

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

+ **C.M.(M) No.413/2012 and C.M.Nos.6363/2012, 10718/2012,
12174/2012, 2356/2014**

% **16th October, 2014**

SH.MAHAVIR SINGH DECD THR LRS. Petitioners
Through: Mr.Madan Lal Sharma with Mr.Varun
Nischal, Advocates.

VERSUS

SMT.CHANDERWATI RATHI Respondent
Through: Mr.Ravi Kant Chandra with Mr.Ajit
Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India is filed against the concurrent judgments: of the Rent Control Tribunal dated 24.1.2012; and the Additional Rent Controller dated 10.10.2011 (an order consequential to the order under Section 14(1)(a) of the Delhi Rent Control Act, 1958 hereinafter referred to as 'the Act' dated 09.9.2011); by which the eviction petition filed by the respondent (owner/landlady) has been decreed with respect to the suit/tenanted premises bearing no.S-528A, School Block, Shakarpur, Delhi.

2. The respondent/landlady filed an eviction petition against the petitioners on the ground of non-payment of rent under Section 14(1)(a) of the Act. This eviction petition after trial was decreed in terms of the judgment of the Additional Rent Controller dated 09.9.2011. An eviction decree automatically does not flow after allowing of a petition under Section 14(1)(a) of the Act inasmuch as if the default in payment of rent is the first default, then under Section 14(2) of the Act a tenant gets a right to make deposit of the disputed arrears of rent under Section 15(1) of the Act, and it is only on non-compliance of an order passed under Section 15(1) of the Act that an order is passed directing eviction of the tenant from the suit/tenanted premises. Accordingly, and as stated above, the main petition under Section 14(1)(a) of the Act was allowed by passing of the judgment in favour of the respondent/landlady by the Additional Rent Controller dated 09.9.2011, and the consequential order of eviction on account of non-compliance under Section 15(1) of the Act, and non-grant of benefit under Section 14(2) of the Act, is in terms of the later order of the Additional Rent Controller dated 10.10.2011, and which order dated 10.10.2011 has directed eviction of the petitioners from the suit/tenanted premises. These judgment and order of the Additional Rent Controller dated 09.9.2011 and 10.10.2011 respectively

have been confirmed by the Rent Control Tribunal vide its judgment dated 24.1.2012, which judgment is impugned in the present petition.

3. The only issue which is argued before this Court on behalf of the petitioners is that the respondent/landlady is not the owner of the suit/tenanted property, inasmuch as, the predecessor-in-interest of the petitioners namely Sh.Mahavir Singh was in possession of the suit/tenanted property even prior to the ownership claimed by the respondent/landlady by means of the documents dated 24.12.1986. Be it noted only 'possession' entitlement is claimed as distinguished from any claim of ownership. The petitioners claim that Sh.Mahavir Singh was in fact in possession of the suit/tenanted property even prior to the ownership of the suit property of the predecessor-in-interest of the respondents namely Smt.Mithlesh Kumari (and then her husband Sh.Ram Saran Sharma). The petitioners claim that Sh.Mahavir Singh was in possession of the property around 35 years prior to the filing of the eviction petition and which property is different than the suit/tenanted property bearing no.S-528A.

4. The case of the respondent/landlady was that by means of the documents being the agreement to sell, power of attorney, receipt dated 24.12.1986, which have been proved before the trial court as Ex.PW1/1 to PW1/3 respectively, the suit property admeasuring 125 sq. yds. was

purchased by the respondent/landlady from Sh.Ram Saran Sharma, the husband of late Smt.Mithlesh Kumari. Smt.Mithlesh Kumari had originally purchased 200 sq. yds., of which the suit/tenanted property of 125 sq. yds. form a part, by means of a registered sale deed dated 04.11.1970 from one Sh.Toti son of Sh.Sukh Ram. Smt.Mithlesh Kumari purchased 200 sq. yds. out of khasra no.162, Village Shakarpur Khas, Illaqa Shadhara, Delhi and out of the area of 200 sq. yds., an area of 125 sq. yds. was sold to the respondent herein by means of the documents dated 24.12.1986 and which is the suit property. The respondent/landlady accordingly claimed ownership of the suit/tenanted premises admeasuring 125 sq. yds. The respondent/landlady also claimed that Sh.Mahavir Singh had also signed counterfoils of rent receipts in favour of the respondent/landlady in the year 1994, and which have been proved before the trial court as Ex.PW1/5 and PW1/6, but, Sh.Mahavir Singh thereafter stopped paying rent to the respondent/landlady, and consequently the petition under Section 14(1)(a) of the Act came to be filed.

