

\$~24

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

%

Judgment delivered on: 19.12.2019

+ RC.REV. 126/2016

JAG MOHAN SHARMA

..... Petitioner

versus

GURCHARAN KAUR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Arun Bhatta, Advocate.

For the Respondent: Mr. Viney Sharma, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 18.08.2015, whereby the 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 one shop on the ground floor in property No. 1567, Rani Bagh, Sant Nagar Road, Delhi-110034, more particularly as shown in red colour in the site plan annexed with the eviction petition.

3. The ground taken in the eviction petition is that the respondent is the owner of the property. The petitioner was inducted as a tenant by the respondent in one shop on the ground floor in the year 1986.

4. It is contended that the family of the respondent consists of her four sons namely Jagjit Singh, Swaran Singh, Jarnail Singh and Kamaljit. Singh. Respondent is using the portion shown in yellow colour in the site plan annexed for residential purpose. She along with her two sons Jarnail Singh and Kamaljit Singh are residing in the yellow portion. Respondent is having two rooms, one drawing room, one store at the ground floor and three rooms, one drawing room at the first floor all depicted in the yellow colour and that they are enjoying the said portions as per their needs. Two other sons of the respondent are residing separately.

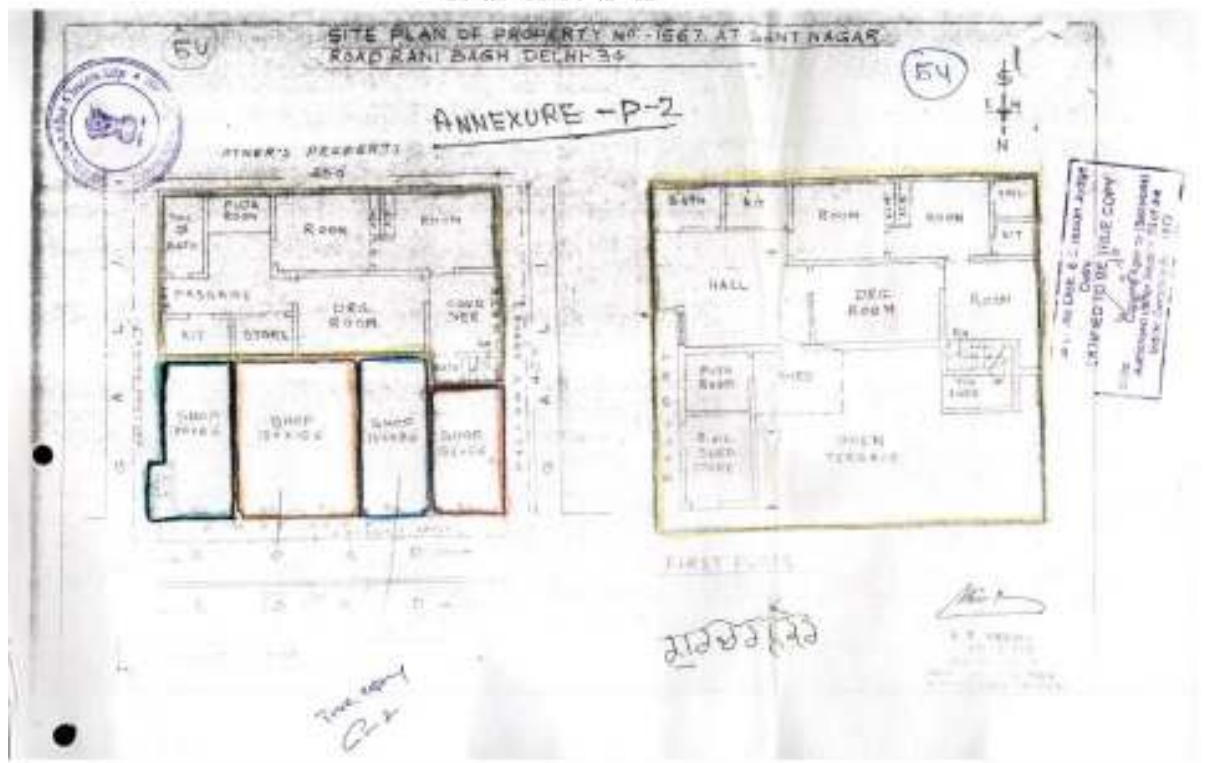
5. It is contended that the Respondent's son Jarnail Singh is married. He resides with the Respondent and his two sons then aged 18 and 15 years (petition having been filed in the year 2013). Respondent's younger son Kamaljeet Singh is residing in the premises along with his two daughters then aged 17 and 12 years. His wife had expired.

6. It is contended that the respondent has one shop; shown in blue colour, which is in the possession of her son Jarnail Singh who is using the said shop for selling spare parts of scooter/motorcycle etc for the last more than 12 years. Another shop shown in orange colour

is in the possession of her other son Kamaljeet Singh who is using the same as a workshop for car/four wheeler since the year 1999 with the help of his brother Jarnail Singh. Respondent has another shop which is under the tenancy of one Manoj Kumar who is running a Namkeen Shop under the name and style of Sachin Namkeen.

7. As per the respondent, she had distributed the four shops to her four sons. Shop in green colour in the site plan has been given to her elder son. Shop in blue and orange colour being used by her sons Jarnail Singh and Kamaljeet Singh and the tenanted premises came under the tenancy of the son of the respondent Swaran Singh.

8. The Site Plan of the Property is as under:



9. It is contended that the son of the respondent: Swaran Singh has two children who at the time of filing of the eviction petition were aged 24 and 22 years. It is contended that the son of Swaran Singh i.e. Sunny Singh did his Diploma in Computer for two years from IIHT Institute and is unemployed and wanted to start his business in hardware and networking etc from the tenanted premises. It is also contended that Sunny Singh was of marriageable age and wanted to settle in his life and respondent and her son i.e. father of Sunny Singh wanted him to start his business from the tenanted premises.

