

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

+ **CM(M) 1022/2011**

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Reserved on: 19th May, 2015

Decided on: 2nd July, 2015

VIDYA WATI

..... Petitioner

Through

Mr. Rajesh Yadav, Ms. Ruchira,
Advts.

versus

PUNJAB KHADI MANDAL

..... Respondent

Through

Mr. Yogesh Swaroop, Mr. B.K.Roy,
Advts.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Smt. Shanta Devi, Smt. Kanta Devi, Smt. Kaushalya Devi and Smt. Shama Devi four sisters through their attorney Shri Ram Prakash Yadav filed an eviction petition against the respondent Punjab Khadi Mandal, Sultan Bhawan under Section 14(1)(a)&(j) of the Delhi Rent Control Act, 1958 (in short the DRC Act) in respect of one room, kitchen, bath and WC along with open terrace situated on the second floor in H.No.1667, Gali No.35, Abdul Rehman Road, Karol Bagh, New Delhi (in short the tenanted premises). Smt. Vidyawati Devi the 5th sister of Shanta Devi, Kanta Devi, Kaushalya Devi and Shama Devi was impleaded as a respondent. It was stated that the tenanted premises was let out vide rent agreement dated 5th January, 1986 and Punjab Khadi Mandal illegally added one room and one

small store to the tenanted premises which came to the knowledge of the eviction petitioners only on 4th March, 2005 when the property was got inspected through the architect. It was further stated that Punjab Khadi Mandal has neither paid nor tendered the whole of the arrears of rent legally recoverable from it despite service of notice. Vide legal notice dated 5th July, 2004 the rent was increased by 10% to ₹ 1210/- per month with effect from 1st September, 2004. However, Punjab Khadi Mandal failed to pay the increased rent and comply with the notice. Thus a notice was issued on 29th November, 2004. Punjab Khadi Mandal was in arrears of rent @ ₹1100/- per month with effect from 1st July, 2004 to 31st August, 2004 and with effect from 1st September, 2004 @ ₹1210/- per month till date. Though a reply to the notice of demand dated 29th November, 2004 was received on 22nd December, 2004, however no rent was paid.

2. During the pendency of the eviction petition No. 589/06 Smt. Shanti Devi, Smt. Kanta Devi and Smt. Shama Devi executed relinquishment deeds and Smt. Kaushalya Devi executed a sale deed with respect to their undivided share in the suit property in favour of Smt. Vidyawati, their sister on 27th April, 2006. On 28th August, 2007 an application under Order XXII Rule 10 CPC read with Order 1 Rule 10 CPC was filed by Smt. Vidyawati seeking substitution as a sole petitioner in place of existing petitioners and deletion of her name as respondent No.2. It was stated in the application that four petitioners have transferred their title and interest in the suit property in favour of Smt. Vidyawati, the applicant and respondent No.2 in the eviction petition and now Smt. Vidyawati is the sole person having complete right, title and interest in the suit property, hence she be substituted as the sole petitioner in place of original petitioners and her name as respondent No.2 be

deleted from the array of parties. Thus she was transposed as the sole eviction petitioner.

3. On perusal of the material on record vide order dated 20th November, 2007 the learned Rent Controller passed an order under Section 15(1) DRC Act directing Punjab Khadi Mandal to pay or deposit the entire arrears of rent with effect from 1st August, 2004 till 30th April, 2005 @ ₹ 880/- per month, thereafter with effect from 1st May, 2005 till 20th November, 2007 @ ₹1100/- per month within one month from the date of the order and shall continue to pay and deposit the future monthly rent @ ₹1100/- per month. The issue of enhancement claimed by Smt. Vidyawati with effect from 1st September, 2004 was deferred to be decided at the time of disposal of the petition after deciding the issue whether there was any service of notice of enhancement of the rent or not and whether the petitioner was entitled to any enhanced rent or not.

4. Challenging the order dated 20th November, 2007 Punjab Khadi Mandal filed an appeal wherein the impugned order dated 5th August, 2011 was passed by the learned Additional Rent Control Tribunal. It was held that none of the release deeds or sale deed assigned the arrears of rent in favour of Smt. Vidyawati and thus she was entitled to rent with effect from 27th April, 2006 i.e. the date on which she became the absolute owner and thus the appeal filed by Punjab Khadi Mandal was allowed.

5. The only question before this Court is whether there was an assignment of the rent or the interest in the property in favour of Vidyawati by her sisters by way of three release deeds and one sale deed and consequently she was entitled to arrears of rent prior to 27th April, 2006.

