

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC.REV. No.221/2013

DATE OF DECISION : 19th December, 2014

NITIN SHARMA

.....Petitioner

Through: Mr. D. S. Dalal, Advocate.

VERSUS

SMT. RAJ RANI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. On the last date of hearing, the following order was passed:-

“1. Respondent appears in person and seeks adjournment. Though there is no ground to grant adjournment simply because the counsel for the respondent has chosen not to come and also considering the fact that it is the respondent who had sought adjournment on the last two occasions to file the counter-affidavit, this petition is adjourned subject to payment of costs of Rs.5000/- to the petitioner within a period of four weeks from today.

2. List on 19th December, 2014.

3. It is made clear that no adjournment will be granted on the next date of hearing.”

2. Counsel for the petitioner states that costs have not been paid in terms of the last order. There is also no representation for the respondent although it is 1.00 P.M. I have therefore heard the counsel for the petitioner and after perusing the record I am proceeding to decide the petition.

3. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is filed by the petitioner/landlord impugning the judgment of the Additional Rent Controller dated 1.2.2013 dismissing the bonafide necessity eviction petition filed under Section 14(1)(e) of the Act with respect to one shop in the tenancy of the respondent situated on the ground floor of property no.3172, Punjabi Basti, Subzi Mandi, Delhi as shown in red colour in the site plan filed with eviction petition.

4. The case of the petitioner/landlord was that he was the owner of the suit shop inasmuch as the property was initially owned by his grandfather Sh. Sunder Dass and the grandfather Sh. Sunder Dass executed his Will dated 24.12.1997 in favour of the petitioner/landlord making him the owner of the suit property. The petitioner/landlord stated that respondent/tenant had also filed a suit for permanent injunction against the grandfather Sh. Sunder Dass and in which the present petitioner was made as a defendant and the respondent made a statement in the said suit that she would have no objection in making the payment of the rent to the petitioner. Petitioner/landlord prayed for the eviction of the respondent/tenant from the suit premises so as to carry on his office for finance in the tenanted premises. The petitioner, a man of 30 years, had worked with ICICI Bank in the loan division of the bank from January 2005 to August 2007. Petitioner/landlord pleaded that he had no other alternative suitable accommodation.

5. After grant of leave to defend, the respondent/tenant filed the written statement and disputed the ownership of the petitioner/landlord and also stated that the petitioner/landlord had two other alternative suitable premises being property no.2642, Lambi Gali, Punjabi Basti, Delhi and two shops in property no.2666, Basti Punjabi, Delhi.

6. Petitioner/landlord examined himself as PW-1 and proved various documents and the respondent also stood in the witness box as RW-1 and proved two documents. These factual aspects of the leading of evidence are noted in paras 4 to 5B of the impugned judgment dated 1.2.2013 and which read as under:-

“4. The petitioner has examined only one witness in support of his case. Petitioner himself stepped into witness box as PW-1 and deposed on the lines of the petition. Further he proved following documents :

(i) Registered Will dt. 24.12.1997

- Ex. PW1/1

- (ii) Site plan of tenanted premises - Ex. PW1/2
- (iii) Order sheets in case titled as Smt. Raj Rani Vs. Sh. Sunder Dass from 2.08.02 to 7.07.11 - Ex. PW1/3
- (iv) Order dt. 05.03.03 in case titled as Smt. Raj Rani Vs. Sh. Sunder Dass - Ex. PW1/4
- (v) Notice dt. 08.06.09 - Ex. PW1/5
- (vi) Copy of power of attorney - Mark A
- (vii) Copy of Will - Mark B
- (viii) Copy of pension letter - Mark C

5. On her turn, the respondent produced two witnesses in defence.

5A. Respondent herself stepped into witness box as RW-1 and deposed on the lines of her written statement. Further she proved following documents :

- (i) Reply to notice dt. 08.06.2009 - Ex. DW1/2
- (ii) Postal receipt - Ex. DW1/3

5B. RW-2, Rakesh Kumar, son of the respondent, also deposed on the lines of written statement.”

