

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 28th November, 2018

Pronounced on: 10th December, 2018

+

RC.REV. 443/2018, CM APPL.37693/2018, 48831/2018

SUKHVINDER KAUR

..... Petitioner

Through : Mr.Jaspreet Singh, Advocate.

versus

PREETI RAJPUT

..... Respondent

Through : Ms.Sonali Malhotra and Mr.Anant
Bhardwaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This revision petition challenges the impugned judgment dated 07.05.2018 passed by learned CCJ-cum-ARC, Pilot Court (Central District), Tis Hazari Courts in eviction petition No.E-279/2017 (New No.321/2017) whereby the leave to defend application filed by the petitioner was dismissed.

2. The respondent herein had filed an eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereafter '*DRC Act*') read with Section 25B (8) of the DRC Act qua the premises bearing No.2527/28, being part of built up property having Khasra No.521, Gali Nalwa, Chuna Mandi, Pahar Ganj, Delhi – 110055, which premises was let out for residential purposes to the petitioner herein. It was alleged Sardar Pawanjit Singh Bawa – the original owner / landlord of the property under an oral agreement to let, had let out the premises to one

Ram Singh and thereafter the respondent came into possession of the same through Ram Singh. She latter attorned to S.Pawanjit Singh and became tenant.

3. It was alleged by the respondent the premises is required bonafidely by her for opening a coaching – cum – tuition centre and she has no other suitable and reasonable accommodation available with her for the said purposes. How the petitioner became an owner of the property is enumerated in para No.9 of the petition and is not repeated for brevity.

4. The petitioner herein has raised three issues in his leave to defend application viz. *a)* the respondent is not an owner of the premises and in fact the original owner was one Jagjeet Singh, who has since expired and he executed a Will in favour of his son Sardar Pawanjit Singh Bawa, who sold the tenancy premises to four person in the year 2010 and the respondent is not an absolute owner of the premises in dispute and neither in the sale deed dated 27.07.2010 nor in the site plan annexed to the petition, the premises is described properly; *b)* the premises is residential and whereas it is allegedly required for commercial purposes, which *per se* is against municipal bye-laws; and *c)* during the pendency of petition, the respondent had married and had shifted to Patel Nagar, Delhi i.e. far off from the tenanted premises and hence the reason for which the premises was required, had disappeared.

5. The leave to defend was granted and the suit/petition then went into trial. The respondent led her evidence and examined herself as PW1 and had proved SPA dated 12.04.2017 as *Ex.PW1/1*; sale deeds dated

27.07.2010 as *Ex.PW1/2*; site plan as *Ex.PW1/3*; copy of rent receipt as *Ex.PW1/4*; copy of the letter dated 13.04.2017 written by Sardar Pawanjit Singh Bawa to the respondent asking her to pay rent to the landlord / respondent as *Ex.PW1/5*; and the documents pertaining to the educational qualifications of the respondent as *Ex.PW1/6* (Colly).

6. Sardar Pawanjit Singh Bawa entered into the witness box as PW2 and deposed in consonance with the respondent PW1 stating interalia he had sold the properties bearing No.2524 to 2530 and 2527 to the respondent and other co-owners vide sale deeds dated 27.07.2010 and had duly informed the petitioner qua execution of such sale deeds.

7. The petitioner also entered into the witness box and examined herself as RW1 wherein she relied upon the marriage card of the respondent *Ex.RW1/1*; copy of the legal notice dated 18.10.2011 *RW1/2* which she had received from one Ms.Anu Oberoi who also claimed herself to be an owner of this premises; copy of print out taken from the website of the Department of Revenue, Government of NCT of Delhi showing sale of the property bearing No.2524-2530 and 2527, Chuna Mandi, Pahar Ganj, Delhi to various persons as *Ex.RW1/3*; and copy of the rent receipt as *Ex.RW1/4*.

