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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RC.REV. 418/2015 & C.M. No.14659/2015 (stay)
HARISH KUMAR CHOPRA

..... Petitioner

Through Mr. Gopi Chand, Adv.
versus

KUSUM SHUKLA & ANR

..... Respondents

Through Mr. S.K. Bhattacharya and Ms.
Seema Sharma, Adv.

+ RC.REV. 489/2015 & C.M. No.19277/2015 (stay)
BHAGWAN GUPTA

..... Petitioner

Through Mr. Gopi Chand, Adv.
versus

KUSUM SHUKLA & ANR

..... Respondents

Through Mr. S.K. Bhattacharya and Ms.
Seema Sharma, Adv.

+ RC.REV. 424/2015 & C.M. No.15057/2015 (stay)
R K KAPOOR

..... Petitioner

Through Mr. Gopi Chand, Adv.
versus

KUSUM SHUKLA & ANR

..... Respondents

Through Mr. S.K. Bhattacharya and Ms.
Seema Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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28.01.2016

1 The petitioners before this Court are Harish Kumar Chopra, Bhagwan Gupta and R. K. Kapoor. They are all aggrieved by the

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common impugned order i.e. order dated 19.05.2015 wherein the applications filed by all of them seeking leave to defend under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

2 The eviction had been filed by the two petitioners namely Kusum Shukla and Deepak Shukul. Kusum Shukla was the wife of deceased Prem Narain Shukla and daughter-in-law of Radhika Narain Shukla. Deepak Shukul is the son of Radhika Narain Shukla. In the eviction petition, it has been disclosed that the suit shop i.e. shop No.3790, Netaji Subhash Road, Daryaganj, New Delhi had been leased to Harish Kumar Chopra; shop No.3788, Netaji Subhash Road, Daryaganj, New Delhi had been leased to Bhagwan Gupta; shop No.3789, Netaji Subhash Road, Daryaganj, New Delhi had been leased to R.K. Kapoor. This was at a monthly rental of Rs.30/-, Rs.40/- and Rs.100/- respectively. The area of each shop was approximately 8 X 18 feet. The tenancy had been created for a commercial purpose. In the eviction petition it has been averred that the tenants have defaulted in the payment of rent.

3 The averments in the eviction petition disclosed that Prem Narain Shukla expired in the year 1972. He was survived by his wife Kusum Shukla (petitioner No. 1), two sons and one daughter, all of whom have relinquished their right in favour of Kusum Shukla vide relinquishment deed dated 06.09.2006. Rupinder Shukla (brother of Prem Narain Shukla) and Deepak Shukul had died in the year 2002. He was a bachelor. The property stood mutated in the MCD record in

favour of Kusum Shukla and Deepak Shukul on 09.03.2007. This was in terms of the original Will dated 28.06.1971 of their deceased predecessor namely Radhika Narain Shukla.

4 Further averments in the petition disclose that the wife of Deeapk Shukul (petitioner No. 2) Manju Shukla is a doctor by profession and has retired from G.B. Pant Hospital (Central Health Services) on 31.03.2010. She wants to set up a poly clinic as she has no other source of income. At present Manju Shukla and her husband are living on the first floor of the premise which comprise of two rooms; petitioner No. 1 (Deepak Shukul) is residing with his son on the second floor of the house which also comprise of two rooms. The present accommodation is required bonafide for the need of Dr. Manju Shukla to start a poly clinic as she has no other alternate viable accommodation to do this work.

5 The applications seeking leave to defend had been filed by the tenants. There are common questions which have been raised by the tenants and common arguments have also been addressed on the basis of the pleadings made by them in their respective applications seeking leave to defend. The first and foremost contention of the learned counsel for the tenants is that the petitions are not maintainable as the original Will of late Radhika Narain Shukla dated 28.06.19671 had bequeathed 1/4th share in favour of Prem Narain Shukla; the contents of the Will do not match the averments made in the petition. This raises a triable issue. The rent receipts had been issued in favour of the HUF; there is no direct attornment of landlord-tenant relationship

between the parties. Further averments in the application seeking leave to defend is that Manju Shukla after retirement is frequently visiting Singapore; they have a residence in Singapore where she wants to live; the visits to Delhi are only intermittent; this accommodation is required by the petitioners only for the purpose of sale to make it a gainful business venture. All these raise triable issue.

