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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 24th January, 2018

+ RC.REV. 316/2012 & CM No. 12066/2012

SURENDER SINGH Petitioner

Through: Mr. Gaurav Sharma, Proxy
Advocate.

versus

NARENDER KUMAR Respondent

Through: Mr. R.K. Saxena, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The revision petition at hand has been filed seeking to assail the order dated 31.03.2012 passed by the Additional Rent Controller on the file of eviction case (E-185/2011) thereby dismissing the application of the petitioner (tenant/respondent before the Rent Controller) seeking leave to defend the proceedings arising out of the petition presented by the respondent (landlord/petitioner before the Rent Controller) on the ground of *bonafide* need under Section 14 (1) (e) of Delhi Rent Control Act, 1958 and in the consequence granting an order of eviction in respect of demised premises described as one shop admeasuring 26.5" x 8.25" bearing shop no. 3926 & 3919/28, now known as No. 3926 forming part of property Nos. 3926, 3919/28, 3924/1 & staircase no. 3924, Abdullah Building, Roshnara Road, Subzi Mandi, Delhi -110007 as shown in red colour in the site plan

attached with the petition (hereinafter referred to as “the suit premises”).

2. It is undisputed that the tenant/petitioner herein was inducted in the suit premises by the erstwhile owner Dhanno Devi. It is also undisputed that Dhanno Devi, the original landlady, whose title to the property cannot be challenged by the tenant, died in the year 2002. It is also undisputed that the landlord (the respondent herein) is her son who has placed on record a copy of the Will duly registered, left behind by Dhanno Devi thereby bequeathing her estate in favour of her legal heirs that include him (the respondent), the other legal heirs including Bimla Devi, the daughter of Dhanno Devi and sister of the respondent.

3. The petition seeking vacation of the subject premises under Section 14 (1) (e), Delhi Rent Control Act, 1958 was filed on the grounds that the respondent is a diploma holder in Instruments Mechanics from ITI, Delhi, engaged in some private job, earning his livelihood by selling household goods as a hawker on footpaths and local weekly markets and that he requires a regular place for his business and therefore was in an urgent need of the suit premises.

4. The petitioner sought leave to contest primarily questioning the title of the respondent to prosecute such a case under Section 14 (1) (e) of Delhi Rent Control Act referring in this context to the fact that the respondent is not the sole or exclusive owner of the property after the death of Dhanno Devi, also placing reliance on certain documents evidencing acceptance of rent by Bimla Devi. These contentions

have been considered and rejected by the Rent Controller on the following reasons:-

“The maintainability of the present petition has been challenged denying the relationship of landlord and tenant between the parties and respondent has even disputed the ownership. Admitted position is that the suit property was let out to the present respondent by Smt. Dhanno Devi. There is no denial on behalf of the respondent that petitioner is not the son of late Smt. Dhanno Devi. Petitioner has claimed his title qua the suit property against the respondent on the basis of Will and respondent has challenged the Will and has alleged that since the petitioner is not the landlord, therefore, he can not maintain the petition on his own without impleading the other co-owners or without filing no objection from other legal heirs and in this regard he has placed reliance upon the judgment reported in 1987 (1) RCJ 85. I have perused the judgment. With due respect, the facts of the present case is different from the said case as in the present case petitioner has claimed his title qua the suit property on the basis of registered will in his favour and in the said case, landlord was not claiming any title on the basis of Will and it is settled law that any of the co-owner can maintain the eviction petition subject to rider that the other co-owner should not have any objection and till date no objection has been filed on behalf of the other co-owners and it is further settled law that the respondent being the tenant can not challenge the title of the petitioner claimed on the basis of Will and there is no need to obtain probate of Will in Delhi and in this regard reliance may be placed upon the judgments reported in 2004 (2) RCR 665 and 832 RCR 1976 and 2004 (1) RCR 154”

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“Next defence taken is that Smt. Dhanno Devi prior to her death, asked the respondent to pay rent to Smt. Bimla

Devi only. He has further claimed that Smt. Bimla Devi in the year 2010 asked for advance and asked to adjust the advance given to her towards the rent. So far as adjustment of rent towards advance give to Smt. Bimla Devi is concerned, no doubt that rent receipt has been issued in favour of the respondent after the death of original landlord/owner signed by Smt. Bimla Devi but title of the said makes it clear that owner of the suit property as shown to be Late Smt. Dhanno Devi and even the rent receipt has been issued in her name and thus, it can not be said that Smt. Bimla Devi is only the landlady of the suit property in exclusion of other legal heirs.

