

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

+ **RC.REV. 78/2014 & C.M.No.2877/2014 (Stay)**

19th September, 2014

MS. CHANDER MUKHI & ORS.

..... Petitioners

Through Mr.V.M.Issar, Advocate.

Versus

SH. PARVEEN GOSWAMI

..... Respondent

Through Mr.T.R.Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M.No.15369/2014

1. This application is allowed and disposed of as at the request of counsel for both the parties, the main petition is heard today.
2. The next date of hearing fixed as 23.2.2015 stands cancelled.

RC.REV.No.78/2014

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Controller dated 25.10.2013 by which the Additional Rent Controller has dismissed the leave to defend application filed by the

petitioners/tenants and has directed eviction under Section 14 (1) (e) of the Act from the suit/tenanted premises being a flat bearing no.A-52, Subhadra Colony, Delhi as shown in red colour in the site plan annexed along with the eviction petition.

2. The respondent/landlord filed the *bonafide* necessity eviction petition pleading that he is presently living with his father in the father's property at M-136, Shastri Nagar, Delhi, and since there have been some disputes between him and his father, his father filed a police complaint against him and now the father is pressurising him to vacate the property, and consequently the respondent/landlord needs his own premises and hence has sought eviction of the petitioners/tenants.

3. At this stage, I may note that even if there are no bad relations of the son with the father, and though there is on record a Police complaint dated 03.5.2012, and which even if I take the same as manipulated as urged on behalf of the petitioners/tenants, yet, it is settled law that any person cannot be forced to continue to stay in a premises which is not owned by him; even if the premises where he is staying belongs to his own father; and the law cannot force a person to keep on living on the premises of someone else and not shift to his own premises.

4. In a petition for *bonafide* necessity, three aspects are required to be established. Firstly there exists a relationship of landlord and tenant between the parties, secondly the premises are required *bonafidely* by the landlord for his need and/or his family members, and thirdly the landlord has no other alternative suitable accommodation.

5. So far as the second and third aspects are concerned, the respondent/landlord is not found to have any other suitable property and the Additional Rent Controller has noted that the allegations made by the petitioners/tenants with regard to properties nos. E-137 and L-2/6A at Shahdara are bald pleas because the respondent/landlord has specifically taken up the stand that he has nothing to do with these properties and the same are not owned by him, and consequently it is rightly held that the respondent/landlord has no suitable alternative accommodation, and he therefore needs the tenanted/suit premises because he cannot be forced to continue to reside along with his father.

6. So far as the aspect as to whether or not the respondent is the owner/landlord of the suit/tenanted premises is concerned, the trial court in the impugned judgement dated 25.10.2013 has dealt with this aspect and held against the petitioners/tenants and in favour of the respondent/landlord by

making the following observations:-

“The petitioner has refuted all the aforesaid allegations. He has alleged that the respondents are his tenants, who had been paying rent to him till 30.11.2011. He has placed on record the chain of ownership including the perpetual lease deed dated 29.09.1977 executed by the President of India in favour of Wazir Chand and his associate Shiv Saran (son of Ram Saran), GPA, Will, receipt etc. whereby the tenanted premises was sold by the daughter-in-laws of Ram Saran (including wife of associated allottee Shiv Saran - to Om Prakash Gulati and similar documents whereby he had purchased the same from Om Prakash Gulati. These documents in totality shows that the petitioner is the owner of the tenanted premises particularly when neither the respondents have placed anything on record establishing their ownership thereupon, nor any of the successors of the previous owners have disputed either of these documents.

The respondents cannot be allowed to raise a plea of adverse possession once they have admitted the permissive nature of their occupation by stating that they were “allowed to live” in the tenanted premises in February 1961 by Ram Saran. This phrase of allowed to live” clearly demonstrates the permissive nature of their occupation. It is well-recognised proposition in law that mere permissive possession however long does not necessarily mean that it is adverse to the true owner. The plea of adverse possession is available when the entry is without the knowledge of the lawful owner and the possession of the occupant is hostile & without the consent of the lawful owner. Thus the permissive nature of the possession of the respondents lacks the sine qua non of the adverse possession. Moreover after admitting their permissive possession, neither they can dispute the authenticity or reliability of the ownership documents either of the petitioner or his predecessors in interest, nor can challenge their ownership by virtue of Section 116 Evidence Act.

The respondents have alleged that they have been paying the electricity & water charges in their capacity as the owners. However none of these have been filed on record to suggest that they have been paying any of these charges in their capacity as the owners or they have the electricity / water connections in their names.

Despite alleging that Om Prakash Gulati (predecessor in interest of the

petitioner) was permanently enjoined by the decree dated 12.05.2004 passed in the CS filed by their father, the respondents have not filed even a single document pertaining to these legal proceedings. Had these proceedings been filed, they would have helped this Court in ascertaining the stand taken by the father of the respondents therein qua his possession as to whether he had claimed himself to be a tenant or a owner. Once these documents have not been filed, adverse inference is to be raised against the respondents to the effect that they are trying to hide something which might go against them.

Nothing has been filed by the respondents suggesting that they elsewhere ever had ever raised the issue of being the owners by adverse possession. They have withheld the record of the CS filed by their father against Om Prakash Gulati. Despite ascertaining that the petitioner has threatened on 25.06.2012 to illegally dispossess them, they did not took any legal steps whatsoever against him to prevent their possession on the basis of their claim of ownership by adverse possession. They also did not took any legal steps involving CS for Declaration or injunction even after the filing of this petition wherein the petitioner to their prejudice in openly asserting him as the owner cum landlord.

The aforesaid circumstances shows that the plea of adverse possession has been taken by the respondents just to create an illusory issue lacking merits.

Hence the pleas of the respondents challenging the ownership or the landlordship of the petitioner are rejected.”

(underlining added)

7. I completely agree with the aforesaid observations because the landlord/respondent had filed the complete chain of title deeds showing him to be the owner/landlord of the suit/tenanted premises. Also, it is not the case of the petitioners/tenants that the respondent/landlord is not the owner of the suit/tenanted premises, because the case of the petitioners/tenants is that they have become the owners of the suit/tenanted premises by adverse

possession i.e they did not become owners by purchase. This plea of adverse possession has been held by the trial court to be totally baseless because long possession is not adverse possession and nothing has been filed on record to show hostile possession and assertion of title with respect to the suit premises by the petitioners/tenants. Though learned counsel for the petitioners/tenants sought to place reliance upon the judgment delivered by a civil court on 12.5.2004 against the predecessor-in-interest of the respondent/landlord Om Prakash Gulati, however, the judgment dated 12.5.2004 only holds that petitioners/tenants cannot be evicted without due process of law, and thus the petitioners/tenants surely can be evicted by due process of law by filing of the subject eviction petition, and which has been decreed.

8. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

**SEPTEMBER 19, 2014
KA**