

IN THE COURT OF MS. SHEFALI BARNALA TANDON:
ADMINISTRATIVE CIVIL JUDGE- CUM- ADDITIONAL RENT
CONTROLLER (CENTRAL) : DELHI

E-78152/16 & E-77468/16

In the matter of:-

1. Sh. N.K. Goel,
S/o Late Sh. D.C. Goel,
R/o 9958/B, Gali No. 4,
New Rohak Road, Sarai Rohilla, Karol Bagh,
Delhi.
2. Sh. R.K. Goel,
S/o Late Sh. D.C. Goel,
R/o B-2/12-B, Lawrence Road,
Delhi-110035.
3. Sh. Y.K. Goel,
S/o Late Sh. D.C. Goel,
R/o. 151, Sapna Ghar Society,
Plot No. 6-B, Sector-11,
Dwarka, Delhi-110075.

....Petitioners

Versus

1. Sh. Vinod Kumar Meena,
2. Sh. Manoj Kumar Meena,

Both Sons of Late Sh. Kali Ram,
and residents of 9958/B, Gali No. 4,
New Rohtak Road, Sarai Rohilla,
Karol Bagh, Delhi.

And also at 200,
Vivekanand Puri,
Delhi-110007.

....Respondents

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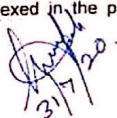
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Date of Institution : 05.05.2014 (E-78152/16)
: 07.01.2015 (E-77468/16)
Date of order when reserved : 17.07.2020
Date of order when announced : 31.07.2020

JUDGMENT :

1. The brief facts of the matter is that vide order dated 21.12.2017, two petitions bearing No. E-78152/16 & E-77468/16 titled as Sh. N.K. Goel & Ors. Vs. Vinod Kumar Meena & Another, filed under Section 14 (1) (h) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'), of the petitioners seeking eviction of the respondents in respect of property bearing no. 9958/B, Gali No. 4, New Rohtak Road, Sarai Rohilla, Karol Bagh, Delhi comprising of one room, kitchen & bathroom at ground floor and one tin shed-cum-room & open verandah on first floor (hereinafter referred to as the 'tenanted premises'), as shown in red colour in the site plan attached to the petition, were ordered to be clubbed by the Court, since the petitioners have filed both the aforementioned petitions qua the same 'tenanted premises'. However, the stand of the petitioners in petition No. E-78152/116 is that respondents have acquired the property bearing no. 200, Vivekanand Puri, Delhi-110007 after letting the 'tenanted premises' to them and in the petition bearing no. E-77468/16, respondents have acquired a portion in 9958, Gali No. 4, Sarai Rohilla, New Rohtak Road, Karol Bagh, New Delhi, as shown in green colour in the site plan annexed in the petition, as owners.



2. Hence, vide this common judgment, the undersigned shall decide both the aforesaid two petitions bearing No. E-78152/16 & E-77468/16 titled as Sh. N.K. Goel & Ors. Vs. Vinod Kumar Meena & Another, filed under Section 14 (1) (h) of the Act seeking eviction of the respondents from the '*tenanted premises*'.

3. The facts of both the cases are identical, as narrated in the petitions, that Sh. Moti Lal Sharma was the erstwhile owner/landlord of the tenanted premises/suit premises, however, the same was sold to Smt. Sushila Devi, mother of the petitioners by virtue of agreement to sell, registered receipt for sale consideration and affidavit which was duly executed by the erstwhile owner Sh. Moti Lal while registered Special Power of Attorney and General Power of Attorney was executed by him in the favour of petitioner No. 3, Sh. Yogender Kumar Goel qua the '*tenanted premises*'. After purchasing the '*tenanted premises*', Smt. Sushila Devi expired intestate on 16.01.2012, leaving behind the petitioners as her legal heirs, hence petitions are filed by them as owners by way of succession.

