

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

+ **RC. REV.No.586/2012**

% **21st November, 2014**

LATE SH. PURSHOTTAM DASS (SINCE DECEASED) THROUGH HIS
LEGAL HEIRS

..... Petitioners

Through: Mr. Rajender Kumar, Advocate with
Sh. Tulsi Dass on behalf of the legal
heirs.

Versus

SH. JAGMOHAN GOLA

..... Respondent

Through: Mr. Pramod Kumar Singhal,
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 under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is filed by the petitioners/tenants impugning the judgment of the Additional Rent Controller dated 30.5.2012 which has dismissed the leave to defend application filed by the petitioners/tenants and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act with respect to the tenanted premises being one room on the ground floor of the

premises bearing no.613, Gali Kundey Walan, Ajmeri Gate, Delhi-6 as shown in red colour in the site plan exhibited as Ex.X.

2. The case of the respondent/landlord was that by virtue of a duly registered partition deed dated 25.7.2005 entered into between him and the other co-owners he became owner of the property no.613 which includes the tenanted premises in question. The respondent/landlord stated that he needed the tenanted room for residential purpose of himself and his family inasmuch as his family comprises of himself, his wife Smt. Tara Devi, two sons namely Sh. Devender Kumar and Sh. Divesh Kumar, and one daughter Dolly and therefore the respondent required a total of five rooms being one room for himself and his wife, one room for each of the sons, one room for the daughter and one room for guests and relatives. Respondent/landlord however has only three rooms. Respondent/landlord also pleaded that he need one store room for keeping his goods as also a puja room. Respondent/landlord stated that there is a store of roughly about 10' X 9' on the ground floor which cannot be used presently on account of narrow access but after getting the tenanted premises vacated, the respondent/landlord can easily use the store Mark-B as shown in the site plan.

3. The original petitioner/tenant (present petitioners are the legal heirs of the original tenant) filed his leave to defend application and disputed that respondent was the owner/landlord of the premises. It was also contended that the respondent cannot file the *bonafide* necessity eviction petition as per Section 14(6) of the Act because a period of five years had not expired from execution of the partition deed on 25.7.2005 inasmuch as the *bonafide* necessity eviction petition was filed on 2.6.2007. The original petitioner/tenant also pleaded that the respondent had more than sufficient accommodation with him because he had two rooms each on the ground floor, first floor and the second floor i.e he had a total of six rooms.

4. Counsel for the petitioners before this Court has argued only the following aspects for setting aside the impugned judgment and for grant of leave to defend:-

(i) Respondent is not the owner of the suit premises and the rent receipt dated 20.11.2000 issued by the respondent only shows that the owners of the properties were Sh. Ram Saran Dass (father of respondent) and Sh. Bhim Singh (brother of Sh. Ram Saran Dass) and it is Sh. Bhim Singh who is the landlord of the tenanted premises and not the respondent.

(ii) The respondent/landlord has not come with clean hands to this Court because he has filed the rent receipt dated 20.11.2000 wrongly pleading that the respondent is the landlord, and therefore the eviction petition has to be dismissed and leave to defend has to be granted.

(iii) Petitioners had regularly disputed the relationship of landlord and tenant between the parties and this aspect was also disputed in the proceedings before the slum authorities under the Slum Areas (Improvement and Clearance) Act, 1956.

5. If we see all the arguments urged on behalf of the petitioners, really the only one point raised is that the respondent is not the owner/landlord of the premises. This argument which was urged by the petitioners herein before the Additional Rent Controller has been rejected by the Additional Rent Controller by making the following correct conclusions/reasoning:-

“8. Ownership over the suit premises:-

8(i) As per petitioner, he is owner of the premises under the tenancy of the respondent by virtue of partition deed dated 25.07.2005 duly registered with the Sub- Registrar, Delhi. The petitioner has placed on record the copy of registered partition deed dated 25.07.2005 on record. By placing on record copy of registered partition deed dated 25.07.2005, the petitioner has been able to show that he is owner of property in question.

8(ii) The petitioner has also placed on record copy of rent receipt dated 20.11.2000 to show that respondent is tendering rent to him. The respondent in the leave to defend application has not raised any contention that petitioner is not his landlord. **Therefore, it is proved that there is relationship of landlord and tenant between the parties.**

