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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 01.03.2016.

Judgment delivered on: 04.03.2016.

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RC.REV. 299/2013

SHRI RAJENDER KUMAR DUGGAL & ANR

..... Petitioners

Through Mr. S.S. Tomar, Adv.
versus

SMT SANJOG BEDI

..... Respondent

Through Mr. Naveen Kumar Chaudhary
and Mr. B.K. Goel, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner is aggrieved by the impugned judgment dated 06.06.2013 wherein the eviction petition filed by him (Rajender Kumar Duggal) seeking eviction of his tenant (Sanjog Bedi) in proceedings under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) stood dismissed. This was after trial.

2 Record discloses that there are two petitioners before the Trial Court namely Rajender Kumar Duggal and Ashok Kumar Duggal. Both were sons of late Raghunath Duggal. They had sought eviction of the

tenant from the suit property i.e. House No. 47, Block 52, Ramjas Road, Karol Bagh, New Delhi. The tenanted premises were on the ground floor comprising of three rooms, one kitchen, one W.C., one bathroom and one covered verandah and open courtyard (depicted in red colour in the site plan). The tenancy was initially created in the name of Brahm Dutt Sharma. This was in the year 1952. Monthly rent of Rs.110/- per month which was exclusive of electricity and water charges. After the death of Brahm Dutt Sharma on 19.05.1997, the respondent (Sanjog Bedi) illegally occupied the suit premises. A civil suit for possession was also filed by the landlords against Sanjog Bedi and her husband. This suit was dismissed on 28.08.2009. That Court was of the view that the respondent had inherited the tenancy from the original tenant i.e. from her brother and thus her case would be covered under the DRCA. The present petition was accordingly filed.

3 Petitioner No. 1 is aged 81 years and petitioner No. 2 is aged 71 years. The family of petitioner No. 1 comprises of himself, his son (R.R. Duggal), daughter-in-law (Bhawna Duggal) and three grand children aged 19, 14 & 13 years respectively. Petitioner No. 1 has another son Harish Kumar Duggal who is a resident of Holland who visits petitioner

No. 1 often. Harish Duggal's family comprises of his wife, three sons and a daughter. The family of petitioner No.2 comprises of himself and his wife Sudershan Rani. He has a married daughter living at Canada. She visits India regularly to meet her parents. Her family comprises of herself, her husband and two grown up sons. Petitioner No. 2 is a resident of Punjab but frequently visits Delhi for 10-12 days on an average in a month. His wife is undergoing treatment at Sir Ganga Ram Hospital and her treatment papers had been filed along with the eviction petition. Submission of the landlord being that their accommodation is insufficient as the present accommodation comprises of only one bed room, one dining room, one kitchen and one toilet and gallery with open courtyard on the ground floor; there is one drawing room, 4 bed rooms, 2 kitchens and two bathrooms/toilet and a gallery on the first floor. The second floor comprises of two rooms, one kitchen, one toilet and an open courtyard. This is in occupation of A.K. Marwah, the nephew of the petitioners. He is aged 65 years. No steps had been taken to oust him because of the close relations with A.K. Marwah. The residential need is of petitioner No. 2 which is bonafide as he has to come to Delhi often from Punjab not only for his own self but also to treat his ailing wife and

the accommodation presently available with the family is insufficient to accommodate him. Apart from this property, the petitioners have no other suitable accommodation. Eviction petition was accordingly filed.

4 Leave to defend had been filed. Leave had been granted on 19.04.2010. Written statement was filed by the respondent. Her main defence is that the accommodation sought bonafide for petitioner No. 2 is not a genuine or a bonafide need; it is in fact malafide. There is enough accommodation on the second floor which has been termed as a 'barsati floor'; it is a full-fledged accommodation and the contention of the landlord that their nephew A.K. Marwah is residing in that property is false; A.K.Marwah is in fact residing with his brother Onkar at Rajender Nagar. The need of petitioner No. 2 even assuming is genuine can be fulfilled by the two rooms (along with a kitchen, latrine and a verandah) on the barsati floor. The residential accommodation which is available on the ground floor and the first floor has also not been depicted properly and the site plan is in contradiction to the site plan filed by the tenant.

5 Evidence was led by the parties. Petitioner No. 2 has examined himself as PW-1. He has produced various documents in the course of

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his testimony which included Ex.PW-1/5 and Ex.PW-1/6 (highlighted by the learned counsel for the petitioners); submission being that Ex.PW-1/5 is the electricity bills generated in the name of Shakuntla Devi (sister of the petitioners); she is the mother of A.K. Marwah; this is to substantiate that the residence of A.K. Marwah is on the second floor. Ex.PW-1/6 is statement of account of A.K. Marwah wherein his residential address (even as way back as in the year 2008) has been depicted as the second floor of property No. 52/47, Ramjas Road. PW-2 and PW-3 had produced the summoned record from their departments to substantiate the visits of Harish Kumar Duggal (resident of Holland) to Delhi as also the visits of Priya (resident of Canada) to India.