6. Learned counsel for the petitioner contends that petitioner is not a transferee pendente lite but was co-owner of the property. Thus by virtue of application of Order XXII Rule 10 CPC she was entitled to the entire arrears of rent. The decision in the case of N.M. Engineer Vs. Narendra Singh Viridi (1994) 5 SCC 261 relied upon by the learned Trial Court holds the field and clinches the issue. The release deeds and sale deed clearly state the assignment of the interest which would include the arrears of rent payable. There is no dispute with regard to arrears of rent to be paid to Smt. Vidyawati, the petitioner herein, with effect from 27th April, 2006, however she was co-owner of the property having 1/5th undivided share in the same even prior to the release deeds and the sale deed executed in her favour, and thus as a co-owner she was entitled to the entire arrears of rent prior to 27th April, 2006. Reliance is placed on N.M. Engineer Vs. Narendra Singh Viridi (1994) 5 SCC 261; Rikhu Dev Vs. Som Dass (deceased) AIR 1975 SC 2159; India Trade Promotion Organization Vs. International Amusement Limited 142 (2007) DLT 342 (DB); Satti Krishna Reddy Vs. Nallamilli Venkata Reddy (1982) 3 SCC 364; Nandita Juneja Vs. Neelam Malik 1998 (1) RCR 49; M/s. India Umbrella Manufacturing Co. & Ors. Vs. Bhagabandei Agarwalla (dead) by LRs & Ors. AIR 2004 SC 1321 and Kanta Goel Vs. B.P. Pathan & Ors. (1977) 2 SCC 814.

7. Learned counsel for the respondent on the other hand contends that prior to the release deeds and sale deed being executed Vidyawati had not filed the eviction petition and thus even if she was a co-owner she was not entitled to the arrears of rent. Further no arrears of rent having been assigned by the release deeds and the sale deed specifically, the learned Rent Controller committed no error in coming to the conclusion that Vidyawati

was entitled to arrears of rent with effect from 27th April, 2006 and the present petition be dismissed.

8. Heard learned counsel for the parties. The undisputed facts in the petition are: an eviction petition was filed by four sisters wherein Vidyawati the 5th sister was impleaded as respondent No.2, no notice of arrears of rent were sent by Vidyawati, release deeds and sale deed were executed in her favour on 27th April, 2006 by virtue of which she became the sole owner of the suit property including the tenanted premises and the application under Order XXII Rule 10 CPC was allowed vide order dated 27th August, 2007. In the release deeds in Para 1 it was stated that the releasor hereby releases, relinquishes, abandons and conveys all her 1/5th undivided share, right, interest and title in the said property absolutely and forever, henceforth in favour of the releasee free from encumbrances, out of love and affection and without any consideration, to be held and enjoyed forever by the releasee, as absolute owner thereof. The deed was not intended to operate as a conveyance. Even the sale deed executed by Smt. Kaushalya Devi conveyed and transferred her 1/5th undivided share in the said property to the vendee who shall thereafter be the owner of the same and shall enjoy all rights of ownership, possession, privileges, easements, appurtenance, whatsoever in respect of the said property.

9. In N.M. Engineer (supra) relied upon by the learned counsel for the petitioner, the Supreme Court held that for institution of a suit a valid notice demanding the rental arrears in respect of accommodation actually let to the tenant was necessary and was a vital ingredient of the conditions which govern the maintainability of the suit. The Supreme Court further held that

in the absence of a valid notice the rent was merely a debt which the appellant therein was not entitled to recover.

10. In Rikhu Dev (supra) Supreme Court while dealing with the general principles under Order XXII Rule 10 CPC held that the provision was based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of the suit had devolved upon another during the pendency of the suit and the suit may be continued against the person acquiring the interest with the leave of the Court. It was thus held that the devolution of interest in the subject matter takes place when the successor is elected as Mahant after the death of the previous Mahant. It was further held that the word “interest” in Order XXII Rule 10 CPC means interest in the property i.e. the subject matter of the suit and the interest is the interest of the person who was the party to the suit.

11. In Satti Krishna Reddy (supra) the Supreme Court was dealing with a case where the successor landlord claimed the arrears of rent assigned to him and it was held that he had a cause of action against the tenant for arrears of rent. In this decision the Supreme Court upheld the decision of the High Court however overruled the view taken in Daya Debi Vs. Chapala Devi AIR 1960 Cal 378 wherein the High Court held that on assignment, arrears of claim becomes merely an actionable claim.

12. Indubitably, as held in Kanta Goel (supra) a co-owner is as much an owner of the entire property as any sole owner and is thus not disentitled from suing for eviction. However, the said decision did not deal with the issue of assignment of arrears of rent. In the present case Vidyawati never sued for arrears of rent and was actually a respondent. No notice of arrears

of rent was sent by Vidyawati. In both the relinquishment deeds and the sale deed there is no assignment of arrears of rent.