8. The contentions which the petitioner had raised before the learned Additional Rent Controller during the time of filing of her leave to defend application have been raised even now. Qua the ownership of the respondent, her bonafide necessity and alternative accommodation the learned Trial Court has noted:-

“20. In order to substantiate her version, the petitioner as PW1 has relied upon the Sale Deed Ex. PW1/2 (colly.). She has also stated

that the tenanted premises is the part of the number mentioned in the sale deed. PW1 stated that she has jointly purchased the property with other co-owners. The said properties include the tenanted premises. Thus, it is clear that the petitioner having purchased undivided and unspecified share of the entire build up premises is the co-owner of the entire suit property. Further, she has categorically mentioned that by way of oral understanding with other co-owners, the tenanted premises alongwith other portions of the property have fallen to her share. She has named the other co-owners in her cross-examination as Jagdish Pahuja, Anu, Sunil Arora and Asha Rani. PW1 has categorically stated that she has got two rooms in 2527/28 alongwith bathroom and kitchen, one room in 2527/42, one room in 2527/62, one room on first floor in 2527/74 and one room on the second floor. Thus, she has given the description of the entire 84 sq. yds. of the property which has come to her share, which includes the tenanted premises.

21. As regards the contention of the respondent that two identical sale deeds have been got made, it is the prerogative of the petitioner to purchase the property by one sale deed or two sale deeds as per her will and convenience. The contention of the respondent regarding the purchase of property being benami transaction is also not found tenable. During cross-examination, PW1 has stated that she used to give tuition classes to the students living in her street. She also used to give tuition classes to students in and around her street. She stated that she purchased the property mentioned in the Sale Deed Ex. PW1/2 (colly.) from her own funds as she was giving tuitions. She sold her gold and took loan from her uncle and Sh. Satish Kumar.

22. Moreover, the absolute ownership is not required to be proved under the DRC Act. The petitioner is required to only show that his/her title is more than that of the tenant. Reliance in this regard is placed upon the case-law titled as *Rajender Kumar Sharma & Ors. v. Leela Wati & others*, 155 (2008) DLT 383", wherein it was laid down that a landlord is not required to prove absolute ownership as required under Transfer of Property Act and he is required to show only that he is more than a tenant. Same was the ratio of decision given in *Jiwan Lal v. Gurdial Kaur & Ors.* 1995 RLR 162. Further, in *Yashpal v. Chamanlal Sachdeva*, 129 (2006) DLT 200, it has been held that co-owner can maintain a petition and that the inter-se-arrangement between owners is no business of the tenant.

23. xxx

24.... PW1 has stated that she got the suit property from the original owner and landlord Sh. Pawanjeet Singh Bawa, who inherited the same from his father late Sh. Jagjeet Singh Bawa. Originally, the tenanted premises was let out on rent to Sh. Ram Singh by late Sh. Jagjeet Singh Bawa on an oral agreement. Later, the respondent happens to be in possession of the said portion and started paying rent on behalf of Sh. Ram Singh. The original rent receipts handed over to the petitioner at the time of sale are Ex. PW1/4. At the time of sale of the suit property by Sh. Pawanjeet Singh Bawa, she informed the respondent about the sale of the portion and that the petitioner is the new landlord, however, the respondent did not pay a single penny towards rent to the petitioner. PW2, Sh. Pawanjeet Singh Bawa also deposed in sync with PW1 and stated to have sent a letter regarding non-payment of rent to the respondent as Ex. PW1/5.

During cross-examination, PW2 stated to have inherited the property from his father by way of registered Will. He stated that there is no dispute between him and his step brother and sister. He also admitted to have sold part of the property to Smt. Anu Oberoi in the year 2010. He also stated that he was present at the time when mutual understanding was arrived between the petitioner and other co-owners.

25. xxx It is not the domain of the tenant to challenge the Will of the deceased landlord. If a landlord is able to show there is a testament in his / her favour, he is deemed to have discharged his burden of proving under the Act. If the tenant takes a frivolous objection about ownership, such an objection cannot be entertained unless the tenant comes forward as to who was the landlord / owner of the premises and to whom he has been paying rent after the death of original owner."

