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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 346/2016, CM APPL No.24828/2016, 29013/2018

DEV RAJ

..... Petitioner

Through Mr.Munish Chhoker, Advocate

versus

MASTER VANSI & ANR

..... Respondent

Through Mr.Ajay Kr., Mr.Sandeep Garausa
and Mr.Sandeep Mudgal, Advocates

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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01.04.2019

1. This petition is challenging the impugned order dated 28.04.2016 passed by the learned SCJ cum RC (NE) Karkardooma, Delhi, in eviction petition E-7449/2015 whereby the application for leave to defend filed by the petitioner herein was dismissed.
2. The respondents had filed an eviction petition for vacation of shop/almirah No.6, forming part of property No.146, Gali No.6, Bhajanpura, Delhi-110053. The petition was filed by respondents no.1 and 2 through their grand father Sh.Mahender Prakash, being their guardian.
3. It was alleged the respondents are sons and only class-I legal heirs of late Mr.Lalit Kumar who had since expired along with his wife in an unfortunate accident on 21.04.2007. Late Mr.Lalit Kumar, the father of the respondents was an owner of the shop premises and he let out the same to the petitioner herein in the year 2002 vide a

written agreement dated 01.12.2002 on a monthly rental of Rs.2,500/- per month.

4. After the death of their father both the respondents became the owner/landlord of the tenanted almirah. It is alleged both the respondents are finding difficulty to satisfy their daily needs, school fee, clothing etc. and these facilities are being provided by their grandfather namely Sh.Mahender Prakash from his meagre pension, he is receiving from DTC. It is alleged the tenanted almirah was required for themselves for earning their livelihood and the respondents through their grandfather will do the business of readymade garments from the tenanted almirah and the respondents shall assist their grandfather in running such readygarment shop. The respondents alleged they did not have any other shop, except the tenanted almirah and there is no other source of their income. It is alleged their grandfather is finding it difficult to meet their daily expenses from his meager pension.

5. The petitioner herein filed an application for leave to defend, primarily, on following grounds:

- a)* There is no relationship of landlord/tenant between the parties and at no point of time the petitioner ever attorned to the respondent as his landlords. Further no copy of ownership documents were ever furnished by the respondents;
- b)* even Mr.Lalit Kumar the late father of the respondents was not an owner of the tenanted shop/almirah and hence the provisoin of Section 116 of the Indian Evidence Act

would not be attracted;

c) earlier a civil suit 31/2008 was pending between the parties and one Mr.Ashok Nishchal relative of the respondents wherein Mr.Ashok also claimed ownership. Ultimately it was dismissed vide judgment/decreed dated 14.07.2014;

d) the respondents being minor would not engage themselves in any commercial activity and hence there is no bonafide necessity and further the respondents had kept mum for seven years would show they does not require the premises bonafide.

6. The respondents filed a reply to the leave to defend application and relied upon a rent deed dated 01.12.2002 executed between Mr.Lalit Kumar, the deceased father of the respondent and the petitioner herein. The application for leave to defend was however dismissed.

7. Let us now see as to how the learned RC has dealt with various issues raised. Qua the relationship of the landlord/tenant between the parties, the learned RC held as follows:

“10.1. Because the respondent in Para 3 of the affidavit accompanying the present application has not denied the signatures on the rent agreement/deed dated 01.12.2002 and has tried to challenge the same on the ground that it does not bear the signature of Lalit Kumar (father of the petitioners). Thus, para 3 of the affidavit is indirect admission of the respondent of the fact that the rent agreement dated 01,12.2002 is signed by the respondent. Therefore, he is bound by the said rent agreement as per which he was inducted as tenant in the premises by late Sh. Lalit Kumar (father of the petitioners).