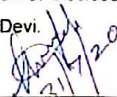
4. Originally, the '*tenanted premises*' were let out by erstwhile owner to the father of the respondent namely Sh. Kali Ram, the predecessor-in-interest of the respondents, for residential purpose at the rate of rent of Rs. 18/- per month excluding all other charges and after his death, the tenancy was inherited by the respondents, being his legal heirs. The father of the respondents paid rent to the mother of the petitioners for the period April, 1982 to July, 1982 through money order, thus the father of respondents

have attorned the mother of petitioners as owner. It is further averred that father of the respondents namely Sh. Kali Ram in the year 1985 filed a petition U/s. 45 of the DRC Act, wherein erstwhile owner of the 'tenanted premises' submitted that he had sold the 'tenanted premises' to the mother of the petitioners namely Smt. Sushila Devi. It is also averred that the respondents have acquired a residential house bearing no. 200, Vivekanand Puri, Delhi-7 and portion in property bearing no. 9958, Gali No. 4, Sarai Rohilla, New Rohtak Road, Karol Bagh, Delhi as shown in green colour in the site plan from their mother before her death. Hence, the petitioners have prayed for grant of an eviction order under Section 14 (1) (h) of the D.R.C. Act against the respondents.

5. Notice of the petitions was served upon the respondents by way of ordinary process and written statement has been filed on behalf of the respondents, to which replication has been filed on behalf of the petitioners.

6. In written statement it is contented by the respondents that there is no landlord-tenant relationship between the petitioners and the respondents. The alleged documents of sale in favour of mother of the petitioners are forged, fabricated and manipulated. Further, the same do not create any right, title and interest in favour of the mother of the petitioners, as they do not bear the signatures of Late Sh. Moti Lal Sharma.

The present petition is not maintainable on the ground of mis-joinder of necessary party, as petitioners have not disclosed/ impleaded the other legal heirs/daughters of Smt. Sushila Devi.




7. Further, that the respondents their father never paid any rent to the petitioners or their mother, as such respondents never attorned themselves as tenants under the petitioners or their mother. The writing and signatures on the alleged money order receipt/acknowledgment is false, concocted and forged. Even the site plan filed by the petitioners is not correct.

8. However, it is admitted in the WS that the respondents are very old tenants in the 'tenanted premises' in question under Late Sh. Moti Lal Sharma, as their father was a tenant in the 'tenanted premises' since 1957. The respondents at the request of Sh. Moti Lal Sharma had constructed ground floor and first floor over the suit property. Furthermore, the petitioners failed to serve any notice upon the respondents before filing the present eviction petition which is mandatory as per the provisions of DRC Act. Lastly, they are not the owners or occupiers/allottees of premises No. 200, Vivekanand Puri, Delhi-110007.

9. In order to substantiate their case, petitioners led evidence, however it is to be noted that before clubbing both the aforementioned petitions, three witnesses of the petitioners i.e. PW-1 HC Matu Ram, PW-2 Sh. Narender Kumar Goel & PW-3 Sh. Manoj Sharma were already examined and cross examined. Since both the petitions are clubbed vide order dated 21.12.2017, hence, the evidence of the said witnesses shall be read in both the petitions jointly. The relevant portion of their testimony is reproduced below.

10. PW-1 HC Matu Ram, PIS No. 28840537 deposed that as per service record of Sh. Vinod Kumar Meena having No. D2769, his

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permanent residential address is H.No. 200, Viveknand Puri, Sarai Rohilla, Delhi, where he is residing with his wife and son Kunal. It is further deposed that there is no other residential address of his residence except mentioned above. During his cross examination, it is deposed that the said address of Vivekanand Puri was given by Vinod kumar at the time of joining in Delhi Police on 26.06.1989. It is further admitted that the address of the '*tenanted premises*' has not been mentioned in his service record.

11. PW-2 Sh. Narender Kumar Goel/ Petitioner No.1 has tendered his evidence by the way of affidavit proved as Ex PW-2/A and deposed almost on the same lines as averred in the petition. He exhibited on record site plan which is Ex. PW-1/1; General Power of Attorney is Ex. PW-1/2; SPA as Ex PW-1/3, the sale consideration receipt is Ex. PW-1/4; the Will which is now marked as Mark A (being copy however mentioned as ExPW-1/5 in the affidavit); the copy of agreement to sell is Ex. PW-1/6; copies of affidavit of Sh. Moti lal Sharma as Ex. PW-1/7 & Ex. PW-1/8; copy of notice from the Court of Sh. M.L. Mehta, Rent Controller is Ex. PW-1/9; copy of money order coupon/receipt is Ex. PW-1/10; certified copies of eviction petition No. 15/2014 is Ex. PW-1/11 & certified copy of voter list is Ex. PW-1/12.

