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

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Judgment delivered on: 24.10.2019

+ RC.REV. 528/2018 & CM APPL. 47072/2018, 7279/2019

TANVIR HASSAN ZAIDI

..... Petitioner

versus

NISHAT HANNAN & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Deepa Sharma, Advocate

For the Respondent: Mr. Diwan Singh Chauhan, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 03.07.2018, whereby the Leave to defend application of the petitioner has been dismissed by the Rent Controller 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 Delhi Rent Control Act, 1958 from property bearing No. T-322-C, Abdul Mannan Lane, Batla House, Okhla, New Delhi, except one room along with unauthorized construction at the

entire first floor, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. The ground for eviction pleaded by the respondent was that the petitioner was a tenant and had made additions and alterations by constructing entire first floor on the tenanted premises and had added two rooms, latrine and bathroom without consent of the respondent.

4. Further it was contended that the petitioner had sublet, assigned and part with the possession of portion of the tenanted portion to sub-tenants.

5. It was pleaded by the respondent was that respondent no. 1 was residing at the first floor of property bearing No. 575, Gali Jite Wali, Churiwalan, Delhi and in possession of two rooms, kitchen, latrine bathroom. Said property was owned by the father-in-law of the respondent no. 1. Mother-in-law of respondent no. 1 is also residing with respondent no. 1.

6. Ground floor of the said property is in possession of the sister-in-law of respondent no. 1 who is a widow. It was contended that the family of respondent no. 1 comprises of respondent no. 1 herself, her husband, two children, one daughter and one son; aged 16 and 14 years. It was contended that respondent no. 1 was suffering from thyroid and diabetes and is residing in the property of her father-in-law and due to strained relations between her and widow of the brother in law, the father-in-law of respondent no. 1 was insisting and

requiring respondent no. 1 and her husband to make arrangement and shift so that disputes between both could be avoided.

7. It was also contended in the eviction petition that respondent no. 2 is residing at the ground floor of property situated at Dholpur, Agra (U.P.) and wishes to settle in Delhi and due to paucity of accommodation she is unable to shift to Delhi.

8. It was contended that respondent no. 3 was residing at House No. 290, fourth floor, Gali No. 2, Johri Farm, Noor Nagar Extn., Jamia Nagar, New Delhi and is in possession of four rooms, kitchen, two attached latrine bathroom and subject properties are owned by Shri Noor Mohd. (father in law of respondent no. 3).

9. Family of Respondent no. 3 comprises of respondent no. 3 herself and two children, aged 9 and 3 years. Daughter of respondent no. 3 is mentally challenged and they are residing in the property of their father-in-law and the father-in-law has been pressurising them to vacate the property and it is further contended that she is residing on the fourth floor of the property of her father-in-law and since the daughter of respondent no. 3 is mentally challenged, she requires special attention and care and as the accommodation is on the fourth floor, there is a possibility of a mishap.

10. It is, in these circumstances, respondents had filed the subject petition seeking eviction of the petitioner from the tenanted premises on the ground of bonafide necessity.

11. Leave to defend application was filed by the petitioner disputing the site plan filed by the respondents. Petitioner had contended that respondent owns several properties in Delhi at Abdul Mannan Lane, Muradi Road Batla House, Chawri Bazar, Delhi, Balli Maran, Delhi and Delhi Gate, Delhi and there are several rooms available to the respondents in these properties and the need as projected is not bonafide.

12. It is further contended by the petitioner that the subject property was owned by Smt. Najma Ara. It is contended that the property was initially owned by late Shri Haji Abdul Mannan, husband of Smt. Najma Ara and on his demise the property fell to her share.

13. Though the petitioner had contended in the leave to defend that the Najma Ara was not in a position to gift away 100% share of the property which came to her share from her husband, learned counsel for the petitioner contends that petitioner does not dispute the relationship of landlord-tenant and the fact that respondents are co-owners of the subject property, however, dispute is with regard to the tenanted premises and the area in occupation of the petitioner. It is contended that the petitioner was a tenant of Smt. Najma Ara.

14. Plea raised by the petitioner that Najma Ara could not have gifted 100% share of the property or give an oral gift in accordance of Muslim Law, is inconsequential as it is not in dispute that respondents are granddaughters of Najma Ara. The fact that Najma Ara was the

owner and landlord is not in dispute. It is also not in dispute that Respondents are co-owners of the subject property, the dispute is with regard to their extent of ownership. Petitioner has not pleaded as to who other than the Respondents is the owner of the property.

15. Rent Controller by the order impugned herein, has returned a finding that the petitioner has admitted that he was a tenant under Smt. Najma Ara and has further noticed that petitioner has not stated that if not the respondent who does he treat as his landlord.

