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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 26th April, 2018

+ R.C. (REV.) 515/2011

ABDUL SATTAR (DECD.) THRU LRS. Petitioner
Through: Mr. S.K. Bhalla, Adv.

Versus

MOHD. WAKIL & ORS. Respondents
Through: Mr. Nikhil Malhotra & Mr.
Vinod Malhotra, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The predecessor-in-interest of the petitioners was impleaded as respondent in the eviction case (E-352/2009) instituted by the respondents herein on 13.08.1998 seeking order of eviction on the ground of *bona fide* requirement under Section 14 (1) (e) of Delhi Rent Control Act, 1958. The case was contested and at the stage of trial, both sides led evidence. The Additional Rent Controller, by judgment dated 24.09.2011, repelled all the defences taken by the petitioners and granted eviction order which is under challenge by the petition at hand.

2. The bone of contention here concerns premises described as property bearing no. 946, Haveli Azam Khan, Jama Masjid, Delhi which comprises of one room, one kothri, verandah, open court yard

with latrine, bathroom and kitchen on the ground floor as specifically shown in the colour red in the site plan (Ex.AW-1/17). It is not disputed by the petitioners that they occupy the said premises in the capacity of tenant, they being legal heirs of Abdul Sattar, the original tenant. It is further not in dispute that the respondents are in occupation of adjoining property bearing no.945, Haveli Azam Khan, Chitli Qabar, Jama Masjid, Delhi. According to the respondents, the said other property comprises of two rooms, kitchen, verandah and open court yard with latrine and bathroom on the ground floor and one room on the first floor. Though the petitioners in the course of their contest had pleaded that the ground floor of the property no. 945 consists of three rooms rather than two rooms, the said plea is of no consequence in view of the extensive needs explained by the respondents.

3. The respondents in their eviction case explained that they are brothers to each other, the first respondent being then aged 40 years, a divorcee, the second respondent being married and having a family of his own, the other respondents then aged being 32 and 28 years respectively, concededly unmarried. The petitioners in the course of their contest also raised issue with regard to the age of the respondents claiming that they were 64 years, 59 years, 57 years and 55 years respectively on the relevant date. Again, no evidence having been led in this regard, the issue of fact raised being not of any significance, the plea need not be considered except for the fact that the petitioners while contesting had pleaded that the averment of the respondents that

the first, third and fourth respondents intended to get married is not correct.

4. The respondents claim to be sons of Mohd. Nazeer who indisputably was one of the legal heirs of Hafizuddin who had let out the property in favour of the predecessor-in-interest of the petitioners. They pleaded that they were short of accommodation in property no. 945 and, therefore, required the subject premises for their personal use and residence, this also being referable to their intention of getting married. The petitioners contested primarily by stating that Mohd. Nazeer had died issueless and, therefore, the respondents cannot claim to be his legal heirs or to have acquired any title in the subject property so as to be competent to seek eviction under Section 14 (1) (e) of Delhi Rent Control Act, 1958.

5. During the course of trial, the respondents examined three witnesses including the second respondent appearing as AW-1. On the other hand, the petitioners examined four witnesses including first petitioner Amtul Haseen (RW-4) and Abdul Saleem (RW-1) who is their attorney.

6. AW-1, in the course of his testimony, deposed that he and the respondents are sons of Mohd. Nazeer. The petitioners witnesses would depose to the contrary. Reliance is placed on Section 50 of Indian Evidence Act, 1872 to contend that there is no cogent evidence available on which the relationship of father and sons between Mohd. Nazeer and the respondents could be found. The petitioners contend that the argument of the respondents that there is no estoppel under Section 116 of Indian Evidence Act, 1872 is not correct in view of the

law declared by the Supreme Court in *Subhash Chandra vs. Mohammad Sharif and Ors.* AIR 1990 SC 636, as noted at length in ruling of the Calcutta High Court in *Sambhunath Mitra & Ors. Khaitan Consultant Ltd. and Ors.* AIR 2005 Calcutta 281. It is also the contention of the petitioners that it was beyond the domain of the Rent Controller to return a finding on the question of title, the said forum being only a tribunal.

7. The last above-mentioned contention cannot be accepted for the simple reason that in proceeding arising out of a petition for eviction on the ground of *bona fide* need under Section 14 (1) (e) of Delhi Rent Control Act, 1958, one of the important issues the Rent Controller is required to address and adjudicate upon concerns the claim of the petitioner seeking eviction to be the owner of the subject property. A petition of such nature cannot be entertained at the behest of the person who is merely a landlord. The landlord must also show, to the satisfaction of the Rent Controller that he is the owner of the tenanted premises, the eviction wherefrom he seeks for his personal use. In these circumstances, particularly in a case where the party that was impleaded as respondents had raised the question of title, it was incumbent on the Rent Controller to inquire into the issue and return a clear finding as has been correctly done by the Rent Controller.

8. The petitioner's argument that in a case where the landlord rests his case on title derived from the original landlord, the claim to title is vulnerable to challenge notwithstanding the rule of estoppel in Section 116 of Indian Evidence Act, 1872 as a proposition of law may be correct. But in the present case, it has to be noted that the petitioners

had attorned in favour of the respondents concededly by paying rent. Though pleadings have been made that such payment of rent by the petitioners unto the respondents was under compulsion, there is no credible evidence of duress having been exercised at any stage. Mere saying so will not lead to such plea being accepted.

9. The petitioners deny the title of the respondents but then they concededly being the tenants are conspicuously silent as to who the landlord qua them is. The respondents proved at the trial that the property in question was mutated in their favour (Ex.AW-1/4) on the basis of their claim to be the legal heirs of Mohd. Nazeer. Though the said mutation appears to have been obtained during the pendency of these proceedings before the Additional Rent Controller, the fact that municipal authority has accepted the claim of the respondents to the title to the subject property should clinch the issue in their favour in the proceedings before the Rent Controller where they were anyhow not expected to prove their title to the satisfaction of the tenants or as against public at large. The evidence led shows that the petitioners had filed a civil suit for injunction against the respondents *vis-à-vis* the subject property and in the pleadings in the said civil suit they had themselves described the respondents as sons of Mohd. Nazeer.

10. In above facts and circumstances, the contentions raising objection as to the claim of the respondents to the title of the subject property must be rejected and the findings returned by the Additional Rent Controller in favour of the respondents must be upheld.

11. Coming to the question of need, the *bona fide* of the claim for eviction is writ large on the facts of the case. Having regard to the

limited accommodation available to the respondents in property no. 945, it is clear that for their comfort they need larger accommodation, this irrespective of the fact as to whether the three of the four respondents would actually get married or not.

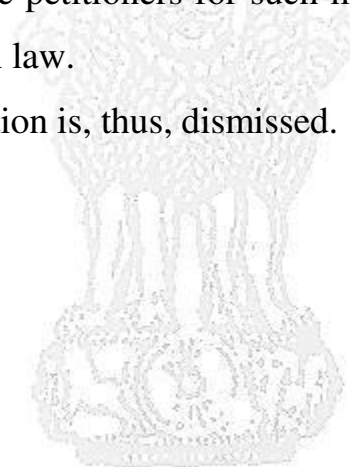
12. It was submitted by the counsel for the respondents that though vacant possession of the subject premises has already been taken over in execution of the eviction order by the respondents, the petitioners are guilty of deliberately damaging and virtually razing the property to the ground. The respondents are at liberty to take such appropriate action in law against the petitioners for such mischief, if the facts are true, as is permissible in law.

13. The revision petition is, thus, dismissed.

R.K.GAUBA, J.

APRIL 26, 2018

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