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

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Judgment delivered on: 11.09.2019

+ RC.REV. 399/2019 & CM APPL. 29915-16/19 & 39294/19

M/S MEDICURA CHEMISTS & ORS. Petitioners

versus

SATWANT KAUR Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Akhil Sibbal, Sr. Advocate, with Mr. Neeraj Grover, Mr. Gaurav Bhardwaj, Mr. Nitya Gupta and Mr. Mahir Malhotra, Advocates with son of petitioner No.3.

For the Respondent: Mr. Nidhesh Gupta, Sr. Advocate with Ms. Japneet Kaur, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 08th March, 2019 whereby leave to defend application of the petitioner has been dismissed.

2. Respondent-landlady had filed the subject eviction petition on the ground of bonafide necessity, under Section 14 (1) (e) of the Delhi Rent Control Act, 1958, seeking eviction of the petitioner from one shop bearing No. 2650/4, Bank Street, Karol Bagh, New Delhi, more particularly as shown in red colour in the site plan annexed with the eviction petition.

3. As per the respondent-landlady, the subject property was owned by Smt. Gurdevi, wife of Sh. Avtar Singh, who died on 19th January, 1964 leaving behind three sons and two daughters as the legal heirs. Respondent-landlady is one of the daughters. Smt. Gurdevi, during her life time executed a will bequeathing the property in favour of the respondent. Accordingly, on her demise on 19th January, 1964, respondent-landlady became the sole and absolute owner of the tenanted premises.

4. It is contended that she thereafter let out the property to the sole proprietorship firm of Sh. Kishan Lal Malhotra and on his demise, petitioners No. 2 & 3, his children, became the partners of the said concern.

5. As per the respondent, it is contended that there are three more shops in the suit property, which have fallen to the share of other legal heirs of Smt. Gurdevi.

6. Respondent owns the first floor and ground floor besides the tenanted premises which is on the ground floor.

7. The ground for eviction pleaded by the respondent was that she has one son and one daughter. Her son is married and has one son and a daughter. The granddaughter of the respondent-landlady is practicing advocate in Chandigarh and the grandson had appeared in final examination of BE (Computer Science) at the time of filing of the eviction petition. It is contended that the grandson of the

respondent-landlady wants to shift to Delhi, being a cosmopolitan city and a Business Centre, for starting his business and requires the premises for carrying on his business.

8. It was contended that the grandson wants to open a showroom on the ground floor from the tenanted premises and a repair centre on the first floor of the subject property, which is in occupation of another tenant against whom a similar application under Section 14 (1) (e) of Delhi Rent Control Act, 1958 has been filed and proceedings are pending.

9. It is contended in the eviction petition that the tenanted premises are required by the respondent-landlady for carrying on the business of sale of computer by her grandson and that she does not possess any other property in Delhi except the subject property. She further contended that the tenanted premises are required by the respondent for her *bona fide* purpose as she is not having any suitable and sufficient accommodation available with her which can be used by her grandson.

10. Petitioner filed the subject leave to defend application contending that the premises in question were taken on rent from M/s Avtar Singh and sons in the year 1956 and thereafter, in the year 1978 they were approached by Mr. Bakshi of M/s Avtar Singh and Sons and on his request, rent was paid to the respondent as she was in need of money.

11. It is alleged that respondent-landlady did not have any ownership rights to the subject premises. It is contended on behalf of the petitioner-tenant that Will of Smt. Gurdevi only permitted the respondent to collect the rent and she has no right to claim the possession of the tenant premises for her own *bona fide* use.

12. Further, it is contended that the respondent does not require the tenanted premises for her *bona fide* need, as she is in no need for the same and she is permanently settled in Mohali, Punjab with her son, who is having a trading business there. It is further contended that the grandson is not dependent on the respondent as his father is alive.

13. It is further contended that there is an alternative commercial accommodation in Katra Bakshi Avtar Singh, Motia Khan, Delhi and she has become the owner of 1/6th share of the said accommodation and it has not been disclosed.

14. Further it is contended that the grandson for whose need the petition has been filed is enrolled as a student and that by itself does not give a right to the respondent to seek eviction and the projected requirement is a ploy to get the tenanted premises evicted by projecting the *bona fide* requirement while none exists.

15. The Rent Controller on perusal of the Will of Smt. Gurdevi has noticed that the Will used the expression “*malkiat*” in respect of the tenanted premises and “*malkiat*” means ownership. There is no dispute raised by petitioner to the genuineness of the Will. Otherwise

also, a tenant has no right to challenge a Will of the predecessor in interest of the landlord when none of the legal heirs have challenged the same. It is also not in dispute that respondent is a Class-I legal heir of Smt. Gurdevi and in absence of the Will would have inherited at least a part of the property.

16. It is settled position of law that any single co-owner can file and maintain a petition for eviction, without joining the other co-owners. Landlord is not required to show absolute ownership and is required only to show that his status is more than that of the tenant.

17. Further, the Rent Controller has noticed that the premises were let out to a proprietorship concern of the predecessor of the petitioners 2 & 3 in the year 1956 and since 1978, rent has continuously been paid to the respondent, though there are some arrears.

18. With regard to the alternative premises mentioned by the petitioner situated in Motia Khan, it has categorically been stated by the respondent/landlady that she became entitled to only 1/6th share in the property and said property is a residential property and only one room has fallen to her share, which had been let out to a tenant and has been in occupation by the tenant for a substantially long period.

19. With regard to the *bona fide* necessity, it is observed by the Rent Controller that the requirement projected by the respondent-owner is of settling her grandson, who is a student of Computer Engineering and intends to open a computer showroom and a repair

shop in Delhi in the tenanted premises.

20. The argument of learned senior counsel for petitioner that the grandson is dependent on his father and not his grandmother is not tenable. Grandson is as much a member of a family as a son. It is the admitted case that the Respondent/landlady is living with her son as a family.

21. It would have been a different position in case petitioner's case was that the son of the respondent-landlady had commercial properties in Delhi and said properties had not been disclosed and the grandson was shown as dependent on the landlady by creating accommodation scarcity.

22. It is not case of the petitioner that even the son of the respondent/landlady i.e. father of the person, for whose requirement petition has been filed, owns or possess any property in Delhi.

23. It is not in dispute that apart from the tenanted premises and the premises at Motia Khan (*which is also not available*) there is no other property in possession or occupation or available to the respondent wherefrom a commercial show room, as projected by the respondent, could be opened by her grandson.

24. Nothing has been brought on record by petitioner to show that the need projected by the respondent is not *bona fide*.

25. It is an admitted position that the family i.e. the grandmother

who resides with her son and grandson in Mohali Punjab, only owns the subject property in Delhi.

26. Properties which are situated outside Delhi cannot be considered as alternative to the tenanted premises.

27. Mere fact that the son of the respondent-landlady is himself in business is no ground to deny the landlady an eviction order when she has projected the requirement for her grandson, who wants to setup an independent business in Delhi.

28. On perusal of the record as also the facts as noticed above, I am of the view that the tenant-petitioner has not been able to raise a triable ground and the affidavit in support of the application seeking leave to defend does not disclose such pleas as would disentitle the landlady from obtaining an order for recovery of tenanted premises.

29. There is no infirmity in the order of the Rent Controller in declining leave to defend. I find no merit in the petition and same is accordingly dismissed.

30. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 11, 2019/rosy