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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 17th April, 2018

+ RC. REV. 80/2015 and CM APPL.3023/2015 (stay)

GHANSAR SINGH

..... Petitioner

Through: Mr. Adarsh Kumar Gupta, Advocate

versus

KUSUM LATA SHARMA

..... Respondent

Through: Mr. V.K. Garg, Senior Advocate with
Mr. Sagar Saxena, & Ms. Noopur
Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner admittedly is a tenant in a portion described as two rooms each on the first and the second floor of the property bearing No.C-586, Gali No.12, Majlis Park, Delhi-110 033 (hereinafter referred to as "*the tenanted premises*"). The respondent had instituted a case for eviction (E.No.03/2011) on 06.01.2011 against him on the ground of *bona fide* need under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The eviction case was contested by the petitioner (the tenant) on various grounds, the prime plea being that the respondent (landlady), a widow, who does not have any children of her own, has available to her sufficient accommodation, the property in question comprising of a number of rooms, out of which two bed rooms have been in use and occupation of the landlady,

the brother-in-law (*devar*) (Prem Kumar Sharma) and his wife (*devrani*) (Geeta Sharma) along with their children (two un-married daughters and one son), not being members of her family nor persons dependent on her for residential purposes. The petitioner (tenant) also took up the plea that the brother-in-law (*devar*) for whose residential needs the eviction was sought, himself owns property No.C-588, Gali No.12, Majlis Park, Azad Pur, Delhi and further that his wife (Geeta Sharma) also owns property bearing No.C-587, Gali No.12, Majlis Park, Azad Pur, Delhi, in addition to another property bearing No.C-600, Gali No.13, Majlis Park, Azad Pur, Delhi.

2. The case was put to trial in which both sides led evidence. It was decided by the learned additional rent controller (ARC) by judgment dated 21.11.2014. All the grounds of contest raised by the petitioner were repelled and eviction order was consequently granted in favour of the respondent/ landlady. The petition at hand challenges the correctness, legality and propriety of the findings returned and the eviction order resultantly passed.

3. At the hearing, the ground raised by the petitioner primarily is that the respondent/landlady has not acted *bona fide* as she has concealed the crucial facts concerning property No.C-587, Gali No.12, Majlis Park, Azad Pur, Delhi. It is the argument of the petitioner/tenant that the pleadings of the respondent/landlady, in above regard have been misleading and that a false case was set up, the true fact being that Geeta Sharma (wife of the brother-in-law) for needs of whose family the eviction case is pressed, is owner and in

possession of the said property in her own rights and, therefore, she not being a dependant for such purposes on the respondent/landlady, has been withheld.

4. Having heard the learned counsel on both sides and having perused the record, this Court finds merit in the grievance of the petitioner/tenant. The reasons may be set out hereinafter.

5. A perusal of the eviction petition presented before the additional rent controller would show that the respondent had described herself as a resident of ground floor of property No.C-586, Gali No.12, Majlis Park, Delhi-110033, the tenanted portion in possession of the petitioner having been described as two rooms, one room each on the first and second floor, in the rear portion of the property. The tenanted premises was described to be part of the property bearing No.C-586, reference being made to its graphical depiction in the site plan (Annexure-‘A’) in colour red. The Copy of the site plan, which was filed with the eviction petition, it having been captioned as the site plan of property No.C-586, Gali No.12 & 13, Majlis Park, Delhi-110 033, would show the property to be a three storeyed structure, there being two bed rooms, one drawing room, atleast three rooms, besides kitchen, toilet, verandah and other areas (courtyard, staircase, etc.) at the ground floor and atleast three rooms on the first floor and the second floor (Ex.PW-1/16). Reliance was also placed on another site plan (Ex.PW-15) which would primarily depict the accommodation at the first and the second floor level, the said site plan also having been captioned as one of property No.C-586, Gali No.15, Majlis Park,

Azadpur, Delhi. For clarity, it may be added here that there was no reference to property No.C-587 in the site plan, the impression thereby created being that the entire structure/accommodation depicted therein relates to property No.C-586 only.

6. The respondent appeared as her own witness (PW-1) and during her cross-examination, she explained that her husband had passed away in 1999 and further that she does not have any child of her own, she not even having adopted any child. She, however, sought to explain in that context that she considered the children of her brother-in-law (*devar*) as her own children and that they had been residing with her since the very beginning. This clearly shows improvement being made over the case as originally set up.

7. Be that as it may, PW-1 in cross-examination stated that she would not remember as to when she had purchased property No.C-586, Gali No.13, Majlis Park, Delhi. She admitted that Geeta Sharma, wife of her brother-in-law (Prem Kumar Sharma) for whose needs the eviction is sought is owner of property bearing No.C-587, Gali No.12, Majlis Park, Azadpur, Delhi. She also admitted that Geeta Sharma was residing in her property bearing No.C-587. It was at that stage that she would add that the plot No.586 and 587 had been joined for raising a construction of one building and that she and her sister-in-law Geeta Sharma are residing in that one building as one family.

8. The argument raised against the above backdrop has been that the site plans (Ex.PW-1/5 and Ex.PW-1/6) depict a common building constructed over two adjoining plots, they bearing No.C-586 and C-

587. This argument cannot be accepted as it is not based on any pleadings to this effect. On the contrary, in the averments in the petition it was a clear case of the respondent/landlady that the tenanted portion forms part of property No.C-586, which is depicted in the said site plan filed therewith.

9. Faced with the above argument, the counsel for the respondent/landlord sought to place reliance on pleadings in para 18(a)(ii) where it was, *inter alia*, mentioned that “*as stated above ... the front portion of the property bearing No.C-586/587, Gali No.12, Majlis Park, Delhi-110033 comprises of only ground floor and is having two bed rooms, one drawing room, two kitchen, two latrine/bathroom, two small store rooms, one pooja room and one court yard and petitioner is presently having the aforesaid accommodation in her possession.*”

10. It is correct on the part of the petitioner/tenant to argue that the pleadings in above nature are misleading. There is no reference to property No.C-587 in any of the earlier or even in the later part of the eviction petition. Therefore, the pleadings beginning with the expression “*as stated above*” were factually incorrect. There was no reference made to the right, title or interest of Geeta Sharma (wife of brother-in-law) in the property in question or the same having been built over two adjoining plots of land as a common super-structure. The respondent/landlady cannot be allowed to make out a new case beyond her own pleadings.

11. For the foregoing reasons, it must be held that the respondent landlady has failed to prove her case of *bona fide* need. Consequently, the impugned order dated 21.11.2014 is set aside. Her eviction petition is dismissed.

12. The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 17, 2018

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