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

Date of decision: 14th February, 2020

+ **CM(M) 281/2019 and CM APPL. 7811/2019, 18127/2019**

RANJANA DHAWAN & ORS Petitioners

Through: Mr. Lalit Bhardwaj, Mr. Jatin Anand
Dwivedi and Mr. Shubhanan
Chaturvedi, Advocates (M
9212117811).

versus

SANKET BEHARI MITTAL & ANR Respondents

Through: Mr. S.N. Gupta, Advocate for R-1
(M:9810077543).
Mr. A.K. Dhupar, Advocate for R-2
(M: 9810263766).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The present petition arises out of an eviction petition filed under Section 14(1)(e) of the Delhi Rent Control Act in respect of premises no. 1548, Kucha Seth, Dariba Kalan, Chandni Chowk, Delhi-110006. The petition was filed by the Landlord - Sanket Behari Mittal against Shri Kishan Chand - the Tenant, and his son, Sh. Dhiraj Kumar. During the pendency of the petition, the Landlord was informed that Shri Kishan Chand had passed away, and accordingly on 5th July, 2017, a statement was made in the Court to the effect that Shri Kishan Chand's name may be deleted. The said statement is recorded by the Id. ARC and the same reads as under:

"I am counsel for the petitioner in the present case. I do not want to implead the other alleged legal heirs of late Sh. Kishan Chand, as disclosed by respondent no. 2 through his application except respondent no. 2, who

is already impleaded as party in the present petition since all the legal heirs of late Sh. Kishan Chand have impliedly surrendered their tenancy rights in the premises in question. Further, I want to delete the name of Sh. Kishan Chand from the array of parties in view of the judgment titled as "Krishan Kumar Alag. Vs. Jambu Prasad Jam (deceased), through LR Anand Kumar Jain" reported as 161 (2009) DLT 511."

2. The petition was filed sometime in April, 2017 and at the inception itself, in July, 2017, Shri Kishan Chand was deleted. Leave to defend was granted. The matter has subsequently proceeded for framing of issues and the evidence on behalf of the parties has been recorded and concluded.
3. On 24th September, 2018, the four sisters of the only surviving Respondent i.e. Sh. Dhiraj Kumar, who are the daughters of late Shri Kishan Chand moved an application seeking impleadment in the eviction petition on the ground that they have inherited the tenancy from their father. The second ground seeking impleadment was that they came to know of the pendency of the eviction petition on the day of *rakshabandhan*, and they have also contributed to the rent for the property. The said application was rejected by the Trial Court vide the impugned order dated 4th February, 2019 on the ground that the son of Shri Kishan Chand was on record as Respondent no 2, and in case of the tenancy being a joint tenancy, since one of the legal representatives is on record, no further impleadment was required.
4. Mr. Lalit Bhardwaj, ld. counsel appearing for the sisters, who are the Petitioners herein, submits that Sh. Kishan Chand had passed away prior to the filing of the petition and since the petition was filed against a dead person, the same was not maintainable. It is further submitted that at the

inception itself the landlord ought to have impleaded all the LRs of Shri Kishan Chand, and thus the impleadment has been erroneously dismissed by the Trial Court. The Id. ARC rejected the application for impleadment on 9th October, 2018. The Petitioners then filed an appeal before the Id. RCT. By the impugned order dated 4th February, 2019, the RCT has dismissed the appeal. Reliance is also placed on a judgement of this Court in ***Krishan Kumar Alag v. Jambu Prasad Jain Decd the LR Anand, 161(2009) DLT 511***, to submit that if the tenant has died, no petition would have been maintainable against the dead tenant.

5. On the other hand, Id. counsel appearing for the Landlord submits that the law is quite settled since the 1960s - that the LRs of late Shri Kishan Chand would only be joint tenants and impleadment of one of the LRs is sufficient for the petition to be held to be mentionable. He relies upon the following judgments:

(i) ***Kanji Manji v The Trustees of the Port of Bombay AIR 1963 SC 468***

(ii) ***Mohd. Usman v Mst. Surayya Begum 1990 (3) DELHI LAWYER 163***

(iii) ***H. C. Pandey v G.C. Paul AIR 1989 SC 1470***

6. Id. counsel appearing for Respondent No. 2 - the brother of the Petitioners, who is the original Respondent in the eviction petition, Shri Dhiraj Kumar submits that he has already contested the matter on merits.

