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

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Decided on: 05.08.2021

+ **RC.REV. 107/2021**

U.S. SINGHAL

.... Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Vishnu Sharma, Advocate for
petitioner

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (ORAL)

The hearing was conducted through video conferencing.

RC.REV. 107/2021, CM APPL. 24412/2021 & CM APPL. 24413/2021

1. The order of eviction dated 01.02.2021, passed by the learned Rent Controller, is impugned on the ground that three issues raised in the leave to defend therein have not been addressed.
2. The first issue being: a security amount/*pagdi* of Rs.4.75 lacs was paid to the now deceased landlady -- Mrs Leelawanti, when the tenancy was created on 21.6.1993 on a monthly rent of Rs.400/- ; that after her demise her son could not inherit the property because she was not keeping well and the will relied upon is doubtful; that it was agreed with the said son—now landlord, that the premises will be

sold to the tenant for a total sale price of Rs. 10 lacs against which the *pagdi* amount of Rs.4.75 would be adjusted. In the said application, the date and mode of payment of *pagdi* was not specified nor was any document attached in support of the claim. Apropos the alleged oral agreement for purchase of the premises by the tenant for Rs.10 lacs, two witnesses have been named by the tenant. However, this agreement is premised upon proof of payment of the so called *pagdi* amount to the mother. There is no indication or proof that the *pagdi* amount was ever paid. There is nothing in the leave to defend or in this petition to even to indicate, the tenant's financial wherewithal to pay Rs.4.75 lacs to Mrs Leelawanti, on some unspecified day in the past. She has since passed away. Surely, nobody would pay such amounts as security/*pagdi* without securing one's interest through documentary evidence. In the absence of proof of payment of the *pagdi* the alleged subsequent oral agreement for sale, is a mere bald statement. The tenant's claim and contention, unsupported by any worthwhile documents or bank transactions, does not raise a triable issue. The impugned order has rightly rejected the aforesaid contention. It reasoned, *inter alia*, as under: -

“12. Further, the contention of the respondent that petitioner was even ready to sell of the tenanted premises to the respondent after adjusting the amount of pagri for sale consideration is also denied by the petitioner in his affidavit. No document is placed on record by the respondent to show that any substantial amount at the time of taking tenanted premises on rent was given by the respondent to the mother of the petitioner nor any document to show that any negotiation for selling the tenanted premises carried

out by the petitioner.”

3. The second issue raised was the non-existence of landlord-tenant relationship. However, the tenant is estopped under section 116 of the Indian Evidence Act, 1872 from so contending because he has already rent to the respondent, thereby accepting the respondent as his landlord. Rent receipt for the month of September 2019 was placed on record, it shows the respondent as the owner of the premises and bears the signature of the tenant on 3rd September 2019. Furthermore, the tenant has not stated as to who is the landlord otherwise, if not the respondent who has claimed ownership of the premises on the basis of his deceased mother's will. The landlord, is a retired bank officer and wishes to use the premises for starting his legal practice. The impugned order has dealt with this issue as under:

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“8. Regarding the denial of ownership and Landlord-tenant relationship, it is stated on behalf of respondent that he was inducted as tenant by the mother of the petitioner and there is no relationship of landlord and tenant between the petitioner and respondent. As per the respondent, the petitioner has claimed his ownership in respect of the tenanted premises on the basis of Will of his mother but till date the petitioner has not obtained Probate in respect of the said Will. It is also stated that till date the petitioner has not been declared as owner of the tenanted premises. Per contra, as per the petitioner, after demise of his mother, he is the owner of the suit property and respondent cannot claim benefit by making false submission that petitioner is not the owner of the suit premises. It is also stated by the petitioner that after demise of his mother respondent paid rent of the suit

premises to him and thus it is admitted on part of the respondent that petitioner is the owner of the suit property. Rent receipt for the month September 2019 is placed on record by the petitioner to support his contentions. As per the said rent receipt, petitioner is mentioned as owner of the suit premises and the same is duly received by the respondent under his signature dated 03.09.2019. The fact of payment of rent of the suit premises to the petitioner is not denied by the respondent. This way respondent is estopped under sec. 116 of Indian Evidence Act and cannot deny the title of the petitioner.

Sec. 116 of Indian Evidence Act, read as under

"Estoppel of tenant; and of the licensee of person in possession.-No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of tenancy, a title to such immovable property by; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such a person had a title to such possession at the time when such licence was given."

