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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 367/2015

RAJESH JAIN

..... Petitioner

Through Petitioner with his counsel Mr. S.S.
Jain and Mr. Nikesh Jain, Advs.

versus

PREM NATH MAKKER & ORS

..... Respondents

Through Mr. H.N. Takkar and Mr. Aditya
Vikram, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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22.02.2016

The landlord before this Court is aggrieved by the order dated 21.04.2014 wherein leave to defend had been granted in favour of the tenant. The concluding paragraph while granting leave to defend to the tenant had been summed up by the ARC as follows:-

“The Court is of the considered opinion that the documents filed by the petitioner itself indicate that father of respondent No. 1 was in possession of the shop in question as early as in the year 1959. Respondent No. 1 has denied execution of rent agreement dated 01.04.1968 and rent receipts filed by the petitioner. The signature of father of respondent No. 1 on page No. 3 filed along with the rent agreement dated 01.04.1968 appear to be different from the one reflected in the rent agreement dated 01.04.1968 and other rent receipts filed by the petitioner. Moreover, this Court does not have any admitted signature of father of respondent No. 1 on record which could have been compared with the disputed signatures. Although, the respondent No. 1 has not stated as to who is owner of the shop in question, but the documents filed by the petitioners themselves indicate that father of respondent No. 1 was in possession of the shop

in question about two decades prior to execution of the rent agreement dated 01.04.1969. Therefore, trial is required to be conducted to determining the relationship between the petitioner and respondent No. 1, the period of tenancy, if any, genuineness or otherwise of the documents relied upon by the petitioner. Accordingly, the application for leave to defend filed by respondent No. 1 is allowed.”

Learned counsel for the petitioner/landlord is aggrieved by this finding. His submission is that the ownership status of a landlord is not relevant in an eviction petition to be decided under Section 14 (1)(e) of the DRCA; the tenant has admitted the relationship of landlord-tenant and this by itself was sufficient for the Trial Court to have decreed his eviction petition as no other triable issue had been raised or even answered by the Trial Court vide this impugned order.

Needless to state that this argument has been refuted.

The eviction petition has been filed by the landlord seeking eviction of the suit property i.e. shop bearing No. 3013, ground floor, Ganda Nala, Ram Bazar, Mori Gate, Delhi. Rate of rent was Rs.24/- per month. Contention in the eviction petition was that vide partition deed dated 05.06.2000 entered into between Ravinder Parsad Jain (deceased father of the petitioner) and Mahinder Prasad Jain (uncle of the petitioner), the suit property had come to the share of the family of the petitioner i.e. his father Ravinder Parsad Jain. This property had devolved upon the father of the petitioner through inheritance. It is further averred in the eviction petition that the entire property bearing No. 2997-3001, 3010-3013 was built on a land measuring 370 square

yards situated at Gali Chakki Wali, Ganda Nala, Mori Gate. It comprised of 14 shops, three rooms, three godowns, store and open court yards. The suit property was owned by the grandfather of the petitioner and after the death of their grandfather vide partition deed dated 05.06.2000 between the father of the petitioner (Ravinder Prasad Jain) and his uncle (Mahinder Prasad Jain), this suit shop had come to the share of the father of the petitioner and after his death, the petitioner is a co-owner of the property. It was stated that the relationship of landlord-tenant exists between the parties and rent was regularly being paid initially by Laxmi Chand (father of the respondent) to the father of the petitioner. Rent deed dated 01.04.1968 had also been executed between the parties and attention has also been drawn to the rent receipts dated 13.08.1982 issued by Laxmi Chand in favour of the father of the petitioner. Submission is that the landlord-tenant relationship is a foregone conclusion. The bonafide need of the petitioner has been explained as the need of Rajesh Jain who is presently doing a private service from where he is earning only Rs.7,000/- per month. He has to look after his family which comprises of his widowed mother, wife and two children aged 3 and 5 years respectively. His income is insufficient to meet the requirements of the family. He wishes to carry out the business of automobiles spare part from the suit property and his business is likely to flourish keeping in view the viable location of the property. He has no other alternate suitable accommodation in his possession. Eviction petition

was accordingly filed.

In the application seeking leave to defend, the most vehement contention raised by the tenant was that there is no relationship of landlord-tenant between the parties. The affidavit annexed along with the application seeking leave to defend has been perused. The tenant has submitted that the landlord has not come to the Court with clean hands. He is not the single owner of the suit property. The other co-owners have not joined him. There is no relationship of landlord-tenant. It is stated that in the year 1952-53, the 'caretaker' of the suit property had inducted the father of the tenant namely Laxmi Chand in the suit property and this suit property is accordingly in possession of Laxmi Chand and his family right from 1952-1953. A 'pagri' amount was also paid to the said 'caretaker'. Relevant would it be to note that name of the caretaker and the amount of 'pagri' has not been detailed in the application seeking leave to defend. Even otherwise, the contention that the tenant had become the owner of the suit property has not been stated in the said application as is now orally sought to be projected. On a candid query to the learned counsel for the respondent, he admits that he had no document to support his stand that he is the owner of the suit property. An oral averment to the said effect has however been made which not being supported by any document and not having been taken in the application seeking leave to defend is an argument which merits no consideration.

The submission of the tenant is that his father was put in the

suit property in the year 1952-1953 through a caretaker. This is an admitted fact. The name of the caretaker has not been spelt out. In the application seeking leave to defend, it has also been admitted that the father of the tenant used to pay maintenance charges to the caretaker of the building. The main contention urged before this Court is that there is no landlord-tenant relationship between the parties in view of the fact that rent deed relied upon by the landlord (dated 01.04.1968) purported to have been executed interse the father of the petitioner (Ravinder Prasad Jain) and Laxmi Chand is accused and the Trial Court has rightly concluded that this raises a triable issue.

