

\$~73

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 04.12.2019

+ RC.REV. 654/2019 & CM APPL. 52292/2019, CM APPL.
51814-15/2019

GULFAM

..... Petitioner

versus

MOHD BILAL & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. A. Maitri, Advocate

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APP No. 49776/2018

For the reasons stated in the application, the application is allowed. The Revision Petition is taken up for consideration today itself.

The next date i.e. 11.12.2019 is cancelled.

RC.REV. 654/2019

1. Petitioner impugns order dated 07.05.2019, whereby eviction petition filed by the respondent has been allowed under Section 14(1) (e) of the Delhi Rent Control Act, 1958 on the ground of bonafide

necessity.

2. Respondent had filed the subject eviction seeking eviction of the petitioner on the ground of bonafide necessity under Section 14(1) (e) of the Delhi Rent Control Act, 1958, from one room, courtyard, toilet, kitchen of property No. 7255, Gali Gariya, Quresh Nagar, Sadar Bazar, Delhi, more particularly as shown in red colour in the site plan annexed with the eviction petition.

3. The ground of eviction as stated by the respondents was that respondents are the owners of the property being legal heirs of late Sh. Sadruddin @ Shaddu who died leaving behind the said property, which was looked into by the daughter who died leaving behind three sons including the respondents. One of the brothers of the respondent did not have any interest in the property and accordingly relinquished his share in favour of the respondents.

4. It was contended that the respondent needed the subject premises for their as well as their family's accommodation. It is contended that the respondents are residing in congested manner comprising of only two rooms; one room and kitchen, bathroom on the first floor and one room kitchen, bathroom on the second floor of property bearing No. 7252, Gali Garhiya, Quresh Nagar, Sadar Bazar, New Delhi.

5. Family of the respondent is very large and respondent no. 1 has five daughters and five sons; one son and three daughters of the

petitioner were married at the time of the filing of the petition and rest of the sons and daughters were of marriageable age. It is contended that they do not have any suitable alternative accommodation. It is in these circumstances, respondent had stated that the tenanted premises were required for bonafide need.

6. Leave to defend was granted to the petitioner who filed Written Statement contending that there is no relationship of landlord and tenant between the parties. It was contended that the petitioners were tenants under one Abdul Hamid and after his death the rent was paid to Munawari Begum and after the death of Munawari Begum to Zarina daughter of Abdul Hamid. It was further contended that late Shri Sadruddin @ Shaddu and Abdul Hamid were real brothers and a partition deed was executed between them in 1963 and the tenanted premises fell to the share of Abdul Hamid and on his death to Smt. Munawari Begum and on her death, Ms. Zarina became owner of the subject property.

7. The petitioner, in the written statement, did not raise any plea that the need as projected by the respondent was not bonafide. The only ground taken was that the respondent was not the owner of the property and there is no relationship between the landlord and tenant.

8. Respondent no. 1 appeared in the witness box as PW3. He duly proved on record the sale deed dated 24.10.1932 in favour of his maternal grandfather i.e. late Shri Sadruddin @ Shaddu as Exb.

PW3/2. Respondent no. 1 duly proved on record the Survey Report of MCD as well as house-tax receipts in the name of the respondent as Exb. PW3/3 & 4. Respondent no. 1 also proved that the maternal grandfather late Shri Sadruddin @ Shaddu expired in the year 1956 leaving behind two daughters – namely Smt. Sugra and Smt. Laiqan. Smt. Laiqan relinquished her claim in favour of Smt. Sugra who died leaving behind three sons i.e. petitioner and Mohd. Ikhlaq. Mohd. Ikhlaq relinquished his share in favour of the respondents.

9. Further, the respondent in his testimony has proved that he has five daughters and five sons; two sons are married. The eldest son had two children and three of his sons were unmarried and three of his daughters were also married and one was unmarried.

10. The petitioner in his evidence produced Ms. Zarina as RW3. Ms. Zarina stated that petitioner was their tenant at monthly rent of RS. 17/- and she had issued rent receipts to the petitioner being owner of the said property.

11. Rent Controller in the impugned order has disbelieved the contention of the petitioner that there was any partition between late Shri Sadruddin @ Shaddu and Abdul Hamid as no partition deed was produced on record by the petitioner. The rent receipts which were alleged to have been issued by Abdul Hamid and Smt. Munawari Begum were also disbelieved as no witness had been produced to prove the execution of the receipts. With regard to the statement of

Ms. Zarina Begum, Rent Controller has noticed that though she had identified her signatures on the rent receipts, the original rent receipts were neither produced on record nor any secondary evidence was led qua them.

12. Rent Controller has noticed that respondent had placed on record the records of the sale deed executed in favour of Shri Sadruddin @ Shaddu, maternal grandfather of the respondent as also the municipal records. Rent Controller has further noticed that at best the case of the petitioner could be that respondents were not absolute owners of the property but the fact that they were co-owners could not be disputed. Rent Controller held that an eviction petition is maintainable by one of the co-owners and the respondent-landlord does not have to prove absolute ownership but has to show a better title.

13. In view of the above, Rent Controller was of the view that eviction petition was maintainable. Further the Rent Controller has noticed that the need as projected by the respondent was bonafide and the petitioner has not been able to prove on record any alternative suitable accommodation available with the respondents.

14. In these proceedings, learned counsel for the petitioner has filed an application seeking to place on record order dated 08.09.2018 in another eviction petition filed by the respondent against another tenant to contend that Rent Controller had held that respondent had no right,

title or interest in the property and on an objection by Ms. Zarina the eviction petition was dismissed.

15. Perusal of order shows that it in fact recognizes the respondent as co-owner of the property. The only reason given by the Rent Controller in that eviction petition is that Ms. Zarina Begum had appeared in the witness box and objected to the claim of the respondents. Accordingly, the Rent Controller was of the view that she had not consented to the filing of the said eviction petition.

16. In the present case, the testimony of Ms. Zarina has been placed on record. However, in the said testimony Ms. Zarina has not objected to the filing of the subject eviction petition. Learned counsel for the petitioner is not able to point out if Ms. Zarina has not taken out any proceedings or ever objected to the filing of the eviction petition.

17. Clearly said judgment the does not help the petitioner rather it negates the arguments of the petitioner that respondent has no right, title or interest in the subject property.

18. Learned Counsel for the Petitioner has also not been able to show that the need stated by the Respondents is not bonafide or that they have any other alternative suitable accommodation.

19. In view of the above, I find no infirmity in the order dated 07.05.2019. There is accordingly no merit in the petition. The petition is dismissed.

20. It may also be noted for the purposes of record that respondent has on 03.12.2019, received possession of the tenanted premises through warrants of possession in execution of the impugned order.

SANJEEV SACHDEVA, J

DECEMBER 04, 2019

‘rs’

