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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 18th January, 2019

Pronounced on: 28th January, 2019

+ RC.REV. 105/2016 & CM APPL Nos.44082/2016, 27383/2017

AERO TRADERS PVT LTD

..... Petitioner

Through : Mr.Mandeep Singh Vinaik,
Advocate.

versus

RAVINDER KUMAR SURI

..... Respondent

Through : Mr.Joy Basu, Sr. Advocate with
Mr.Achin Mittal and Mr.Kanak
Bose, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges the order dated 13.08.2015 in eviction petition no.167/2011 titled as *Ravinder Kumar Suri vs. Aero Traders Pvt. Ltd.* passed by Commercial Civil Judge-cum-ARC (Central) Tis Hazari Court, Delhi wherein the eviction petition under Section 14(1)(e) was allowed by the Court in favour of the respondent and against the petitioner.

2. Before coming to the issues involved it would be appropriate to state few facts, as alleged, in eviction petition:

a) the tenanted premises comprising of one room on ground floor, two rooms on the mezzanine floor and a basement. It has a private flat no. 6, forming part of the property bearing no.820, Joshi Road, Karol Bagh, New Delhi, more specifically shown

in red colour in the site plan. The petitioner is a tenant at the rate of Rs.30/month, excluding other charges. It is alleged the premises is lying locked for the last more than 22 years;

- b)* the respondent is an owner/landlord of the premises and he requires the same bonafidely for himself and his family members dependent upon him. The petitioner is a senior citizen aged about 80 years and he has undergone a bye-pass surgery and is living on the first floor of the said property and hence want to shift his residence on the ground floor of the said property as he find it difficult in climbing the stairs on account of his old age and has decided to take up his residence on the ground floor;
- c)* the subject flat is most suitable for the petitioner and he has no other reasonable suitable accommodation on the ground floor for his residence;
- d)* the petitioner is one of the leading company and have got several business premises at various places and it does not require such suit premises as the same is lying locked for the last more than 22 years.

3. The respondent examined himself as PW1 and proved documents of co-ownership with his brother as *Ex.PW1/1* colly.; the site plan regarding partition of the suit property as *PW1/2*; the site plan of the property owned by the petitioner showing the tenanted premises as *Ex.PW1/3*; the original office copy of cancellation notice dated

09.09.1992 issued on behalf of the petitioner as *Ex.PW1/4*; house tax receipts as *Ex.PW1/5* colly.; certified copies of the orders dated 09.09.2003 and 27.10.204 passed by the Delhi High Court and Supreme Court as *Ex.PW1/6* colly.; documents of heart surgery and medical treatment as *Ex.PW1/7* colly.; photographs showing locking of the tenanted premises *Ex.PW1/8* colly.; copy of the legal notice with postal receipts, courier receipts and returned AD as *Ex.PW1/9* colly.

4. One Mr.Sudarshan Lal Arora was examined as *RW1* on behalf of the petitioner herein and he proved site plan *Ex.RW1/1*; a rent note dated 29.10.1988 as *Ex.PW1/R1* and an agreement to sell with KAPL as *Ex.PW1/R2*.

5. The learned ARC in his impugned order has noted:

“16. The respondent has disputed the ownership of the petitioner over the suit premises on the ground that no actual partition took place between the petitioner and his brothers and that the petitioner had sold off the property under his ownership to M/s Kwaliti Apartments Private-Limited by way of Agreement to Sell and therefore, the petitioner has no right over the said property. Per contra, the case of the petitioner is that the petitioner and his brother Sh. Rajan Kunhar Suri were the co-owners of equal share with respect to property bearing no. 816-820, Joshi Road, Karol Bagh, New Delhi. That on 01.10.1994, an oral partition took place between the petitioner and his brother whereby portion marked in colour 'Blue' in the site plan came to the share of the petitioner and portion marked in 'Green' came to the share of brother of the petitioner Sh. Rajan Kumar Suri. Thereafter, petitioner's brother Sh.Rajan Kumar Suri sold his entire portion to Rehman & Company vide a duly registered Sale Deed dated 21.10.1982. The petitioner has placed on record the copy of the Sale Deed as well as the site plan filed by brother of the petitioner alongwith said Sale Deed which clearly depicts that an oral partition took place between the petitioner and his brother by virtue of which, petitioner alongwith his

brother had acquired equal share in the suit property. The respondent being the tenant of the petitioner has no right to dispute the family partition which took place between the petitioner and his brother or title of the petitioner over the suit property on the ground that no partition has taken place between the petitioner and his brother Sh. Rajan Kumar Suri.

