

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

% *Date of Judgment: 23.04.2012.*

+ RC.REV. 169/2012 & CM Nos.7155-56/2012

SANT LAL Petitioner
Through Mr. Amit Khemka, Adv.
versus

RAJINDER KUMAR Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned order dated 31.01.2012 had decreed the eviction petition filed by the landlord; the application seeking leave to defend filed by the tenant had been declined.

2 Record shows that the present eviction petition has been filed by the landlord Rajinder Kumar against his tenant Sant Lal; disputed premises are a shop forming part of property bearing No. 8489, Ward No. 15, Arya Nagar, Pahar Ganj, New Delhi measuring approximately 10"X10"; rate of rent was Rs.35/- per month excluding electricity charges. Bonafide need has been disclosed in the eviction petition as the

need for the petitioner for himself as also for his daughter and his wife for the purposes of running a business; contention of the petitioner is that he is the owner and landlord of the aforementioned premises; he had purchased it from Ram Devi wife of Ram Chander vide document dated 13.10.1986 and since then the tenant has attorned to him and has been paying rent to him; the plaintiff has two sons and two daughters one of whom is unmarried. His elder son Akash is running a general store from the back portion of the property No. 8489, Arya Nagar, Pahar Ganj, New Delhi. The petitioner is unemployed; shop is required bonafide by the petitioner for himself as also for the need of his wife and daughter for running a business. The petitioner has no other reasonable suitable accommodation to run his business which he proposes to carry on; his wife and daughter are also dependent upon him. Eviction petition was accordingly filed.

3 Leave to defend has been filed. Various contentions had been noted. The only two arguments urged before this Court. It is submitted that the petitioner is not the owner of the disputed premises; admittedly the original owner of the property was Ram Devi who although had sold this property to the present petitioner vide a document dated 13.10.1986

yet this document create no interest in the property as this is only an agreement to sell and as such the petitioner is not the lawful and legal owner of the suit property. There is however no dispute that the tenant right from 1986 attorned in favour of the landlord and has been paying rent to him and as noted supra before this date never questioned the title of the landlord as owner.

4 The triable issue sought to be raised by the petitioner qua the status of the landlord as owner has no merit. There is no doubt that the word ‘owner’ has been used under Section 14 (1)(e) of the DRCA but the concept of ownership as construed and understood under Section 14 (1)(e) of the DRCA is not an owner in the strict sense of the word. The imperfectness of the title of the landlord would not affect the rights of the landlord in his capacity as owner to recover the suit premises and on this ground alone, a triable issue does not arise.

5 The Apex Court in various judgments have an occasion to consider the concept of ownership in proceedings under Section 14 (1)(e) of the DRCA.

6 In (1987) 4 SCC 193 Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors.

“The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be is that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Section [14\(1\)\(e\)](#) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.”

7 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.”

8 This issue does not arise as a triable issue.

9 The only other argument urged before this Court is that his son is running a business at the back side of the shop and this is evident from the photographs filed by the petitioner along with this application seeking leave to defend. Even assuming this position as submitted by the petitioner/tenant is correct, it does not affect the need of the petitioner which as pleaded in the eviction petition is the need for the premises for himself as also for his wife and daughter; in fact the landlord has himself admitted in his eviction petition that his son is carrying on the business in the back portion of the premises; the petitioner himself is an individual entity and so also his wife and daughter who are dependent upon him for their need for accommodation as has been pleaded by the petitioner in the eviction petition. The need of the parties i.e. the petitioner himself, his wife and daughter are for running the business; there is no reason why the averments made by the petitioner in the eviction petition should be disbelieved; it is not the contention of the tenant that the landlord, his wife and daughter are not qualified to run a business; merely because the petitioner is 65 years of

age, it does not disentitle him to carry on his business which he proposes to carry on and which has not been disputed; contention by and large is that this need is malafide as the whole purpose of the landlord is to extract a higher rate of rent. \

10 In 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan Das, the Apex Court observed as under:-

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

11 No other argument has been urged. Triable issues as sought to be raised cannot be and should not in a routine manner be granted.

12 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.”

13 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.

14 In these circumstances, impugned order decreeing the petition of the landlord and dismissing the application of the tenant seeking leave to defend does not suffer from any infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 23, 2012
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