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

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Judgment delivered on: 13.12.2019

+ RC.REV. 108/2016

MOHD SHAFIQUE

..... Petitioner

versus

MOHD MASOOD

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Mahesh Srivastava with Mr. Vaibhav Manu
Srivastava, Advocates.

For the Respondent: Mr. Amit Dhalla, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 04.07.2015, whereby, leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Subject eviction petition was filed by the respondent seeking eviction of the petitioner on the ground of bonafide necessity under Section 14(1) (e) of the Delhi Rent Control Act, 1958, from shop bearing No.897A, Haveli Azam Khan, Bazar Chitli Qabar, Jama Masjid, Delhi, more particularly as shown in red colour in the site

plan annexed with the eviction petition.

3. The ground of eviction pleaded by the respondent was that the respondent was the owner landlord of the subject premises and the same was bonafidely required for himself.

4. It is contended that the family of the respondent consists of mother, one brother and three sisters, one of whom is married. Subject property was purchased by the father of the respondent from its previous owner Mohd. Haseeb son of Mohd. Haneef by a duly registered sale deed dated 12.12.2001 and on the demise of the father of the respondent, respondent being one of the legal heirs, filed the subject eviction petition.

5. It is contended that the family of the respondent is having one shop bearing No.897, which is a very small shop and the respondent wanted to evict the petitioner tenant and demolish the intervening wall between both the shops so that a restaurant can be opened in the premises. Respondent has also stated that he has filed another eviction petition against another tenant of Shop No.898, which is on the other side of the tenanted premises.

6. Subject leave to defend application was filed by the petitioner disputing the relationship of landlord and tenant and also disputing that the respondent is the owner of the property.

7. It is contended that the property was owned by Mohd. Haneef

and Mohd. Haneef died intestate and petitioner being the brother of Mohd. Haneef, became the co-owner of the property.

8. Further, it is pleaded that the respondent has not disclosed that the respondent does not have any other alternative suitable accommodation. It has further been pointed out by the petitioner that the respondent has not purchased the property from the rightful owner and some person Mohd. Haseeb has been set up as the son of Mohd. Haneef for the purposes of purchase of the property.

9. It is pointed out by learned counsel appearing for the respondent that the respondent is the son of Mohd. Rafique, who was also the brother of Mohd. Haneef and the petitioner. Learned counsel for the respondent submits that Mohd. Haneef got married to Mst. Akhtari Begum and on 18.04.1965, a son was born, who was named Mohd. Haseeb and on 20.04.1965, birth of the son was registered with the sub-Registrar, Births and Deaths.

10. Learned counsel for the respondent submits that the respondent has duly purchased the subject property from Mohd. Haseeb after the demise of Mohd. Haneef by a registered sale deed.

11. Learned counsel for the respondent submits that the birth certificate has duly been placed on the record of the Rent Controller to establish that Mohd. Haseeb, seller of the property to the respondent, was the son of Mohd. Haneef and Mst. Akhtari Begum.

12. Before this Court, the original birth certificate has been produced which shows that a male child was born on 18.04.1965, who was named Mohd. Haseeb and the child was born to Mst. Akhtari Begum and Mohd. Haneef. Said certificate shows that the date of registration is 20.04.1965. There is a presumption of the validity of the said certificate and it clearly establishes that Mohd. Haseeb, the seller of the property to the respondent, was the son of Mohd. Haneef and it is admitted case of the petitioner that Mohd. Haneef was the owner of the property.

13. With regard to alternative accommodation, it is noticed that the petitioner has not taken any ground in the affidavit supporting the leave to defend application that respondent has any other accommodation available leave alone a suitable alternative accommodation.

14. Respondent has clearly stated that the family of the respondent comprises of himself, his mother, one brother and three sisters and that they are in possession of a small shop right adjoining the tenanted premises and because of their need, they wish to demolish the intervening wall and open a restaurant in the said premises. Clearly the need, as projected by the respondent in the eviction petition, is bonafide and the petitioner has failed to produce any material to show that the need is not bonafide or that any other suitable alternative accommodation is available with the respondent.

15. Another contention raised by the learned counsel for the petitioner is that the tenant of the adjoining shop No.898 was granted leave to defend the eviction petition. Copy of the order granting leave to defend has been produced in Court.

16. Perusal of the order shows that the leave was granted on a concession being given by learned counsel for the respondent that the application seeking leave to defend raised a triable issue. There is no finding returned by the court. No such concession is being given by learned counsel for the respondent in these proceedings.

17. Even otherwise, as noticed above, respondent has been able to establish that the respondent is the owner of the property and that the respondent requires the tenanted premises for bonafide need and that the respondent does not have any other suitable alternative accommodation.

18. Merely because leave to defend is granted to one tenant of an adjoining property does not necessarily mean that the other tenant should also be granted leave to defend. Application seeking leave to defend and the affidavit filed in support thereof have to be considered on their merit to ascertain whether tenant has raised such ground which, if proved, would disentitle the respondent landlord from an order of eviction. No such ground has been raised by the petitioner in these proceedings.

19. No other point is urged by learned counsel for the petitioner.

20. Further, it may be noticed that respondent has already taken possession of the tenanted premises in execution of the impugned order.

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

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

DECEMBER 13, 2019
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SANJEEV SACHDEVA, J

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