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

% Judgment delivered on: 20.01.2020

+ RC.REV. 30/2020 & CM APPL. 1814-15/2020 & CAV.
39/2020

BHUPINDER SINGH

..... Petitioner

versus

S RAVINDER SINGH & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Naginder Benipal, Mr. Naveen Chaudhary, Ms.
Manpreet Kaur and Mr. Gaurav Sharma, Advocates

For the Respondents: Mr. P.D. Gupta, Senior Advocate with Mr.
Abhishek, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 02.05.2019 whereby leave to defend application filed by the petitioner has been dismissed and an eviction order passed.

2. Subject eviction petition was filed by the respondents in respect of the premises bearing Shop No. 863, Ground Floor & Basement, Old Lajpat Rai Market, Delhi – 110006.

3. It is contended in the eviction petition that respondent is the co-

owner and co-landlord of the entire property. Said property was owned by Amar Singh Sethi, father of the respondent and his brother and sisters, which was allotted to him by Ministry of Home Affairs (Rehabilitation Division). Mr. Amar Singh Sethi expired on 09.10.2009 bequeathing the subject property by way of a registered Will in favour of his wife and children and thereafter his wife expired, intestate, and accordingly respondent and his brother and two sisters became one-fourth owner each of the subject property.

4. It is contended that the tenanted premises was let out by father of the respondent at a monthly rent of Rs. 2000/- to petitioner. Subsequently, rate of rent was enhanced by 10% to Rs. 2200/-. It is contended in the eviction petition that respondent was carrying on his business of repairing television sets from his residential house at 2404, Hudson Lane, Delhi. Said house was owned by Shri Amar Singh Sethi. He during his life time sold the basement and second floor with roof rights to a third party and the ground floor and first floor was sold to the respondent.

5. It is contended that respondent is residing with his family in the said premises and also carrying on his business of television repair and there is an acute paucity of space. Further it is contended that the said property is purely a residential house, however, respondent is carrying on commercial activity and intends to shift the commercial activity to the tenanted premises which is situated in Old Lajpat Rai Market; a market of electronics and is best suited place for opening of

a showroom.

6. It is contended that the respondent has no other reasonable suitable accommodation for opening a showroom and workshop repair of television and other electronic items.

7. Subject leave to defend application was filed by the petitioner. Petitioner though admitted that the property was initially let out by the father of the respondent to the petitioner, it was contended that there was no relationship of landlord and tenant. It is contended that the property is owned by the Municipal Corporation of Delhi. It is contended that respondent has no right, title or interest in the property as the owner of the market is MCD after transfer of the same from Department of Rehabilitation.

8. It is further contended that the petitioner had applied to MCD to get his name endorsed in the record of the MCD in respect of the said shop, however, that application is still pending.

9. It is further contended that the respondent is carrying on his business from a property at Hudson Lane which is a four-storied property and sufficient accommodation is available for carrying on the business activities there from.

10. Learned counsel for the petitioner contends that earlier a Suit for recovery of possession and damages was filed by the father of respondent no. 1 contending that petitioner is a licensee and

unauthorized occupant.

11. Judgment of the said Suit has been produced. Perusal of the judgment dated 20.11.2004 in the said Suit shows that the said Suit was dismissed by the Court holding that petitioner was a tenant under the father of the respondent and the tenancy was protected under the Delhi Rent Control Act, 1958 and a civil suit for possession was not maintainable under Section 50 of the Delhi Rent Control Act.

12. None of the parties challenged the said Judgment dated 20.11.2004 and accordingly, said judgment has become final and accordingly the status of the petitioner as a tenant under the father of the respondent was confirmed by the Court and said finding operates as res-judicata as same has not been assailed either by the petitioner or the father of the respondent or the respondent.

13. Since there is a categorical finding that petitioner was a tenant under the father of the respondent and even there is a candid admission by the petitioner that the petitioner was inducted in the premises as a tenant by the father of the respondent, Petitioner cannot be permitted to challenge the title of the respondent.

14. It is settled position of law that *once a tenant always a tenant*.

15. The contention of the petitioner that the respondent is not the owner of the property is also unsustainable.

16. It is an admitted position that the father of the respondents was

in possession of the subject property since long and had let out the property to the petitioner. Petitioner has even been depositing rent in the name of the respondent under Section 27 of the Delhi Rent Control Act.

17. All along the stand of the petitioner has been that the petitioner had been a tenant under the father of the respondent and subsequently under the respondent. Petitioner cannot be permitted to deny the title of his lessor.

18. The plea that the MCD is owner of the property is also not substantiated by any material on record. Respondent, on the other hand, has placed on record documents of Ministry of Home Affairs, Estate Office *inter alia* communication dated 11.09.1995 on the subject of regularization of accommodation on transfer of ownership rights in respect of the subject shop in favour of Sh. Amar Singh Sethi.

19. Respondent has also placed on record a letter dated 22.11.1995 issued by the Ministry of Home Affairs to Sh. Amar Singh Sethi enclosing a final receipt for payment of arrears of rent, damages, security deposit and net depreciated value of super-structure in respect of Shop No. 863 and the letter categorically talks of the super-session of earlier provisional receipt. Said documents *prima facie* show that ownership rights in the said shop were transferred in favour of Sh. Amar Singh Sethi in the year 1995. Admittedly, petitioner took on

rent the tenanted premises from the father of the Respondent in the year 2001.

20. Accordingly, respondent has been able to show that respondent is the owner and landlord of the tenanted premises as such the contention raised by the petitioner that the respondent is not owner landlord of the tenanted premises is not sustainable. Accordingly, there is no infirmity in the view taken by the Rent Controller that no triable issue arises.

21. Further, the contention of the petitioner that respondent is carrying on his business from a property at Hudson Lane, Delhi and as such the need is not bonafide is also not sustainable.

22. Respondent in the eviction petition has himself stated that he has been carrying on his business from his residential house at Hudson Lane wherein he is also residing. Respondent has stated that he is owner of ground and first floor of the subject property having purchased the same from his father and said property is purely a residential property and he is also residing therein with his family. He has stated that he intends to shift his business from the residential property in Hudson Lane to the tenanted premises which is a shop situated in Lajpat Rai Market and is a hub of electronic items.

23. It is settled position that landlord is the best judge of his requirement and the best person to assess as to what is more suitable for the purposes of his requirement. On this ground also, I find that

no triable issue arises.

24. Perusal of the leave to defend application shows that petitioner has not been able to raise any ground which, if proved, would disentitle the respondent/landlord from an order of eviction.

25. There is no infirmity in the view taken by the Rent Controller in order dated 02.05.2019 declining leave to defend to the petitioner by holding that the leave to defend application does not raise any ground which requires any trial.

26. There is no merit in the petition. The petition is accordingly dismissed.

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

JANUARY 20, 2020
'rs'

SANJEEV SACHDEVA, J