

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

Reserved on: 06.05.2014
Date of Decision: 10.11.2014

+ RC. REV. No.19 of 2014 & CM No.473 of 2014

ASHOK KUMAR Petitioner
Through: Mr. Sanjeev Sindhwani, Sr. Adv. with
Mr. Rakesh Saini & Mr. Sanjay Dua, Advs.

versus

PRAVEEN KUMAR GUPTA Respondent
Through: Mr. Sunil Lalwani, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns an eviction order dated 15.7.2013 passed by the Additional Rent Controller (Central) in an eviction petition filed by the respondent/landlord under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'DRC Act'). The landlord had petitioned for vacation of the premises, being shop No.9813, Ahata Thakur Dass, Sarai Rohilla, New Rohtak Road, New Delhi (hereinafter referred to as the 'suit premises') on the ground that he was unemployed and not gainfully engaged to earn a living, therefore he required the shop for starting a general/*kirana* store in the tenanted premises, particularly, because it

is located near the Sarai Rohilla Railway Station which is merely 50 feet away from his residence, hence the tenanted premises would be eminently suitable for his proposed business. The landlord had further submitted that he had no other reasonable or suitable accommodation for his proposed business. His case was that he had purchased the suit premises from its owner and landlord, Shri K.K. Jain, along with one Shri Mukesh Sharma by registered Sale Deed dated 18.1.2006. Later on, he purchased the undivided share of Shri Mukesh Sharma through a registered Sale Deed dated 31.7.2012.

2. The tenant is admittedly the sole surviving legal heir of one Shri Desh Raj in a tenancy created prior to 1947. In his leave to defend application, the tenant had contended that the eviction-petitioner was neither the owner nor the landlord of the suit premises since he could not have gained any right in the property from Shri K.K. Jain through the alleged Sale Deed either in his favour or through Shri Mukesh Sharma because the property was self-acquired by one Shri Thakur Dass who bequeathed it to Shri Jahangir Chand without any right to sell, mortgage or create any charge in the suit premises, therefore, the alleged sale by Shri Jahangir Chand to Shri K.K. Jain itself was illegal and in the absence of any right having been transferred

legitimately to Shri K.K. Jain, the latter could not transfer or bestow any better right upon the eviction-petitioner or to Shri Mukesh Sharma. Additionally, the tenant argued that since the eviction-petitioner had acquired the undivided share of Shri Mukesh Sharma only on 31.7.2012, the eviction petition would not be maintainable by virtue of Section 14(6) of the DRC Act which bars the filing of an eviction petition on the ground of *bona fide* need, unless a period of five (5) years have elapsed from the date of such acquisition. The tenant further argued that the eviction petition did not disclose the complete facts of the case inasmuch as the eviction-petitioner's wife owned two properties being property No.9820-A (part), Sarai Rohilla, Amrik Ganj, Ahahta Thakur Dass, New Rohtak Road, Delhi admeasuring 64.4 sq.yds and a shop on the ground floor of property bearing No.9812, Sarai Rohilla, Amrik Ganj, Ahahta Thakur Dass, New Rohtak Road, Delhi. The tenant had argued that the eviction-petitioner was already running a general store from the aforesaid shop and residing on the first floor above it. Additionally, it was contended that the eviction-petitioner was running a hotel/restaurant/*dhaba* from property No.9812, and that the eviction-

petitioner was the owner of certain other properties. However, no details of such other properties were furnished.

3. In reply, the eviction-petitioner had controverted the submissions of the tenant and submitted that the properties owned by his wife were occupied by tenants, namely Giriraj and Pawan Kumar. The rent receipts in original with regard to both the properties were filed.
4. On the issue of right of ownership being transferred to the eviction-petitioner through J.C. Madhok and Shri K.K. Jain, the Trial Court was of the view that the tenant had not given any account of the person, whom he has attorned as the landlord and it was not his case that he was not a tenant. Relying upon the judicial precedents¹, the Trial Court was of the view that mere denial of ownership is no denial at all and that such denial would not give a licence to a tenant to drag on an eviction petition for years in a trial. Furthermore, the Trial Court was of the view that the law is settled that under Section 14(1) of the DRC Act, a landlord is not supposed to prove absolute ownership but only that he is more than a tenant. The Trial Court was of the view that the eviction-petitioner had claimed his ownership through duly registered sale deeds whereas the tenant had

¹ Meenakshi Vs. Ramesh Khanna & Anr. 60 (1995) DLT 524; Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors. 155 (2008) DLT 383.

shown nothing to substantiate his argument that such a right did not flow to the eviction-petitioner/landlord; that if at all anyone were to challenge the said ownership right as claimed by the eviction-petitioner, it would only be the original owners and/or his legal heirs and surely not the tenant. Accordingly, the said contention was not found to be a triable issue.

5. Apropos the constraint of five (5) years as stipulated under Section 14(6) of the DRC Act, the Trial Court was of the view that the bar would operate only when the landlord becomes an owner of the property by virtue of a transfer whereas in the present case he had become a co-owner/landlord of the property in the year 2006 itself when he became a co-owner with Shri Mukesh Sharma. Therefore, it was held that the period of five (5) years would start running from 2006 because the subsequent purchase of the undivided share of Shri Mukesh Sharma merely gave him absolute right of ownership in the suit premises. The Trial Court was of the view that the eviction-petitioner had become the landlord apropos the tenant in 2006 itself along with the co-owner Shri Mukesh Sharma and by the doctrine of agency, a co-owner could file a suit for eviction of a tenant as he

does so, not on his own behalf but in his own right². The Trial Court, thus, found that this contention too was not a triable issue.

