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

+ CM(M) 482/2017

RAJ KUMAR

..... Petitioner

Through: Ms.Sonam Anand, Advocate

versus

CHANDU LAL & ORS

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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01.05.2017

CM No.16513/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 482/2017

1. The petitioner is aggrieved by the order dated 14th February, 2017 passed in Eviction Petition No.6293/2016 whereby as co-owner his prayer for impleadment as respondent has been declined by the learned Additional Rent Controller, Saket Courts, Delhi.

2. Learned counsel for the petitioner has submitted that petitioner is co-owner of the suit property. The respondent Nos.2 to 4 are also paying rent to the petitioner as he is the landlord in respect of the suit property. However, the eviction petition has been filed by his brother, Chandu Lal claiming himself to be the landlord in respect of the suit property.

3. Learned counsel for the petitioner further submitted that though one of the co-owners can file an eviction petition seeking eviction of the tenant but it is required to be shown that the eviction petition has been filed by him as agent of the other co-owners and with their consent. Learned counsel for the petitioner has referred to the decision of Hon'ble Supreme Court reported as ***India Umbrella Manufacturing Co. And Others Vs. Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla (Smt) and Others, (2004) 3 SCC 178*** wherein it was observed as under:-

6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co- owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath & Ors., (1976) 4 SCC 184; Dhannalal Vs. Kalawatibai & Ors., (2002) 6 SCC 16, para 25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co- owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co- owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

4. Learned ARC vide order impugned herein, in the light of the legal position discussed, has declined the prayer for impleadment of the petitioner as one of the co-owner/landlord. The reasons are given in para No.11 of the

impugned order extracted hereunder:-

*“11. I am unable to agree myself with the submission made by learned counsel for applicant. As discussed earlier the Rent Controller has no jurisdiction to decide the inter-se dispute between the landlords. It is a settled law that one co-owner cannot injunct the other co-owner from evicting a tenant. The Hon'ble High Court of Delhi in **Sheikh Mohd. Zakir & Ors. Vs. Shahnaz Parveen & Ors. CM(M) 779/2012 dated 13.07.2012** has observed that it is a well settled law that in a suit between landlord and tenant, a third person claiming to be co-owner of the property cannot intervene as the issue of ownership could not be decided in the proceedings under Delhi Rent Control Act. To the specific argument of the counsel for Applicant that where there is a clash of interest between the co-owners, a co-owner can become a party in eviction petition, the answer lies in the judgment of Full Bench of the Hon'ble Patna High Court in **Sharfuddin & Ors. Vs. Bibi Khatija & Anrs. A.F.A.D.No.201 of 1982 dated 06.07.1987** wherein the Court failed to an important question of law that “Whether under the Bihar building (Lease, Rent and Eviction) Control Act, 1947 one of the two joint co-owners can evict the tenant from the whole of the premises on the ground of the violation of S.II(I)(d) of the said Act despite the desire and volition of the other co-owner to allow the tenant to continue in occupation.”*

5. In the eviction petition filed by respondent No.1 claiming himself to be landlord in respect of the suit property, the respondent No.1 is required to prove not only the relationship of landlord and tenant between the parties but also the ground of eviction on the basis of which eviction has been claimed.

6. Merely because the petitioner claims himself to be one of the co-owner in respect of the suit property, in itself is not sufficient to implead him as a party/respondent in the said eviction petition for the reasons that the Court of ARC is having limited jurisdiction and the contention of the

petitioner/applicant that he is not agreeable to evict the tenant is no ground to implead him as a party. Reference can be made to the decision reported as ***“Jitendra Mohan Gulati Vs. Hira Lal Singh”, 219(2015) DLT 489*** wherein the coordinate Bench of this Court has observed that even if co-owner had not given any authority to the respondent to file an eviction petition, still being the co-owner the petitioner can file eviction petition without impleading other co-owners.

7. Thus in the absence of there being any material illegality or perversity, the order of the Court below is not to be faulted with or interfered with by this Court in exercise of its supervisory power under Article 227 of the Constitution of India.

8. I see no infirmity in the impugned order hence the petition is dismissed.

CM No.16514/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 01, 2017

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