16. Further, learned counsel for the petitioner has conceded that petitioner does not dispute the relationship of landlord-tenant and the fact that respondents are co-owners of the subject property.

17. It is settled position of law that even the co-owner can maintain a petition for eviction. Even if the respondents are not absolute owners of the property, they can still maintain the eviction petition and as such the Rent Controller has rightly held that there is no merit in the denial of the petitioner with regard to the relationship of landlord-tenant.

18. In so far as bonafide need of the respondents is concerned, Rent Controller has noticed that respondent had explained all the details as to how they require the tenanted premises.

19. Respondent no. 1 has categorically stated that she is presently staying in two rooms in a property of her father-in-law and the

relations between her and her in laws are not cordial and she intends to shift to her own property.

20. Respondent no. 2 has categorically stated that she is residing in Agra with her husband and does not have any accommodation in Delhi.

21. Respondent no. 3 has also contended that she is living in the house of her father-in-law on fourth floor and her father-in-law is pressurizing her to vacate the property. Further she has contended that she has a child who is mentally challenged and for her safety and well-being the residence at fourth floor is not suitable as there is a possibility of a mishap.

22. Petitioner has not been able to show either before Rent Controller or before this Court that the need as projected by the respondents is not bonafide.

23. Further with regard to contention of the petitioner is that there is alternative accommodation available, it is seen that apart from giving mere description of localities, petitioner has not been able to point out to even a single property which is available to the respondents.

24. The allegations of the petitioner, of availability of alternative accommodation are clearly vague and unsubstantiated and as such cannot be relied upon.

25. With regard to the denial of the petitioner that petitioner is not in occupation of the first floor and has no connection with the first floor, it is seen that respondent had earlier filed an eviction petition under Section 14(1) (b) (h) and (j) of the Delhi Rent Control Act against the petitioner contending that petitioner had raised unauthorized construction in the form of two rooms and had sublet the premises.

26. Subject petition was dismissed by a judgment dated 09.06.2017 by the Court of Additional Rent Controller. In judgment dated 09.06.2017, the Additional Rent Controller has noticed the contention of the petitioner, taken in the written statement, in response to the plea of the respondent/landlord, that petitioner tenant had raised unauthorized construction at first floor and sublet the premises. The petitioner in said proceedings had denied that any illegal construction was made but had stated that the petitioner had only carried out repair work in the tenanted premises. Further it was contended that petitioner had not sublet or assigned the property to anyone.

27. Additional Rent Controller in those proceedings had noted that there was no evidence produced by the respondent that any substantial damage or construction in the property had taken place.

28. From the judgment dated 09.06.2017, it is apparent that petitioner had not denied the contention that there were two additional rooms constructed on the first floor, however, the contention was that

no construction had been done and the property had only been repaired. There was no denial to the fact that construction on the first floor existed.

29. With regard to the subletting, the contention of the petitioner as noticed in the said judgment was that petitioner had not sublet the premises. In the cross-examination petitioner had admitted that some rooms were in possession of his nephew and as the same did not lead to any presumption that three persons – namely Parvez Zaidi, Umer Zaidi and Suhail Zaidi were tenants in the subject property and he had pleaded that a relative of the tenant could live with the tenant. Furthermore the petitioner had not disputed that petitioner was in possession of the first floor of the subject property. Further with regard to the ground of subletting, the earlier petition was dismissed holding that a relative of the tenant can live with the tenant.

30. The contention of the petitioner that petitioner is not in possession of the subject property except the ground floor is not substantiated. In any eventuality, even if there is a sub-tenant in the property, law is settled that once an eviction order is passed, it is binding upon a sub-tenant and a sub-tenant is not a necessary party to the eviction proceedings¹.

31. It may also be noticed that on 16.10.2019 an application under

¹ *Balvant N. Vishwaitra & Others Versus Yadav Sadashiv Mule (Dead) through LRs. (2004) 8 SCC 706*

Order 1 Rule 10 CPC was filed on behalf of Suhail Zaidi and Umer Zaidi claiming independent rights to the property. Said application was dismissed on 16.10.2019 holding that since the proceedings have not been initiated by the respondent against the said applicants and they claim independent rights in the property they are neither necessary nor proper party and in case they had any independent right they were free to avail such remedy as may be available in law.

32. Petitioner cannot be permitted to fight a proxy battle on behalf of a third party. In case any third party has an independent right they would be entitled to claim the same in appropriate proceedings. Petitioner cannot take a plea and resist eviction on behalf of third parties.

33. I find no infirmity in the view taken by the Rent Controller that no triable issue arises and that the petitioner has not raised any ground which if proved would disentitle the landlord from an order of eviction.

34. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.

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

OCTOBER 24, 2019/‘rs’

SANJEEV SACHDEVA, J