

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

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

+ **CM(M) 1246/2017**

BALESHWAR DAYAL SHARMA **Petitioner**

Through: Mr. C.S. Bhandari, Adv.

Versus

BIMLA GUPTA & ORS **Respondents**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.39567/2017 (for exemption)

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

CM(M) 1246/2017 & CM No.39568/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 24th August, 2017 in RCT No.30500/2016 of the Rent Control Tribunal (Headquarter), Tis Hazari Courts, Delhi] of dismissal of the appeal under Section 38 of the Delhi Rent Control Act, 1958 filed by the petitioner against the order [dated 19th September, 2016 in E No.65/2014 of the Court of Additional Rent Controller (ARC) (Central), Tis Hazari Courts, Delhi] holding the six respondents to have made out a ground for eviction of the petitioner (from a portion of property No.64, Gali No.2, Prem Nagar, Subzi Mandi, Delhi) under Section 14(1)(a) of the Act.

4. The order of the ARC, after holding so, listed the proceedings to determine whether the petitioner was entitled to benefit of Section 14(2) of the Act.

5. The counsel for the petitioner, on enquiry, states that the said

proceedings are still underway and it has still not been determined whether the petitioner is entitled to the said benefit or not.

6. The counsel for the petitioner does not dispute that the petitioner was a tenant in the said portion of the property under one Khazan Singh who died leaving the six respondents as his daughters or that the said Khazan Singh left a Will whereunder he bequeathed the said property, a portion of which is in the tenancy of the petitioner, to his said six daughters. The counsel for the petitioner/tenant has however drawn attention to the following clauses at pages 36 and 38 of the paper book in the said Will:

“I hereby GIVE, DEVISE AND BEQUEATHE my aforesaid House No.64, Prem Nagar, Subzi Mandi, Delhi, in favour of my wife Smt. Angoori Devi, for life and, thereafter the said property shall belong to and vest in my six daughters referred to above in proportion stated below. My younger daughter Mrs. Geeta Jain will get the share of 20% of the said property. The balance 80% of the property will be divided equally to my remaining five daughters, i.e. Bimla, Usha, Santosh, Munni and Anita will get 16% each.

.....

4. *I appoint my son-in-law, Shri Nawal Kishre Gupta, who is married to my eldest daughter Bimla Gupta, as the executor of this my will and he shall be entitled to probate of this Will, if necessary, without furnishing security. Liability, if any, including liability to pay Income Tax, Wealth tax and any other kind of liability shall be discharged by the executor Shri Nawal Kishore Gupta out of my estate.”*

It is not the contention that wife of Khazan Singh is alive.

7. The only argument of the counsel for the petitioner/tenant is that though on the demise of Khazan Singh the property, a portion of which is in

the tenancy of the petitioner/tenant, devolved on the six respondents who sued for eviction of the petitioner/tenant but owing to the aforesaid clauses in the Will, till the property is partitioned between the six daughters or any family settlement is executed, it cannot be known as to which of the six daughters/respondents is the owner/landlord of the portion of the property in the tenancy of the petitioner/tenant.

8. On my asking, which law is the counsel for the petitioner/tenant applying, he has frankly stated “my law”.

9. To say the least, the argument appals me. It is settled position in law (see *Vijay Manchanda Vs. Ashok Manchanda* 2010 (114) DRJ 467 SLP(C) No.8872-8873/2010 whereagainst was dismissed on 1st April, 2010 and *Manita Khurana Vs. Indra Khurana* AIR 2010 Del 69) that none can be compelled to partition the property and jointness is a concept of Hindu families.

10. In the present case, in terms of admitted Will of Khazan Singh, it is not as if Khazan Singh has bequeathed separate portions of the property to his six daughters. Under the clauses aforesaid of the Will, Khazan Singh has bequeathed undivided share in the property, a portion of which is in the tenancy of the petitioner, to his six daughters and it is upto the six daughters/respondents, whether to continue to hold the property jointly with undivided share therein as prescribed in the Will or to partition the property. The petitioner/tenant cannot compel the six respondents/landladies to first partition the property amongst themselves before any of them to whose share the portion in tenancy of petitioner falls, asserts rights as owner/landlord against petitioner.