6 The respondent per contra had examined herself. Four other witnesses were also produced of which RW-3, RW-4 & RW-5 were the neighbours of the parties. RW-2 had produced the record from DLF, Gurgaon to substantiate the submission of the respondent that Bhawna Duggal (daughter-in-law of petitioner No.1) was the owner of a property at Gurgaon and thus her need in the suit property was not real.

7 The oral and documentary evidence was examined in detail by the Additional Rent Controller (ARC).

8 Before advertng to the evidence, this Court would like to remind itself that this Court is sitting in a revisional jurisdiction. Until and unless there is a patent illegality or a perversity which is apparent on the face of the record, this Court may not interfere.

9 On this count, learned counsel for the petitioners submits that the evidence has not been appreciated by the ARC in the correct perspective and the illegality and perversity in this appreciation by the Trial Judge is clearly evident.

10 Needless to state that these arguments have been refuted by the learned counsel for the respondent. His submission is that the impugned judgment in no manner calls for any interference.

11 This petition has been filed by the landlords. There is no counter-revision by the tenant. On various issues, the Trial Court has returned finding in favour of the landlords. These findings are undisputed and are as under.

12 The ownership of the landlords is not in dispute. It is an admitted fact that the petitioners are landlords of the suit property and the respondent is a tenant. It is also an admitted fact that the civil suit filed by the landlords had been dismissed as the Court was of the view that

the respondent has inherited her tenancy rights from her brother; it was a corollary to that judgment that this eviction petition was filed. The Trial Court has also returned a finding that the accommodation at Q-4/12, DLF, Phase II, Gurgaon which is in the name of Bhawna Duggal (daughter-in-law of petitioner No. 1) cannot be said to be a reasonable suitable alternate accommodation of the petitioners as admittedly this accommodation besides the fact that it is in the name of the daughter-in-law of petitioner No.1, even otherwise, the grandchildren of petitioner No. 1 are admittedly staying in Delhi; his son R.R. Duggal, the husband of Bhawna Duggal is also working in Delhi; even presuming that this accommodation was in the name of Bhawna Duggal, it would not affect the right of the two petitioners in the present eviction petition.

13 On the extent of the bonafide requirement of the tenanted premises for the purposes of their residence, the Trial Court was of the view that the accommodation available on the ground floor and the first floor is sufficient to accommodate the family of petitioner No. 1. Petitioner No. 1 has a wife and two sons of whom one is admittedly a resident of Delhi. He also has three teenaged grandchildren; the eviction petition had been filed on 14.10.2009; in that year they were aged 19, 14

& 13 years. The Trial Court was of the view that each of them require one room and so also one room is required for their parents, the son and daughter-in-law of petitioner No. 1. Petitioner No. 1 also requires a bed room for himself. A detailed fact finding has been returned by the Trial Court on this issue.

14 The site plan filed by the landlords and the site plan filed by the tenant were examined. They are not contrary and distinct. They appear to be the same and this Court has studied both of them in the course of the arguments with the assistance of the respective counsels. The site plan of the landlord is Ex.PW-1/2. The site plan filed by the tenant is Ex.PW-1/R-1. In his cross-examination, PW-1 has admitted that Ex.PW-1/R-1 is correct. In this view of the matter, the Court will confine itself to Ex.PW-1/R-1.

15 This site plan shows that on the ground floor of the property, the portion which is in occupation of the landlords comprises of one dining room, one bed room, an open courtyard and a bathroom/toilet as also a kitchen. The room depicted by the tenant as a bed room has been shown as a dining room by the landlords. The need of dining room is eminent.

It cannot be said that a large family (as is the family of the landlords)

does not require a dining room and thus the submission of the learned counsel for the tenant that this dining room can also be treated as a bed room is a submission which is bereft of force. The portion shown in green colour in this site plan is admittedly the portion which is in occupation of the tenant. There is no other accommodation on the ground floor. On the first floor (as per Ex.PW-1/R-1), the tenant has depicted six bed rooms. There is an open courtyard and a gallery as also a bathroom depicted in this site plan. This is identical with the site plan of the landlords except that the portion which is shown as a bed room on the extreme left (measures 13" X 15") has been described as a store by the landlords. Looking at the measurement of this room (13" X 15" square feet) as compared to the adjacent room (19" X 11" square feet) shows that this is a much smaller room. The fact that a store room is required for a large family is also not out of place and thus the submission of the tenant that this store room can be used as a bed room is again an argument bereft of any force. The bed room on the top extreme left (depicted in Ex.PW-1/R-1) has been described as a drawing room by the landlords. On a query put to the learned counsel for the landlords on this count that if he has a drawing room on the ground floor

