

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

+ RC.REV. 171/2012 & CMs. 7225/2012 & 7227/2012

% Decided on: 29th January, 2015

SATISH KUMAR @ SATISH SINGH Petitioner
Through Mr. Sidharth Joshi, Adv.

versus

LAXMI CHAND JAIN AND ORS Respondent
Through Mr. Sanjeev Sindhwani, Sr. Adv. with
Mr. Sanjay Dua and Mr. Uday Joshi,
Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition the petitioner impugns the order dated 18th November, 2011 whereby the leave to defend application of the petitioner was declined in an eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act (in short the DRC Act).

2. In the eviction petition the respondents herein i.e. respondent No.1 Laxmi Chand Jain, respondent No.2 Laxmi Chand Jain & Sons HUF and respondent No.3 Suresh Chand Jain pleaded that petitioner No.1 and 3 are brothers and owners of the suit property bearing No. 4262/2 Ansari Road, Darya Ganj, New Delhi which devolved on them on the demise of their father Shri Amir Chand Jain and their mother Smt. Premwati. In 1987 an oral partition took place between Laxmi Chand Jain and Suresh Chand Jain

and the property was divided into two portions. This oral partition was subsequently reduced into writing by a deed of partition dated 20th July, 1994. However since the said deed was lost the same was again re-written on 11th March, 1997. Thus half the portion of the suit premises wherein the tenanted shop is situated vested in petitioner Laxmi Chand Jain who is the respondent herein. The tenanted premises consists of one shop which was let out to Surjeet Singh. After the death of Surjeet Singh, the petitioner herein i.e. Satish Kumar occupied the premises as he was working with him as a servant. Surjeet Singh left no legal heir as he was unmarried.. Thus, the petitioner herein remained in illegal possession and was served with a notice by the respondent No.1 herein on 9th February, 2006. It is further stated that the respondent's son Dr. Mukul Jain is running a clinic which is on the three side of the tenanted premises. After the partition the respondent Laxmi Chand Jain came to own one shop No. 367, Naya Katra, Chandni Chowk and three small shops on the first floor of Shop No.312, Naya Katra, Chandni Chowk measuring less than 100 sq.ft. Besides on the second floor there are three shops which are all tenanted and all shops have a low roof of about 7 feet. Laxmi Chand Jain runs his business as cloth merchant from his shop bearing No.367, Naya Katra, Chandni Chowk, Delhi as the sole proprietor in the name and style of 'Amar Chand Laxmi Chand Jain & Sons' for which purpose he has to travel daily from his residence, at Ansari Road, Darya Ganj which is on the first floor of the suit premises, to Chandni Chowk. Respondent No.1 Laxmi Chand Jain aged 69 years of age is suffering from old age ailments and has developed acute back and knee pain besides high blood pressure and epilepsy. For the knee pain he has been advised knee transplant and has been asked to avoid squatting or sitting cross legged on

the floor. The shop at Chandni Chowk can be run only by sitting on the gaddi on the floor and thus the respondent No.1 is facing serious problems and needs a shop on the ground floor to carry out his business. The site plan of the suit premises wherein the tenanted premises was situated was duly filed. The same shows that the suit property has been given numbers 4244 to 4251 Prem Bhawan, Darya Ganj admeasuring a total of 270 sq.yds. The first floor and the second floor are being used by the respondent No.1 and his brother for residential purposes.

3. In the leave to defend application the grounds taken are that the son of the respondent Dr. Mukul Jain was running his Dental clinic from Vasant Vihar and his other son Rajneesh Jain was running garments business from some other place. It is further stated that behind the tenanted premises there is sufficient place on the ground floor of the property and thus the tenanted premises was not required bona-fidely.

4. The respondent in the reply to leave to defend application has placed on record the partition deed by virtue of which the back portion of the ground floor as stated in the leave to defend application has fallen in the share of respondent No.3 i.e. brother of respondent No.1. Copy of the eviction petition has also been placed on record wherein the back portion of the ground floor premises has been directed to be vacated. The said petition was filed by Nikhil Jain and Manoj Kumar Jain sons of Suresh Kumar Jain, nephews of respondent No.1. From the documents on record it was clear that an alternate accommodation which was alleged to be available to the respondent No.1 Laxmi Chand Jain, was not available to him but was in fact with the nephews of respondent No.1. Respondent No.1 has placed on

record photographs and postal envelopes to demonstrate that his son Dr. Mukul Jain was running a dental clinic from the ground floor of the suit premises which encloses the tenanted premises in a 'U' shape.

5. The learned ARC considered all the pleas and came to the conclusion that the petitioner herein has not denied the ailment suffered by the respondent No.1 and that in the shop at Chandni Chowk he has to sit on the floor on gaddi, thus aggravating his ailment. The Court noted that Dr. Mukul Jain was running a dental clinic from the shops bearing No. 4244/2, 4545/2 and 4247/2 of the suit premises at Ansari Road, Darya Ganj has been demonstrated and thus even if he was running another clinic at Vasant Vihar the same was immaterial. As regards the alternative accommodation at the backside of the suit premises, the learned ARC looked into the partition deed as per which the rear portion fell to the share of respondent no.3 herein and not respondent No.1. Thus there being no suitable accommodation available and the tenanted premises being bona-fidely required, the learned ARC came to the conclusion that the leave to defend did not raise any triable issues.

6. The main plea of the petitioner before this Court is with respect to the subsequent event i.e. back portion of the ground floor premises being available. In Gaya Prasad Vs. Pradeep Srivastava (2001) 2 SCC 604, the Supreme Court after reviewing its earlier judgments on the requirement to consider subsequent events in an eviction petition seeking eviction on the ground of bona-fide requirement held that the Courts must only take 'cautious cognizance' of subsequent events and unless and until subsequent events totally extinguish and demolish the bona-fide necessity, the eviction petition on the grounds of bona-fide requirement would subsist.

7. The fact in relation to the availability of the back portion in the suit premises was considered by the learned ARC. It noted that the said portion fell in the share of respondent No.3 and not respondent no.1 as per the partition deed. The respondent No.1 has placed on record the copy of the order dated 20th August, 2011 wherein the rear portion of the suit premises was directed to be evicted. The said petition was filed by Nikhil Jain and Manoj Kumar Jain both sons of Suresh Chand Jain i.e. respondent No.3 and not respondent No.1. The same further fortifies the stand of respondent No.1 that the back portion of the suit had fallen to the share of respondent No.3 as per the partition deed which fact has been duly considered by the learned ARC.

8. In view of the facts noted above, it is apparent that the respondent No.1 has been able to show the landlord tenant relationship between the parties, requirement of the tenanted premises is bona-fide and that he has no other suitable accommodation. Hence, the view taken by the learned ARC is a plausible view and warrants no interference by this Court in the present petition.

9. Petition and applications are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 29, 2015
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