

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

+ **RC.REV. 87/2015 & CM 3380/2015 (stay)**

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Reserved on: 25th February, 2015
Decided on: 17th March, 2015

BALWANT SINGH

..... Petitioner

Through

Mr. Arun Vohra with Mr. Dilip
Kumar, Advs.

versus

SANJAY MALHOTRA & ORS

..... Respondent

Through

Mr. S.C. Singhal, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 20th August, 2014 whereby the application of the petitioner seeking leave to defend was dismissed the petitioner prefers the present petition.

2. Property bearing No. HS-23, Kailash Colony Market, New Delhi was owned by Baldev Raj Malhotra on whose demise the same devolved on his legal heirs. Respondent No.1 is the son of late Baldev Raj Malhotra and respondent No.2 to 6 are the legal heirs of late Rajesh Malhotra, another son of late Baldev Raj Malhotra being the wife and four children. In the eviction petition the respondents pleaded that Baldev Raj Malhotra and his wife Saroj Malhotra died leaving behind two sons and four daughters. The four daughters relinquished their shares in the said property in favour of Rajesh

Malhotra and Sanjay Malhotra who agreed to share the property in the ratio of 45% and 55% after reconstruction. However, the reconstruction could not be done for various reasons. In the meantime Rajesh Malhotra died intestate on 16th November, 2013 leaving behind respondent No.2 his widow, respondent No.3 to 5 his daughters and respondent No.6 his son who are all unmarried. Thereafter the parties mutually decided to own the property in equal shares i.e. 50% to Sanjay Malhotra and 50% to respondents No.2 to 6 jointly.

3. In the eviction petition it was stated that Rajesh Malhotra and Sanjay Malhotra were carrying on the business of jewellery from a small tenanted shop at Dariba Kalan, Chandni Chowk for which an eviction petition No. 88/2009 was filed by the landlord and was pending in Tis Hazari Courts. The place being congested and respondents No.2 to 6 having no experience in the said business cannot carry on their business in the said premises. The respondents No.2 to 6 have no other source of income. Respondent No.3 aged 30 years has completed the course of Choreography and is running a boutique from the residence as no commercial space is available. Respondent No.4 who is 28 years old has done diploma in hospitality management especially in Patisserie and also has no commercial space to carry on the business. Similarly respondent No.5 aged 24 years has done diploma in hotel management and is also unable to do her own business and is presently working as a sales-girl in Khan Market. The wife of respondent No.1 Shivani Malhotra is a law graduate and a practicing lawyer who also needs a regular office in a commercial place. In view thereof besides the petitioner's shop the respondents also filed eviction petition against two

other shop owners in the said premises wherein also orders were passed in favour of the respondents. It is stated that the first floor of the premises consisting of three rooms including drawing and dining room with a store room was in possession of respondents No.2 to 6 who were using the same for residential purposes. The second floor consisting of same number of rooms is being used by respondent No.1's family for residential purposes. The respondent No.1's family consists of himself, his wife and two daughters aged 15 and 13 years who are also school going. Both the daughters of respondent No.1 are residing at the second floor as well as ground floor. In the ground floor besides these three shops there are two rooms on the back side, two toilets and motor room with front yard which is being used for parking right from the very beginning. In terms of the compromise the family of respondent No.2 to 6 is residing on the first floor and is also occupying one room on the ground floor and two rooms on the mezzanine floor. It is further stated that the respondent No.1 has another residential premises measuring 923 sq. ft. first floor, F-38, South Extension which cannot be used for commercial purpose and respondent No.2 to 6 have no legal right qua the said property. It is thus urged that in view of the bonafide requirement of earning a regular livelihood by the respondents the premises be directed to be vacated.

4. In the leave to defend application the petitioner pleaded that he was engaged in the business of selling toys and gifts from one portion of the ground floor of the suit premises and was inducted as a tenant by late Shri Baldev Raj Malhotra. The firm of the petitioner is a proprietorship firm and the petitioner was paying rent regularly, however after the death of Baldev

Raj Malhotra and his wife it was not clear as to whom the rent was to be paid and he enquired from respondents as to in what proportion the rent was to be paid and to whom, but they did not revert back. It is further stated that during May 2013 husband of respondent No.2 approached the petitioner to sell the said shop and that he would obtain the consent of his siblings, however he passed away in November 2013. It is further stated that sisters have not been impleaded as parties. Their claim of 50% share is contrary to the settlement arrived at between the parties in CS(OS) No. 109/2004. The respondents also have a godown bearing No.149 in property situated at Katra Mashroo, Dariba Kala. The petitioner is 80 years old and is working as his only son passed away in the year 2006 at the age of 40 years and the tenanted premises is the only source of livelihood of the petitioner.

