

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

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Reserved on: 10th April, 2015

Decided on: 15th May, 2015

+ **CM(M) 390/2012 & CMs. 6037/2012, 5947/2014**

KB WATTS

..... Petitioner

Through

Mr. Sameer Abhyankar, Adv.

versus

VIPIN KALRA

..... Respondent

Through

Mr. A.K. Singhla, Sr. Adv. with Mr.
M.L. Bhargava, Mr. S. Jaswal, Advs.

+ **RC.REV. 329/2012 & CMs. 12388/2012, 13889/2014**

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Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Since the facts in the present petitions are common the petitions are being disposed of by a common order. Vipin Kalra became the owner of suit property No. II-D/33, Lajpat Nagar, New Delhi 110024 in the year 2003. In the said property Dr. K.B. Watts was a tenant in respect of one shop measuring 22' x 7'-6" at a monthly rent of ₹330/- per month on the ground floor. Two eviction petitions were filed by Vipin Kalra one being Eviction

petition No. E-96/09 on 5th August, 2004 under Section 14(1)(b) DRC Act and the other on 24th October, 2008 being eviction petition No. 97/09 under Section 14(1)(e) of the DRC Act.

2. The eviction petition under Section 14(1)(b) DRC Act was dismissed by the learned ARC vide its judgment dated 29th March, 2011 which was challenged by Vipin Kalra before the Rent Control Tribunal and was allowed in favour of Vipin Kalra vide the judgment dated 1st March, 2012. Hence Dr. K.B.Watts preferred CM(M)390/2012 against the order of the District Judge (South)-cum-Rent Control Tribunal dated 1st March, 2012 in Eviction Petition No. 96/09. Eviction petition No.97/09 filed by Vipin Kalra under Section 14(1)(e) was allowed in his favour vide the judgment dated 4th March, 2011 against which a review petition was filed before the learned ARC by Dr. K.B. Watts which was dismissed vide order dated 5th June, 2012. Hence the orders dated 4th March, 2011 and 5th June, 2012 passed by the learned ARC in Eviction petition No. 97/09 are challenged by Dr. K.B. Watts in RC.REV.329/2012. During the pendency of the present proceedings Dr. K.B. Watts passed away and his legal heirs have been brought on record.

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3. In Eviction petition No. 96/09 Vipin Kalra stated that Dr. K.B. Watts had been running a dental clinic in the tenanted premises however now due to his old age, illness and paralytic attack he was not running the clinic and that the tenanted premises has been sublet, assigned or otherwise parted with by Dr. K.B. Watts to his son Mr. Ashok Watts and daughter-in-law Radhika Watts. It was further stated that the possession of the shop had been given

by Dr. K.B. Watts to his son and daughter-in-law without the written consent of Vipin Kalra.

4. In the written statement Dr. K.B. Watts denied the fact and stated that he was running his dental clinic himself since the inception of his tenancy and the same was in his actual, legal and physical possession. He had not sublet, assigned or otherwise parted with his clinic to his son or his daughter-in-law and they were working in the clinic under his guidance and not independently. Dr. K.B. Watts appeared as RW1 and deposed on the lines as stated by him in the written statement. He further stated that his son and daughter-in-law were staying with him as members of his family. He further stated that except for a brief period when he suffered a paralytic attack, the dental clinic was run by him and even during that period his son and daughter-in-law were running the clinic as junior doctors. In cross-examination he admitted that a suit was filed by his son Dr. Ashok Watts and that Dr. Ashok Watts was living with his family at 7/1 Pant Nagar, New Delhi and Dr. K.B. Watts was living with his wife at Jangpura. He admitted that the board installed on the premises depict the name of Dr. Ashok Watts and that he has opened an account and made the license at the address of the tenanted premises.

