

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

% **Date of decision: 1st September, 2017.**

+ **RC.REV. No.409/2017 and CM No.31866/2017 (for stay)**

SUDESH KUMARI

..... Petitioner

Through: Mr. Deepak Anand and Mr.
Aayushmaan, Advs.

Versus

RAMESH KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.31865/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

RC.REV. No.409/2017 and CM No.31866/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 2nd March, 2017 in E.No.199/16 (Old No.4/2015) of the Court of Additional Rent Controller, North District, Rohini Courts, Delhi) dismissing the application of the petitioner / tenant for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlord and the consequent order of eviction of the petitioner / tenant from one room and toilet on the second floor of property no.A-1724, Jahangir Puri, New Delhi – 110 033.

4. The counsel for the petitioner / tenant has been heard.
5. The only argument of the counsel for the petitioner / tenant is that there is no relationship of landlord and tenant between the parties; that in the petition for eviction filed in or about January, 2015 it is pleaded that the petitioner is a tenant for about last ten years; that the petitioner / tenant has however been in possession of the premises for long, and as owner thereof.
6. On enquiry, as to what are the documents of title in favour of the petitioner / tenant, the counsel for the petitioner / tenant states that the said documents of title have been lost, inasmuch as the husband of the petitioner / tenant had purchased the said premises but the petitioner / tenant, after the demise of her husband, is unable to locate the same.
7. On further enquiry, that even if the originals have been lost, why cannot certified copies thereof be obtained from the office of the Sub Registrar with which the said documents are registered, it is stated that there is no registered document of title in favour of the husband of the petitioner / tenant.
8. On yet further enquiry that without any registered document, on what basis can the petitioner / tenant claim that her husband and after him she has title to the premises, it is argued that the documents though unregistered are of a date prior to the pronouncement of the Supreme Court in ***Suraj Lamps*** case (probably intending to refer to ***Suraj Lamp and Industries (P) Ltd. Vs. State of Haryana*** 2009 (7) SCC 363 & (2012) 1 SCC 656).
9. However the counsel for the petitioner / tenant on being asked to show where the Supreme Court in ***Suraj Lamp and Industries (P) Ltd.*** supra has held that the documents of an earlier date, even if unregistered, would

constitute documents of title, the counsel states that he has not even brought the said judgment for citing before this Court.

10. The aforesaid shows the casual manner in which the argument is being addressed, without even studying the law. ***Suraj Lamp and Industries (P) Ltd.*** merely reiterates the law as contained in the Transfer of Property Act, 1882 and the only exemption provided therein is that on the basis of documents even though unregistered, steps for securing title can be taken and that the titles already created would not be disturbed thereby. However in the present case, neither are there any documents nor any copies thereof; there is only a bare plea in the leave to defend. Para 26 of the second judgment aforesaid in ***Suraj Lamp and Industries (P) Ltd.*** in this regard is as under:

“26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/Will transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said “SA/GPA/Will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments / leases by development authorities. We make it clear that if the documents relating to “SA/GPA/Will transactions” have been accepted / acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.”

11. Such a plea cannot constitute a fact which would disentitle the respondent from an order of eviction under Section 14(1)(e) of the Act, within the meaning of Section 25B(5) of the Act.

12. Finding from the paper book, that the respondent is the resident of the first floor of the same property, it has been enquired from the counsel for the petitioner / tenant, in what capacity the respondent / landlord is residing on the first floor.

13. The counsel for the petitioner / tenant has argued that the respondent / landlord is residing as the owner. At this stage of dictation, it is stated that the counsel does not know what is the title of the respondent / landlord.

14. On the basis of the aforesaid arguments, no error can certainly be said to have been made by the learned Additional Rent Controller in denial of leave to defend to the petitioner / tenant.

15. Though the counsel for the petitioner / tenant has not raised any other argument but to satisfy myself that the order of eviction is in accordance with law within the meaning of Section 25B(8) of the Act, I have gone through the paper book.

