



2024:DHC:1239



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

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Judgment reserved on: 08.01.2024

Judgment pronounced on: 19.02.2024

+ CM(M) 2107/2023, CM APPL. 66129/2023 (stay), CM APPL. 66131/2023 (Exemption from filing TCR)

SUNIL GULATI

..... Petitioner

Through: Mr. Satish Aggarwala and Mr. Kuldeep Jauhari, Mr. Rishabh Gupta, Mr. Shivam Gupta and Mr. Vipul Goel Advs.

versus

NASEEM AHMED & ANR.

..... Respondents

Through: Mr. R.Y. Kalia, Adv. for R-1.
Mr. Gopesh Jindal, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed impugning the order dated 17.08.2023 passed in the matter titled "*Naseem Ahmad vs Sandeep*" being RC ARC 277/2019 passed by the Learned Rent Controller, Central, Tis Hazari Court, Delhi, whereby the learned Rent Controller dismissed the application of the petitioner under Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter "CPC") for the impleadment of the petitioner as respondent in the said case filed by the respondent no.1 against the respondent no.2, seeking possession of the property on the basis on bonafide requirement under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act').



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2. Before dealing with the rival submissions of the parties, the brief factual matrix as is necessary for the adjudication of the present petition may be noted.

3. The grandfather of the petitioner after 1947 partition occupied the property bearing No.3605, Mori Gate, Delhi (hereinafter “suit property”) along with other portions neighboring it as were lying vacant and took refuge in the same along with his family. The grandfather of the petitioner then proceeded to run a dry-cleaning business on the ground floor of the suit property and had his workshop in the mezzanine floor of the same. The grandfather of the petitioner occupied other portions of the suit property as well.

4. In 1957, the grandfather of the petitioner handed over suit property and his business to his son i.e. the father of the petitioner. During the lifetime of the grandfather and father of the petitioner, no one claimed ownership of the suit property and therefore the father of the petitioner came to be its owner by way of adverse possession. The said property fell into the category of “Evacuee Property”.

5. In the year 2018, the father of the petitioner handed over possession Diana Drycleaners (i.e. the shop on the ground floor and the workshop on the mezzanine floor) along with the other portions of the suit property to the petitioner. The petitioner has been in exclusive possession of the suit property since then. It is pertinent to note that the petitioner and his brother are not on talking terms



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6. On 15.02.2019, the father of the petitioner expired following which all his legal heirs relinquished their shares in favor of the petitioner by way of relinquishment deeds. No other legal heir of the father of the petitioner is an owner or co-owner of the property nor is any legal heir in the possession of the said property, except the petitioner. The suit property has been divided into various portions as per the site plan, namely, A1, A2, B, C1 and C2. Portion A1 comprises of the shop on the ground floor as well as the go-down on the mezzanine floor. Portion B comprises of the triangular space beneath the staircase. Portion C1 comprises of the 8 rooms with a kitchen and toilet.

7. It is further the case of the petitioner that the petitioner came to know, the respondent no.1 herein filed an eviction petition under section 14(1)(e) of the DRC Act, wherein he arrayed his brother i.e., respondent no. 2 namely Sandeep Gulati as a defendant. The eviction petition was filed for the property of Diana Dry-Cleaners i.e. the shop on the ground floor and the workshop on the mezzanine floor.

8. Opposing the eviction petition, respondent no. 2 filed an application under Section 25B(4) of the DRC Act, seeking leave to contest the eviction petition. Thereafter, the petitioner herein preferred an application under Order I Rule 10 read with Section 151 of the CPC to be impleaded as a party.

9. Vide the impugned order dated 17.08.2023, the learned Rent Controller dismissed the application, The impugned order reads as under:-



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“The applicant is seeking impleadment into the present petition on the ground of being an LR of Sh. Madan Lal Gulati. It is not disputed that Sh. Madan Lal Gulati expired on 15.02.2019. The petition has been filed against the brother of the applicant ie one of the LR of Sh. Madan Lal Gulati. It is settled law that on the death of a tenant the legal heirs inherits the tenancy rights as joint tenants and not tenants in common. In joint tenancy, two or more tenants take identical interest simultaneously with each other. In- joint tenancy, incidents of tenancy are the same as goes enjoyed by original tenant and if one of the legal heirs not made a party, the other legal heirs who are joint tenants represents the tenancy. Thus, the interest of all the legal heirs of the deceased tenant can be represented by any one of the legal heirs. In the present petition, the respondent, being one of the legal heirs of Sh. Madan Lal Gulati, represents all the LRs being the joint tenants. Reliance can be placed on Kanji Manji Vs. Trustees of Port of Bombay AIR 1963 SC 498. Therefore, the impleadment of the applicant is not necessary. As far as the claim of the applicant that Sh. Madan Lal Gulati was not a tenant in the suit property, is concerned, the applicant is at liberty to institute appropriate legal proceedings against the petitioner for declaration of his rights but the same cannot be a subject matter of the present petition since the proceedings before the Rent Controller are limited to adjudication of disputes between landlord and tenant in accordance with the provisions of DRC Act. It is for the petitioner to establish that he is the landlord in respect of the suit property and that Sh. Madan Lal Gulati was a tenant and in case, the petitioner fails to prove the same, his petition would be dismissed.