7. The Additional Rent Controller by the impugned judgment has held the aspect of ownership in favour of the petitioner/landlord in paras 10 and 11 of the impugned judgment, and since I completely agree with the conclusions in those paras, I adapt the same and reproduce the said paras as under:-

“10. Ld. Counsel for the respondent argued that petitioner is not the owner of the tenanted premises and he has not produced any title document to show his or his predecessor-ininterest/grandfather’s ownership rights over the tenanted premises. On the other hand, PW1 deposed that property bearing no. 3172, Punjabi Basti, Subzi Mandi, Delhi, of which tenanted premises is a part, was bequeathed by his grandfather in his favour vide registered Will dt. 24.12.1997 Ex. PW1/1. Further plaintiff has placed on record documents Ex. PW1/X which is order passed by Smt. Manju Goel, Ld. Civil Judge, site plan and award passed by arbitrator Sh. Raja Inder Singh, whereby the suit property came to the share of grandfather of the plaintiff. Though, it has been admitted by PW-1 and it is evident that award is not a registered document but at the same time the defendant has not been able to show as to who else was the owner of the property.

11. The concept of ownership in a landlord-tenant litigation governed by rent control law has to be distinguished from the one in a title suit. Ownership is a relative term, the import whereof depends on the context in which it is used. The word "owner" is not used in the Act in the context of an absolute owner. In this regard reference can be had to the decision of the Apex Court in "Shanti Sharma & Ors. Vs. Ved Prabha & Ors., AIR 1987 SC 2028", wherein it was held that:

“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 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 terms from the Govt. 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 Sec. 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 bonafide 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 bonafide 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.”

In another case law, "Rajender Kumar Sharma & Ors. Vs. Leela Wati & others, 155 (2008) DLT 383", it was laid down that a landlord is not required to prove absolute ownership as required under Transfer of Property Act and he is required to show only that he is more than a tenant. Same was the ratio of decision given in "Jiwan Lal Vs. Gurdial Kaur & Ors. 1995 RLR

162.” Further, the High Court of Delhi made important observations in the decision given in the case titled as “Ramesh Chand Vs. Uganti Devi, 157 (2009) DLT 450” in following terms:

“7. It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14 (1) (e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly.....”

In view of above, it may be held that petitioner has satisfied this court about his ownership rights over tenanted premises.” (underlining added)

8. The reason why the Additional Rent Controller dismissed the bonafide necessity eviction petition was by giving the finding that the petitioner/landlord had with him two other alternative suitable premises being property no.2642, Lambi Gali, Punjabi Basti, Delhi and two shops in property no.2666, Basti Punjabi, Delhi. Let us examine this issue.

9. In my opinion, the Additional Rent Controller has fallen into a clear cut error in holding that the aforesaid two property nos.2462 and 2666 are alternative suitable accommodations, and the reasons for the same are given hereunder:-

(i) So far as property no.2642 is concerned, this is a residential house and therefore these premises cannot be alternative suitable premises with respect to the need for a shop for opening of an office for finance. That the property no.2642 is a residential property is deposed by the petitioner/landlord in his evidence and there is no cross-examination by the respondent/tenant that the property no.2642 is not a residential property. In this view of the matter,

Additional Rent Controller has erred in holding that property no.2642 is an alternative suitable accommodation.

(ii) So far as the other property no.2666 is concerned, it has been deposed by the petitioner/landlord that this property was not his self-acquired property but it was an ancestral property which had devolved upon him i.e the property had belonged to three persons i.e his father, the petitioner/landlord and the brother of the petitioner/landlord. Petitioner/landlord filed and proved in his evidence as Ex.PW1/D3 and Ex.PW1/D4, the documents whereby the suit property was transferred to the brother of the petitioner/landlord. Once the property no.2666 was shown by means of documentation not to belong to the petitioner/landlord, but to his brother, the same cannot be said to be alternative suitable premises. A tenant has no right to dispute transactions which have taken place inter se the family members once the family members themselves do not dispute the transaction. Tenants cannot create disputes between the family members when no disputes exist with respect to the transactions of the transfer of the property. Therefore the Additional Rent Controller has erred in holding that the premises no.2666 which had two shops would amount to alternative suitable accommodation.

10. In this view of the matter, the impugned judgment of the Additional Rent Controller dated 1.2.2013 is set aside and the bonafide necessity eviction petition is decreed with respect to the tenanted premises being one shop on the ground floor of property no.3172, Punjabi Basti, Subzi Mandi, Delhi and as shown in red colour in site plan Ex.PW1/2. Respondent/tenant is granted the statutory period of six months to vacate the suit/tenanted premises. No costs.

DECEMBER 19, 2014

Sd/-
VALMIKI J. MEHTA, J.