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

+ **RC.REV. 84/2021 & CM APPL. 16050/2021**

JAN ALAM (DECEASED) THR LRS

..... Petitioners

Through: Mr. Adarsh Ganesh, Advocate
alongwith Petitioner No. 1 in person.

versus

REKHA AND ORS

..... Respondents

Through: None.

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Reserved on: 07th March, 2023

Date of Decision: 10th April, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present revision petition has been filed by the Petitioner ('tenant') assailing the eviction order dated 06.03.2021 ('impugned eviction order'), passed by the Additional Rent Controller, Central, Tis Hazari Courts, Delhi ('Trial Court'), in ARC No. 77991/16, wherein post-trial, the eviction order has been passed in favour of the Respondent, landlady, in the eviction petition filed by her under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act').

2. In this matter the impugned eviction order has been executed and the possession of the tenanted premises i.e., One room in Flat No. E-15, third floor, DDA Flats, Turkman Gate, Delhi ('tenanted premises') has been recovered by the Respondent, as recorded in the order dated 15.11.2021. In

these circumstances, it was submitted by the Respondent that nothing survives for consideration in the matter, in view of the decision of Supreme Court in *N.C. Daga v. Inder Mohan Singh Rana, (2003) 1 SCC 453*. However, learned counsel for the Petitioner, tenant, is seeking adjudication of the present petition on merits and states that he has instructions from the Petitioner No.1, who is present in Court, to proceed with the matter.

3. Learned counsel for the Petitioner states that the primary contention on which the Petitioner has impugned the eviction order is that the Respondent herein is neither the owner, nor the landlady, of the tenanted premises. He states that the recorded owner of the property is late Sh. Hardwari Lal Verma ('original owner'), who had executed an unregistered Will dated 16.06.1984 ('unregistered Will') in favour of Mr. Jan Alam, the now deceased father of the Petitioners herein. He admits that Mr. Jan Alam was not related to the original owner and states that the said unregistered Will was executed by the original owner out of love and affection.

4. He states that the Respondent herein had filed the eviction petition claiming herself to be the owner of the tenanted premises on the basis of registered adoption deed dated 15.01.1990, executed by the original owner. He states that the Respondent is claiming herself to be the legal heir of the original owner, who was issueless. He states that Respondent was not adopted by the original owner and the Petitioner herein disputes the claim of adoption.

5. He states that the Trial Court has limited jurisdiction while adjudicating a petition filed under Section 14(1)(e) of the DRC Act and it

exceeded its jurisdiction while opining on the validity of the unregistered Will.

6. He relies upon the judgment of the Supreme Court in ***Rajendra Tiwary v. Basudeo Prasad and Anr., (2002) 1 SCC 90***, and ***A.V.G.P Chettiar & Sons and Ors. v. T. Palanisamy Gounder, (2002) 5 SCC 337***, to contend that the issue of title to the suit premises could not have been adjudicated by the Trial Court.

7. None appeared on behalf of the Respondent.

8. This Court has considered the submissions of the Petitioner and perused the record.

8.1. In this matter, leave to defend was allowed and therefore, a full trial was conducted. The parties filed their pleadings and led evidence.

8.2. The Respondent had filed the petition for eviction on the assertion that she is the owner and landlady of the tenanted premises. She had asserted that she is the adopted daughter of the original owner and placed before the Court a copy of the registered adoption deed dated 15.01.1990 i.e., Exhibit PW 1/2. She stated that the title in the tenanted premises had devolved upon her by operation of law and the property bearing Flat No. E-15, third floor, DDA Flats, Turkman Gate, Delhi ('subject property') has been mutated/transferred in her name *vide* mutation letter dated 15.09.2011, issued by the Delhi Urban Shelter Improvement Board ('DUSIB').

8.3. Mr. Jan Alam, the deceased father of the Petitioners herein, filed his written statement before the Trial Court and disputed the aforesaid claim of

ownership set up by the Respondent herein. He raised a rival claim of ownership by relying upon the unregistered Will [dated 16.06.1984].

