

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

% *Date of Judgment: 27.4.2012*

+ **R.C.REV. No.44/2012 & CM No.1879/2012**

RAVI PRAKASH GARG Petitioner
Through Dr. Anurag Kr. Agarwal, Mr
Virag Kr. Agarwal and Mr.
Umesh Mishra, Adv.

versus

JASWANT SINGH JAISWAL Respondent
Through Mr. R.S. Mahla, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned is the order dated 01.11.2011; the eviction petition filed by the landlord Jaswant Singh Jaiswal seeking eviction of his tenant Ravi Prakash Garg from the disputed premises i.e. the first floor of property bearing No.C-2/3, Rana Pratap Bagh, Delhi had been decreed in his favour; application filed by the tenant seeking leave to defend had been dismissed.

2 Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement. Contention is that these premises had been let out to the tenant at monthly rental of Rs.2650/- excluding electricity and water charges. The original owner of the property was Shanti Devi, the mother of the petitioner; she had acquired this property by way of a sale deed dated 22.5.1953; the tenant had been inducted in the premises by Shanti Devi in terms of a written rent agreement. After the death of Shanti Devi by virtue of a registered will dated 13.8.1996 the entire property was bequeathed in favour of her three sons i.e. the petitioner and his brothers Dr.Kanwar Amrinder Jit and Mohinder Jit Singh Jaiswal. Mohinder Jit Singh Jaiswal was mentally retarded and remained unmarried during his lifetime; he had died issueless on 02.8.2001 during the life time of Shanti Devi; the property thereafter devolved upon the two brothers i.e. the present petitioner Jaswant Singh Jaiswal and his brother Kanwar Amrinder Jit. The petitioner was a resident of America; he had acquired a NRI status; he continued to remain in America as he had been employed as a forensic scientist in with the U.S.Department of Homeland Security in USA from where he retired on 02.01.2010 after the service of almost 30

years. After his superannuation the petitioner and his wife wish to settle and live in India i.e. in the aforementioned premises; they have no other reasonable suitable accommodation where they can live; even during the lifetime of the mother of the petitioner, the petitioner and his wife used to visit India to see his ailing mother; he now wishes to spend his remaining life in Delhi. The petitioner and his wife in fact returned to Delhi in January 2010 and are presently residing in the ground floor of the premises C2/3, Rana Pratap Bagh, Delhi which ground floor has fallen to the share of Dr. Kanwar Amrinder Jit; the two brothers had entered into a amicable family settlement by virtue of which Dr.Kanwar Amrinder Jit became the owner of the ground floor and the entire first and second floor with roof right had fallen to the share of the present petitioner. The petitioner has two sons namely Harinderjit Singh Jasiwal and Harjit Singh Jaiswal; both of whom are married and he has three grandchildren; although both the sons are living in America yet his younger son Harjit Singh Jaiswal has to come India for the purpose of expansion of his business and he used to stay with the petitioner. Present petitioner now wishes to settle in India. Eviction petition has accordingly been filed.

3 Leave to defend had been filed; eviction petition had been contested. Contention is that the need of the landlord is not bonafide, it is in fact malafide; the petitioner has an NRI status and his passport evidences the fact that it is valid up to 2017; petitioner has no intention to settle in India. This eviction petition had been filed only for ulterior purposes. Second submission is that family settlement arrived at between the two brothers is not only unregistered but it is under stamped and as such it cannot be relied upon. Reliance has been placed upon AIR 1976 SC 807 Kale & Ors. Vs. Deputy Director of Consolidation; submission being that such family settlement is required to be registered; otherwise it would be inadmissible. Reliance has also been placed upon (2009) 2 SCC 532 Avinash Kumar Chauhan Vs. Vijay Krishna Mishra; contention being that Section 35 of the Indian Stamp Act creates a bar. Submission of the petitioner is that triable issue has arisen on these aforementioned counts. Further submission being that the brother of the petitioner is in fact not living on the ground floor in Delhi; this ground floor is available to the landlord and his family as his brother is the Head of the Department of Dermatology. PGI, Chandigarh and he is a resident of Chandigarh; last submission being that the

petitioner is living in USA and he does not require the premises in Delhi. All these grounds raise triable issues; as such the impugned order decreeing the eviction petition suffers from an infirmity. To support this submission reliance has been placed upon a judgment reported in (2001) 1 SCC 706 Inderjeet Kaur Vs. Nirpal Singh. Contention being that in the summary procedure engrafted under Section 25(B)(4) of the DRCA, burden which is placed upon the tenant is light and limited and if the affidavit filed by him discloses such facts which would dis-entitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in Clause (e) of the DRCA; it is enough to grant leave to defend.