19. It cannot be denied that a Lease Agreement between the petitioner and M/s Aero Traders Pvt. Ltd., copy of which has been placed on record by the respondent himself, was executed on 29.10.1988, whereas, the Agreement to Sell with M/s Kwaliti Apartments Pvt. Ltd. was executed on 03.11.1988. Both these documents were not executed on the same day and therefore, it cannot be said that tenancy to M/s Aero Traders Pvt. Ltd. was given as method of securing right of the purchaser over the tenanted premises. Even otherwise, it cannot be said that M/s Kwailty Apartments Pvt. Ltd. and M/s Aero Traders Pvt. Ltd. are under the proprietorship of only one person, i.e., Sh. Avtar Singh, as the agreement with M/s Kwailty Apartments Pvt. Ltd. Ex. PW1/R-2 was signed by Director Sh. A.K. Dua and not by Sh. Avtar Singh. There is no mention of Sh. Avtar Singh in the entire Agreement to Sell mentioning thereby, that Director of M/s Kwaliti Apartments Pvt. Ltd. was Sh. A.K. Dua and not Sh. Avtar Singh in whose favour tenancy right was granted. No document has been filed by the respondent to prove that Sh. Avtar Singh was Director of M/s Kwaliti Apartments alongwith being the Director of M/s Aero Traders Pvt. Ltd. In absence of proof that M/s Kwaliti Apartments Pvt. Ltd. was under the directorship or proprietorship of Sh. Avtar Singh, it cannot be said that Lease Agreement was executed in order to secure the possession of the subsequent purchaser, i.e., M/s Kwaliti Apartments Pvt. Ltd. over the tenanted premises.

20. As far as transfer of right, title or interest in the suit property by the petitioner in favour of M/s Kwaliti Apartments Pvt. Ltd. is concerned, no Sale Deed has been executed between the petitioner and M/s Kwaliti Apartments Pvt. Ltd. by virtue of which, the petitioner has transferred his right, title and interest in the suit property in favour of M/s Kwaliti Apartments Pvt. Ltd.. It is a well established law that an Agreement to Sell does not confer any right or title in any party, which can be transferred only by way of Sale deed in case of immovable properties.

In the present case, no Sale Deed was executed between the petitioner and M/s Kwaliti Apartments Pvt. Ltd. The contention of the respondent that it was the petitioner who had not complied with terms of Agreement to Sell, due to which Sale Deed could not be executed is also baseless since if that would have been the case, M/s Kwaliti Apartments Pvt. Ltd. would have filed a suit for specific performance against the petitioner, which was never done. No document has been filed by the respondent to substantiate that it was the petitioner who had not complied with the terms of Agreement to Sell or that any right, title and interest was transferred by the petitioner in favour of M/s Kwaliti Apartments Pvt. Ltd.. The document 'Agreement to Sell' does not transfer or confer any right, title or interest in any of the parties. For transferring of interest of immovable property, it is necessary that a Sale Deed should be executed. Meanwhile, the petitioner has also filed the notice of cancelling said Agreement to Sell dated 09.09.1992 Ex. PW1/4. If there would have been any lacunae on behalf of the petitioner in compliance with the terms of Agreement to Sell, M/s Kwaliti Apartments Pvt. Ltd. had all the rights to file suit for specific performance which was never done and therefore, today it cannot be said that all the rights, title and interest have been transferred by the petitioner in favour of M/s Kwaliti Apartments Pvt. Ltd. Thus, the ownership of the petitioner over the suit premises as well as existence of landlord-tenant relationship duly stands proved. Respondent himself has filed copy of the Lease Deed Ex. RW1/1, by virtue of which respondent become the tenant under the petitioner.

23. The petitioner has filed copy of his medical record, by virtue of which it stands proved that the petitioner had undergone Bye-Pass surgery and therefore, it cannot be denied that it would be in the best interest of the petitioner to shift to the ground floor in comparison to premises on first and second floor. Also, it cannot be denied that the petitioner is an old aged person of 80 years and therefore, it would be more comfortable for him to shift to premises at ground floor In this old age and not to climb the stairs.

24. The contention of the respondent that the premises In question cannot be used for residential purpose as it has always been used as warehouse Is without any basis since even If, It Is presumed that ground floor portion does not consist of kitchen and bathroom but that cannot stop the

petitioner for getting the same constructed for his bonafide requirement, If he has vacant possession of the said area.

