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

+ **C.R.P. 172/2019 & CM No. 35656/2019**

MOHD ISHAQ & ORS

..... Petitioners

Through: Mr Chetanya Puri, Mr Vijendra
Pandey and Mr Vijay Rawat,
Advocates.

versus

MOHD FAIZAL & ORS

..... Respondents

Through

WITH

68.

+ **C.R.P. 173/2019 & CM Nos. 35658/2019, 35659/2019 & 35660/2019**

NOOR MOHD (DECEASED) THR LRS
& ORS

..... Petitioners

Through: Mr Chetanya Puri, Mr Vijendra
Pandey and Mr Vijay Rawat,
Advocates.

versus

MOHD FAIZAL & ORS

..... Respondents

Through

AND

71.

+ **C.R.P. 176/2019 & CM Nos. 35807/2019 & 35808/2019**

KANEEZ BEGUM (DECEASED) THR LRS

..... Petitioner

Through: Mr Chetanya Puri, Mr Vijendra
Pandey and Mr Vijay Rawat,

Advocates.

versus

MOHD FAIZAL & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

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09.08.2019

1. The petitioners have filed the present petitions impugning separate orders dated 26.02.2019 (hereafter 'the impugned orders'), wherein ARC-01, Central District, Tis Hazari Court held that the objectors (petitioners herein) did not have the right to question the title of the Decree Holders (respondents herein) over 16 rooms, kitchen, latrines and bathrooms forming part of property bearing no. 1782-83-84, Kalan Mahal, Daryaganj, Delhi (hereafter the 'tenanted premises'). In view of the facts and circumstances of the case, the Court had dismissed the objections raised by the petitioners under Section 47 of the Code of Civil Procedure, 1908 and Section 25 of the Delhi Rent Control Act, 1958.
2. The petitioners in C.R.P No. 172 of 2019, impugn an order dated 26.02.2019 passed by the Court in Petition No. M. 9/09 (New No. 96308/16). The petitioners in C.R.P No. 173 of 2019, impugn an order dated 26.02.2019 passed by the Court in Petition No. M. 10/09 (New No. 96311/16). The petitioners in C.R.P No. 176 of 2019, impugn an order dated 26.02.2019 passed by the Court in Petition No. M 8/09 (New No. 96312/16).
3. Since the material facts and the issues involved in these petitions are similar, the same were heard together.

4. An eviction petition was filed by the respondents in relation to the tenanted premises against Smt. Anwari Begum, under Section 14(1) read with Section 25-B of the Delhi Rent Control Act, 1968, captioned '*Mohd Faizal & Ors v. Smt. Anwari Begum*', whether the respondents claimed themselves to be the owners and landlords of the tenanted premises.

5. The eviction petition was allowed by ARC-01, Tis Hazari Court and by an order dated 01.11.2002, the Court directed Anwari Begum (judgment debtor) to vacate the tenanted premises and handover the possession of the same to the respondents (Decree Holders).

6. An execution petition bearing Ex. No. 25/09 was filed before the said Court by the respondents (Decree Holders) for the execution of the eviction order dated 01.11.2002.

7. During its pendency, objections were filed by the petitioners in C.R.P. No. 172 of 2019 against execution of the decree. The objectors (petitioners in C.R.P 172 of 2019) are the sons of Mr. Mohd. Ismail [Mr. Mohd. Ishaq (petitioner no.1) and Mr. Mohd. Mukhtar (petitioner no.2)] and the sons of Mr. Yusuf Khan [Mr. Yunus Khan (petitioner no.3 represented through his legal representatives (a)-(d), Mr. Yasin Khan (petitioner no. (e) represented through his legal representatives (i)-(v), Mr. Hanif Khan (petitioner no.4) and Mr. Anis Khan(petitioner no.5)]. It is stated that the father of petitioner nos.1 and 2 (Mohd Ismail) was in possession of two rooms, one kitchen with common latrine and one courtyard forming part of the tenanted premises. It was stated that the father of petitioners no. 3 to 5 (Sh Yusuf Khan) was in possession of four rooms, two kitchens with common latrine and one

courtyard forming part of the tenanted premises. After the death of their respective fathers, the possession of the same passed on to the petitioners.

8. The petitioners in C.R.P. No. 173 of 2019 filed a separate application dated 11.09.2017 objecting to execution of the decree. These objectors (petitioners in C.R.P 173 of 2019) are the legal representatives of Late Noor Mohd (petitioner no.1), Nazar Mohd (petitioner no.2) and daughters of Late Noor. Mohd (petitioner nos. 3 to 5). The petitioners state that Late Noor Mohd and Nazar Mohd were in possession of one room at the first floor, one room, kitchen and W.C. at second floor forming part of the tenanted premises. It is further stated that the portion under the possession of the petitioners was constructed in the year 1980 with their own funds and therefore, they are the owners of the same.

