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

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Decided on: 24.02.2022

+ RC.REV. 113/2021, CM APPL. 25979/2021 & CM APPL. 25980/2021

VEEHA BHAI

..... Petitioner

Through: Mr. Pawan Kumar Saxena, Advocate.

versus

SANJAY DECEASED & ORS.

..... Respondents

Through: Mr. Anil Panwar, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. On 15.02.2021, the learned Rent Controller passed an eviction order apropos the tenanted premises, i.e. two rooms on the ground floor of property no. B-1/229, Raghubir Nagar, New Delhi-110027 (as shown in the site plan annexed to the petition). The said order is impugned on the ground that the petitioner was never a tenant of Mr. Sanjay (since deceased). Instead, he claims that his landlord is one Mr. Shanti Lal. This issue has been duly considered in the impugned eviction order as under:

“ ...

13. Respondent has challenged the existence of landlord-tenant relationship between the parties as well as the



ownership of the petitioner over the suit property. RWI has stated himself to be tenant of Shanti Lal and paying rent since the year 2000 to Shanti Lal. He has relied upon the rent agreement dated 03.03.2012 Ex. RWI/A and the rent receipts Ex. RWI/B to Ex. RWI/T in this regard. RWI has further stated that Shanti Lal to be the owner of the tenanted premises.

14. On the other hand, in order to prove his ownership, PWI has stated that his father Late Shri Sanjay purchased the tenanted premises from Shri Kundan and Shri Trilok vide registered agreement to sell and general power of attorney Ex. PWI/l. Further, he also relied upon the suit bearing no. 214/2010 titled as Sanjay v. Shanti Lal decided by the Court of Shri Virender Kumar Bansal, Ld. ADJ wherein on the basis of documents available with the petitioner, the petitioner was held entitled to decree of possession, damages and permanent injunction from said Shanti Lal whom the respondent is alleging to be the landlord /owner of the premises. It is argued by Ld. Counsel for the petitioner that the property originally belonged to one late Smt. Amti who was the mother of said Shanti Lal. Smt. Amti had sold the property to Shri Dinesh Chand on 17.11.1998, thereafter Shri. Dinesh Chand has sold property to Smt. Raj Rani vide document dated 21.09.1999, thereafter Smt. Raj Rani sold the property to Shri Kundan and Shri Trilok vide document dated 01.10.2001, thereafter Shri Kundan and Shri Trilok sold the property to Late Shri Sanjay i.e. the deceased petitioner i.e. the father of PWI.

15. Perusal of the record shows that respondent has certified copy of the judgment and the entire record of suit no. 214/2010 on record and relied upon the copy of the plaint, written statement and replication Ex. RW3/1 to Ex. RW3/3 during his evidence. As the certified copy of the judgment and decreed sheet has been filed by the respondent himself, Judicial notice of the judgment and decree can be taken by the Court. In the said judgment, the respondent in this case namely Veeha Bhai has been examined as DW2 and the relevant portion of his examination as mentioned in the said



judgment at page no. 8 and 9 is quoted as under :

"Veeha Bhai was examined as DW2. He stated that there is no relationship of landlord and tenant between him and the plaintiff and he alleged that he was paying Rs. 1000/- per month as rent to Shri Shanti Lal, the defendant and rent agreement was also executed. He also mentioned that plaintiff has also filed an eviction petition against him.

During cross examination he stated that he know defendant since he took the premises on rent. He stated that he is tenant since 01.12.1999 and at that time Smt. Amti Bhain was the owner of the property and he was inducted as a tenant by Amti Devi. He paid rent of Rs. 1000/- to Amti Devi. He is not having any ration card or election I-card of this address, however, he stated that his voter card is at the address B-1/239, Raghubir Nagar, New Delhi. Thereafter defendant closed the evidence.

Case was fixed for arguments." (emphasis added).

16. Thus, from the own version of the respondent in the earlier suit bearing 214/2010 it is clear that the respondent was inducted as a tenant by Smt. Amti and made payment of rent to Smt. Amti. The respondent has also admitted the ownership of late Smt. Amti over the tenanted premises. On the other hand, the petitioner has traced his ownership to Smt. Amti and was able to show a better title in the earlier suit bearing no. 214/2010 titled as Sanjay v. Shanti Lal on the basis of which the said suit was decreed.

17. It is settled principle of law that in case respondent is admittedly tenant under earlier owner then any attornment by the tenant to the petitioner/ landlord is not required. Thus once, the respondent has admitted to be tenant under late Smt. Amti and the petitioner is able to traced out his ownership to Smt. Amti and establish a better title then the alleged person namely Shri Shanti Lal/son of late Smt. Amti, in such a



situation the respondent is estopped u/s 116 of the Indian Evidence Act from challenging the ownership of the petitioner. Reference may be made to : Sanjay Singh v. M/s Corporate Warranties Pvt. Ltd. (2013) 204 DLT 12; Harvinder Singh v. M/s. Paradise Tower Pvt. Ltd. (2013) 199 DLT (CN) 25; Ambica Prasad v. Mohd. Alam (2015) 13 SCC 13.

18. Further, even if the respondent submits that he is making payment of rent to Shri Shanti Lal against receipt, however, no better title has been shown by Shri Shanti Lal to accept any rent for want of any documents in his favour. Thus, the ownership of the petitioner over the premises in question as well as existence of landlord-tenant relationship between the parties stands duly proved.

... ”

(emphasis supplied)

2. A decree was passed in favour of the landlord apropos the first and second floor of the said property on the basis of documents of conveyance. This decree was impugned by Mr. Shanti Lal and the same was stayed by this court by order dated 27.09.2013 in RFA 463/2013, which reads *inter alia* as under:

“ ...