5. Dr. K.B. Watts also examined one Bahadur Singh as RW-1 who was his patient who deposed that Dr. K.B. Watts was residing in property bearing No. 1, Kasturba Gandhi Marg, New Delhi with his family and elder son's family and the younger son of Dr. Watts was residing in Jangpura extension. Dr. Watts surrendered the tenancy in respect of the property at Kasturba Gandhi Marg in April 2007 and shifted to Jangpura extension at H.No. C-45. Bahadur Singh was visiting Dr. K.B. Watts at the tenanted premises for

treatment and the tenanted premises continued to be in possession of Dr. K.B. Watts. In cross-examination Bahadur Singh admitted that he was the tenant of Dr. K.B. Watts since December 1989. He could not tell the number of times he visited the clinic of Dr. K.B. Watts for treatment and stated that he has never shown himself to Dr. K.B. Watts. Dr. K.B. Watts also examined his wife Mrs. Rita Watts as RW-3 who deposed on the same lines as Dr. K.B. Watts. She further stated that the suit between Dr. K.B. Watts and his son Ashok Watts had been settled and exhibited the statement of her husband and son as Ex.RW-2/3 and RW-3/3 respectively, the order of the Court, the affidavits and the written statement filed. She admitted that Dr. Ashok Watts was initially staying with them at Kasturba Gandhi Marg, however now he was residing separately. Dr. Ashok Watts practiced since 1991 and she did not know if Dr. Ashok Watts and Dr. Radhika Watts had another clinic.

6. Vipin Kalra examined himself as PW-1 and exhibited the original sale deed in respect of suit property and that Dr. Ashok Watts due to old age and paralytic attack was not professionally working as a dentist in the tenanted premises and the premises was in possession of his son Dr. Ashok Watts and daughter-in-law Mrs. Radhika Watts. He exhibited the legal demand notice and the acknowledgement due thereof. He denied that the possession of the tenanted premises was always with Dr. K.B. Watts or that Dr. Ashok and Radhika were working under the guidance of Dr. K.B. Watts. He did not know that Dr. K.B. Watts was taking any amount either from Dr. Ashok or Radhika.

7. The case of Vipin Kalra is based on the civil suit filed by Dr. Ashok Watts which was confronted to Dr. K.B. Watts and his wife in cross-

examination. Dr. Ashok Watts filed a civil suit against his parents being CS(OS) No.608/2007 seeking permanent injunction restraining Dr. K.B. Watts and Rita Watts from interfering in the peaceful possession of Dr. Ashok Watts in the tenanted premises II-D/33 Lajpat Nagar, Central Market. In the civil suit Dr. Ashok Watts claimed that he was a doctor by profession and was practicing from the tenanted premises which formed part of the suit property for over the last 16 years. The area of tenanted premises was approximately 150 sq.ft. The tenanted premises was originally leased out to Dr. K.B. Watts, who had been in possession since 1966; that Dr. K.B. Watts was diabetic and suffered paralytic attack in November 2004 owing to which he stopped practicing from the suit premises since November 2004 and Dr. Ashok Watts had been running his exclusive practice from the tenanted premises since November 2004 and has been in continuous physical possession thereof since then. It is further stated that the relations between Dr. Ashok Watts and his parents have got strained due to family rifts for the reason that his parents did not effect the partition of the ancestral residential property C-45 Jangpura Extension. His parents have been trying to dispossess Dr. Ashok Watts from the tenanted premises and take forcible possession thereof, however Dr. Ashok Watts has been able to resist the same.

8. CS(OS) No. 608/07 was disposed of as compromised before this Court and in this regard statements of Dr. Ashok Watts and Dr. K.B. Watts were recorded which are material and on the basis of which the two decisions i.e. of the learned ARC and the learned Rent Controller rest. Dr. Ashok Watts in CS(OS) No. 608/07 stated:

“Defendants No.1&2 are my parents. My father is the lawful tenant of the premises D-II-33, Central Market, Lajpat Nagar, New Delhi – 110024 in which he is running his dental clinic since the year 1966. After completing my education I joined my father as a dentist and started doing my practice in the premises in suit with his permission without any obstruction of any kind since 1991 and therefore, my father has every right to continue his practices in the said premises. Defendants have agreed to permit me to continue my practices uninterruptedly in the suit premises. I be permitted to withdraw my affidavit filed on the record in view of the observations made by the Court.”

9. Dr. K.B. Watts on oath before this Court in Suit No. 608/07 deposed:

“I am a tenant in the suit premises since January, 1966 and I am running my dental clinic in the said premises since then. After my son completed his studies I permitted him to join the practice as a dentist being my son. I have no intention to dispossess him from the suit premises and I shall not dispossess him from the suit premises as I have all love and affection for my son.”