26. Further, It is immaterial that the respondent /tenant attorns to the respondent/ landlady as landlady or not, as law does not require any act of attornment. It is settled principle that in case respondent is admittedly tenant under earlier owner, and once Sale Deed is registered by the earlier owner in favour of petitioner/landlady any attornment by the tenant to the petitioner/ landlady is not required. Reference may be made to : Sanjay Singh v. M/s Corporate Warranties Pvt. Ltd. (2013) 204 DLT 12; Harvinder Singh v. M/s. Paradise Tower Pvt. Ltd. (2013) 199 DLT (CN) 25; Ambica Prasad v. Mohd. Alam (2015) 13 SCC 13. Hence, the contention of the respondent that the petitioner is not having any rent receipt after the year 2007 nor she has given any written notice or communication to the respondent about the purchase of the premises in question does not hold ground.

27. Another contention raised by the respondent is that PW2 during cross-examination has admitted that the property is leasehold property and he has sold the entire property as leasehold. It is averred that PW2 does not remember whether he had obtained any permission from the DDA to sell the leasehold rights and he has not applied for freehold to the DDA. It is argued on behalf of the respondent that the lease was for a total period of 90 years and for sale of leasehold rights in immovable property, prior permission of the DDA is required. The above argument of the respondent is not found tenable as the respondent is not able to produce any document in support of her contention. Also, in *Smt. Shanti Sharma & Ors. v. Smt. Ved Prabha & Ors.*, 1987 AIR 2028, it has been held that "Ordinarily, the concept of the ownership may be absolute ownership in the land as well as of the structure standing thereof. But in the modern context, where all lands belong to the State, the persons who hold properties will only be lessees or the persons who holding the land on some term from the Government or the authorities constituted by the State. The legislature, when it used the term "owner" in S. 14 (1) (e), did not think of ownership as absolute ownership.

28. xxx

29. xxx On the other hand, it is averred by the petitioner that the tenanted premises was let out for residential purposes to Sh. Ram Singh. Later on, the respondent came into possession of the suit premises and used to give rent on his behalf. PW1 has relied upon the rent receipt Ex. PW1/4 which was issued by Sh. Jagjeet Singh Bawa, i.e., the original erstwhile owner/landlord. The respondent has nowhere denied that the deceased Sh. Jagjeet Singh Bawa was not the erstwhile landlord. Once the petitioner has purchased the property from the LR of the deceased landlord, she has stepped into the shoes of the original landlord, which cannot be challenged by the respondent.

The respondent has also relied upon the rent receipt Ex. DW1/4 which is issued in the name of Ram Singh by erstwhile landlord Jagjeet Singh Bawa. The respondent is not claiming any right separate from Ram Singh. Hence, the version of the petitioner that the original tenant was Sh. Ram Singh and respondent is claiming to be tenant though Ram Singh has been substantiated from the version of the respondent herself.

30. As regards the contention of legal notice Ex. DW1/2 given by one Anu Oberoi in the year 2011 to the respondent, the petitioner has admitted that Anu Oberoi is one of the coowners. RW1, during crossexamination, has stated that she did not inform Smt. Anu Oberoi about the present eviction petition filed against her. RW1 also did not have any knowledge whether any ownership dispute relating to the suit property is pending in any Court. Petitioner has categorically stated that there is no dispute between the coowners and they have arrived at oral understanding amongst themselves. None of the coowners have filed any objections. It is settled law that any of the coowner can alone in his/her own right can file an eviction petition against the tenant. The consent of other coowner is assumed as taken, unless it is shown that the other coowners are not agreeable to evict the tenant. Reliance in this regard is placed upon M/s. India Umbrella Manufacturing Co. v. Bhagabandel Agarwalla (dead) by Lrs. AIR 2004 SC 1321. Hence, the petitioner is able to prove that she is one of the coowners and that there exists the relationship of landlord and tenant between the petitioner and the respondent, which has been proved as per the requirement of the DRC Act.”

