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

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Judgment delivered on: 20.11.2019

+ RC.REV. 578/2015 & CM APPL. 25295/2015, 13171-
13172/2018

SATISH KUMAR

..... Petitioner

versus

RAJ RANI SABHARWAL & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Shekhar Kumar, Advocate (DHCLSC)

For the Respondent: Mr. Shiv Charan Garg, Mr. Viney Sharma, Mr. Abhishek Sabharwal and Mr. Imran Khan, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 13.08.2015, whereby the Leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Subject eviction petition was filed by late Shri Raj Rani Sabharwal, mother of the respondent under Section 14(1) (e) of Delhi Rent Control Act, 1958 seeking eviction of the petitioner on the ground of bonafide necessity from one Shop at ground floor of

property bearing No. 575-A, Rishi Nagar, Shakur Basti, Delhi, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. The ground on which the eviction petition was filed pleaded by Smt. Raj Rani was Sabharwal was that she has two sons and four daughters (except one daughter all daughters are married but they frequently visit the mother at her house) She is residing in subject property along with her sons and their family.

4. It is contended that there are six shops on the ground floor; one shop was rented out to the petitioner and remaining shops were occupied. It is mentioned in the eviction petition that out of five shops on the ground floor of the suit premises, shop shown in brown colour in the site plan is in use and occupation of grandson – Mr. Kapil Sabharwal who is running a Chemist shop; another shop shown in pink colour is occupied by the petitioner's son Mr. M.P. Sabharwal who was using the same as a Godown and another shop shown in orange colour is occupied by tenants – Anil Kumar and Sunil Kumar for the last 25 years. One more shop shown in black colour was under the tenancy of Suresh Suri and Smt. Anita Suri since the year 1984.

5. It is contended that her grandson – Shri Abhishek Sabharwal had enrolled himself as an Advocate in the year 2008 and since then he was practising as an Advocate at different Courts at Delhi and did not have independent office for his professional practice and wanted

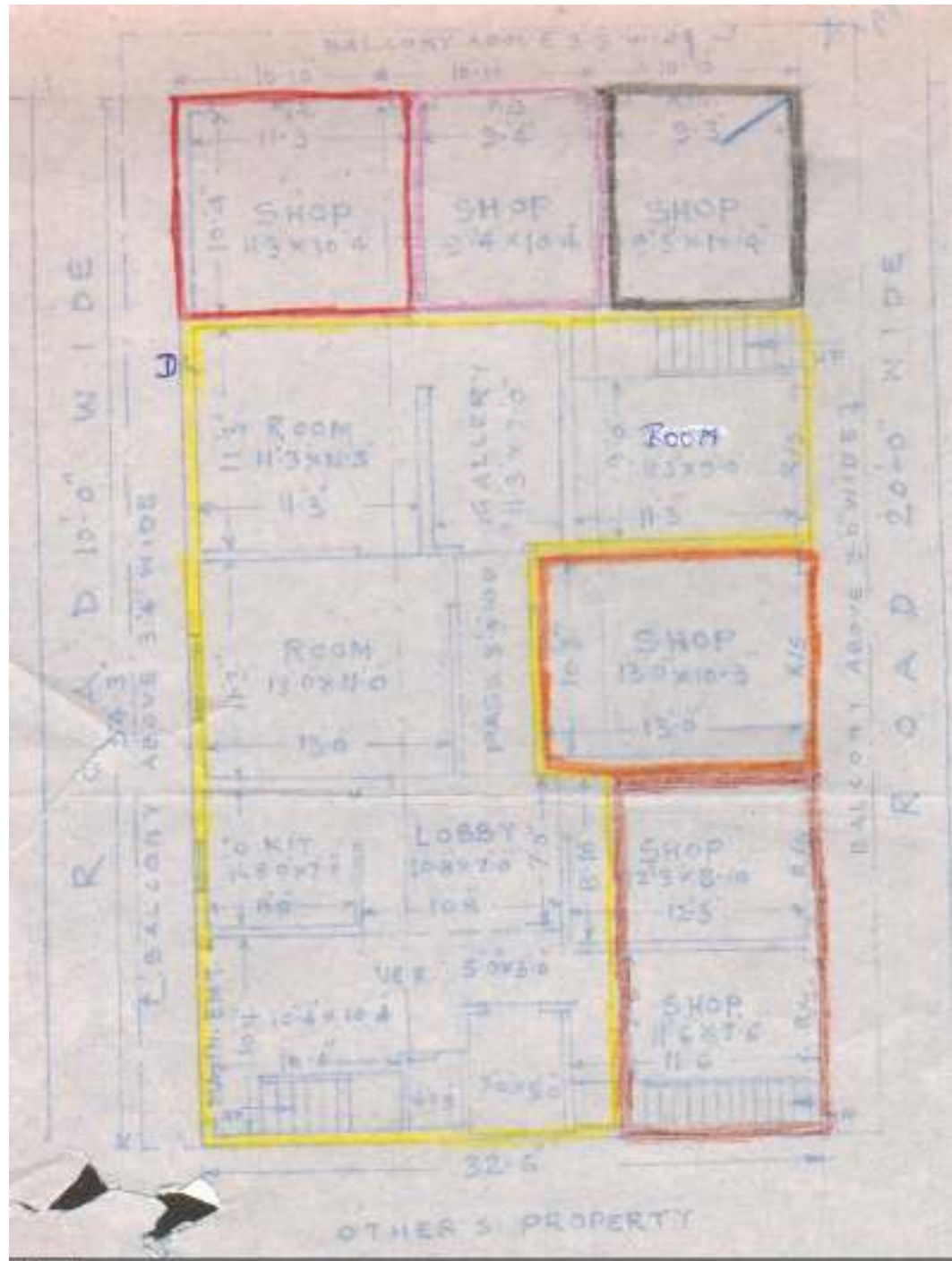
to open his office to set up his practice in the tenanted premises. It was contended that he also applied for a chamber in Rohini Court but no allotment of chamber was made in his favour.