10.2. Because the respondent has admitted, though

indirectly, that he was inducted as tenant by rent deed dated 01.12.2002 under the landlordship of Late Sh. Lalit Kumar, hence, the respondent is estopped by Section 116 of Indian Evidence Act from denying the title of landlord Lalit Kumar or after his death, of that of his sons/petitioners qua the property/tenanted premises, it may be noted that in the present case, the petitioners/sons are the legal heirs of the deceased Lalit Kumar, who admittedly along with his wife has expired in accident on 21.04.2007. Therefore, the petitioners being Class-1 legal heirs under the Hindu Successions Act, are entitled to the property of the deceased/original landlord Lalit Kumar and as such the estoppel under Section 116 of Indian Evidence Act is applicable in the present case with full force in favour of the petitioners against the respondent.

10.3. *Because in Para 4 of the affidavit, the respondent has stated that he never interacted with Lalit Kumar and never paid rent to him directly and he paid rent to Mukesh Kumar, who was the close relative of Lalit Kumar. The said paragraph in itself is the admission of the fact that the rent used to be paid indirectly to Lalit Kumar, through Mukesh Kumar, who was the close relative of Lalit Kumar. It may be noted that the respondent is trying to play hide and seek by saying that the rent agreement was signed by him and mentions the name of Lalit Kumar as landlord and that rent was being paid to Mukesh Kumar who was close relative of Lalit Kumar. Thereby neither directly admitting or submitting that whether it was Mukesh Kumar who was the landlord or whether it was Lalit Kumar. However, the rent agreement which is admittedly signed by the respondent and the fact that the rent was being collected indirectly by Lalit Kumar from the respondent, are sufficient to prove or establish the relationship between the parties.*

10.4. *Because the respondent has himself mentioned in para10 of the affidavit about the suit which was filed by him against Lalit Kumar and Ashok Nishchal seeking permanent injunction bearing no.1021/2007, and from Para 2 of the said suit it becomes clear that the property was let out by Lalit Kumar to the respondent on 01.02.2002 vide rent deed dated 01.12.2002. The said paragraph is quoted below:- "That the petitioner is a tenant under the defendant No.1 and was let out a Shop/Almirah No.6 portion of Property No. 146 measuring 6-7", Deep 11" and Breadth 7.0" fitted with a shutter situated at Gali No.6, Bhjanpura, Delhi-110053 by the defendant no.1 on the*

monthly rent of Rs.2,500/- on 01.12.2002 vide Rent Deed dated 01.12.2002 executed between the plaintiff and the defendant No.1." The said paragraph amounts to clear and unambiguous admission on the part of the respondent of the fact that the respondent was inducted as tenant under Lalit Kumar (defendant no.1 in the said case) by way of rent deed dated 01.12.2002 at monthly rent @ Rs.2,500/- per month. Despite, the said admission, rather, submission before the court by the respondent in the civil suit filed by him in the year 2007, the respondent is now trying to challenge the said position /relationship by neither denying it in his current affidavit nor admitting it and by avoiding to say as to who is the landlord of the property, if the petitioners are not, after the death of Lalit Kumar.

10.5. Because not only this, the respondent has also mentioned about the civil suit filed by Ashok Nishchal, which was contested by deponent and his wife (para 6 of the affidavit) and the judgment in the said suit passed by Ld.ADJ has been filed on record by the respondent himself. Relevant paragraphs of the said judgment are quoted below:

Para 6' "On merit it is averred that Shri Dev Raj, husband of defendant is a tenant in the suit property since the year 2002 vide Rent Deed dated 01.12.2002 executed by Sh. Lalit Kumar who was the landlord of the suit property. The rent of the suit property was fixed at Rs.2,500/- and the husband of the defendant was regularly making payment to Sh. Lalit Kumar through his relative. The defendant has further pleaded that Sh. Lalit Kumar In the month of April 2007 came to the suit property and apprised the husband of the defendant that henceforth plaintiff would collect the rent on his behalf. She has further pleaded that plaintiff in the absence of her husband collected rent in the month of May, June and July 2007 from the defendant and promised to issue rent receipt". .