5. At this stage itself it is required to be noted that the petitioners took up a vague and evasive stand in the written statement that if they are not in possession of the suit/tenanted property bearing no.S-528A, and which was purchased by the respondent/landlady by means of the documents dated

24.12.1986 (and the predecessor title document being the sale deed dated 04.11.1970) then, petitioners were in possession of which property number and situated in which khasra number. In order to see the vagueness of the stand on behalf of the petitioners, let me reproduce para no.8 of the preliminary objections of the written statement on the basis of which the petitioners claim that they are not in possession of the suit/tenanted property which is the subject matter of the sale deed dated 04.11.1970 or the documents dated 24.12.1986, and which para no.8 reads as under:-

“ 8. That the petition of the petitioner is also not maintainable as the petitioner has crossed her all the limits of making false statements as even the khasra number in which the petitioner allegedly have saying to fall the municipal number of the property which is situated at least 500 sq. yards away from the suit property as such the false and frivolous petition of the petitioner is not maintainable and is liable to be dismissed with heavy costs.”

6. A reading of the aforesaid para shows that the petitioners were required to but they did not take up any specific case that if they were not in possession of the property situated in khasra no.162 bearing municipal no.S-528A, then they were in possession of which property, which municipal number and it was situated in which khasra number. I am mentioning this fact because vague and evasive denials lack credibility and courts are entitled not to consider the same with seriousness which is displayed suddenly during the course of trial or during the course of oral arguments.

7. At this stage I would like to put on record the fact that the respondent/landlady has stated that the khasra no.162 which is written in the documents dated 24.12.1986 is a typing mistake, and which typing mistake had occurred because even in the predecessor title document being the sale deed dated 04.11.1970 khasra number was written as 162, whereas the suit/tenanted property is actually situated in khasra no.262 i.e the first numerical digit should be '2' and not '1' in the no.162 as found in the sale deed dated 04.11.1970 and the documents dated 24.12.1986.

8(i) It is argued on behalf of the respondent/landlady that the issue actually turns on to the location of the suit/tenanted property, and therefore, one has to see the location of the suit/tenanted property as delineated in the sale deed dated 04.11.1970 executed by Sh.Toti in favour of Smt.Mithlesh Kumari, wife of Sh.Ram Saran Sharma, and from whose husband Sh.Ram Saran Sharma, the respondent/landlady had purchased the suit/tenanted property.

(ii) It is further argued on behalf of the respondent/landlady that in the sale deed dated 04.11.1970, the property which is shown to be in the ownership of Sh.Toti being 200 sq. yds. was bounded on the North and South by galis (roads) of 15 ft. and 10 ft. width respectively, and on the East was the land of Sh.Toti and in the West was the land of one Sh.Ram Singh

i.e specific boundaries are provided in the sale deed dated 04.11.1970, and reference to which will remove any confusion with respect to the location of the suit/tenanted property because the suit/tenanted property is a part of 125 sq. yds. of 200 sq. yds. belonging to Sh.Toti and purchased by the respondent/landlady consequent to the documents dated 24.12.1986. As a result of the documents dated 24.12.1986 in favour of the respondent/landlady, the result would be that in the East of the property purchased by the respondent/landlady, the property which would exist would be the property of Sh.Ram Saran Sharma and Smt.Mithlesh Kumari, and on the West would be the property of Sh.Ram Singh, and if today that is so then petitioners should not be allowed to create any confusion with regard to the suit/tenanted property.

(iii) It is also to be noted that there is no dispute that location of the suit/tenanted property so far as the North and South is concerned, there are admittedly galis (roads) having width of 15 ft. and 10 ft. and the dispute as regards location is what lies to the East and West of the suit/tenanted property.

9. The net conclusion from the facts as found is that to the East of the suit/tenanted property, there is undoubtedly the property in ownership and possession of Sh.Ram Saran Sharma and to the North and South are *gallies*

of 15 ft. and 10 ft. and the only locational parameter which would remain for identification is to the West of the suit/tenanted property i.e is there a property of Sh.Ram Singh in the West or to the West is the property which is claimed by the petitioners through their predecessor-in-interest Sh.Mahavir Singh. Putting it in another words, once the respondent/landlady proves the chain of title deeds showing location and ownership of the suit/tenanted property, thereafter it was incumbent upon the petitioners to plead and prove their specific case so as to show that they were in possession of which particular khasra number as different than that of the respondent/landlady, and the petitioners had also to prove by leading sufficient evidence that if they had constructed the property, then what is the proof of making the construction, whether the petitioners took any electricity connection for the property in their name (or their predecessor Sh.Mahavir Singh), whether the petitioners took any water connection for the property in their name or in Sh.Mahavir Singh's name etc. The requirement of existence of electricity and water connections is being referred to because there is no dispute that there exists electricity and water connections in the suit/tenanted property in the name of the respondent/landlady, and the respondent/landlady has filed the documents with respect to existence of electricity and water connections in the suit/tenanted property, which documents have been filed and proved

