



2024:DHC:9691



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 03.12.2024*+ **RC.REV. 626/2018 & CM APPL. 36604/2022****WAHABUDDIN & ORS**

.....Petitioners

Through: Mr. J. Amal Anand & Mr. Shashmat,
Advocates.

versus

RIYAZUDDIN & ORS

.....Respondents

Through: Mr. Mohd. Elahi, Ms. Sumliul Mizam
& Mr. A.K. Suri, Advocates.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioners/tenants impugning the order dated 23.08.2018 passed by the learned Administrative Civil Judge-cum-Additional Rent Controller (Central), Delhi [hereinafter referred to as the "Impugned Order"]. By the Impugned Order, the Leave to Defend/Contest filed by the Petitioners/tenants has been dismissed and the Respondents/landlords have been entitled to possession of the premises i.e., Shop bearing No.6286, Bara Hindu Rao, Delhi-110006 as shown in red colour in the site plan filed by the Respondents/landlords along with the Eviction Petition [hereinafter referred to as the "subject premises"].

2. A Coordinate Bench of this Court on 15.02.2019 passed an interim order staying the execution proceedings and directed payment in the sum of Rs.12,000/- per month to be made till the pendency of the Petition. These



2024:DHC:9691



payments were however not made on time by the Petitioners/tenants, and it is only pursuant to various orders passed by this Court that the payment has since been completely made.

3. This Court had the occasion to examine this matter on various dates.

4. On 25.11.2024, this Court had, after hearing arguments on behalf of the Respondents/landlords in the matter, had recorded the following:

“3. So far as concerns the Application for vacation of stay, the learned Counsel for the Petitioners submits that the Petitioners undertake to the Court that during the pendency of the present proceedings, the Petitioners shall fully comply with the order dated 15.02.2019 passed by this Court in timely manner.

4. Learned Counsel for the Respondents has contended that even on merits, the Petitioners does not have any case. He submits that so far as concerns, the issue of landlord-tenant relationship and ownership, the Petitioners have claimed that the father of Petitioners was the original tenant and later on purchased the subject premises on 09.01.1995 by way of General Power of Attorney, Agreement to Sell, Affidavit, Will and a Receipt all dated 09.01.1995.

4.1 Learned Counsel for the Respondents submits that the learned Trial Court has held that the documents that are sought to be relied on are unregistered and hence cannot transfer any title to the Petitioners.

4.2 In addition, it is contended by the learned Counsel for the Respondents that these documents form subject matter of criminal proceedings which have been initiated by the Respondents against the Petitioners.

5. In the event, if there is any default in payment of user and occupation charges, the interim protection granted to the Petitioners on 15.02.2019 shall automatically stands dissolved and the Respondents will be at liberty to take appropriate steps in accordance with law against the Petitioners.

*6. The learned Trial Court has dealt with this aspect in paragraph 8 and 9 of the Impugned Order and has also relied on the judgment passed by this Court in the matter of **Ram Chander v. Ram Pyari**; (2004) 109 DLT 388 to held that a Petition under the Delhi Rent Control Act, 1958 cannot be converted into a title suit and that the title of the party can only be decided through civil proceedings.*



2024:DHC:9691



7. On a query to the Petitioners whether any civil proceedings have been initiated by them after the year 1995 in respect of their claim to ownership, the learned Counsel for the Petitioners, on instructions from the Petitioners, responds in negative.”

4.1 On that date, the learned Counsel for the Petitioners/tenants had requested for some time to make his submissions in the matter and seek instructions as well.

5. As stated above, on the aspect of bonafide need and availability of alternate suitable accommodation, there is no challenge by the Petitioners/tenants. This aspect has also been dealt with in the Impugned Order, wherein it is stated that there was no pleadings or averments made by the Petitioners/tenants contrary with the contentions made by the Respondents/landlords in the Eviction Petition have been made by the Petitioners/tenants before the learned Trial Court. On the aspect of availability of alternate suitable accommodation as well, there is no challenge by the Petitioners/tenants. The position before this Court is no different.