Accordingly, the present petition filed by the applicant u/o 1 Rule 10 CPC is dismissed.”

10. The petitioner has approached this Court by way of present petition assailing the impugned order.

Submission on behalf of the Petitioner:

11. Mr. Satish Aggarwala, learned counsel for the petitioner has submitted that respondent no.2 has surrendered his rights in the suit property in favour of the petitioner by way of the relinquishment deed dated 23.11.2019. The petitioner has been the exclusive owner and in possession of the suit property as all the legal heirs of his deceased father have also relinquished their shares in favour of the petitioner, therefore, petitioner is a



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necessary party in the eviction suit. The Learned Trial Court has wrongly held that the petitioner and respondent no.2 are joint tenants and therefore the petitioner need not be impleaded as a party.

12. It is submitted that the respondent no.1 and 2 have colluded due to the respondent no.2 and petitioners' previous enmity and the respondent no.2 is not only asserting ownership rights acquired by the grandfather of the petitioner but is also giving an admission qua tenancy of the suit property. In such circumstances, it would be necessary to implead the petitioner. Moreso, if the leave to defend filed by the respondent no.2 is not allowed, the ownership and possession rights of the petitioner would be taken away causing grave irreparable loss to the petitioner for no fault of his. The learned Rent Controller failed to appreciate the fact that the petitioner is the actual owner of the suit property by way of adverse possession of the evacuee property. It is imperative that the petitioner be impleaded so he can bring on record relevant documents to save the title of the property and contest the eviction petition.

13. The learned counsel submitted that if the petitioner is not given a chance to contest the eviction petition, his rights will be violated. Thus his presence is essential for adjudication of the controversy arising in the eviction petition and he seeks to be impleaded as a party to safeguard his own property.

Submissions on behalf of the Respondents:

14. The aforesaid submissions have been controverted on behalf of the respondent by contending that the present petition deserves to be dismissed



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as there is no illegality in the order passed by learned Rent Controller. The impugned order has correctly observed that the eviction petition has been filed by the landlord against his tenant who is the brother of the petitioner and one of the legal heirs of deceased, Sh. Madan Lal Gulati, father of the petitioner and respondent no. 2, therefore, in such a case, it not necessary to implead all the legal heirs and the decision in the eviction petition shall be binding on all the joint tenants. It was submitted on behalf of respondent no. 1 that late Sh. Madan Lal Gulati was only a tenant in the suit property till his death and after his death, the tenanted premises is occupied by respondent no. 2. Therefore, there is no patent illegality in the impugned order and the petition may be dismissed.

Reasons and Analysis

15. Insofar as the above submissions, the petitioner is claiming himself to be the owner of the suit property having inherited the same from his deceased father Sh. Madan Lal Gulati, and the other legal heirs of his father having relinquished their rights in the suit property in favour of the petitioner. The respondent No. 2 is one such legal heir of his deceased father. The eviction petition has been instituted by the landlord i.e., respondent no. 1 against respondent no. 2 claiming him to be tenant of respondent no. 1. The petitioner wants to join the eviction petition in order to safeguard his rights so that in case any eviction order is passed against the property, he may not have to suffer the eviction decree for not having defended the eviction petition appropriately. However, in such a situation the position of law is settled that in a suit between the landlord and tenant, a



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third person claiming to be owner/co-owner of the suit property cannot intervene and raise issue of his ownership with respect to the suit property as the same could not be decided in the proceedings under the DRC Act. The petitioner is seeking to agitate his ownership title to the suit property being one of the legal heirs of the deceased Sh. Madan Lal Gulati.

16. The petitioner is yet to establish his status in the suit property as an owner, however, the petitioner is seeking impleadment into the eviction petition on the ground of being an LR of Sh. Madan Lal Gulati. The learned Trial Court has correctly considered that the petitioner is a joint tenant in the suit property. Therefore, it is not necessary for him to be impleaded as a defendant in an eviction petition as it is not necessary for all the tenants who are joint tenants to be arrayed as defendants in the eviction petition. The petition filed by respondent no. 1 against respondent no. 2 is on the averments that they are in landlord-tenant relationship, therefore, the claim of the petitioner is impermissible in these circumstances as same cannot be adjudicated upon the present eviction petition.

17. Similar issue arose before the Hon'ble Supreme Court in the case of ***India Umbrella Manufacturing Co. & Anr. Vs. Bhagabandei Agarwalla (Dead) by LRs Savitri Agarwalla (Smt.) & Ors. reported in (2004) 3 SCC 178*** it has been held as under :-

"6..... It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners..."



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18. The above mentioned principle has been reiterated by the Apex Court in *FGP Ltd. vs. Saleh Hooseini Doctor and Anr. 2009(10) SCC 223*.

19. In due consideration of the above laid principle of law, the petitioner cannot be permitted to be impleaded as a party in the present eviction petition as he is trying to set up a case adverse to that of respondent no. 1 which will render his eviction petition infructuous. It is needless to say that remedy of the petitioner lies elsewhere and the petitioner can bring his own suit seeking declaration of his ownership title.

20. Thus, this Court finds no infirmity in the order passed by learned ARC, consequently, the petition along with pending applications is dismissed leaving open the remedies of the petitioner against his brother.

SHALINDER KAUR, J.

FEBRUARY 19, 2024/SU