



2025:DHC:353



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

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Reserved on: 18th December 2024

Pronounced on: 23rd January 2025

+ **CM(M) 595/2017 & CM APPL. 20278/2017**

**SH. SRI RAM GUPTA (SINCE DECEASED) THROUGH HIS
LEGAL HEIRS SH. SUIMT GUPTA & ORS.**

.....Petitioners

Through: Mr. Rajesh Banati, Mr. Ashish
Sareen, Mr. Harsh Gupta, Mr.
Aditya Mishra and Mr. Ankit
Banati, Advocates.

Versus

LALIT KUMAR & ORS.

.....Respondents

Through: Mr. Vipin Nandwani, Adv. for
R-1.
Mr. Ayush and Mr. Nitin
Kumar, Advs. For R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. Present petition under Article 227 of the Constitution of India impugns the order dated 03.04.2017, passed by the court of learned District & Sessions Judge, South District, Saket Courts in RCT No. 42/2016, titled as “Shri Lalit Kumar Vs. Shri Sri Ram Gupta & Ors.”

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By: SUNITA KUMARI

Signing Date: 23.01.2025

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2. Brief background of the case is that petitioner Sh. Sri Ram Gupta, now deceased, owner of superstructure of the building bearing No. 8, Main Market, Yusuf Sarai, New Delhi, filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1995 [**“DRC Act”**] against the tenants i.e. respondents No. 2 & 3 in the year 2012.
3. Respondents No. 2 & 3 filed an application for leave to defend, which was allowed by the Court. Thereafter, both parties completed their respective evidence and the matter was listed for final arguments.
4. Respondent No. 1 filed an application under Order 1 Rule 10 CPC for impleadment in the eviction proceedings.
5. Vide order dated 25.05.2016, learned Additional Rent Controller [**“ARC”**] (South) Saket, dismissed the application moved by respondent No. 1 under Order I Rule 10 CPC.
6. Against the said order, respondent No. 1 preferred an appeal under Section 38 of the DRC Act.
7. Learned District & Sessions Judge, South, Saket, vide judgment dated 03.04.2017, set aside the order of learned ARC and allowed the application under Order I Rule 10 CPC of respondent No. 1.
8. Feeling aggrieved, petitioner has preferred the present petition.
9. Learned counsel for petitioner submits that respondent No.1 claims himself to be the co-owner of the suit property/superstructure and even though, the same is completely false, but otherwise also, Rent Controller has no power to decide the dispute of ownership/title in the eviction proceedings. It is submitted that part of land in the suit



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property was given on perpetual lease to Sh. Puran Chand with permission to raise construction thereon with further rights to sell, mortgage etc. Sh. Puran Chand raised construction on the suit property through his own funds and had let out various portions to different tenants. It is submitted that perpetual lease deed mentions that the ownership of land will remain with the first party and the second party shall have the possession over the same, and therefore, the successors and representatives of the lessor and the lessee shall be bound by the terms of the lease deed. It is further submitted that respondent No. 1 has admitted this position in its application under Order I Rule 10 CPC, and therefore, has no right to be impleaded in the eviction petition.

10. It is argued that learned District Judge has failed to appreciate that respondent No. 1 has already filed independent proceedings against the petitioner being Civil Suit No. No. 1148/2019 at Saket Court for possession and permanent injunction, which is pending adjudication, and therefore, the rights of respondent No. 1 can be adjudicated in the civil suit and not in the eviction proceedings pending before the Rent Controller.

11. It is further argued that in an eviction petition, the only point of adjudication is whether there exists a relationship of landlord and tenant between the petitioner and respondents No. 2 & 3 and whether the requirement of petitioner is bona fide. In the present case, respondents No. 2 & 3 have admitted the relationship of landlord and tenant in their written statement. It is submitted that respondent No. 1



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has filed the present application with clear intent to delay the eviction proceedings and to resist the eviction of respondents No. 2 & 3 from the suit premises. In support of his contention, learned counsel places strong reliance on the following decisions:-

- i) **Kanaklata Dass & Ors. Vs. Naba Kumar Dass & Ors. (2018) 2 SCC 352;**
- ii) **Smt. Shanti Sharma & Ors. Vs. Smt. Ved Prabha & Ors., AIR 1987 SC 2028.**

12. Per contra, learned counsel for respondent No. 1 submits that respondent No. 1 is the co-owner of the property. It is submitted that the late father of respondent No. 1 along with his two brothers namely late Sh. Lal Singh and late Sh. Ram Mehar were the recorded owners of the said land, who inherited the same from Sh. Dhan Singh (grandfather of respondent No. 1). It is further submitted that Dhan Singh during his lifetime, had let out the property to Puran Chand and after the demise of Dhan Singh, Puran Chand attorned to Sh. Mool Chand, Sh. Lal Singh and Sh. Ram Mehar. It is further submitted that Puran Chand without the consent of the landlord, had let out some portions out of the said property to various tenants, which is the subject matter of the eviction petition.

