

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV.No.384/2011 & C.M.No.17845/2011 (Stay)**

% **27th November, 2014**

SH. KAPOOR CHAND THR. LRS AND ORS. Petitioners
Through: Mr.S.K.Singh, Advocate.

VERSUS

SH.PRABHU DAYAL Respondent
Through: Mr.Sumesh Gandhi, 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 (ARC) dated 05.7.2011 by which the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act has been decreed after trial and final arguments of the parties.

2. The suit/tenanted premises is I-198, Bapa Nagar, Karol Bagh, New Delhi. This property belonged to one Sh.Jai Ram who died on 25.8.1968

leaving his property to his daughter Smt.Kalawati. Smt. Kalawati also died on 03.12.1968. Smt. Kalawati had executed a Will (Ex. AW3/5) dated 02.7.1987 in favour of the respondent/landlord, and who filed the subject *bonafide* necessity eviction petition stating that he is living in a rented accommodation, and therefore he needs the suit/tenanted premises for residence of himself and his family which comprises besides the respondent/landlord and his wife, their four children in the age group of 3 to 10 years, the ages are those when the eviction petition was filed in the year 1992 i.e around 22 years back. The respondent/landlord was living in the rented accommodation of one room and a kitchen. The respondent also stated that his landlord wanted him to vacate the tenanted premises, and therefore the respondent/landlord needed the suit/tenanted premises.

3. The only and the main defence of the present petitioners, and who are the legal heirs of one Sh.Kapoor Chand, was that they and their predecessor-in-interest Sh.Kapoor Chand were/was the owner of the suit/tenanted premises by adverse possession, and in fact Sh.Kapoor Chand with his own funds raised a super structure on the land in the year 1962.

4. The ARC by the impugned judgment has held the aspect of ownership in favour of the respondent/landlord by observing the following paras:-

“ 9. AW3 deposed that the property in question belonged to his maternal grand father Late Sh.Jai Ram and there are house tax receipts, assessment and bills in his favour which are collectively marked as Ex.AW3/1. Sh. Jai Ram died on 25.08.1968 leaving behind his daughter (mother of petitioner) his sole legal heir and upon his death the suit property devolved upon his daughter as the sole owner. AW3 further deposed that her mother had executed a will dated 02.07.1987 in his favour and the said will became operative upon her death. The will is marked as Ex.AW3/4. AW3 further deposed that his maternal grand father had inducted respondent as a tenant in the suit premises which were earlier comprised of ground floor at a monthly rent of Rs.30/- sometime in the year 1965. Later on in the year 1986 after the construction of the first floor his mother let out the first floor portion also at an additional rent and the consolidated rent of both the portions was fixed at Rs.300/- per month which was paid by the respondent to his mother during her life time. Later on the respondent became dishonest and stopped payment of rent which was due from 1.01.1989 onwards. AW3 deposed in his cross examination that Sh.Jai Ram was his Nana who used to reside in house no.1-198, Bapa Nagar, Karol Bagh, New Delhi and he resided in that house till his death.

10. RW1 deposed that petitioner is neither owner nor landlord of the premises in question and his father Sh. Kapoor Chand (original respondent) had occupied land underneath the premises in question in the year 1952 and raised the super structure on the land from his own funds and started living therein alongwith his family members. RW1 further deposed that his father never came as tenant in any portion of the premises in question at any point of time nor any portion of the premises in question was ever let out to his father.

11. RW1 deposed in his cross examination that he has not filed any document showing the ownership of his fore-father or father in respect of suit premises. No document was filed to show the possession of his father since 1954. RW1 further deposed that he does not know who is Sh. Jai Ram and Smt. Kalawati. RW1 further deposed that he never inquired from the Govt. department such as MCD/DDA to know who is the actual owner of the property in suit and has not paid the house tax as the same was exempted by the Govt. RW1 further deposed that he could not say that his mother has shown herself as daughter of Sh. Jai Ram at the time of taking electricity connection. Here the word daughter is written inadvertently in place of daughter-in-law as it is case of petitioner that

Smt. Kamla Devi had applied for electricity and water connection being daughter-in-law of Late Sh. Jai Ram.

12. RW2 Smt. Kanta Devi has deposed almost similarly to the deposition of RW1. RW2 has deposed that the petitioner is residing in House no. 431, Prem Nagar, New Delhi and he is owner of three properties no. (i) 631, Dev Nagar, New Delhi, (ii) 431, Dev Nagar, New Delhi and one house at Anand Prabhat, New Delhi. RW2 in her cross examination deposed that she had not made any verification to the fact that petitioner is owner of three properties bearing no. (i) 631, Dev Nagar, New Delhi, (ii) 431, Dev Nagar, New Delhi and one house at Anand Prabhat, New Delhi.

13. As discussed above the case of the petitioner is that his maternal grand father Late Sh. Jai Ram was owner of the property in question and he let out the ground floor of the property in question to the respondent. After his death the mother of the petitioner being sole legal heir of Late Sh. Jai Ram became owner of the property and she had let out the first floor of the property in question to the respondent and the consolidated rate of rent of the ground floor and 1st floor was raised Rs.300/- per month. The mother of the petitioner executed will as Ex.AW3/4 in favour of petitioner and thus petitioner became owner of the property in question. The petitioner has proved letter Ex.AW3/R1 written by Assistant Assessor and Collector, Karol Bagh Zone dated 05.02.1993 to the petitioner rejecting his application regarding mutation of suit property in his name. However it is stated in the said letter Ex.AW3/R1 that the name of Sh. Jai Ram, deceased still stands as Assessee/Owner of the above property. From this document it is proved that Late Sh. Jai Ram was owner/Assessee of the property in question in the record of MCD. The petitioner has filed a copy of death certificate of Late Sh. Jai Ram Ex. AW3/3 and also filed house tax and property receipt dated Ex. AW3/1 and Ex. AW3/2 respectively. The petitioner has also filed a copy of will executed by late Smt. Kala Devi daughter of Late Sh. Jai Ram Ex. AW3/5. The death certificate of Smt. Kalawati Ex.AW3/4. From all these documents it is proved that late Sh. Jai Ram was owner/landlord of property in question and after his death his daughter Late Smt. Kala Devi became owner of the property in question and she had bequeathed the property in question in favour of petitioner vide will Ex. AW3/5 and thus petitioner became the owner/landlord of the property in question. So far as the question whether the will Ex.AW3/5 is duly proved or not is concerned, as it is established that Late Sh. Jai Ram was owner of the property in question and after his death her daughter Smt. Kala Devi

