

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Ex F.A 7/2011

Reserved on : 11.02.2011

Date of Decision : 17.02.2011

SATNAM ANAND & ANR. Appellants
Through: Mr. S.K. Duggal, Advocate.

Versus

GURBACHAN SINGH Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

MOOL CHAND GARG,J

1. This appeal arises out of an order dated 19.01.2011 passed by the learned Additional District Judge in Execution case No.54/2010 in E-477/2009 whereby the learned Judge has dismissed the objections filed by the appellant under Order XLVII read with Order XXI Rule 29 CPC and the application under Section 151 CPC seeking setting aside of the eviction order dated 03.02.2010 passed against the appellant. The appellant, who is admittedly a tenant in the suit property filed objections to the execution after having been unsuccessful in obtaining leave to defend and failing in his revision petition against order of eviction passed against him in the aforesaid order.

2. The respondent, Gurbachan Singh succeeded to the estate of Late Smt. Amarjeet Kaur and had been claiming that the shop in question devolved upon him and his two sons and he being one of the co-owners filed eviction petition as stated above against the appellant under Section 14(1)(e) of Delhi

Rent Control Act (for short 'DRC Act') in which the court did not allow the appellants to contest the petition and dismissed their application dated 23.09.2009 vide its order dated 03.02.2010 and passed an eviction order against the appellants.

3. After losing in the eviction petition, the appellant filed objections in the execution petition which was filed for his eviction based upon the eviction order passed against him challenging the grant of letters of administration dated 23.08.1993 which is the spring board of the claim of ownership by the respondent alleging that letters of administration were obtained by them by fraud perpetrated by Sh. Avtar Singh, since deceased, and in respect thereof, the appellants also filed petition dated 05.07.2010 for revocation of the letter of Administration dated 23.08.93 under Section 263 of the Indian Succession Act in the Ld. Court of Sh. Rajinder Kumar Shastri, ADJ, Delhi. It was further stated that the eviction order has been obtained by playing a calculated fraud on the Court in as much as respondent was not one of the co-owners of the tenanted shop in dispute and he could not have filed petition under Section 14(1)(e) of the DRC Act.

4. The appellants further argued that Sh. Avtar Singh, propounder of the Will was not the son of Sh. Amar Singh Sabharwal but was in fact his Manager. Later event further revealed that Sh. Avtar Singh was in fact the son of Sh. Inder Singh. The appellants also stated that these facts were not known to the appellants at that time when they moved application under Section 25 (B) (4) of DRC Act dated 23.09.2009 in the aforesaid eviction petition seeking leave of the Court to defend the aforesaid eviction petition. The appellants claimed that they became aware about these startling facts on 05th May, 2010 when they went to Patiala House Court and met one Sh. Amrik Singh who informed him that it was he who was the son of Sh. Amar Singh Sabharwal. He further informed the appellants that Sh. Amar Singh Sabharwal had left behind two daughters apart from the said Sh. Amrik Singh and that Sh. Avtar Singh was not the son of Sh. Amar Singh Sabharwal nor Smt. Amarjeet Kaur was the daughter of Sh. Amar Singh Sabharwal and further it came to the knowledge of the appellants that said Sh. Amrik Singh had filed application under Section 264 and 296 of the Indian Succession Act, 1925 dated 25.03.2000.

5. The appellants also objected that the Will in question was unregistered which is always looked upon with an eye of suspicion and in this case, this suspicion was further augmented by the fact that there was interpolation in

the alleged Will. It was further stated that the para (ii) of the said Will dated 06.09.89 reads as under :

"There are (eight)/nine one to Ghansham Dass sold shops facing the main side of the Chowk Military road in the aforesaid plot, which shops are on rent to the tenants".

However, the Will on the basis of which letter of administration has been obtained does not bear these words "Nine one to Ghansham Dass sold."

6. The appellants further stated that letter of administration granted by the District Judge, has also been relied upon by the Lower Court in its eviction order dated 03.02.10 and it was mainly on the basis of that letter of administration that the Lower Court had held that respondent was the owner of the said property and the ground of bonafide requirement under Section 14(1)(e) of the DRC Act was available to him. But, according to the appellant, if that letter of administration was struck down, respondent would be completely knocked out and his eviction petition will not be maintainable. The appellants further objected that the impugned eviction order dated 03.02.2010 otherwise also was illegal, void, invalid and nonest in the eyes of law and was therefore liable to be set aside and the objections be accepted.

7. Respondent on the other hand submitted that it was a matter of record that he obtained eviction order dated 03.02.2010 on merit on the basis of tenancy deed dated 02.06.1985 which was admitted document between the parties also the appellants were paying rent to the respondent and never raised any question of title. Further prior to filing eviction petition the appellants had filed DR No. 74/99 in New No. 697/2000 for deposit of rent, the appellants were in arrears of rent for the period of August, 1993 to August, 1998 till date including the period of 6 months so granted. Total arrears of `52,450/with interest @ 18%. The appellants also filed Petition No. 44/06/05 under Section 44(8) DRC Act for grant of permission to carry out repairs at the cost of the respondent for the work of interior and decoration of the shop in the garb of repair, the same was dismissed in default and never got restored.

