
(2014) 07 DEL CK 0043
In the Delhi High Court
Case No : RC Rev. No. 455/2013

Karori Mal

APPELLANT

Vs

Santosh Kumari

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)(e), 2(e), 25(B)(8), 27
Evidence Act, 1872 — Section 116

Citation : (2014) 07 DEL CK 0043

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Anil Sharma, Advocate for the Appellant; Manmohan Swaroop and Sanyogita Swaroop, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This petition u/s 25(B)(8) of the Delhi Rent Control Act, 1958 is filed against the impugned judgment of the Additional Rent Controller dated 23.10.2013 by which the Additional Rent Controller has dismissed the leave to defend application filed by the present petitioner and decreed the eviction petition with respect to one shop measuring 8"x10" in the property bearing no. 1/7220, Shivaji Park Chowk, Shahdara, Delhi.

2. In a petition for bonafide necessity it has to be seen that the petitioner before the Additional Rent Controller is the owner/landlord of the suit premises. It is settled law that even a co-owner can file a petition for bonafide necessity in view of the catena of judgments of the Supreme Court. The second requirement is that the petitioner requires the premises bonafidely for her use or for use of family member. Petitioner is a landlady/respondent herein and she stated that she is a widow receiving minor pension and she wants to open a tea shop in the tenanted shop in question.

3. The court below has held that the respondent herein is the landlord of the premises and therefore, an eviction petition will lie. Of course, this reasoning is

not correct because the petitioner in the court below i.e. landlord also has to be the owner in a bonafide necessity petition, however, a reading of the admitted facts show that the respondent has been admitted to be co-owner as also the landlord of the suit premises. In this regard, I would like to refer to paras-4 and 6 of the affidavit filed in support of the leave to defend application and which read as under:-

4. That the Petitioner is not the co-owner/landlady of the suit property. She requested to pay the rent being the old lady and she claimed co-owner of the property, the Respondent paid the rent @ Rs. 200/- per month but later on she asked to enhance the rent from Rs. 200/- to Rs. 2000/- per month. The Respondent refused and agreed to increase the rent of 10% than she has filed this petition. The Respondent deposited the rent in the court under protest.

6. That the Respondent came to know that the sister of the Petitioner Late Smt. Sudesh Rani Sood filed a suit for partition and permanent injunction against her brothers and the Petitioner in this case. The Ld. A.D.J. Ms. Shailender Kaur passed in order on 17.08.2005 and parties were directed to maintain status quo of the property in suit. The above named Sh. Harbinder Kumar Sood and Sh. Jitender Kumar Sood have filed their written statement and will claiming themselves as absolute owners/landlords of the property and case is pending in the court of Sh. Pitamber Dutt, ADJ, Tis Hazari Court, Delhi and fixed for evidence on 18.03.2013. The matter is subjudice regarding ownership of the suit property. The certified copy of the order and copy of the written statement and will filed by Sh. Harbinder Kumar Sood and Sh. Jitender Kumar Sood are attached herewith and hence petition is not maintainable. The evidence by way of affidavit filed by Sh. Jitender Kumar Sood is also attached.

(Underlining added)

4(i) In law, once a person is paid rent, such a person becomes a landlord in view of the definition of landlord contained in Section 2(e) of the Delhi Rent Control Act, 1958. Section 2(e) specifically states that landlord means a person who for the time being is receiving the rent.

(ii) So far as the aspect of ownership is concerned, it is clear and not disputed that the respondent-landlady is a co-owner of the suit premises in view of para 6 of the affidavit filed in support of leave to defend application and that there is no objection by any other co-owner.

(iii) It is also required to be noted that a tenant cannot dispute the title/ownership of the landlord in view of Section 116 of the Indian Evidence Act, 1872 and since the respondent is admitted to be the landlady to whom rent is paid the ownership of respondent cannot be denied. In fact the petitioner/tenant has admitted the respondent to be the landlady in the petition u/s 27 of the Delhi Rent Control Act where rent was deposited by the present petitioner.

5. Learned counsel for the petitioner wanted to argue that the respondent is a co-

owner, and that already suits for partition are pending, however, all that would make no difference once the respondent-landlady is a co-owner of the premises, and so specifically admitted in para-6 of the affidavit of leave to defend application which is reproduced above. Also, learned counsel for the petitioner sought to urge before this Court that the petitioner/tenant was paying rent to the respondent/landlady in the name of the father of the respondent/landlady, but when asked to point out any such averment made in the leave to defend application that the respondent/landlady is being paid rent not for her own sake but on account of the father being the landlord, no such averment could be pointed out.

6. I may note that the courts while dealing with the applications for leave to defend are necessarily confined only to averments made in the application for leave to defend alongwith supporting affidavit. Supreme Court in the judgment in the case of Prithipal Singh Vs. Satpal Singh (Dead) through LRs., has held that the statutory period for filing the leave to defend application is sacrosanct and delay of even one day cannot be condoned. Therefore, if all that has to be stated for taking leave to defend has to be stated in 15 days, neither the Additional Rent Controller nor this Court can consider pleas which are not found in the leave to defend application because it will amount to allowing of leave to defend application/additional affidavit like a leave to defend affidavit beyond 15 days. Also, if one ground which is not found in the leave to defend application is allowed to be urged, then why not various other grounds which can be at different points of time sought to be urged by filing of additional affidavits, but this cannot be so once the statutory period of 15 days has been held to be sacrosanct in Prithipal Singh's case (supra).

7. So far as the issue of bonafide necessity is concerned nothing could be argued before me by the petitioner because respondent/landlady who is a widow wants to open a tea shop in the suit premises and which is clearly a bonafide necessity.

8. Learned counsel for the petitioner finally sought to argue that the eviction petition was originally filed as a conjoint petition for subletting as also bonafide necessity, but since the subletting part was subsequently withdrawn, the petition for bonafide necessity cannot lie. The argument urged on behalf of the petitioner in fact inverts the logic because no doubt a conjoint petition cannot be filed for subletting and bonafide necessity, but, if the petition is treated only for bonafide necessity by not pressing the subletting aspect, there is no law that such a petition should be dismissed although it is only pressed so far as the aspects of bonafide necessity u/s 14(1)(e) of the DRC Act is concerned. It would have been otherwise only if the petition was pressed both for the grounds of subletting and bonafide necessity, but that is not so.

9. In view of the above, there is no merit in the petition and the same is therefore dismissed with costs of Rs. 15,000/- to the respondent/landlady. Costs shall be paid within a period of four weeks from today. I may note that the Supreme Court in the judgment in the case of Rameshwari Devi and Others Vs.

Nirmala Devi and Others, has held that it is high time that in certain litigations, costs be imposed. I am empowered to impose costs in terms of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.