

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

+ **RC.REV.No.277/2013**

% **29th October, 2014**

SMT. KRISHNA CHAUDHARY Petitioner
Through: Mr.Pradeep Chhindra, Advocate.

VERSUS

SH.SHARAD SHARMA Respondent
Through: Mr.R.K.Bali, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This rent control 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 06.8.2011 by which the Additional Rent Controller has dismissed the eviction petition filed by the petitioner/ widow /landlady against the respondent/tenant under Section 14 D of the Act. The suit/tenanted property is flat no.E-29, Gaurav Apartments, Plot No.1, I.P. Extension, Delhi. The provision of Section 14 D

of the Act allows a *bonafide* necessity eviction petition to be filed by a widow when the tenanted premises are let by the widow or her late husband.

2. The eviction petition is filed under Section 14D of the Act on the ground that the petitioner needs the suit/tenanted premises for her own use as a residence as she cannot continue to live in the Government quarter allotted to her.

3. The eviction petition filed by the petitioner was dismissed after trial on the sole ground that the petitioner has failed to prove the relationship of landlady and tenant between her and the respondent, though, the Additional Rent Controller (ARC) holds that the petitioner is the owner of the tenanted premises.

4. At the outset, I must express my angst not only at the impugned judgment, but also on the conduct of the respondent in harassing the petitioner/widow/landlady since the respondent is now sitting in the suit/tenanted premises at least from 1999 without paying a single rupee to the petitioner/landlady. The dishonesty of the respondent is so stark in the present case that I am allowing this petition with penal costs to the petitioner/landlady. The contumacious attitude of the respondent can be borne out from the fact that even after the arguments were heard on merits

and it was proposed by the petitioner that forgetting the past, respondent can vacate the suit/tenanted premises in a short time, but, counsel for the respondent after obtaining instructions insists that the petition be decided on merits.

5. The case as set up by the petitioner/landlady was that she is the widow of one Sh.Kailash Chandra who expired on 20.3.1997. The petitioner pleaded that she was the owner of the suit/tenanted premises and was residing in a Government allotted flat at E—1220, Netaji Nagar, Near Sarojini Nagar, New Delhi along with her son Sachin and daughter Vandana, and that she *bonafidely* and immediately required the suit/tenanted premises for residence of herself and her family members because she had to shift from the Government accommodation. In the eviction petition it was stated that the respondent was falsely since long claiming to be owner of the suit/tenanted premises and was not even paying any rent to the petitioner/landlady.

6. The respondent filed his written statement and claimed that he was the owner of the same as he purchased the same from one Sh.Yashpal Singh Joshia, a first cousin of the petitioner, on 13.7.1999 by virtue of a general

power of attorney dated 22.5.1992 which had been executed by the petitioner in favour of the said Yashpal Singh Joshia.

7. So far as the aspect that the petitioner is the owner of the suit/tenanted premises is concerned, this aspect has been held in favour of the petitioner/landlady by the Additional Rent Controller in terms of the observations made in paras 11 and 12 of the impugned judgment, and which paras read as under:-

“ 11. It is admitted fact that suit premises is a flat of Society. PW2, the president of Society specifically deposed that petitioner is recorded as owner of suit premises vide membership no.410 of the aforesaid Society. He further deposed that there is no mention of the name of Sh. Sharad Sharma/respondent being owner of said flat either in the share certificate register or in the membership register. PW2 further deposed that if a flat of a Society is intended to be sold by the owner of the flat to a third party then a permission has to be taken from the Society. PW2 further deposed that if the owner of the flat intend to sale the flat then no third party is allowed to purchase the same and in that case the flat will revert back to the Society. PW2 also deposed that till date there is no application of Sh. Sharad Sharma in the Society that he purchased the flat form Smt. Krishna Chaudhary. PW2 further deposed that till date Society has not given permission either to petitioner or respondent for the sale and purchase of the suit premises. The testimony of PW2 is unchallenged as he has not been cross-examined by the respondent.