9. The petitioners in C.R.P. 176 of 2019 filed a separate application dated 11.09.2017 raising objections against execution of the decree. These objectors (petitioners in C.RP. No. 176 of 2019) are legal representatives of Smt. Kaneez Begum. It is stated that petitioner no.1 (Late Kaneez Begum), and her late husband Abdul Aziz, were in possession of one room on first floor, one room and kitchen at second floor and common W.C. forming part of the tenanted premises and the other petitioners in the said petition were residing along with them. They claim that after their demise, the possession of the same has now passed to them.

10. The objections raised in the aforesaid applications are similar and are summarised as under:

- (i) That the petitioners and their family members are owners by way of adverse possession as their possession has been peaceful, adverse,

hostile and continuous. The respondents (Decree Holders) and the judgment debtor are neither the owners/landlords, nor do they have any right, title or interest in the tenanted premises. The petitioners do not share any relationship or have made any payment to the judgment debtor or the respondents (Decree Holders).

(ii) That the eviction order has been obtained by collusion between the judgment debtor and the decree holders by showing the judgment debtor as a tenant of the premises bearing number 1782 to 1784. It is submitted that as per the counterfoil of the rent receipt, the judgment debtor is only a tenant in property no. 1782. Further, the relinquishment deed executed by the sons of Sh. Jumma Khan (husband of the judgment debtor) in the favour of the judgment debtor does not substantiate the residence of the judgment debtor in property no. 1783 or 1784.

(iii) That since no decree of eviction had been passed against the petitioners (the objectors), the said decree cannot be executed against them. The respondents (Decree Holders) ought to have impleaded the petitioners(objectors) since they were also residing in the tenanted premises and the respondents (Decree Holders) were aware of the said fact.

11. The respondents (Decree Holders) filed a reply to the applications, denying the abovementioned averments and stated that whilst some of the petitioners in the present petitions were related to the judgment debtor, the others were sub-tenants. It was alleged that the respective fathers of the objectors were relatives of Sh. Jumma Khan (husband of judgment debtor) and Smt, Anwari Begum (judgment debtor). It was alleged that Late Mr.

Mohd. Ismail was the brother of Smt. Anwari Begum and Late Mr. Yusuf Khan was the brother of Mr. Jumma Khan. It was pleaded that Sh. Jumma Khan had sub-let some portion of the tenanted premises to the fathers of the objectors unauthorizedly and illegally and without permission of the Decree Holders and other co-owners. It was stated that Mr. Noor Mohd. and Mr. Nazar Mohd. are also sub-tenants of Sh. Jumma Khan. It was stated that since the objectors are sub-tenants of the judgment debtor, the eviction order is binding upon the objectors (petitioners).

12. On 26.02.2018, the learned ARC, vide the three separate impugned orders, dismissed the respective applications of the objectors and held that objectors (petitioners) had been unable to prove that they were enjoying adverse possession. The Court also held that the objectors were also unable to establish any collusion between the Decree Holders (respondents) and the judgment debtor.

13. The learned ARC rejected the objections raised by the petitioners essentially on the ground that the petitioners were unable to establish any interest or title to the premises occupied by them. The petitioners claimed that they were owners of their respective areas occupied by them by adverse possession. This contention was rejected by the learned ARC – and in the view of the Court, rightly so – *inter alia*, on the ground that the objectors had not provided any evidence to establish adverse possession. The Court held that in order to establish a claim of adverse possession, the objectors were required to provide evidence as to the approximate time when the claim for adverse possession commenced. The Court also held that mere wrongful or unauthorized possession could not lead to an interference of

adverse possession. The court held that it is necessary that it be brought to the notice of the owner that the possessor of the property was setting up a claim of adverse possession. In the present case, the objectors could not establish the same.

14. The Decree Holders had claimed that the objectors were either family members or sub-tenants of the tenant and were in occupation of the tenanted premises through the tenant Sh Jumma Khan and after his demise, her widow Smt. Anwari Begum. Although the objectors contested the above assertion, they could not indicate any material as to how they came into possession of the tenanted premises. The learned ARC rightly held that objectors were claiming to be in possession of the premises in their own right and therefore, they were required to indicate the manner in which they came into possession of the property in question as those facts were within the special knowledge of the objectors. Since the objectors were unable to substantiate their claim by indicating how they, or their predecessors, had come to possess the property in question, the learned ARC accepted the claim of the Decree Holders that the objectors had come reside in the premises either as relatives or sub-tenants of Jumma Khan / Anwari Begum.

15. This Court finds no infirmity with the aforesaid view.

16. Insofar as the claim that the Decree Holders are not owners of the property, the Court noticed that the Decree Holders had filed inspection reports of the Municipal Corporation of Delhi (MCD), which indicated the names of the ancestors of the Decree Holders as tax payers. It is material to mention that the petitioners (objectors) were not claiming any right, title or interest through those persons as mentioned in the inspection report of

MCD. As noticed above, their case was that they were in possession of the tenanted premises in their own right and were neither tenants nor sub-tenants of any person. As noticed above, this claim was rejected as the petitioners could not provide any particulars as to how they or their predecessors had come into possession of the property in question.

17. In view of the above, this Court finds no reason to interfere with the impugned order.

18. The petitions are, accordingly, dismissed. The pending applications are disposed of.

VIBHU BAKHRU, J

AUGUST 09, 2019

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