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

Date of Decision: 28.10.2024

+ **RC.REV. 449/2013 & CM APPL. 20837/2023**

MUNNI DEVI & ANR

.....Petitioners

Through: Ms. Jyoti Dwivedi, Adv. with Mr. Madan Lal, son of Petitioner No.2 in person.

versus

MADAN LAL & ORS

.....Respondents

Through: Mr. Anurag Ojha, Adv. with Mr. D.N. Chaturvedi and Mr. Deepak Somani, Advs. with son of Respondent No.1 in person.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. Learned Counsel for the Petitioners on instructions from the son of the Petitioner No.2 who is physically present in Court today submits that the Petitioner No.2 has expired on 19.05.2015.
2. Since, no Application for impleading the legal representatives of the Petitioner No.2 has been filed for the last nine years, it is contended by the learned Counsel for the Respondents that the Petition is abated *qua* Petitioner No.2.



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3. This Court has in *Shiv Charan v. Bal Kishan Singh and Another*¹ has while applying the provisions of Order XXII Rule 9 and 3 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] held that the period for bringing a legal heir of a party on record is 90 days and where the same is not done in the said period and no sufficient cause has been shown for the same, the right to sue does not survive for the legal heirs of such person. It was held as follows:

"6. Order XXII Rule 3(1) of Civil Procedure Code, 1908 (CPC) sets out that where a Plaintiff dies and the right to sue survives, the Court shall cause the legal representative of the Plaintiff to be made a party. Sub section (2) of Order XXII Rule 3 CPC provides that in the case that no Application under Sub-rule (1) is made, the suit so far as concerns the deceased Plaintiff shall abate.

6.1 Order XXII Rule 9 (1) CPC also provides that where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action. Order XXII Rule 3 (1) CPC and Order XXII Rule 9(3) CPC are extracted below:

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff. — (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

xxx xxx xxx

9. Effect of abatement or dismissal.—

(3) The provisions of Section 5 of the 1 [Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2).

[Explanation. — Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.]”

7. Limitation under Article 120 of Schedule 1(A) of the Limitation Act,

¹2024 SCC OnLine Del 7287



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1963 [hereinafter referred to as the "Act"] upon the death of a Plaintiff/Defendant to a suit is 90 days from the date of Plaintiff/Appellant, defendant or respondent as the case may be. Article 120 of Schedule 1(A) is reproduced below:

Description of suit	Period of limitation	Time from which Period begins to run
120. Under the Civil Procedure Code, 1908(5 of 1908), to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.	Ninety days.	The date of death of the plaintiff, appellant, defendant or respondent, as the case may be.

8. Order XXII Rule 1 CPC mandates that a death of a Defendant or Plaintiff shall not cause a suit to abate if the right to sue survives. Order XXII Rule 3 CPC further sets out that if the right to sue does survive then an appropriate Application to implead the legal representatives of the deceased is required to be filed within specified time - which is 90 days as per the Act. Consequently, if the party does not take appropriate steps, the right to sue does not survive and the proceedings abate qua the deceased.

8.1 Order XXII Rule 9(2) CPC provides for an Application for setting aside of the abatement in circumstances where the principles under Section 5 of the Act are applicable. Thus, the Applicant must show that there was sufficient cause for not filing the Application within the prescribed time.

9. In the present case, the Petitioner (Defendant in the Eviction Petition) passed away. However, no Application as is contemplated by Order XXII Rule 3 CPC has been made. No reason much less sufficient cause is shown by the Petitioner for the inaction. As stated above, the Petitioner is unable to give any reason for the same.

10. The Supreme Court has held that where the Application to bring on record the legal representatives of a deceased party has not been made on time and no reasons are given for the same, the Suit/Petition will stand abated. The ratio of the decision of the Supreme Court in Balwant Singh v. Jagdish Singh is squarely applicable to the facts in the present case."

[Emphasis supplied]



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4. Undisputably, no steps have been taken pursuant to the demise of Petitioner No.2 after 19.05.2015. Thus, for a period of more than 10 years, the Application was not filed by the Petitioners/tenant. No explanation is forthcoming by the Petitioners/tenants either. No reasons have been given for this huge delay by the learned Counsel of Petitioners/tenants. In these circumstances, and since no sufficient cause has been shown by the Petitioners/tenants in not filing the Application for impleadment of Petitioner No.2 within the prescribed time, the Petition *qua* Petitioner No.2 stands abated.

