

IN THE HIGH COURT OF DELHI AT NEW DELHI

RC REV No. 225/2013 & C.M. No.9870/2013 (stay)

8th August, 2014

.....Petitioner

VERSUS

..... Respondent

Through: Mr. V.P. Katiyar, Advocate.

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 26.2.2013 by which the leave to defend application filed by the petitioner/tenant has been dismissed and the eviction decree in the *bonafide* necessity petition under Section 14(1)(e) of the Act has been passed with respect to the tenanted shop bearing private no.4 in property bearing no.2523/193, Tri Nagar, Delhi-110035.

2. The subject eviction petition for *bonafide* necessity was filed inasmuch as the respondent/landlady stated that she needed the suit property

to open a ladies boutique/tailoring shop because the family needed to augment the income. It was also stated that the rental income from the shop is very less and the respondent's husband is not earning well from the stationery shop which is adjacent to the suit premises, and therefore eviction be ordered of the petitioner/tenant.

3. The Additional Rent Controller has held that the respondent/landlady is the owner/landlady of the suit premises and that the respondent/landlady needs the suit premises *bonafidely* for her business purpose. Accordingly, eviction of the petitioner/tenant has been ordered.

4. The main argument which is urged before me on behalf of the petitioner/tenant is that the respondent/landlady is not the owner of the suit premises inasmuch as the Power of Attorney and the Will dated 10.4.2001 executed by the husband of the respondent in her favour cannot create title in her favour. Accordingly, it is argued that since it was necessary for the respondent/landlady to be the owner and landlady of the suit premises as per Section 14(1)(e) of the Act, and because the respondent/landlady is not the owner of the suit premises, hence the eviction petition could not be decreed and this aspect raises a triable issue.

5. The Additional Rent Controller, in this regard, has held that since there is no dispute raised by the petitioner/tenant in the leave to defend

application that the respondent is the landlady of the petitioner/tenant, consequently the petitioner/tenant is estopped under Section 116 of the Evidence Act, 1872 from disputing the title of the respondent/landlady. I agree and in addition to the aforesaid aspect, I must note that the respondent/landlady alongwith the eviction petition had filed rent receipts which are duly signed by the petitioner/tenant and which rent receipts show that the respondent has been accepted by the petitioner/tenant as the owner/landlady of the suit premises. Once, no dispute is raised with respect to the factum of the rent receipts having been executed, and which show/accept the respondent/landlady as the owner of the suit premises, in my opinion, the respondent/landlady is the owner, and no triable issue arises that the respondent/landlady cannot file the *bonafide* necessity petition on the ground that the respondent/landlord is not the owner.

6. The relevant paragraphs containing the conclusions of the Additional Rent Controller on this issue are paras 13 to 17 and which read as under:-

“A. **OWNERSHIP**

13. The relationship of landlord and tenant is admitted between the parties. However, respondent has stated that admittedly only a General Power of Attorney has been executed in favour of petitioner and therefore petitioner cannot claim herself to be the owner of the suit shop. The fact that originally the suit shop belong to father-in-law of petitioner which was transferred to Smt. Chameli Devi and

subsequently the entire property including the suit shop having devolved upon petitioner's husband and another son of Smt. Chameli Devi is admitted by the respondent. Respondent has also not denied that vide Mutual Agreement of partition dated 10.4.2001, the entire property was divided in two shares and the suit shop has fallen to the share of husband of petitioner. Respondent has not challenged the authenticity of the General Power of Attorney dated 10.4.2001 executed in favour of the petitioner. The only contention of the respondent is that mere General Power of Attorney is not a title document which can transfer ownership in favour of the petitioner.

14. Firstly, it is settled law that once respondent has admitted the petitioner as landlord, then the respondent/tenant is estopped from challenging the ownership of the petitioner as per Section 116 of Evidence Act. Further, in the case of Vijender Gupta Vs. Pushpa Devi 2011 IX AD (Delhi) 374, the Hon'ble High Court of Delhi has held that if relationship of landlord and tenant is not disputed then tenant cannot question the title of the landlord.

15. Further it is a settled law that bald assertions challenging the ownership of the petitioner will not entitle the respondent to grant of leave to contest the petition. Respondent has to disclose that if the petitioner is not the owner then who else is the owner of the suit shop. Reference in this regard be made to the judgment in the case of Bhagwati Vs. Vijay 2010 IV AD (Delhi) 449, wherein it was held that when sufficient material has been placed on record by the landlady to establish that she is the owner of the property, then mere bald assertions by the respondent/tenant that the Will produced by the landlady is unregistered and therefore she is not the owner, cannot be considered.

16. In the present case, respondent has not even challenged the authenticity of the General Power of Attorney executed in favour of the petitioner. The only contention of the respondent is that the General Power of Attorney is not a title document. It is a settled law that in an eviction petition, the Court does not have to adjudicate the title of the parties. The landlord is not required to establish his absolute ownership over the premises in question.

In Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 450, the Hon'ble High Court of Delhi held as under:-

“.....It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly....

17. In the present case also, what the petitioner has to prove is that her title is more than a tenant. In the instant case, admittedly the petitioner is the landlady and a General Power of Attorney has been duly executed in her favour and therefore she has proved that her title is better than the tenant and the plea of the respondent that she is not the owner of the suit shop is not tenable. Further a perusal of the said General Power of Attorney will show that she has been vested with all the rights with regard to the suit shop pursuant to said General Power of Attorney. Therefore, in view of above discussion, respondent cannot challenge the ownership of the petitioner with respect to the suit shop and no cogent material has been disclosed by the respondent by raising this plea so as to grant him leave to defend and contest the present petition ”

7. In my opinion therefore no triable issue arises that the respondent is not the owner/landlady of the suit premises.

8. No other issue is urged before this Court except as discussed above, however, as a matter of abundant caution I may note that the respondent/landlady was entitled to file the eviction petition for *bonafide* necessity and merely because the husband of the respondent/landlady is having a stationery business in the adjacent shop cannot mean that the respondent/landlady cannot augment the income of her family by opening a ladies boutique/tailoring shop. No tenant can challenge the aspect that a landlord/landlady should not augment the income for her family by opening a business, once a tenanted premises are available for opening of the business and from which the tenant should/can be evicted.

9. In view of the above, I do not find any error in the impugned judgment of the Additional Rent Controller decreeing the *bonafide* necessity petition, and therefore this revision petition is hence dismissed, leaving the parties to bear their own costs.

AUGUST 08, 2014
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VALMIKI J. MEHTA, J.