

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserved: 18.12.2020

Date of Decision : 15.01.2021

+ RC.REV. 259/2020 & CMs 33399/2020, 33401/2020

SALIM KHAN SINCE DECEASED THROUGH ITS LEGAL
HEIRS RUKSHANA & ORS. Petitioners

Through Mr.Ajay Kr. Thakur Adv

versus

RUKMANI DEVI Respondent

Through Mr.Rajesh Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the Petitioners-tenants challenging the Order dated 04.02.2020 (hereinafter referred to as the “*Impugned Order*”) passed by the learned ACJ/ARC/CCJ, Patiala House Courts, New Delhi (hereinafter referred to as the “*Rent Controller*”) in case RC ARC No. 5760/16, titled as ***Rukmani Devi vs. Salim Khan and Ors.***, whereby the application seeking leave to defend filed by the predecessor of the petitioners has been dismissed and their eviction has been ordered in respect to one room with a front varandah on the first floor of the property bearing no. WZ-549/A, Naraina Village, New Delhi-110028 (hereinafter referred to as the “*Suit Property*”).

2. The respondent-landlady filed an eviction petition under section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “*the Act*”) against the petitioners claiming to be the owner of the Suit Property comprising of ground floor and first floor. It was stated that the Suit Property was let out for residential purpose to one Mr. Salim Khan (predecessor of the petitioners), who expired during the pendency of the eviction petition. The petitioners being the legal heirs of Mr. Salim Khan are since contesting the present petition.

3. The respondent claimed title to the property by virtue of a registered Sale Deed dated 03.09.2010. The family of the respondent, as stated in the eviction petition, comprised of three sons, three daughters-in-law, seven grand-children, one unmarried and two married daughters, and a brother of her deceased husband. All members other than the married daughters were stated to be dependent upon respondent for residence/accommodation. It was further stated that the respondent required the Suit Property for residential *bona fide* use of the family of the respondent and had no alternate suitable accommodation.

4. In the application seeking leave to defend, the petitioners herein denied the landlord-tenant relationship with the respondent landlady and alleged the availability of alternate accommodation with the respondent.

5. By the impugned order, the learned Rent Controller held that the respondent was able to prove her *bona fide* need while fulfilling all the requisites mentioned in section 14(1)(e) of the Act.

6. Challenging the said Order, the learned counsel for the petitioners submits that the impugned order cannot be sustained inasmuch as no documentary proof has been given by the respondent to show how the family members are dependent on the respondent for residential accommodation. He submits that infact one of the sons of the respondent is running business from a different place, while another son has settled in Bihar. He further submits that presently the respondent is residing at a property in Ramesh Nagar, New Delhi and there is no mention in the eviction petition as to why the accommodation where the respondent is residing is not suitable for her. He submits that the case of *bona fide* need set up by the respondent is a sham and cannot be entertained.

7. The learned counsel for the petitioners argues that the respondent has alternate accommodations in Delhi in her name as also in the name of her legal heirs and therefore the finding of the learned Rent Controller on non-availability of an alternate suitable accommodation is erroneous.

8. The learned counsel for the petitioners lastly submits that the Suit property being an undivided property and since it is not known under whose share the tenanted room would fall into, the respondent could not seek eviction of the petitioner from the suit property.

9. He submits that petitioners have been able to raise triable issues and therefore the impugned order should be set aside.

10. On the other hand, the learned counsel for the respondent submits that the respondent requires the entire Suit property for *bona fide* use of her family and in this regard three eviction petitions were filed against three different tenants including petitioner- Mr. Salim Khan. He submits that in the other two eviction petitions, orders of eviction have already been passed and have attained finality. He submits that in one of the matters, the tenant challenged the eviction order before this Court, however, the said revision petition, being RC. REV. 529/2017, was dismissed by this Court vide order dated 20.11.2017, rejecting similar contentions as raised in the present case.

11. He further submits that the extent of the family of the Respondent and the requirement of members of the family was not specifically disputed in the leave to defend application filed by the petitioners and therefore, the petitioners cannot come up with new plea at this stage.

