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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 31.03.2016.

Judgment delivered on : 08.04.2016.

- + CM(M) 1116/2014 & CrI.M.A. No.3578/2015
SURESH CHAND JAIN Petitioner
Through Mr.S.S.Jain and Mr. Nikesh Jain,
Advocate.
versus
GODAVARI DEVI JESWANI & ORS Respondents
Through Dr.Sarabjit Sharma, Ms.Shidhika
Verma and Ms. Priamvada,
Advocates.
- + CM(M) 1117/2014 & CrI.M.A No.3514/2015
SURESH CHAND JAIN Petitioner
Through Mr.S.S.Jain and Mr. Nikesh Jain,
Advocate.
versus
GODAVARI DEVI JESWANI & ORS' Respondent
Through Dr.Sarabjit Sharma, Ms.Shidhika
Verma and Ms. Priamvada,
Advocates.
- + RC.REV. 230/2015
SURESH CHAND JAIN Petitioner
Through Mr.S.S.Jain and Mr. Nikesh Jain,
Advocate.
versus
RAJENDER KUMAR & ANR Respondents
Through Mr.H.K.Gangwani, Advocate

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner before this Court is Suresh Chand Jain. He claims himself to the owner and the landlord in all the aforementioned three petitions. Two of the suit properties have been tenanted out to a tenant namely Godavari Devi Jeswani & Others. The third tenant is Rajender Kumar and another. The suit premises qua the tenancy of Godavari Devi Jeswani & Others is shop Nos. 3911 & 3912, Gali Barna, Sadar Bazar, Delhi-110006. The third tenanted shop i.e. qua the third tenant Rajender Kumar is shop No.3910 forming part of the same property i.e. Gali Barna, Sadar Bazar, Delhi. A perusal of the site plan in fact shows that all these three shops are adjacent and adjoining one another. All of them face a front façade i.e. a road measuring 25.6 feet.

2 On 14.10.2014, vide two impugned judgments, leave to defend had been granted to the tenant Godavari Devi Jeswani & Others qua thw shop Nos.3911 & 3912. The Trial Court was of the view that triable issues have arisen. The third judgment is the judgment dated 10.03.2015. In this case also, the Additional Rent Controller (ARC) was of the view that the triable issues have arisen and leave to defend had been granted qua shop NO. 3910 as well.

3 The first two petitions i.e. the petitions qua the tenancy of Godavari Devi Jeswani & Others were heard and reserved for orders. The third petition i.e. qua the tenancy of Rajender Kumar and Another was heard at a later date but also reserved for orders. All these three petitions shall now be decided by this common judgment.

4 The landlord Suresh Chand Jain has made common averments in all the three eviction petitions. In C.M. (M) No.1116/2014, the shop No. is 3912. It is a non-residential property. The need of the landlord has been described in para 18. The landlord has stated that he is the owner of the suit premises. The same has been let out to the respondent-tenant for non-residential purposes. It is bonafide required by the petitioner for running business of sanitary ware/tiles by his son. Submission being that apart from shop No. 3912, he also requires the adjoining and adjacent shops i.e. shops No.3910 & 3911 as also a portion of property bearing No.3908 (at the back side) for running the business which his son is already doing from Mangol Puri but being a rented accommodation at Mangol Puri, he now wants the present premises from which he wishes to carry out his business. Submission being that the petitioner has two sons namely Nitesh Jain and Nikesh Jain. These premises are required for his elder son Nitesh Jain aged 36 years and

as noted supra, he is already running a shop of sale of tiles and sanitaryware from a rented accommodation at 70/1/1, Marble Market, Mangolpuri Kalan, Rohini Delhi. He is carrying out this business for the last several years. It is under the name and style of M/s Vardhman Tiles. That shop has been taken on rent at a rate of Rs.6,000/- per month. A godown has also been taken for the purpose of storage for which a monthly rent of Rs.9,500/- is being paid. Tehse rented premises at Mangol Puri from where his elder son is carrying out his business is about 16 kilometers away from Sadar Bazar where the parties are residing. The landlord and his family including his son Nitesh Jain are living in property bearing NO. 3760-61, Gali Barna, Sadar Bazar, Delhi. The present property i.e. shop No. 3912 when co-joined with the other shops No. 3910 & 3911 (for which separate eviction petitions have been filed) would enable the son of the petitioner to have an area of about 800-900 square feet which would be adequate for the purpose of carrying on his business. Shop No. 3908 (for which a separate eviction petition has also been filed) which is on the backside would be suitable for storage purposes. The son of the petitioner is presently carrying on his business from the rented accommodation which beside the fact is far from his place of residence, even otherwise is not suitable as the area is much smaller; the shop at Mangol Puri