6. The only challenge which has been raised before this Court by the learned Counsel for the Petitioners/tenants is with respect to the landlord-tenant relationship/ownership of the subject premises. It is the contention of the learned Counsel for the Petitioners/tenants that the subject premises were purchased by him from the father of the Respondents/landlords on 09.01.1995. Learned Counsel for the Petitioners/tenants seeks to rely upon the documents i.e., general power-of-attorney, agreement to sell Affidavit and a will, all of even date. This contention was also raised before the learned Trial Court as well.



6.1 The learned Trial Court rejected this contention for two reasons. Firstly, the learned Trial Court found that in a suit for permanent injunction *inter se* between one of the Respondents/landlords and Petitioners/tenants, an averment was made by the Petitioners/tenants, in para 2 stating that the late father of the parties in that suit was a tenant in respect of the subject premises and in response to the said averment in the written statement it was stated by the Petitioners/tenants that the same is a matter of record.

6.2. Secondly, it was held by the learned Trial Court that the title of the property can only be decided through civil proceedings and eviction proceedings under Delhi Rent Control Act, 1958 cannot be converted into a title suit. The relevant extract of the Impugned Order is below:

“8. The contention of the answering respondents that way back in the year, 1995 father of the petitioners has sold the shop in question to father of respondents no. 1, 2, 5 & 6 has no merits as copy of written statement dated 03.10.2011 filed by respondents no.1, 2, 5 & 6 in the suit earlier filed by respondent no.3 on 13.09.2011, is on record and from the same it is apparent that in reply to the contention of the respondent no.3 that the property is a tenanted one, they had stated that it is a matter of record. Thus, they did not deny this contention of respondent no.3. They neither explain the fact that the property was purchased by their father by way of General Power of Attorney, Agreement to Sell, Affidavit, Will and Receipt in the year, 1995. From this fact, it is apparent that unregistered General Power of Attorney, Agreement to Sell, Affidavit, Will and Receipt are not reliable.

9. Furthermore, it was held by Hon'ble High Court of Delhi in Ram Chander Vs. Ram Pyari, (2004) 109 DLT 388 that in a case where tenant claims himself to be the owner of the premises, the judgment in Manoj Kumar v. Bihari Lai (Dead) by LRs, 91 (2001) Delhi Law Times 25 (SC) is not at all applicable, as: any person who denied to be a tenant and claim to be the owner of the premises cannot claim to be granted leave to defend eviction petition as eviction proceedings initiated under the Delhi Rent Control Act cannot be converted into a title suit. The title of the party is always decided through civil proceedings. As such claim of the petitioner that he is the owner of the premises and not the tenant could have been vindicated by way of filing civil suit and not in the eviction



2024:DHC:9691



proceedings. It was further observed that the first and foremost requirement to become entitled to leave to defend is that there should exist relationship of landlord and tenant between the parties. By denying the ownership or landlord of the petitioner and claiming himself as owner, the petitioner cannot be granted leave to defend the eviction petition.”

[Emphasis Supplied]

7. Learned Counsel for the Petitioners/tenants has contended that the learned Trial Court wrongly interpreted these pleadings. All that was meant by the Petitioners/tenants in these pleadings was that the Petitioners were the tenants of the father of the Respondents till the year 1995 and not thereafter, when the subject premises were purchased by the father of the Petitioners from the Respondents/landlords.

8. A perusal of the Impugned Order shows that the learned Trial Court, in addition to relying on the admission made in the present Petition, has also examined the contention of the parties, based on the fact that the documents which the Petitioners/tenants seek to rely upon for title to the sub premises are unregistered documents.

8.1 It is settled law that no transfer of title can occur without a registered document of sale, which admittedly the Petitioners/tenants does not possess. In the case of **Beena v. Charan Das**¹, Supreme Court has held that in the absence of a registered document no transfer of title can pass from one party to another. The relevant extract of the judgement is reproduced below:

“19. The Rent Controller in passing the consent order on 05.09.1979 recorded that the dispute between the landlord and tenant had been compromised. According to the terms of the compromise contained in the statements of the parties, on the payment of Rs. 12,500/- by the tenant as the price of the house, he was to become the owner in possession. This

