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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 107/2011

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Decided on: 6th April, 2015

HEM CHAND GARG

..... Petitioner

Through: Dr. Suraj Singh, Mr. Arun and Mr.
Yogesh Saini, Advocates.

versus

SHREE CHAND

..... Respondent

Through: Mr. Ankur Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

**RC.REV. 107/2011 and CM Nos.7419/2011 (Stay) and 10934/2013
(u/Order 22 Rule 4 CPC for LR's of deceased Respondent)**

1. Despite opportunities no steps have been taken by the Petitioner for substituted service of LR (ii) Ms. Sapna of the deceased Shree Chand.
2. I have heard learned counsel for the Petitioner and the Respondent [R(i)].
3. Petitioner is aggrieved by the order dated 31st January, 2011 whereby the leave to defend application of the Petitioner in an eviction petition filed by the Respondent was dismissed. Pursuant to the execution proceedings the possession of the premises has been taken over by the Shree Chand in his lifetime on 7th October, 2011.
4. Shree Chand since deceased had filed the eviction petition claiming himself to be the owner of the property No. 3636, Gali No.13, Rehgarpara, Karol Bagh, New Delhi-5 having purchased the same by virtue of Sale Deed

dated 26th March, 1975 (in short the ‘suit property’). The tenanted premises is a shop on the ground floor of the suit property which was let out on rent of Rs. 300/- per month besides electricity charges and it was sated that Hem Chand Garg had not paid rent for several years. He further illegally and unauthorisedly sublet and assigned the possession of the tenanted premises to one Bhupinder Kumar Jindal without permission of Shree Chand. Shree Chand claimed that he required the tenanted premises for the expansion of his business and that he had no other alternate suitable accommodation in the vicinity. Shree Chand had also filed an eviction petition against another tenant in the same property. Shree Chand was running the business of Sweetmeat.

5. In the leave to defend application Hem Chand Garg claimed that Shree Chand was not the owner. No tenancy existed and that Shree Chand was not running any business of Sweetmeat rather Shree Chand and his son were running another sweetmeat shop in Gali No. 8, Rohtak Road, New Delhi and hence they do not require the tenanted premises.

6. As regards the plea of ownership the learned ARC relied upon the copy of the judgment dated 20th October, 2008 passed by this Court in RFA No. 143/1981 titled as ‘Sri Chand and another vs. Kamla and others’ wherein it was held that Shree Chand was the owner of the suit property. Further in view of the rent receipts from the year 1975 onwards it was clear that Hem Chand Garg was tendering rent to Shree Chand.

7. As regards the bona fide requirement, the learned ARC noted that Hem Chand Garg has taken two contrary stands. Firstly that he was not running the business of sweetmeat and secondly that he was opening the shop only once or twice in a week. No material was placed with regard to

the opening of the shop once or twice in a week and the second contention itself belied the earlier one that Shree Chand was not running the Sweetmeat shop in the suit property.

8. As per the eviction petition the tenanted premises measure 7 ft x 8 ft out of the total floor area of the suit property which was 25 sq. yards. Besides there was only one tenant on the upper floor who was using the same for residential property. As per the site plan filed by Shree Chand there were two shops in the suit property one with Hem Chand Garg and other with Shree Chand. Admittedly even as per Hem Chand Garg the other shop being run at Gali No. 8, Rohtak Road was being run by Shree Chand and his son. The son being an elder and married son had his own responsibilities and was thus running his shop. Consequently, the leave to defend application was dismissed and the impugned order was passed.

9. Before this Court, the only plea taken is that Shree Chand opens the shop once or twice in a week. As noted above the possession of the shop was taken over in the lifetime of Shree Chand, that is, on 7th October, 2011. No material was placed on record before the learned ARC by Hem Chand Garg that the shop was being opened once or twice. Rather Hem Chand Garg has placed on record the cross-examination of Shree Chand in Eviction Petition No.505/2009 which eviction petition was filed on the ground of non-payment of rent. As per the suggestion Hem Chand Garg's shop was being run by his servant who was working in the shop of Hem Chand Garg and Shree Chand was in possession of the godown behind the shop of Hem Chand Garg from where he was running the business of selling milk and bread.

10. In view of the material placed on record, I find no illegality in the impugned order.

11. Consequently, petition and applications are dismissed

(MUKTA GUPTA)
JUDGE

APRIL 06, 2015
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