

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 546/2015 & CM APPL.23318/2015 (stay)**

Decided on: 14th January, 2016

JAI PRAKASH

..... Petitioner

Through: Mr. Surender Kumar Gupta, Advocate
with Mr. Dinesh Kumar, Adv.

versus

BIRMA DEVI & ORS

..... Respondents

Through: Nemo

+ **RC.REV. 556/2015 & CM APPL.23451/2015 (stay)**

DEVENDER KUMAR

..... Petitioner

Through: Mr. Surender Kumar Gupta, Advocate
with Mr. Dinesh Kumar, Adv.

versus

BIRMA DEVI @ BRAHMO DEVI & ORS Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. These are two revision petitions filed by the petitioners/tenants against the order dated 30.05.2015 passed by the learned Additional Rent Controller in EV No.87/2014 titled *Birma Devi &*

Ors. v. Jai Prakash; and EV No.86/2014 titled *Birma Devi & Ors. v. Devender Kumar @ Kaju* rejecting the leave to defend application and passing eviction orders.

2. I have heard the learned counsel for the petitioners/tenants as well as for the respondents/landlords. I have also gone through the record.
3. Briefly stated the facts of the case are that the respondents/landlords filed two separate eviction petitions for eviction of the petitioners/tenants under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act) in the capacity of co-owner of property bearing No.98-E, Hari Nagar Ashram, Delhi. Respondents No.2 and 3 are the grand children of respondent No.1. It has been stated in the eviction petition that the suit property originally belonged to Late Hukum Singh husband of Birma Devi i.e. Respondent no.1 and after his demise the respondents have inherited the property. The petitioner/tenant (Jai Prakash) in RCR 546/2015 was let out a shop in the suit property on 24.03.1984 at the rate of Rs.400/- per month by the previous owner which rent

was increased from time to time and current rent was stated to be Rs.1900/- per month. Petitioner/tenant (Devender Kumar @ Kaju) in RCR 556/2015 was let out a shop in the suit property on 13.07.1981 at the rate of Rs.150/- per month by the previous owner which rent was increased from time to time and the current rent was stated to be Rs.1200/- per month.

4. The respondent no.1/landlady had stated in eviction petition that her family consists of herself, one widowed daughter-in-law, one unmarried granddaughter, i.e. respondent No.2 and two grandsons Sanjeev Kumar and respondent No.3. In addition to this, the respondent also has a divorced daughter apart from one married grand daughter and two more married daughters. It was averred that the respondents are occupying backside portion of property with one bedroom, one drawing room, one store, kitchen, toilet and bathroom on ground floor and one room, one small study room, toilet and bathroom on the first floor. So far as respondents No.2 and 3 are concerned, for whose benefit eviction was sought, it was stated that they have completed their education and are presently

unemployed and therefore both of them intend to start business of readymade garments in a space of 200 sq. ft. Respondent/landlady also stated that she does not own any other commercial accommodation.

5. The present petitioners contested the eviction petitions by filing leave to defend wherein they denied existence of relationship of landlord and tenant. It was stated that the respondent No.1 had sold the property to one Mohan Rai in the year 2000 and thereafter the suit property was purchased by one A. Mohan Dass in the year 2011. It was stated that because of these reasons the respondents were not the owners of the suit property and therefore, the eviction petition is not maintainable. On merits of the case it was stated that the respondents No.2 and 3 do not have any knowledge about the business of readymade garments and therefore, their requirement is not genuine. It was stated that both of the respondents are professionals and it is very unlikely that they are going to start a readymade garment shop.

6. The learned ARC after hearing the arguments rejected the leave to defend application of the petitioners on the ground that they do not raise any triable issue either with regard to the landlord-tenant relationship or with regard to *bona fide* requirement of the respondents and passed the eviction order.
7. Feeling aggrieved by the aforesaid eviction order and observations, the petitioners/tenants have assailed the same before this Court and have reiterated the pleas which were taken before the learned ARC.
8. The learned counsel for the petitioners has challenged the rejection of the leave to defend application as well as the passing of the eviction orders essentially on two grounds. Firstly, it has been contended that there exists no relationship of landlord and tenant between the petitioners and respondent No.1. He has stated that the petitioners/tenants had learnt recently about the sale of the property by respondent No.1 to Mohan Rai who in turn had sold it to A. Mohan Dass in the year 2011 and ever since they learnt about the same, they stopped payment of rent to the respondent No.1. It has been further stated that one of the requirements of Section 14

(1) (e) of the DRC Act is that the landlord should be also be the owner of the suit property. Because of these facts it was stated that the respondent/landlord not being the owner is not entitled to a decree of eviction and hence it raises a triable issue.

