

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

% **Date of decision: 6th November, 2017**

+ **RC.REV. 266/2017 & CMs No.21625/2017 (for stay) & 39606/2017 (of petitioner for early hearing)**

ANIL BHASIN

..... Petitioner

Through: Mr. Shahid Ali, Mr. Umardaraj
and Ms. Bushra Hasan, Advs.

Versus

IMARTI DEVI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 20th March, 2017 in E No.292/2014 (New No.80119/2016) of the Court of Additional Rent Controller (ARC)-02 (Central), Tis Hazari Courts, Delhi] of eviction, after full trial, of the petitioner from property No.5626, Ward No.16, Gali No.76-77, Block-A, Regharpura, Karol Bagh, New Delhi-05.
2. The petition came up before this Court first on 24th May, 2017, when the notice of this petition was ordered to be issued, though recording that the impugned order was of dismissal of the application for leave to defend and without realising that the order impugned was of eviction after full trial, but no stay of the order of eviction impugned granted.
3. The respondent is reported to be served and this petition is listed next on 8th March, 2018.
4. An application filed by the petitioner for early hearing of this petition, stating that the respondent has applied for execution of the order

of eviction, is listed today. On a reading of the paper book, not finding any *prima facie* ground for interference to have been made out, the counsel for the petitioner has today itself been heard on the merits of the Rent Control Revision Petition.

5. The counsel for the petitioner has raised three arguments. Firstly, it is contended that the respondent claimed ownership of the premises in the tenancy of the petitioner on the basis of a sale deed but which sale deed has not been proved in accordance with law and thus ownership of the respondent has not been proved. The second contention is that the respondent herself did not step into the witness box and only her son appeared as her Power of Attorney holder, that too without obtaining any permission from the Court for appearing as the Power of Attorney of the respondent. The third contention is that no *bona fide* requirement of the respondent of the premises in the tenancy of the petitioner has been proved.

6. The respondent instituted the petition for eviction, from which this petition arises, pleading (i) that the father of the petitioner was already a tenant on the first floor and *barsati* floor of property No.5626, Ward No.16, Gali No.76-77, Block-A, Regharpura, Karol Bagh, New Delhi, when the same was purchased by the respondent vide sale deed dated 26th October, 1989; (ii) that after the death of the father of the petitioner, the tenancy devolved on the petitioner; (iii) that the petitioner has been using the premises for residence; (iv) that the ground floor of the property was also with a tenant who vacated the same after the property had been purchased by the respondent and handed over the possession of the same to the respondent; (v) that the said ground floor has been in use and

occupation of the son of the respondent who is having his office of tours and travels in the same; (vi) that the respondent is presently residing in one room situated on the ground floor of property No.2756-57/22, Beadon Pura, Karol Bagh, New Delhi along with the family of her another son Azad Kumar; (vii) that the respondent requires the premises in the tenancy of the petitioner for occupation by herself as she wants to shift from property No.2756-57/22, Beadon Pura to live comfortably in her own house and the respondent has no other accommodation available to herself; (viii) that property No.2756-57/22, Beadon Pura belonged to the ancestor of the husband of the respondent and devolved on the husband of the respondent along with other heirs of the said ancestor and only a portion of property No.2756-57/22, Beadon Pura had fallen to the share of the husband of the respondent; (ix) that the ground floor of the aforesaid property which had fallen to the share of the husband of the respondent consists of three rooms only which are occupied by the son Azad Kumar of the respondent and his family members and in one of the said rooms, the respondent also is residing; (x) that the family of Azad Kumar comprises of wife, three daughters and one sons and of which one daughter is married and the other daughters and son are major; (xi) that the portion of the first floor of property No.2756-57/22, Beadon Pura which had fallen to the share of the husband of the respondent is in occupation of the two sons and one daughter of a deceased son Bhagwan Dass and rest in occupation of another son Ram Dass of the respondent who is living therein along with his wife, two married sons and daughters; (xii) that the portion of second floor of property No.2756-57/22, Beadon Pura which had fallen to the share of the husband of the

respondent is in occupation of family of another deceased son Kailash of the respondent; (xiii) that similarly the portion of third floor of the said property which had fallen to the share of the husband of the respondent is in occupation of the son Madan Lal of the respondent and his family; (xiv) that the respondent also has a daughter who is a widow and who has three children and who regularly visits the respondent; (xv) that the respondent requires the premises in the tenancy of the petitioner for occupation for herself, to live comfortably in her own house along with her widowed daughter and her children; (xvi) that the respondent is about 80 years of age.