8. The respondent then filed petition No. E-477/09 under Section 14(1)(e) DRC Act wherein the appellants filed leave to defend application which was rejected on merits by the Court while passing eviction orders dated 03.02.2010. The appellants further filed Rent Revision No. 46/2010 when

the High Court directed appellants to pay the entire arrears of rent which the appellants undertook to pay but not complied. Further the appellants sought the extension of period from 6 month to one year which was declined on failure to pay the arrears of rent and the revision was dismissed on merit on 20.05.2010 vide order dated 20.05.2010.

9. The respondent further stated that in tenancy deed dated 02.06.1985 the appellant's husband/father admitted the ownership rights of the petitioner and once landlord tenant relation is established the appellant's being tenants are statutory and on the basis of document they are precluded and stopped challenging the title of the landlord by the principles of "Estoppel". Further the factum of ownership admitted in tenancy deed is further correlated in the Will dated 06.09.1989 in para 8 wherein the shop in question is given to Smt. Amarjit Kaur which is adjudicated upon in probate case no. 172/91 and declared genuine vide order dated 02.03.1993 and letter of administration 93 was to Avtar Singh.

10. The respondent also stated MOU dated 22.05.2008 was the latest document wherein the right of Smt. Amarjit Kaur in respect to shop in question was admitted by all the legal heirs of Late Sh. Amar Singh Sabharwal and there was no objection from any of the legal heirs of Late Sh. Amar Singh Sabharwal. The respondent denied that there was interpolation of Will dated 06.09.1989.

11. The Id. ADJ after hearing the parties, dismissed the objections filed by the appellants on the ground that the objections filed by the appellants were frivolous. The relevant extract is reproduced hereunder:-.

"This court has to function under the provision of DRC Act. It is not in dispute that a tenancy deed dated 02.06.1985 was executed between the DH (his wife) and JD and the JD was paying rent to the DH and never raised any question of title. The JD has also filed Rent Deposit petition No. 74/99 for deposit of rent and stated the DH as his landlord. Not only this the JD has also filed a petition u/s 44 (8) of DRC Act for grant of permission to carrying out repair at the cost of the DH. All these facts shows that there was an admitted relationship of landlord & tenant between the parties. However, at this stage when an eviction order already passed against the JD, he in order to stop the execution of eviction order, bring new facts that the petitioner has wrongly represented himself as owner of suit property. It is well settled law that the landlord should be more than a tenant and a landlord is not required to prove the absolute ownership. It was held in Ramesh

Chand Vs. Uganti Devi, 157 (2009) DLT 450 by the Hon'ble High Court of Delhi that, "It is settled proposition 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".¹¹ It was held in Rajender Kumar Sharma & others Vs. Leela Wati & ors., 155 (2008) Delhi Law Times 383 that "Landlord is not supposed to prove absolute ownership as required under Transfer of Property Act, he is required to show only that he is more than tenant In view of the above discussions and relied upon the above said rulings, I find the objections and contentions of the objector are frivolous. "

12. I have heard learned counsel for the petitioner who is admittedly a tenant and is trying to dispute the rights of the respondent who were the landlords of the suit property somehow to go out of the eviction order. It may be that there were some lacuna and defect in the grant of probate but that lacuna or defect is not available to the tenant. That could be the cause of dispute between the heirs of the deceased or at the most can be the basis of filing of a revocation petition by one of the legal heirs under Section 263 of the Indian Succession Act. However, such defect would never permit a tenant to rake up issues to question the title of the landlord in eviction petition. This is a clear view taken by this Court in the case of Rajender Kumar Sharma & Ors. Vs. Leela Wati 155 (2008) DLT 383 and Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 450. To make a reference, in the case of Ramesh Chand Vs. Uganti Devi (Supra) which was a case where revision petition was filed by the tenant opposing the eviction order which was passed against him on the ground of bonafide requirement at the instance of respondent-landlord and objections were raised that the respondent was

owner of various properties, it has been observed by learned Single Judge of this Court that:

“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. I, therefore, find that there was no infirmity in the order of learned ARC in this respect. As far as letting purpose is concerned, in view of the judgment of Hon'ble Supreme Court in Satyawati Sharma (dead by Lrs. v. U.O.I. and Anr., AIR 2008 SC 3148, this ground is not available to the petitioner.”

13. In view of that, the appeal as filed by the appellant per se is not maintainable. Accordingly, the appeal is dismissed with no order as to costs.
CM No.2932/2011

Dismissed as infructuous.

Sd/-
MOOL CHAND GARG, J