During his cross-examination, he admitted that there is no rent receipt and rent agreement qua the '*tenanted premises*' filed on record. It is stated that he was present at the time of execution of these documents, however, he is not a marginal witness, however, one Lekh Ram and another Manoj Sharma were the witnesses of these documents. It is admitted that his mother did not issue any notice regarding change of ownership. It is admitted that there is no such document of ownership of

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respondent on record. He had not issued any legal notice to the respondent before filing the present petition. It is denied that he has filed false and fabricated documents qua his ownership regarding suit property.

12. **PW-3 Sh. Manoj Sharma** deposed that his grand father Sh. Moti Lal Sharma had executed a registered GPA, Special Power of Attorney and agreement to sell in his presence on 14.04.1982 in which he had signed as witness at point C. It is further deposed that Sh. Moti Lal had signed on the documents Ex. PW-1/2, Ex. PW-1/3 & Ex. PW-1/6 in his presence on 14.04.1982. He deposed that these three documents were also witnessed by Sh. Lekh Ram in his presence and also identify his signatures on these documents at point B. Sh. Moti Lal Sharma also executed a receipt and Will in favour of Smt. Sushila Devi, Ex. PW-1/4 and Mark A respectively in his presence and put his signature at point A and Sh Lekh Ram had put his signature at point B on those documents and Smt. Sushila Devi had put her signature in his presence at point D on Ex. PW-1/6.

In his cross examination, it is admitted that petitioners were having two sisters. It is stated that he had signed on the document as a witness after the signature of Moti Lal.

No other witness has been examined on behalf of the petitioners and petitioners' evidence was closed.

13. In rebuttal, respondent No. 1 namely **Sh. Vinod Kumar Meena** examined himself only as **RW-1**, who tendered his evidence by way of affidavit as Ex DW-1/A and deposed almost on the same lines as averred in the written statement. He exhibited on record the copy of letter dated 29.09.1997 & 21.09.1997 which are exhibited as Ex. DW-1/1 & Ex

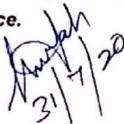
admitted that he had shown his residential address as 200, Vivekanadpuri, Delhi in his service record at the time when he joined the service. The green portion shown in Ex. PW-1/1 does not form part of property bearing no. 9958/B, Gali No. 4, Sarai Rohilla, Rohtak Road, Delhi as the same falls in property No. 9958 & 9960. One Radhey Shyam, Santosh, Shiv Dayal, Sumer, Chander Prakash & father of Sumer are occupying the said green portion as a tenants of his mother and father since long. His parents have expired.

No witness has been examined on behalf of the respondents despite opportunities and respondents' evidence was closed vide order dated 25.01.2020.

15. The undersigned heard the submissions/arguments of Ld. Counsel for the parties and perused the record along with written submissions filed on behalf of both the parties.

16. The present petition has been filed by the petitioners under Section 14 (1) (h) of D.R.C. Act. To succeed on this ground, the petitioners must satisfy the following ingredients :-

- (i) That there is relationship of landlord and tenant between the parties;*
- (ii) That the tenant has, whether before or after the commencement of this Act, acquired vacant possession of, or been allotted, a residence.*


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DW-1/2 and other documents as DW-1/3 to Ex. DW-1/5. During the Chief-examination, it is mentioned that paras no. 15, 16, 19, 24, 27 & 30 in ExDW-1/A relates to the connected petition filed for bonafide requirements U/s. 14 (1) (e) of DRC Act and are beyond pleadings in this matter.

14. During his cross examination, it is admitted that he does not have any documents to show the signatures of Kali Ram which might have submitted to any Government authority or department. It is admitted that the site plan filed by the petitioner is correct, however, the directions mentioned therein are incorrect. It is stated that there is no portion in his tenancy. It is stated that Moti Lal was the owner of the land, but not of the super structure. Moti Lal had given a portion to his father free of cost for residence purpose, however, there was no document reduced in writing to that effect. He stated that he has mentioned in his written statement that he is the owner of the property, however, there is no document qua his ownership . He has not given any application for the mutation qua the property in question. His father never paid any rent to Sh. Moti Lal. It is stated that perhaps the petitioner occupied the portion of the property sometime in the year 1981. He has not gone through the documents of the property in question, so executed by Moti Lal . He did not purchase any portion of the property from Moti Lal. His brother and sister also did not purchase any portion of the property bearing no. 9958 from Moti Lal. It is stated that the portion shown in green is occupied by the petitioners and the portion shown in red colour in the site plan, Ex. PW-1/1 is occupied by him. In the yellow portion, there are 3-4 persons are residing as a tenant of his mother. His mother has expired and his son is realising rent from those tenants. Sh. Moti Lal handed over the possession to his grand father in respect of and only. He

17. Now the undersigned shall deal with each ingredient and the evidence led by the parties to decide whether the aforesaid ingredients as required U/s 14 (1) (h) of DRC Act have been proved on the record or not.