2. *The appeal impugns a decree for possession on the basis of title against the appellant and for mesne profits.*
3. *Issue notice.*
4. *Notice is accepted by the counsel for the respondent.*
5. *Admit.*
6. *The Trial Court record be requisitioned.*
7. *List in the category of Regular Matters as per its turn.*
8. *Subject to the appellant depositing the entire decretal amount towards mesne profits till 31st October, 2013 in this Court i.e. with interest till the date of deposit and costs etc. if any within four weeks of today and further subject to the appellant continuing to deposit in this Court mesne*



profits awarded @ Rs.2,000/- per month with effect from the month of November, 2013 and till the disposal of the appeal month by month in advance for each month by the 15th day of the month, there shall be stay of execution. The CM No.15266/2013 is disposed of.

... ”

3. Before the learned Rent Controller, Shanti Lal had deposed, *inter alia*, as under:

“...Sanjay has filed suit for possession against me in the year 2005. it is true that Ex. RW 2/P-2 dt. 25.02.10 was in possession of my brother Sh. Kashi Ram. It is wrong to suggest that Ex. RW 2/P-2 was not filed in the said suit, as it was not in existence. Vol. The said document was in possession of my brother hence it was not filed. It is true that RW 2/P-4 was in my possession at the time of filing of suit by the Sanjay. I have filed Ex. RW 2/P-4 in the case filed by Sanjay. In response to RW 2/ P-5, I have deposited a sum of Rs. 2965/- vide receipt Ex. RW 2/P-4. It is wrong to suggest that Ex. RW 2/P-4 and RW 2/P-5 belong to property no. D-229. It is true that receipt Ex/RW 2/P-1 is not lost. It is true that I have no receipt in my possession except Ex. RW 2/P-1 filed by Sh. Sanjay in the suit for possession. It is true that I am not in possession any receipt prior to 08.02.77 except the receipt which I have filed today but not in between of that. It is wrong to suggest that my mother has handed over the entire record to the then purchaser of the rented property. Vol. My mother had not sold out the said property. I did not file any complaint to the local police in respect of loss of Ex. RW 2/P-1. It is wrong to suggest that my mother has executed Will dt. 17.11.98 before the Sub Registrar in favour of Sh. Dinesh Chand bequeathing the tenanted premises. It is true that photo placed on the Will Ex. RW 2/P-6 is of my mother. It is wrong to suggest that thereafter Dinesh Chand sold the property further which ultimately purchased by deceased Sanjay after paying its consideration in year 2005. It is wrong to suggest that that on 17.11.98 when the Will Ex. RW 2/P-6 was registered, another document being general power



of attorney was also registered before the Sub Registrar. Papers used in writing on Ex.RW 1/B to RW 1/R were purchased from the Kabadi. It is wrong to suggest that I have purchased documents used in RW 1/B to RW 1/R from the kabadi only for the purpose that they seems to be very old. I have executed 18 rent agreements with the respondent. Presently Veeha Bhai is paying rent to me @ 1400/- per month. I have nine persons in my family. The entire family is residing in B-1/ 229, 1st Floor. The property is constructed upto 2½ floor and I have three room in my possession: two in first floor and one in second floor. Respondents are four persons in their family and are residing in two rooms. It is true that Ex. RW 1/A does not bear the number of rooms in possession of the respondents. It is wrong to suggest that the 18 rent agreements were executed with the respondents only with the purpose to defeat the claim of the petitioners. It is wrong to suggest that I am deposing falsely just to defeat the claim of the petitioners. It is wrong to suggest that all the rent agreements executed between me and the respondent are fake and fabricated just to defeat the claim of the petitioners. It is true that the suit filed by the deceased Sanjay against me was decreed by the. Ld. ADJ in favour of deceased Sanjay and I have filed the appeal before the Hon'ble High Court which is pending for disposal. It is true that I and the respondent Veeha Bhai have the same lawyer to defend both the cases filed by the deceased Sanjay. It is true that I am regularly deposing damages in terms of the order passed by Hon'ble High Court of Delhi.

... ”

“असिमेव जयते”

4. The learned counsel for the landlord submits that two important things are evident from the said deposition: i) that Mr. Shanti Lal never filed a police complaint or intimated any authority apropos the loss of receipt of possession document issued by DDA (Ex. RW-2/P-1). Furthermore, he identified his mother's photograph on the registered



will, which along with other document formed the basis of transfer of rights to Mr. Dinesh Chand, who in turn sold/transferred the rights in the entire building to subsequent purchasers, which ultimately came to vest with Mr. Sanjay.

5. A suit for injunction was filed by Mr. Shanti Lal, which was decreed to the effect that he would not be dispossessed from the first and second floors of the said building except by due process of law. Thereafter, the aforesaid decree of possession was passed; however, the same has been stayed by this court.
6. Mr. Sanjay has furnished documents such as Registered Agreement to Sell, General Power of Attorney (exhibit PW-1/1) and a Will from Shri Kundan and Shri Trilok apropos the entire building. These documents have been duly considered in the impugned order and it has been rightly concluded that the deceased respondent was the landlord and in any case he had more rights in the premises than the tenant. Mr. Shanti Lal did not file a suit apropos the ground floor whereas, Mr. Sanjay made a claim to the entire building. The petitioner had admitted to being inducted into the premises through Smt. Amti. The landlord has shown his ownership and/or better title to/ rights in the entire building through a succession of documents. The tenants' status remains the same i.e. of a tenant, and will automatically attorn to the new landlord. The impugned order has rightly concluded so.
7. No other issues are raised.
8. In view of the aforesaid discussions, the court finds no reason to interfere with the impugned order of eviction.



9. The petition, along with pending applications, is dismissed.

NAJMI WAZIRI, J

FEBRUARY 24, 2022

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