

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

+ **RSA No. 34/2016**

% **2nd May, 2017**

MAMTA DEVI Appellant

Through: Mr. Ashok Kumar Bahl, Mr.
V.P. Bansal, Advocates

versus

PREETI Respondent

Through: Mr. Narain Saxena, Advocate
with Ms. Preeti, Respondent in
person.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff against the concurrent judgments of the courts below; of the Trial Court dated 16.7.2015 and the First Appellate Court dated 24.9.2015; by which the courts below have dismissed the suit for possession and damages. Suit for possession was filed pleading that the tenant, whose contractual tenancy had been terminated in her lifetime, had died and since the legal heir of the deceased tenant was not financially dependent on the deceased tenant, hence the legal heir/respondent/defendant did not inherit the tenancy. In Delhi a

residential tenant is defined under Section 2 (1) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') and as per this provision only certain limited legal heirs of the deceased tenant inherit the residential tenancy subject to their living with the tenant and being financially dependent on the tenant.

2. The admitted facts are as under:

- (i) That the suit property is a shop measuring 3 Ft. x 9 Ft. bearing no. 3 in property no. 1/6826, Main Road, East Rohtash Nagar, Shahdara, Delhi. The tenanted premises were let out by its previous owner, landlord to Smt. Prem Rani, and the latter is the predecessor-in-interest of the respondent/defendant.
- (ii) That appellant/plaintiff purchased the suit property on 11.7.2005 and Smt. Prem Rani became tenant under the appellant/plaintiff thereafter.
- (iii) The last paid rent by Smt. Prem Rani to the appellant/plaintiff was Rs.266/- per month.
- (iv) Appellant/Plaintiff terminated the tenancy of Smt. Prem Rani through a legal notice dated 7.11.2011 which was duly received as she gave its reply dated 15.5.2011 (wrongly typed as 15.5.2010) also.

(v) Smt. Prem Rani expired on 7.11.2011 and the respondent/defendant is her daughter.

(vi) That the suit property being a shop was used for commercial activities by the deceased Smt. Prem Rani/tenant.

3. The limited issue is whether the subject suit for possession will lie on the ground that the respondent/defendant was not financially dependent upon her deceased mother Smt. Prem Rani at the time of her death and consequently is therefore excluded from the definition of 'tenant' as contained in Section 2(l) of the Act.

4. The issue is no longer *res integra* and Supreme Court has in the celebrated judgment in the case of ***Gian Devi Anand Vs. Jeevan Kumar and Others, (1985) 2 SCC 683*** held that so far as devolution of commercial tenancies are concerned, the devolution thereof is as an ordinary property of a deceased, and the commercial tenanted property on the death of the deceased tenant devolves upon all his legal heirs and not only upon the limited legal heirs as specified in Section 2(l) of the Act. Accordingly, the subject suit for possession was not maintainable because the suit proceeded on a wrong hypothesis that Section 2(l) of the Act applies to tenancies which were commercial whereas the subject section only applies to devolution of tenancy of a residential property.

5. Learned counsel for the appellant/plaintiff argues that the Supreme Court in the judgment in the case of *Satyawati Sharma vs. Union of India and Another*, (2008) 5 SCC 287 has held that now even the commercial tenancies under the Act will have limited devolution under Section 2(l) of the Act, however, this argument is based on a complete misreading of the judgment in the case of *Satyawati Sharma (supra)* because in the case of *Satyawati Sharma (supra)* Supreme Court only held that though the literal interpretation of the language contained in Section 14(1)(e) of the Act allowed eviction petitions for *bonafide* necessity only with respect to residential premises, however, such language being discriminatory, and thus consequently held that this Section 14(1)(e) of the Act will even apply for evicting by landlords of tenants not only of residential premises but also of commercial tenancies. There is nothing in the judgment in the case of *Satyawati Sharma (supra)* which holds that the commercial premises and commercial tenancies are covered under Section 2(l) of the Act.

6. No substantial question of law arises. Dismissed.

MAY 02, 2017
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VALMIKI J. MEHTA, J