10. The learned ARC vide judgment dated 29th March, 2011 held that indisputably in the year 2003 Dr. K.B. Watts suffered a paralytic attack, however the learned ARC held that it is the case of Vipin Kalra himself that Dr. K.B. Watts had been practicing but due to old age and suffering from paralytic attack he had not been attending the clinic and thus he has sublet assigned or parted with the clinic to his son and daughter-in-law but Vipin Kalra has not been able to prove that Dr. K.B. Watts was charging any rent from Dr. Ashok Watts or Dr. Radhika Watts. Thus the learned ARC held that if the son and daughter-in-law of Dr. K.B. Watts, during a brief period when he had suffered paralytic attack and was confined to bed, had been running the dental clinic in the tenanted premises under the guidance of Dr.

K.B. Watts; the same would not amount to subletting, assigning or parting with the possession of tenanted premises. Reliance was placed on Dr. Vijay Singh Vs. Raghbir Singh AIR 1973 SC 2254, Govindji Khera Vs. Padma Bhatia AIR 1972 Delhi 239; Nanakchand Vs. Sansar Chand & Anr. 1983(2)RLR 76; Chander Kishore Sharma & Anr. Vs. Kampa Wati 24 (1983) DLT 316.

11. In the appeal filed by Vipin Kalra, the learned Addl. Rent Controller relying upon the averments in the suit, the statements of the witnesses and also the fact that Dr. Radhika Watts has no connection with the dental practice because she was a homeopath by training as shown by her degree Ex.RW-1/4 held that Dr. K.B. Watts conceded that his son Dr. Ashok Watts had entered the tenanted premises in 1991 may be initially to assist and had since been engaged in his own independent dental practice and therefore he could not be dispossessed. Thus, Dr. K.B. Watts has not only inducted a stranger but conceded a right to the said stranger to continue uninterruptedly in the suit premises with an independent right not to be dispossessed.

12. Thus, the short question before this Court on the facts of the case as noted above is whether the tenanted premises has been sublet, assigned or otherwise parted with possession in whole or in part without obtaining in writing the consent of the landlord. In Dr. Vijay Singh Vs. Raghbir Singh AIR 1973 SC 2254 the Supreme Court held that no presumption can be drawn from mere relationship of father and son or from joint living or joint messing that the appellants therein were in permissive possession of the half portion. This is a question of fact to be determined on the facts of each case.

13. Learned counsel for Dr. K.B. Watts has taken me through the evidence on record and contends that the ingredients of Section 14(1)(b) DRC Act are

not attracted to the facts of the present case. Learned counsel for the petitioner relies upon Gulzar Singh & Anr. Vs. Chand Gupta 29 (1986) DLT 50; Vishwa Nath & Anr. Vs. Chaman Lall AIR 1975 Del. 117; Abdul Hamid Vs. Nur Mohd. AIR 1976 Del. 328; Nirmal Kishore Jain Vs. Sunpack India 2012 IV AD (del) 455; Shalimar Tar Products Vs. H.C. Sharma AIR 1988 SC 145 and the decision of this Court dated 15th December, 2011 in CM(M) 1574/10 in Munshi Lal Vs. Sumitra Devi & Ors to buttress his argument that there was no subletting.

14. In Vishwa Nath & Anr. (supra) this Court while interpreting the words sublet, assign, parted with the possession, in respect of a tenant who was the sole proprietor of a concern and formed the company with the controlling interest held that it was not subletting or parting with the possession by the tenant to the company. In Vishwa Nath this Court further laid down the interpretation of words sublet, assign or otherwise parted with possession and held that mere use by other person is not parting with possession so long as the tenant retains the legal possession himself or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. Divestment or abandonment of the right to possession is necessary in order to invoke the Clause of parting with the possession (See Hazari Lal Vs. Gian Ram 1972 Rent Control 74 Delhi).

15. In Abdul Hamid (supra) this Court held that mere fact that the tenant himself was not in physical possession of the tenanted premises for any period of time would not amount to parting with possession so long as during his absence the tenant has a right to return to the premises and be in possession thereof. In Nirmal Kishore Jain (supra) this Court held as long

as tenant retains legal possession himself there may be no parting with possession in terms of Section 14(1)(b) of the DRC Act. The words subletting, necessarily means transfer of an exclusive right to enjoy the property in favour of the third party. In Munshi Lal (supra) this Court held that partnership between the father-in-law and son-in-law was a genuine transaction and not a camouflage to cover real aspect of subletting.