9. I agree to the reasoning given by the learned Trial Court on all the three issues raised. It is not obligatory upon a co-owner to demarcate his share i.e. first to seek partition of his/her share and then to seek eviction of a tenant. This would be against the concept of co-ownership, hence, the plea of the petitioner that respondent is not an absolute owner of the tenanted premises or the premises has not been properly described is frivolous. Even otherwise, in *Rajender Kumar Sharma vs Leelawati* 2008 (155) DLT 383, it was held for the purposes of section 14 (1) (e) of the DRC Act, the landlord is not supposed to prove absolute ownership as required under the Transfer of Property Act and all that he is required to show is he is more than a tenant. Similar view was expressed in *Ramesh Chand vs Uganti Devi* 2009 (157) DLT 450 where the Court went further to say imperfectness of the title of the premises cannot stand

in the way of eviction petition under section 14 (1) (e) of the DRC Act, and neither a tenant can be allowed to raise the plea of imperfect title or a title not vesting in the landlord. On record there are sale deeds Ex.PW1/2 (colly) in favour of the respondent. Further, the petitioner on his own has proved documents Ex.RW1/3 qua ownership of S.Pawanjeet Singh Bawa from whom the respondent has purchased the premises. The respondent has also proved a letter Ex.PW1/5 dated 13.04.2017 qua attornment and rent receipt Ex.PW1/4 executed by Jagjit Singh, the erstwhile owner in favour of petitioner. Hence the respondent has sufficiently proved on record her title being better than that of the petitioner and she has a right to seek eviction of petitioner.

10. Qua the plea the residential premises cannot be used for commercial purposes or its suitability, I may also refer to the findings of learned Trial Court in paras No.33 & 34 of the impugned judgment, which notes:-

“33. The respondent has not disputed the education qualification of the petitioner. Further, it is not the case of the respondent that the petitioner is already engaged in any job to earn her livelihood. Thus, the petitioner, being one of the coowner/ landlord of the premises in question, is well within her right to seek eviction of the respondent from the suit premises in order to start her own coaching/tuition center even after her marriage and the respondent, being a tenant cannot dictate terms upon the petitioner regarding the same.

34. Further, as regards the contention of the respondent that after marriage, the petitioner has left her parental home at Paharganj to Patel Nagar, which is at a distance of more than 15 kms and it is highly improbable and impossible that the petitioner can open a coaching centre at the property in question or even to run the same, it is the sole prerogative of the petitioner to decide as to which premises would be more suitable for her bonafide requirement and the respondent, being a tenant cannot dictate terms upon the petitioner as to whether the premises in question would be suitable for the petitioner to run her coaching centre or not, being situated at a distance from her matrimonial home. Reliance in this regard is placed upon the caselaw titled as Ragavendra Kumar v.Firm Prem Machinery reported as AIR 2000 SC 534, the Supreme Court held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the

matter. Reference may also be made to the judgment titled as Prativa Devi (Smt) v. T.V. Krishnan reported as (1996) 5 SCC 353. Moreover in Sarla Ahuja v. United India Insurance Company Ltd. (1998) 8 SCC 119 it has been held that Rent Controller shall not proceed on the presumption that the requirement of the landlord is not bona fide and that when the landlord shows Prima facie case, a presumption that the requirement is bona fide is to be drawn. Thus, the bonafide requirement of the petitioner over the premises in question for starting her own coaching/tuition center in order to stand on her own legs and to earn her livelihood stands duly proved."

11. Even otherwise, per Master Plan, 2021, a coaching center/tuition centre other than those imparting structured courses, are all permitted to run in the residential plots. Admittedly, the respondent alleges to start only tuition classes from the premises and not any structured course(s). Moreso, it is a settled law the tenant cannot dictate the landlord as to how he/she should deal with his/her property. Besides the above three issues no other issue was raised/agitated.

12. A bare perusal of the reasoning given by the learned Trial Court do show the eviction order does not suffer from any error of law and is not perverse or arrived at without consideration of the material evidence filed before it. It is only when such findings are based on no evidence or on misreading of the evidence or is grossly erroneous that if allowed to stand it would result in miscarriage of justice it is open to the High Court to upset such finding. If this Court is satisfied qua the correctness, legality or propriety of any decision or the order impugned, this Court shall not exercise its power as an appellate court to re-appreciate or reassess the evidence for coming to a different finding on fact. The revisional power cannot be equated with the power of reconsideration of all questions of facts as a Court of first appeal, per *Hindustan Petroleum Corporation Ltd vs Dilbahar Singh* 2014 AIR(SC) 3708.

13. Hence finding no infirmity in the judgment dated 07.05.2018, the petition stands dismissed. All pending applications stands disposed of in terms of above.

YOGESH KHANNA, J.

DECEMBER 10, 2018

M