9. It is not in dispute that the petitioners/tenants had paid rent to the predecessor-in-interest of the respondents/landlords as well as to respondent No.1 till 2011. It is only in 2011 that they stopped paying rent on the ground that respondent No.1 has allegedly sold the property.
10. Section 116 of the Indian Evidence Act clearly states that a tenant during the continuance of tenancy is prohibited from challenging the title of the landlord. In the instant case also since there is no dispute about the factum that the petitioners were inducted as tenants by the previous owner and they continued to pay rent to respondent No.1, therefore, any attempt on their part to challenge the title of respondent No.1 was not entertained by the learned ARC for the simple reason that they are estopped from challenging the same.

11. The learned counsel for the petitioners has contended that this doctrine of estoppel is applied only during the continuance of the tenancy and since the petitioners have failed to pay rent to respondent No.1, therefore, they are not precluded from challenging the title of respondent No.1.
12. I do not agree with this contention of the learned counsel for the petitioners that it is only during the period of tenancy that he cannot challenge the title of the landlord. The very fact that the petitioners had been paying rent to respondent No.1 they are precluded from challenging the title of the respondent/landlord. Moreover, the learned ARC has rightly placed reliance on a judgment of the Apex Court in case titled *Ramesh Chand v. Uganti Devi*; (2007) 15 SCC 384, wherein it has been observed that for showing the title and right qua the tenant, the landlord need not have a perfect title to the suit property. The only requirement under Delhi Rent Control Act is that his title must be superior to the one of the tenant.

13. In the instant case, the very fact that respondent No.1 was the owner clearly shows that she has a better title to the property and the petitioners/tenants cannot be permitted to assail the same. The petitioners in support of their contention have placed reliance on some documents i.e. agreement to sell, etc. purported to have been executed by the respondent no.1 which were filed in a separate suit for declaration and permanent injunction filed by respondent no.1 against the petitioners herein. In that suit, respondent No.1 had obtained the opinion of a handwriting expert who had stated in his report that the alleged thumb impressions of respondent No.1 appearing on sale documents are forged and fabricated. The petitioners had not raised this plea before the learned Additional Rent Controller in the leave to defend application. Hence, there is no reason for this court to consider the same and take a different view now.
14. Therefore, I am of the considered view that the respondents have been successful in establishing their ownership to the suit property and she is entitled to retrieve the possession of the suit property consisting of shops from the petitioners/tenants.

15. Secondly, with regard to opening of a readymade garments shop, the counsel for petitioners/tenants has raised an objection that neither of the two respondents, i.e. respondents No.2 and 3, who are the beneficiaries of the eviction order, have any knowledge about the manufacturing or sale of the readymade garments. As a matter of fact, it was stated that they are professionals and therefore, it is very unlikely that they will start a new venture of selling the readymade garments. This plea was also rightly rejected by the learned ARC by observing that merely because respondents do not have any knowledge or experience about the business of readymade garments, it would not prevent them from retrieving the possession of the suit property for their *bona fide* requirement.
16. The Supreme Court in a number of cases has categorically observed that the lack of experience should not become an impediment to start a new business by any person. Reliance in this regard was placed on case title *Ram Babu Agarwal vs. Jay Kishan Das*; (2010) 1 SCC 164, wherein it was observed:

“.....that a person can start a new business even if he has no experience in the new business that does not mean

that his claim for starting new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also.”

17. For the aforesaid reasons, I feel that the learned ARC was absolutely right in rejecting both the pleas of the petitioners while refusing them the leave to contest the matter. It is a fit case where the leave to defend has been rightly denied to the petitioners and eviction orders have been passed.
18. I order accordingly.
19. Pending applications also stand disposed of.

V.K. SHALI, J.

JANUARY 14, 2016
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