8(iii) The only contention of the respondent is that the previous owner of the suit premises Smt.Durga Devi has transferred the property in the name of petitioner on 25.05.2005 and hence, the petitioner cannot file the petition before the expiry of 25.05.2010 as per provision u/s.14(6) of the DRC Act. In counter affidavit, the petitioner has averred that he was the co-owner of the property in question and the petitioner and other co-owner partitioned and partition deed was executed. I have seen the copy of partition deed placed on record. It is true that petitioner has become the sole owner of the property in question through partition deed which was execution on 25.05.2005 but it is also a fact before said partition, he was one of the co-owner of the property in question as the same has been reflected through said partition deed and the execution of said partition deed. Hence, it is clear that petitioner was earlier co-owner of the property in question and now, he is sole owner of the property in question. During course of arguments, counsel for petitioner has filed judgment of Hon'ble Delhi High Court in **Hindustan Lever Ltd. and Smt. Rajeshwari Pandey 75(199) DLT 238** and submits that this case is applicable to the facts and circumstances of the present petition and drawn attention of this Court to para no.18 of said judgment which is reproduced as under:-

“18. In Shri Onkar Singh and Another vs.Shri Saheb Ditta Mal Kholi, 1970(2) Rent Control Reporter 18, it was held that an acquisition of the property by inheritance can by no stretch of imagination be said to be such a voluntary transfer even if the property comes to the heirs by means of a Will. Paragraph 5 of the judgment reads as under:-

“It is clear from the language particularly in view of the background of the object of sub-section (6) that the transfer must be by a voluntary act of the landlord who transfers. An acquisition of the property by inheritance can by no stretch of imagination be said to be such a voluntary transfer even if the property comes to the heir by means of a Will. According to the argument advanced, even in a case where the landlord filed a petition on the ground of personal bona fide requirement and died during the pendency of the petition wherein his heirs are brought on the record as his legal representatives, the petition will be defeated because the heirs have obtained the property by transfer and will not have completed the requisite period of five years after acquisition of the property. In my opinion, the word "transfer" in sub-section (6) of section 14 of the Act contemplates only a voluntary transfer and not a transfer by inheritance That being so, there is no substance in the objection as to the maintainability of the petition by the respondent before the expiry of five years from the date when he acquired the property by inheritance.”

I have gone the above mentioned said judgment and found that facts and circumstances mentioned in the said judgment are squarely applicable to the facts and circumstances of the present petition.

In view findings given and above and the case law cited above, **I am of the considered opinion that provisions of Section 14(6) of the DRC Act are not applicable to the present petition and present petition is very maintainable under the provisions of DRC Act.**

8(iv) Besides above, in case titled as **Ramesh Chand vs. Uganti Devi cited as 157(2009) Delhi Law Times 450** it has been held by the Hon’ble Delhi High Court in para no.7 that *“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 the 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.” It is also well settled preposition of law that “for the purpose of Section 14(1) (e) of the DRC Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property of Act. He is required to show only that he is more than a tenant”.

In view of above, it is held that petitioner has proved that he is owner/landlord of the premises in the question and all the objections raised by the respondent in this regard are dismissed.”

6. Once there exists a registered partition deed as filed by the respondent/landlord and the other co-owners are not disputing the title of the respondent in terms of the partition deed of the suit/tenanted premises, petitioners can have no *locus standi* to question the ownership of the respondent/landlord. The petitioners allege that Sh. Bhim Singh was their landlord, but, besides the fact that there is only a self-serving averment of the petitioners, even if we assume that Sh. Bhim Singh was once the landlord, the fact of the matter is that nothing has been shown by the petitioners to show that after the partition deed dated 25.7.2005 was executed between different family members, Sh. Bhim Singh has either issued any rent receipt to the petitioners or has represented himself as the landlord. In any case once the respondent after the partition deed became

the owner, consequently the respondent is also automatically a landlord because Section 2(e) of the Act defines a landlord to include an owner because a person who is entitled to receive the rent is included in the definition of a landlord.

7. Learned counsel for the respondent states that the petitioners are arm-twisting and blackmailing the respondent because the petitioners have kept the tenanted room locked and have shifted elsewhere and to show which aspect the respondent has with him the title documents of the other properties which are acquired by the petitioners. Counsel for the petitioners very vehemently disputes this position.

8. In view of the above, I do not find any merit in the petition and the same is therefore dismissed with costs of Rs.25,000/-. Costs shall be paid within a period of four weeks from today. I am imposing costs because when after the arguments were completed, counsel for the respondent stated that petitioners can vacate the suit premises by taking sufficient time more so because the premises remain locked, but the counsel for the petitioners on instructions states that he has instructions to ask this Court to pass a judgment. In the facts of the present case, I may note that petitioners are only paying a sum of Rs.500/- per month in terms of an order passed by a

learned Single Judge of this Court dated 7.2.2013 and which was also fixed because the admitted rent was only Rs.16/- per month. Obviously old tenants want to keep on occupying the tenanted premises although they do not have any use of the same and the object is to somehow or the other harass the landlords.

9. Petition is dismissed in terms of aforesaid observations.

VALMIKI J. MEHTA, J

NOVEMBER 21, 2014

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