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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 135/2014

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27th May, 2014

SH. D.N.SINGHAL & ORS.

.....Appellants

Through: Mr. S.S.Jain, Advocate.

VERSUS

SH.KISHAN KUMAR (DECD.)THROUGH HIS LRS & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed impugning the concurrent judgments of the courts below; of the trial court dated 11.10.2006 and the first appellate court dated 23.7.2013; by which the suit of the respondents/plaintiffs/landlords for possession and mesne profits has been decreed against the appellants/defendants/tenant who are the legal heirs of the original tenant Sh. Kundan Lal.

2. Sometimes the judgments which are passed by the District Courts are really exhaustive and good judgments. This is one such case

where the first appellate court in my opinion has given a very thorough, exhaustive and well considered judgment. In a case such as the present therefore this Court would only reproduce the relevant portions of the impugned judgment of the first appellate court which gives the necessary reasoning and conclusions, with a very little discussion by this Court.

3. The issue in the present case is that whether the appellants/defendants do not have protection of the Delhi Rent Control Act, 1958 by having inherited the tenancy rights under Section 2(l) of that Act because the contractual tenancy for residential purpose of the tenant Sh. Kundan Lal had been terminated in the life time of Sh. Kundan Lal. It be noted that under the Delhi Rent Control Act, 1958 whereas on the death of a tenant whose tenancy was for a commercial purpose the tenancy rights are inherited by all the legal heirs who are successors under the Hindu Succession Act, but, in tenancies which are residential tenancies where the contractual tenancy of a tenant is terminated during the life time of the tenant, then, the tenancy is personally inherited only by a limited class of persons and that too sometimes only for a limited period. The relevant provision of Section 2(l) of the Act provides that where the tenancy is for a residential purposes, and the contractual tenancy of the tenant is terminated in the life time of the tenant, the tenancy rights are inherited only by the

family members who are financially dependent on the tenant on the date of the death of the tenant and are living with the tenant on the date of death of the tenant. Section 2(l) of the Delhi Rent Control Act, 1958 in its entirety is reproduced below:-

“Section 2 (l) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes-

- (i) a sub-tenant;
- (ii) any person continuing in possession after the termination of his tenancy; and
- (iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and to this clause, such of the aforesaid person's-
 - (a) spouse,
 - (b) son or daughter, or, where there are both son and daughter, both of them,
 - (c) parents,
 - (d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,-
 - (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso of section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);
 - (B) any person to whom a license, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation1. - The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:-

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;

(c) thirdly, his parents, if there is no surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II. - If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III.-For the removal of doubts, it is hereby declared that, -

(a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguished shall not affect the right of any other succession of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the

same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be;

(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, develop on any of his heirs.”

4. There are three major issues which were argued in the courts below in the present case on behalf of the appellants and which are: firstly contractual tenancy of Sh. Kundan Lal was not terminated in his life time, secondly, the premises were let out for commercial purposes and not only for residential purposes as was the case of the plaintiffs/landlords, and thirdly, the original plaintiff namely Smt. Kasturi Devi, widow of Sh. Ghasi Ram, was not the owner of the suit property so as to have locus standi to file the subject suit for possession and mesne profits.

5. So far as the aspect of termination of contractual tenancy of late Sh. Kundan Lal is concerned, the same has been dealt with by the first appellate court in paras 23 and 24 of the impugned judgment and the same read as under:-

Jurisdiction of the Civil Court:-

“23. Having held that the suit premises were let out for residential purposes, the rights of the legal heirs of a statutory tenant to occupy such tenancy premises on his death are