¹ 2024 SCC OnLine SC 2490



*narration of fact that the tenant would become the owner in possession in the order of the Rent Controller is obviously against the record, i.e., the statement of the parties, wherein it has nowhere been stipulated that the tenant, on deposit would become the owner of the property. However, in the end, the Rent Controller himself records that on the price of Rs. 12,500/- being deposited on or before the 15.12.1979, the application of the landlord would be deemed to have been dismissed and on failure to deposit, it shall deem to have been allowed. It means the aforesaid consent order was only with regard to dismissing and allowing of the application of the landlord in the eventuality of depositing of the amount and non-depositing of the amount by the tenant. The settlement recorded in terms of the statements of the parties and even the consent order does not in any way provide or confer right of ownership upon the tenant, nor it could have been done in a proceeding for eviction of the tenant. **No document, much less a registered instrument, was executed between the parties transferring the title of the suit premises. In its absence obviously no transfer of title can pass from one party to another.** In such a proceeding, the only option available to the Rent Controller was either to order eviction or to dismiss the application for eviction as has been done by him.”*

[Emphasis Supplied]

9. On a query put by the Court to the learned Counsel for the Petitioners/tenants as to whether the Petitioners/tenants have filed any civil suit for perfecting the title to the subject premises after 1995, the response is in the negative.

10. Given the fact that there have been prior legal proceedings between the parties, it is quite clear that the Petitioners/tenants were aware of their legal rights.

11. Section 116 of the Indian Evidence Act, 1872 which is *para materia* to Section 122 of the Bharatiya Sakshya Adhiniyam, 2023 prohibits a challenge by a tenant to the ownership of a landlord in the following manner:

“116. Estoppel of tenants and of licensee of person in possession. — No tenant of immovable property, or person claiming through such



tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

11.1 The Supreme Court in ***Bhogadi Kannababu v. Vuggina Pydamma***² has while discussing the Section held as follows:

“18. This view was also recognised by this Court in Atiyam Veerraju v. Pechetti Venkanna [(1966) 1 SCR 831 : AIR 1966 SC 629]. Similar view has also been expressed in a later decision of this Court in Tej Bhan Madan v. II ADJ [(1988) 3 SCC 137] in which it was held that a tenant was precluded from denying the title of the landlady on the general principles of estoppel between landlord and tenant. It was held that the principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. In our view, Section 116 of the Evidence Act is clearly applicable in the present case, as held by the High Court in the impugned order. The finding of fact of the High Court and the trial court that the appellants were let into possession by Pydamma and that possession was not restored to her by surrender, was based on consideration of material evidence on record, which cannot be disturbed by us. Therefore, in our view, even if Respondent 1 Pydamma, was not entitled to inherit the properties in question of late Suryanarayana then also she could maintain the application for eviction and obtain a decree/order of eviction on the ground of default and sub-letting under the A.P. Tenancy Act. We keep it on record that the learned counsel appearing for the appellants did not raise any objection on the findings of the High Court regarding default and sub-letting, before us.”

[Emphases supplied]

12. In addition, learned Counsel for Respondents/landlords has drawn the attention of the Court to the fact that the documents which are sought to be relied upon by the Petitioners/tenants have been challenged by the Respondents/landlords including by filing a police complaint which has

² 2006 SCC OnLine SC 582



2024:DHC:9691



resulted in an FIR being registered i.e., FIR No.2/2020 dated 14.01.2020 in Police Station Bara Hindu Rao against the Petitioners/tenants. Thus, these documents are also a subject matter of adjudication before another forum.

13. The scope of examination by this Court in a Revision Petition filed under Section 25(B)(8) of the Delhi Rent Control Act, 1958 is well settled. The Supreme Court *Abid-ul-Islam v. Inder Sain Dua*³ has held that the jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the *Abid-ul-Islam* is as follows:

“Scope of revision

“22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

³ (2022) 6 SCC 30



23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

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25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

[Emphasis supplied]



2024:DHC:9691



14. From an examination of the above, this Court finds no infirmity with the Impugned Order. The present Petition is accordingly dismissed. All pending Applications stand closed.

15. The Petitioners/tenants are however not precluded from taking appropriate steps in accordance with law in pursuance of their claims, if any, in relation to the subject premises.

16. Parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

DECEMBER 3, 2024/ ha

Click here to check corrigendum, if any