11. The six respondents, in terms of the Will aforesaid of their father are co-owners of the property, though not in equal share and with one of them having 20% share and the other five having share of 16% each in the remaining 80% share of the property. It is the settled position in law that a co-owner of a property owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property; the position changes only when partition takes place. Reference in this regard can be made to *Sri Ram Pasricha Vs. Jagannath* (1976) 4 SCC 184. This Court in *Bimla Wati Seth Vs. Kastings Pvt. Ltd.* 1998 (44) DRJ 743 held that even a preliminary decree for partition only determines the respective shares and till a final decree for partition by metes and bounds is passed, all continue to be co-owners of the property and the petitioner/tenant as a co-owner alone could sue for eviction under the Delhi Rent Control Act, 1958. In that case, it was held that the preliminary decree for partition determining the share of the plaintiff therein to be 1/7th, did not identify, demarcate or crystallize her share. In *Kochkunju Nair Vs. Koshy Alexander* (1999) 3 SCC 482, it was held that ownership imports three essential rights, namely, right to possession, right to enjoy and right to dispose; all the three essentials are satisfied in the case of co-owner; all co-owners have equal rights and coordinate interest in the property, though their shares may be either fixed or indeterminate; every co-owner has a right to enjoyment and possession equal to that of other co-owner or co-owners and each co-owner has, in theory, interest in every infinitesimal portion of the subject matter and each has the right irrespective of the quantity of his interest, to be in possession of every part and parcel of the property jointly with others.

12. It is not the contention of the counsel for the petitioner/tenant that any partition by metes and bounds of the property has taken place.

13. Not only so, the argument is also totally contrary to Section 37 of the Transfer of Property Act, 1882, which is as under:

“37. Apportionment of benefit of obligation on severance.—
When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract, to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official Gazette so directs.”

Though per Section 5 of the Transfer of Property Act devolution of property by inheritance or under a Will is not transfer of property but applying the principle contained in the said section also, even if there were to be a partition, even then severance is not automatic.

14. I need not say anything more, since the aforesaid provisions of law is self explanatory.

15. The counsel for the petitioner/tenant has then drawn attention to a rent receipt at page 45 of the paper book, stated to have been issued by Nawal Kishore Gupta, executor named in the Will and states that the said Nawal Kishore Gupta is the landlord and not the six respondents.

16. On asking, as to which law will apply, the counsel states that as per Section 2 of the Delhi Rent Control Act, the said Nawal Kishore Gupta is the landlord.

17. On further asking, as to which clause in the definition Section 2 is being referred to, the counsel refers to Section 2(i) which defines 'premises'.

18. The petitioner/tenant himself is relying on the Will, to have the petition for eviction knocked out. As per the said Will, the said Nawal Kishore Gupta is merely the executor. The executor does not become the landlord of the property bequeathed, more so, when the executor is not claiming adversely to the legatees/beneficiaries.

19. Merely because the respondents have chosen to collect the rent through an agent, namely the executor named in the Will, does not mean the said agent is the landlord, particularly when the agent is not claiming any right in the premises adversely to the beneficiaries.