7. The petitioner herein was granted leave to defend and filed a written statement contesting the petition for eviction, pleading (a) that the respondent as well as the petitioner were tenants in the property no.5626, Ward No.16, Gali No.77, Block-A, Regharpura (Regharpura property) of late Ghamandi Lal who was the real owner of the property and who had died long ago leaving behind legal heirs but who had preferred not to come forward to collect rent; (b) that the husband of the respondent for sometime collected rent from the petitioner on behalf of the landlord/owner Ghamandi Lal but the husband of the respondent subsequently refused to accept rent stating that he could not discharge the liability of collecting the rent and thereafter handing over the same to family of Ghamandi Lal; (c) that there is no relationship of landlord and tenant between the petitioner and the respondent; (d) that the respondent has more than sufficient accommodation consisting of property No.2756-57/22, Beadon Pura (Beadon Pura property) which is approximately 200 sq. yds. building comprising of four floors; (e) that Beadon Pura

property is situated at a distance of about 1 Km from Regharpura property and the respondent who is admittedly 80 years of age cannot be believed to be wanting to shift alone to the property in the tenancy of the petitioner; (f) that the husband of the respondent was tenant in respect of ground floor of property No.5626, Regharpura under Ghamandi Lal and which ground floor is being used by Madan Lal son of the respondent for residential use for his servant and one of the rooms on the ground floor is being used by Madan Lal for running his business; (g) that the respondent has two rooms and veranda on the ground floor of Regharpura property; (h) that Regharpura property till date is assessed for house tax in the name of Ghamandi Lal and the petitioner has been paying the property tax and other taxes for and on behalf of Ghamandi Lal and is possession of receipt of payment of house tax for the year 2006-2007; (i) that the respondent, along with the petition for eviction had only supplied front pages of the alleged sale deed in her favour and without the photocopy of the reverse side of the said pages which bear mark of registration; (j) that else, the averments with respect to the family members of the respondent in occupation of Beadon Pura property were generally denied.

8. The learned ARC, on the basis of evidence led before him has found the respondent to be the owner of the Regharpura property, that the relationship of landlord and tenant exists between the parties and that the premises in the tenancy of the petitioner are required by the respondent and the respondent has no alternative suitable accommodation. It is not in dispute that the letting purpose is residential.

9. As far as the first of the aforesaid contentions is concerned, the counsel for the petitioner has argued that the respondent filed only a

photocopy of the lease deed before the Court. However, on the counsel for the petitioner being asked to show the evidence recorded in the case, it transpires that what has been proved before the Court is a certified copy issued by the office of the Sub-Registrar, of the sale deed. The counsel for the petitioner has then argued that though in evidence, the respondent stated that the original sale deed had been filed in some Court proceedings but subsequently in cross-examination stated that there is no other Court proceeding. It is argued that without the original sale deed coming before the Court, it cannot be said that the respondent has proved ownership. In this context it is also contended that the sale deed, as appears from the certified copy thereof, is not executed by Ghamandi Lal or by his heirs but the sale deed is executed in pursuance to a decree for specific performance in favour of the respondent and against Ghamandi Lal. It is argued that no copy of the judgment in which the decree for specific performance may have been passed and no copy of the order sheet of the Court directing execution of Sale Deed have been placed on record. It is further contended that the fact that the property has not been mutated in the name of the respondent was also admitted in the cross-examination and the same also belies the claim of the respondent of being the owner.

10. I have enquired from the counsel for the petitioner, whether any other person has claimed title to the premises in the tenancy of the petitioner, adversely to the title claimed by the respondent.

11. The counsel for the petitioner replies in the negative.

12. No mention is found in the pleadings or in the evidence of the petitioner having deposited the property tax which he claims to have

deposited. No order of attachment issued by the Municipality, asking the petitioner to deposit the rent payable by him in satisfaction of property tax, either is found. I have enquired from the counsel for the petitioner, whether any such attachment order has been passed by the Municipality.

13. The counsel for the petitioner replies in the negative.

14. The counsel for the petitioner has further argued that though qua a proceeding under Section 14(1)(e) of the Act, it is settled law that a title better than that of the tenant is enough to qualify as ownership for the purposes of Section 14(1)(e) of the Act but contends that the same principle would not apply to the present case because both, the respondent as well as the petitioner were tenants in the property under Ghamandi Lal and just because the respondent has proved to be smarter than the petitioner in fabricating a sale deed would not entitle the respondent to evict the petitioner.

