

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

% *Judgment delivered on: August 01, 2013*

+ **CM(M) No.654/2013 & CM No.9806/2013**

O.N. SHARMA & ANR Petitioners
Through Mr.Ratnesh Bansal, Adv.

versus

GOPAL GUPTA & ORS Respondents
Through Mr.Varun Goswami, Adv. with
Mr.Rajesh Singh and Mr.Raj Kumar,
Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The abovementioned petition has been filed by the petitioner against the impugned order dated 5th April, 2013 passed by ADJ-08, Central, Delhi and order dated 1st August, 2011 passed by Civil Judge-6, Central, Tis Hazari Courts, Delhi.

2. Brief facts as culled out from the petition are that respondent No.1 being a minor at the time of institution of the suit had filed the suit, being Suit No.51/10/91, through his next friend Sh.Raj Kishore Gupta who was the natural father, however, the respondent No.1 was the adopted son of Late Sh.Gir Parshad. It was averred in the suit that Smt.Sona Devi, wife of late Sh.Gir Parshad was the owner of three storeyed property No.2761, Peepal Mahadev, near Baradari Sher Afgan Khan, Hauz Qazi, Delhi, as per the sale deed dated 26th October, 1970, registered on 27th October, 1970.

3. The case of the respondent No.1 is that Smt.Sona Devi had no child of her own and therefore Sh. Raj Kishore Gupta, the next friend of the respondent No.1 being the grandson of the sister of Smt.Sona Devi was brought up by Smt.Sona Devi as her own son and she also performed his marriage. The respondent No.1 is the natural son of Sh.Raj Kishore Gupta and Smt.Sona Devi adopted him as her son on 17th October, 1980, according to Hindu rites. She acknowledged the factum of the adoption of the respondent No.1 in her last Will dated 16th July, 1981, registered on the same day as per which she bequeathed all her movable and immovable properties in favour of the plaintiff. It was averred by the respondent No.1 that Smt.Sona Devi died on 9th July, 1983 and on her death the respondent No.1 became the absolute owner of the suit property being her adopted son as well as on the basis of the Will dated 16th July, 1981.

4. It was further averred that the respondent No.1 obtained a probate of the said Will from the court of learned District Judge in Probate Case No.246/1985. It was the case of the respondent No.1 that Sh.Gopal Krishan Sharma was a tenant under Smt.Sona Devi in respect of the suit property at a monthly rental of Rs.31/- for residential purposes, however, by notice dated 18th May, 1971 his contractual tenancy was terminated. He died on or about 26th December, 1971 as a statutory tenant leaving behind his widow Smt.Lakshmi Devi and two sons Sh.Triloki Nath Sharma and Sh.Prithvi Nath Sharma and a daughter Mrs.R.L. Sharma as his legal heirs. It was further stated that on the death of Sh.Gopal Krishan only his widow inherited the tenancy rights for her life time as provided in Section 2(I) of the Delhi Rent Control Act. It was further stated that in 1978 Smt.Sona Devi filed an eviction petition under Section 14(1)(e) read with Section

25(B) of the Delhi Rent Control Act, being Eviction Case No.202/78, against Smt.Lakshmi Devi for eviction from the suit premises wherein it was specifically mentioned that on the death of Sh.Gopal Krishan his widow alone had become the tenant in the premises and no other legal heir of Sh.Gopal Krishan had inherited the tenancy rights.

5. The case of the respondent No.1 was that with a view to avoid any complications the sons and daughter of late Sh.Gopal Krishan Sharma were impleaded as defendants in the suit. It was further stated that in the eviction petition it was held by the learned Additional Rent Controller by his judgment dated 24th December, 1981 that the joint family was not the tenant but Sh.Gopal Krishan was the tenant with respect to the suit premises and his contractual tenancy was terminated by notice dated 18th May, 1971. The said eviction petition was dismissed as Smt.Sona Devi was not able to show her bonafide requirement of the suit property. It was further averred that against that judgment a Civil Revision No.382/1982 was filed by Smt. Sona Devi however during the pendency of the same, she died. Thereafter, an application was filed by Sh.Raj Kishore Gupta to get himself impleaded as the legal representative of Smt.Sona Devi on the plea that he was her adopted son. However, on 29th April, 1985 this Court gave a finding that Sh.Raj Kishore Gupta was not the adopted son of Smt.Sona Devi and therefore the revision petition was dismissed as abated. It was further stated that after the judgment of this Court in Civil Revision, Smt.Lakshmi Devi also died and as under the law her tenancy was not heritable it came to an end and therefore the petitioners were the unauthorized occupants in the suit premises. The petitioners were in actual and physical possession of the suit property and Mrs.R.L. Sharma was residing with her in-laws and Sh. Prithvi