13. In Sheikh Noor & Anr. Vs. Sheikh G.S. Ibrahim (dead) by LRs. AIR 2003 SC 4163 Supreme Court while dealing with a case where the landlord had assigned the right to recover arrears of rent held that a transferee/ landlord can recover those arrears as rent and if not paid maintain a petition for eviction under the rent laws for those arrears as well.

14. In Ranjit Singh Vs. K.K. Sikand & Anr. 1996 AIHC 754 the Punjab High Court also took the view that in the absence of assignment of rent due for the period prior to sale to the vendee/ landlord he has no right to recover rent or seek ejectment. The Division Bench of Patna High Court in Ram Tahal Modi Vs. Ratan Lal AIR 1989 PATNA 13 held that although the transferee acquires all the rights of his transferor, in view of the proviso to Section 109 of the Transfer of Property Act (in short the T.P. Act), the transferee ipso-facto is not entitled to arrears of rent accrued before the transfer. Section 8 of the T.P. Act provides that on transfer, the transferee is entitled to the rents and profits thereof accruing after the transfer. Similar is the position under Section 55 of the T.P. Act. Thus, in law a transferee cannot claim that as the corpus has been transferred to him, the rent accrued prior to the transfer shall also be deemed to have been transferred. If the arrears of rent accruing prior to the transfer is claimed by the transferee, he must show that the same have also been specifically assigned to him.

15. In the present case though neither there is assignment of arrears of rent in favour of the petitioner nor has petitioner issued any valid notice for arrears of rent, however the petitioner was a co-owner of the property. It is well settled that co-owners enjoy unity of possession, and one of the co-

owners can maintain a petition for eviction and arrears of rent on behalf of the other co-owners. Thus, in a co-ownership no fresh right to sue accrues on transfer of interest by the co-owners. The decisions in Ranjit Singh and Ram Tahal Modi (supra) do not deal with the cases of co-owners.

16. In Kochkunju Nair Vs. Koshy Alexander & Ors. (1999) 3 SCC 482 the Supreme Court explained the concept of co-ownership and held:

“9. Ownership imports three essential rights, namely, right to possession, right to enjoy and right to dispose. If an owner is wrongly deprived of possession of his property, he has a right to be put in possession thereof. All the three essentials are satisfied in the case of co-owner of a land. All co-owners have equal rights and coordinate interest in the property, though their shares may be either fixed or indeterminate. Every co-owner has a right to enjoyment and possession equal to that of the other co-owner or co-owners. Each co-owner has, in theory, interest in every infinitesimal portion of the subject-matter and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with others (vide Mitra's Co-ownership and Partition, 7th Edn.).”

17. In Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram AIR 1961 Punjab 528 the Division Bench of the Punjab High Court, as it then was, culled down the various principles with regard to the rights and duties of the co-owners as under:

“78. The weight of the authorities and the principles which have been discussed above, give rise to the following propositions -

(1) A co-Owner has an interest in the whole property and also in every parcel of it.

- (2) *Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.*
- (3) *A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*
- (4) *The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession, of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that of the other.*
- (5) *Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*
- (6) *Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*
- (7) *Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to anyone to disturb the arrangement without the consent of others except by filing a suit for partition.*
- (8) *The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.*
- (9) *Where a portion of the joint property is, by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered."*

18. In India Umbrella Manufacturing Co. & Ors. Vs. Bhagabandei Agarwalla (dead) by LRs. Savitri Agarwalla (Smt.) & Ors. (2004) 3 SCC 178

while considering the rights of one of the co-owners to file a suit for eviction the Supreme Court held:

“6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16] , SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

19. Thus, from the principle of law laid down as noted above it is well-settled that due to unity of ownership in the property and the principle of agency i.e. one co-owner acting on his own behalf in his own right and as an agent of the other co-owners unless specifically objected to by another co-owner can maintain a suit for eviction. The decisions relied upon by the learned Additional Rent Control Tribunal to come to the conclusion that in

the absence of specific assignment of arrears of rent in the relinquishment deed and sale deed Vidyawati was not entitled to arrears of rent prior to 27th April, 2006 have no applications to the facts of the present case as they were rendered *inter se* the parties who were not co-owners.

20. Consequently, the impugned order dated 5th August, 2011 passed by the Additional Rent Control Tribunal is set aside and the decision of the learned Rent Controller dated 20th November, 2007 is restored.

21. Petition is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JULY 02, 2015
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