measures 300 square feet. The present premises are accordingly required for the bonafide need of his son who is dependent upon his father for his need for accommodation. Submission being that this property being located in Sadar Bazar which is a well known market for wholesale and retail business would be a viable suitable accommodation for the purpose of carrying on business by Nitesh Jain; the petitioner-father also has necessary funds for enabling his son to do this business. The petitioner has also no alternate suitable accommodation for enabling his son Nitesh Jain to carry out this business of sanitary ware which he is carrying on from a rented place. The eviction petition further discloses the other properties which are owned by the petitioner. It is stated that shop No. 3913 is also owned by him it is a staircase leading from the ground floor to first and second floors of the suit property; this portion consists of three room, a kitchen and a bathroom has been let out to the erstwhile tenant namely Parduman Kumar Jain and after his death his legal heir Anil Jain is in occupation of the same. The second floor of the suit property is in occupation of one Gian Chand Jain. The eviction petition further discloses that the wife of the petitioner Nisha Jain is the owner of the property No. 7036-7041, Gali Tanki Wali, Mandi Ghass, Pahari Dhiraj, Delhi and the same have been tenanted out.

5 These facts as disclosed in the present eviction petition are almost verbatim the facts which are disclosed in the corresponding eviction petitions i.e. C.M.No.1117/2014 & R.C.R. No.230/2015.

6 Separate applications seeking leave to defend were filed by all the tenants. In C.M.(M) No.1116/2014 and C.M.(M) No.1117/2014, the tenant is common namely Godavari Devi Jeswani & Others who is in occupation of shop Nos.3911 & 3912.

7 The site plan depicts that both these shops are adjacent to one another. The area of shop No. 3911 comprises of about 500 square feet; the area of shop No.3912 is approximately 150 square feet. The portion of this shop (No.3912) is encumbered by the staircase which has a separate municipal No.3913. The site plan further shows that shop No.3910 is immediately adjoining shop NO.3911. Shop No.3908 opens out on the back lane. The back lane is about 6 feet wide. There is no dispute to these facts.

8 The two applications seeking leve to defend filed by Godavari Devi Jeswani & Others has raised identical issues. Submission is that the landlord has failed to prove that he is the owner of the suit property. He is claiming his ownership on the basis of a Will of Ajit Prasad Jain and Chander Wati. The tenant Godavari Devi Jeswani & Others was paying rent to Chander

Wati and the rent receipts issued by her in December, 1978 (filed in the trial Court) clearly show that Chander Wati had signed her name in Hindi. The Will of Chander Wati pursuant to which the landlord is now claiming ownership in the suit property is thumb marked; this document is suspicious as Chander Wati having signed all the rent receipts till the year 1978, it would be difficult to believe that in 1980 when this Will was prepared, she was not in a position to sign it but merely thumb mark on it. This raises a serious doubt on the veracity of this document. The ownership of the petitioner does not stand proved. This raises a triable issue. It is submitted that the petitioner is admittedly an adopted son of Ajit Prasad Jain and Chander Wati; attention has also been drawn to the adoption deed. Submission being that although this is a registered document but it cannot be looked into as the essential requirements of a valid adoption as contained in Section 7 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the 'HAMA') has not been adhered to. The consent of Chadner Wati i.e. the mother of the petitioner had not been taken by her husband at the time of the so called adoption. This also raises a triable issue. Evidence is required.

9 The additional triable issue sought to be raised by the tenant in this application seeking leave to defend is to the effect that the premises in question is not required bonafide by the petitioner. The petitioner is aged 75 years of age and his elder son for whom this bonafide need has been disclosed is 36 years of age and by no stretch of imagination, can it be said that the son who is in his mid thirties would be dependent upon his father.

10 The application seeking leave to defend in C.M.(M) No. 1117/2014 is also by and large on the same points. The same triable issue i.e. qua the ownership of the landlord as also his bonafide need have been raised.

11 The question about the veracity of the Will of Ajit Prasad Jain and Chander Wati (the parents of the landlord) has been raised; it is stated to be fabricated. Attention has also been drawn to the rent receipts issued by Chander Wati. Submission being that same which is to the effect that Chander wati used to sign in Hindi and the Will carrying her thumb impression clearly creates a doubt on the veracity of the document. The bonafide need pleaded by the petitioner also appears to be not genuine as an adult who is in his mid 30's carrying on his own business cannot qualify as 'dependent' upon his father.

