

\$~25

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

Date of decision: 28th January, 2020

+ **CM(M) 1356/2019 & CM APPL. 40985/2019**

ROHIT DHANKARD

..... Petitioner

Through: Mr. Vipin Nandwani, Advocate. (M:
9899299404)

versus

SANDHYA GUPTA & ORS

..... Respondents

Through: Mr. Mayank Goel, Mr. Monamshel
Maring and Mr. Sunil Gupta,
Advocate for R-1. (M:9810329623)
Mr. Manu Nayar, Advocate for R-2.
(M:7048915439)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. The present petition arises out of disputes relating to Municipal No.13/13 Mandir Wali Gali, Yusuf Sarai, New Delhi. The Respondent No.1 - Smt. Sandhya Gupta filed an eviction petition under Section 14(1)(e) of the DRC Act against Respondent Nos. 2 to 5 alleging that she had let out the suit property to the said Respondents and the same is required for her *bona fide* need. In the said petition, an application was filed by the Petitioner - Mr. Rohit Dhankard who claimed that he is the actual owner of the property. The said application under Order I Rule 10 CPC was rejected by the ARC vide order dated 10th January, 2019. The finding of the ARC is that in an earlier proceeding *inter se* the Respondents, there is an admission that the Respondent No.1 is the owner and thus the Petitioner is no longer a

necessary or a proper party to the eviction petition. This order was appealed before the RCT and vide order dated 10th April, 2019 the appeal was also dismissed. The Petitioner has thus filed the present petition challenging the impugned order dated 10th January, 2019 as also the order dated 10th April, 2019.

2. On behalf of the Petitioner, Id. counsel submits that the order dated 1st November, 2017 passed in RC Rev. 498/2017 was an order passed in a petition wherein the Petitioner was not a party. The said order cannot bind the Petitioner who has an independent title and ownership in respect of the suit property. The admission by Respondent No.2 that Respondent No.1 is the landlord cannot be held to be binding on the Petitioner who is himself claiming title and ownership to the suit property. He further submits that when a petition under Section 14(1)(e) is filed, the ownership has to be gone into by the Court and since there is competing ownership claims by the Petitioner, the Petitioner would be a necessary and proper party to the eviction petition.

3. On the other hand, Id. counsel appearing for the Respondent No.1, submits that the admission and the knowledge of the statement made by Respondent No.2 has been acquired by the Petitioner long back when the said order dated 1st November, 2017 was passed. The Petitioner was well aware that the said Respondent admits the landlord-tenant relationship between Respondent No.1 on the one hand and Respondent No.2 on the other hand. Thus, in an eviction petition, as per the law laid down in ***Kanaklata Das And Others v. Naba Kumar Das And Others, (2018) 2 SCC 352***, no other person is liable to be impleaded as a party. He further submits that the title to the suit property is not to be gone into in the eviction petition

and thus, the Petitioner is neither a necessary nor a proper party. It is also submitted by Id. counsel that insofar as the title to the suit property is concerned, the same ought to be determined in separate independent proceedings, if any, initiated by the Petitioner-landlord. Reliance is also placed upon Section 13 of the West Bengal Premises Tenancy Act, 1956 which also requires ownership to be established under Section 13(f)(f) which was the subject matter of the judgment in *Kanaklata Das And Others (supra)*. Ld. counsel also relies on *Sivayogeswara Cotton Press, Devangere and Ors. v. M. Panchaksharappa and Anr. (1962) 3 SCR 876*, to argue that once there is a lease which is more than twenty years, the lessee becomes the owner of the suit property.

4. Ld. counsel appearing for Respondent No. 2 submits that the notice was served upon Respondent No. 2 by the Petitioner claiming to be the supreme landlord and accordingly, since the notice was served, the tenants have now filed an interpleader suit against the Petitioner.

5. The Court has considered the orders passed by the ARC and the RCT as also the impugned orders dated 10th January, 2019 and 10th April, 2019. The primary error in the order of the ARC is that the ARC seems to have not appreciated the fact that the Petitioner was not a party in RC Rev. 498/2017. Any statement made by Respondent No. 2 in the said petition cannot be held to be binding on the Petitioner, who is himself claiming ownership rights in the property, independent of the Respondent No.1. Thus, an admission by Respondent No.2 that Respondent No.1 is the landlord, would not take away the claim of ownership to be established by the Petitioner herein. Thus, simply on the ground that on the basis of the order passed in RC Rev. 498/2017, it cannot be held that the Petitioner is not a necessary party in the

present suit.

6. While, there is no doubt that in an eviction petition, the title to the suit property is not to be decided and the same is to be decided in the independent proceedings including the interpleader suit and the suit filed by the Petitioner, it cannot be held that the Petitioner is not a necessary party to the eviction petition. Any order passed behind the back of the Petitioner in the eviction petition, would affect the Petitioner's interest irreparably and thus, the Petitioner ought to have an opportunity to participate in the eviction proceedings.

7. Accordingly, the impugned orders are set aside. This Court has not given any observation as to whether the Petitioner has any right, title or interest in the suit property, the same is to be adjudicated in appropriate proceedings. However, the fact that the Petitioner claims to be the owner and exercises title to the suit property does make the Petitioner a necessary party in the eviction petition. The Petitioner shall accordingly be impleaded in the eviction petition as a contesting respondent. Since the petition was filed in the year 2013, it is directed that an endeavour shall be made by the ARC to dispose of the eviction petition within a period of one year from today.

8. With these observations the petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 28, 2020

dj