16. Thus whether there is subletting or not depends on the facts coupled with the intention of the parties i.e. whether a right to possess the property to the exclusion of the original tenant has been vested in the third party.

17. In Gulzar Singh & Anr. Vs. Chand Gupta (supra) this Court held that an admission made by the mere occupier was not admissible against the tenant. It was held:

“10. In the affidavit Avtar Singh has stated that he was the sole proprietor of the firm M/s. Standard Cloth House, WZ 258/4, Nangal Raya, New Jail Road, New Delhi since its start in 1969; there had never been any partner at any time in any form since the start of the business; and his brother Gulzar Singh in the first three or four months simply assisted him in the business on a salary of Rs. 100/- per month and left afterwards and started his own business. This affidavit, no doubt, shows that Avtar Singh was in exclusive possession of the shop in dispute since 1969 in his own right. The courts below, however, were not justified in relying on this admission.

11. The statements contained in the affidavit are contrary to the averments made by Gulzar Singh in his application for getting his business, carried on in this shop, registered under the Delhi Shops and Establishment Act on which the reliance had been placed by the landlord himself. Again according to the plea in the eviction petition, this parting with possession took place in December 1972 and not in 1969 as the affidavit suggests. In any case this admission by Avtar Singh, one of the co-respondents in the eviction petition, was not legally

admissible in evidence against the tenant Gulzar Singh, the other respondent.

12. The primary rule, as contained in Section 21 of the Indian Evidence Act, is that an admission is relevant and may be proved as against the persons who make it or his representative in interest. Generally speaking, therefore, any relevant statement made by a party to the proceedings on a former occasion is admissible in evidence against him only or his successor in interest. Thus an admission by one of the respondents is no evidence against the co-respondent (See *Rashid-ud-din v. Nazir-ud-din* (AIR 1929 Lahore 721) and *Kanwar Lal Gupta v. Amar Nath Chawla*, ILR (1972) Delhi Vol. I 717.)”

18. Dr. K.B. Watts would be bound by his statement wherein he stated that after his son completed his studies, he permitted him to join practice as a dentist being his son and he has no intention to dispossess him from the tenanted premises and that he shall not dispossess him from the tenanted premises as he has all love and affection for his son. In contrast Dr. Ashok Watts stated on oath before this Court that after completing his education he joined his father as a dentist and started doing his practice in the tenanted premises with the father’s permission without any obstruction of any kind since 1991 and therefore his father has every right to continue his practice in the said premises. He also stated on oath that his parents have agreed to permit him to continue his practice uninterruptedly in the suit premises. From the statement of Dr. K.B. Watts and Dr. Ashok Watts it is apparent that it was not a case of permissive user but of creating a right of user of Dr. Ashok Watts in the tenanted premises.

19. A perusal of the statements as noted above would show that nowhere Dr. K.B. Watts admitted that he had parted with the possession of the tenanted premises, though from the statement of Dr. Ashok Watts it can be inferred that he was in exclusive possession of the tenanted premises with his wife. However, the statement of Dr. Ashok Watts cannot bind Dr. K. B. Watts.

20. Thus, in the facts of the case since statement of Dr. Ashok Watts would not bind Dr. K.B. Watts it cannot be held that there is subletting of the premises by him to his exclusion in favour of his son and daughter-in-law. Consequently the impugned order dated 1st March, 2012 passed by the learned Rent Control Tribunal in an appeal from the eviction petition No. E-96/09 is set aside and that of the learned ARC dated 29th March, 2011 is restored.

21. Petition and applications are disposed of.

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22. In eviction petition No. 97/09 filed by Vipin Kalra under Section 14(1)(e) of the DRC Act Dr. K.B. Watts filed a leave to defend application which was dismissed vide the order dated 4th March, 2011 and the review petition was dismissed on 5th June, 2012 which are the orders impugned in RC.REV.329/2012.