25. The respondent has also disputed the site plan filed by the petitioner on the same ground that there is no kitchen or bathroom on the ground floor under the tenancy of the respondent and therefore, the said premises cannot be used for residential purpose. Even If the contention of the respondent Is believed to be true, then also, the petitioner Is well within his right to make the premises habitable for himself after getting It re-constructed. In the judgment titled as "Ragavendra Kumar v. Firm Prem Machinery reported as AIR 2000 SUPREME COURT 534", the Supreme Court held that It Is settled position of law that:-

"The landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter."

28. It has nowhere been denied .that the petitioner is having two sons who are also residing with the petitioner. In these circumstances, it cannot be disbelieved that the entire ground floor portion has been divided into two shares, i.e. one for elder son and one for the younger son. Even if it is believed that there is no school running in the other half portion on the ground floor of the suit property, then also, since the said portion is not under the occupation of the petitioner, therefore, it cannot be said that the petitioner can use the same for his bonafide requirement. Further, the premises on the first and second floor cannot be said to be an alternative suitable accommodation for the petitioner for his residential purposes since the petitioner is in requirement of premises on the ground floor due to his old age and deteriorating health and thus, the premises on first and second floor cannot satisfy bonafide requirement of the petitioner which is for the ground floor. In these circumstances, since other half of the suit property has been given by the petitioner to his elder son by way of oral family settlement, therefore, the petitioner is left with no space on the ground floor other than the tenanted premises. It is stated by the respondent that the tenanted premises is constructed in such a manner that it cannot be used for residential purposes. But even if the contention of the respondent is believed to be true, then also, petitioner can get the same re-constructed to make It habitable for

himself. Hence, the availability of alternative suitable accommodation with the petitioner is also not proved.”

6. Before this court now the petitioner has, primarily raised three issues qua **(a)** the ownership of the respondent; **(b)** the bonafide necessity and **(c)** the concealment.

7. It is argued by the learned counsel for the petitioner that the respondent is not an owner of the premises. The respondent in his reply to leave to defend application as also in his replication to the written statement of the petitioner herein has alleged the property was jointly owned by him and his brother and there was an oral partition vide which half of the entire property went in favour of Mr.Rajan Suri, who then sold his 50% share in the entire property to Mr.Anis-ur-Rehman. The other half portion of the building which fell in favour of the respondent was further orally partitioned between him and his two sons and that the ground floor of the property coming to his share includes the tenanted premises, hence has filed this petition.

8. In his written statement, the petitioner has alleged the subject property was purchased in the year 1960 by one Mr.Jagat Ram Suri vide registered sale deed dated 05.02.1960, registered with Sub-Registrar New Delhi. It was averred Mr.Jagat Ram Suri died on 18.10.1972 and in terms of his Will, the property devolved upon his four sons, including the respondent. However vide a power of attorney dated 18.03.1975, duly registered, by Mr.Ranjit Kumar Suri and Mr.Krishan Kumar Suri, the brothers of the respondent, constituted their mother Smt.Savitri Suri as their general attorney in respect of their shares in the property. However vide a deed of relinquishment dated 25.07.1975 both these sons later

relinquished their 1/4th share each in favour of Mr.Ravinder Kumar Suri and Mr.Rajan Suri and thus the respondent became owner of the half share in the entire property and whereas Mr.Rajan Suri became owner of the other half.

9. It was further alleged by the petitioner in his written statement Mr.Rajan Suri then sold his share to Mr.Anis-Ur-Rehman vide a registered sale deed 15.10.1982 and hence the respondent owns other half share in the property and for that he too had entered into an agreement to sell dated 03.11.1988 with M/s.Kwality Apartments Pvt. Ltd. (hereinafter referred as 'KAPL') in respect of entire ground floor in the property which fell to his share and had put the purchaser in vacant possession thereof against receipt of valuable consideration.

10. It was further alleged after the death of Mr.Anis-ur-Rehman, his legal heirs now hold the balance one-half share in the said Property, which previously vested in Mr.Anis-ur-Rehman and hence they are also necessary and property party in the eviction petition.

11. It was urged since the respondent had not filed any partition suit to partition the property between himself and his brother Mr.Rajan Suri or the transferee Mr.Anis-ur-rehman, hence per *Mr.Sattar Mohammad Chaudhari Vs. Gundappa* (1996) 6 SCC 373 this petition is not maintainable without the consent or impleadment of the other co-owners of the property.

