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

+ **RC.REV. 377/2013**

% Decided on: 20th February, 2015

SMT SHARIFAN & ORS Petitioners
Through: Mr. Nawabuddin, Mr. Bipin Kumar
Jha and Mr. Mohd. Adeel Siddiqui,
Advocates.

versus

SH ABDUL HAMID & ORS Respondents
Through: Mr. Rajesh Raina, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Aggrieved by the order dated 6th June, 2013, whereby the leave to defend application filed by the Petitioners in an eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') was dismissed, the Petitioners prefer the present petition.
2. In the eviction petition, the Respondents stated that the tenanted premises, that is, one room, one common veranda, one common bathroom in property No.2431, Ground Floor, Gali –M. Abdul Qadeer, G.B. Road, Delhi-6 (in short 'the suit property') was let out to one Mohd.Yusuf at a monthly rent of Rs.10/- excluding other charges and after the death of Mohd.Yusuf the Petitioners became the joint tenants. The suit property was purchased by the grandfather of the Respondents vide Sale Deed in December, 1931 and after his death the property devolved on the father of the Respondents

namely late Mohd. Ramzan. Further after the death of Mohd. Ramzan, the other legal heirs relinquished their rights in favour of the Respondents vide Relinquishment Deed dated 6th May, 2005. Thus the Respondents as the co-owners and landlord of the tenanted premises sought eviction of the Petitioners. It was stated that the Respondents have a large family and the accommodation available was insufficient. The Respondent No.4 had six children who were staying in two rooms in property No.2488, Street Katra Rajji, behind G.B. Road, Delhi-6. The youngest son and youngest daughter of Respondent No.3 were of marriageable age and there was acute shortage of accommodation. Further Respondent Nos. 4, 5 and 7 were having only one room for their occupation.

3. In the leave to defend application, the main ground urged by the Petitioners was that the Respondents were neither the owners nor the landlord of the tenanted premises as the same belonged to Slum and JJ Department/Custodian Department where the rent used to be deposited by Mohd. Yusuf and a FIR No.760 was also lodged at PS Kamla Market, Delhi against the Respondents in this regard. The Respondents had no connection with Allah Baksh who had migrated to Pakistan and the property was thus an evacuee property.

4. Even before this Court this is the sole ground urged that the Respondents are not the owners/landlords of the premises and thus no eviction order could be passed in favour of the Respondents by the learned ARC. The Petitioners have placed on record documents to show that they had been paying the rent/license fee to the Slum and JJ Department since long and RTI reply dated 29th December, 2009 shows that the suit property

was under the management and control of Slum and JJ Department, MCD w.e.f. 1st December, 1962.

5. In response to the leave to defend application the Respondents placed on record a letter of the Assistant Settlement Commissioner-cum-Managing Officer, Evacuee Property stating that the suit property has been held to be not an evacuee property. The Respondent placed on record the photocopy of the Sale Deed dated 11th December, 1931 in favour of Allah Baksh and a copy of the detailed order dated 30th July, 1980 passed by the Assistant Custodian (Judicial), Jaisalmer House, New Delhi wherein after looking into the evidence and examining the documents the Assistant Custodian (Judicial) came to the conclusion that the suit property belonged to Shri Allah Baksh as a result of purchase through Sale Deed dated 11th December, 1931 and he was not an evacuee and it cannot be taken over or deemed to have been taken over as an evacuee property under automatic vesting. This order was also enclosed with the clarificatory letter dated 14th March, 2011.

6. Thus in view of the finding of the Competent Authority that the suit property was not an evacuee property and was purchased by Allah Baksh in December, 1931 and the Respondents having placed on record the Relinquishment Deed executed by the other legal heirs there is no error in the order of the learned ARC coming to the conclusion that no triable issue was raised and hence the leave to defend application was declined.

7. In view of the facts noted above and the clarification issued by the Assistant Settlement Commissioner vide its letter dated 14th March, 2011 along with the order dated 30th July, 1980 it was rightly held that the Respondents were the owners/landlord and no case for leave to defend was

made out. There being no illegality or perversity in the impugned order warranting interference the present petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 20, 2015
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