



2025:DHC:1592



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 19.02.2025***

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RC.REV. 362/2019 & CM Appl.27114/2019**DALIP SINGH**

.....Petitioner

Through: Mr. Shellen Kumar and Mr. Manak
Budhiraja, Advs.

versus

DURGA PRASAD SHARMA & ANR

.....Respondents

Through: Mr. Mohit Gupta, Ms. Aayushi Jain
and Mr. Mohit, Advs. for R-1.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. This Court has briefly heard the parties on 31.01.2025 and had given a *prima facie* finding that the remedy of the Petitioner does not lie before this Court. The relevant extract of the order dated 31.01.2025 is reproduced below:

“... 2. It is the plea of the Petitioner that he was in possession of the subject premises in his independent right and not as a tenant.

3. Learned Counsel for Respondent No.1 submits that the operation of the Impugned Order was stayed by the Court on 30.05.2019, and thereafter, the Petitioner has continued in an uninterrupted possession of the subject premises without paying any user and occupation charges, rental or damages. It is further contended that the Petitioner has no rights in the subject premises and seeks to rely upon paragraph 14 of the Impugned Order to submit that there is a finding of the learned Trial Court that the Petitioner is nothing but a trespasser.

4. Learned Counsel for the Petitioner submits that the Petitioner was impleaded as Respondent No.2 before the learned Trial Court by order dated 22.08.2017 and thereafter he has contested the matter.

5. Prima facie, the remedy of the Petitioner does not lie before this Court. At this stage, learned Counsel for the Petitioner requests for some time to take instructions....”

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2. Briefly the facts are that an Eviction Petition was filed by Respondent No.1/landlord against Respondent No. 2/tenant before the learned Trial Court.

2.1 During the pendency of the Eviction Petition, the Petitioner filed an Application under Order I Rule 10 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] stating that the Petitioner is in the exclusive possession and use of the subject premises in his independent right since 1984. The application filed by the Petitioner was allowed by the learned Trial Court by an order dated 22.08.2017 holding that the presence of the applicant was necessary for the adjudication of the disputes between the parties.

2.2 The Petitioner thereafter filed his leave to defend Application in the matter. It was contended therein that there is no landlord-tenant relationship between the Petitioner and Respondent No. 1/landlord and that there is collusion between Respondent No.1/landlord and Respondent No.2/tenant. Various other grounds were raised including that the mother of Respondent No.2/tenant is shown to be a trespasser and cannot be treated as a tenant. Respondent No.1/landlord denied all the allegations in the reply to leave to defend Application.

2.3 The Respondent No.2/tenant also filed an Application for leave to defend *inter-alia* contending that they were predecessors-in-interest of the original tenant, Smt. Amrit Kaur Bedi. It was further contended that the said Smt. Amrit Kaur Bedi was a tenant of one Sh. Inder Sain Verma, however Respondent No.2/tenant or her predecessor-in-interest did not attorn to Respondent No.1/landlord as the letter dated 08.02.2002 sent to



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Smt. Amrit Kaur Bedi demanding the rent was unsigned. It was further contended therein that there are other alternate suitable accommodations available with Respondent No.1/landlord.

3. The learned Trial Court examined the Applications for Leave to Defend filed by both the Petitioner and Respondent No.2 and gave a finding that no triable issue was raised by either the Petitioner or Respondent No.2. Originally, the sale deed executed by the said Sh. Inder Sain Verma showed Smt. Amrit Kaur Bedi as a trespasser, however it also sets out that monthly occupation charges of Rs. 150/- as damages were being received. The learned Trial Court held that in view of the fact that the payment was being received on a regular basis akin to rental payment, the said Smt. Amrit Kaur Bedi was a tenant.

3.1 In addition, the learned Trial Court dismissed the Application for Leave to Defend by the order dated 30.01.2019 [hereinafter referred to as "Impugned Order"]. It was further held that the Respondent No.1/landlord had proved all necessary ingredients of Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as "DRC Act"]. Thus, an Eviction Order was passed against both the Petitioner and Respondent No.2/tenant.

4. The Respondent No.2/tenant [Respondent No.1 before the learned Trial Court] has not appeared nor contested this Petition.