12. It was further alleged with a view to secure the property for the purchaser, the tenancy of the premises was taken in favour of M/s.Aero

Traders Pvt. Ltd. and the lease gave exclusive right/power to the lessee/petitioner to deal with the premises as it deemed fit, including the power to sublet. Pursuant to an agreement to sell with KAPL the respondent constructed a hall on the ground floor for KAPL. On construction thereof, a sum of Rs.2,00,000/- was payable to the respondent by KAPL and under the agreement to sell the said amount was paid by Mr.Avatar Singh who owns shares in KAPL. The said amount was paid on a clear understanding that it would be adjusted against the balance sale consideration payable to the respondent on transfer of the property. The remaining balance amount is thus only payable.

13. The respondent herein in his replication had rather denied Mr.Anis-ur-Rehman was an erstwhile associate of Mr.Avatar Singh. He denied the agreement to sell was for ground floor, the part of first and second floor. It was rather alleged the agreement to sell was executed only for a portion of the share of the respondent and the possession was never given to KAPL under the said agreement to sell as the said company neither offered nor paid the balance sale consideration to the petitioner, hence such agreement to sell was later cancelled by sending a legal notice dated 19.09.1992 to KAPL. Thereafter M/s.KAPL never took any step to pay the balance amount, hence the earnest amount was forfeited by the respondent. The copy of the cancellation notice dated 09.09.1992 is also on record. No suit was filed by M/s KAPL against the respondent till filing of the eviction petition.

14. It is also to be noted yet another eviction petition against this very petitioner was filed under Section 14(1)(a) of the DRC Act on the ground the petitioner was in arrears. An order under Section 15(1) of the DRC Act was passed on 20.12.1999 in the said petition directing the petitioner to pay or deposit the arrears of rent and future rent, which order was later confirmed by the High Court on 09.09.2003 in CM(M) 512/2001. Even the SLP (C) against it was also dismissed. Petitioner herein, however failed to comply with the above orders. The petitioner never denied the factum of the ownership of the respondent in such eviction petition filed under Section 14(1)(a) DRC Act or in revision or in SLP(C) etc., hence now cannot challenge the ownership of the respondent. This answers issue (a) raised above.

15. Further since the respondent, allegedly, was never concerned with the property of Anis-ur-rehman, hence there was no question of impleading the legal heirs of Anis-ur-Rehman in this eviction petition. Admittedly his brother Mr.Rajan Suri had sold his half share after an oral partition on 01.10.1974. The factum of such partition is even noted in sale deed dated 21.10.1982 executed by Mr.Rajan Suri in favour of Anis-ur-Rehman.

16. The respondent further submitted the premises in fact is residential. The site plan as filed by the petitioner is stated to be false as there is no school functioning on the ground floor of the premises. The respondent rather reiterates after the half portion of the property fell in his share on partition with his brother, there was yet another oral partition between the respondent and his two sons, whereby the portion of the left over

property was further divided into two parts right from ground floor to top floor and that one part of it had gone to the share of respondent's elder son namely Mr.Pradeep Kumar Suri and another half from ground to top floor has fallen to the share of respondent and his younger son Mr.Sandeep Kumar Suri, which includes the tenanted shop, hence there exist no accommodation available to the respondent on the ground floor.

17. Another issue raised before this Court by the learned counsel for the petitioner is there does not exist any bonafide need of the respondent, since in the eviction petition he has alleged he require the premises for himself as also for his sons but when in his written statement the petitioner herein disclosed the respondent has in his possession eight (8) rooms on the ground floor after the closure of the school at the said ground floor, pat came the reply of the respondent that the property with him after partition with his brother has been further divided 1/2:1/2 in an oral partition between him and his two sons and the portion where the school earlier existed came to the share of his elder son; and whereas the other portion, including the tenanted premises has fallen to the share of the respondent and his younger son.

18. Admittedly, there has been a history of oral partition between the parties. The brother of respondent had infact sold his portion of the property acting upon such oral partition. If this is so, then considering the age of the landlord, being more than 80 years, it is quite natural for him at this age to distribute his property amongst his sons by partitioning and determining their shares in his life time itself so as to avoid disputes after

his demise, hence, it cannot be said the oral partition amongst them is motivated.