Nath Sharma was also residing in Gali Jhankar Wali, Faridabad, Haryana. As per the respondent No.1, none of them had inherited the tenancy rights of Smt.Lakshmi Devi and therefore after her death had no right to remain in possession. Thus, it was averred that the possession of the petitioners was illegal and unauthorized and they are to hand over the vacant and peaceful possession of the suit property to the respondent No.1. Despite the fact that the respondent No.1 had asked the petitioners to vacate the suit premises the petitioner had not complied with his demand and were holding over the suit property. Therefore, the suit was filed by the respondent No.1. He claimed mesne profits @Rs.500/- p.m. from the date of death of Smt.Lakshmi Devi till the time the petitioners actually and physically deliver vacant and peaceful possession of the suit property to the respondent No.1. He claimed mesne profits with effect from 1st September, 1989 as he pleaded that he did not know exact date of death of Smt.Lakshmi Devi. Thus, the respondent prayed for a decree of possession in his favour and against the petitioners, Mrs.R.L. Sharma and Sh. Prithvi Nath Sharma with respect to the suit property and further prayed for a decree of recovery of Rs.9500/- on account of mesne profits for the period from 1st September, 1989 to 31st March, 1991 @Rs.500/- p.m. till they actually and physically deliver the vacant and peaceful possession of the suit property to him.

6. In the present case in hand it is an admitted position that Sh.Gopal Krishan Sharma was a tenant in the suit premises under the landlordship of Smt.Sona Devi at a monthly rental of Rs.31/- only. It is a further admitted position that Smt.Sona Devi has given a notice of eviction to Smt. Lakshmi Devi, Sh. Triloki Nath Sharma and Sh.Prithvi Nath Sharma Ex.4/17 and after that notice has instituted an eviction petition under the provisions of

Section 25(A) and (B) in the court of learned Rent Controller. In that eviction petition Smt. Lakshmi Devi, Sh. Triloki Nath Sharma, Sh. Prithvi Nath Sharma and Smt. R.L. Sharma were made as respondents. Judgment was passed by the court of Sh.V.B. Gupta, learned Additional Rent Controller in that suit bearing No.E-202/78 on 24th December, 1981 which was exhibited by the plaintiffs as Ex.PW3/6 and by the defendants as Ex.D1.

7. In that judgment it was held by the learned Additional Rent Controller as under:

“...only Gopal Krishan was the tenant. ...contractual tenancy of Gopal Krishan was terminated vide notice dated 18.05.1971 ... and the mere fact that Gopal Krishan Sharma has been residing in joint family will not mean that the tenancy has been created in the name of joint family..... So, I hold that after the death of Sh.Gopal Krishan Sharma only his LR's can be taken to be tenant in the premises in dispute and the joint family cannot be taken to be the tenant and as such, the present petition against LR's Gopal Krishan is perfectly maintainable. Accordingly, this issue is disposed of.”

8. Scope of interference in a petition under Article 227 of Constitution of India has been discussed in many cases. Some are:

- (i) In *Waryam Singh and Another v. Amarnath and Anr.*, AIR 1954 SC 45, the court observed; “This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in-“**Dalmia Jain Airways Ltd. V. Sukumar Mukherjee**”, AIR 1951 CAL 193 (SB) I(B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”
- (ii) In *Mohammed Yusuf Vs. Faij Mohammad and Ors.*, 2009 (1) SCALE 71, Supreme Court held; “The jurisdiction of the High Court

under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

- (iii) In ***State of West Bengal and Ors. Vs. Samar Kumar Sarkar, JT 2009 (11) SC 258 Supreme Court held***; “10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”
- (iv) In ***Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta*** (AIR 1975 SCS 1297) the Court again reaffirmed that “the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.”
- (v) In ***Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives, JT 1995(7) SC 400, Apex Court observed***; “The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of

duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

9. In view of settled law on this aspect, I am of the view that the impugned order does not suffer from any infirmity.

10. The petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

AUGUST 01, 2013