8.4. Mr. Jan Alam stepped into the witness box as RW/1. Pertinently, in his evidence he did not dispute that he was inducted in the premises in June, 1984, by the original owner. He relied upon the unregistered Will in support of his testimony and tendered the said Will in evidence as Exhibit PW 1/9.

8.5. In view of the pleadings of the parties and the evidence led by the parties, the validity of the unregistered Will (Exhibit PW 1/9) and the adoption deed (Exhibit PW 1/2) became a specific issue before the Trial Court. The Trial Court after appreciating the oral evidence and the documentary evidence led by the parties, returned a finding that the unregistered Will dated 16.06.1984 is an unreliable document. The relevant portion of the findings of the Trial Court read as under:

“11. I have carefully gone through the testimony of all the witnesses on record. It is expedient to reproduce the relevant portion of cross-examination of RW1/respondent Sh. Jan Alam which is as under: -

“I am in possession of the property in case since June 1984. I was inducted by Sh. H.L. Verma. It is wrong to suggest that premises in question was let out to me by Sh. Hardwari Lal Verma in 1985. It is correct that I was inducted in the suit premises at the instance of Nazir Master (Tailor). It is incorrect

.....It is correct that Will was not drafted in my presence. I do not know whether the signature of Sh. Hardiwari Lal Verma are not on the Will Ex. PW1/9.....

..... It is correct that petitioner was got married by Sh. Hardiwari Lal Verma being his adopted daughter. Sh. Hardiwari Law Verma died in the year 1996.”

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15. *On the other hand, the respondent has stated in the written statement that he has become the owner of the tenanted premises on the basis of unregistered Will dated 16.06.1984 executed by Sh. Hardwari Lal and he has also placed on record copy of Will dated 16.06.1984 Ex. RW1/9. I have gone through the document Ex. RW 1/9 and other documents filed by the respondent. In my considered view, documents Ex. RW1/1 and Ex. RW 1/8 merely shows the possession of the respondent and his legal heirs in the tenanted premises. These documents do not prove the ownership of respondent or his legal heirs.*

16. *Moreover, the document, i.e., Will dated 15.06.1984 Ex. RW1/9 is an unregistered document. Secondly, the respondent has himself deposed during the cross examination that “I do not know whether the signature of Sh. Hardiwari Lal Verma are not on the Will Ex. RW1/9”.*

As such, the respondent has not specifically denied the fact that signature of Sh. Haridwari Lal Verma is not on the Will Ex. RW1/9.

17. *It is pertinent to mention that although the respondent has claimed that he become owner by way of Will dated 16.06.1984 but he has not placed on record any reliable and convincing document to show his ownership qua tenanted premises ever after the death of Sh. Hardwari Lal which occurred in the year 1996. Moreover, such document Ex. RW1/9 shows that in the said document the testator has stated father of respondent as his friend but in the cross-examination, the RW1 has stated that “It is correct that I have mention in my affidavit that Sh. Hardiwari Lal Verma is my friend.””*

(Emphasis Supplied)

8.6. With respect to the validity of deed of adoption, the Trial Court after perusing the oral evidence of RW/1 and PW/3, returned a finding that the Respondent had been adopted by the original owner. The relevant finding of the Trial Court in this regard are at Para 13 and 14:

“12. *As such, the respondent has admitted during the cross-examination that he was inducted in the tenanted premises by father of petitioner i.e. Sh. Hardwari Lala Verma. Moreover, the respondent has also admitted that petitioner was got married by Sh. Hardiwari Lal Verma being his adopted daughter. As such, there existed the relationship of landlord-tenant between respondents and Sh. Hardiwari Lal as it is admitted by the respondent during cross-examination.*

13. *One of the contentions of the respondent is that adoption deed placed on record by the petitioner is a forged document and the alleged adoption of the petitioner is illegal U/S 11, 12, 14 and 16 of law of adoption. As such, on the one hand, the respondent has claimed that*

adoption deed is forged document but on the other hand, the respondent has claimed that adoption of the petitioner is illegal under the law of adoption. As such, contradictory stand is being taken by respondent. Moreover, the respondent has admitted during the cross-examination that the petitioner got married by Sh. Hardwari Lal being his adopted daughter.