governed by Section 2(1) (iii) of the Delhi Rent Control Act. The notice of termination of tenancy Ex.PW1/1 had been sent on behalf of the landlady to Sh. Kundan Lal through registered post as well as UPC at his correct address. Nothing to perceive that the envelope contains said notice had returned has brought on record. Acknowledgment Card Ex.PW1/2, existence, authenticity whereof is not questioned in cross examination (see-*Rajendra Prasad Vs Darshna Devi, 2001 VI AD (SC) 272*), rather reflects its proper delivery to the addressee. In the circumstances, presumption of service of such article in the usual course of postal service has to be drawn under Section 27 of The General Clauses Act as held in *State of Kerala Vs. George Joseph, 1996 RLR 173* and *Shimla Development Authority Vs. Santosh Sharma, (1997) 2 SCC 637*. Further the notice was also sent under Certificate of Posting Ex.PW1/4 raises presumption of service unless the tenant proves extraordinary happening or event which prevented the following of usual course of postal business as was held in *1981 (2) Rent Law Reporter 148* and *Kanwal Raj Sadana Vs. D D Saigal, 59 (1995) DLT 443*. Undoubtedly therefore, the tenancy of Sh. Kundan Lal of the suit premises had been validly terminated during his life time.

24. Another notice Ex.PW1/5 was sent through registered post on behalf of the landlady by the same Advocate to the appellant no.1 to 4 to notify them their legal status in the suit property but had returned with remarks that the addresses are not available on repeated visits. The presumption of service arise even in such case in view of the law enunciated in *M/s Madan & Co. Vs. Wazir Jaivir Chand, AIR 1989 SC 630*. This notice was also sent through UPC which had not returned. It has been contended that signatures of Sh. Suresh Gupta Advocate differ on two notices therefore, they cannot be relied upon. I have minutely perused his signatures on two notices of which more than one copy are available in trial court record and found that assertion to be farfetched and manifestly untrue. It is also contended that Sh. Gupta would have used his letter head for keeping office copy of notices rather than using a plane paper. The surmise has no edifice. The lawyers generally used

to retain carbon copies of notices engrossed on plane papers about 25-30 years ago when the computers had not come into vogue. In any case none from his office was examined by the appellants to confirm the fact. The grievance that copy of notices was not signed by the landlady is yet another faint attempt to shun the notices. It was held in **AIR 1933 Rangoon 146** that when a member of Bar writes a letter purporting to be instructed by a client, there is a presumption, until contrary is proved, that letter is written under instructions. None of these questions were put to PW1 in cross-examination, who had specifically deposed about recognizing the signatures of advocate. (underlining added)

6. I completely agree with the aforesaid reasoning and conclusions because the legal notice has been proved and exhibited as Ex.PW1/1 and the AD card has been proved and exhibited as Ex.PW1/2. Another notice sent by registered AD post has been exhibited as Ex.PW1/5. Though counsel for the appellant sought to argue before this Court that the legal notice has not been proved and exhibited, however, when he was put a query that whether any objection was raised to exhibiting of the legal notices Ex.PW1/1 and Ex.PW1/5 at the time the documents were being exhibited, the counsel for the appellant conceded that no such objection was raised when the documents were being exhibited. Once that is so the ratio of the judgment of the Supreme Court in the case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Anr. AIR 2003 SC 4548*** will apply and the appellants are estopped from raising any objection to the

exhibition and proof of the legal notices. In any case, the objection which is argued in this Court of invalidity of notice on account of signatures not being of the signatory is a wholly frivolous argument and the first appellate court has adequately dealt with the same in paras 23 and 24 of the impugned judgment which have been reproduced above.

7. So far as the issue as to whether the premises were let out for non-residential purposes or commercial purposes, as contended by the appellants is concerned, the first appellate court has held that the tenancy was not for a commercial purposes, and the relevant reasoning and conclusions are contained in paras 17 and 18 of the impugned judgment and which read as under:-

Purpose of letting:-

17. The rival contentions of parties prominently revolve around the additional issue which was framed on 13.07.1999. The verbal tenancy had been created sometime in 1950s. None of witnesses examined in this case was a witness to the terms and conditions of tenancy settled between the landlord Sh. Ghasi Ram and the tenant Sh. Kundan Lal. It being an oral tenancy, the surrounding circumstances viz. Nature of premises, its construction, location of the building, like premises in adjoining properties and dominant use since inception will be the factors for inferring the purpose of its letting. Ref. 1986(1) RCR 623. The appellants seek to draw inference from the fact that the deceased original tenant Sh. Kundan Lal was using part of the suit premises for preparing sweets and running a sweet shop. His son Sh. P.K.Singhal was carrying on a tea stall in it and another son Sh. P.K.Singhal was carrying on a tea stall in it

