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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd February, 2018

+ RC.REV. 323/2016 and CM APPL.22950/2016 (stay)

MAYA

..... Petitioner

Through: Mr. Pawan Kumar Singh, Advocate

versus

SHYAM SUNDER & ANR.

..... Respondents

Through: Mr. G.D. Sharma, Advocate with
Mr. Rakesh Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The revision petition at hand challenges judgment dated 21.03.2016 of the rent controller on the eviction petition (E. No.95/2013) which was instituted by the respondents against the petitioner on 31.05.2012 on the ground of *bona fide* need invoking the provision contained in Section 14 (1)(e) of the Delhi Rent Control Act, 1958, the proceedings arising wherefrom are governed by the procedure envisaged in Section 25-B of the Delhi Rent Control Act, 1958. The eviction petition had sought relief in respect of the premises described as one room, kitchen and bath room comprised in total area of 62 sq. yds., forming part of the premises at first floor of property bearing municipal No.292-293, Krishna Gali, Chhota Bazar, Kashmere Gate, Delhi (hereinafter referred to as "the tenanted

premises)” as specifically shown in the site plan submitted with the petition.

2. It may be mentioned here that on the application of the petitioner initially moved she was granted leave to defend, by order dated 22.07.2013, where-after she submitted written statement dated 29.08.2013 setting up her defences. After the pleadings had been completed the case was put to trial by the rent controller at which stage both sides led evidence, the first respondent (the first plaintiff) having appeared as his own witness (as PW-1), also examining his nephew Anil Jindal son of Late Shri Moti Ram (PW-2). On the other hand, the petitioner herein examined herself (as RW1), she also examining her sons Naveen (PW2) and Vikas Kumar (PW3).

3. The rent controller accepted the case of the respondents returning findings that they are the owner-cum-landlord *qua* the petitioner in respect of the tenanted premises. He also held that the respondents are in *bona fide* need of the tenanted premises for residential use of their children and other members of the family, the accommodation available in the remaining portion of the property being not sufficient for such purposes.

4. The prime contentions raised by the petitioner, admittedly a tenant in the premises in question, was of denial of landlord-tenant relationship between the parties, she disputing the claim of the respondents of they being the owner of the property in question, also raising the issue that there was no *bona fide* need. It was further the contention of the petitioner before the rent controller that the eviction

petition was bad in law in that it sought eviction from part of the tenanted premises, the claim being that the remaining portion on the first floor, i.e., the portion other than the premises described in the petition as the tenanted premises was also part of the tenancy which had been originally created in the name of Chhotey Lal, from whom Chiranjee Lal, the late husband of the petitioner had inherited the right to the tenancy. The petitioner additionally raised the plea that the petition was bad on account of non-joinder, Moti Ram being the original landlord, his legal heirs not having been impleaded and the tenancy having been inherited by other legal heirs of Chiranjee Lal, they not having been made a party.

5. The rent controller, on appraisal of the evidence led, found all the contentions or defences or objections of the petitioner to be devoid of merits or substance and, thus, having rejected the same, found the respondents to have proved their case as to the title to the subject property and as to the need on which they were seeking eviction order which consequently was granted.

6. Having heard the learned counsel on both sides and having gone through the record, this court finds no merit in the revision petition on any of the contentions urged and the reasons may be set out hereinafter.

7. The respondents/plaintiffs may have committed some error in pleadings in the eviction petition that the tenancy was created by late Shri Manphool Singh under whom they claim right, title or interest in the property. But then, during the course of evidence, it came to be

proved, without any contest, that the property in question was an evacuee property under the control of the custodian from whom it had been purchased in April, 1954 by two brothers Moti Ram and Harkesh. It is an admitted case of the petitioner that Moti Ram was the landlord qua her predecessor-in-interest. The evidence to the effect that Harkesh, the brother of Moti Ram had relinquished his rights in the property transferring entire title to Moti Ram need not be doubted. At any rate, the petitioner, concededly a tenant, is in no position to raise such issues in the proceedings arising out of Delhi Rent Control Act, 1958. The evidence of PW-1, on the strength of his affidavit (Ex.P-1), to the effect that half of the property in question was transferred by Moti Ram in favour of Manphool Singh on 12.01.1987 is substantiated by the documents to such effect (proved as Ex.PW-1/5). The petitioner, appearing as RW1, admitted that Moti Ram had died on 13.12.1987, as was also proved by PW-2, who is son of the said Moti Ram, his death certificate (Ex.PW-1/8) also having been duly proved.

