

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

+ R.C. REV. 394/2012

Date of Decision: 10.10.2012

INDERMAL GUPTA & ANR

.....Petitioner

Through: Mr.G.D.Tehri, Adv.

Versus

SUNDER SINGH & ORS

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition u/S 25B (8) of the Delhi Rent Control Act (for short "the Act"), impugns the order dated 17.05.2012 passed by the ARC (East) Karkardooma Courts, Delhi, whereby the leave to defend application filed in the eviction petition, was dismissed.

2. An eviction petition was filed by the respondent/landlords in respect of part of premises bearing No. 3, Mahila Colony, Gandhi Nagar, New Delhi-110031 (for short "the tenanted premises"). The respondents submitted that the tenanted premises was allotted in the name of one Smt. Maya Devi by Mahila Co-operative Building Society Ltd. vide sale certificate dated 17.02.1975. Subsequently, this property

was sold by Smt. Maya Devi to Sh. Sunder Singh (respondent No 1 herein), Smt. Tarinder Jit Kaur, Smt. Ranjit Kaur and Sh. Inderjit Kaur by virtue of registered sale deed dated 22.04.1998 and they acquired equal shares of 1/4th each. Smt. Ranjit Kaur then expired on 30.11.1998 leaving behind one daughter, Smt. Harbans Kaur Arora (respondent no 2 herein) and three sons. The three sons later executed a relinquishment deed dated 23.09.2004, in favour of their sister, Harbans Kaur Arora, by which she got 1/4th undivided share in the property. Now both Sh. Sunder Singh and Smt. Harbans Kaur Arora are the co-owners and co-landlords in the above said property. The respondent/landlord, submitted that the tenanted premises is needed for additional accommodation, as the property available with them is not sufficient for themselves and their large family consisting of their son, Sh. Manpreet Singh, his wife and three children (out of which two are school going), and their divorcee daughter, Sh. Arvinder Kaur. All the members of the family currently live in property No.3 and No. 4 Mahila Colony, Gandhi Nagar, New Delhi-110031. Manpreet Singh is running a motor-workshop by the name of M/s Tegh Motors in part of the above mentioned property. On the ground floor of property No 4, there are two rooms, one store, one kitchen and a latrine. One of the rooms measuring 14' x 16'-9', is being used as a drawing room. Behind this room, there is a small room being used by Smt. Arvinder Kaur. On the first floor of property No 4, there is one pucca room measuring 14'x 22' which is being used by Sh. Manpreet Singh and his family for sleeping. There is no other pucca room on the first floor or

the second floor of property No 4. The rest of the 3 small rooms have only a tinshed and cannot be used for living purposes as there is a lot of leakage of water in the rainy season and the same gets too hot during the summer. The respondents No 1 and 2 also submitted that they have no permanent space for their sleeping. They also submitted that there is no dining room or study room (for the grandchildren) or a puja room. The respondents no 1 and 2 have three married daughters, who frequently visit with their families and so the extra space is needed as a guest room. They also state that they are aging persons with ailments and are unable to climb the stairs so they want to live on the ground floor which is in possession of the petitioner/tenants.

3. In their leave to defend application, the petitioners raised a number of grounds. They raised the plea that there was no relationship of landlord tenant as the ownership of the tenanted premises by Smt. Maya Devi was disputed. They contended that the said property was initially allotted to one Smt. Dhan Devi, being a widow, by the Ministry of Rehabilitation and this property was mutated in her name. She left behind three sons and four daughters and Smt. Maya Devi was not her heir. It was submitted that Smt. Maya Devi got the property in question transferred in her name by fraudulent and illegal means and then sold it. Also, it was submitted that the originally, Sh. S.N. Gupta had been inducted as a tenant by Smt. Dhan Devi. In reply to this, the respondents submitted that Smt. Dhan Devi had died after the allotment and after letting the same to the original tenant, Sh. S.N

Gupta. After her death, the property was transferred in the name of Smt. Maya Devi and the Mahila Co-operative House Building Society Ltd. had issued a sale certificate in her favour. This sale certificate was registered in the office of the Sub-Registrar on 27.02.1975. Another issue taken up by the petitioners was that in the relinquishment deed entered into between the sons of Smt. Ranjit Kaur and Smt. Harbans Kaur Arora, the share of one son, Sh. Inderjit Singh, was never relinquished to anybody. As there was no relinquishment on the part of Sh. Inderjit Singh, he ought to be impleaded as a necessary party. The respondents denied this fact and have placed the relinquishment deed on record in the lower court.

