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HIGH COURT OF DELHI AT NEW DELHI

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RC. Revision No.574/2015

Decided on : 28th October, 2015

GAYASUDDIN & ORS.

..... Petitioners

Through: Mr. T.C. Sharma, Advocate.

Versus

MOHD. ASQIN & ANR.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 12.8.2015 by virtue of which the learned ARC-I, Central, Tis Hazari Courts, Delhi dismissed the eviction petition bearing No.352/2014 titled *Gayasuddin & Ors. vs. Mohd. Asquin & Anr.*

2. I have heard the learned counsel for the petitioners. The learned counsel has contended that the learned ARC has erroneously dismissed the petition despite the fact that he has been able to establish that he is the actual successor being the brother of late Sitara Begum and therefore, he becomes the owner. It has also been stated by him that so far as the other

parameters for passing a decree of eviction are concerned, they were also satisfied and are not in question before the learned ARC.

3. I have carefully considered the submissions and have gone through the impugned order. One Gayasuddin, s/o Late Mohd. Rashid & Others filed an eviction petition claiming themselves to be the owner of property No.7595, Ward NO.14, Katra Khuca Baksh, Qasabpura, Delhi. The case which was setup by them was that the property actually belonged to Sitara Begum, who had expired on 18.2.1985. Sitara Begum had married one Tasleem, who had migrated to Pakistan and thereafter, she had never heard of him. It was stated in the petition that the present three petitioners, being the real brothers of Sitara Begum have inherited the property and thus, are the owners of the suit property. It was also stated that petitioner No.1 is having six family members including himself; petitioner No.2 is having nine family members including himself and petitioner No.3 is having more than eleven family members while as the petitioners are in possession of two properties bearing No.T-275/6 and T-275/10, Ahata Kinara, Delhi besides property No.7595-B, Qasabpura, Delhi, which is the suit property, which are grossly insufficient to

accommodate all the family members and therefore, the petition was filed.

4. The respondent had contested the petition after leave to defend was granted. It was stated by them that the petitioners are not the legal heirs of late Sitara Begum and in any case, there are more than two legal heirs who have not been joined as parties and therefore, the petition is bad in law. So far as *bona fide* requirement of the petitioners is concerned, that was also contested and it was also disclosed by them in the written statement that in addition to the aforesaid properties disclosed by the respondents, they also had properties bearing No.5113/2 and 5118, Quresh Nagar, Delhi, apart from the suit property which was sufficient to meet their requirement. The petitioners in support of their case had examined their power of attorney AW1 Mohd. Naseem, who had proved following documents :-

- “a. SPA Ex. AW-1/1
- b. Copy of death certificate Ex. AW-1/3
- c. Copy of ration card of Mohd. Mirajuddin Ex. AW-1/10
- d. Copy of ration card of Mohd. Islamuddin Ex. AW-1/11
- e. Copy of death certificate of Mohd. Mirajuddin Ex. AW-1/12
- f. Copy of Pedigree Chart Ex. AW-1/13.”

5. From the cross-examination of the witness, one thing had been very clearly established that Sitara Begum had married Tasleem, who is still alive and he had migrated to Pakistan. The learned ARC had dismissed the petition on the ground that the petitioners have not been established to be the owners of the property by any credible evidence. For this purpose, it has referred to the fact that Sitara Begum, the owner of the property might have expired but there is no evidence brought on record to show that her husband Tasleem had also expired. On the contrary, it has been established that he had migrated to Pakistan and was still alive and this factum was admitted by AW1 in his cross-examination. On this short ground itself, the learned ARC came to the conclusion that as the petitioners were not the owners, therefore, decree of eviction in their favour could not be passed. The other points were not at all discussed by the learned ARC.

6. I find no infirmity in the analysis of evidence by the learned ARC in returning the finding of dismissal of the petition as one of the important ingredients to be satisfied before the decree of eviction can be passed on the ground of *bona fide* requirement is that the person who is claiming retrieval of possession of the premises under Section 14 (1) (e)

of the DRC Act must establish that he is the owner, which has not been established in the instant case. Therefore, I find that there is no illegality, jurisdictional error or impropriety in the impugned order. Accordingly, the petition under Section 25-B (8) of the DRC Act is totally misconceived and is dismissed.

V.K. SHALI, J.

OCTOBER 28, 2015
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