and another son Sh. J.B.Singhal was running a charitable dispensary in a part thereof. Absolutely no documentary proof of any of the so called commercial activities being run from the suit premises purportedly for many decades, has been filed by the appellants. No proof of purchase of raw-material by Sh. Kundan Lal for his sweet shop has been filed. There is also nothing to discern that the amenities of electricity and water were installed in the suit premises or where he was running the shop, for commercial purposes. No registration under the Delhi Shops & Establishments Act or License as an eating house or source of food for human consumption was obtained from Delhi Police or other prescribed authority has been filed. No sale bill or copies or sample thereof reflecting the sale of sweets etc. from the said shop by Sh. Kundan Lal has been filed. The copy of challan, if any issued to him by MCD or other local authority is also not produced. Even the purchase bills of boxes for packing and selling sweets have not been filed.

18. Similarly, no document whatsoever to show the registration of charitable dispensary allegedly being run by Sh. J.B.Singhal in the suit premises with Health Department of Delhi Government has been produced. No document of purchase of medicines or equipments for the dispensary is filed. Even the sample of letter head of the dispensary or of Sh. J.B.Singhal bearing address of the suit premises is produced. No copy of the academic qualifications of Sh. Singhal or of having qualified as Registered Medical Practitioner has been filed. He also did not prove that income from the dispensary was being informed by him to the Tax Authorities by filing annual returns punctually. His brother Sh. P.K.Singhal did not even know when he had acquired his medical qualification although he was more than 30 years of age in 1974-75. Sh. P.K.Singhal on his part also failed to submit even a photograph to show and specify the running of tea stall in a portion of suit premise. No bills of purchase of raw material from market, by the appellant are brought on record of this case. No independent witness including a neighbour has been examined even to verbally support the assertion. There is thus no convincing evidence to the effect that the suit premises had been let out or

were being used for composite purposes since inception of tenancy. The very location of the property, number of family members of the tenant and its construction as per the site plan Ex.DW1/A unambiguously suggest that it was meant for exclusively residential use. The oral evidence of one side has been countered by the oral testimony of the other. The appellants having failed to discharge the onus of prove the issue, the outcome reached by Ld. Trial Court in respect of the issue that the suit premises had been let out for residential purposes was the obvious conclusion.” (underlining added)

8. Learned counsel for the appellant could not dispute that all the facts as stated in the aforesaid paras are correct and no documentary evidence whatsoever was led to prove letting out of premises for commercial purposes or user of the premises for commercial premises. Once that is so, I do not find any illegality or perversity in the conclusions of the courts below that the suit premises were let out only for residential purpose and not for commercial purpose as contended by the appellants.

9. The third and final issue which was urged was as to whether the original plaintiff Smt. Kasturi Devi had locus standi to file the suit for possession. It may be noted that Smt. Kasturi Devi died during the pendency of the suit and was thereafter substituted by her legal heirs who were also the legal heirs of her husband Sh. Ghasi Ram. This issue of locus standi has been dealt with by the first appellate court in paras 19 to 22 of its judgment and the same read as under:-

“Locus-standi of the plaintiff to file the suit:-

19. The appellants having initially accepted the original plaintiff Smt. Kasturi Devi to be the co-owner of suit premises to the extent of 1/4th share, attempted to withdraw this admission at subsequent stage by shifting their stand. No document whatsoever has been filed to perceive that Sh. Kishori Lal and his brother Sh. Parmanand had jointly acquired the suit property. There is neither assertion nor proof that the suit property had also devolved on Smt. Kapoori Devi on demise of Sh. Kishori Lal apart from Sh. Ghasi Ram. There is no visible claim in this behalf from said quarters. Be that as it may, Sh. Ghasi Ram having inducted Sh. Kundan Lal as tenant in the suit property, his title cannot be challenged by the appellants in view of the law laid down in 'Baldev Singh Vs. State of Punjab, 1998 (3) PLR 785', 1997 II AD (Delhi) 679. Sh. Ghasi Ram had left behind the respondent no. 1 to 8, five daughters and widow Smt. Kasturi Devi. He had also left behind a Will Ex. PW 1/R1 in respect of his estate in favour of his wife. Even if the suit property has not been specifically mentioned therein by Municipal Number there is ample description thereof in the registered document to relate it to the suit premises. The admission about suit property having been let out by Sh. Ghasi Ram lends support to his Will and that there is unmistakable reference to the suit property in it as he is not shown to have other property in Najafgarh, Delhi. So far as the objection raised on behalf of the appellants at the time of tendering of Will by PW 1 in rebuttal evidence, is concerned, a tenant has no right to challenge the Will in respect of his tenancy premises in favour of landlord. Only the legal heirs of executant have a right to contest it. Relied – Krishna Chopra Vs Smt. Raksha, 2000 RLR 83. Logical reference in this behalf may also be made to the ratio in Kishen Lal Vs Rajan Chand Khanna, 1992 RLR 347.