4. It was also submitted that an eviction petition No 391/83 was filed by Smt. Maya Devi in the year 1983 against Sh. S.N. Gupta, the predecessor-in-interest of the respondents, u/S 14 (1) (a), (e) and (j) of the Act. In the said petition, the relationship of landlord tenant was contested. Subsequently, an order u/S 15(4) of the Act was passed in 1985 and ultimately Smt. Maya Devi could not prove the relationship of landlord tenant between the parties, which resulted in the dismissal of the petition of Maya Devi by withdrawal on 25.04.1989. The respondents stated that during the pendency of this suit, Maya Devi sold the property in question and did not further prosecute the eviction petition. No evidence had been recorded and the eviction petition was never decided on merits.

5. It was also contended that the site plan filed by the landlord/respondents was wrong and incomplete. They have illegally shown two rooms of 10'x8' and 13' 6" x 5' available in house No. 3 and a store measuring 7' 9" x 35' 6" available in house No. 4 being used as a part of the workshop being run by the son of the petitioner by the name of M/s Teg Motors. Also the respondents have not disclosed the availability of one room on the ground floor of the house No. 4 adjacent to the alleged office measuring 14'x9'. The petitioners submit that the house No. 3, being situated on the main road of the locality can fetch a heavy amount by sale and that the respondents intended to sell the same. It was alleged that the landlord/respondents have negotiated with one Sh. Naresh Ahuja, a property broker. The respondents denied these submissions and stated that they had never heard of the property broker Sh. Naresh Ahuja. The petitioners contended that the suit premises needs of repairs, being in a broken condition and that the accommodation available with the respondents at present was much better and spacious than that available with the respondents. Another issue raised was that Smt. Tarinder Jit Kaur and Sh. Inderjit Singh Makhija, who also hold 1/4th share in the disputed property by virtue of sale deed executed by Smt. Maya Devi, are necessary parties to the eviction petition. Lastly, the petitioner/tenants submitted that they have no other alternative accommodation available with them and also that the respondents are healthy and do not suffer from any ailment as stated in their eviction petition.

6. The Ld. ARC dismissed all the above said grounds of the petitioner vide order dated 17.05.2012 and this order is under challenge in this petition.

7. Before proceeding to examine the submissions made by the counsels, it is vital to note that the powers of revision of this court u/S 25B (8) are not as wide as that of an appellate court. If it is found that the impugned order is according to law and does not suffer from a jurisdictional error, then this court has no power to interfere. Only when there is a gross miscarriage of justice caused or where the conclusion arrived at by the ARC, based on the material provided, is not possible, that this Court interferes. Keeping this aspect in mind, I have examined the impugned order and the arguments put forth by the learned counsels.

8. The main contention of the petitioners is that there is no landlord-tenant relationship between the parties and that the respondents are not the owners. The petitioners/tenants, in their petition challenged the ownership of the landlords by submitting that the title in favour of Smt. Maya Devi was obtained fraudulently. The Ld. ARC dismissed this ground laying emphasis on the settled position of law that the tenant cannot dispute the ownership of the landlord. He also made reference to the case of ***“Rajinder Kumar & Ors v. Leelawati & Ors, 155(2008) DLT 383”***, wherein it was held that:-

“11. Where a tenant denies ownership of landlord, he is obliged to disclose who was owner/landlord and to whom rent was being paid”

The petitioners nowhere in their leave to defend application specified as to whom the rent was being paid. They merely denied the ownership by the landlords and stated that the original tenant was inducted by Smt. Dhan Devi. The petitioners have merely stated that the respondents have obtained the title of the tenanted premises fraudulently, without specifying as to who the real owner is. Further, in an eviction petition u/S 14(1) (e) of the Act, a landlord-tenant relationship has to be established and not the absolute ownership of the landlord. It is sufficient if the ownership of the landlord is more than that of the tenant. In the case of ***“Sheela & Ors vs. Firm Prahlad Rai Prem Prakash, AIR 2002 SC 1264”***, the Supreme Court held that:-

“17. In our opinion, denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to affect adversely and substantially the interest of the landlord.....To amount to such denial or disclaimer, as would entail forfeiture of tenancy rights and incur the liability to be evicted, the tenant should have renounced his character as tenant and in clear and unequivocal terms set up title of the landlord in himself or in a third party. A tenant bona fide calling upon the landlord to prove his ownership or putting the landlord to proof of his title so as to protect himself (i.e. the tenant) or to earn a protection made available to him by the rent control law but without disowning his character of possession over the tenancy premises as tenant cannot be said to have denied the title of landlord or disclaimed the tenancy.”