19. Needless to further say this oral partition between the respondent and his sons was rather pleaded and was a part of evidence filed on behalf of the respondent but was never challenged in cross-examination. No question was rather asked to PW1 viz. the respondent, qua the legality of such oral partition or if such oral partition never took place. There is no dispute to the preposition that partition can be oral. In *A.K.Nayar vs. Mahesh Prasad* 153 (2008) DLT 423 the Court held :

“8. Counsel for the petitioner contended that a family settlement is required to be registered and if it is not registered it cannot be looked into. As already stated this Court has not to look into the ownership of respondent for the purpose of the Transfer of Property Act. If Sh. J. P. Srivastava or other family member had challenged the family settlement, the Court could look it from the angle of the Transfer of property Act. But a tenant cannot challenge the family settlement nor can ask the Court to ignore the document on the ground of its not having been registered. Even otherwise, in Kale v. Deputy Director of Consolidation MANU/SC/0529/1976 : [1976]3SCR202 , Supreme Court observed as under:

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(3) The family arrangement may be even oral in which case no registration is necessary;”

20. Further in *G.C.Khanna and Ors. vs. Electric Construction and Equipment Co. Ltd.* 139(2007) DLT 128 the Court held:

“11. I need not note the plethora of authorities which permit Courts to take cognizance of subsequent events which have transpired during pendency of eviction petition, more so when eviction sought is predicated on the plea of

bona fide requirement. Suffice would it be to note that in relation to claims of bona fide requirement it is the duty of the Court to test the bona fide requirement as on date when the matter is being decided.

12. Reason thereof is that due to docket explosion in this country, considerable time elapses between the date when eviction petition is instituted and its final decision. Births and deaths take place in the family of the landlord. Deaths go to the benefit of the tenant, in that, removal of a member from the family of the landlord diminishes a requirement. Births go to the benefit of the landlord as the same results in an increase in the requirement of the family. Similarly, needs of the growing children and in particular on their attaining adulthood, to have separate rooms for themselves becomes important. Marriage of a child and in particular a male would further increase the demand for space within the family. Daughters getting married and moving out would reduce, to some extent, the requirement of the family members.

13. If life is not static, so cannot be the law. As the saying goes, the rule of law would lose its meaning if it does not run close to the rule of life.

14. As a proposition of law, it is clearly decipherable that as long as an eviction petition is pending, each and every subsequent event which is relevant for a proper adjudication of rival claims can always be brought to the notice of the Court. Indeed, it is the duty of every Court to take it on record.”

21. Qua concealment, I may say replication, being a part of the pleadings, the tenant has no right to allege the averments made by the respondent in the replication cannot be read. Admittedly there was an earlier litigation between the parties wherein an issue of ownership was never raised by the petitioner and if in such circumstances an eviction petition was filed without disclosing the details qua ownership, the respondent was fully justified in disclosing those in his replication on denial of his ownership by the petitioner herein in his written statement.

The replication thus was an explanation to the denials/issues raised in written statement by the petitioner herein, and hence the petitioner cannot allege concealment on the part of the respondent. A bare perusal of the eviction petition show it contains all necessary ingredients of Section 14(1)(e) of DRC Act. It was only when the petitioner raised issues in his leave to defend application, the respondent clarified all such facts in his rejoinder/replication.

22. Further, admittedly, on record there is a lease deed dated 29.10.1988 and an agreement to sell dated 03.11.1988 which the respondent had with M/s.KAPL. A bare perusal of the leave to defend application and the written statement filed by the petitioner/tenant would rather reveal the tenant/petitioner has copied down paras 1 to 5 of the said agreement to sell deed 03.11.1988 but deliberately had missed out the contents of para 6 of such agreement which duly notes of an oral partition between the respondent and his brother Mr.Rajan Suri. Thus such oral partition was well within the knowledge of the petitioner/tenant. It is even recorded in the sale deed executed in the year 1992 by Mr.Rajan Suri in favour of Anis-ur-Rehman. The site plan annexed to sale deed do show the property was divided into two separate parts between the two co-owners. Hence the respondent is an absolute owner of the portion of the property which fell into his share, including the tenanted premises.

23. Thus the petitioner cannot question the oral partition the respondent had with his sons and there is no concealment, as alleged and hence it cannot be said the need of respondent is not bonafide. In the

circumstances I see no reason why should I differ from the decision of the learned Trial Court, also when *RWI* who appeared on behalf of the petitioner did not file any authority to appear and depose on behalf of the tenant/petitioner.

24. The petition stands dismissed in terms of the above. Pending applications, if any, also stands disposed of.

25. No orders as to costs.

JANUARY 28, 2019

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YOGESH KHANNA, J.