12. It is admitted fact that petitioner is the original allottee of the suit premises and she herself has not sold the suit premises to the respondent. It is also pertinent that Sh. Yashpal Singh Joshia who allegedly sold the suit premises to respondent being Attorney of petitioner had not obtained the permission of Society to sell the suit

premises to respondent. It is also pertinent that PW1 denied the execution of GPA Ex.DW1/A in favour of RW2. It is also admitted that stamp paper of GPA Ex.DW1/A was purchased for the purpose of affidavit. It is also admitted that the sale deed of the suit premises has not been executed in favour of respondent and he simply holds the GPA of RW2. Under these circumstances, it cannot be said that petitioner is not the owner of the suit premises. In view of aforesaid discussion, petitioner proved that she is widow and owner of the suit premises accordingly issue no.1 stands satisfied.”

(Underlining added)

8. In addition to the above observations of the Additional Rent Controller for holding that the petitioner/landlady is the owner of the premises, the following aspects are also held in favour of the petitioner/landlady for concluding that the petitioner is the owner of the suit/tenanted premises:-

(i) No doubt, the petitioner/landlady had executed the power of attorney dated 22.5.1992 in favour of Sh.Yashpal Singh, S/o Sh. Jeet Singh (and who is referred to also as Sh.Yashpal Singh Joshia), and which power of attorney is dated 22.5.1992 has been exhibited before the trial court as Ex.DW1/A (actually the exhibit number should be DW1/B as per the affidavit by way of evidence of the respondent), however, the respondent can only be the owner if the agreement to sell and the general power of attorney dated 13.7.1999 executed in favour of the respondent by Sh.Yashpal Singh Joshia can be said

to have resulted in transfer of the title in the suit premises to the respondent. However, the agreement to sell and general power of attorney dated 13.7.1999 exhibited as Ex.DW1/A in the affidavit by way of evidence of the respondent did not result in transferring the title of the suit/tenanted premises to the respondent for various reasons given below, and I hold that the documents being agreement to sell and general power of attorney dated 13.7.1999 are sham and fraudulent documents. Firstly, if these documents dated 13.7.1999 were valid documents, then consideration under the same would have been paid by the respondent to Sh.Yashpal Singh Joshia being the amount of Rs.5,25,000/-, however, no evidence whatsoever has been led on behalf of the respondent that this amount of Rs.5,25,000/- was ever paid by the respondent to Sh.Yashpal Singh Joshia much less that this amount of Rs.5,25,000/- has been further paid by Sh.Yashpal Singh Joshia to the petitioner. A reading of the cross-examination of Sh.Yashpal Singh Joshia, who appeared as a witness/RW-2 on behalf of the respondent, shows that he could not show from his passbook that any entry was made in his account for receiving an amount of Rs.6,50,000/-(sic: Rs.5,25,000/-) as claimed by the respondent to have been paid to Sh.Yashpal Singh Joshia for purchase of the suit premises by the respondent from the petitioner through Sh.Yashpal

Singh Joshia. In the cross-examination of RW-2 on 18.7.2009, it is categorically admitted by Sh.Yashpal Singh Joshia that he has no evidence whatsoever that any amount was ever credited in his account as alleged to have been paid under the documents dated 13.7.1999 executed by Sh.Yashpal Singh Joshia in favour of the respondent, and Sh.Yashpal Singh Joshia has no proof that any amount was paid by him to the present petitioner. Sh.Yashpal Singh Joshia/RW-2 did try to set up a case that he paid the amount of consideration to the petitioner after the documents dated 13.7.1999 were executed in cash, however, in his cross-examination he admitted that he had no proof whatsoever to show that any consideration amount whatsoever was paid by him (Sh.Yashpal Singh Joshia/RW-2) to the present petitioner. Therefore, taking the power of attorney dated 22.5.1992 executed by the petitioner in favour of Sh.Yashpal Singh Joshia as correct, Sh.Yashpal Singh Joshia never legally transferred any title of the suit property to the respondent herein and the documents after the agreement to sell and general power of attorney dated 13.7.1999 are clearly fraudulent and sham documents.