5. Learned Counsel for the Respondents submits that the Notice was issued in this matter on 19.05.2014 when the Impugned Order was directed to be stayed by the Court on the plea that the premises is owned by the DDA. He submits that, as was recorded by this Court in a subsequent order on 18.03.2015, the civil proceedings which were sought to be relied upon by the Petitioners/tenants had since culminated into a decree and the Civil Court had held that the Respondent is the owner of the said premises. Reliance is placed on the Order dated 18.03.2015 where this has been recorded by a Coordinate Bench of this Court.

6. Learned Counsel for the Respondents submits that despite supplying the details of the legal heirs of Respondent No.1, no application has been filed for bringing the legal representatives of Respondent No.1 on record. It is submitted by the learned Counsel for the Respondents that the Petitioners/tenants are only trying to delay these proceedings.

6.1 Learned Counsel for the Petitioners/tenants contends that the said



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Application has been filed but is lying under objection.

7. Learned Counsel for the Respondent No.1 submits on instructions from the legal representative of the Respondent No.1 who is present in Court, submits that since the subject premises is co-owned by all the Respondents, this Court can proceed with the matter even in the absence of this Application.

8. It is no longer *res integra* that a co-owner of a premises acts as an agent of the other co-owners and can file an eviction petition without joining the other co-owners as a party. This Court has in *R.S. Chadha v. Thakur Dass*² while relying on *India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (Dead) by LRs*³ while dealing with the issue of consent of co-owners held as follows:

"10.4 It is settled law that a co-owner of a premises acts as an agent of the other co-owners and can file an eviction petition without joining the other co-owners. The consent of all co-owners is assumed unless shown to the contrary."

[Emphasis supplied]

8.1 In the present case, it is not disputed that the Respondents/landlords had jointly filed the Eviction Petition before the learned Trial Court and have been contesting the Petition jointly. The consent of all co-owners is assumed unless shown to the contrary. There is no averment to the contrary, shown by the Petitioners/tenants.

8.2 In any event, the son/legal representative of the Respondent No.1 is present in Court and this order has been passed in his presence. In these

²2024 SCC OnLine Del 47

³(2004) 3 SCC 178



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circumstances and in view of the fact that the present Petition is being contested by the Respondents who are all co-owners, the impleadment of the legal representatives of Respondent No.1 is dispensed with.

9. Learned Counsel for the Respondents submits that the Petitioners/tenant have encroached upon property bearing No.6469, which belongs to the DDA, however, the subject premises is property bearing No. 6470, which was purchased by the father of the Respondent No.1, Madan Lal by virtue of a registered sale deed. Learned Counsel for the Respondents submits that the Respondents are the owners of the property bearing No.6470 and that property bearing No.6469 is not the subject matter of the present Petition.

10. It is no longer *res integra* that a Revision Petition is not meant to decide the issue of title between the parties. Reliance is placed on judgment of Supreme Court in *Smt Shanti Sharma & Ors. vs Smt. Ved Prabha& Ors.*⁴ and this Court in *Jiwan Lal vs Gurdial Kaur and Others*⁵.

10.1 The Supreme Court in the *Shanti Sharma* case has held that the term 'owner' in the context of the provisions of Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as "DRC Act"], viz- *a-viz* a tenant should mean more than a tenant. The relevant extract reads as follows:

"14. The word "owner" has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the

⁴(1987) AIR (SC) 2028

⁵(1995) 57 DLT262



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structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State **and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present.** It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. **In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant.** Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term “owner” as is contemplated under this section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in *T.C. Rekhi v. Smt Usha Gujral* [1971 RCJ 322, 326 (Del HC)] as under:...."

[Emphasis supplied]

10.2 A Coordinate bench of this Court in ***Jiwan Lal*** case has held that there is a tendency on the part of the tenants to deny ownership in cases under Section 14(1)(e) of the DRC Act, however, these petitions are not title cases involving disputes of title to the property and ownership is not to be proved in absolute terms. The relevant extract of the judgment is



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reproduced below:

"3. There is a tendency on the part of tenants to deny ownership in cases under Section 14 (1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner.' In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the ownership of the premises. He is only a tenant and according to him was inducted by Kuldeep Kaur, daughter of deceased Raghubir Singh. Raghubir Singh held lease of the premises from Kanna Mal Chhanna Mal. AW 1 Smt. Gurdayal Kaur has stated that the lease of the property was in the name of her husband Raghubir Singh and after his death she has inherited the same. House tax bill AW 1/2 is in the name of Raghubir Singh. Therefore, I do not find anything to disturb the finding of the Court below on this point."