Para 36: "The defendant has also examined her husband Sh. Devraj as DW-2 who also deposed in para 2 of his examination in chief that he is tenant in the suit property and was inducted in the year 2002 on monthly rent of Rs.2500/- per month. He also deposed in para 3 of his examination in chief that the plaintiff had obtained signatures of his wife on blank paper and misused the same. During cross examination DW-2 deposed that he is tenant in the suit property since 2002. He was paying the rent of the suit property to the uncle of Sh. Lalit Kumar

who is running his shop under the name and style of Manohar Maching in the same market where the suit property is situated. The name of the uncle of Mr. Lalit is Mr. Mukesh Kumar. He further stated that he has not paid any rent to the present plaintiff. He again said in his absence the rent for the month of May, June and July 2007 was collected from his wife by the present plaintiff. He admitted that he was inducted as a tenant by Sh.Lalit Kumar through his relative namely Sh. Mukesh Kumar. He further deposed that he has not filed any complaint against the plaintiff for his act of taking signatures of his wife on plain paper. He further stated that he used to pay the rent to Mr. Mukesh Kumar till the filing of the suit, however, he does not remember the exact date."

Para 39: "In view of my above discussion, my issuewise findings is as under: Issue No.1: Whether the suit is not maintainable as there is no privity of contract between the plaintiff and the defendant? OPD in view of my above discussion, I am of the considered view that defendant has proved on record that there is no privity of contract between the plaintiff and defendant. The plaintiff himself has admitted that defendant was already in occupation of the suit premises when he purchased the same. On the other hand defendant has also proved on record that her husband was inducted as a tenant in the suit Almirah by Lalit Kumar through his relative therefore there is no privity of contract between plaintiff and defendant. The defendant has successfully discharged the onus of Issue No.1, same is accordingly decided in favour of defendant."

10.6. *Because the respondent has not stated that if the petitioners are not the landlord and owner of the premises after the death of Lalit Kumar and his wife in unfortunate accident in 2007, then who is presently the landlord and owner of the tenanted premises. Therefore, the vague defence taken by the respondent as regards the ownership and relationship is without merits and is contrary to his stand which he and his wife had taken before Ld. Civil Judge and also before ADJ in the Civil Suits filed by the respondent and Ashok Nishchal respectively. Therefore, the said defence does not raise a triable issue and there is no requirement of evidence for trial to be held in order to determine as who is the landlord and owner of the property, in view of admitted position taken by the petitioner earlier before two civil courts."*

8. Thus the learned RC has considered even the previous litigation between the parties and have passed a reasoned order. It is pertinent to mention the judgment/decreed dated 14.07.2014 in civil suit no.31/2008 records Ms.Saroj wife of Mr.Raviraj had appeared as *PW1* and deposed the shop in question is owned by Mr.Lalit Kumar, the father of the respondent herein.

9. Second issue raised before me is qua the bonafide necessity of the respondents. It is alleged since the respondents have failed to file a petition since seven years of the death of their parents hence they do not require the premises bonafide. Admittedly both the parents of the respondents had died in an unfortunate accident in the year 2007 when they were too small hence now when they have attained the maturity they need to work and sustain themselves and thus have filed this petition with the aid of their grandfather. No malafide can be seen in their conduct.

10. Even the learned RC has noted till the respondent attain the majority the grandfather will continue the business to augment his income so as to improve the standard of living of the respondents and to provide them with better education and facilities. No doubt after the death of their parents both the respondents being minor have to look to someone to sustain them. The grandfather is admittedly taken care of them, hence need finances, since he himself is a retired DTC personnel and is only getting a meagre pension.

11. The allegations of collusion of the grand father of the respondents with Mr.Ashok Nishchal is also not well founded. Further the respondents are noted to be happy with their grandfather and

hence this contention did not find favour with the learned RC.

12. Thus, I see no fault in the reasoning given by the learned RC qua the bonafide requirements of the respondents herein as also qua the ownership of the respondents herein of shop premises. Though a faint attempt is made to say the respondents have not proved that they are the sons of late Mr.Lalit Kumar but a tenant cannot allowed to go so far to challenge the paternity of the children of a deceased owner/ landlord. No cogent ground is raised to set aside a reasoned judgment given by the learned RC. In the circumstances there is no merit in the contentions raised. The petition stands dismissed. Pending applications, if any, also stands disposed of in terms of above.

YOGESH KHANNA, J.

APRIL 01, 2019

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