5. The learned ARC vide the impugned judgment dismissed the leave to defend application.

6. Assailing the impugned order learned counsel for the petitioner contends that the claim of the bonafide requirement of the respondents is inherently flawed. The ground floor comprises of three shops, measuring 170 sq.ft on the left side, 175 sq.ft on the middle and 160-170 sq.ft on the right, which sums up to an area of 505 sq.ft in total and in such a small area six different business cannot be opened. The claim of the parties that the settlement of 50% share each is also a triable issue as the parties before the Court agreed to a 45% share to Rajesh Malhotra and 55% to Sanjay Malhotra. The wife of respondent No.1 is already an independent practicing advocate and is thus not dependent on respondent No.1. It is stated that in the event of eviction of shops for what purpose the respondents No.2 to 6

would be using the same has not been stated. Proof of ownership is the first and foremost requirement and there being no formal partition between the parties, the oral partition cannot be relied upon.

7. Heard learned counsel for the parties. In the present petition the petitioner has taken grounds which were not even taken in the leave to defend application and thus the scope of the present petition would have to be restricted to the grounds taken in the leave to defend application and adjudicated by the learned Trial Court for the reason that three eviction petitions were filed and almost common orders were passed in the three petitions.

8. The legal position while exercising supervisory jurisdiction under Section 25(B) DRC Act is well settled. This Court in its supervisory jurisdiction under Article 227 of the Constitution or 115 of the CPC or Section 25 of the DRC can interfere only if the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or exercised the same in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. The supervisory jurisdiction is not available to correct mere errors of facts or of law unless the errors are manifest and apparent on the face of proceedings such as when the same are based on clear ignorance or utter disregard of the provisions of law. It is also trite law that while exercising the supervisory jurisdiction this Court will not go beyond what is pleaded in the leave to defend application as the same would be permitting additional grounds and thus extending the period of limitation.

9. As regards the jural relationship of landlord/tenant, misjoinder of necessary parties and inter-se settlement regarding shares of the two brothers in the suit property, the decision of the learned ARC is based on sound principles as having sent the rent to respondent No.1 the petitioner cannot dispute the relationship of landlord and tenant. Further it is well settled that all co-owners are not required to be impleaded in the eviction petition and in the present case the respondents have placed on record the relinquishment deeds as well. The decree in the suit before this Court was a compromise decree and not on merits, thus the co-owners can always settle their shares inter-se in the property.

10. As regards the requirement of respondent Nos. 3 to 6 are concerned spaces are required by all four of them being educated and wanting to settle in life. It will be for the parties to settle their inter-se shares in suit premises and how the three shops admeasuring 550 sq.yds. of which one shop is the subject matter of the present petition were to be divided. As regards the dependency of the wife of respondent No.1 is concerned, even if she has her own independent practice it cannot be said that for a commercial space she is not dependent on her husband.

11. In Om Prakash Bajaj Vs. Chander Shekhar 102(2003) DLT 746 This Court has held that “the wife, son and son’s wife and children are the members of the family of landlord whose need of accommodation is the need of the landlord. There is no dispute about this fact. His requirement is only qualified by its genuineness and bona fide”. Even in Labhu Lal Vs. Sandhya Gupta 173(2010) DLT 318 this Court held that son and daughter-in-law of

the landlord are very much dependent upon him for requirement of premises for the purpose of expansion of their clinic.

12. Whether any triable issue arises or not is a question of fact to be determined on the facts of each case and considering that the respondent No.2 has three daughters wanting to establish their business and her fourth child respondent No.6 is also doing BBA who would also be required, it cannot be said that there is no bona-fide requirement for the premises. Even as per the petitioner, the respondents No.2 to 6 have no other alternative accommodation.

13. In Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5 SCC 353 on an observation of the High Court that the landlady therein being aged 70 years and as there was no one to look after her therefore she should continue to live as a guest with a family friend, the Supreme Court noted that the landlord is the best Judge of his residential requirement and he has complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own. In Ragavendra Kumar Vs. Firm Prem Machinery and Co. AIR 2000 SC 534 the Supreme Court repelling the contention that even if in evidence the plaintiff/landlord states that he has number of other shops and houses belonging to him but in a categorical statement being made that the said house and shops were not vacant and suitable and the suit premises was suitable for his business purpose, the Courts will not interfere because the landlord is the best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

14. Similar view has been taken by this Court in RC.REV.399/2014 titled “Gulshan Rai Monga Vs. Sanjay Malhotra & Ors.” decided on 4th February, 2015 filed by the tenant of another shop in the same premises. There being no illegality or perversity in the impugned order, the petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 17, 2015
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