16. The respondent / landlord instituted the petition for eviction pleading (i) that late Shri Chandu Lal, father of the respondent / landlord was allotted the plot underneath the property vide possession slip dated 12th October, 1976; (ii) that after the demise of the father of the respondent / landlord, the respondent / landlord inducted the husband of the petitioner / tenant as a tenant in respect of one room and toilet situated at second floor of the property at a monthly rent of Rs.1,000/-; (iii) that after the demise of her husband, the petitioner / tenant has stepped into the shoes of her husband and

has become a tenant under the respondent / landlord; (iv) that the family of the respondent / landlord consists of the respondent himself, his wife and two unmarried sons; (v) that the sons of the respondent / landlord are of marriageable age; (vi) that the ground floor of the property was disposed of by the deceased father of the respondent / landlord and the respondent / landlord along with his aforesaid family members is residing in one room situated on the first floor of the property; and, (vii) that the respondent / landlord requires the premises in the tenancy of the petitioner for his own use and occupation.

17. The petitioner / tenant applied for leave to defend pleading (i) that the husband of the petitioner / tenant had on 1st November, 2000 purchased the premises in occupation of the petitioner / tenant from Smt. Raj Rani, Smt. Suman Rani and Sh. Ramesh i.e., the respondent herein, being the legal heirs of late Shri Chandu Lal, for a consideration amount of Rs.50,000/-; (ii) that after the death of the husband of the petitioner / tenant, the petitioner / tenant and her daughter have become the owners of the property; (iii) that there is no relationship of landlord and tenant between the parties; (iv) that the sale documents in favour of the husband of the petitioner / tenant i.e. General Power of Attorney, Agreement to Sell, Receipt and Will were not traceable at present as the said documents were in the custody of the husband of the petitioner / tenant who expired on 16th December, 2010 and since then there was no requirement for the said documents; (v) that all the electricity bills, gas connection, ration card, voter-ID card, Aadhar card are in the name of the petitioner / tenant; (vi) that the respondent / landlord is a quarrelsome person and the petitioner / tenant had also lodged a complaint to the Police against the respondent / landlord; (vii) that the respondent / landlord had not

shown any documents of his ownership; and, (viii) that the same family of the respondent / landlord had been residing in the accommodation on the first floor and there had been no increase in the family members, and denying each and every averment in the petition for eviction.

18. Needless to state, the respondent / landlord filed a reply to the aforesaid application for leave to defend denying the contents thereof and denying that her or his siblings had transferred the premises in occupation of the petitioner / tenant to the husband of the petitioner / tenant.

19. The aforesaid would show that the petitioner / tenant in the application for leave to defend does not controvert the accommodation in possession of the respondent / landlord and the number of family members of the respondent / landlord. Certainly the one room accommodation, presently available to the respondent / landlord on the first floor of the property, cannot be said to be sufficient for the family of the respondent / landlord comprising of his wife and two grown up sons. The counsel for the petitioner / tenant has thus rightly not raised any other arguments.

20. As far as the contents of leave to defend aforesaid are concerned, the petitioner / tenant has admitted that the father of the respondent / landlord was the owner of the property and that the father of the respondent / landlord is now no more. The same constitutes the respondent / landlord, according to the petitioner / tenant also, at least as one of the co-owners of the property.

21. There is absolutely nothing in the application for leave to defend to show that the petitioner / tenant or her husband have exercised any ownership rights with respect to the property or have with any authority

declared themselves to be the owners of the property. The sale of the ground floor by the father of the respondent / landlord is also not disputed.

22. The counsel for the petitioner / tenant has argued that the petitioner / tenant has also instituted a Civil Suit for declaration of her rights as owner in the property and it is contended that if the petitioner / tenant is evicted, the said suit will become infructuous.

23. On enquiry, it is informed that the suit has been filed after the filing of the eviction petition.

24. I do not understand that how the suit will become infructuous by eviction of the petitioner / tenant. If the petitioner / tenant succeeds in the suit, she, inspite of being evicted can still claim declaration of her ownership and recover possession in pursuance thereto.

25. There is thus no merit in this petition.

26. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 01, 2017

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