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

% Judgment delivered on: 23.09.2019

+ RC.REV. 285/2017 & CM APPL. 21056/2017 & 42185/2018

RAMESH KUMAR BAGGA Petitioner

versus

KAILASH MAKKAR & ANR Respondents

Advocates who appeared in this case:

For the Petitioner: Mr.Praveen Suri, Advocate.

For the Respondent: Mr.Mayank Mohan, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 04.05.2017, whereby the Leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Subject eviction petition has been filed by the respondents on the ground of bonafide necessity under Section 14(1) (e) of Delhi Rent Control Act, 1958 with regard to a shop No.1 in property No.WZ-113/1, Meenakshi Garden, Tilak Nagar, New Delhi, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. Respondents had filed the subject eviction petition contending that they are the owners/landlords of the property in which the tenanted premises is situated, having purchased the same from the previous owners by a registered sale deed dated 09.09.1987.

4. It is contended that the respondent No.1 is the wife of brother of respondent No.2 and is a widow and has one married daughter besides one son who is running his business of fabrication from a rented shop. It is contended that the son of respondent No.1 is residing in the suit property along with his family. Respondent No.2 has two children.

5. It is contended that there are two shops in the suit property, one which is tenanted to the petitioner and the other is presently being used by respondent No.2 for his own business purposes.

6. Subject eviction petition contends that respondent No.1 wants to start a business of boutique with the help of the daughter of respondent No.2. It is contended that her financial position is not very good and accordingly it has become necessary for her to do some work for meeting her financial requirements. It is contended that respondents have no shop/commercial premises from where they would carry on their business.

7. It is also contended that petitioner is related to the respondents. Petitioner is married to the sister of respondent No.2 and the husband of respondent No.1.

8. Subject leave to defend application has been filed contending that the premises was in possession of the father of the petitioner since the year 1958 and after the demise of the father of the petitioner on 12.05.1999, petitioner has been in exclusive and uninterrupted possession of the premises in question. It is contended that the father of the petitioner was continuously doing his business from the tenanted premises and after his death petitioner has been carrying on the business therefrom.

9. It is further contended in the leave to defend application that electricity meter was also installed in the tenanted premises in the name of father of the petitioner in the year 1968. It is contended that the electricity meter is installed by the concerned department after obtaining proof of ownership or after obtaining no objection from the owner which is not the case of the petitioner.

10. As noticed above, the Rent Controller has declined to grant leave to defend.

11. The only ground urged by the Petitioner/tenant is that the father of the petitioner is in occupation of the tenanted property since 1958 and further that there is an electricity meter installed in the name of the father of the petitioner.

12. Learned Counsel for the petitioner submits that the same implies that petitioner is in occupation of the property as an owner thereof and there is no relationship of landlord and tenant between the

parties and petitioner is occupying the property in his own right.

13. Perusal of the affidavit in support of the leave to defend application does not show that petitioner has taken any ground that petitioner or his father were occupying the tenanted premises as owners thereof or have set up a title adverse to that of the respondents.

14. It is a settled position of law that once a tenant always a tenant and a tenant cannot set up a plea of adverse possession.

15. It may be noticed that in the leave to defend application petitioner has not specifically taken up a plea of adverse possession. In the leave to defend application, petitioner has merely stated that his father has been in occupation of the property since 1958 and that he had an independent electricity connection which as per the petitioner could be obtained only by an owner or by an occupier with the consent of the owner and no consent had been taken from the owners.

16. The petitioner in the leave to defend application has not stated as to in what capacity his father occupied the premises in 1958. In the entire leave to defend application, plea of adverse possession or an independent title has not been set up by the petitioner.

17. The presumption accordingly would be that the stand of the respondents that the petitioners were occupying the property as a tenant has not been refuted.

18. It is also a settled position of law that the onus is on the tenant

to raise a triable issue and only when he raises a triable issue or pleads specific ground which if proved would disentitle the respondents/landlords for an order of eviction, leave to defend is to be granted.

19. The fact that father of the petitioner was in occupation of the property since 1958 that itself would not disentitle the respondents from an order of eviction. Respondents claim to have purchased the property on 09.09.1987 by way of a registered sale deed.

20. Further submission of learned counsel for the petitioner that in the sale deed dated 09.09.1987, respondents have stated that they are in possession of the entire property which is incorrect as the petitioner through his father has been in possession of the property since 1958, would also not disentitle the Respondent from an order of eviction.

21. Merely because, in a sale deed, the purchaser mentions that he is in physical possession of the property, when he is not, would not in any manner impinge upon the ownership rights that the purchaser acquires under the sale deed.

22. Further this may be considered in the light of the stand taken in the leave to defend where the petitioner has not claimed any independent ownership rights or title to the property.

23. It is an admitted position that respondents do not have any other alternative accommodation.

24. Further ground raised by the petitioner is that the son of respondent No.1 is carrying on his business of fabrication in a separate property.

25. The respondents in their petition have disclosed that the son of the respondent No.1 is carrying on the business of steel fabrication from a tenanted premises. Even otherwise the case set up by the respondents is that respondent No.1 has no independent source of income and her financial condition is not good and thus she has to start some work and intends to open a boutique of ladies' garments from the tenanted premises.

26. In my view, the petitioner has not been pleaded any ground which raises a triable issue or which if proved would disentitle the respondents/landlords of an order of eviction.

27. I find no infirmity in the view taken by the Rent Controller that no triable issue arises and no ground is raised by the petitioner which would entitle him to grant of leave to defend.

28. Accordingly, I find no merit in the petition. The petition is dismissed.

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

SANJEEV SACHDEVA, J

SEPTEMBER 23, 2019/rk