became the owner by operation of law similarly the petitioner also became atleast co-owner/ landlord on the death of Smt. Kaladevi. Even if we ignore the will in question the petitioner still is co-owner/landlord of property in question being maternal grand son of actual owner Late Sh. Jai Ram. I do not find any substance in the contention of the respondent and his legal heirs that the respondent became the owner of property in question by adverse possession. It is settled law that a tenant always a tenant and he can become the owner of property only by purchasing from its owner. The claim of the respondent that he is owner of the property in question is fortified from the documents Ex. PW2/3. As per the affidavit of Smt. Kamla Devi, wife of respondent she has stated herself to be a daughter-in-law of Late Sh. Jai Ram. This clearly shows that the wife of respondent has tried to get water and electricity connection in her name claiming herself to be daughter-in-law of Late Sh. Jai Ram as the property stands in his name. Both the RW1 and RW2, children of respondent deposed that they do not know Late Sh. Jai Ram. Thus it is proved that respondent is tenant in the property in question.

14. In view of the above discussion I am of the view that the relationship of landlord and tenant exists between the parties and the petitioner is owner/landlord of the property in question. So far the purpose of letting is concerned, after the judgment pronounced by Hon'ble Supreme Court in "*Satyawati Sharma Vs. Union of India 2008, SLT 553*", the purpose of letting is no more an issue since the word 'residential' has been deleted from the Section 14(1)(e) of DRC Act and the eviction petition on the ground of bonafide requirement in respect of premises let out for commercial purpose is maintainable." (underlining added)

5. A reading of the aforesaid paras shows that the respondent/landlord was the grand-son of Sh.Jai Ram, and in the name of Sh.Jai Ram, admittedly, there are house tax receipts, assessments and the relevant bills which have been duly proved and marked collectively as Ex.AW3/1 and Ex.AW3/2. Therefore, the ownership of Sh.Jai Ram stood established on record and the petitioners/tenants failed to establish that Sh.Kapoor Chand or

they had spent moneys for construction of the property. Also, since the petitioners had raised the plea of adverse possession, the petitioners had to prove this plea, but no evidence whatsoever was led on behalf of the petitioners/tenants to prove the plea of adverse possession. After all, if the petitioners were owners as claimed because they had spent moneys on construction, actually the property tax record would have been in the name of the petitioners/tenants or Sh.Kapoor Chand, but that is not the case as the property tax record is in the name of Sh.Jai Ram.

6(i) In fact the curious aspect which had emerged in this case was that the RW-I namely one Sh.Ajit, one of the legal heirs of Sh.Kapoor Chand admitted that his mother i.e wife of Sh.Kapoor Chand had applied to the MCD for mutation of the property in her name stating that in fact she was the daughter-in-law of Sh.Jai Ram. Similar was the position taken when electricity connection was applied for but in cross-examination the witnesses RW1 and RW2 deposed they did not know Sh.Jai Ram.

(ii) The fact of the matter thus is that the respondent/landlord was the grand-son of Sh.Jai Ram and the son of Smt.Kalawati, the daughter of Sh.Jai Ram. The respondent/landlord specifically took up this stand in his affidavit by way of evidence and there is not a single line of cross-examination that

Sh.Jai Ram was not the father of Smt.Kalawati and Smt.Kalawati was not the mother of the respondent/landlord. The Will of Smt.Kalawati has been duly proved and exhibited as Ex.AW3/5, inasmuch as the respondent/landlord duly identified the signatures of all the executants in the Will. Also, before commencing of the cross-examination, there is no objection raised by the present petitioners/tenants with respect to exhibition of the Will. The petitioners/tenants have not been able to show any convincing evidence that the Will of Smt.Kalawati (Ex.AW3/5) was not executed in favour of the respondent/landlord. In any case, the respondent being the son of Smt.Kalawati is admittedly the co-owner, and therefore it has rightly been held by the ARC that even a co-owner is entitled to file a petition for *bonafide* necessity under Section 14(1)(e) of the Act.

7. As per section 2(e) of the Act, an owner is automatically a landlord because as per the definition in Section 2 (e) of the Act, a person who is entitled to receive the rent is a landlord. Since the owner is entitled to receive the rent, therefore the owner will always be a landlord, and once the present petitioners failed to prove their ownership of the suit/tenanted premises or of their predecessor-in-interest Sh.Kapoor Chand, including by

adverse possession, hence the ARC has rightly held the respondent to be the owner/landlord of the suit/tenanted premises.

8. No other point or issue is urged before this Court.

9. 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. While dismissing the petition, interim order passed by this Court dated 06.1.2012 for payment of interim user charges by the petitioners is confirmed, and in case the petitioners fail to comply with the same, the respondent can always execute the said order.

VALMIKI J. MEHTA, J

NOVEMBER 27, 2014
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