14. The petitioner has placed on record copy of adoption deed Ex. PW1/2 which is a registered document and this documents shows that petitioner was adopted by the previous landlord/owner Sh. Hardwari Lal in the year 1990. Moreover, the testimony of Sh. Vishan Chand/PW3 supports the fact of adoption of the petitioner by Sh. Hardwari Lal.”

(Emphasis Supplied)

9. The decision of the Supreme Court in ***Rajendra Tiwary*** (Supra) and ***A.V.G.P Chettiar & Sons*** (Supra), are not applicable to the facts of present case inasmuch in ***Rajendra Tiwary*** (Supra), the Trial Court as well as the appellate Court i.e., High Court, found that the relationship of ‘landlord and tenant’ did not exist between the parties and therefore, the enquiry into the title of parties having regard to the nature of the suit and jurisdiction of the Court, was unwarranted. Further, in the case of ***A.V.G.P Chettiar & Sons*** (Supra), the Supreme Court held that the Trial Court did not have jurisdiction to decided on the issue of title of the Respondent to the suit property. The Supreme Court was of the opinion that under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the Rent Controller could have only decided (i) whether there was a dispute regarding the landlord's title raised by the tenant, and (ii) whether the said dispute was *bona fide*.

10. In the present case, the Trial Court has decided the issue with respect to existence of landlord-tenant relationship between the parties, and has only delved on the issue of title on the basis of the pleadings and defence raised by the Petitioners herein to the claim of the Respondent.

11. This Court is of the view that once the matter has been set down for full trial and the parties have led oral evidence in support of their respective claims, the Trial Court was obliged to adjudicate the claim of the Petitioners herein with respect to alleged ownership of the tenanted premises on the basis of unregistered Will and therefore, the Trial Court has not committed any error in returning the findings as noted above. The said exercise was necessary for the Trial Court to adjudicate the defense raised by the Petitioner herein in the eviction petition.

12. Pertinently, learned counsel for the Petitioner has not disputed the findings of Trial Court as regards the invalidity of the unregistered Will or the validity of the registered adoption deed.

12.1. To a query of this Court, learned counsel for the Petitioner admitted that the Petitioners herein have not filed any petition for seeking probate/letters of administration of the unregistered Will dated 16.06.1984. The eviction petition was filed 02.09.2015 and the impugned eviction order was passed on 06.03.2021. The Petitioners thus, had notice of the dispute raised by the Respondent herein as regards the validity of the unregistered Will and her rival claim to the subject property. In this regard, it would be instructive to refer to the judgment of Coordinate Bench of this Court in ***Pamela Manmohan Singh v. State & Ors., 1999 SCC OnLine Del 1077***, which reads as under: -

“Various objections have been raised by the Petitioner but in my opinion these do not call to be dealt with in specific and separate detail. Admittedly, the alleged Will dated 1.10.1987 has not seen the light of day heretofore. Considering the fact that there was no blood relationship between late Dr. (Mrs.) Raseel Kohli and the Applicant and also because the Applicant is not in possession of property bearing No. 6-B, Jangpura

Extension, Mathura Road, New Delhi, probate proceedings, for giving judicial imprimatur to the Will dated 1.10.87 ought to have been initiated much earlier. It would be reasonable to assume that any prudent person would immediately initiate probate proceeding of the alleged Will dated 1.10.1987. It would also be further reasonable to presume against the genuineness of this Will since no proceedings have heithertofore been started by the present applicant. I am fully mindful of the fact that it is not mandatory that a probate be obtained in respect of Wills executed in and dealing with properties in Delhi, but this cannot be stretched to the extremity that even where there is a overwhelming probability of the Will being disputed there is still no obligation for initiating these legal steps. In the present case, numerous proceedings are pending between the petitioner, who is the daughter of late Dr. (Mrs.) Raseel Kohli and her late brother. Disputes are also pending between her and Smt. Harnam Kaur & Ors. since it is alleged that Mrs. Harnam Kaur, Mrs. Mahinder Kaur and Shri Jagjit Singh, all partners of M/s. Texla Service Centre, 6-B, Jangpura Extension, Mathura Road, New Delhi have trespassed into this property and have admitted to purchase titular rights thereof contrary to injunctions passed by this Court. The uncle of the Applicant, S. Raja Singh is a resident of this very property and it would, therefore, be fair to assume that the Applicant had full knowledge of the pendency of these conflagatory litigations. Yet no action has been taken by the Applicant, and no reason has been given why this action has not been taken.

