

(2025) 05 DEL CK 0917

In the Delhi High Court

Case No : Civil Miscellaneous Petition No. 7 Of 2025 & Civil Miscellaneous Application No. 30177-81 Of 2025

Madhu Tayal

APPELLANT

Vs

Shri Ghanshyam Das Tayal

RESPONDENT

Date of Decision : 20-05-2025

Acts Referred:

Bharatiya Sakshya Adhiniyam, 2023 — Section 122

Citation : (2025) 05 DEL CK 0917

Hon'ble Judges : Mini Pushkarna, J

Bench : Single Bench

Advocate : Amrit Pal S. Gambir, Pooja Saini, Akash, Monika Saini

Final Decision : Dismissed

Judgement

Mini Pushkarna, J

1. The present matter has been received on transfer.
2. The present appeal has been filed challenging the judgment and decree dated 02nd December, 2024, passed by the Court of District Judge-02, Shahdara District, Karkardooma Courts, Delhi in CS No. 2855/2016 (Old CS No. 233/2013).
3. By way of the impugned judgment and decree, the appellant herein has been directed to handover the premises, i.e., 30/75 (Plot No. 75 & Block No. 30), area measuring 45.99 sq. mtrs., i.e., 55 sq. yds, along with its whole structure built up thereon, out of Khasra No. 811 Min, situated in the area of Village Chandrawali, Shahdara at the abadi of Vishwas Nagar Shahdara, Delhi-110032, to the respondent.
4. Learned counsel appearing for the appellant submits that the husband of the appellant had been inducted as a tenant in the aforesaid premises. He further submits that after the demise of her husband, the appellant is continuing in possession of the said premises.

5. He submits that the respondent is not the actual owner of the premises in question. The respondent has claimed ownership over the property in question on the basis of gift deed from his younger brother, Jai Prakash. However, the younger brother of the respondent, i.e., Jai Prakash, did not himself have any legal right over the property in question. Therefore, it is contended that no right can be claimed by the respondent over the property in question on the basis of the said gift deed, when the brother of the respondent himself did not have any valid title over the said property.

6. This Court does not find any merit in the aforesaid contention. Firstly, the impugned judgment clearly records the stand of the appellant herein before the learned Trial Court that the appellant had been inducted into the property by Jai Prakash, the brother of the respondent herein. Secondly, once the appellant has admitted to have been inducted as a tenant, she cannot challenge the ownership of the landlord. Law in this regard is very clear that a tenant's possession is derived from the landlord. Therefore, a tenant is barred from denying the landlord's title, or challenging the same. In this regard, reference may be made to Section 122 of The Bharatiya Sakshya Adhiniyam, 2023, which reads as under:

"Section 122 in Bharatiya Sakshya Adhiniyam, 2023

122. Estoppel of tenant and of licensee of person in possession.

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

(Emphasis Supplied)

7. Accordingly, the appellant is precluded from challenging the title and ownership of the respondent.

8. The next contention raised by the appellant is that a civil suit filed by the respondent, was not maintainable, as the appellant was paying rent less than Rs. 3,500/- per month. Therefore, the respondent ought to have filed proceedings under the Delhi Rent Control Act, 1958 ("DRC Act"). For this purpose, the appellant has relied upon the rent receipt dated 3rd October, 1990 of Rs. 400/- for the period from 1st November, 1990 to 31st October, 1990.

9. It is submitted that the respondent has not been able to place on record any rent receipt to show that rent was more than Rs. 5000/-, as contended on behalf of the respondent before the Trial Court.

10. However, the aforesaid contention of the appellant is also without any merit. The learned Trial Court has categorically held that the appellant herein, as

defendant in the suit, has not proved that the suit property had been taken on rent by the appellant for an amount of Rs. 400/- per month.

11. This Court also takes note of the submission made by learned counsel appearing for the appellant that the appellant was allowed to stay in the premises free of cost and was not paying any rent for the premises in question. The submission on behalf of the appellant in this regard, as noted in the impugned judgment dated 2nd December, 2024, is reproduced as under:

"xxx xxx xxx

20. Earlier the stand taken by the defendant in his WS is that one Sh. Neeraj Tayal is the owner of the suit property, who had let out the suit property to the defendant @ Rs.400/- per month and therefore, the plaintiff is neither the landlord nor the owner qua the suit property. However, during the arguments, Ld. Counsel for the defendant submitted that the defendant was given the property by Sh. Jai Prakash as the defendant got handicapped/ injured his hand while working for said Sh. Jai Prakash and due to this reason, the defendant is not required to either pay any rent to the plaintiff or to vacate the suit property as claimed by the plaintiff in the present suit.

xxx xxx xxx"

(Emphasis Supplied)

12. Perusal of the aforesaid reflects the stand of the appellant herein that the appellant was allowed to stay in the premises in question, without payment of any rent, as the husband of the appellant had got injured while working for the brother of the respondent. Thus, if the appellant was staying in the premises without payment of any rent and free of cost, then, there is no question of applicability of the DRC Act to the present case.

13. After some arguments, since this Court is not inclined to interfere in the impugned judgment and decree, learned counsel appearing for the appellant, upon instructions, submits that he shall withdraw the present appeal.

14. However, he submits that since the appellant is a widow, she may be granted some time to vacate the premises.

15. Accordingly, considering the request made before this Court and in the facts and circumstances of the case, time is granted to the appellant to vacate the premises in question, till 31st August, 2025.

16. Learned counsel appearing for the appellant submits that the appellant shall abide by the order passed by this Court. The appellant is accordingly, held bound to vacate the premises by 31st August, 2025.

17. Let an undertaking be filed by the appellant within a period of one week.

18. List before the Registrar for compliance on the date already fixed, i.e., 26th May, 2025.

19. It is clarified that in case the appellant does not vacate the premises by 31st August, 2025, the respondent shall be at liberty to take possession of the same, in accordance with law.

20. Accordingly, the present appeal, along with the pending applications, is dismissed as withdrawn, with the aforesaid direction.