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

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Judgment delivered on: 25.11.2019

+ RC.REV. 182/2017

VINOD KUMAR & ANR

..... Petitioners

versus

PREM KISHORE MOHANIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Deepak Tyagi, Advocate for Mr. P.K. Jain, Advocate.

For the Respondents: Mr. Mohit Gupta with Mr. Shiven Khurna, Ms. Aayushi Jain, Ms. Nidhi Sanmotra, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 182/2017 & CM APPL.14995/2017 (stay), CM APPL.17925/2018 (user and occupation charges)

1. Petitioners impugn order dated 11.01.2017, whereby, the eviction petition filed by the respondents has been allowed and an eviction order passed.

2. Subject eviction petition was filed by the respondents on the ground of bonafide necessity under Section 14(1) (e) of the Delhi Rent Control Act, 1958, with regard to one room with common latrine

on the ground floor of property No.4288, Main Bazar, Paharganj, New Delhi, more particularly as shown in red colour in the site plan annexed with the eviction petition.

3. The ground of eviction on which the petition was filed by the respondents was that the accommodation in possession of the petitioner is required bonafide by the respondent for his residence as well as for the residence of his family members dependent upon him.

4. The family of the respondent, as stated in the eviction petition, consisted of himself, his wife, four sons as well as a daughter. It was contended in the eviction petition that the elder son was married and the other three sons were also stated to be of marriageable age but due to paucity of accommodation they were facing great difficulty in getting married. The daughter of the respondent was stated to be married and residing at Faridabad but regularly visiting her parents along with her family comprising of her husband and two children.

5. It is contended in the eviction petition that the respondent is a man of status in the Society and wanted to live comfortably in the property, which is under the tenancy of the petitioner as also other tenants and accordingly, the eviction petition had been filed against all the tenants.

6. It is contended in the eviction petition that on the ground floor besides the petitioner, there are other tenants. The portion under the tenancy was shown as red colour in the site plan annexed to the

eviction petition.

7. It was contended that a portion marked as “X2” is under the tenancy of one Sh. Dinesh Kumar, the brother of the petitioner, who was residing therein but had sub-let, assigned and parted with the possession of the same to the petitioner and petitioner was in unlawful possession of the said portion.

8. It was contended that the two independent rooms and two connected rooms on the ground floor as well as two rooms with kitchen and verandah on the first floor were in possession of the respondents, which was not sufficient, in any manner, for the residence of the respondent and his family members.

9. As per the respondent, the respondent required at least one room for himself and his wife, two rooms for his married son, two rooms for the second son, who is of marriageable age and one room each for the unmarried sons besides one room for the married daughter, who often came and resided with the respondent, which room could also be used as a guest room.

10. It is further contended in the eviction petition that the respondent required one room as a drawing room, one room as a dining room, one Puja Room, kitchen, bathroom as well as space for storage of household and other articles.

11. Leave to defend was granted to the petitioner to contest the

petition and thereafter written statement was filed. In the written statement, the defence taken by the petitioner was that the respondent had no locus standi to file the petition as the respondent is neither the owner nor the landlord of the premises.

12. Further, it is contended that the site plan was incorrect inasmuch as the portion under the tenancy of the respondent was two rooms, which were claimed to be the rooms in possession of the brother of the petitioner as the subject premises was in tenancy of his brother Sh. Dinesh Kumar in his own independent rights and the petitioner was the tenant in respect of two *Kothries* marked as “X2” in the site plan.

13. It was further contended by the petitioner that besides the respondent and his wife, respondent only had three sons and all the sons had sufficient source of income for their livelihood as well as residence. It was contended that all of them are well placed and earning substantial income.

14. It was further contended that the respondent was also in occupation of a HIG Flat No.212, Sector-9, Plot No.1, Dwarka Paradise Apartment in a society known as “Delhi State Indian Bank Cooperative Group Housing Society Ltd.”. It was contended that one of the four sons of the respondents and the daughter were not the son and daughter of the respondent but son and daughter of the deceased sister of the respondent and as such, they could not be treated as

members of his family.

