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

Date of Decision : 16.12.2020

+ **RC.REV. 188/2020**

SURENDER KUMAR GUPTA & ORS. Petitioners
Through Mr.Ankit Jain, Mr.Mohit
Gupta, Advs.

versus

MAHESH & ORS. Respondents
Through Mr.Varun Yadav, Ms.Shikha
Goyal, Advs. for R-1-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

This hearing has been held by video conferencing.

CM 20063/2020 (exemption)

Allowed, subject to all just exceptions.

RC.REV. 188/2020 & CM 20062/2020

1. This petition has been filed challenging the order dated 21.10.2019 passed by the learned Additional Rent Controller (South), Saket Courts in Eviction Petition no.35/2017 titled ***Mahesh & Anr. vs. Surender Kumar Gupta & Ors.***, dismissing the application of the

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petitioners seeking Leave to Defend against the above eviction petition filed by the respondents.

2. The learned counsel for the petitioners has vehemently argued that the respondents have failed to prove themselves to be the owners of the shops in question that is Shop Nos.368/2 and 368/3 in property bearing No.H-368, Ward No.4, Mohalla Imambara, Delhi-110030 (hereinafter referred to as the 'tenanted shops').

3. In this regard, the learned counsel for the petitioners submits that in the eviction petition filed by the respondents, it was asserted that the property in question was owned by Late Sh. Hazari Lal, grandfather of the respondents, however, no document substantiating such claim was filed by the respondents on record. He submits that in the eviction petition, it was further mentioned that the property was thereafter gifted by Late Sh.Hazari Lal to his wife-Smt. Vidyawati *alias* Bhuddu. The gift deed which was filed by the respondents on record, however, is in favour of 'Bhuddu', who has not been identified in the gift deed as the grandmother of the respondents and therefore, whether this gift deed in fact named Smt.Vidyawati as the owner of the property will be a disputed question of fact to be determined in the trial, for which Leave to Defend was to be granted in favour of the petitioners.

4. The learned counsel for the petitioners further submits that in the eviction petition, it was further mentioned that the shops in question have fallen in the share of the respondents under a Family Settlement. The Family Settlement, which is placed on record, in fact,



transfers the properties in the *in presentine* and therefore, would not confer any title on the respondents to the said shops without the documents being registered. He submits that therefore, the ownership of the respondents was a disputed question of fact, which require a trial and at least Leave to Defend be granted in favour of the petitioners.

5. As far as the *bona fide* necessity of the shops set out by the respondents, the learned counsel for the petitioners submits that the eviction petition was filed on 20.03.2017. To set up a case of the *bona fide* necessity, the respondents placed on record a lease deed dated 21.09.2016, that is a few months prior to the filing of the eviction petition, to assert that they were tenants in another shop which needed to be vacated by them. He submits that therefore, an artificial need for the tenanted shops was set up by the respondents and this could not have been believed at least at the stage of consideration of application seeking Leave to Defend.

6. On the other hand, the learned counsel for the respondents, placing reliance on the judgment of this Court in ***Harbhajan Singh @ Bhajji vs. Mahavir Singh*** MANU/DE/0553/2019 and ***Rajender Kumar Sharma & Ors. vs. Leela Wati & Ors.*** MANU/DE/1386/2008, has submitted that the petitioners cannot challenge the Family Settlement. He further submits that the predecessor in interest of the petitioners have in fact admitted to the status of being tenants under Smt. Vidyawati in form of a compromise that was recorded before the learned Sub-Judge, Delhi in a Suit filed by Smt. Vidyawati.



7. He further submits that the petitioners have acted in a mala fide manner inasmuch as they are not in occupation of the tenanted shops and in fact are filing this petition merely to retain possession thereof so as to extract money from the respondents.

8. I have considered the submissions made by the learned counsels for the parties.

9. As far as the ownership of Smt.Vidyawati is concerned, the respondents have placed on record the compromise recorded before the learned Sub-Judge, Delhi in Suit no.608/1958, wherein the predecessors in interest of the petitioners have admitted themselves to be tenants under Smt.Vidyawati with respect to the tenanted shops. The respondents have also placed on record the Gift Deed executed in favour of Smt.Vidyawati. Though, it may be correct that the same describes the donee to be 'Buddhu', it also records that 'Buddhu' is the wife of Sh.Hazari Lal. The insistence of the petitioners qua the respondents to prove even the ownership of Sh.Hazari Lal cannot be accepted as a ground to grant them leave to defend. The landlord/landlady cannot be expected to prove the case to such exactitude.

10. As far as the family settlement is concerned, as held by this Court in **Harbhajan Singh** (supra), the petitioners as tenants cannot challenge the same for want of registration. I may only quote from the said judgement as under:



"4. Yet again the counsel for the petitioner has agitated these issues before me. It is argued the family settlement dated 30.11.1998 is in fact a deed of partition which requires registration and since is not registered; could not have been relied upon by the learned ARC. I disagree with the contention. Firstly, because even if this partition deed is ignored still the petitioner is a co-owner of the property as has inherited from common ancestor; and secondly, in Gopal Kishan vs. Ram Saroop 243 (2017) DLT 66 the Court held a tenant has no locus standi to challenge the family settlement so arrived at between the members of the family of the land lord even if it is not registered. All that the respondent lastly is to show he is having a better status than the tenant, may be he is not an absolute owner of the premises. Admittedly, the petitioner has been paying rent to the respondent."

11. There is, therefore, enough material on record to substantiate that the respondents were the owner- landlords of the tenanted shops. I therefore, find no merit in the submission of the petitioners in this regard.

12. As far as the bonafide necessity is concerned, the respondents had pleaded the use of the shop taken on rent by them. The petitioners apart from stating that the lease deed was executed just prior to filing of the eviction petition, have not disputed the use of such property by the respondents. I therefore, find no merit in this submission as well.

13. I further further find merit in the submission of the respondents that the present petition has been filed with a *mala fide* intent of somehow blackmailing the respondents. The respondents in the eviction petition had asserted that the tenanted shops are not being used by the petitioners and are in fact in dilapidated condition. The petitioners in the Leave to Defend admitted that a portion of the shop



has fallen down and did not dispute that they are not in use of the tenanted shops. Clearly, the petitioners are wanting to hold on to the tenanted shops wanting to extract consideration from the respondents for vacating the same.

14. In view of the above, I find no merit in the present petition The same is dismissed with cost quantified at Rs.25,000/-.

NAVIN CHAWLA, J

**DECEMBER 16, 2020
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