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

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Judgment delivered on: 27.02.2020

+ RC.REV. 249/2017

CHANDER KANTA KAINTH & ORS Petitioners

versus

TULSI DAS TALREJA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Harpreet Singh, Advocate.

For the Respondent: Mr. Amitabh Krishna, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn order dated 12.01.2017 whereby the leave to defend application of the petitioners has been dismissed and an eviction order passed.

2. Subject eviction petition was filed by the respondent seeking eviction of the petitioners on the ground of bonafide necessity under Section 14(1)(e) of the Delhi Rent Control Act from complete flat number M-2/A-4, Jhulelal Sindhunagar, Cooperative Housing Society, Road No.44, Pitampura, New Delhi, more particularly as shown in red colour in the site plan annexed to the eviction petition.

3. The ground pleaded by the respondent/landlord was that the son of

the respondent had recently completed his M.B.B.S degree and had joined Dr. Ram Manohar Lohia Hospital, Delhi and the daughter was taking a professional course of psychiatrist at Baroda which was on the verge of completion. The family of the respondents had grown and both the children had completed their professional courses and require separate accommodation owing to the nature of the job done by them.

4. It was further pleaded that the son who had become a doctor needed separate accommodation to carry on his professional obligations and also that he had attained the age of marriage and would need a separate accommodation to stay therein. The daughter of the respondent whose professional course was on the verge of completion, it was stated, had decided to settle down in Delhi as the profession of psychiatrist was in huge demand and would also provide a bright future for this purpose and she also required to have separate accommodation.

5. It was contended that the respondent had no other suitable accommodation to accommodate his children and settle them in Delhi. It was further contended that in case the children of the respondent had to stay in a rented accommodation it would cause huge economic drain on their pocket despite the fact that accommodation was available with the respondent which was occupied by the petitioner tenant.

6. Subject leave to defend application was filed by the petitioners raising two pleas. Firstly, it was contended that there was no relationship of landlord and tenant between the parties and that the petitioner was occupying the premises under an agreement to sell and specific performance of that agreement had been sought and till adjudication

thereof, the eviction petition was not maintainable.

7. Secondly, it was contended that the accommodation, eviction of which was sought, was too small to accommodate the requirement as projected by the respondent and was not going to serve any purpose or satisfy the need of accommodation of the respondent or his children.

8. Learned counsel for the petitioners has further raised a plea before this court for the first time on behalf of the tenant that the tenanted premises is a flat situated in a residential cooperative group housing society and the need as projected was for commercial purpose which was prohibited to be carried on in a residential cooperative group housing societies' flat.

9. I am unable to accept the contentions of learned counsel for the petitioners. The petitioners in the leave to defend application have themselves categorically stated that the property was let out to the predecessor of the petitioners i.e. husband of petitioner No.1 and father of petitioner nos. 2 and 3 by the father of the respondent on a monthly rent of Rs.2500/- besides electricity and water charges.

10. It is an admitted position that the predecessor of the petitioners had come into the possession of the property as a tenant. Subsequently a plea has been taken by the petitioners that there was an agreement to sell whereby the father of the respondent had agreed to sell the property to the predecessor of the petitioners and a Suit for Specific Purpose was filed.

11. It is pointed out by the learned counsel for the respondent that petitioners were merely relying on an oral agreement to sell and the Suit for Specific Performance filed by the petitioners has already been dismissed by

judgment dated 12.07.2017.

12. The contention of learned counsel for the petitioners that regular first appeal, impugning the order dismissing the Suit for Specific Performance is pending, would make no difference to the relationship between the parties of landlord and tenant. It is not the case of the petitioners that there was any merger of tenancy with ownership rights or extinction of tenancy.

13. Admittedly petitioners came in possession of the tenanted premises as tenants and not under the alleged agreement to sell. The petitioners would have to first perfect their title, if any to the property, before claiming that the eviction petition would not be maintainable. So long as the status of the petitioners continue as that of a tenant, the landlord would be entitled to maintain an eviction petition. I find no merit in the contention of learned counsel for the petitioners on this ground.

14. The Rent Controller has rightly held in the impugned order that the said plea does not become a triable issue.

15. The second contention raised by the petitioners in the leave to defend application i.e. that the tenanted premises are too small to satisfy the requirement of the respondent, has been correctly dealt with by the Rent Controller by holding that the tenant cannot dictate as to how the landlord has to put to use the tenanted accommodation, after the eviction of the tenant.

16. Merely because the tenanted premise is small and insufficient to completely meet the requirement of the landlord is no ground to deny the landlord of even the scarce accommodation.

17. Furthermore, the contention is also not born out from the facts of the case. The respondent in the eviction petition has stated that both, his son and daughter require separate accommodations as both of them are qualified professionally. Admittedly the subject property is a residential flat and can very easily accommodate either of the two or even both of them. It is for the landlord to decide as to how to put the tenanted premises to use after eviction and not for the tenant to dictate to the landlord.

18. The third contention raised by learned counsel for the petitioners is that the tenanted premises is a residential flat situated in a cooperative group housing society and cannot be put to any commercial use. It may be noticed that this ground was neither raised by the petitioners in the leave to defend application nor was even urged before the Rent Controller at the time of the hearing of the leave to defend application. A tenant is precluded from raising a fresh plea in the revision petition which has not been taken in the affidavit in support of the leave to defend application.

19. Even if this plea were to be considered, the plea is *ex facie* incorrect. Reading of the eviction petition clearly shows that respondent has sought the tenanted premises for accommodating his children. The need as projected in the eviction petition is not for opening of a clinic or for any commercial purpose but clearly is for residential accommodation by the children of the respondent and that is why the eviction petition uses the expression "*in case the children of the petitioners have to stay in rented accommodation.....*". This clearly indicates that the need projected in the eviction petition is for residential purposes. Clearly a residential flat can be put for residential use.

20. I find no infirmity in the view taken by the Rent Controller that the affidavit in support of the leave to defend application does not raise any triable issue or plead facts, which if proved, would disentitle the respondent/landlord from an order of eviction.

21. I find no merit in the petition. The petition is accordingly dismissed.

22. For the purpose of record, it is also noticed that the petitioners has already been evicted from the tenanted premises in execution of the impugned order by the Executing Court on 31.08.2017.

SANJEEV SACHDEVA, J.

FEBRUARY 27, 2020

at

