

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

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**C.R.P No.157/2012 & C.M.No.21034/2012 (Stay)**

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**17<sup>th</sup> September, 2014**

SARASWATI

.....Petitioner

Through: Mr.Dinesh Kumar, Advocate

VERSUS

ANGOORI DEVI (NOW DECEASED) THR. LRS. .... Respondents

Through: Mr.Ramkishan Saini, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This petition under Section 115 of Code of Civil Procedure, 1908 (CPC) is filed by the petitioner/defendant in the suit against the impugned judgment and decree dated 10.9.2012 passed by the trial court decreeing the suit of the respondents/plaintiffs (LRs of original plaintiff Angoori Devi) under Section 6 of the Specific Relief Act, 1963 (in short 'the Act').

2. A reading of the plaint shows that the only basis of the respondents/plaintiffs to claim to be in possession of the suit property was that an eviction decree bearing no. 8/2001 dated 28.11.2001 was obtained by

Smt.Angoori Devi against one tenant Rajender Kumar and in execution of that decree, the petitioner/defendant Smt.Saraswati Devi was found in possession of the suit property and she was accordingly dispossessed in execution of the decree, but, since the petitioner/defendant again came back in possession of the suit property, therefore the subject suit under Section 6 of the Act was filed to reclaim the possession. The suit property is A-17, Jhilmil Colony, Shahdara, Delhi situated on a plot admeasuring approx. 57.50 sq. yds.

3. A further reading of the plaint shows that the only basis for claiming possession under Section 6 of the Act is the decree passed against one Rajender Kumar and there is no averment in the plaint as to how and when Rajender Kumar, the alleged tenant was inducted as a tenant by Smt.Angoori Devi, and also as to if Rajender Kumar was put into possession and continued in possession of the suit property as a tenant through Smt.Angoori Devi then what are the facts which show that possession. Also, there is no averment in the plaint as to what were the legal rights of Smt.Angoori Devi as regards the suit property ie whether she was the owner etc and pursuant to which right she came into the possession of the suit property and

consequently was entitled to create the alleged tenancy in favour of one Rajender Kumar.

4. The case of the petitioner/defendant was that there was never any real tenant Rajender Kumar. The decree which was obtained by Smt.Angoori Devi against Rajender Kumar was a fraud played upon the court because Rajender Kumar was a fake tenant and that neither Smt.Angoori Devi nor Rajender Kumar were ever in possession of the suit property. The petitioner/defendant was illegally dispossessed in execution of the decree obtained by Smt. Angoori Devi against a non-existent tenant Rajender Kumar and by playing a fraud. At this stage, I may note that judgment and decree against Rajender Kumar is an *ex parte* judgment and decree as Rajender Kumar never appeared in the eviction proceedings filed by Smt.Angoori Devi against him for alleged non-payment of rent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the DRC Act').

5. Before dealing with the issues dealt by the trial court, I note that the respondents/plaintiffs had not filed before the trial court the eviction petition filed against Rajender Kumar and the eviction decree which was obtained against Rajender Kumar. These documents are only filed by the petitioner/defendant in her rejoinder filed in this Court and I have confirmed

the veracity of these documents from the counsel for the respondents, and accordingly I am taking these undisputed documents on record, more so because these documents are the foundation of the suit itself of the respondents/plaintiffs.

6. A reference to the impugned judgment dated 10.9.2012 shows that the only evidences which are led on behalf of the respondents/plaintiffs were of the police officials or the court bailiff who executed the judgment and decree dated 28.11.2001 against Rajender Kumar and dispossessed the petitioner/defendant who was admittedly found residing in the property and, these facts/basis are/is the sole basis of the respondents/plaintiffs to have come into the possession of the suit property.

7. In my opinion, merely showing that the respondents/plaintiffs came into possession in execution of the judgment and decree against Rajender Kumar will not give the respondents/plaintiffs entitlement to possession under Section 6 of the Act unless the possession which is taken in execution of a decree is of a decree which is valid in the eyes of law viz the decree is not a fraudulently obtained decree.

8. A reading of the eviction petition filed by Smt.Angoori Devi against Rajender Kumar under the DRC Act on the ground of non-payment of rent

shows that in para 14 of the eviction petition it was stated that Rajender Kumar was inducted as a tenant on 01.1.1999. The case of Smt. Angoori Devi was that Rajender Kumar was inducted as a tenant on 01.1.1999, however one of the respondents Sh. Kamal Singh, son of Sh. Ishwar Singh, admitted in his cross-examination conducted on 31.10.2007, that the petitioner/defendant Saraswati Devi has been residing in the suit property since the end of year 1997 i.e prior to the alleged date of letting out the suit property to Rajender Kumar on 01.1.1999 as stated in para 14 of the eviction petition. Also, in para 14 of her affidavit by way of evidence, the petitioner/defendant had filed various documents showing her possession and which included the Conveyance Deed executed in her favour by DDA, dated 22.7.2005, ration card, election card, water and electricity bills, bank pass book etc and which undoubtedly established her possession and legal rights in the suit property.

9. Also as stated above, no documents of title of the suit property have been filed or relied upon by the respondents/plaintiffs to show as to how they or Smt. Angoori Devi, their predecessor, derived legal rights in the suit property, and that how and when on what basis they had come into possession of the suit property. No doubt, title is not relevant in a suit under

Section 6 of the Act, however, once possession is claimed, how a person came into the possession will have to be shown to the court because it is to be shown that the possession was a settled possession and which can be enforced against a person who has dispossessed a person in a settled possession.

10. A resume of the above facts, as also the impugned judgment of the trial court, and the evidence led before the trial court, shows that the only case set up and the only evidence led by the respondents/plaintiffs of their coming into possession is through execution of *ex parte* judgment and decree dated 28.11.2001 obtained by Smt.Angoori Devi against one Rajender Kumar, but, there is no proof of any title of Smt.Angoori Devi and as to how she came into the possession of the suit property and was in settled possession and how Rajender Kumar was inducted as a tenant and possession was delivered to the alleged tenant Rajender Kumar, and further how Rajender Kumar is shown to have continued to be in possession of the suit/tenanted property till his eviction and so on. Therefore, in sum and substance, neither title nor settled possession has been proved to be of the respondents/plaintiffs for the suit to have been decreed under Section 6 of the Act.

11. In view of the above, the impugned judgment of the trial court dated 10.9.2012 is set aside. Suit of the respondents/plaintiffs for possession under Section 6 of the Specific Relief Act, 1963 will stand dismissed. Parties are left to bear their own costs.

**VALMIKI J. MEHTA, J**

**SEPTEMBER 17, 2014**  
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