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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 5th November, 2024

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C.R.P. 156/2019, CM APPL. 32501/2019, CM APPL. 15037/2023**DINESH KUMAR**

.....Petitioner

Through: Mr. Siddharth Aggarwal and Mr.
Gaurav Sindhwani, Advocates.

versus

1. KRISHAN LAL KHURANA
2. SHRI GULSHAN RAI KHURANA
3. SHRI BHIM SEN KHURANA
4. SHRI HANS RAJ MIGLANI
5. SMT. URMIL MIGLANI
6. SHRI RAJESH MIGLANI

.....Respondents

Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****C.R.P. 156/2019**

1. None is present on behalf of the Respondents.
2. The Petition under Section 115 of *Civil Procedure Code, 1908* ('CPC' *hereinafter*) has been filed on behalf of the Petitioner(Respondent No.1 in the Eviction Petition), Mr. Dinesh Kumar to challenge the impugned Order dated 10.04.2019 *vide* which the Application under Order 7 Rule 11 and Order 12 Rule 6 read with Section 151 CPC, for rejection of the Suit, has been dismissed.
3. It is submitted that the Eviction Petition under Section 14(1)(e) of *Delhi Rent Control Act, 1958* ('DRC Act' *hereinafter*) has been



filed against the Petitioner, who is admittedly the tenant in respect of the one shop bearing No. 31, Community Centre, Ashok Vihar, Phase-1, Delhi-110052 of which all the Respondents herein are the co-owners. The Eviction Petition had been filed by two co-owners namely, Mr. Kishan Lal Khurana and Mr. Gulshan Rai Khurana while the other co-owners had been arrayed as Respondent Nos. 2 to 5. The Eviction Petition filed against the Petitioner, has been contested by the co-owners who have challenged the eviction of the tenant. Therefore, it is submitted that when one co-owner objects to the Eviction of a tenant which is sought by the other co-owners, the Suit for Eviction is not maintainable and a Suit for Partition is first required to be filed between the co-owners.

4. Reliance has been placed on Mangal Builders & Enterprises Limited & Anr. Vs. Williamson Magor & Company Ltd. & Anr., Special Leave to Appeal (C) No(s). 9616-9617/2015, decided on 06.04.2017; Navin Chander Anand vs. Union Bank of India & Ors., RFA No. 544/2018 dated 17.07.2018; South Eastern Roadways vs. Satyanarayan and Others, 1982 SCC OnLine Ori 21, decided on 23.03.1982; Keshav Chander Thakur & Anr. Vs. Krishan Chander & Ors., 2014 (143) DRJ 330 (DB), RFA (OS) 86/2013, decided on 19.05.2014.

5. None is present on behalf of the Respondents, when the matter is taken up again at 3.30 p.m. The respondents are proceeded *ex-parte*.

6. **Arguments heard.**

7. The tenant/Dinesh Kumar filed an Application under Order VII



Rule 11 and Order XII Rule 6 CPC for rejection of the Suit on the premise that the other co-owners, Respondents namely Hans Raj Miglani, Urmil Miglani and Rajesh Miglani in their Written Statement have stated that they have not consented to the present petition. They have also filed a separate Petition under Section 14(1)(e) DRC Act against the tenant Dinesh Kumar claiming their respective personal requirements. It is submitted that the once the co-owners have an objection to the eviction of the tenants, the Eviction Petition is not maintainable.

8. First and foremost, it is a settled proposition of law as has been held by this Court in Ram Dulari thr. LRs vs. Om Prakash Gupta, 169 (2010) DLT 301 that the Petition for Eviction can be filed by any of the co-owners of the Suit property. Similar observations were made in Yashpal vs. Chamanlal Sachdeva, 129 (2006) DLT 200. Likewise, the Apex Court in the India Umbrella Manufacturing Co. vs. Bhagabandei Agarwalla (Dead) by LRs, AIR 2004 SC 1321 observed that one of the co-owners can file an Eviction Petition generally owned by the other co-owners on the principle of Doctrine of Agency. One co-owner filing an Eviction Petition against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of the other co-owners is assumed as taken unless it is shown that the other co-owners are not agreeable to eject the tenant. Similar observations have been made by the Supreme Court in the case of Dhannalal vs. Kalawatibai, AIR 2002 SC 2572. Therefore, the proposition of law that the Eviction Petition can be filed by any one or more co-owners without impleading the



other co-owners as a party to the Eviction Petition is maintainable with the only rider that the consent of the other co-owners shall be presumed unless demonstrated otherwise.

9. In the present case, perusal of the record shows that the Eviction Petition had been filed by Krishan Lal Khurana and Gulshan Rai Khurana, the two co-owners of the Suit property under Section 14(1)(e) of the Delhi Rent Control Act, 1958 seeking eviction of the tenant i.e. Dinesh Kumar on their *bona fide* requirement. The other co-owners namely Sh. Hans Raj Miglani, Urmil Miglani and Rajesh Miglani, impleaded as Respondents, filed a joint Written Statement wherein it is nowhere alleged that they do not consent to the eviction of the tenant. Rather, they have filed their counter claim bearing No.133/2010 in the said Eviction Petition wherein they pleaded their own bonafide requirement for claiming the eviction of the tenant. Subsequently, this Counter Claim was withdrawn and they have filed a separate Eviction Petition No.153/2011 under Section 14(1)(e) of the DRC Act seeking possession of the Suit property from the tenant.

10. In this factual matrix, it cannot be said that the co-owners are not inclined or consenting to the eviction of the tenant. Instead, they also are pleading the same ground of eviction on the *bona fide* requirement of the Suit premises by the co-owners. *Inter se*, the co-owners may be at variance about who shall be using the property, but it is pertinent to observe that a partition Suit is already pending *inter-se* the parties.

11. The judgment in South Eastern Roadways (Supra) clearly observed that where one co-sharer opposes eviction, the Eviction



Petition shall not be maintainable unless there is a partition of the Suit premises by metes and bounds and the share of each co-owner is defined. Similar are the observations made in Mangal Builders & Navin Chander Anand (Supra).

12. However, from the factual matrix of this case it is evident that the co-owners are not disputing the eviction of the tenant and, therefore the judgments relied upon on behalf of the Revisionist/Dinesh Kumar the tenant are not applicable to the facts in hand.

13. The learned Rent Controller also has taken an *additional ground* that from the averments made in the Eviction Petition, all the essential ingredients for the maintainability of a Petition under Section 14(1)(e) DRC Act is made out. Moreover, the case was instituted in 2010 and the present Application has been filed in 2018 at the stage of Petitioner's evidence.

14. The Order of learned Trial Court dismissing the Application under Order VII Rule 11CPC, does not suffer from any infirmity and the Revision is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 5, 2024
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