5. This Petition has been filed by the Petitioner claiming ownership of the premises in view of the fact that the Petitioner is in possession of the subject premises for an extended period of time. The contention raised by the Petitioner today (who was Respondent No.2 before the learned Trial



Court) was also raised before the learned Trial Court. The learned Trial Court examined this contention and has given a finding that the Petitioner is a trespasser in the subject premises. It was held that since Smt. Amrit Kaur Bedi was a tenant *qua* property in question, who admittedly parted possession in favour of the father of the Petitioner then the father of the Petitioner would also be a tenant/sub-tenant *qua* the subject premises and not a trespasser. A finding was given that in terms of the documents placed on record by Respondent No.1/landlord, the Respondent No.1/landlord is the owner of the subject premises. The relevant extract of the Impugned Order is set out below:

“15. The undersigned has perused the sale deed executed by Sh. Inder Sain Verina in favour of Sh. Ramesh Chand. In the said sale deed, Sh. Inder Sain Verma has shown Smt. Amrit Kaur Bedi as trespasser in two shops on the ground floors qua property in question, however in the same line, it is mentioned that the landlord was receiving damages charges of Rs. 150/- per month from Smt. Amrit Kaur Bedi. It is to be noted that the present petitioner has also been shown as trespasser qua first floor of the property in that sale deed. During arguments, it is stated by Ld. Counsel for petitioner that the present petitioner was also an old tenant in the said premises who subsequently purchased the said property. Sometimes after death of a tenant, landlord resist in accepting his legal heirs as tenants in respect of the tenanted premises and call them trespassers, however Court in such cases protect tenancy rights devolve upon the legal heirs of a deceased tenant. Apparently, after the death of husband of Smt. Amrit Kaur Bedi, landlord resisted in accepting Smt. Amrit Kaur Bedi as a tenant in terms of DRC Act being a legal heir of her husband, nonetheless the landlord had continued receiving rent @ Rs. 150/- per month from her. In these circumstances, it is held that just by calling a tenant as trespasser, a landlord would not loose his right to sue legal heirs of his tenant under DRC Act. In these circumstances, it is held that Smt. Amrit Kaur Bedi was a tenant qua property in question as also admitted by her son/legal heir (respondent no.1). Further, if she parted possession in favour of father of the respondent no.2, then father of the respondent no.2 would became only a sub-tenant qua property in question, not a trespasser.”

16. In view of the same, the Court holds that the petitioner is owner of the



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tenanted premises and he is the landlord in respect of the tenanted premises, qua the respondents.”

[Emphasis Supplied]

6. It is settled law that an Eviction Order binds the tenant and all those claiming through such tenant. Clearly, the Petitioner is such a person.

7. However, the challenge to the Impugned Order by the Petitioner has been restricted before this Court to another issue. Learned Counsel for the Petitioner submits that he is not a tenant but has acquired ownership rights in the subject premises i.e., two shops on ground floor forming part of property no. 4226, Ward No. XV, Tel Mandi, Pahar Ganj, New Delhi-110055 as shown in red colour in the site plan [hereinafter referred to as “subject premises”].

7.1 Learned Counsel for the Petitioner submits that he has already filed a Civil Suit being CS SCJ 3573/2019 captioned ***Dalip Singh v. Durga Prasad Sharma & Anr.*** which is pending adjudication before Tis Hazari Courts, Delhi [hereinafter referred to as ‘Civil Suit’].

8. The contention of the Petitioner to the extent of ownership right of the Petitioner is refuted by the learned Counsel for Respondent No.1/landlord. It is reiterated that the Respondent No.1/landlord has acquired ownership rights by virtue of a registered sale deed. It is further contended that the Respondent No.1/landlord is not aware of the Civil Suit.

9. The record reflects that the Eviction Petition was filed by the Respondent No.1/landlord in the year 2013. The matter was adjudicated for six years and decided by the Impugned Order on 30.01.2019. Concededly, the Civil Suit was filed after the Impugned Order was passed.



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9.1 An examination of the order dated 10.02.2025 passed by the learned Trial Court in the Civil Suit, a copy of which has been handed across to the Court today, shows that after the suit was filed, it was adjourned *sine die* by the Court by an order dated 14.09.2022. Subsequently, after the passing of the order dated 31.01.2025 by this Court, this suit has been revived by the Petitioner. It is apposite to extract the order dated 10.02.2025 in the Civil Suit which reflects this:

“Heard. Perused.

It is submitted that the present suit was adjourned sine-die vide order dated 14.09.2022. It is also submitted that the Hon'ble High Court of Delhi is still seized with the RC REV No.362/2019 and CM APPL. 27114/2019 filed by the plaintiff against the eviction order passed by the Ld. ARC Court which is listed for 11.02.2025 before the Hon'ble High Court of Delhi. It is also submitted that the Hon'ble High of Delhi had orally observed during the proceedings therein that the plaintiff should pursue the present suit on its merits.

Heard.

It is submitted by the Ld. Counsel for plaintiff that fresh address of defendant no. 1 was furnished on 21.04.2022 and till date, defendant no.1 has not been served.