4 Arguments have been countered. The pleadings of the parties i. e. application seeking leave to defend as also the reply filed to the corresponding paras have been perused. In this application an objection about the status of the present petitioner as owner/landlord has also been taken. There is no doubt to the factum that Shanti Devi, the mother of the plaintiff, was the original owner and title holder of the suit property; there is also not dispute to the factum that after her death she has left behind two sons i.e. the aforementioned petitioner and Dr.Kanwar

Amrinder Jit; the registered will is also not the subject matter of challenge. Even otherwise the tenant has no locus standi to challenge the will which has bequeathed the property of the erstwhile owner in favour of the landlord. There is also no dispute to the factum that the tenant has since attorned to the other brother of the petitioner namely Dr. Kanwar Amrinder Jit who is a resident of Delhi and to whom the rent is now being paid; the tenant has himself recognized Dr. Kanwar Amrinder Jit. The family arrangement entered into between the two brothers also cannot be the subject matter of challenge by the tenant. It is not the case of the tenant that this family arrangement has created any new right inter se between the brothers; rights of the two brothers were already pre-existing; thus the judgment of Kale (supra) relied upon by learned counsel for the petitioner has no application. This family settlement has also been acted upon and mutation of the said property has been effected; ground floor had been mutated in favour of Dr. Kanwar Amrinder Jit and the first floor and second floor had been mutated in the name of the present petitioner; copy of this document dated 12.3.2010 is a part of the trial court record; this letter by the Deputy Assessor and Collector supports this submission of the petitioner. This

document shows that the family settlement has been acted upon. In this view of the matter the judgment of Avinash Kumar (supra) relied upon by the petitioner has no application. The status of the present petitioner as owner/landlord cannot be challenged. The Apex Court has also had the occasion to discuss the concept of ownership in a petition under Section 14(1)(e) of the DRCA which is not a title suit. No triable issue has arisen on this count.

5 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.”

6 The bonafide need of the landlord has been averred in the eviction petition; there is no dispute that he has an NRI status; he had worked in

America as a scientist for the last 30 years. The fact that he had retired from the service and since January 2010 he is in Delhi has not been disputed. Eviction petition was filed in October, 2010. Submission of the petitioner that he had been visiting India often with his wife not only to see his ailing mother but also to connect other family ties in India is also not a disputed fact. Counsel for the landlord has also shown to this Court the passport of Indian original which has been obtained by the petitioner; the submission of the landlord is that even if he continues to retain his american passport nothing precludes him from exercising his right as an Indian citizen to settle in his house country in his post-retirement years; there is also no dispute to the fact that the landlord is in fact a citizen of India. The Apex Court in the judgment reported in (2005) 12 SCC 778 Baldev Singh Bajwa Vs. Monish Saini while dealing with the status of NRI of a landlord in an eviction petition which was an eviction petition for bonafide requirement had inter alia noted as follows:

“Thus to be an NRI, it is sufficient that a person of Indian original establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain

period. A person to be an NRI, first should be of an Indian origin. The phrase “Indian origin” has not been defined in the Act of 1949. In the dictionary and in ordinary parlance the word “origin” refers to a person’s parentage or ancestry. If we read the phrase “return to India” along with the definition of “NRI” under Section 2(dd) of the Act, it is clear that in the special category of landlords “NRI” could also be a person who has settled permanently outside India. Thus a permanent resident outside India being an NRI can claim ejectment.”

7 On similar facts in the case reported as 48(1992) DLT 208 T.D.Dhingra Vs. Pritam Rai Khanna a Bench of this Court while dealing with the need of a non-resident Indian to enjoy his own property in India when she chooses to return India the Court had inter alia noted as follows:

“Counsel has not been able to point out any provision of law whereby an India who had acquired foreign citizenship is disentitled to enjoy residence in his own property in India when he chooses to return to India. The passport of the respondent was brought in the Court which shows that ever since 1988 he has been staying in India and even in 1991 his visa was extended up to the year 1994.”

8 In the instant case also it is specifically averred that the petitioner wishes to return to India to settle here but cannot do so because of non-availability of accommodation; there is nothing to show that this statement is to be disbelieved.

9 In 97 (2002) DLT 997 S.P. Kapoor Vs. Kamal Mahvir Prasad Murarka & Ors. Reported the Apex Court has noted as follows:

“In the case in hand it is satisfactorily shown on record that the respondent no.1 the landlord/owner of the premises in question, although a permanent resident of Mumbai has to visit Delhi off and on in connection with his political and business matters. He is a man of status who needs sufficient accommodation even in the course of his short visits to Delhi so that he may live comfortably and discharge his social and business obligations effectively. It is true that his two daughters are already married but the averment in the petition is that they may also stay in the premises in question during their visits to Delhi. The Courts have no justification to insist that he should either live in hotels or hire some other accommodation merely for the sake of protecting the tenancy of the petitioner. The respondent no.1 owner/landlord cannot be asked to face inconvenience and adjust in smaller accommodation here and there in the course of his visits to Delhi. This Court, therefore, has no hesitation in concluding that the claim of respondent no.1 in regard to his bona fide need of premises in question for his residential use was reasonable and bona fide. The plea of petitioner that this plea is not bona fide or a mere pretence to evict him in unfounded and does not give rise to any triable issue for grant of leave to defend to him.”

10 Unless and until triable issues arise leave to defend should not be granted by the courts in a routine and mechanical manner. This proposition has been reiterated time and again by Apex Court.

11 In Nem Chand Daga Vs. Inder Mohan Singh Rana 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

12 In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court has held that the prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.

13 The landlady is the best judge of her requirement; it is not for the tenant or the court to dictate terms as to how and in what manner she has to meet her needs for an accommodation. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was noted:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

14 In this back ground the application seeking leave to defend having been dismissed as a result of which the eviction decree had fallen in the hands of the landlord. There is no merit in the petition; it is dismissed.

INDERMEET KAUR, J

APRIL 27, 2012
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