There is no other argument which is noted by the Trial Court. None has also been pleaded in the application seeking leave to defend.

This Court is not in agreement with this submission of the learned counsel for the tenant. The whole purpose of the summary procedure as engrafted by the Legislature under Section 25-B of the DRCA would be given a go-bye if frivolous defences are allowed to be taken and leave to defend is mechanically granted in favour of the tenant. The tenant in this application seeking leave to defend has made a bald contention that his father had not executed the rent deed dated 01.04.1968 and he had not signed any rent deed. This in view of this Court was not a triable issue as admittedly Laxmi Chand was inducted into the suit property in the year 1952-53 through a caretaker; the fact that he is not the owner of the suit property is

admitted. What was the status of Laxmi Chand in the suit property is thus obviously of a tenant as averments in this application seeking leave to defend clearly disclose that it was at the behest of 'caretaker' (name not disclosed for reasons best known to the tenant) that Laxmi Chand was given possession of the suit property. The rent agreement (dated 01.04.1968) has been disputed and so also the rent receipt dated 13.08.1982 yet there were further rent receipts which have also been brought on record by the landlord in his reply to the application seeking leave to defend and those rent receipts were dated 10.09.1982. These rent receipts are purported to be signed by the respondent namely Prem Nath Makker. His signature on this document is also apparent. These documents, as per record, were filed on 01.05.2013. Learned counsel for the tenant on this count submits that these rent receipts (purported to have been signed by the respondent Prem Nath Makker) were filed not with the reply to the application seeking leave to defend but were filed later and as such the tenant had no opportunity to rebut these documents.

Noting these submission of the learned counsel for the respondent but at the same time also noting the averments in the pleadings before the Trial Court i.e. the eviction petition which had clearly disclosed the ownership status of the landlord which was to the effect that Ravinder Prasad Jain and his brother Mahinder Prasad Jain had pursuant to a partition deed dated 05.06.2000, acquired this ancestral property which had devolved upon both the brothers through

their father; i.e the grandfather of the petitioner. This document is admittedly not the subject matter of challenge. It is an admitted document and by virtue of which Rajesh Jain (the present petitioner) through his father Ravinder Prasad Jain who had in turn become the owner of this property through his own father Mahabir Jain was the owner of this property which ownership dates back to the year 1918. This document describes the fact that the petitioner Rajesh Jain was the owner of the suit property. He also claimed his status as landlord.

In the application seeking leave to defend, although it had been stated that there is no relationship of landlord and tenant yet the tenant (Prem Nath Makker) made a clear admission that his father Laxmi Chand had been inducted in this property in the year 1952-1953 by a caretaker of this property. Who could be this caretaker but the father of the petitioner as admittedly the father of the petitioner was a co-owner of this property. It is not the case of the tenant (in his application seeking leave to defend) that Ravinder Prasad Jain had not inducted Laxmi Chand in the suit property as is the averment set up in the eviction petition. The fact that Laxmi Chand was paying maintenance charges to that caretaker is also an admitted fact. It is also not the defence of the tenant that he is the owner of the property. He has candidly admitted that he has no document to substantiate this.

The learned counsel for the landlord has also relied upon the rent agreement dated 01.04.1968 (executed between Laxmi Chand

and Ravinder Prasad Jain) and apart from this rent agreement, there is also a rent receipts (dated 13.08.1982) purported to have been executed by Laxmi Chand. There is only a bald denial; it definitely does not raise any triable issue as this Court has ultimately to decide the status of the respondent in the suit property; he admittedly not being the owner and also admittedly having been inducted through a caretaker (who could be none-else than Ravinder Prasad Jain) in the year 1952-1953 and Laxmi Chand also having paid maintenance charges to the said caretaker, the status of the landlord-tenant relationship is clearly answered. Section 116 of the Indian Evidence Act also comes to the aid of the petitioner.

The Apex Court in this context in (2000) 1 SCC 451 C. Chandamohan Vs. Sengottayan (dead) through Legal heirs. And Others has noted as under:-

“To constitute denial of title of the landlord, a tenant should renounce his character as tenant and set up title or right inconsistent with the relationship of landlord and tenant, either in himself or a third person. In the case of derivative title of the landlord, in the absence of notice of transfer of title in favour of the landlord or attornment of tenancy a tenant’s assertion that the landlord is a co-owner does not amount to denial of his title, unless the tenant has also renounced his relationship as a tenant. The principle of equity that a person cannot approbate and reprobate finds legislative recognition in Section 116 of the Evidence Act.”

This is further clear from the fact that after the death of Laxmi Chand, legal notice was sent to his legal heirs on 30.10.2000 claiming rent from them. All the legal heirs of Laxmi Chand were deemed to be served with this notice. No dispute was raised by them. This has also been detailed in the eviction petition.

The bonafide requirement has also been detailed which is to the effect that there is no other alternate suitable accommodation with the petitioner to carry out his business which he wishes to from this shop which is situated in a commercially viable location. The fact that one co-owner can maintain an eviction petition is also an admitted legal position.

In this context the Apex Court in ((2004)3SCC178, [2004]1SCR10) India Umbrella Manufacturing Co. and Ors. Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Ors has held as under:

“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. 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.”

The Trial Court noting frivolous grounds and granting leave to defend has thus committed a grave illegality.

In this background, the petition is allowed and impugned order is set aside. Eviction petition stands decreed.

INDERMEET KAUR, J

FEBRUARY 22, 2016

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