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The Applicant has no direct interest in the present controversy. Till date no petition has been filed for the grant of probate of the Will dated 1.HU987 propounded by the Applicant. In the present case, at the very least, an adverse inference as to the authenticity and genuineness of the Will dated 1.10.1987 should be drawn. There would be no justification, therefore, to permit a~ interpolator, who has not even bothered to take requisite steps for obtaining judicial approval for the Will propounded by him to be permitted in proceedings between siblings, pertaining to the estate of their mother. The correct approach, in consonance with justice, fair play and good conscience, would be to grant probate, if the Will is found to be genuine. Otherwise a grave miscarriage of justice would occur directly resulting in inordinate delay being caused. Thereafter if good cause is shown to the Court to stay the judgment if a subsequent Will has been put in for approval in the judicial pipeline. The following observations of the Supreme Court in the case of Elizabeth Antony vs. Michel Charles John Chown Lengera, AIR 1990 SC 1.576 is relevant in this regard”

(Emphasis Supplied)

12.2. The non-filing of a petition for seeking probate/letters of administration by the Petitioners gives rise to an adverse inference that the said Will is not genuine as held by this Court in ***Pamela Manmohan Singh (supra)***.

13. With respect to the issue pertaining to the status of possession of Mr. Jan Alam, in the tenanted premises, the Trial Court after perusing the testimony of RW/1 returned a finding that admittedly, Mr. Jan Alam was inducted as a tenant in the premises by the original owner. The relevant findings of Trial Court read as under:

“18. Moreover, in the written statement the respondent has disputed the landlordship of not only the petitioner but also of the Sh. Hardiwari Lal but on the other hand, the respondent himself has relied upon the documents Ex.RW1/9 claiming that Sh. Haridwari Lal has conferred upon the half of the property on the respondent. As such, the respondent has taken the contradictory stand. Moreover, during the cross-examination, he has deposed that he is in the possession of the property since June, 1984 and has also admitted the landlordship of Sh. Hardiwari Lal. As such record, well settled proposition of law and discussion as earlier clearly show that there exists the relationship of landlord and tenant between parties and the petitioner has been able to prove that she is something more than tenant.”

(Emphasis Supplied)

13.1. The Trial Court thus held that late. Mr. Jan Alam was a tenant in the premises and the original owner was the landlord. The Trial Court further, concluded that the Respondent is the adopted daughter of the original owner.

13.2. Learned counsel for the Petitioner had not addressed any arguments impugning the said finding of the Trial Court as regards the status of late. Mr. Jan Alam as a tenant in the tenanted premises. The said finding has therefore become final.

14. The Constitutional Bench of Supreme Court in ***Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh, (2014) 9 SCC 78***, has dealt with the

revisionary power of this Court under the relevant rent control Act. The relevant extract of the judgement reads as under:

“31. We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in Dattopant that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.”

(Emphasis Supplied)

15. In view of the dicta of the Supreme Court, this Court is of the view that the issues raised by the Petitioner herein are without merits and the finding of the Trial court do not suffer from any infirmity.

16. Accordingly, the present petition is dismissed with cost of Rs. 25,000/- payable to the Delhi High Court Legal Services Committee within a period of two (2) weeks. The Petitioner is directed to deposit the proof of payment before this Court within one (1) week thereafter.

MANMEET PRITAM SINGH ARORA, J

APRIL 10, 2023/aa