10. It is further contended that Sunny Singh was dependant on the petitioner for the purposes of accommodation and petitioner had no other suitable commercial accommodation available for starting of business by her grandson Sunny Singh.

11. Subject leave to defend application was filed by the petitioner contending that the son of the respondent i.e. Swaran Singh, owns and possesses property in Sector 9, Patel Apartments, Rohini, Delhi while his son Sunny Singh was in possession of the ground floor as also the first floor in shop No.627, Srinagar behind Ramlila Ground, Rani Bagh, Shakur Basti, Delhi from where he was running a shop under the name and style of "Singh Motors" along with his father Swaran Singh. It was further contended that Swaran Singh also owns and possesses shop on the ground floor being Shop No.1, Behind Bhasin Bus service, Garg Plaza, Pitampura, Rani Bagh, Delhi under the name and style of "Nayol Motor Workshop". Further it was contended that

the grandson of the respondent was living separately and as such was independent and could not be treated as a dependant family member.

12. Further it is contended that the respondent had converted one vacant hall comprising of two shops and was using the same as a garage for parking a car. Further it is contended that in the eviction petition, respondent had herself stated that she has distributed the properties to her four sons and thus she would not have any right, title or interest in the property to maintain the eviction petition and further the liability is of the father of Sunny Singh to maintain him and not of the respondent/grandmother.

13. In response to the grounds raised by the petitioner in his leave to defend, respondent has categorically stated that the property at Patel Apartments, Rohini, Delhi is a residential flat and being used by the son of the petitioner and his family for residence and as such could not be used for the purposes of tenanted shop.

14. Further it is contended that the shop on the ground floor as also on the first floor of shop No.627, Srinagar behind Ramlila Ground, Rani Bagh, Shakur Basti, Delhi is in the possession of Swaran Singh from where he is running the business of Sale and Purchase of cars and Sunny Singh is only helping him. It is further contended that the other son of the petitioner Kamaljeet Singh is running the car workshop under the name and style of Nayol Motor Workshop and the said shop is jointly owned by Swaran Singh and Kamaljeet Singh.

15. It is further denied that respondent had recently let out the shop to Sachin Namkeen Bhandar. It is contended that the said shop has been in the tenancy of one Sh. Mukesh for over more than last three years, prior to filing of the eviction petition. Respondent has further denied that she has unauthorizedly converted two shops into a big hall where a car is parked. It is stated that the said shop is being used by her son Kamaljeet Singh.

16. Rent Controller has noticed that the relationship of landlord and tenant has been admitted by the respondent.

17. The contention of learned counsel for the petitioner that respondent has distributed the shops to her sons and as such has no right, title or interest is not substantiated on record. No material has been placed on record by the petitioner that the respondent has divested herself of her ownership rights to the said property.

18. The reading of the pleadings clearly gives an impression that since respondent has four sons, she has divided the use of the said four shops that she owns. She has allotted the four shops to her sons for utilizing the same independent of each other. The petitioner in his leave to defend has neither pleaded nor placed on record any material to show that respondent has divested herself of her ownership rights in any of the shops in favour of her sons.

19. The fact that petitioner has admitted the relationship of tenant, clearly negates such a contention. Said plea does not raise any triable

issue and the Rent Controller has rightly rejected the said plea of the petitioner.

20. With regard to bonafide necessity as pleaded by the respondent, it is clear from the site plan that the respondent has four shops each of which has been allotted for use and enjoyment by one of her sons.

21. Two shops are occupied by two of her sons. One shop has been let out to one Sh. Mukesh, who runs the shop under the name and style of Sachin Namkeen Bhandar. Said shop was let out three years prior to the filing of the eviction petition.

22. No material has been placed on record by the petitioner to show that the letting was recent. Even in the eviction petition, respondent has categorically stated that the said shop has been let out to Sachin Namkeen Bhandar. Two of the shops are in the possession of two of the sons of the respondent who are carrying on their business from the same.

23. Petitioner has also not placed on record any material to show that respondent has available any other commercial premises from where her grandson can start his business.

24. Respondent has very categorically stated that her grandson Sunny is of marriageable age and is dependent upon her for the purposes of accommodation and for running his business. Petitioner has also not placed on record any material to show that even the father

of Sunny i.e. Swaran Singh has any other alternative premises from where Sunny Singh can start his business.

25. As per the eviction petition, the tenanted shop has been allotted to Swaran Singh, father of Sunny Singh and as such the need expressed by the respondent for evicting the petitioner so that the said shop could be used by her grandson Sunny cannot be said to be malafide.

26. As is apparent from the site plan, the yellow portion shown in the site plan is being used by the respondent along with two of her sons and their families for residential purposes and apart from the yellow portion there are only four shops which are owned by the respondent.

27. Petitioner has not been able to place on record any material to show that respondent has any other suitable alternative premises available which could be used for opening of a shop by the grandson of the respondent.

28. In today's day and age, when families live together, it can clearly be said that the grandson is as much a dependant family member as a son. If the son of a landlord can be a dependent family member son can the grandson. It would have been a different situation, if the son was not dependent upon his mother, then it could be argued that the grandson would be dependent upon his father and not on the grandmother. Petitioner has not placed any material to

show that the father of Sunny Singh i.e. Swaran Singh is not dependent upon his mother, the Respondent

29. I find no infirmity in the view taken by the Rent Controller that petitioner has not been able to show any triable issue or raise any ground or plea which, if proved, would disentitle the landlord from an order of eviction.

30. I find no merit in the petition.

31. Petition is accordingly dismissed.

DECEMBER 19, 2019

rk

SANJEEV SACHDEVA, J