13. Learned Rent Controller, vide order dated 25.05.2016, was of the view that Court cannot allow the petition under Section 14 (1)(e) of the DRC Act to be converted into a regular title suit and allowing the application in question, would tantamount to opening the Pandora Box of allegations and counter-allegations qua the title of the premises



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in question and would defeat the scheme of Section 25-B of the DRC Act, and thus, dismissed the application under Order I Rule 10 CPC.

14. However, learned District Judge while disposing the appeal was of the view that question of ownership is a fundamental issue to be determined by the learned Rent Controller while determining whether the petition is to be allowed or not. It took the view that if the Rent Controller was to return a finding upholding the claim of respondent No. 1 to the ownership of the premises, the rights of appellant would be prejudicially affected. The appeal was allowed holding that participation of respondent No. 1 in the proceedings would assist the Rent Controller in coming to a right conclusion on the question whether petitioner is the owner of the premises in question, and therefore, entitled to seek eviction of respondents No. 2 & 3 from the suit premises in that capacity.

15. The short question which requires consideration in this petition is whether the learned District Judge was justified in allowing the application filed by respondent No. 1 under Order I Rule 10 of the Code, thereby, permitting him to be a party to the eviction petition filed by appellant against respondents No. 2 to 5.

16. It is no more *res-integra* that a person claiming title adversely to the landlord is not a necessary or a proper party to the petition. The Hon'ble Supreme Court in the case of Kanaklata Dass (*supra*), laid down the principles of law in this regard. In the said case, appellants filed a suit for ejectment against respondents No. 2 to 5 at Calcutta for their eviction on the grounds of non-payment of rent, subletting and



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bona fide need of the suit premises for their personal use under the provisions of West Bengal Tenancy Act. In the ejectment suit, respondent No. 1 filed an application under Order I Rule 10 (2) of the Code praying that he may be allowed to be a co-plaintiff along with the appellants. He sought his impleadment alleging that he is member of the appellants' family and being so, has a right, title and interest in the suit premises. It was essentially on these allegations and with a view to protect his interest in the suit premises, he sought his impleadment in the suit.

17. The principles of law as laid down in the said decision are extracted below:-

“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.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds.

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] .



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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] .)

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See *Udit Narain Singh Malpaharia v. Board of Revenue* [*Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1963 SC 786] .)

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. 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. Chinniyan* [*Kasthuri Radhakrishnan v. M. Chinniyan*, (2016) 3 SCC 296 : (2016) 2 SCC (Civ) 331] .)....

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.

14. In the eviction suit, the question of title or the extent of the shares held by the appellants and Respondent 1 against each other in the suit premises cannot be decided and nor can be made the subject-matter for its determination.

15. The reason being that this is not a suit between the appellant-plaintiffs and Respondent 1 where their inter se rights relating to the suit premises can be gone into but rather is an ejectment suit filed by the appellants against Respondents 2 to 5 for their eviction from the suit premises.

16. Therefore, the lis in the suit is between the appellants on the one hand and Respondents 2 to 5 on the other hand and the



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decision in the suit would depend upon the question as to whether there exists any relationship of landlord and tenant between the appellants and Respondents 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of Respondents 2 to 5 are established or not. For deciding these two main questions, the presence of Respondent 1 is not necessary.

17. For these reasons, we are of the considered opinion that Respondent 1 is neither a necessary and nor a proper party in the suit.”

18. In view of the principles as laid down above, respondent No. 1, who claims title to the suit property, is not a necessary and proper party in the eviction proceedings as the question of title is not to be decided by the Rent Controller in the eviction petition. The presence of respondent No. 1 is not necessary for effective decision in the eviction petition. Notably, respondent No. 1 filed independent proceedings against the petitioner bearing Civil Suit No. 1148/2019 at Saket Court for possession and permanent injunction. The rights of respondent No. 1 can be decided by the civil court and not in the eviction petition pending before the Rent Controller.

19. For the reasons stated above, the Court is of the considered opinion that respondent is neither a necessary nor a proper party in the eviction proceedings.

20. In view of the aforesaid discussion, the petition succeeds and is allowed. The impugned order dated 03.04.2017 is set aside and the order dated 25.05.2016 passed by the learned Additional Rent Controller is restored. As a consequence, application filed by respondent No. 1 under Order I Rule 10 of the Code in the aforementioned eviction petition is dismissed. Since the eviction petition



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was filed in the year 2012 and the decision on the petition has been considerably delayed, trial court is directed to decide the eviction petition on merits in accordance with law expeditiously.

RAVINDER DUDEJA, J.

23 JANUARY, 2025/*RM*

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