12. On the issue of availability of alternate accommodation, the learned counsel for the respondent submits the respondent owns a small 66 sq. yards of property in Vikas Nagar, Uttam Nagar and the non-suitability of the same has been pleaded in the eviction petition as the same has been given on rent and is also far off from the schools of the grandchildren. He submits that in any case, it is a settled law that the tenant cannot dictate terms to the landlady and therefore, it is the choice of the landlady to choose the property to reside with her family as per her own suitability.

13. He submits that as the landlord-tenant relationship has already been established and the sale deed of the respondent has not been challenged, the present petition has been filed only to delay the execution of the eviction order. He submits that in fact, there is a huge delay in filing of the present petition. He submits that the impugned order does not suffer from any infirmity and all the contentions have already been dealt with by the learned Rent controller.

14. I have considered the submissions of the learned counsels for the parties.

15. As far as the ownership and landlord-tenant relationship between the parties is concerned, the learned Rent Controller has held the same to be established based on the judgment and order dated 12.08.2013 passed by the learned SCJ/RC, South-West, Dwarka in E-18/2011 titled ***Rukmani Devi v. Salim Khan***, that was filed by the respondent against the predecessor of the petitioners under Section 14(1)(a) of the Act. I find no merit in the submissions made by the learned counsel for the petitioners in challenge to these findings.

16. Similarly, the challenge to the locus of the respondent to file the eviction petition also has no merit. As pointed out by the learned counsel for the respondent, this court in its order dated 20.11.2017 passed in RC Rev. 529 of 2017, titled ***Sujit v. Rukmani Devi***, had negatived a similar challenge, holding as under:-

“8. Merely because a third party has challenged the title of the landlord would not entitle the tenant to contend that the landlord is barred from invoking the grounds of eviction under the Rent

Act. Supreme Court in **Shanti Sharma vs. Ved Prrabha** (1987) 4 SCC 193 held that the requirement of ownership under Section 14(1)(e) of the Act is not of absolute ownership but of merely something more than the tenant. The same view was reiterated subsequently also by the Supreme Court in **Swadesh Ranjan Sinha vs. Haradeb Banerjee** (1991) 4 SCC 572 and **Sheela vs. Firm Prahlad Rai Prem Prakash** (2002) 3 SCC 375. There is, thus no merit in the said contention.”

17. As far as the *bona fide* necessity of the respondent for the tenanted premises is concerned, the learned Rent Controller has held as under:-

“12. Respondent has claimed that the petitioner is having other suitable accommodation like some rooms in the premises in question and one four storey residential accommodation in Vikas Nagar, Uttam Nagar, New Delhi and two floors are lying vacant there. With regard to the property of Vikas Nagar, it has been stated by the petitioner that the said property is neither available nor suitable to the petitioner /dependents of the petitioner because the said property is not only away from the work place of the petitioner's son and daughter in law and Moreover, the grand children of the petitioner are in school which are near to the tenanted premises in Naraina. The contentions of the petitioner seems to be genuine and acceptable because the property of Vikas Nagar is away from the tenanted premises situated in Naraina. Moreover, the property of Vikas Nagar is not available to the petitioner as explained by the petitioner in her reply. The respondent could not file any document on record to prove that the said property of Vikas Nagar is available to the petitioner.

12.1 The other contention of the respondent that some rooms are available in the premises i.e. WZ-504A Naraina is also not acceptable because the petitioner has properly explained regarding the non availability of room in her petition as well as in reply to leave to defend application.

12.2 So, pleas of respondent regarding alternative suitable accommodations with the petitioner, are vague pleas.”

18. I do not find any merit in challenge to the above finding.

19. Further, the requirement of the premises by the family of the respondent has been contended by the respondent in its eviction petition and has also been mentioned hereinabove. Except vaguely contending that the sons are not dependent on the respondent for purposes of residence, no substantive defence has been raised by the petitioners.

20. In view of the above, I find no merit in the present petition and the same is dismissed.

21. There shall be no order as to costs.

NAVIN CHAWLA, J

JANUARY 15, 2021