

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

% **Date of decision: 21<sup>st</sup> August, 2017**

+ **CM(M) 884/2017**

**ANIL KHATTAR**

**..... Petitioner**

Through: Mr. Vikas Aggarwal and Mr. Karan Arora, Advs.

Versus

**CAPT. PREETINDER SINGH THAPAR & ORS..... Respondents**

Through: None.

**AND**

+ **CM(M) 888/2017**

**VIJAY KUMAR SETIA**

**..... Petitioner**

Through: Mr. Vikas Aggarwal and Mr. Karan Arora, Advs.

Versus

**CAPT PREETINDER SINGH THAPAR & ORS ..... Respondents**

Through: None.

**AND**

+ **CM(M) 892/2017**

**RAM GOPAL**

**..... Petitioner**

Through: Mr. Vikas Aggarwal and Mr. Karan Arora, Advs.

Versus

**CAPT PREETINDER SINGH THAPAR & ORS ..... Respondents**

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**CM No.29596/2017 in CM(M) No.884/2017, CM No.29692/2017 in CM(M) No.888/2017 & CM No.29826/2017 in CM(M) No.892/2017 (all for exemption).**

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

**CM(M) No.884/2017 & CM No.29595/2017 (for stay), CM(M) No.888/2017 & CM No.29691/2017 (for stay) & CM(M) No.892/2017 & CM No.29825/2017 (for stay)**

3. These three petitions, all under Article 227 of the Constitution of India, impugn separate but identical orders [all dated 21<sup>st</sup> April, 2017 in CIS-RCT-23-2016 CNR-DLST 01-002344-2015, CIS-RCT-22-2016 CNR-DLST 01-002343-2015 and CIS-RCT-24-2016 CNR-DLST 01-002345-2015 respectively of the Rent Control Tribunal (South District), Saket Courts, New Delhi] of dismissal of the appeals preferred by the petitioner in each of the petitions against the common order dated 13<sup>th</sup> October, 2015 of the Additional Rent Controller (ARC) of dismissal of the application filed by each of the petitioner under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the written statement to the petitions for eviction under Section 14(1)(a) of the Delhi Rent Control Act, 1958 filed by the three respondents against each of the petitioner for eviction of each of the petitioner from shop in his respective tenancy in property no.A-78, Malviya Nagar, New Delhi.

4. The learned Rent Control Tribunal (RCT) has dismissed the appeals holding the same to be not maintainable under Section 38 of the Rent Act.

5. The counsel for the petitioner in each of the petitions has been heard.

6. The application for amendment filed by each of the petitioner/tenant was to take a plea in the written statement of each of the petitioner/tenant, having together purchased 1/4<sup>th</sup> share in the property in which shop in the tenancy of each of the petitioner was located.

7. The learned ARC dismissed the applications for amendment of the written statement holding that even if the plea of the petitioner/tenant of having purchased 1/4<sup>th</sup> share in the premises in the tenancy of each of the

petitioner was correct, the same was not material for adjudication of the petitions for eviction under Section 14(1)(a) of the Act inasmuch as the same required only the relationship of landlord and tenant to be proved and did not require the respondent/landlord to be the owner of the premises.

8. I have enquired from the counsel for the petitioner in each of the petitions, which provision of law is he invoking to urge that the purchase, even if any (and which is disputed by the respondents/landlords) would defeat the petition for eviction under Section 14(1)(a) of the Act.

9. The counsel for each of the petitioner has rightly referred to Section 111 of the Transfer of Property Act, 1882 and agrees that per Clause (d) thereof, lease rights are determined only if the interest of the lessee and the lessor in the 'whole of the property' become vested at the same time in one person in the same right and that there would be no merger of the tenancy of each of the petitioner with 1/4<sup>th</sup> ownership, even if acquired.

10. The counsel for each of the petitioner however argues that the plea of the petitioner is that because they have purchased 1/4<sup>th</sup> share in the tenancy premises, the petitions for eviction are for partial eviction.

11. During the hearing, it has also been disclosed that the petitioners/tenants together have filed a suit for partition of their 1/4<sup>th</sup> share in the premises in tenancy of each of the petitioner against the three respondents/landlords and which the respondents/landlords are contesting.

12. Once the counsel agrees that there is no merger of the tenancy rights of each of the petitioner in the ownership rights claimed to have been purchased by each of the petitioner in premises in his tenancy, the question of the petition for eviction being bad for partial eviction or being liable to be dismissed on that ground does not arise. Till the petitioners are found to

have 1/4<sup>th</sup> share and the property is partitioned, it cannot be said that the petitioner/tenant has right as owner to any demarcated portion of the premises in his tenancy, for it to be said that the petitions for eviction are bad for partial eviction.

13. The counsel for the petitioner in each of the cases has also contended that without the consent of all the owners, one landlord could not have filed the petition for eviction.

14. It has still to be determined in the partition suit, whether the person from whom the petitioners/tenants claim to have acquired 1/4<sup>th</sup> share in the property, had any right in the property for it to be said that the petitioners/tenants have acquired the same.

15. I have enquired from the counsel for the petitioner in each case, how were the petitioners/tenants paying the rent.

16. The counsel states that they were paying in cash.

17. On enquiry, whether any receipts were issued, the counsel states that the receipts were issued by respondents No.1&3 herein and who along with respondent No.2 have filed the petitions for eviction from which these petitions arise.

18. However, on being asked to show the rent receipts, the counsel states that though rent receipts have been filed before the Trial Court but have not been filed here and he is also not carrying the same today.

19. The contention however is, that since during the pendency of the petitions, the petitioners/tenants have acquired the rights, the position would be different.

20. The principle enshrined in Section 111 of the Transfer of Property Act would however still apply.

21. Reference in this regard may be made to *India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla* (2004) 3 SCC 178 laying down (i) that 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; (ii) that the 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-owner; (iii) that 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; (iv) that where eviction is sought by both co-owners, one of the co-owners cannot withdraw his consent midway the eviction suit so as to prejudice the other co-owner—eviction 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; (v) that 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; (vi) that where the tenant purchases only a share in the property and not the entire property, applicability of the doctrine of merger within the meaning of clause (d) of Section 111 of the Transfer of Property Act is not attracted; (vii) that in order to bring the tenancy to an end, the merger should be complete i.e. the interest of the landlord in its entirety must come to vest and merge into the interest of the tenant in its entirety; (viii) that when part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished. Accordingly, the judgment of the High Court directing that the order of

eviction could not be executed unless the property was partitioned, was set aside.

22. Applying the aforesaid law, these petitions also have to be dismissed.

23. There is no merit in the petitions.

24. Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**AUGUST 21, 2017**

Bs..

(Corrected & released on 28<sup>th</sup> September, 2017)

