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

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Judgment delivered on: 17.10.2019

+ RC.REV. 550/2019 & CM APPL. 41230/2019

ANIL KUMAR GUPTA & ANR

..... Petitioners

versus

CHETAN LAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Ashok Kumar Arya, Advocate with petitioner in person.

For the Respondent:

Mr. Anuj Kumar, Advocate with respondent in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 02.03.2019 whereby leave to defend application of the petitioner has been dismissed and an eviction order passed.

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 first floor of property bearing No. 634, Gali No. 14, Adarsh Mohalla, Maujpur, Delhi (consisting of two rooms, latrine, bath, kitchen, balcony, lobby),

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 subject property is situated in an area measuring 75 sq. yards which consists on ground floor and first floor. The ground floor consists of one hall measuring 15'x45' ft., latrine and bath therein and first floor consists of two rooms, kitchen, latrine, bath, balcony and lobby which is under the tenancy of petitioner herein.

4. It is contended in the eviction petition that the family of the respondent consists of himself, his wife and four children, i.e., three sons; aged 23, 20 and 15 years and one daughter; aged 21 years. Besides his wife and children, the family of the respondent consists of his mother and two unmarried sisters aged 28 and 26 years and the respondent along with his wife, children, widow mother and sisters are residing in property bearing No. 129, Gali No. 4, Bhajanpura, Delhi which is a house owned by the mother of the respondent and said property consists of three rooms on the ground floor, out of which one room was being used as a drawing room, two kitchens, one Pooja room, two store rooms, latrine and two bathrooms and first floor consists of two temporary rooms with tin-shed, latrine and bath.

5. It is contended that the respondent also has a younger brother who along with his wife and children is living in Maujpur, Delhi, in his own house but visits the respondent, his mother and sisters.

Besides this, the respondent also has four married sisters who though live with their families but visit the mother off and on.

6. It is contended that there is no other vacant suitable accommodation available with the respondent for residence of his family and since his family is very large, the accommodation at D-129, Gali No. 4, Bhajanpura, Delhi consisting only five rooms is insufficient to accommodate the respondent, his wife, his four children, his unmarried sisters and mother and also the visiting the guests of his mother and his married sisters and brother.

7. Subject leave to defend was filed by the petitioner disputing that respondent is owner/landlord of the subject property. It is contended by the petitioner that Shri Jagdish Mittal had let out the property to the petitioner and there is no relationship of landlord and tenant between the parties. It is further contended that the hall on the ground floor of the subject premises is lying vacant.

8. In response to leave to defend application, it is contended by the respondent that he had purchased the property from Smt. Sushma Mittal wife of Sh. Jagdish Prasad Mittal. It is further contended that Smt. Sushma Mittal had even sent a legal notice to the petitioner directing the petitioner to attorn to the respondent.

9. Petitioner has not that he is a tenant in the property. The only dispute is that he claims to be a tenant of Shri Jagdish Prasad Mittal.

10. In support of the claim respondent has filed the property

documents executed by Smt. Sushma wife of Shri Jagdish Prasad Mittal i.e. registered agreement to sell, registered general power of attorney, registered special power of attorney and notarized agreement to sell, etc. in favour of the respondent.

11. It is a settled position of law that to maintain an eviction petition, the respondent-landlord does not have to show absolute ownership but has to show a title better than that of the tenant.¹

12. Petitioner has claimed to be a tenant under Shri Jagdish Mittal. Respondent has claimed ownership based on the documents executed by Smt. Sushma Mittal wife of Shri Jagdish Mittal. Smt. Sushma Mittal has also sent a legal notice to the petitioner requiring the petition to attorn to the respondent.

13. It is also the admitted case of the parties that prior to this petition, a petition under Section 14 (1) (a) of DRC Act was filed against the petitioner. In the said petition, orders were passed under Section 15(1) of the Delhi Rent Control Act, 1958, directing petition to deposit rent in court and the petitioner claims to have duly deposited the rent in compliance of the said directions, though it is contended that the same was deposited only to comply with the directions of the Court.

14. Be that as it may, since the respondent has shown that

¹ *Shanti Sharma & Others Versus Ved Prabha & Others* (1987) 4 SCC 193;
Suresh Kumar Anand Versus Suman Bala 2014 SCC Online Del 4051;

respondent has a better title than the petitioner and petitioner has only claimed tenancy rights in the property, the petition is maintainable on behalf of the respondent.

15. With regard to the bonafide necessity and alternative accommodation, it is seen that the respondent has pleaded that respondent has a large family comprising of his wife, four grown up children; three boys and one girl aged 20 to 21 years. Respondent is presently residing with his mother where not only the mother but two unmarried sisters are also residing. Married sisters and brother of the respondent also visit the mother.

16. Even if, entire accommodation at the house of the mother was taken into account, the same does not satisfy the requirement of the respondent, his family as also the mother and her family.

17. Petitioner has not pleaded that apart from the subject property in which the tenancy premises are situated, respondent owns or possesses any other property.

18. With regard to the plea of the petitioner that the ground floor of the subject property comprising of a hall is lying vacant, it is seen that it is not the case of the respondent that there are rooms, etc. on the ground floor but contention is that the same is a big hall. Even if the said hall was taken into account and clubbed to the accommodation already available with the respondent at his mother's house, the same would not still satisfy the requirement of the respondent.

19. I am satisfied that the Rent Controller has correctly held that there is no triable issue arising in the present petition and petitioner has not been able to show any ground, which if proved, would disentitle the respondent-landlord from an order of eviction.

20. In view of the above, I find no infirmity in the order of the Rent Controller in declining to grant leave to defend to the petitioner.

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

22. Order *Dasti* under signatures of the Court Master.

OCTOBER 17, 2019

‘rs’

SANJEEV SACHDEVA, J,

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