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

+ RC.REV. 398/2017 & CM No.30942/2017 (for stay)

GULBIR SINGH LAMBA Petitioner

Through: Mr. B.B. Sawhney, Sr. Adv. with Mr.
Sushma Suri, Mr. Aditya Shandilya &
Mr. Shashank Mishra, Advs.

Versus

AMARJEET KAUR & ORS Respondents

Through: Mr. Devraj Singh & Mr. H.S. Dhwan,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.09.2017**

1. This order is in continuation of the earlier order dated 28th August, 2017.
2. The counsel for the respondents states that there is no dispute with respect to the fact that the respondents are the landlords.
3. However on enquiry as to where is the admission to the effect of the respondents being landlords and what is there to show relationship of landlord and tenant between the parties, the only argument of the counsel for the respondents is that the respondents are the owners and the petitioner is in possession of the premises from which he has been ordered to be evicted.
4. Merely because a person is in possession of a premises owned by another does not make the owner the landlord of the person in possession and does not make the relationship between the two to be of landlord and tenant.

5. In the present case, the petitioner has placed before this Court an affidavit and a receipt to show his status as an agreement purchaser in possession. If the said fact is correct, then the possession of the petitioner would be as agreement purchaser and not as tenant and even though the respondents may be entitled to recover possession from the petitioner, but not in a proceeding under the Rent Control Act but before the Civil Court.

6. The senior counsel for the petitioner on enquiry, under instructions, categorically states that the petitioner, in the event of the respondents invoking the jurisdiction of Civil Court to recover possession from the petitioner, will not take the plea of the jurisdiction of the Civil Court being barred for the reason of the petitioner or anyone else also having any tenancy rights in the shop in possession of the petitioners.

7. The learned Additional Rent Controller (ARC), in the impugned order, notwithstanding the aforesaid facts has also though given elaborate reasons about ownership but has not considered that to maintain a petition for eviction before the Rent Controller, whether on the ground, of Section 14(1)(e) of the Act or otherwise, existence of relationship of landlord and tenant is necessary. The learned ARC also seems to have confused ownership with landlordship, as the counsel for the respondents arguments are suffering from. Merely because the respondents may be owners does not make the petitioner a tenant under them, especially when the petitioner has expressly pleaded on the basis of documents that his possession of the premises is as of an agreement purchaser in possession.

8. For the aforesaid reason, need to go into the aspect of *bona fide* requirement is not felt inasmuch as once the petition for eviction has to be put to trial, the same would be on trial in entirety.

9. The petition is thus allowed. The order dated 17th July, 2017 in ARC No.25333/2016 of the Court of ARC (West), Tis Hazari Courts, Delhi is set aside. Resultantly, the petitioner is granted leave to defend the petition for eviction.

10. The petitioner to file written statement within 30 days from today with advance copy to the respondents.

11. List before the ARC (West), Tis Hazari Courts, Delhi on 6th November, 2017.

12. The counsel for the respondents may file replication if necessary and the ARC shall then proceed to adjudicate the petition for eviction.

13. The senior counsel for the petitioner at this stage contends that it is also his plea that the petitioner has been in possession of the premises since 1984 and his possession has matured into adverse possession.

14. The said plea is contrary to the settled position in law. Reference in this regard may be made to *Mohan Lal Vs. Mirza Abdul Gaffar* (1996) 1 SCC 639, *Karnataka Board of Wakf Vs. Government of India* (2004) 10 SCC 779, *Annasaheb Bapusaheb Patil Vs. Balwant @ Balasaheb Babusaheb Patil* (1995) 2 SCC 543 and *L.N. Aswathama Vs. P. Prakash* (2009) 13 SCC 229 where it has been held that plea of adverse possession is mutually inconsistent with plea of lawful title to the premises.

15. Option has been again given to the senior counsel for the petitioner to clarify, whether he claims possession to be by way of adverse possession or as agreement purchaser in possession.

16. The senior counsel for the petitioner states that he will take the requisite plea in his written statement.

The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 25, 2017

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