20. A Division Bench of the High Court of Calcutta, in ***Mt. Kulwanta Bewa Vs. Karam Chand Soni*** AIR 1938 Cal 714 held that merely because an estate is in the hands of an administrator, the beneficiaries are thereby not rendered incompetent to deal with their interest in the estate. It was further held that Section 211 of the Indian Succession Act, 1925 merely provides that the estate of a deceased person vests in its executor or administrator as such; the words "as such" are important and show that the vesting is not of

the beneficial interest in the property but only for purposes of representation; the beneficial interest in the estate vests in the heirs-at-law and there is nothing in the Succession Act which limits the power of disposal of the heirs-at-law over such estate merely because a grant of administration has been made; nor does the Transfer of Property Act make the interest of the heirs-at-law in the estate, a property which may not be transferred. The contention that Sections 216, 220 and 273 of the Indian Succession Act provide to the contrary was negated. A Division Bench of the High Court of Gujarat also in ***Janardan Badrinarayan Patel Vs. Sheth Ambalal Himatlal*** AIR 1999 Guj 162 held on an analysis of the provisions of the Indian Succession Act that the executor does not acquire any personal benefit, when the property of the deceased person vests in him in his capacity as an executor and that only the legal estate vests in the executor and the vesting is not for any personal benefit. Again, it was held that the words “as such” used in Section 211 clearly indicate that the executor is not the absolute owner of the property that vests in him, in the sense of beneficial owner thereof and that the property vests in him only for the purpose of its administration under the Will. It was further held that the executor gets completely divested of such legal interest as executor also when the property is transferred to the legatee.

21. Before proceeding further, I may notice that as far as the city of Delhi is concerned, it is not essential to obtain probate of a document claimed to be the Will (see ***Bharat Bhushan Sabharwal Vs. Rama Bhasin*** 2010 SCC OnLine 653 SLP(C) No.11990/2010 whereagainst was dismissed on 10th September, 2010 and ***Capt. (Retd.) O.P. Sharma Vs. Kamla Sharma*** (2009) 158 DLT 631 (DB)) to claim any right thereunder. There is thus no need for

the executor named in a Will to transfer the property to the legatee/beneficiary and the property of the deceased vests in the legatee/beneficiary on the moment of death.

22. Notice may also be taken of Section 2(e) of the Act defining ‘landlord’ as a person who for the time being is receiving or entitled to receive rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant. As per the said definition, a person who is receiving the rent as well as a person who is entitled to receive the rent, both are landlords. Having concluded hereinabove that the property aforesaid vested in the respondents on the moment of demise of their father, the respondents are landlords within the meaning of Section 2(e) of the Act.

23. This Court in *Savitri Devi Abdali Vs. Ram Bhaj Datta* (1976) 12 DLT 334 held that the definition of landlord in the Act is of the widest amplitude. In *Madan Lal Vs. Hazara Singh* 1977 (2) RLR 641 it was held that the definition being wide, which covers a person who is entitled to receive rent also, merely because the owner choose to let out the premises through an agent would not mean that the owner is not the landlord or would not be in a position to maintain a petition for eviction. To the same effect is *Jag Jit Kaur Vs. Mool Chand* 1982 DRJ 244. Supreme Court also in *Rishab Chand Bhandari Vs. National Engineering Industry Limited* (2009) 10 SCC 601, though in the context of the definition in Section 3(iii) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 defining ‘landlord’, held that the natural landlord of a premises is ordinarily the

owner; however expanded definition has been given in various rent statutes of many States for the reason that sometimes the owner may not himself be in a position to collect the rent and may hence appoint an agent or authorise any person to collect rent on his behalf because he may be abroad or is unable to do so for any other reason; this does not mean that the natural meaning of the word “landlord”, who is the owner of the premises, would disappear and the owner would go out of the picture altogether. The dicta in *Madan Lal* supra was approved of.

24. What falls is that merely because the six respondents have allowed the husband of one of them and who is also the named executor in the Will to collect rent from the petitioner, would not mean that the respondents are not the landlords or are disentitled from maintaining the petition for eviction from which this petition arises.

25. The counsel for the petitioner then states that he filed this petition only to avail benefit in another petition for eviction filed under Section 14(1)(e) of the Act.

26. The same shows that the present petition to be in abuse of the process of this Court and having been filed merely to entangle the respondents/landladies in litigation.

27. Dismissed.

28. I am refraining from imposing any costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 06, 2017/‘bs’
(corrected & released on 6th January, 2018)