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

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Judgment delivered on: 10.10.2019

+ RC.REV. 533/2019 & CM APPL. 40446/2019

ZAKIR

..... Petitioner

versus

MAQBOOL AHMED

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Shoaib Haider and Mr. Zafar Abbas, Advocates

For the Respondent: Mr. Amit Gupta and Mr. S. Bharti, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 08.04.2019 whereby leave to defend application of the petitioner has been dismissed.

2. Respondent had filed the subject eviction petition 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 Godown/Shop with Mezzanine having separate staircase on the ground floor of property known as property bearing No. 990, Ward No. XI, Haveli Bakhtavar Khan, Gail Madarse Wali, Matia Mahal, Jama Masjid, Deihi-110006, more particularly as shown in red colour in the site plan attached with the eviction petition.

3. Respondent had filed the subject eviction petition contending that they are owner/landlords of the tenanted premises and require the premises for residence of himself and members of his family dependent upon him for residence and neither he nor any of his dependent family members have any other suitably residential accommodation.

4. It is contended that the respondent was the owner/landlord of the subject property and was paying house-tax regularly. It is even contended that the petitioner was paying rent to the respondent and rent receipts were being regularly issued. It is contended that the family of the respondent consisting of himself, his wife, six sons out of whom three are married and three grandchildren. The accommodation was stated to be two rooms on the first floor and one tin-shed on the first floor of the subject property.

5. The only contention raised by the petitioner in his leave to defend is that respondent is not the owner/landlord of the tenanted premises. It is contended that the petitioner is himself an owner of the tenanted premises by virtue of a General Power of Attorney/Affidavit executed by one Smt. Zohara Begum widow of late Sh. Abdul Qadeer and respondent has not placed any document to show that he is the owner of the property.

6. Even before this Court, the only contention raised is that the respondent is neither the owner/landlord of the property. The rent receipts placed by the respondent before the Rent Controller has been denied by the petitioner.

7. In response to the leave to defend application, the respondent had categorically stated that the respondent is the owner of the property having

succeeded to the property by virtue of a registered Will dated 23.07.1979 executed by his maternal grandmother – Mst. Hurmazi Begum widow of Shri Shamsuddin.

8. It is contended that in the Will as well as the Inspection Report of the Corporation, the name of the tenant has been mentioned as Abdul Qadeer, husband of Mst. Zohara Begum. It is pointed by learned counsel for the respondent that the document relied upon by the petitioner claiming title itself states that she was transferring all her rights in the tenanted premises which was on rental basis.

9. It is also pointed by learned counsel for the respondent that respondent had filed a suit bearing No. 600962 seeking declaration that he is the sole and absolute owner of the tenanted premises, titled *Zakir Vs. Maqbool Ahmed*.

10. It is pointed out that by a judgment dated 31.07.2018 the said Suit has been dismissed after the trial and the trial court has clearly returned a finding that Smt. Zohara Begum was a mere tenant in respect of the suit property under the respondent and prior to her, her husband Abdul Qadeer was a tenant and by virtue of the documents, relied upon by the petitioner, she had transferred only the tenancy rights in the tenanted premises and the petitioner stepped into the shoes of the Smt. Zohara Begum merely as a tenant and no ownership rights were acquired by the petitioner by way of the said documents.

11. Learned counsel for the petitioner submits that the petitioner has today filed an appeal impugning the suit judgment.

12. The only contention raised by the petitioner is that respondent is not the owner and landlord of the premises and he has claimed ownership rights in himself. The documents relied upon by the petitioner i.e. agreement shows that the petitioner had sought to purchase all rights and interest of Mst. Zohara Begum in the tenanted premises. Mst. Zohara Begum in the said document, which has been placed on record by the petitioner, has only claimed tenancy rights and has not claimed any ownership rights in the subject property.

13. Clearly, no ownership rights have been claimed by Mst. Zohara Begum in the subject property and she has herself stated that she holds the property *on rental basis*. Petitioner on the basis of the said documents cannot claim any ownership rights in the property.

14. Even the suit filed by the petitioner seeking declaration and permanent injunction claiming that he be declared as the sole and absolute owner of the tenanted premises has been dismissed after trial and the trial court has returned a categorical finding that the petitioner is neither the owner nor having any rights other than tenancy rights of Mst. Zohara Begum. Further the court has returned the finding that the respondent is the landlord of the petitioner. Said judgment was passed on 31.07.2018 and appeal is stated to have been filed today after a gap of over 14 months.

15. No other plea has been taken by the petitioner in his leave to defend application, disputing the bonafide necessity of the respondent or claiming any rights in himself independent of the rights allegedly transferred by Mst. Zohara Begum or based on his possession and thus no such plea can be entertained on behalf of the petitioner at this stage.

16. The Rent Controller in the impugned judgment has rightly held that the petitioner has not been able to establish that he is the owner of the property or dispute the relationship of landlord and tenant between the parties. Even the requirement of the respondent for additional accommodation for residence of his family has not been disputed by the petitioner either before the Rent Controller or before this Court.

17. I find no infirmity in the view taken by the Rent Controller that the affidavit filed in support of leave to defend application does not raise any triable issue or raise any ground which, if proved, would disentitle the respondent landlord from an order of eviction

18. I find no merit in the petition. The petition is accordingly dismissed.

19. Order *dasti* under signatures of the Court Master.

OCTOBER 10, 2019

‘rs’

SANJEEV SACHDEVA, J,