(i) Relationship of landlord and tenant

It is the case of the petitioners that Sh. Moti Lal got executed the registered GPA and SPA which are exhibited as Ex.PW1/2 & Ex.PW1/3 qua property bearing No. 9958/B, Gali No.4, New Rohtak Road, Sarai Rohilla, Karol Bagh, Delhi comprising of the '*tenanted premises*' in favour of petitioner No.3 namely Sh. Yogender Kumar Goel and also got executed a registered receipt for sale consideration, Will and agreement to sell alongwith affidavit which are exhibited as Ex.PW1/4, Ex.PW1/5, Ex.PW1/6, Ex.PW1/7 & Ex.PW1/8 in favour of mother of the petitioners namely Smt. Sushila Devi W/o Late Sh. D.C.Goel on 14.04.1982. After the death of Smt. Sushila Devi, the '*tenanted premises*' had devolved upon her legal heirs respectively, herein petitioner No.1 to 3, who have acquired the right/ share in the '*tenanted premises*'.

However, the respondents have denied the ownership of all the petitioners by contending that the alleged documents of sale in favour of the mother of the petitioners are forged, fabricated and manipulated one and it does not create any right, title and interest in favour of the mother of the petitioner or in favour of the petitioners. The mother of the petitioners never became the legal owner of the premises in question after the alleged execution of sale documents by Late Sh. M.L. Sharma in her favour. Neither Late Sh. M.L.Sharma during his lifetime nor any of his legal heirs ever legally sold and transferred the said property to the mother of the petitioners at any point of time and the said documents does not bear any signature of Late Sh. M.L. Sharma. The respondents have not disputed

the ownership of Sh. Moti Lal Sharma (erstwhile owner) and as per record, petitioners examined PW-2 Sh. Manoj Sharma (grandson of Sh. M.L.Sharma), who is the attesting witness of the registered General Power of Attorney, Special Power of Attorney and Agreement to Sell, and who categorically deposed that these documents were executed in his presence and he put his signature as witness at point C on the aforementioned documents. He further categorically deposed that Sh. Moti Lal (erstwhile owner) had signed these documents in his presence and also in the presence of another witness Sh. Lekh Ram, whose signatures are at point-B.

18. All the documents and testimony on record prima facie point towards the ownership of the mother of the petitioners and after her death, petitioners became the owner of the 'tenanted premises' being her class-legal heirs. At this stage, the Court is also guided by the following judgments of the Superior Courts :-

Judgment delivered by Hon'ble Apex court in **Shanti Sharma Vs. Ved Prabha AIR, 1987, SC 2028**, where it has been held that, "ownership is not to be understood as absolute ownership but only as a title better than the tenant".

Judgment delivered by our Hon'ble High Court in **Rajendra Kumar Sharma & Ors Vs. Leelawati & Ors 155 (2008) DLT 383** wherein it has been held 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 a tenant".

19. The relation of the present petitioners with Smt. Sushila Devi has not been disputed or denied by the respondents. Therefore, all the LR's of

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Smt. Sushila Devi stepped into her shoes after her death and became the landlords of the 'tenanted premises' as per section 2 (e) of the Delhi Rent Control Act, 1958.

20. Further, the contention of the respondents that the present petition is bad for mis-joinder of the necessary party, as petitioners have not impleaded the legal heirs of the erstwhile owner, does not hold water when the sale documents and testimony of attesting witness qua the sale of the demised premises by the erstwhile owner to the mother of petitioners is on record.

21. The contention of respondent that they are the owners of the suit property is a sham defence in view of the admission made by them in their WS that they are very old tenants in the 'tenanted premises' in question under Late Sh. Moti Lal Sharma as their father was a tenant in the 'tenanted premises' since 1957. The rate of rent has also not been disputed by the respondents in their written statement. No site plan has been filed by the respondents/tenants. The contention regarding mentioning of wrong property number is also not tenable when the property is identified and petitioner no 1 is residing there and only seems to be a clerical error only. It is well settled that the technicalities shall not come in way of administration of justice.