7. Vide order dated 16th April, 2019, the proceedings before the Id. ARC were stayed by this Court. Parties have been heard in this matter and the judgements cited have been perused. A perusal of the order dated 5th July,

2017 shows that at the inception itself, the landlord had deleted the name of Shri Kishan Chand, who had passed away. At that stage, the eviction petition already had the son of Shri Kishan Chand as Respondent no.2. Thus, the eviction petition continued to proceed against the said Respondent, the son of Shri Kishan Chand. The petition was filed in 2017 and the application for impleadment has been moved on 24th September, 2018. There is no doubt that the issues have been framed, evidence has been adduced and the matter is listed for final arguments.

8. The law on this aspect is quite clear as has been settled in various judgements cited on behalf of the Landlord. In 1963, the Supreme Court in ***Kanji Manji v The Trustees of the Port of Bombay (supra)*** has held that once the tenancy is a joint tenancy, notice to one of the joint tenants is sufficient. The Supreme Court held:

“7. The argument about notice need not detain us long. By the deed of assignment dated February 28, 1947, the tenants took the premises as joint tenants. The exact words of the assignment were that “...the Assignors do and each of them doth hereby assign and assure with the Assignees as Joint Tenants...” The deed of assignment was approved and accepted by the Trustees of the Port of Bombay, and Rupji Jeraj and the appellant must be regarded as joint tenants. The trial Judge, therefore, rightly held them to be so. Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient and the suit for the same reason was also good. Mr. B. Sen, in arguing the case of the appellant, did not seek to urge the opposite. In our opinion, the notice and the frame of the suit were, therefore, proper, and this argument has no merit.”

In ***H. C. Pandey v G.C. Paul (supra)*** the above view has been reiterated by the Supreme Court as under:

“4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice was served was sufficient. It seems to us that the view taken in Ramesh Chand Bose (AIR 1977 All 38) (supra) is erroneous where the High Court lays down that heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice under S. 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and therefore the suit must succeed.”

9. This view has also been followed by this Court in ***Mohd. Usman v Mst. Surayya Begum (supra)*** wherein a ld. single Judge of this Court, after referring to the decision of the Supreme Court in ***H. C. Pandey v G.C. Paul (supra)*** has observed as under:-

“6. In the light of the above observations of the Supreme Court there can be no doubt that even if one of the legal heirs is not a party to the proceedings for eviction filed by the landlord against the legal heirs of the original tenant, that heir who has been left out cannot later come forward and agitate his or her right

in the tenancy. In the present case, I find that Surayya Begum who claims to be living in the same disputed premises alongwith other legal heirs after the death of Khalil Raza has chosen to file her objections after the whole round of litigation is over and after the other legal heirs have lost right upto the Supreme Court. It is thus, clear that these objections are filed only to defeat the decree and delay the execution of the decree. In my view, therefore, even if Surayya Begum was not a party to the previous litigation between the parties she has no right to object to the execution of the decree and the Additional Rent Controller ought to have dismissed the objections on that ground alone.”

10. In **Kishan Kumar Alag (supra)** the same view has been reiterated.
11. In the present case, the tenanted premises is admittedly where Shri Kishan Chand's son - Shri Dheeraj Kumar is running a business and storing electrical products. He was the Respondent in the eviction petition since inception, and had complete knowledge of the pendency of the proceedings. The evidence in the matter has also concluded and as per the Landlord, the rent was also paid by Shri Dheeraj Kumar. The sisters do not have any direct relationship with the Landlord. They are at best joint tenants and their brother had knowledge of the pendency of the petition and has contested the same on merits. This Court also does not find the version of the sisters plausible that they came to know only on the day of a festival about the pendency of the petition or that they were paying any rent to their brother. In view of the settled legal position as contained in the above judgements, this Court is of the opinion that there is no error in the impugned order passed by the Id. RCT, which has observed as under:-

“7. Since the respondent no.2 has already been contesting the matter and paying rent and he is one of the legal heirs of Sh. Kishan Chand (respondent no.1), so I am of the view that it is a case of joint tenancy and being a joint tenant, application of the appellants under Order I Rule 10 CPC was rightly dismissed as one joint is already containing the eviction petition. Nothing has been brought on record to show that the contesting legal heir is in collusion with landlord. There is no merits in the appeal. Same is accordingly dismissed. TCR be sent back alongwith copy of the order.”

12. Even otherwise, the impleadment of one of the joint tenants is sufficient to maintain the petition. Under these circumstances, there is no merit in the present petition. The petition is dismissed. The Trial Court to now proceed with the final hearing and adjudication of the eviction petition.

FEBRUARY 14, 2020
MR/RG

PRATHIBA M. SINGH,
JUDGE