[Emphasis supplied]

11. The Impugned Order has been passed in respect of one room and common courtyard on the ground floor forming part of property no. 6470, Gali Hanuman Mandir, Ward No. XV, Nabi Karim, Paharganj, New Delhi, as shown in the map annexed. The record shows that the issue with regard to the Petitioners/tenants being in possession of property bearing No.6469 and not property bearing No.6470, was raised before the learned Trial Court and that a similar submission that the said property is owned by DDA was made before the learned Trial Court. The learned Trial Court found that the Petitioners/tenants could not place any material on record to substantiate their plea.

11.1 On the other hand, the Respondents/landlords placed on record copy of civil proceedings filed in 1988, which were not disputed by the Petitioners/tenants, to show that in those proceedings, the



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Petitioners/tenants had taken the same stand. The learned Trial Court relied on the finding of ownership given by the Court in its order dated 06.09.1999 passed in ***Suit No. 347/88*** captioned ***Het Ram vs. Pooran Chand and Munni Devi*** to hold that the Respondents/landlords are the owners of the tenanted property which the Petitioners/tenants are in possession, as tenants. Paragraph 10 of the Impugned Order, in this regard is extracted below:

“10. The real dispute appears to be as to whether tenanted premises, as shown in red colour attached in the petition, is part of the property No.6470-71. Though the respondents have claimed that the tenanted premises shown in the site plan filed by the petitioners is part of property No.6469, however, they have not brought on record any material to substantiate their plea. On the other hand, in support of their stand, petitioners have placed on record the copy of judgment dated 06.09.1999 given in suit No.347/88 titled Het Ram vs. Pooran Chand and Munni Devi which has not been disputed by the respondents. It is noteworthy that the site plan of property no.6470-6471 filed in those suit proceeding is quite similar to the site plan filed alongwith present petition. From the judgment, it also becomes clear that the respondents had taken a stand that they are owners of property No.6469-6470, however, it was held by the court that the plaintiff is the owner of the property and there exists landlord tenant relationship between the parties. In view of this, there remains no doubt that property in occupation of respondents is a part of Property No.6470 and they are in possession thereof in the capacity of tenants.”

[Emphasis supplied]

11.2 Thus the issue of ownership had already been decided by the Civil Court in previously instituted proceedings and has been dealt with in the Impugned Order. In view of the settled position of law, the Court finds no reason to interdict the same.

12. The only argument made by learned Counsel for the Petitioners/tenant before this Court is that the Impugned Order directs the



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eviction of the Petitioners/tenants from property No.6470, Gali Hanuman Mandir, Ward No.XV Nabi Karim, Paharganj, New Delhi, but the Petitioner No.1 is not in occupation of the said premises as it is residing at property No.6469, Gali Hanuman Mandir, Ward No.XV Nabi Karim, Paharganj, New Delhi.

13. The Impugned Order has been passed in Eviction Petition No. 25/12 captioned as *Madan Lal & Ors. v. Munni Devi & Anr.* where the Respondents/landlords sought to evict the Petitioners/tenants from the premises at No.6470, Gali Hanuman Mandir, Ward No. XV Nabi Karim, Paharganj, New Delhi as shown in red in the annexed site plan, therein. As discussed herein, the issues raised by the Petitioners/tenant in the present Petition were also raised before the learned Trial Court and after an examination of the same, the learned Trial Court found no merit therein. This Court has also undertaken an examination of these issues and found no infirmity with the Impugned Order passed by the learned Trial Court.

14. In any event, since admittedly the Petitioners/tenants are not residing in property No.6470, Gali Hanuman Mandir, Ward No.XV, Nabi Karim, Paharganj, New Delhi but at property No.6469, Gali Hanuman Mandir, Ward No. XV Nabi Karim, Paharganj, New Delhi, the challenge to the Impugned Order which is in respect to property no. 6470, Gali Hanuman Mandir, Ward No. XV, Nabi Karim, Paharganj, New Delhi, cannot be maintained by the Petitioners/tenants.

15. In the circumstances, the Petition and all pending Applications are disposed of in the foregoing terms. Consequently, all interim orders stand



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vacated.

16. The Respondents/landlords are also at liberty to take recourse to appropriate proceedings for recovery of arrears of use and occupation charges/*mesne profits*, if applicable, in accordance with law.

17. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

OCTOBER 28, 2024/SA

Click here to check corrigendum, if any