6. The ground taken by the petitioner in the leave to defend application is that respondent has only given a description of five shops including the tenanted shop and there is no description given of the sixth shop and further that the shop which is stated to be in occupation of Shri M.P. Sabharwal was lying locked and no business was being carried on from the said shop.

7. Learned counsel for the petitioner submits that the respondent also has another accommodation as her son had purchased a property in Pitam Pura, Delhi.

8. Perusal of the site plan annexed to the eviction petition shows that the respondent had, in fact, shown the description of the five shops which are being used by either the family members or are under the tenancy.

9. In the eviction petition respondent had stated that the shops shown in brown colour in the site plan are in use and occupation of Shri Kapil Sabharwal. In the site plan, the respondent had shown two shops in brown colour. It is pointed out by the learned counsel for the respondent that there is an error of apostrophe (') in the description, but, in the site plan the shops are correctly shown. The site plan of the shops of the ground floor is extracted herein below: -



10. Perusal of the site plan clearly shows that two shops are shown in brown colour; one shop in orange, one shop in pink, one in black

and the tenanted shop is shown in red colour. In the eviction petition, the respondent has categorically stated that shops shown in brown colour are occupied by her grandson and shop shown in black colour is used as a Godown by her son and the other two shops shown in orange and pink are under the tenancy of old tenants.

11. The respondent has disclosed in the eviction petition that her son had purchased a property in Pitam Pura and is using the same for residential purposes. Even in the affidavit in support of leave to defend, petitioner, with regard to the Pitam Pura property, has himself stated that younger son of the landlady was residing there along with his family for last several years.

12. Since admittedly the case of the petitioner is that the property at Pitam Pura is a residential property the same would not be suitable for opening of an office.

13. With regard to the Shop in black colour, the case of the respondent is that it is being used as a garage. Since it is a garage, no day-to-day business activity would be carried on from the said shop.

14. Rent Controller has rightly held that the affidavit in support of the leave to defend does not raise any triable issue or disclose facts which if proved would disentitle the respondent landlord from an order of eviction.

15. I find no infirmity in the view taken by the Rent Controller in

refusing to grant leave to defend.

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

17. It may be noticed for the purpose of record that respondent has already taken possession of the tenanted premises in execution proceedings.

NOVEMBER 20, 2019
'rs'

SANJEEV SACHDEVA, J.