15. I have perused the Trial Court record requisitioned in this Court and do indeed find the certified copy of the sale deed duly bearing the marks of the office of the Sub-Registrar with which it purports to be registered and also giving the particulars of the register in which the sale deed is registered, to have been proved. It is also found that the sale deed gives the particulars of the suit in which the decree for specific performance, in pursuance to which the sale deed was executed, are stated. The petitioner herein appearing as a witness was during his cross examination by the counsel for the respondent, on being asked, whether the petitioner has inspected the records of the Sub-Registrar in which the sale deed was registered and of the Court in which the decree was passed, replied in the negative. The learned ARC on the basis thereof has held

that the petitioner, even if entitled to challenge the title claimed by the respondent on the basis of registered document giving all the particulars, had admittedly not chosen to do and the same shows that the petitioner was merely denying ownership without taking any positive plea, as to who was the owner.

16. The counsel for the petitioner before this Court also interjects at this stage and states that it was for the respondent to summon the record of the register.

17. Though the counsel for the petitioner has neither seen the affidavit by way of examination-in-chief of the son of the respondent who appeared as the attorney of the respondent and has also not filed a copy of the same and has without even perusing the said records, sought to raise arguments, a perusal of the affidavit by way of examination-in-chief of Madan Lal, son of the respondent, shows the sale deed to have been proved. The said witness also proved that though the certified copy of the judgment and decree in pursuance to which the sale deed was executed was also applied for but the file was stated to have been weeded out and is found to have proved the original application which was made to the Court for the said purpose and the response which was received thereto.

18. It is also found that the certified copy of the sale deed has been proved by leading evidence of non-availability of the original. It cannot be forgotten that in a petition for eviction between landlord and tenant, the question of title is not to be gone into as between parties claiming adversely to each other. As held by the Supreme Court as far back as in *Shanti Sharma Vs. Ved Prabha* (1987) 4 SCC 193 and consistently followed in *Swadesh Ranjan Sinha Vs. Haradeb Banerjee* (1991) 4

SCC 572 and *Sheela Vs. Firm Prahlad Rai Prem Prakash* (2002) 3 SCC 375, a title merely better than of the tenant is enough. Here, the respondent admittedly has proved a proceeding for specific performance of agreement of sale having been filed and execution of a sale deed of the property in her favour and that is enough evidence to show the respondent to be the owner for the purposes of Section 14(1)(e) qua the petitioner.

19. Reference in this regard may also be made to *Milk Food Ltd. Vs. Kiran Khanna* (1993) 51 DLT 141 where it was held by this Court that a person who is for long being claiming adversely to the person who is claimed by the tenant to be the true owner, is also owner by adverse possession qua the tenant. In the present case, the sale deed on the basis of which the respondent claims to be the owner is dated 26th October, 1989 and as per the endorsement of the office of the Sub-Registrar is registered as far back as on 29th January, 1990. The same shows that the respondent, for at least 24 years prior to the institution of the petition for eviction on the basis of the said sale deed was claiming to be the owner, without any claim or interference from anyone and the same would entitle the respondent to be the owner within the meaning of the aforesaid judgment.

20. There is thus no merit in the first contention raised by the counsel for the petitioner.

21. As far as the second contention, of the respondent having herself not stepped into the witness box, is concerned, it has been held by the Supreme Court in *Ramkubai Vs. Hajarimal Dhokalchand Chandak* (1999) 6 SCC 540 that it is not essential in a proceeding for eviction of a

tenant for the landlord to himself/herself step into the witness box. This Court in *Om Parkash Vs. Inder Kaur* 2009 (107) DRJ 263, in the context of a petition filed under Section 14D of the Act held that any person is a good witness if he deposes about the facts which are in his personal knowledge, whether he is a father or an attorney or a son or a neighbour; what law requires is that the deposition must be of the facts to which he is a privy; the evidence given by a witness cannot be rejected on the ground that he is a father or a relative, nor any adverse inference can be drawn against the plaintiff on the ground that he had not appeared his own witness in the case; the plaintiff is master of his case; he can prove his case without appearing in the witness box. Mention may also be made of *Capt. Praveen Davar (Retd.) Vs. Harvansh Kumari* (2010) 119 DRJ 560, (SLP (C) No.26449/2010 preferred whereagainst was dismissed on 27th September, 2010). In the present case, it is the son of the respondent who has appeared as a witness and who is admittedly residing in one of the two properties aforesaid which are stated to be situated in close proximity of each other, according to the petitioner also at a distance of 1 Km only. It cannot be said that the said son of the respondent was not conversant with the facts, so as to be not able to depose about the same. A perusal of the cross-examination by the counsel for the petitioner of the said son of the respondent also shows the same to be comprising of nothing except suggestions that each of the deposition of the said son in the affidavit by way of examination-in-chief was wrong.

22. I may also state that no permission is required for any witness in the know of the facts to appear and depose to the Court. Merely because

the son of the respondent also claimed to be the attorney of the respondent would not make any difference in the aspect.