12 Arguments have been heard. Record has been perused.

13 The petitioner claims himself to be the adopted son of Ajit Prasad Jain and Chander Wati. The adoption deed dated 28.01.1955 is a registered document by virtue of which Ajit Prasad Jain had adopted the petitioner Suresh Chand Jain as his son. Admittedly Ajit Prasad Jain had only one daughter namely Gurkamal and he had accordingly adopted Suresh Chand Jain not only pursuant to a ceremonial ritual but also by virtue of this registered adoption document. This document at the cost of repetition is dated 28.01.1955 and being prior in time to the enactment of the HAMA. The provisions of Section 7 even presuming have not been complied with and the consent of Chander Wati had not been taken would not make this deed invalid. That apart, there is nothing to suggest that Chander Wati had not given her implied consent to this adoption. The enunciations contained in this document do not support this version of the tenant. This document is not assailable. The petitioner having established himself to be the adopted son of Ajit Prasad Jain and Chander Wati not only became entitled to the aforementioned properties by inheritance but as also under the testamentary law. The petitioner has relied upon the Will of his father Ajit Prasad Jain dated 11.05.1969. This document is also registered. By virtue of this document, Ajit Prasad Jain had given life interest in his property in favour of his wife

Chander Wati and after her death to the petitioner Suresh Chand Jain. Chander Wati had thereafter executed a Will on 27.12.1981 by virtue of which she had bequeathed all her properties both moveable and immoveable to Suresh Chand Jain. This Will is admittedly thumb marked. Chander Wati had expired on 04.07.1982 i.e. within less than six months of her having executed this document.

14 The submission of the learned counsel for the respondent that till 1978 Chander Wati was signing in Hindi on the rent receipts being issued by her and it is difficult to believe that at the time when she executed her Will, she had thumb marked it which raises a doubt on the veracity of the document is an argument noted to be rejected. Admittedly Chander Wati was in her mid 80's at the time when she executed her Will. Even presuming that she had signed the rent receipts till December, 1978 but this Will had been executed more than three years later i.e. on 27.12.1981. The rule of ageing is well known; a person ages much faster in his later years as compared to his early years and the submission of the learned counsel for the petitioner-landlord that at the time when Chander Wati had executed the Will, she was not in a position to pen her signatures is a submission which carries complete force; there is no reason to dis-believe this submission. More so, it is noted that

within less than six months of execution of the Will, Chander Wati had expired.

15 This Court notes that the tenant Godawari Devi Jeswani & Others had disputed the Will of Chander Wati. The tenant Rajender Kumar and another had disputed both the Wills i.e. of Ajit Prasad as well as of Chander Wati. This Court is not in agreement with this submission of the learned counsel for the respondents as the aforementioned documents cannot be made the subject matter of challenge by the tenant who cannot deny and in fact does not deny his status as a tenant in the suit property. The question of ownership sought to be raised by him would not be crucial in an eviction petition filed under Section 14(1)(e) of the Delhi Rent Control Act (DRCA). The law on this aspect is clear.

16 The Apex Court in Kamaljit Singh Vs. Sarabjit Singh in Civil Appeal No.8410/2014 had noted that the rule of estoppel as contained in Section 116 of the Evidence Act prevents the tenant who is in occupation of the premises from denying the title of the landlord; once the jural relationship of the landlord-tenant exists between the parties is proved, the concept of ownership would fade into oblivion. The rule embodied in Section 116 of the Evidence Act prevents the tenant in occupation of the premises from denying

the title of his landlord. This was the ratio laid down by the Apex Court in the aforementioned judgment.

17 In another judgment of a Bench of this Court reported as 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Others while dealing with the concept of ownership sought to be raised by the tenant, the Court has noted as under:-

“There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title of the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

18 On the question of the challenge laid to a Will by virtue of which the landlord had become the owner of the suit property, a Bench of this Court in Ravi Prakash Garg Vs. Jaswanit Singh Jaiswal in R.C.Rev.No.44/2012 had noted that the tenant had no locus standi to challenge the Will by virtue of which the property had been bequeathed in favour of the landlord.

19 This Court is thus of the considered view that this argument raised by the respondent here is a cloud over the ownership of the landlord is an argument which is worthy of no merit and the Trial Court having noted this as a triable issue has committed a grave illegality.

20 At this stage, it would be relevant to note that the status of the landlord has never been disputed. In fact in the application seeking leave to defend, the status of the landlord has never been challenged; the only submission all along being that the landlord is the owner of the suit property. In the very first paragraph of the affidavit filed by Godavari Devi Jeswani & Others she has admitted that she is the tenant in the aforementioned premises i.e. premises No. 3911 & 3912 and the monthly rent has also been disclosed. In the eviction petition qua the tenancy of Rejender Kumar and another, again the concept of tenancy has also not been challenged. It is the status of the landlord as the owner which has been challenged. The rent receipts which are admitted documents and which have been relied upon by the tenant himself and which have been placed on record clearly show that the rent was being paid to Suresh Chand Jain. These rent receipts are of the years 1987 and 1988. They are also a part of this record and are not in dispute.

