

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

Reserved on: 09.05.2014
Date of Decision: 17.10.2014

+ CM (M) No.1217 of 2013

RICHARD LEE Petitioner
Through: Mr. V.K. Srivastava, Adv.

versus

GIRISH SONI & ORS. Respondents
Through: Mr. Sanjeev Mahajan, Adv. for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition filed under Article 227 of the Constitution of India impugns an order dated 22.8.2013 of the Rent Control Tribunal in Rent Appeal No.14/13. The impugned order upheld the order of the learned Additional Rent Controller which had rejected the petitioner's application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') seeking impleadment in the eviction petition filed by the respondent/landlord for eviction of the tenants declared therein.
2. The eviction-petitioner's case was that Shri P.C. Soni was the owner/landlord of shop bearing No.B-30, Khan Market, New Delhi,

which was let out to Shri L. Queth Khong on a monthly rent of Rs.500/-. Since there were considerable arrears of rent, eviction of the tenant was sought under Sections 14(1)(a) and 14(1)(b) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). However, the tenant, Shri L. Queth Khong claimed the partnership firm M/s. K.K. Lee to be the tenant. The Court rejected the plea and held Shri L. Queth Khong as the tenant and an order was passed under Section 14(1)(a) of the Act. The tenant's appeal against the said dismissal was rejected by the appellate court so was the subsequent revision petition [CM (M)] by this Court on 18.1.2012. The landlord Shri P.C. Soni got to know that the tenant Shri L. Queth Khong had shifted to Canada and resided there till his demise but prior to his departure from India he had illegally sub-let the tenanted premises to his brother, one Shri Mankhong Lee and the applicant Shri Richard Lee, who after his death are in physical possession; that neither the wife nor the son of the deceased tenant, Shri L. Queth Khong, were in physical possession of the same. Accordingly an eviction was sought under Section 14(1)(b) of the Act which stipulates a ground for eviction where the tenant has sub-let, assigned or otherwise parted with the possession of the whole or any part of the

premises without obtaining the consent of the landlord in writing. The eviction-petitioner had relied upon the judgement of the Additional Rent Controller in eviction petition No.421/89 titled ***Prem C. Soni v. L. Queth Khong*** decided on 24.10.1998 which held the respondent L. Queth Khong was a tenant as opposed to M/s. K.K. Lee, the partnership firm. The judgement clearly recorded that Mr. L. Queth Khong in his individual capacity was the tenant and not the firm M/s. K.K. Lee. The learned ARC had allowed the present petitioner's impleadment application on the ground that the earlier petition initiated by the landlord was filed under Section 14(1)(a) of the Act since it concerned the non-payment of arrears of rent whereas the present case was filed on the grounds of sub-letting of the tenanted premises. He was of the view that the factors discussed in the judgement of ***Devki Nandan v. Om Prakash & Anr. 1972 RCR 321*** which was referred to in the judgement of 24.10.1998 were sufficient to hold that there was no sub-letting. The learned ARC was further of the view that the question as to who was the tenant in the tenanted premises or whether the applicant through M/s. K.K. Lee was a tenant was the matter at issue, i.e., whether Shri Richard Lee was inducted into the premises without the knowledge and consent

of the eviction-petitioner, had yet to be determined. The Court distinguished between the present case and the judgement titled ***Balavant N. Viswamitra & Ors. v. Yadav Sadashiv Mule* AIR 2004 SC 4377** relied upon by the eviction-petitioner which had held that the sub-tenants cannot be said to be necessary parties to the suit proceedings and are not required to be joined as defendants in the suit and that non-joinder of such sub-tenants to the suit would not make a decree passed in the suit nullity or inexecutable apropos a sub-tenant. The learned ARC was of the view that the ratio of that decision has to be understood in the background of the facts of the case as the decision was only an authority for what it actually decides. He then relied upon ***Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd. (2003) 2 SCC 111*** and ***Bharat Petroleum Corporation Ltd. & Anr. v. N.R. Vairamani & Anr. AIR 2004 SC 4778*** in support of the proposition that a little difference in facts would make a huge difference in the precedential value of a decision and that the reliance upon precedents has to be examined to ascertain whether they fit into the facts and circumstances of the case at issue. The Court then relied upon the judgement in ***Kewal Kant vs. V.K. Gupta ILR 1972 Delhi 357***, which held it necessary to hold a sub-tenant

as proper party because he possessed a right within the framework of the Rent Control Act and that such matter should finally be adjudicated at that stage instead of being determined at the stage of execution of an order under Section 25 of the Act or other provisions of law. The learned ARC then held that since Mr. Richard Lee was in possession of the premises from where he was running his business he would be a proper party and without his presence, all the questions involved in the eviction petition could not be completely decided. However, on appeal against the said order was allowed on the ground that the issue of tenancy in favour of Mr. L. Queth Khong as against M/s. K.K. Lee, the partnership firm, stood decided in the judgement dated 24.10.1998 in Eviction Petition No.421/89. The Appellate Court was of the view that once the tenant was declared, only his legal heirs could claim relationship of landlord and tenant between the parties, for the purposes of proceedings under Sections 14(1)(a), 14(1)(b) and 14(1)(j) of the Act. The Appellate Court further held that once the plea of the partnership firm had been rejected and had attained finality, the petitioner claiming through the said partnership firm would have no locus and would be clearly an outsider to the proceedings. The Trial Court relied upon

Balavant N. Viswamitra & Ors. (supra) and held that the impleadment application was not *bona fide* because it was filed only to control the tenanted premises through illegal designs.