why he needs a drawing/living room on the first floor, it has rightly been pointed out that there are three adult grandchildren of petitioner No. 1. On the date of filing of the eviction petition, they were aged 19, 14 & 13 years respectively; one of them was an adult even on that date; their friends come to visit them and they require some space where they can accommodate them; this need over the years (i.e. from the date of filing of the eviction petition till today) has become even larger as the grandchildren do need an area where they can sit with their friends and if need be, have joint work sessions. This explanation furnished by the learned counsel for the landlord appears to be wholly correct. For such a large family, a drawing room (on the ground floor) and a living room on the first floor is also not out of the ordinary. It would be normal for the grandchildren to have an accommodation where they can space out with their friends.

16 The Trial Court in fact had returned a finding that the ground floor and the first floor accommodation is sufficient for the family of petitioner No. 1. The only finding which has been returned against the landlord in this judgment is qua the second floor. The Trial Court was of the view that the second floor which is purportedly with A.K. Marwah is

not really with him. This second floor accommodation which was initially described as a barsati floor has admittedly two rooms, a kitchen, a toilet and an open verandah; it would be sufficient to fulfill the need of petitioner No.2.

17 The Trial Court has discussed the evidence in detail qua this proposition.

18 This Court is not in agreement with this finding returned by the Trial Judge. Admittedly petitioner No. 2 was aged 71 years on the date of filing of the eviction petition. Over the years, he is now in his late 70's. The medical record of his ailing wife showing her admission in Sir Ganga Ram Hospital on several occasions (documents filed to support this) shows that she is suffering from old age ailments which include osteoporosis and not only does she require treatment for her knees/bones, in such a scenario, it would be impossible for her to climb two flights of stairs to access her accommodation on the barsati floor which as per the Trial Court is the alternate accommodation available to fulfill the need of petitioner No.2. Ex.PW-1/4 is a medical document showing tenderness and swelling on her right knee and evidences her admission in the hospital which was in the year 2006 and which is prior

to the filing of the eviction petition. This is an admitted document.

19 That apart, the contention in the eviction petition from the very inception was that A.K. Marwah, the nephew/bhanja of the landlords was living in this accommodation. He is a bachelor aged 65 years. That was on the date of filing of the eviction petition. The fact that he is living in this accommodation (2nd floor) is also evident from Ex.PW-1/5 & Ex.PW-1/6. Ex.PW-1/5 is the electricity bills generated in the name of Shakuntala Devi (mother of A.K. Marwah). They are no doubt computer generated bills and marked as true copies but the fact that they have been downloaded from the site of the BSES is evident. They do reflect that Shakuntala Devi was a resident of 52/47, second floor, Ramjas Road from the year 2008 onwards. In his deposition, PW-1 has stated that their sister Shakuntala Devi was living in this property since 1953. Learned counsel for the tenant points out that this was the never plea set up by the landlord in his eviction petition. This Court notes this submission. It is correct that in the eviction petition it had not been stated that Shakuntala Devi was a resident of second floor since 1953 but the contention in the eviction petition all along has been that A.K. Marwah (the son of Shakuntala Devi), a bachelor aged 65 years is in

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occupation of this portion of the property. The evidence led before the Trial Court has substantiated this. This is substantiated not only by Ex.PW-1/5 but also by Ex.PW-1/6 which is a bank statement from the years 2008 to 2011 in the name of A.K. Marwah reflecting the fact that he is a resident of second floor at 52/47, Ramjas Road.

20 The witnesses produced in defence have not been able to dislodge this submission. RW-1 in her cross-examination has admitted that she has not visited the upper portion of the suit property since the last more than 20 years ago. She also could not state whether the second floor was vacant or not. The neighbours examined as RW-3, RW-4 & RW-5 could not be in a better position than RW-1 herself to state as to whether A.K. Marwah was a resident of the second floor or not as was the contention of the landlords. RW-3 in his cross-examination has admitted that the second floor used to be called the barsati floor; he admitted that he had met A.K. Marwah 4-5 months ago on the main Ramjas Road; he admitted that he had not seen A.K. Marwah residing with his brother (Onkar) as was the submission of the learned counsel for the tenant whose submission on this score was that A.K. Marwah was living with his brother Onkar at Rajender Nagar. It is also not in dispute that this

