paid any rent of this property.

6 This was the sum total of evidence which led before the trial Court. Arguments have been heard.

7 Vehement contention of the learned counsel for the petitioner is that the petitioner/tenant has never admitted the status of Triloki Nath Sharma as his landlord; there is nothing on record to show that he had acquired this property from Mahant Buddha Dass; attention has been drawn to the testimony of PW-1 wherein she has admitted that the property did originally belong to Mahant Buddha Dass; contention being that the Will relied upon by the landlord Ex. PW-1/A dated 15.08.1974 does not also show as to how Kalu Dass had himself acquired this property; in the absence of which the title of the landlord as owner is under a cloud; in the absence of this essential ingredient i.e. the status of the non-applicant as an owner/landlord not having been proved, the whole petition under Section 14 (1)(e) of the DRCA is liable to be dismissed.

8 Arguments have been countered. Contention is that the tenant has himself in various correspondences admitted the status of Triloki Nath Sharma as the landlord.

9 Record has been perused. The essential ingredients to establish a case under Section 14 (1)(e) of the DRCA are as follows:

(a) The applicant has to be a landlord;

- (b) He has also to be an owner;
- (c) The premises in question should have been let out for residential or commercial purpose or both;
- (d) The said premises are required bon fade by the landlord for occupation as a residence for himself or his family dependent upon him and;
- (e) That the landlord or such person dependent upon him has no other reasonably suitable residential accommodation.”

10 Arguments addressed are only on the status of Triloki Nath Sharma as owner/landlord. Contention of the landlord in his eviction petition is that by virtue of a Will dated 15.08.1974 which is the Will of Kalu Dass, the landlord Triloki Nath Sharma s/o Mr,. Bhiku Ram has become the owner of the disputed property. The judgment of 09.08.1995 in LPA No. 103/1976 had also put the controversy to rest. In the eviction petition it has been disclosed that one Kewal Dass had in fact contested the right of the individual properties of Mahant Buddha Dass but this has been declined. There is no dispute to this point. Ex. PW-1/J is the judgment passed by a Division Bench of this Court in RSA No. 237/1967 on 13.08.1975 wherein the Court had dismissed the suit of Kewal Dass wherein he had claimed individual rights in the property of Mahant Buddha Dass; this right having been declined to Kewal Dass,

the present property which is admittedly an individual property of Mahant Buddha Dass could not be claimed by Kewal Dass. This order dated 13.08.1975 was affirmed by a Division Bench of this Court in LPA No. 103/1976 of 09.08.1995 wherein the appeal filed against the order passed in RSA proceedings was dismissed. It is thus clear that Kewal Dass was no longer having any right to the individual property of Mahant Buddha Dass. The Will Ex. PW-1/A dated 15.08.1974 of Kalu Dass has been relied upon by the non-applicant Triloki Nath Sharma to establish his title as owner/landlord of the suit premises. This Will of Kalu Dass has bequeathed the suit premises to Triloki Nath Sharma who is the son of Bhiku Ram and who had been treating Kalu Dass as the adopted son of Mahant Buddha Dass; in this Will Kalu Dass has stated that his son has already died and he is bequeathing this property in favour of Triloki Nath Sharma. Relevant would it be to state that this Will was proved in the version of PW-1 and not a single suggestion has been given to PW-1 on any score that this will is forged, fabricated or otherwise not a genuine document.

11 A Bench of this Court in AIRCJ 1971 2 Arjan Dass Vs. Madan Lal, in the context of a landlord-tenant relationship has in fact held, as

follows:

“a tenant has no locus standi to challenge the validity of the Will made by the landlord as he is not an heir of the landlord.”

12 Ex.PW-1/G is the reply given by the present petitioner/tenant to a notice issued by the landlord before the eviction petition was filed. In this document dated 30.01.1986, it has been admitted that the tenant namely Shambhoo Singh Verma has been inducted in the suit property by Mahant Buddha Dass and Kalu Dass as tenant. This admission being clear and categorical it now does not lie in the mouth of the tenant to deny the status of Mahant Buddha Dass as his landlord; Triloki Nath Sharma has claimed his right through Kalu Dass in terms of the Will dated 15.08.1974. That apart in the written statement filed by the tenant in separate suit proceedings (suit for injunction filed by Triloki Nath Sharma) in paras 2 & 4 it has been admitted that the tenant namely Shambhoo Singh Verma was a chela of late Kalu Dass; the present petitioner has thus all along recognized the status of Kalu Dass as his guru. Ex. PW-1/L (mark ‘A’) is also a rent receipt issued by Kalu Dass in favour of the present petitioner Shambhoo Singh Verma; this

document also establishes the relationship of landlord-tenant between the petitioner and Kalu Dass. The present petitioner in his capacity as tenant of Kalu Dass had also written a letter to the MCD seeking mutation of the above noted property in the name of Kewal Dass i.e. of the suit property (page 285 of the trial Court record) (admitted document).

13 All these facts are admitted and have been brought to the notice of the Court by the learned counsel for the non-applicant; the petitioner clearly has no legs to stand on; it is not as if the Court is dealing with a title suit. The aforementioned facts which have been borne out from the record clearly establish the status of Triloki Nath Sharma as the owner/landlord. Shambhoo Singh Verma has recognized the Kalu Dass as his landlord/owner; in fact he has admitted that Kalu Dass inducted him in the property along with Mahant Buddha Dass as a tenant; Kalu Dass vide Will dated 15.08.1974 had bequeathed this suit property in favour of Triloki Nath Sharma; Triloki Nath Sharma thus steps into the shoes of Kalu Dass and Shambhoo Singh recognizing the status of Kalu Dass as his landlord has little option but to recognize Triloki Nath Sharma as his landlord. This controversy rests here.

14 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.”

15 No other argument has been urged.

16 In this background, the impugned order having decreed the eviction petition under Section 14 (1)(e) of the DRCA in favour of the landlord in no manner suffers from any infirmity.

17 Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 25, 2012
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