

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

+ CM(M) No.699/2013

% Judgment reserved on: 14th August, 2013
Judgment delivered on: 24th September, 2013

SANYOGTA PRAKASH Petitioner
Through: Mr. Sandeep Bhalla, Mr. Aviral
Asthana and Mr. Alok Singh, Advocates.

Versus

BIBI DHIRA BALA & ANR. Respondents
Through: Ms. Pinky Anand, Senior
Advocate with Ms. Sangeeta Bharti,
Mr. Nitin Soni and Ms. Natasha Sherawat,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

CM(M) No.699/2013

1. Vide the present petition, petitioner has assailed the order dated 20.04.2013 passed by the learned ARC, whereby an application filed by the petitioner under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 was dismissed.

2. It is important to note that the landlady/respondent No.1 has filed an eviction petition under Section 14 (1) (e) read with Section 25(B) of the Delhi Rent Control Act, 1958 (hereinafter to be referred as

‘DRC Act’) against the respondent No.2/husband of the petitioner. Case of the petitioner herein is that her husband/respondent No. 2 is the tenant in the premises/shop bearing No. 133, Bhagat Singh Market, New Delhi and she would be vitally and directly affected from the outcome of the eviction petition against her husband for the reason that a civil suit for specific performance of an agreement to sell qua the suit property is pending before the court. Therefore, if her husband is deprived of the possession, automatically she will be deprived of the fruit of her long pending litigation.

3. The suit premises mentioned above was purchased by late Lala Pindi Dass from L&DO vide a lease and conveyance deed dated 27.02.1969 which was signed by her husband/respondent No. 2, Sh. S.K. Prakash as a witness. On account of close intimacy between the parties, shop was rented out to her husband/respondent No.2. Late Lala Pindi Dass died on 14.07.1969 and bequeathed the suit premises to his daughter late Smt. Swaraj Kumari, mother of the respondent No.1, Bibi Dhira Bal Malhotra vide a Will dated 10.04.1969. Aforementioned, late Smt. Swaraj Kumari agreed to sell the shop to the petitioner for a sum of Rs.31,000/- and received a sum of Rs.5,000/- as part payment through cheque dated 01.01.1971.

4. Admittedly, the eviction petition is pending for trial before the Trial Court. Case of the petitioner is that if she succeeds in the civil suit seeking specific performance of an agreement to sell, then it will be very difficult to get the possession of the suit property, in case respondent No. 1 succeeds in the eviction petition and consequently,

respondent No.2/husband of the petitioner is evicted from the said property. Therefore, the petitioner is seeking right to become a party in the eviction petition. She is not claiming any right at present, but wants to save her future rights, if succeeds in the suit for specific performance.

5. Learned counsel for the petitioner has submitted that in the rent proceedings the title of the suit property is not being adjudicated upon, however, the petitioner is entitled to be arrayed as a party in those proceedings. Her claim against the same property is pending for adjudication, therefore, she is proper party in eviction proceedings.

6. To strengthen his arguments, learned counsel for the petitioner has relied upon a case of ***Razia Begum Vs. Sahebzadi Anwar Begum & Ors., 1958 AIR 886***, wherein the Apex Court has held that:-

“.....There cannot be the least doubt that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit he should have a direct interest in the subject-matter of the litigation whether it raises questions relating to moveable or immoveable property.

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(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy;”

7. He has also relied upon a case of ***R. Kanthimathi & Anr. Vs. Beatrice Xavier (Mrs)***, ***AIR 2003 SC 4149***, wherein the Supreme Court has held as under:-

“1. Heard learned Counsel for the parties. The question raised in this appeal is an interesting question and of some importance. The question is: "Whether on the execution of agreement to sell, by the landlord with the tenant and landlord having received substantial portion of the sale consideration, the relationship of landlord-tenant infer se between them ceases and fresh rights and obligations flows under this agreement?"

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6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when appellants were inducted into tenancy it only means both agreed that their relations is to be that of a landlord and tenant. Later when landlord decides to sell this property to the tenant and tenant agreed by entering into agreement they by their positive act changed their relationship as purchaser and seller. When seller-landlord accepts sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change then their relationship of landlord tenant ceases.

7. This Court in Arjunlal Bhatt Mall Gothani v. Girish Chandra Dutta AIR1973SC2256 held as under:

“The appellants were tenants in the premises of the respondent-landlord and three suits, including an eviction suit, were pending against them. By an agreement between the appellants and the respondent, the respondent agreed to sell the

whole property to the appellants for a certain sum to be paid to him by equal installments. Clause 5 of the agreement provided that in case of default of any installment, the agreement for sale would stand cancelled and if the purchasers failed to pay the defaulted installments within one month's notice the payments made would stand forfeited and purchasers would make over possession of the property to the vendor.

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Under Clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the installments paid by the purchaser. Not even one installment having been paid the question of forfeiture does arise and no notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement, D/ June 7, 1959 was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement."