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property at Rajender Nagar is in the name of Onkar and A.K.Marwah has no share in this property. RW-4 also admitted that he had not seen any worker doing any embroidery work on the first floor as was the contention of the learned counsel for the tenant that one room was being used by the daughter-in-law of petitioner No. 1 for the purposes of her business which is of embroidery. He also admitted that he had not visited the barsati floor for the last six years. RW-5 has admitted that the relations of the petitioners with A.K. Marwah are not very good; sometime they are good and sometime they are bad. He knew A.K. Marwah since the year 1972 and he was residing with his family members on the second floor. This has categorically been admitted by RW-5. RW-5 has also in another part of his cross-examination admitted that petitioner No. 2 is a resident of Punjab where there is no medical facility and the closest medical facility is at a distance of 7-8 kilometers from the village of petitioner No. 2 which is at Phagwara.

21 This evidence which is writ large on the face of the record was not appreciated in the correct perspective by the Trial Judge. The Trial Judge, in this background, returned a finding that the accommodation on the second floor was an accommodation which was available with the

landlords and was a reasonably suitable alternate accommodation with petitioner No. 2. This is not only an illegal but also a perverse finding.

22 Petitioner No. 2 is admittedly a resident of Punjab. On the date of filing of the eviction petition, he was 71 years of age. He is about 77 years of age. His wife is also in her 70's. She has admittedly stayed in the Sir Ganga Ram Hospital on two occasions for her orthopedic problem which includes swelling in her knees; she was being treated not only as an OPD patient but also as an indoor patient. This was in the year 2006 which is much prior to the filing of the eviction petition meaning thereby that as early as one decade ago, the wife of petitioner No. 2 was suffering from osteoporosis. The contention of the petitioners that this problem has aggravated also cannot be ignored. It is not the version of the tenant that the wife of petitioner No. 2 has undergone any surgery for this problem which could have improved her medical condition. This is not the case of the tenant.

23 In this background, the Trial Judge holding that the accommodation on the second floor is a reasonably suitable accommodation for the two senior citizens which admittedly can be accessed only by climbing two flights of stairs is nothing short of a

perverse finding.

24 That apart, the Trial Court had also been misled in concluding that the accommodation on the second floor was with the landlords. This finding is also contrary to the record. Ex.PW-1/5 and Ex.PW-1/6 clearly show that A.K. Marwah was residing in this property and this has been admitted even by the witnesses of the tenant i.e. RW-4 who in his cross-examination has admitted that A.K. Marwah and his family were residing on the second floor since 1972. The submission of the tenant that A.K. Marwah was actually residing at Rajender Nagar with his brother Onkar has been denied. RW-3 admitted that he seen A.K. on the main Ramjas road; he admitted that A.K. Marwah was not living with his brother Onkar. The fact that A.K. Marwah is a bachelor aged 65 years and the son of the sister of the petitioners is also an admitted fact. Their contention that because of their close relationship which they share with A.K. Marwah, proceedings of ejectment had not been conducted against him thus also appears to be correct.

25 Accordingly, the eviction petition must succeed. The Trial Court having dismissed it on cursory grounds has committed an illegality. At the cost of repetition, the accommodation on the ground floor comprises

only of on one bed room which is presently in use and occupation of the elder son R.R. Duggal of petitioner No. 1. Petitioner No. 1 was aged 81 years on the date of filing of the eviction petition. This has been admitted by RW-1 in her cross-examination. He is occupying one bed room. The other three bed rooms on the first floor are in the occupation of the three adult grandchildren. The fact that a living room on the first floor is also required by the growing grandchildren of petitioner No. 1 who at the cost of repetition need adult space to accommodate their friends. The requirement of a store for such a large family is also essential. The fact that the son of petitioner No. 1 is a resident of Holland and the daughter of petitioner No. 2 is married in Canada is also an admitted position. The records produced by the Competent Authority (PW-2 & PW-3) reflect that they have been visiting India more than once annually; they come for a minimum 10-15 days. Harish Kumar Duggal has a family comprises of his wife and three children. Priya Duggal has a husband and two adult grown up sons. They have to be accommodated when their come to meet their parents in India. A guest room is a necessity. There is no room for their requirement. Petitioner No. 2 is also admittedly a resident of Punjab. RW-5 has admitted that

the closest medical facility for these senior citizens is 7-8 kilometers away which is at Phagwara. The fact that he is coming to Delhi for the treatment of his wife has been established. He needs to stay in Delhi. He needs a space for himself and his family which is his wife and his daughter who visits him from Canada. The accommodation with the tenant is the most suitable alternate accommodation which can be made available to petitioner No. 2.

26 In this background, the petition is allowed. The eviction petition stands decreed.

INDERMEET KAUR, J

MARCH 04, 2016

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