Further, respondent has nowhere stated as to if petitioner is not the owner of the suit property then who else has better claim than the petitioner in the suit property. Hence, mere denial of ownership of the tenanted premises in petitioner is not suffice to deny his title.

Here reliance is placed upon T.C. Rekhi v. Usha Gujral ILR 1969 Delhi 9 and upon Shanti Sharma v. Ved Prabha 1987 AIR 2028 where in it was held that what meant by the word "Owner" general rule is to the

effect that the plaintiff has to have a better title than the defendant and is not required to show that he has the best of all possible titles.

In Parvati Devi v. Mahinder Singh 1996 (1) AD (Del) 819 and in Milk Food Ltd. v. Kiran Khanna 1993 (51) DLT 141, also it was held that the petitioner to an eviction petition under Section 14(1)(e) of the DRC Act, 1958 as amended need not show that he was the absolute owner in the strict sense and has to show a better and superior title only to the tenant. The petitioner is only required to show his status in respect of tenanted premises is more than that of the tenant and even imperfectness of title of tenanted premises does not come in the way of eviction of tenant in such case.

Hon'ble Supreme Court in the judgment titled as "R. V. E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple" reported as AIR 2003 SC 4548 has laid down that:

“.....Being a civil case, the plaintiff cannot be expected to prove is title beyond any reasonable doubt.” and the concept of ownership in a landlord-tenant litigation governed by rent control law has to be distinguished from the one in a title suit. Ownership is a relative term, the import whereof depends on the context in which it is used.”

Hence, from the above discussed facts and in the light of above mentioned authorities, status of petitioner being owner of the tenanted premises and relationship of the petitioner and respondent being landlord and tenant is safely concluded for the purpose of deciding the present application.

9. Regarding the issue of bonafide requirement of the

landlord, it is contended on part of respondent that there is no bonafide requirement for tenanted premises by the petitioner for opening office for legal practice. It is further contended that as per available record of advocates at the website of Bar Council of Delhi, the name of petitioner is not mentioned in the list of Roll of Advocates. To this, it is stated by the petitioner that he is enrolled as an advocate with Bar Council of Delhi and his enrollment no. is D/0382/2009 and he has placed on record copy of certificate of enrolment with Bar Council of Delhi and his Identity card issued by Bar Council to support his contentions. Considering the documents placed on record by the petitioner, prima facie it cannot be held that he is not enrolled as an advocate with Bar Council of Delhi.”

4. The issue of *bona fide* requirement has been addressed in para 10. It reads as under:-

“10. The other contention raised by the respondent qua bonafide requirement is that petitioner is more interested in selling off the tenanted premises as he is getting pension from the Government being retired from Bank and after selling the tenanted premises, he shall shift abroad as both of his sons are residing abroad. The contentions of the respondent are totally denied by the petitioner. It is stated by the petitioner that he started his legal practice after retirement and he need tenanted premises for opening his office. Merely claiming by respondent that as petitioner is a retired person and he is getting pension, thus he does not require to do legal practice as an advocate hold no ground for denial of bonafide requirement of the petitioner.

Here reliance is placed upon Ram Babu Aggarwal Vs. Jay Kishan Das 2009 (2) RCR 455 wherein it was held that:

"we are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also".

In view of above discussed facts, it does not appear that there is no bonafide requirement of the petitioner for the tenanted premises."

5. It is settled law that the tenant cannot dictate or instruct a landlord as to how and which property of the latter should be used for which purpose. In *Sarla Ahuja v. United Insurance Company Ltd.* (1998) 8 SCC 119 the Supreme Court held *inter alia* as under:

"14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself..."

6. The contentions raised in the application for leave to defend have been duly addressed in the impugned eviction order. The landlord has shown that the has no other accommodation to start his practice of law. He has said, it is neither professional nor appropriate to entertain his clients from his residential address. No alternate commercial property is shown to be in his possession. As discussed hereinabove, the three points raised in this petition are untenable and are accordingly rejected.
7. Lastly, the tenant's learned counsel says that the eviction petition was disposed-off within one year of its institution. Surely, nobody can object to cases being disposed-off expeditiously -- on merits and after hearing the parties.
8. The petition is without merit, therefore it, along with pending applications, is dismissed.

NAJMI WAZIRI, J

AUGUST 05, 2021

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