

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC REV No. 246/2013

DATE OF DECISION : 11th July , 2014

SMT. SAROJ KUMARI

.....Revisionist

Through: Mr. Vivek Sharma, Advocate.

VERSUS

SH. RAMESH CHAND VERMA

..... Respondent

Through: Mr. Ajit Pratap Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25B of the Delhi Rent Control Act, 1958 is filed against the judgment of the Additional Rent Controller dated 29.4.2013 by which the leave to defend application filed by the petitioner/tenant has been dismissed.

2. The only issue which is argued before this Court, and which was also the main issue urged before the court below was that whether the respondent is the owner/landlord of the suit premises. The issue with respect to whether the respondent herein, petitioner before the trial court, was the owner/landlord arose inasmuch as respondent herein (landlord) had purchased the suit property from the petitioner herein, respondent before the trial court. The case of the respondent herein before the Additional Rent Controller was that petitioner herein had executed the usual documents being the agreement to sell, power of attorney, Will etc transferring rights in the suit property in favour of the present respondent on 3.4.2001. These documents including the general power of attorney which was duly registered with the office of the Sub Registrar, Delhi. The petitioner herein admittedly handed over all the title documents of the suit property to the respondent herein simultaneous to the execution of the documents. In the

general power of attorney which is registered in the office of the Sub Registrar, signatures of the husband of the present petitioner are stated to exist.

3. I do not find any error in the conclusion of the trial court that the petitioner herein had sold rights in the suit property to the respondent herein by means of the documentation dated 3.4.2001. I may note that Section 53A of the Transfer of Property Act, 1882 alongwith the connected provisions of the Stamp Act, 1899 and the Registration Act, 1908 were amended by Act 48 of the year 2001 which became applicable w.e.f 25.9.2001 only. The documents executed prior to this date did not require any stamping or registration in terms of the subsequently amended provisions and the observations in the judgment of the Supreme Court in the case of Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. (183) 2011 DLT 1 (SC). In fact, Supreme Court in the judgment in the case of Suraj Lamps & Industries Pvt. Ltd. (supra) lays down the ratio and protects the documents executed prior to 2001 by observing that the agreement to sell in the nature of part performance will have the necessary benefit in terms of provision of Section 53A of the Transfer of Property Act, 1882 and also that the power of attorney given for consideration would be irrevocable in terms of Section 202 of the Contract Act, 1872.

4. In view of the above, it is clear that the petitioner herein had transferred rights in the suit property to the respondent herein and the respondent herein was therefore in terms of the rent agreement of the same date entitled to evict the petitioner herein. There is nothing unusual if the petitioner herein was continued to allow to stay in the suit property even after rights in the property were transferred inasmuch as the rights of the respondent herein were protected in terms of the rent deed executed holding the possession of the petitioner herein to be of the tenant.

5. The defence of the present petitioner stated in the leave to defend application that the documents were got executed by misrepresentation is a moonshine defence because not only the power of attorney is registered, parties are not illiterate villagers who did not know what they were doing. Also, the stand that the property was only mortgaged to the respondent by the petitioner in terms of the documentation dated 3.4.2001 and that entire mortgage amount stood paid is ex facie baseless not only because the proof of alleged property is not stated, but also if amount

was repaid the original title documents would not be with the respondent herein.

6. I may note that during the course of arguments, counsel for the petitioner before this Court stated that petitioner has filed a suit for cancellation of the documents dated 3.4.2001, however, admittedly that suit for cancellation of the documents dated 3.4.2001 has been filed as late as in the year 2012 and after the present eviction petition was instituted by the respondent herein against the petitioner. Clearly therefore once the documents dated 3.4.2001 remained in force for over a decade, there is no reason for the Court to disbelieve the same. Challenge to the documentation dated 3.4.2001 in the year 2012 would be barred by Article 59 of the Limitation Act, 1963 which requires that a suit to challenge documents has to be filed in three years

7. In view of the above, there is no merit in this rent control revision, and the same is therefore dismissed, leaving the parties to bear their own costs.

JULY 11, 2014

Sd/-
VALMIKI J. MEHTA, J.