22. Further, it is averred by the petitioners that the father of the respondents paid rent to the mother of the petitioners for the period April, 1982 to July, 1982 by way of money order. The respondent contended that the money order receipt is forged but did not examine any witness from postal authorities to prove his contention. It is also averred that father of

the respondents namely Sh. Kali Ram in the year 1985 filed a petition U/s. 45 of the DRC Act, wherein the erstwhile owner of the 'tenanted premises' submitted that he had sold the 'tenanted premises' to the mother of the petitioners namely Smt. Sushila Devi and thereafter, Sh. Kali Ram filed an application under order 1 rule 10 CPC for impleading Smt. Sushila Devi by admitting her to be the landlord/ owner. The averment has been supported by ExPW1/9. Thus, the tenancy is admitted and there is landlord-tenant relationship between the parties.

23. The last contention of the respondents that it is bad for misjoinder/ non-joinder as other LRs of Sushila Devi ie her daughters have not been made petitioners does not hold good, as the Law is clear that any co-owner can file the petition.

24. With this background, the ownership of petitioners over the 'tenanted premises' as well as existence of landlord-tenant relationship between the petitioners and the respondents stand established.

25. Now coming to the other ingredient ie. (ii) The tenant has, whether before or after the commencement of this Act, acquired vacant possession of, or been allotted, a residence.

As per Section 14 (1) (h) of DRC Act, it is to be proved that tenant acquired vacant possession of, or been allotted, a residence. In the matter bearing No. E-78152/16, the plea has been taken by the petitioners that respondents have build, acquired vacant possession of, or been allotted, a residence bearing No. 200, Vivekanand Puri, Delhi-7. In support their contention, petitioner examined PW-1 HC Matu Ram, who



categorically deposed that as per service record, the permanent residential address of the respondent No. 1 Sh. Vinod Kumar Meena is H.No. 200, Vivakanand Puri, Sarai Rohilla, Delhi and the address of the tenanted premises has not been mentioned in the record.

26. From perusal of the documents, Ex. PW-1/12 i.e. the certified copy of the Voter I Card list it has surfaced that the address of the respondent No. 1 Sh. Vinod Kumar Meena has been mentioned as 200, Vivakanand Puri, Sarai Rohilla, Delhi. Further, from the documents Ex. PW-1/11 i.e. the certified copies of summons sent to both the same respondents in connected eviction petition at address 200, Vivekanand Puri, Delhi, it has come on record that they were served on the said address. The respondents have not taken any defence in respect of the premises No. 200, Vivekanand Puri, Delhi having been acquired at all. It is admitted by the respondent no. 1 as DW-1, that in his official record his residential address has been shown as 200, Vivekanand Puri, Delhi.

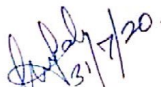
27. Now coming to the second property i.e. 9958, Gali No. 4, Sarai Rohilla, New Rohtak Road, Karol Bagh, New Delhi as shown in green colour in the site plan which is the subject matter of another eviction petition bearing no. E-77468/16. During cross examination, DW-1/ Respondent no.1 categorically admitted that in the yellow portion, there are 3-4 persons residing as a tenant of his mother, who had already expired and his son is realizing rent from those tenants, which is part of portion of the property bearing No. 9958, Gali No. 4, Sarai Rohilla, New Rohtak Road, Delhi. Hence, it is proved that the respondents have possession of the property shown in the site plan vide yellow portion, in which their tenants are residing.

28. In view of the aforesaid discussion relying upon the official record as well as the admissions of the respondent, this Court is of the considered opinion that the respondents have two properties in their possession, hence petitioner(s) have proved all the necessary ingredients of Section 14 (1) (h) of Delhi Rent Control Act, 1958.

Accordingly, an eviction order is passed U/s 14 (1) (h) of DRC Act in favour of the petitioner(s) and against the respondents in respect of premises municipal No. 9958/B, Gali No. 4, New Rohtak Road, Sarai Rohilla, Karol Bagh, Delhi, as shown in the site plan in red colour annexed with the petition.

File be consigned to Record Room.

Announced through
video conferencing
on 31.07.2020


(SHEFALI BARNALA TANDON)
Administrative Civil Judge -cum-
Additional Rent Controller (Central):
Delhi

(This judgment contains 15 pages in total)