On taking steps i.e. whatsapp mobile phone number or e-mail I.D. of defendant no. 1 accompanied with an affidavit and PF/RC, issue summons for settlement of issues to the defendant no.1 (on the fresh address filed on 21.04.2022) for NDOH.

On filing of PF, issue notice to defendant no.2, returnable for 22.04.2025.

Application is disposed off.

Suit is hereby restored to its original number...”

[Emphasis supplied]

10. It is no longer *res integra* that an Eviction Petition or even a Revision Petition does not decide a title dispute between parties. In any



Eviction Petition, the title is not germane in the strict sense. In the case of ***Kanaklata Das v. Naba Kumar Das***¹, the Supreme Court has held that in an Eviction Petition, landlord and tenant are the only necessary parties for the decision of the suit and the question of title to the tenanted premises is not germane for the decision of the Eviction Petition.

“11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

xxx xxx xxx xxx xxx

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See *Ranbir Singh v. Asharfi Lal* [*Ranbir Singh v. Asharfi Lal*, (1995) 6 SCC 580] .)

*11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See *Ruma Chakraborty v. Sudha Rani Banerjee* [*Ruma Chakraborty v. Sudha Rani Banerjee*, (2005) 8 SCC 140] .)*

xxx xxx xxx xxx xxx

11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant.

¹ (2018) 2 SCC 352



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In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See Kasthuri Radhakrishnan v. M. Chinnian [Kasthuri Radhakrishnan v. M. Chinnian, (2016) 3 SCC 296 : (2016) 2 SCC (Civ) 331].

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13. In our considered opinion, Respondent 1, who claims to be the co-sharer or/and co-owner with the plaintiff-appellants herein of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against Respondents 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of Respondent 1.”

[Emphasis Supplied]

10.1 The Supreme Court in the case of ***Tribhuvanshankar vs Amrutlal***² has held that in case where a landlord initiates eviction proceedings against the tenant based on landlord-tenant relationship the scope of the proceedings are very limited and the question of title cannot be adjudicated. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case. The relevant extract is set out below:

“28. At this juncture, we may fruitfully refer to the principles stated in Ranbir Singh v. Asharfi Lal [(1995) 6 SCC 580]. In the said case the Court was dealing with the case instituted by the landlord under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had set aside the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. While advertng to the issue of title the Court in Ranbir Singh [(1995) 6 SCC 580] ruled that in a case where a plaintiff

² (2014) 2 SCC 788



institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

29. In the said case the learned Judges referred to the authority in *LIC v. India Automobiles & Co.* [(1990) 4 SCC 286] wherein the Court had observed that: (*Ranbir Singh case* [(1995) 6 SCC 580] , SCC pp. 585-86, para 9)

“9. ... in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case.”

[Emphasis Supplied]

10.2 A Coordinate Bench of this Court in the case of ***Ram Chander v. Ram Pyari***³, has held that the title of the party is always decided through civil proceedings and the claim of the ownership over the tenanted premises can be vindicated by way of filing civil suit and not in eviction proceedings.

“3. ...The authority of the Supreme Court relied upon by the learned counsel for the petitioner in *Manoj Kumar v. Bihari Lal (Dead)* by LRs, 91 (2001) Delhi Law Times 25(SC) is not at all applicable in the given facts and circumstances of the case *as any person who denies to be a tenant*

³ 2004 SCC OnLine Del 18



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 proceedings.”

[Emphasis Supplied]

11. In order to make out a case under Section 14(1)(e) read with Section 25B of the DRC Act, the landlord is required to prima facie show the following:

- (i) Existence of landlord/tenant relationship;
- (ii) Existence of bona fide need on the part of the landlord and;
- (iii) Non-availability of reasonable suitable alternative accommodation with the landlord.

12. The Respondent No.1/landlord has successfully proved all three ingredients before the learned Trial Court, which lead to the passing of the Impugned Order. Concededly, the original tenant – Respondent No.2 has not challenged the Impugned Order. The challenge by the Petitioner is only in view of the fact that the Petitioner claims ownership of the suit premises. In view of the settled legal position, this challenge cannot be decided in these proceedings. In any event, the Civil Suit has been filed by the Petitioner, *albeit* clearly after the Eviction Order was passed.

13. Concededly, thus, the Petitioner has taken steps qua his challenge to the title of the Respondent No.1/landlord before the Civil Court. In view of the settled legal position, the remedy of the Petitioner does not lie before this Court.

14. In view of the foregoing, the Petition and pending Application stands disposed of. The Petitioner is however at liberty to take steps in



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accordance with law with respect to his challenge in the Civil Suit. The rights and contentions of both parties are left open in this regard.

15. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 19, 2025/r/pa/jn

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