23. Once the petitioner is held to be the owner, Section 109 of the Transfer of Property Act, 1882 does not require any attornment by the petitioner in favour of the respondent and the same would follow under the law, creating the relationship of landlord and tenant between the parties. I have in *Harvinder Singh Vs. M/s. Paradise Towers Pvt. Ltd.* (2013) 199 DLT (CN) 25, *Sanjay Singh Vs. Corporate Warranties Pvt. Ltd.* (2013) 204 DLT 12 and recently in judgment dated 6th September, 2017 in RC. Rev. No.422/2017 titled *Vijay Sharma Vs. Namita Aggarwal* dealt with the same aspect in detail.

24. With respect to the third argument, the counsel for the petitioner argued (I) that the respondent being 80 years of age now cannot be expected to climb to the first floor and *barsati* floor in the tenancy of the petitioner; (II) that the respondent has sufficient accommodation available to her on the ground floor of property No.5626, Regharpura. Attention is also drawn to the cross-examination of the son Madan Lal of the respondent; while it was stated by the said son that the area of property No.5626, Regharpura was about 90 sq. yds., the counsel for the petitioner suggested that it was 200 sq. yds.

25. I have enquired from the counsel for the petitioner, the area of the property in which the petitioner is a tenant.

26. The counsel for the petitioner states that he is unable to state so and it has not come on record.

27. However, a perusal of the Trial Court record requisitioned shows the site plan filed by the respondent to be disclosing the area of the

property, on the first and *barsati* floors of which the petitioner is a tenant, as 75 sq. yds. and the premises in the tenancy of the petitioner to be comprising only of two rooms, besides kitchen, bath and latrine etc. on the first floor and one room and terrace on the *barsati* floor. Therefrom, the accommodation on the ground floor of the said property can also be gauged and which falsifies the stand of the petitioner of the said ground floor comprising of four rooms and of which two rooms are available to the respondent. Significantly, the petitioner did not file any site plan of his own. It has been held in ***Rishal Singh Vs. Bohat Ram*** (2014) 144 DRJ 633 that when the tenant controverts the accuracy of the site plan filed by the landlord, he is required to file a copy of the site plan he believes to be correct so as to guide the Court in finding the discrepancies of the site plan filed by the landlord; without such site plan filed, mere contentions raised to this effect will be considered meritless. This Court in ***Satish Kumar Vs. Subhash Chand Agarwal*** 2012 SCC OnLine Del 4447 (SLP (C) No.27431/2012 preferred whereagainst was dismissed vide order dated 15th October, 2012) held that if a tenant does not file his site plan showing that the plan filed by the owner is incorrect, then, the site plan filed by the owner would be assumed to be correct. Reference can also be made to ***R.K. Bhatnagar Vs. Sushila Bhargava*** ILR (1987) II Delhi 607 and ***Ghanshyam Vs. Vijender*** 2014 SCC OnLine Del 3983 (SLP (C) No.3654/2015 preferred whereagainst was dismissed vide order dated 27th February, 2015), to the same effect. Thus, the petitioner, without filing a site plan of his own, cannot dispute the site plan of the landlord.

28. That brings me to the argument, of the respondent at the age of 80

years being not able to climb the stairs.

29. What is not in dispute is the number of family members of the respondent and the accommodation available to the respondent and her family members. It is not the argument that any other property, besides property No.5626, Regharpura and property No.2756-57/22, Beadon Pura is available to the family members comprising of five sons/deceased sons and their respective families, in turn also comprising of married sons and all of whom are residing in the two properties.

30. For the reason aforesaid, the accommodation as disclosed by the respondent in property No.2756-57/22, Beadon Pura, without the petitioner proving anything to the contrary, cannot also be accepted as a sufficient, suitable and convenient alternate accommodation in all respects.

31. Though the landlord may have pleaded use of the premises in a particular manner but when a landlord has a large family as has been found to be the case with the respondent herein, the portions of the accommodation which members of family may occupy from time to time may keep on changing as per their mutual understanding and it is not open to the petitioner as a tenant to tell the landlord, as to how the landlord should use the premises. The precedent, if any required on this aspect is to be found in *Sarla Ahuja Vs. United India Insurance Company Ltd.* (1998) 8 SCC 119, *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222, *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal* (2005) 8 SCC 252 and *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610.

32. I am therefore unable to find the order of eviction impugned in the

petition for eviction to be not in accordance with law.

33. Resultantly, the petition fails and is dismissed.

34. The date of 8th March, 2018 is cancelled.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 06, 2017

‘bs’

(Corrected and released on 30th November, 2017).