21 This argument thus raises no triable issue.

22 The second triable issue noted by the Trial Court for which leave to defend had been granted to the tenant relate to the bonafide need of the landlord. The Trial Court was of the view that there is enough accommodation with the landlord and his bonafide need has to be tested in trial. This Court is not in agreement with this submission also of the learned counsel for the tenants.

23 The eviction petition discloses that the elder son of the petitioner is aged 36 years. He is carrying on his business of sanitary and hardware at Mangol Puri from a rented accommodation where he is paying rent of Rs. 6,500/- per month for a 300 square feet shop and Rs. 9,500/- for a separate godown. The business of his son requires all the three shops from where he can run this business as also a godown for storage purposes. His present shop is at a distance of 16 kilometers from the residence of the parties who are living in Sadar Bazar. The disputed premises i.e. the premises which are now the subject matter of the impugned judgment comprise of shop No. 3910, 3911 & 3912. Shop No. 3910 is on the extreme left. Shop No. 3912 is on the extreme right. Shop No. 3911 is much larger. This shop opens out into a hall which is much larger; total area is about 500 square feet. The total area available to the petitioner in case all these three shops which are adjacent and

adjoining one another (as is evident from the site plan) would be around 800-900 square feet which is the area which is required by the petitioner for enabling his son to carry on his business. It is a ridiculous preposition raised by the tenant that the son of the petitioner should continue to carry out his business from his rented accommodation as his need appears to be fulfilled from that rented property. At the cost of repetition, the rented property is in Mangol Puri and where the son of the petitioner is paying a cumulative rental of Rs. 15,000/- per month. The premises which are in occupation of the three tenants before this Court would be not only more viable and commercially suitable for the business of the son of the petitioner as admittedly Sadar Bazar is a well known market for wholesale and retail business but it is also established that the petitioner has no other alternate suitable accommodation available with him. A rented accommodation can by no stretch of imagination be an alternate accommodation where admittedly apart from the burden of a monthly rental of Rs. 15,000/- the accommodation is also at a distance of 16 kms from where the incumbent (son of the petitioner) resides. The suit premises (the three shops) are also on the main road of Sadar Bazar and when joined together would have an area of about 800-900 square feet which would be wholly conducive business preposition for the son of the

petitioner. The fact that the son of the petitioner is dependent upon his father for his accommodation has been specifically averred in the eviction petition. Even presuming that the son is paying a rental of Rs. 15,000/- per month, that would not prevent him from him being dependent upon his father for the purpose of accommodation.

24 The concept of ‘dependency’ as contained in the Section 14(1)(e) is not limited to a financial dependency only. The concept is much wider.

25 In 1986 (1) RCJ 717 R.K. Bhatnagar versus Sushila Bhargava, the word ‘dependent’ was analysed to include not only a person who is financially dependent upon the landlord/landlady but has as such inder ambit. In this context it was noted as under:

“It is now well settled that the word ‘dependent’ cannot be construed as wholly dependent in the sense of earning nothing at all and the entirely dependent on the parents for lodging and maintenance. It connotes a wider concept and covers a larger field. It takes a person who is not financially dependent upon the landlord but who would in normal course look upto the landlord to provide him/her with the facility of a house/portion possessed by the landlord.”

26 In 10(2003) DLT 746 Om Prakash Bajaj Vs. Chander Shekar, a Bench of this Court had noted that the members of the family of the landlord and their need for accommodation is in fact the need of the landlord himself and even where the son and grandson of the landlord were noted to be financially well of, it could not be said that they were not dependent upon their father and grandfather for the need of accommodation.

27 This need also thus has been fully established. By no stretch of imagination could it be said that any triable issue has arisen on any count. The Trial Court had preceded on conjectures and surmises. In fact the order itself records that ordinarily the rent Courts are not obliged to decide the question of ownership.

28 Accordingly the impugned judgments dated 14.10.2014 & 10.03.2015 are set aside. No triable issue has arisen. Leave to defend was illegally granted to the tenants. The whole purpose of a summary procedure contained in Section 25-B of the DRCA would be given a go-bye if in a routine manner, leave to defend is granted to a tenant. At the cost of repetition, the Trial Judge had himself noted that the question of ownership does not raise a triable issue in rent matters. The question of adoption which was sought to be raised by the respondent is also wholly meritless and so also the Trial

Court holding that the bonafide need of the petitioner has not been disclosed. On all counts, the impugned judgments are liable to be set aside. They are accordingly set aside. All the three eviction petitions filed by the landlord stand decreed.

29 Petitions disposed of.

INDERMEET KAUR, J

APRIL 08, 2016

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