3. The learned counsel for the petitioner reiterates the same arguments as were advanced on behalf of the applicant before the learned ARC. He further submits that the eviction-petitioners themselves have admitted that the property was in physical possession of the applicant, Richard Lee, who was put in possession by Mr. L. Queth Khong; that the judgement and order in eviction petition No.421/89 would not be applicable to the present petitioner since he was not a party to the proceedings and it had been obtained behind his back; that he is not an outsider to the present proceedings but a person vitally interested in the eviction proceedings and his presence is necessary for complete adjudication of the disputes between the parties; that the eviction petition is at an initial stage and the evidence has not even started hence the impleadment would not make any difference to the proceedings before the learned ARC. He relied upon the judgement of this Court in ***Devi Dayal Dixit v. Rashtriya Electrical And Engineering Company*** 23 (1983) DLT 119 and ***Kewal Kant vs. V.K. Gupta*** (supra) which held that

where there was a dispute on the basis of the rent deed as to who was the original tenant the issue ought to be decided to obviate multiplicity of proceedings especially because the respondent therein had admittedly been in possession of the premises for quite some time. However, this Court is of the view that the issue of tenancy could not be raised as a *lis* since the matter already stood settled vide judgement dated 24.10.1998.

4. The learned counsel for the respondents, however, refutes the contentions of the petitioner and relies upon the *dicta* of the Supreme Court in ***Balavant N. Viswamitra & Ors.*** (supra), which held that a sub-tenant cannot be a necessary party in the proceedings and hence is not required to be joined as a defendant in the suit. He draws the attention of this Court to the judgement passed on 24.10.1998 by the learned ARC which recorded that: the signature of Mr. L. Queth Khong had been denied by him but the said person had intentionally not appeared before the Court as that would have put the Court in a better position to compare his signatures under Section 73 of the Indian Evidence Act. Accordingly an adverse inference was drawn against him. The signatures were compared by the Court and it was found that they were made by the same respondent. The Court observed that “Mr. L. Queth Khong had

not dared to come in the witness box to deny his signatures on the lease deed. Had the respondent got his signatures compared of the dates prior to the institution of the case, then I would have definitely given some weightage to the report of the hand writing expert as in that case the possibility of the tendency on the part of the respondent to make out different signatures was not there. I have compared the signatures of Mr. L. Queth Khong on partnership deed produced by the respondent, rent receipts placed on record by the petitioner and have found that there are similarities in the same to observe that the signature on the lease deed are that of the respondent.” Upon further reasoning, the learned ARC held that Mr. L. Queth Khong, in his individual capacity, was the tenant and not the firm M/s. K.K. Lee.

5. The Supreme Court in ***Rupchand Gupta vs. Raghuvanshi (Private) Ltd. & Anr.*** AIR 1964 SC 1889 held that “....it is quite clear that the law does not required that the sub-lessee need be made party. It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not impleaded the sub-lessee as a party to the suit, the object of the landlord

is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease. The law allow this and so the omission cannot be said to be an improper act.”

6. This Court is of the view that the aforesaid determination had become final insofar as the appeal against it and subsequently the revision petition before this Court were dismissed. The petitioner, Richard Lee, does not claim tenancy through the tenant Mr. L. Queth Khong but as a beneficiary of M/s. K.K. Lee, the partnership firm. This issue is no more *res integra* since the firm itself had contested the matter and lost. Therefore, no right would come to the petitioner from the aforesaid firm which itself had no tenancy rights. The mere possession of the tenanted premises too would neither lend any legitimacy nor confer any rights upon the petitioner as a person to be considered as a necessary party to the eviction proceedings. If mere possession or being a sub-tenant were to confer a right it would create an abnormal situation in virtually all other cases as a third party would step in to say that he/she is in possession of the tenanted premises and, therefore, ought to be heard.

This would defeat the objective of the statute and prolong the eviction proceedings. In the present case, clearly the petitioner would have no right to any tenancy through the entity M/s. K.K. Lee since this entity itself was declared not to be a tenant. This clearly is the second round of litigation and is not justified.

7. From the aforesaid discussion it is quite clear that the impugned order does not suffer from any infirmity, the conclusions arrived at are based upon the law and the reasoning is cogent and clearly plausible in law, there is no ground for interference with the same. The petition is without merit and is dismissed with costs of Rs.25,000/- to be deposited with the Delhi High Court Staff Welfare Fund within four (4) weeks from the date of this order.

OCTOBER 17, 2014
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NAJMI WAZIRI, J.