8. RW-1 admitted that though the tenancy initially created was in respect of entire first floor portion, she had surrendered half of the said portion in favour of Moti Ram during his lifetime, the only portion remaining in her possession and use as a tenant thereafter being the portion in respect of which the eviction is sought.

9. Thus, the objection in the written statement that the eviction petition was bad for the reason it was to seek partial eviction from the

larger tenanted portion was apparently false and misleading intended to create confusion.

10. Moti Ram, it is an admitted case of the petitioner, was the landlord in whose favour she had attorned, particularly after the death of her husband who was the earlier tenant, though he having inherited the tenancy rights under his father. In these circumstances, the argument raised at the hearing on the revision petition that even Moti Ram could not be the landlord in that it was an evacuee property governed by the provisions of the Administration of Evacuee Property Act, 1950 cannot be accepted.

11. The tenant, who had admittedly attorned in favour of Moti Ram, is in no position, rather is estopped in law from questioning the title of his landlord (Section 116 of the Evidence Act). The fact that Moti Ram had transferred his share in the subject property in favour of Manphool Singh, his brother, by executing formal document (Ex.PW-1/5) has been corroborated by Anil Jindal (PW-2), son of said Moti Ram, by his deposition. The petitioner had tried to prove during the trial before the rent controller that she had paid rent to Moti Ram lastly by rent receipt dated 23.06.1990. Since Moti Ram had died on 13.12.1987, it is unbelievable that he could or would have received the rent on 23.06.1990 as is sought to be proved. The fact that the rent receipt purporting to show payment of rent has been denied by PW-2, son of Moti Ram, there being no other cogent evidence to prove the said transaction, punctures the defence raised beyond repair.

12. The learned rent controller has correctly referred to the rulings in *Shanti Sharma vs. Ved Prabha*, AIR 1987 SC 2028 and of this court reported as *Rajender Kumar Sharma & Ors. vs. Smt. Leelawati & Ors.*, 155 (2008) DLT 383, *Tahira Begum vs. Sumitar Kaur & Anr.*, 166 (2010) DLT 443, and *Mrs. Meenakshi vs. Ramesh Khanna, etc.*, 1995 RLR 322, to reject the contentions of the petitioner with regard to challenge to the claim of the respondents respecting the ownership. In proceedings under the rent restriction law, the landlord/plaintiff is not to show absolute ownership. He only is required to show that he has a title better than that of the tenant.

13. The respondents (the plaintiffs) having shown, particularly through the deposition of PW-2, that Moti Ram had transferred his right, title and interest in favour of their predecessor-in-interest, he having died, the conclusion reached by the rent controller to the effect that the respondents are the owner-cum-landlord qua the petitioner cannot be faulted.

14. As regards the contentions that the tenant Chiranjee Lal, late husband of the petitioner, had left behind other legal heirs, the plea has been rejected by the rent controller setting out correct reasons, with reference to the rulings of this court reported as *Delhi Cloth Market Trust Committee vs. Sheela Devi*, 2001 RLR 63 and *Rajender Kumar Sharma & Ors. vs. Leelawati & Ors.*, 155 (2008) DLT 383. The tenancy was one single indivisible tenancy and, therefore, the objection raised is of no consequence.

15. The respondents have proved before the rent controller that Nishant son of the second respondent is constrained to live in a rented accommodation, the available accommodation in the remaining portion of the property in question being hardly sufficient for the needs of the family. This fact, by itself, justifies the grant of eviction order on the ground of *bona fide* need [*Kailash Chand & Ovs. vs. Chand*, 75 (1998) DLT 734, *Surjit Singh Kalra vs. Union of India & Anr.*, 43 (1991) SLT 447 (SC); *Mahendra Raj vs. Union of India and Colonel Ashok Puri*, JT 1991 (1) 417].

16. For the foregoing reasons, the petition is found to be devoid of substance. It is, therefore, dismissed.

17. The stay against the execution of the eviction order is vacated. The application to that effect also stands disposed of.

R.K.GAUBA, J

FEBRUARY 22, 2018

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