(ii) It is also come on record that the petitioner had in fact taken a loan from LIC by mortgaging this property. As per the affidavit by way of

evidence filed by the petitioner, she applied to LIC Housing Finance Limited for the loan and LIC Housing Finance Limited sanctioned a loan to her vide letter dated 29.8.1990 and 8.8.1991, which have been proved and exhibited as Exs. P-5 and P-6. The petitioner was working as a Government servant with the Director General of Health Services and the employer vide its letter dated 18.12.1995 exhibited as Ex.P-7, approved the loan of Rs.54,500/- to the petitioner for repaying the loan by the petitioner to LIC Housing Finance Limited. The tripartite agreements of the petitioner, society and LIC Housing Finance Ltd. have been deposed to by PW-2 on 18.3.2004 and are on record as Ex.RW-1/P3&P4

(iii) The fact that the respondent is not the owner of the suit/tenanted premises becomes clear from the fact that, if really the title had to be transferred to the respondent by means of documents dated 13.7.1999, then surely the respondent would have got with him the original share certificate of the society, original possession letter giving possession of the suit property to the petitioner by the society, original agreement of the petitioner with the society giving ownership rights to the petitioner of the suit property etc etc. Once the respondent does not have with him any original title documents of the property, and which he was bound to have if really the title

was transferred to him by the documents dated 13.7.1999, there remains no doubt that the respondent was not the owner of the suit property on account of his having allegedly purchased the same from the attorney of the petitioner Sh.Yashpal Singh Joshia.

(iv) It is also an admitted fact appearing on record that the respondent at no point of time ever sought mutation of his claim with the society as having purchased the suit property by means of the documents dated 13.7.1999 and in all the records of the society it is the petitioner who is shown as the owner. The records of the society showing the petitioner as the owner have been proved by the President of the Society who appeared as PW-2 and these documents are Ex.PW2/1 to Ex.PW2/8.

9. In view of the above, I have no hesitation to hold that the Additional Rent Controller was justified in arriving at a finding and conclusion that the petitioner was and continued to remain the owner of the suit property and neither the respondent became the owner of the suit property through the documents dated 13.7.1999 nor did Yashpal Singh Joshia became the owner by the alleged GPA dated 22.5.1992.

10 (i) Before me, counsel for the respondent did not urge any argument to counter the fact that the petitioner was the owner of the suit property and it

was only vehemently argued that since there was no relationship of landlady and tenant between the petitioner and the respondent there was no jurisdiction of the Additional Rent Controller under the Delhi Rent Control Act, 1958 to entertain the eviction petition. Counsel for the respondent has referred to me various admissions made by the petitioner in her cross-examination that she had not let out the suit property to the respondent including the admission made by the petitioner in her cross-examination on 23.7.2005 where the petitioner stated that neither she nor her husband let out the property to the respondent, and that she had not authorized Sh.Yashpal Singh Joshia either to let out the property and dispose of the same.

(ii) This argument however urged on behalf of the respondent does not carry any weight because in the same cross-examination of the petitioner on 23.7.2005, the petitioner in the next few lines has specifically stated that Sh.Yashpal Singh Joshia had let out the suit property to the respondent on behalf of the petitioner and not as the owner of the property. In fact, I would like at this stage to refer to the admission made by RW-2/ Sh.Yashpal Singh Joshia in his cross-examination on 18.7.2009 when RW-2/ Sh.Yashpal Singh Joshia specifically admits as correct that whatever rent he received from the respondent was paid to the present petitioner.

(iii) I must also note that the respondent himself admits that he initially claimed rights in the premises as a tenant, though of course he claimed his tenancy under the landlordship of Sh.Yashpal Singh Joshia. According to the respondent he became a tenant of Sh. Yashpal Singh Joshia on account of the general power of attorney dated 22.5.1992 executed by the petitioner in favour of Sh.Yashpal Singh Joshia.