8. On the other hand, learned senior counsel appearing on behalf of the respondent No. 1 has submitted that the suit between the petitioner and the respondent No.1/landlady is pending since 1978,therefore, learned Trial Court has rightly dismissed the application of the petitioner vide impugned order dated 20.04.2013 by recording that the petitioner is not claiming any title or interest, much less her possession in the suit property on the basis of any right within the framework of

the Rent Control Act but on the basis of her independent right to seek specific performance of an agreement to sell in her favour. The eviction petition filed under Section 14 (1) (e) of DRC Act is to be tried in a summary procedure as provided under Section 25B of the DRC Act. Therefore, the petitioner is neither a necessary party nor a proper party in the present eviction petition as she has no independent right of possession with respect to the suit premises under the Rent Control Act as she had filed her suit for specific performance of an agreement to sell in the year 1978, much prior to the filing of the present eviction petition and the issue of title cannot be made a subject matter in these proceedings.

9. Learned senior counsel for the respondent No.1 has relied upon a case decided by the Kerala High Court in RC Rev. No. 48 of 2005, titled as ***K.V. Narayanan Murti Vs. Thankamma Sebastian***, decided on 19.05.2005, wherein it is held as under:-

“14. The further question is when the tenant raises a contention that there was an agreement between the landlord and the tenant to sell the building to the tenant, whether it would constitute denial of title of the landlord within the meaning of Section 11(1) of the Act. When the landlord-tenant relationship is admitted or proved, the question whether there was an agreement to sell the building to the tenant becomes irrelevant. An agreement to sell does not invest any title in the tenant; nor does it divest the title of the landlord. The title would pass to the proposed transferee only on execution of the sale deed. The agreement to sell by itself would not terminate the landlord-tenant relationship. Even if a suit for specific performance filed by the tenant-transferee is pending,

that by itself would not be a ground to oust the jurisdiction of the Rent Control Court. So long as the tenant has not shed his character as a tenant, he cannot take shelter under the agreement for sale and contend that the Rent Control Court has no jurisdiction.....”

10. I have heard the learned counsel for the parties.

11. Significantly, two facts are important; firstly, suit for eviction is pending as per the provisions of Rent Control Act. before the rent controller vide eviction petition no 15/2012 between respondent no. 1 and respondent no. 2 as landlord and tenant respectively Secondly, suit for specific performance of contract on the basis of agreement to sell dated 1-1-1971 is also pending before the civil court between the petitioner and respondent no. 2. Pertinently, both the suits are in respect of the same property; and the petitioner is the wife of the respondent no. 2.

12. In the present case, the sole question need to be examined whether the petitioner is a necessary and proper party in the eviction suit which is pending between respondent no. 1 and 2 as landlord and tenant. The application has been filed by the petitioner under Order 1 Rule 10 of CPC for impleading her as a necessary party. For convenience Order 1 Rule 10 CPC is reproduced as under:-

“10. Suit in name of wrong plaintiff.- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is

necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

13. The rules are very clear regarding the test to be applied for impleading a person as a necessary or a proper party. Order 1 Rule 10 of CPC enable the court to add any person as party at any stage of the proceedings if the presence of the person before the court is necessary in order to enable the court to effectively and completely adjudicate

upon and settle all the disputes involved in the suit. Admittedly, the suit is pending for adjudication before the Rent Controller as per the provisions of Delhi Rent Control Act, being the respondent no. 1 as land lord and respondent no. 2 as tenant.

14. The apprehension regarding the fact that the interest or title in respect of the suit property may arise in favour of the petitioner; and such interest or title are not protected is not in itself a reason for arraying such person/persons as a necessary or proper party/parties in a civil proceeding, whereas such future interest or title are protected under a special statute.

15. Admittedly, the petitioner has filed suit for specific performance as per the provisions of Specific Relief Act against respondent no1 with respect to the same property and, therefore, if any right or interest exist in favour of the petitioner and against respondent no1 are duly protected under the Act mentioned above.

16. It is also pertinent to note that the Delhi Rent Control Act is a specific statute which is regulating and controlling the dispute between landlords and tenants wherein the dispute regarding the title or ownership of the property is not adjudicated. No doubt, the rights and liabilities arising out of the framework of Delhi Rent Control Act can be adjudicated before the Rent Controller. However, petitioner fails to show any right, or interest in respect of the suit property exists as per the provisions of the Delhi Rent control Act. Moreover, the petitioner could not bring any material or evidence that the right or even the

future interest may accrue within the framework of Delhi Rent Control Act.

17. Finally, it is legally significant to note that the power of superintendence of the High court under Article 227 of the Constitution of India is limited to see that the grave dereliction of duty and flagrant abuse of fundamental principles of law and justice are not stepped in to the legal process. In this context, the apex court in ***State of west Bengal and ors vs. Samar Kumar Sarkar, JT 2009(11) SC 258*** has held as under:

“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 an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”

18. Petitioner is neither a landlord nor a tenant. It is also admitted that the petitioner has no right or title, at present, in respect of the suit property; therefore, the impleadment of petitioner as a party is not necessary for the effective and complete adjudication of the eviction suit.

19. Moreover, the apprehension of a future cause of action in favour of petitioner is not a valid reason for arraying such person as a proper party in the existing suit and the same is not contemplated or engrafted in the concept of parties to suits.

20. In view of above discussion and settled legal position, I do not find any infirmity or illegality in the impugned order, therefore, interference is not warranted.

21. Accordingly, the petition is dismissed.

22. No order as to costs.

CM No. 10597/2013 (for stay)

With the dismissal of the petition itself, this application has become *infructuous*. The same is accordingly disposed of.

SURESH KAIT, J.

SEPTEMBER 24, 2013

Sb/jg