23. In the eviction petition Vipin Kalra stated that the tenanted premises was a part of suit property II-D/33, Lajpat Nagar. According to Vipin Kalra he was the owner of the ground floor of the suit property vide the registered sale deed dated 17th April, 2000. On 5th July, 2003 Dr. K.B. Watts accepted Vipin Kalra as the owner/landlord and started paying rent by way of cheques

besides electricity and water charges to the authorities. The tenanted premises was required by Vipin Kalra bonafidely as he was running a showroom of Sarees in the name and style of 'Dayal Sons' on the ground floor in the remaining portion of the suit property which was located on the main road, Central Market, Lajpat Nagar since 1980. The showroom had an opening of only 15 feet wide because on the left side 4 feet space of the plot had been left for the stairs for going to the basement which was owned by another person and the other part of the front was in the tenanted premises. Thus, the opening of Vipin Kalra's showroom was only 15 feet wide. At the other end of the showroom there was one small toilet, a small pantry and an office thus he was left with only 1000 sq.ft area which was highly insufficient for a Saree showroom. Further his son Dhruv Kalra has completed his graduation in Bachelor of Business Administration from USA with main subject as finance and he wanted to join the business of his father to help him. It was stated that Vipin Kalra's son was dependent on him for the premises. Further besides the ground floor of the suit property Vipin Kalra had no other reasonably suitable accommodation to meet his bonafide requirement. That in the second, third and fourth floor of the building son of Vipin Kalra had one-third share but the said accommodation was not suitable for business of Vipin Kalra.

24. In the leave to defend application filed by Dr. K.B. Watts the site plan filed by Vipin Kalra was challenged as it did not show the staircase, however no site plan was filed by Dr. K.B. Watts. It was stated that the eviction petition was not in the proper format and as per the requirement of the law. It is further stated that in the eviction petition itself Vipin Kalra admitted that his family members own second, third and fourth floor of the suit property

and only fourth floor was occupied by one Mohan who was the general manager of Vipin Kalra and the caretaker of the whole building. Thus there was surplus accommodation. Vipin Kalra has not clarified whether he requires the tenanted premises for his own showroom or for setting up for his son who was an expert in finance. The sale deed filed by Vipin Kalra was also challenged and also that Vipin Kalra and his wife owned two building which were residential-cum-commercial in DLF, Phase-2, Gurgaon.

25. The learned ARC vide the order dated 4th March, 2011 held that the fact that no other accommodation was available to Vipin Kalra and his family was not challenged considering the various portions of the property which were with the progeny of Shri Neb Dass Kalra, father of Prem Dass Kalra and grand-father of Vipin Kalra; the properties at DLF Gurgaon were residential where Vipin Kalra was living with his parents and the other property was also residential which has been let out and thus the same are not relevant for considering the requirement of Vipin Kalra for business purposes. The basement of the suit property was not owned by Vipin Kalra and was owned by his cousin brother who was running the business in the name and style of M/s. Dayal Opticals. In the first floor of the property Vipin Kalra had no share and the second, third and fourth floor were in the share of his son, wife and father of Vipin Kalra and the said accommodations were not suitable for business. Further the landlord tenant relationship was not disputed and hence the leave to defend application was denied.

26. Though the site plan was alleged to be incorrect, however no counter site plan was filed and thus review petition was filed by the petitioner wherein site plan was placed on record and it was stated that the son of Vipin Kalra had never visited the shop to carry on the business and he was

gainfully employed with M/s. Bharti Foundation and prior thereto M/s. Johnson Control (I) Pvt. Ltd. Thus, there was no bonafide requirement. Since the review petition was filed belatedly the same was not considered on the ground that searching of new facts cannot be said to be sufficient cause to condone the delay in filing the review petition.

27. It is trite law that the tenant cannot take new pleas beyond those taken in the leave to defend application as the amendments would have the effect of extending the time to file the leave to defend application which is not permissible unless they are subsequent events which are also required to be considered cautiously.

28. In the eviction petition the plea taken by Vipin Kalra for eviction is that the front of the showroom was small and due to the tenanted premises and an office, toilet and pantry being there on the ground floor, the area of the shop was reduced to 1000 sq.ft. and that his son wants to start his business as he has done MBA in Finance from Texas. Admittedly the son and wife of Vipin Kalra own the 2nd, 3rd and 4th floors, however it is also well-settled that for a profession or business ground floor premises are always more suitable. It is trite law that the tenant cannot dictate the landlord as to how he should utilize the premises. On the facts noted above the view taken by the learned ARC is a plausible view, suffering from no illegality.

29. Consequently, RC.REV. 329/2012 & CMs. 12388/2012, 13889/2014 are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 15, 2015
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