So far as advance to Smt. Bimla Devi is concerned, i.e. between the respondent and Smt. Bimla Devi and otherwise also as per own allegation she has placed three Kisan Vikas Patra with the respondent of Rs. 5000/- each and even, if it is assumed that, respondent has given any amount to Smt. Bimla Devi, the said amount is liable to be recovered from her. Moreover the admitted rate of rent is Rs. 700/- per month and the alleged advance has been given in the month of December 2010 and now we are in the month of March, 2012 and thus, atleast about Rs. 9000/- has already been adjusted and respondent is having Kisan Vikas Patra about Rs. 15000/- with him and thus, otherwise also his interest is secured”.

5. Having heard the counsel on both sides, this court finds the core reasons set out in the impugned judgment of the Rent Controller are correct and in accord with the settled law on the subject. The respondent is admittedly a co-owner of the property. In *Sri Ram Pasricha vs. Jagannath & Ors.* 1976 RCR 832, the Supreme Court observed thus:-

“29. Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He 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 will, change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants”.

(emphasis supplied)

30.We are of opinion that a co-owner is as much an owner of the entire property as any sole owner of a property is”.

6. The above law was reiterated in *M/s India Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (dead) by LRs.* 2004 (1) RCR 154:-

“One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co- owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only

exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law”.

(emphasis supplied)

7. The next contention pressed at the hearing is in the context of the plea taken by the petitioner that the site plan submitted by the respondent and the description of the suit premises in the eviction petition are deficient inasmuch as he had raised certain further construction, he having asserted ownership right in their respect. The specific averments in the application for leave to defend as may be culled out from para 3 are as under:-

“That in the year 1994 the applicant started asking Smt. Dhanno Devi that he was running engineering works and need more space to conduct his business, however, Smt. Dhanno Devi did not accept his request and denied him for letting out the Kothari situated at the backside of the shop. However, the applicant was in dire need of the extended area to conduct his work finally in the year 1995, he in total defiance and disrespect to the ownership rights of Smt. Dhanno Devi removed the wall separating the Kothari from his shop and occupied the backside portion measuring 9.6” x 9.3”... the possession of the applicant over the backside portion shown in green colour in the site plan is hostile and in his own rights.”

(emphasis supplied)

8. This plea has also been rejected by the Rent Controller on the following reasoning:-

“Next defence is taken on behalf of the respondent is that the respondent is in possession of other portion of the

property shown in green colour in the site plan of respondent in his individual capacity and in defiance of the ownership right for last about 16 years and is not paying the rent for the said portion. The pleadings itself suggests that such defence has been taken with a view to obtain leave to contest the present case on merits on a ground which is not available in law to any of the tenant. A person who himself has alleged that he has taken the extra portion against the wishes of the landlord of the property belonging to the landlord can not seek an equitable relief. The reliance has been placed by the respondent in this regard upon the judgment reported in JT 2001 (5) SC 93. I have gone through the judgment. With due respect, the facts of the said case is quiet different from the facts of the present case. In the case relied upon by the respondent the fact is that the respondent claimed his possession qua the suit property in part performance of agreement to sell and here respondent is claiming unauthorized possession. In this regard, the reliance may be placed upon the judgment reported in 161 (2009) DLT 121. Wherein Hon'ble High Court of Delhi has held that a person claiming to have constructed unauthorized portion has no right, title or interest and it was further held by the Hon'ble High Court that a person in unauthorized occupation qua unauthorized construction has no right to even object the execution and thus, the stand taken by the respondent regarding his unauthorized occupation does not authorized him to retain the possession alongwith the suit property or in isolation of the suit property. Alleged portion in occupation of the respondent over and above the suit property is unauthorizedly occupied by him thus, the said portion can not be said to be out of purview of D.R.C. Act and respondent is bound to return the possession of the said portion as well. Mere possession can not said to be hostile that too in proceedings filed for eviction under the DRC Act and there is nothing on record to show that the respondent has ever claimed

prior to filing of the present leave to defend application that he has hostile possession of the said portion and therefore, said defence appears to be afterthought only with a view to leave to defend”.

9. There is no error in the above approach of the Rent Controller and reference in this regard may be made to the decisions in *Bhagwat Prasad Sharma vs. Pinki Aggawral & Anr.* 2009 (107) DRJ 517 and *Hiro Devi & Ors. vs. Balbir Singh & Anr.* 161 (2009) Delhi Law Times 121.

10. In the face of above facts and circumstances, the revision petition is found devoid of merit. It is thus dismissed. Stay against execution of the eviction order is vacated. The pending application becomes infructuous and also stands disposed of.

R.K.GAUBA, J.

JANUARY 24, 2018

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