15. It was further contended that the respondent had 4 rooms on the ground floor and three rooms on the first floor, which was sufficient for the requirement of the respondent and his wife and his sons could not be treated as financially dependent upon him.

16. In the evidence, respondent landlord categorically stated that he was the owner and landlord of the subject property having purchased the same from its erstwhile owner, who the petitioner also claims to be the owner of the property. The sale deed was proved on record as Ex.P1. The property already stands mutated in the name of the respondent in the records of MCD. The House Tax assessment as well as payment of House Tax were also duly proved on record as Ex.P2 to Ex.P4. The respondent also proved on record the site plan as Ex.-P5 as also the attornment letter issued to the petitioner as Ex.P6 and attornment letter of other tenants Ex.P7 to Ex.P9.

17. Respondent reiterated that the site plan correctly depicted the tenanted premises. Respondent further reiterated that he had four sons as well as the daughter whose names were duly entered in the ration card of the respondent.

18. Respondent also proved on record that all his four sons and daughter are highly educated and very well placed and in high positions earning substantial income thereby establishing that the respondent and his family is a family of some status.

19. Respondent further reiterated that portion marked as “X2” in the site plan was let out to the brother of the petitioner and it was the petitioner who was trying to create a confusion. Respondent had contended that the same was done in collusion with his brother, who had sub-let his portion to him.

20. With regard to Flat No.212 at Dwarka, he contended that the said flat was owned by his mother, who had left a Will and bequeathed the property in favour of his son but the said flat was not suitable as his sons wanted to live with the respondent and the other family members.

21. It is an admitted position that during the pendency of the present proceedings before the Rent Controller, all the four sons of the respondent have married.

22. Rent Controller has found that the need of the respondent was bonafide and genuine and that there was no other residential alternative suitable accommodation available with the respondent for residence of respondent as well as his family members.

23. Family of the respondent comprises of respondent, his wife, four sons and one daughter.

24. Learned counsel for the respondents, under instructions in Court, submits that there are 7 grandchildren from the four sons. Even if the subsequent growth of the family were to be ignored, the need as

projected by the respondent is for himself, his wife, four sons and a daughter.

25. As per the petitioner, respondent had two rooms available on the first floor and four rooms on the ground floor at the time of the filing of the petition and subsequently, three rooms fell vacant during the trial and three rooms further fell vacant by the time the petition matured for hearing. As per the petitioner, 12 rooms are available to the respondent.

26. The contention of the learned counsel for the petitioner that 12 rooms are available to the respondent cannot be sustained. The reason for that is when the learned counsel for the petitioner was asked to point out to the 12 rooms in the site plan, he was unable to do so.

27. It may further be seen that as per the site plan, the area which are contended to be rooms by the petitioner cannot qualify as a room being an area less than 10 x 10 or 100 sq. feet. This being an old property, there are some areas which are in the nature of *Kothries* measuring 6 x 8, 8 x 8 and 9 x 8. Majority of the areas, which are claimed by the petitioner to be rooms are less than 100 sq. feet, which on their own, would not qualify as a liveable room.

28. Learned counsel for the petitioner contends that an application has been filed in another petition with regard to premises "X-2" before the Rent Controller seeking correction of the site plan so as to depict the subject area of this petition as a tenanted premises in the

other petition, which application has been dismissed.

29. The contention of the learned counsel for the petitioner with regard to an application having been filed by the respondent in the other petition is also of no consequence inasmuch as the application, which was filed on the ground that the petitioner and his brother had sought to raise a confusion before the Rent Controller with regard to the tenanted premises and without prejudice and without admitting the same, subject application was filed so that there was no confusion inasmuch both the properties are in possession of the petitioner.

30. Further, petitioner has not been able to place on record any material to show that the respondent only has three sons and the fourth son and the daughter are not the children of the respondent. The only contention of the petitioner is that merely because the names are depicted in the ration card would not establish parentage. This contention of the petitioner is not acceptable inasmuch as petitioner has not been able to place on record any material to contradict the claim of the respondent that he has four sons and a daughter.