6 The reply filed to the leave to defend has been perused. The last submission made by the learned counsel for the petitioners shall be answered first. In this reply, it has categorically been stated that Manju Shukla who had retired as a doctor from G.B. Pant Hospital in 2010 has gone to Singapore only to meet her daughter who is residing there and who is presently having a matrimonial dispute with her husband and to share her emotional burden, the parents of the girl which including Manju Shukla and her husband Deepak Shukul, the visit was made to Singapore. It has categorically been denied that the parties have a residence in Singapore.

7 In the rejoinder filed to this averment, there is no specific denial. Admittedly there is not a single document with the tenants to advance their submissions that Dr. Manju Shukla has an immoveable property in Singapore; the submission of the landlord that she had visited Singapore only to pacify her daughter who was suffering from an emotional turmoil in her life because of a scarred relationship with her husband is the justifiable answer to this defence raised by the tenants. It merits no consideration.

8 The second submission of the learned counsel for the petitioners which is based on the registered Will of late Radhika Narain Shukla dated 28.06.1971 also is worthy of no merit. Admittedly all the co-owners of the property which includes the two sons of Prem Narain Shukla have joined hands in filing these eviction petitions. His third son had died as a bachelor. His legal representatives would be the two petitioners before this Court. The tenants who are admittedly the tenants in the suit property since 1960's i.e. more than half a century ago and the tenancy originally having been created in favour of successor of the present petitioners and rent also having been continuously paid (at the admitted rate) by the tenants to the landlords, the question of a landlord-tenant relationship not having arisen between the parties is also an argument bereft of any merit. Principal of estoppel under Section 116 of the Evidence Act clearly creates hurdle in the way of this argument. The tenants are not in a position at this stage to challenge the ownership or status of the landlord. They are also not in a position to challenge the veracity of the Will of deceased Radhika Narain Shukla by which the property had fallen to the share of the present petitioners pursuant to which mutation had also been effected in the record of the MCD vide mutation document dated 09.03.2007.

9 In this context, a Bench of this Court has inter-alia noted as under:-

"It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right

of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as to owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the D.R.C. Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppel against such tenant.."

10 The twin requirements for a petition under Section 14 (1)(e) of the DRCA have been satisfied. The eviction petitions clearly state that Manju Shukla requires these shops which together would measure about less than 415 square feet for her professional purpose; she being a professional doctor and having retired from Central Health Services which is about two years ago i.e. in the year 2010 wishes to set up a poly clinic and she having no other commercial accommodation where she can put this centre, her need is genuine and bonafide. It is not the case of the tenants that Manju Shukla has any other commercial accommodation available with her. The submission that the property on the first and second floor can be utilized for the said purpose is wholly out of context as in the eviction petition it has clearly been pleaded that petitioner No. 1 is living with his family on the first floor (comprising of two rooms) and petitioner No. 2 is living with his son on the second floor (also comprising two rooms). The commercial accommodation which is on the ground floor is the only

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commercially viable accommodation to start her poly clinic. The fact that she is professionally qualified doctor is also an admitted fact. The submission of the learned counsel for the tenants that a license is required to run a poly clinic and the same has not been obtained till date is also an argument noted to be rejected as the stage has not become ripe for the landlord to obtain the license. The whole idea of the tenants appears to delay the proceedings. No triable issue has arisen.

11 The impugned order calls for no interference. Petitions are without any merit. Dismissed with cumulative costs of Rs.30,000/-.

INDERMEET KAUR, J

JANUARY 28, 2016/A