before the trial court as Ex.PW1/5 (electricity connection receipt) and Ex.PW1/23 (water connection receipt). The petitioners on the other hand have failed to file any documents whatsoever that the electricity and water connections in the property claimed by them are in the name of the petitioners as Sh.Mahavir Singh. I may also note that the respondent/landlady has also stated before this Court that she is paying house tax for the suit property though there is no such document on record, but the counsel for the respondent states that he is ready to file such documents to show that the house tax is being paid by the respondent/landlady. These house tax records in the name of the respondent/landlady are said to have been filed in another civil suit which is said to be pending against the present petitioners. Therefore, the position which emerges is that, whereas the respondent/landlady has filed and proved on record the water and electricity connections documents with respect to the water and electricity connections in the suit/tenanted property in her name and has pleaded a case before this Court of paying house tax in her name as regards the suit property, it is an undisputed fact on record that the petitioners have however not filed any document whatsoever as to in which name the electricity and water connections exists in the premises which are in occupation of the petitioners. Also, it is an admitted position that there are

no house tax documents in the petitioners' name as the counsel for the petitioners claims that no house tax is paid by the petitioners allegedly because as per the counsel for the petitioners no house tax is payable in the area where the suit/tenanted premises are situated.

10. Therefore, in my opinion confusion sought to be created by the petitioners with respect to the location and numbering of the property, and that the suit/tenanted property is not a property no.S-528A, but a property adjacent on the West side of property no.S-528A does not merit any acceptance from this Court.

11. Learned counsel for the petitioners argues before this Court that Sh.Ram Saran Sharma when deposing as PW-2 admitted in his cross-examination that Sh.Mahavir Singh is residing in the property adjacent to his house even earlier to possession of Sh.Ram Saran Sharma, and accordingly it should be held that the property in possession of the petitioners is different than the suit property, however in my opinion, a stray admission in cross-examination made by Sh.Ram Saran Sharma has to be seen in the context of the entire facts and other evidence of the case including and especially the lack of requisite pleadings on behalf of the petitioners as stated above, and also not filing of any documents by the petitioners to show their possession or the expenditure incurred towards construction of the suit/tenanted

property, and therefore, this Court is not inclined on the basis of just one admission in the cross-examination of Sh.Ram Saran Sharma as one to be treated as a clinching evidence that all other evidence in favour of the respondent/landlady stands superceded by a lone admission. Also, I must note that more weight has obviously to be given to documentary evidence than oral statements, and in this case documentary evidence in favour of the respondent/landlady is not only the chain of title deeds in her favour but also there exists the documents/receipts of water and electricity connections which were proved and exhibited before the trial court as also the payment of house tax by the respondent/landlady qua the suit/tenanted property in the name of the respondent/landlady.

12. I would like to note that it is very strange that the petitioners keep on claiming 'possession' of the suit/tenanted property and also stating that effectively they would be the owners, (though the issue of ownership is not relevant in a petition filed under Section 14(1)(a) of the Act), however, no credible evidence; much less necessary documentary evidence; has been filed on behalf of the petitioners with respect to possession or of construction of the property being made by them or their enjoyment of the property by the electricity and water connections in the suit/tenanted property being in their name and so on.

13. Powers under Article 227 of the Constitution of India are not a substitute for a second appeal. In the Delhi Rent Control Act, 1958, there was a provision of second appeal being Section 39 of the Act and this provision of second appeal being Section 39 of the Act was repealed way back in the year 1988. Even the provision of second appeal which was there, was a very restricted right of appeal on substantial questions of law. Once there is no right of second appeal, and which second appeal was also to be on a very limited ground, powers under Article 227 of the Constitution of India can only be exercised in case of stark illegality in the findings and conclusions of the courts below. If the courts below have given one possible and plausible view on the appreciation of the evidence, I do not think powers under Article 227 of the Constitution of India are to be exercised in the cases such as the present to upset the concurrent judgments of the courts below.

14. 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

OCTOBER 16, 2014
KA