9. The next ground taken by the petitioners was that the site plan filed by the respondents was incorrect and the respondents have

concealed the existence of a room on the ground floor of House No. 4 of the tenanted premises. The Ld. ARC has dismissed this ground observing that the petitioners having raised the above issue, have not produced any material in support of the same. It is important that any assertion made by the tenants in their leave to defend application need to be substantiated with some material. This was nothing but a vague plea raised by the petitioners. This Court in the case of **“Krishan Kumar Gupta v. Swadesh Bhushan Gupta, (2008) 152 DLT 556”** held that:-

“6. The Trial Court considered that mere denials for the sake of denial without giving any details and disclosing the facts was no denial and was not sufficient for grant of leave to defend..... The tenant had not filed any separate site plan, so the site plan filed by the landlord was to be considered as correct.....”

It was further held in the same case that:-

“12. All sorts of objections are generally raised whenever an eviction petition is filed by the landlord. Even the ownership of the landlord, the relationship of the landlord-tenant, the purpose of letting and bona fide requirement are denied by the tenant and fake allegations are made that the landlord has other properties..... Unless, the learned ARC scrutinizes each of the objections raised by the tenant with the help of documents and the material placed on record, the entire purpose of providing summary proceedings in respect of the eviction proceedings fails. Thus, it is incumbent upon the ARC to scrutinize all objections carefully in the light of law laid down and in the light of the material placed on record. It cannot be argued that the learned ARC was not required to go into the details of the objections and come to a conclusion on the basis of affidavits and once objections are raised leave to defend must be granted. Leave to defend can be granted only in those cases where the tenant is able to show by material on record that the petition was filed by the landlord mala fide.”

10. The petitioners raised the ground that the petition was bad for non-joinder of necessary parties. They stated that impleadment of Inderjit Singh Makhija and Tarinder Jit Kaur was necessary as they also held 1/4th share in the suit property vide sale deed executed by Smt. Maya Devi. The ARC dismissed this submission citing the case of ***“Pal Singh v. Sunder Singh (dead) by LRs & Ors, AIR 1989 SC 758”*** where it was held that:-

“This in our opinion falls within the ratio of Kanta Goel v. B.P. Pathak [(1977) 2 SCC 814] where this Court clearly held that when the other co-owner did not object to the eviction one co-owner could maintain an action for eviction even in the absence of other co-owner.”

It is settled law that it is sufficient if the landlords in possession of the premises are impleaded as parties and it is not necessary for the other co-owners to be impleaded as party.

11. The contention of the petitioners that the intention of the landlord was malafide and that they wanted to sell the property after eviction, was dismissed by the ARC stating that the Act u/S 19 gives protection to the tenant if such a situation should arise. The tenant can always apply for restitution under this section, but this can be done only after he vacates the premises.

12. It was urged by the petitioners that the premises in house No3 and 4 occupied by the respondents was in a much better condition than the premises occupied by them. They submitted that the ballies of the

rooms and the kitchen are in a broken condition and require repairs and replacement. This contention was dismissed by the Ld. ARC stating that what is to be seen is the requirement of the landlord and not the condition of the premises, which can be repaired by the landlord after eviction. It has been held in plethora of judgments delivered by the Apex court and High courts that a landlord is the best judge of his needs. It is not in the power of the court or the tenant to dictate terms to the landlord as to the use or enjoyment of his property. It was held by this Court in the case of **“Ram Lal vs. Bharat Singh, 1992(22)DRJ637”** that:-

“10. It is settled law that while considering the question of ejection on the ground of bonafide requirement it is desirable to strike a proper and just balance between the right of the owner and those of the tenant as protected by the law on the other. The owner is entitled to make himself comfortable and he is the best judge of his own requirement. Unless he can be considered to be misusing his right to acquire the property in the eviction petition which means that he is seeking possession under the veil of bonafide requirement but for some other purpose, his claim demands acceptance. If the owner landlord is not considered to be seeking eviction on the false pretext of acquiring additional accommodation with some collateral purpose or oblique motive and his requirement cannot be considered to be inspired purely by fanciful whim, the plea of the landlord deserves ordinarily to be upheld. As a broad workable rule, landlord must be left to assess his own requirement in the background of his position, circumstances, status in life, special and other responsibilities and other relevant factors..... An owner of modest means is not supposed to huddle his family in a small space. He can legitimately ask for more space for comfortable living.”

13. In light of the above discussions, I find that the order of the Ld. ARC is well according to the principles of law and does not suffer

from any illegality or infirmity. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 10, 2012

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