6. Finally, apropos the issue of suitable alternate accommodation being available to the petitioner with respect to property Nos. 9820-A (part), Sarai Rohilla, Amrik Ganj, Ahahta Thakur Dass, New Rohtak Road, Delhi ad measuring 64.4 sq.yds and a shop on the ground floor bearing No.9812, Sarai Rohilla, Amrik Ganj, Ahahta Thakur Dass, New Rohtak Road, Delhi, the Trial Court concluded that the tenant had failed to file anything on record, not even photographs to show that the said *kirana* shop or the *dhaba*/restaurant as alleged being run by the eviction-petitioner, whereas rent receipts shown by the eviction-petitioner showed that the property had been let out by his wife to the tenants. Therefore, the Trial Court was of the view that neither of them could be said to be available to the landlord, and that since the properties owned by the wife of the eviction-petitioner were already in possession of the tenants, there was no need for the same to have been mentioned in the eviction petition. The Trial Court found the tenanted premises suitable for the proposed business and

² India Umbrella Mfg. Co. v. Bhagabandei Agarwalla (2004) 3 SCC 178

concluded that this too was not a triable issue. Accordingly, an eviction order was passed.

7. Mr. Sanjeev Sindhvani, the learned Senior Advocate appearing for the petitioner/tenant has reiterated the same arguments as raised before the Trial Court. In addition, he submits that the bar of Section 14(6) of the DRC Act would be operative in the present case since the eviction-petitioner had acquired exclusive ownership rights only on 31.7.2012. In support of his contention, he relied upon a judgment of the Supreme Court in ***Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate***, AIR 1997 SC 998, in particular para 37 thereof, which reads as under:

“37. In view of the above discussion, it is obvious that the law with regard to the splitting of tenancy is not what the High Court has set out in the impugned judgment. As pointed out earlier, a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves.

Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them on behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of tenants except on specified grounds set out in the relevant statute.”

8. From the paragraph referred to hereinabove and the facts of the case, it would be evident that the lis related to division of a joint property between its co-owners to which a tenant could have no objection in law whereas the present case concerns the eviction of a tenant by a landlord who becomes the absolute owner of the premises.
9. The relevant Section 14(6) of the DRC Act reads as under:

“14. Protection of tenant against eviction. –

xxxx xxxx xxxx xxxx xxxx

(6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition.”

Quite clearly, if as a co-sharer of a leased property could file an eviction petition after years from 2006, surely the co-sharer could not

be put in a worse-off position upon his becoming the absolute owner of the premises in 2012. Such an interpretation would be a clear absurdity. A co-ownership right which matures into a right for seeking eviction after a lapse of five (5) years thereafter, under Section 14(6) of the Act cannot be diminished, simply because the co-sharer acquires some more right in the interim or becomes the absolute owner of the leased premises. The statute does not stipulate any such successive curtailment of the co-sharers or absolute ownership rights of enjoyment or interest in the property. The aforesaid stipulation cannot be read as to deprive a landlord from the beneficial enjoyment of his property which would come about his way after five (5) years from the initial transfer.

10. The learned counsel for the respondent/landlord has relied upon ***Jagdish Chander Gulati v. Ram Chand Lakram*, 15 (1991) DLT 660** wherein this Court has held as under:

“6. The legislative intention underlying Section 14(6) is that a landlord who is himself unable to evict a tenant for some reason should be deprived of the temptation of transferring the premises to another person who would not be prevented. Section 14(6) applies only when the person becomes the landlord of the premises in question by virtue of transfer itself. The words used under Section 14(6) are "has acquired" any premises by transfer. The petitioners have acquired the possession of these premises on 13.1.1978 in part performance of the agreement of sale and since then for all intents and

purposes the petitioners are in physical possession of the ground floor and barsati and in notional possession of the first floor, which has continued to be in possession of the respondent as a tenant. The language of the Section 14(6) shows that the person must become landlord by acquisition of the premises before this sub-Section can be attracted. It cannot be said that the petitioner became landlord by acquisition of the premises by transfer on 29.12.1986 when the sale deed was executed. He became landlord on 13.1.1978 when the agreement of sale was executed and he got the symbolic possession of the suit premises. In this case there is no escape from the conclusion that Section 14(6) will not stand in the way of the petitioners landlord from asking for recovery of the premises in dispute under Section 14 (l) (e) of the Delhi Rent Control Act. Even otherwise now more than five years have passed when the decree for specific performance and execution of sale deed was passed on 29.9.1983.”

11. This Court is of the view that the reasoning for and the conclusion arrived at in the eviction order is based upon the records and the view taken is plausible in law. It does not suffer from any material irregularity.
12. The petition is without any merit and is accordingly dismissed with costs of Rs.50,000/- to be paid to the respondent within three (3) weeks from today.

NOVEMBER 10, 2014
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NAJMI WAZIRI, J.