20. In this case the legal heirs of deceased original landlord are rather propounding the Will of their father whereby Smt. Kasturi Devi was made Manager of the property and right to deal with tenants, realize rent from them and right of residence etc. were given to her. Admittedly, Sh. Kundan Lal had continuously paid rent of the suit premises to Smt. Kasturi Devi against rent receipts without murmur wherein she was described as the owner of suit property. He and after him the appellants are estopped from challenging the title of

Smt. Kasturi Devi to the suit premises and therefore her locus-standi to file the present suit. It was held in *Yashoda Bai Vs Lakshamma 2003 (2) RCR (Rent) 702 (Karnataka)* and *Pandharinath Vs Rukminibai, 2006 (1) RCR (Rent) 197 (M.P.)* that a person who collects rent from tenant comes within the meaning of landlord and is entitled to seek his eviction. Moreover, even one of the co-owners is competent to file suit for recovery of possession against tenant in the property. Reliance for the proposition is placed upon *Sri Ram Pasricha Vs Jagannath, AIR 1976 SC 2335*.

21. DW 1 had endeavored to cast cloud over the title of original plaintiff and after her the respondent no. 1 to 8 on the strength of property tax bills of the suit premises. Interestingly, neither party took chance to summon the property tax record from the concerned ward for clearing the cloud. The attempt however was futile firstly because the assessee in the record of property tax cannot claim himself to be the owner of the concerned property and secondly the DWs could not show that the respondent no. 1 to 8 are rank outsiders or have nothing to do with the suit premises.

22. Respondent no. 9 projected himself to be the co-owner of the suit property but apart from a few property tax bills Ex.PW1/D1 to Ex.PW1/D3 no link could be substantiated. He had never claimed the rent of the suit property from the tenant nor was able to show that it had been realized by his predecessor-in-interest. He does not claim to have notified having a share in the suit property either to the Income Tax Authority or his employer. So far the present proceedings are concerned; he utterly failed to dent the claim of other respondents.” (underlining added)

10. I completely agree with the aforesaid reasoning and conclusions because Section 116 of the Evidence Act, 1872 is a complete bar for the appellants to question the title of Smt. Kasturi Devi wife of Sh. Ghasi Ram since issuing of receipts in favour of Sh. Kundan Lal by Smt. Kasturi Devi is not denied. Section 116 of the Evidence Act, bars a tenant from challenging

the title/ownership of the landlord. I may note that the counsel for the appellants tried to argue that the correct interpretation of the Will Ex.PW1/R1 of Sh. Ghasi Ram dated 23.4.1957 does not give ownership rights to his wife Smt. Kasturi Devi of the suit property, however, the appellants have no locus standi to question interpretation of the Will of Sh. Ghasi Ram inter se the legal heirs of Sh. Ghasi Ram because those legal heirs understand the Will of Sh. Ghasi Ram in a particular manner that the widow Sh.Kasturi Devi is given the right to become the landlord of the suit property. The appellants hence cannot seek to challenge that interpretation because they are third parties to the Will and have no rights to question interpretation of the Will which is agreed inter se the legal heirs of Sh. Ghasi Ram who made the Will.

11. In view of the above, I do not find that any substantial question of law arises under Section 100 CPC for this appeal to be entertained, and the appeal is therefore dismissed, leaving the parties to bear their own costs.

MAY 27, 2014
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VALMIKI J. MEHTA, J.