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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 103/2015 & C.M. Nos.3961/2015, 3962/2015 & 11829/2015

RAJINDER KUMAR

..... Petitioner

Through Ms. Praveen Gautam and Mr.Rohit
Kumar Modi, Advs.

versus

TARUN VERMA

..... Respondent

Through Mr. Sachin Sangwan, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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25.01.2016

The petitioner is aggrieved by the impugned order dated 04.12.2014 wherein his application seeking leave to defend had been dismissed by the Additional Rent Controller in the pending petition under Section 14 (1)(e) of the Delhi Rent Control Act (in short 'DRCA'). The petitioner is aggrieved by the finding.

The first vehement submission made by the learned counsel for the petitioner is that the property has not been properly described; it does not fall either in khasra No. 287 or 288; this has not been considered by the Trial Judge in the correct perspective. Her second submission is that he is the owner of the premises and is enjoying the property since the last 40

years. There is no relationship of landlord-tenant with the respondent; the petitioner has never attorned to the respondent. The rent receipts relied upon by the respondent purported to have been signed by the father of the petitioner are fabricated. All these raise triable issue. Leave to defend should have been granted in favour of the petitioner.

The averments contained in the application seeking leave to defend are relevant. The first argument propounded by the learned counsel for the petitioner that the property does not fall in khasra No. 287-288 and has not been properly described is not a defence in the application seeking leave to defend. This has not been mentioned anywhere in the said application which has been accompanied by the affidavit of the petitioner. Legal position is that it is only the averments which are contained in the application seeking leave to defend which have to be considered by the Court at the time of deciding whether any triable issue has arisen or not. This objection not having been taken in the application seeking leave to defend, it is worthy of no merit.

The second submission of the learned counsel for the petitioner is that he is the owner of the said shop and is enjoying the property since the last 40 years being in occupation of the same. Admittedly not a single

document has been placed on record to support this stand. This averment does not find mention in the application seeking leave to defend. The application seeking leave to defend is bereft of any detail on this count. In the application seeking leave to defend a case has been put up by the petitioner that he is the owner of the suit property being in possession since the last 40 years but on the strength of what document he becomes the owner has neither been disclosed and nor filed.

Per contra, the respondent has placed on record the jamabandi for the year 1990-1991 which reflects that the father of the respondent namely Vijay Pal Singh was the recorded owner along with five other siblings of the suit property. The suit property is located at khasra No. 287-288 of village Kotla Mubarakpur. The property was initially owned by Chowdhary Durga Singh, the great grandfather of the petitioner and after his death it was duly recorded in the jamabandi for the year 1948-49 in the names of his six sons which included the grandfather of the landlord. The grandfather of the landlord is Ram Singh. The documents showing that the mutation has been effected in the name of Vijay Pal Singh are also a part of record. Vijay Pal Singh is the father of the landlord. Record from the office of Assistant Assessor and Collector,

MCD has also been placed on record showing that the said shop (measuring 24 X 10 ft at a rental of Rs.90/- per month) was tenanted to Ram Prasad (father of the petitioner). These documents appear at page 187 of the paper book. Ram Prasad was again shown as a tenant in this shop in another document dated 16.01.2007 showing the tenancy of Ram Prasad w.e.f. 11.08.1969. This document appears at page 150 of the paper book and is also a document from the office of Assistant Assessor and Collector, MCD. Apart from this, four rent receipts purported to have been signed by Ram Prasad in favour of Vijay Pal Singh (father of the respondent) are also a part of the record. These rent receipts also reflect that Rs.90/- was being paid as rent. Although in the application seeking leave to defend, a submission has been made by the petitioner that the father of the petitioner used to sign in Hindi and not in English and that these rent receipts are fabricated; even presuming that these receipts are to be ignored, yet even while ignoring these documents, the other documents which included the jamabandi of the year 1948-49 reflecting that Ram Singh as the recorded owner of the suit property (grandfather of the present petitioner) which was followed in the mutation record in the name of Vijay Pal Singh (father of the

respondent); the assessment records from the office of Assistant Assessor and Collector, MCD again showing that Ram Prasad (father of the present petitioner) was assessed as tenant at the rate of Rs.90/- which was w.e.f. 11.08.1969; the relationship of landlord and tenant is clearly established. These being true certified copies of public record and there being no reason for the Court to disbelieve these documents, they were rightly ruled upon by the Trial Judge.

Even otherwise, the petitioner has been blowing hot and cold. At one point of time, his defence was that there is no relationship of landlord-tenant. Assuming that this argument is taken to be correct but in what capacity he was staying in the property has not been mentioned. On a query put to the learned counsel for the petitioner as to how he becomes the owner of the suit property and what were the documents showing ownership of the petitioner, the discussion recorded supra answers this submission. There is not a single document showing that he is the owner of the suit property.

On the other hand, the landlord has filed on record the jamabandi for the year 1990-91, record from the Department of Assistant Assessor and Collector, MCD all reflecting that the father of the petitioner Ram

Prasad was a tenant @ Rs.90/- per month in the suit property. The rent receipts issued by the father of the petitioner in favour of Vijay Pal (father of the respondent) also cannot be ignored.

The twin requirements which have to be satisfied in a petition under Section 14 (1)(e) of DRCA are

(a) there is bonofide need on the part of the landlord to take back the property and

(b) there is no alternate suitable accommodation available with him. Both these averments have been satisfied. They are clarified in the eviction petition and have been reiterated in the reply filed by the respondent to the application seeking leave to defend. The triable issue sought to be set up by the tenant in the application seeking leave to defend which was to the effect that he is the owner and there is no relationship of landlord and tenant is negatived by this Court in view of the discussion supra. His oral submission that property does not fall in khasra No. 287-288 and has not been properly described does not merit any consideration in view of the fact that this is not the objection taken in the application seeking leave to defend and the legal position that it is only the averments which are contained in the application seeking leave to defend which have to be

answered by the Trial Judge to determine as to whether a triable issue has arisen or not. The averments contained in the eviction petition particularly para 18 have also been perused. The respondent has claimed himself to be the owner of the said shop situating at Kotla Mubarakpur. The petitioner is a tenant at the rate of Rs.1,000/- per month besides other charges. The grandfather of the respondent Kesar Singh had inducted the father of the petitioner namely Ram Prasad as a tenant sometime in the year 196-67. The respondent had become the recorded owner of the suit property. The respondent/landlord being 31 years of age and being a graduate is unemployed and has got no suitable job and is eager to settle in life. He has no sufficient source of income. He requires the tenanted shop for a business i.e. for running a stationary shop and other allied books which business would definitely flourish in view of the fact that the property is located in a prime business area on the main road of Kotla Mubarakpur. He has no other alternate suitable accommodation.

These twin requirements are not really assailed in the application seeking leave to defend. The impugned order has noted all the facts in the correct perspective. This petition has no merit. It is an abuse of the process of the Court. Learned counsel for the petitioner has time and

again vehemently argued on submissions which do not form a part of the application seeking leave to defend. Her submission is that the property has been mis-described and is not a part of the khasra No. 287-288 and at the cost of repetition this is not the objection which has been taken in the application seeking leave to defend.

Petition being an abuse of the process of the Court is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 25, 2016

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