31. Admittedly, all the four sons of the respondent are married and highly educated and financially in very well to do positions which establishes that the respondent belongs to a family of a very high status.

32. The Supreme Court in *M.L. Prabhakar Versus Rajiv Singhal* (2001) 2 SCC 355 has held that suitability has to be seen from the

convenience of the landlord and his family members and on the basis of the totality of circumstances including their profession, vocation, style of living, habits and background.

33. A landlord cannot be expected to live in cramped accommodation merely to accommodate a tenant. A landlord being a man of a high status is entitled to have a sitting room, a dining room besides a bed room. Even a family of two cannot be expected to live in one room if they have a possibility of more than one room available.

34. In today's day and age husband and wife cannot be expected to share one room in case either of them has a visitor or a guest. Both husband and wife require their independent space and privacy. Accordingly, the contention of the respondent that he requires two rooms for each of his married sons is not unreasonable. Specially in view of the fact that all four sons are married and have children.

35. Further, the contention of the learned counsel for the petitioner is that one of the sons can go and live in Dwarka at his own house separate from the family is also not sustainable. The Supreme Court in *M.L. Prabhakar (supra)* has also held that landlord cannot be expected to split his family just to accommodate the tenant.

36. If a landlord desires to reside with his children as a composite family, neither the tenant nor the Court can expect the family to split up solely for the purpose of accommodating a tenant.

37. Further, the issue raised by the petitioner with regard to alleging that the site plan filed by the respondent does not depict the correct tenanted premises is also not sustainable as the petitioner has not filed any site plan to contradict the site plan filed by the respondent.

38. Respondent in the eviction petition itself has stated that the petitioner is in occupation of one room and his brother is a tenant in the other two rooms mark “X2”, which as per the respondent, had been sublet by the brother of the petitioner and the petitioner was occupying the same also. It is also noticed that the respondent has filed another eviction petition qua the two rooms mark “X2” against the brother of the petitioner.

39. The contention of the respondent was that the father of the petitioner was a tenant in the property and on his demise, the petitioner as well as the brother succeeded to the tenanted rights.

40. Though the contention of the petitioner is that his father was a tenant, who surrendered his tenancy and thereafter independent tenancy was created in favour of the petitioner, no material or document has been placed on record by the petitioner to show that his father has ever surrendered his tenancy rights or any tenancy was created independently in the name of the petitioner.

41. Be that as it may, Respondent had filed the petition against the father of the petitioner and the father of the petitioner is no longer alive and the petitioner, in any eventuality, would have succeeded to

the tenancy rights as a son of his father. His other brother i.e. Sh. Dinesh Kumar was also impleaded as a party on the demise of Sh. Suraj Prakash, the father of the petitioner, but he has chosen not to defend this petition.

42. Further, the contention of the learned counsel for the petitioner that the respondent has failed to duly prove the Will of the mother of the respondent in favour of his son with regard to Dwarka property is also not sustainable as the petitioner tenant cannot assail the Will, which is *inter se* the family members. It is only a legal heir who could have challenged the Will and none of the legal heirs are impugning the Will of the mother of the respondent. In fact, their stand is that the Will exists.

43. Further, the claim of the respondent is that he wants to reside with all his children as one family so this ground is not sustainable because as noticed above, a tenant cannot require a landlord to split his family to accommodate the tenant.

44. Further, the contention of the learned counsel for the petitioner that during pendency of this petition, the children of the respondent have stopped residing in the subject property is of no consequence inasmuch as no such plea was taken by the petitioner before the Rent Controller nor has any material been produced by the petitioner to show that the children of the respondent are not residing with him.

45. In view of the above, I find no infirmity in the view taken by

the Rent Controller that the respondent has been able to prove his bonafide need and has been able to establish that the respondent does not have any other alternative suitable accommodation.

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

NOVEMBER 25, 2019
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SANJEEV SACHDEVA, J