Once the respondent admits that he originally was only a tenant in the suit premises and the landlord was Sh.Yashpal Singh Joshia, but since Sh.Yashpal Singh Joshia was admittedly only a power of attorney holder of the owner/present petitioner/landlady, in my opinion therefore the ownership of the petitioner stands admitted once the respondent or Sh.Yashpal Singh Joshia fails to prove that by virtue of the general power of attorney dated 22.5.1992 the petitioner had sold/transferred title in the suit property to Sh.Yashpal Singh Joshia. Also it is not the case of the respondent and Sh.Yashpal Singh Joshia that Sh.Yashpal Singh Joshia ever paid any consideration to the petitioner for the petitioner to have executed the power of attorney dated 22.5.1992 in favour of Sh.Yashpal Singh Joshia. It is relevant to note that after all Sh.Yashpal Singh Joshia, as per the admitted case of both the parties, was the cousin brother of the petitioner/landlady.

The petitioner/landlady therefore has clearly executed the general power of attorney dated 22.5.1992 in favour of Sh.Yashpal Singh Joshia in trust and only with the object to manage the suit property on behalf of the petitioner/landlady including in the act of management of the suit property for Sh.Yashpal Singh Joshia to let out the suit property to the respondent as a tenant.

(iv) As stated above, since the respondent admits that he was the tenant and the tenancy was under the landlordship of Sh.Yashpal Singh Joshia ie Sh.Yashpal Singh Joshia acted for and on behalf of the present petitioner/landlady, and since the present petitioner is the owner of the suit property, therefore by virtue of Section 2(e) of the Act, the petitioner/landlady will become the owner/landlady of the suit property, inasmuch as, as per Section 2(e) of the Act an owner is automatically a landlord because a person who is entitled in law to receive rent i.e an owner of the property is also a landlord of the suit property.

(v) Therefore, once the respondent admits that he was inducted as a tenant and it is also admitted on record that he was inducted as a tenant by Sh.Yashpal Singh Joshia who was the power of attorney holder of the petitioner under the general power of attorney dated 22.5.1992, and the

petitioner was the owner of the property and continued to remain the owner of the property because the documents dated 13.7.1999 allegedly executed by Sh.Yashpal Singh Joshia in favour of the respondent are fraudulent and sham documents, there arises a relationship of landlady and tenant between the petitioner as the owner/landlady and the respondent as a tenant in the suit property.

(vi) Therefore, the sum and substance of the entire facts would be that Sh.Yashpal Singh Joshia being a cousin brother of the petitioner/landlady was given the power of attorney dated 22.5.1992 in trust for the management of the suit property and the respondent was inducted as a tenant in management of the suit property, but, the respondent in collusion with Sh.Yashpal Singh Joshia sought to fabricate the documents of transferring title of the suit property to the respondent by means of the documents dated 13.7.1999, and which documents are clearly fraudulent and sham documents and thus did not and could not have transferred title of the suit property to the respondent.

(vii) I therefore hold that the Additional Rent Controller has erred in holding that the petition has to be dismissed because there is no relationship of landlady and tenant between the petitioner and the respondent.

11. In view of the above, this petition is allowed with costs of Rs.2 lacs especially because the petitioner has not received any charges for use and occupation of the suit property by the respondent since the year 1999 i.e for around 15 years. Eviction petition of the petitioner under Section 14 D of the Act will stand decreed in favour of the petitioner and against the respondent with respect to the suit/tenanted property being the flat no.E-29, Gaurav Apartments, Plot No.1, I.P. Extension, Delhi-92 (as shown in red colour in the site plan filed with the eviction petition exhibited as Ex.PW2/5). Costs be paid by the respondent to the petitioner within a period of four weeks from today.

VALMIKI J. MEHTA, J

**OCTOBER 29, 2014
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