
(2008) 09 DEL CK 0241

In the Delhi High Court

Case No : RCR 23 of 2007

Rajender Kumar Sharma and Others

APPELLANT

Vs

Smt. Leela Wati and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1), 25B, 27

Citation : (2008) 155 DLT 383 : (2008) 106 DRJ 471 : (2008) 12 ILR Delhi 103

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : S.K. Luthra, for the Appellant; Sumit Bansal and Manish Paliwal, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner has assailed an order dated 3rd February, 2007 passed by learned Additional Rent Controller whereby a petition u/s 14(1)(e) of Delhi Rent Control Act filed by the landlord was allowed and an application u/s 25-B of DRC Act seeking leave to defend made by the petitioner was dismissed.

2. The brief facts relevant for purpose of deciding this petition are that the landlady, a widow had purchased the suit property from previous owner Smt. Bhagwati Devi by virtue of documents namely agreement to sell, power of attorney, receipt, affidavit and a registered "Will". Smt. Bhagwati Devi died on 29.11.1996. The premises was under tenancy of late Sh. Mangi Lal Sharma and the petitioners are LRs of late Sh. Mangi Lal Sharma who are residing in the premises. The landlady claimed that she was in possession of one room, kitchen, open jal, courtyard on second floor and WC on third floor of the property in dispute. Her family consisted of nine daughters and one son. Out of nine daughters, seven were married. Two unmarried daughters and one son were living with her. One unmarried daughter was studying in M.Com 2nd year, second daughter was studying in BCA final year and her son Mohit was aged 16 years

and a student of 11th class. The accommodation in her possession namely one room, kitchen on second floor and WC on third floor was highly insufficient for herself and her family members dependent on her. She required one room for herself, one drawing-cum-dining room, three separate rooms for her two adult daughters and one son, one pooja room and two study rooms and one guest room for visiting daughters and other relatives. The premises in occupation of tenant namely one room, kitchen on second floor, one tin shed and open terrace in front of tin shed and one small kolki and latrine on third floor in property bearing No. 5269, Gali Bharat Nagar, Paharganj was bonafidely needed by her.

3. In leave to defend, the tenant had disputed the title of the petitioner and also disputed relationship of landlord and tenant, letting purpose and the bonafide need of the landlady. It was also stated that all LRs of late Sh. Mangi Lal Sharma, who died on 22.12.2003, were necessary parties and since all LRs were not made party to the petition, the petition was bad in law. It was also submitted that the landlady was having another premises namely 5261, Gali Bharat Nagar, Shora Kothi, Paharganj where she was residing with her one son and two daughters. The premises Nos. 5261 and 5269 were just adjoining each other and the landlady had joined the two premises by removing the wall in between. She has in her possession eight rooms, two stores, two bath rooms, two WCs and dalan inclusive of portion at second floor which was also owned by the landlady. The tenants disputed the extent of premises in their own possession and stated that actual premises in possession of tenants consisted of two rooms, one store, one kitchen on second floor and two rooms, one kolki and one bath-cum-WC on third floor. The tenant contended that it had raised triable issues for grant of leave to defend and it was submitted that since landlady was asking for additional accommodation, the petitioner was entitled to leave to defend.

4. The landlady in its response to the application for leave to defend had submitted that she had no concern with property No. 5261, Gali Bharat Nagar. Neither she was co-owner of this property. Property No. 5261 initially belonged to Gulab Singh, grand father of the petitioner. Late Sh. Gulab Singh had four sons namely Kripa Ram, Kanhiya Lal, Hari Chand and Ram Prashad. She placed on record the copies of documents showing in whom property No. 5261 vested and who was residing in the property. The documents placed on record by her included copy of resolution No. 20 of sub-Committee of MCD dated 23.3.1935, house tax receipt in the name of Gulab Singh pertaining to year 1937, bills of house tax paid by Gulab Singh in 1952, electricity connection in the name of Kanhiya Lal, S/o Gulab Singh of 2005, water bill in the name of Kanhiya Lal, voter I-card of Kanhiya Lal and voter list issued by Election Commission showing that there were 22 voters in this property of LRs of Gulab Singh. Property No. 5261 was built on 55 square yards of area. The landlady placed document that she had no share in the property nor she was living in the property and a false plea was taken about her being co-owner of this property. She placed on record a document showing that total area of the land was 502 square feet (approx. 55 square yards)

5. The petitioners (tenants) had also contended that landlady was owner of first floor of the property No. 5269. The landlady denied this contention and placed on record the document showing that first floor was owned by Smt. Shakuntla Devi and Smt. Krishna Devi who were owner in possession of first floor and purchased the first floor by way of documents like general power of attorney, special power of attorney, "Will", etc.

6. It is undisputed fact that Smt. Bhagwati Devi previous owner of the property after executing documents in favour of the petitioner had informed the tenants that she had sold the property and hence forth landlady/respondent would be the owner and should be paid rent. In view of the attornment, Sh. Mangi Lal Sharma moved a petition u/s 27 of Delhi Rent Control Act before ARC, Sh. V.K. Bansal, admitting therein that Smt. Leelawati, the present landlady was entitled to rent and he deposited rent in the Court in the name of Smt. Leelawati. Another petition u/s 27 was made in the Court of Sh. Sanjay Sharma, the then ARC, depositing rent in the name of present landlady.

7. The extent of family of the landlady was not disputed by the petitioner. The learned ARC concluded that in a petition for eviction u/s 14(1)(e) of Delhi Rent Control Act, absolute title was not required to be proved and the documents placed on record by the landlady were sufficient to show that she was owner for the purpose of Section 14(1)(e) of Delhi Rent Control Act. The relationship of landlord and tenant was also established from the documents. The tenant had failed to show even prima facie that there was an alternate accommodation available with the landlady. The tenant had also failed to show that she was owner of any other premises. Considering the family of the landlady and the accommodation available with her, the learned ARC came to conclusion that accommodation in her possession was highly insufficient for her and her family and he therefore allowed the Eviction Petition dismissing application for leave to defend.

8. The order of learned ARC is challenged on the ground that the learned ARC committed irregularity and ignored the principle laid down by Supreme Court and this Court in various decisions including decision of Supreme Court in Precision Steel and Engineering Works and Anr. v. Prem Deva Niranjana Deva Tayal wherein it has been laid down that Rent Controller has to confine himself to the affidavit filed by the tenant and if the affidavit discloses such facts it would dis-entitle the petitioner from seeking possession. It is argued that mere disclosure of such facts must be held sufficient to grant leave to defend and no proof was needed at this stage.

9. It is further contended that the Trial Court exceeded jurisdiction by relying upon the documents filed by the respondent on record as if the same were duly proved without giving petitioner an opportunity to cross examine the defendant or witnesses. The Trial Court also failed to appreciate that non-joinder of other LRs of Sh. Mangi Lal Sharma was fatal to the Eviction Petition and all LRs of Sh. Mangi Lal Sharma were needed to be joined as parties. The site plan of the

tenanted premises filed by the landlady was incomplete since the site plan showed one room, kitchen on the first floor and one tin shed and open terrace in front of tin shed and one small kolki and latrine on third floor in possession of the tenants whereas the tenants were in possession of the two rooms, one store and a kitchen on the second floor, two rooms and a bath-cum-WC on third floor. It is further submitted that the landlady had sufficient accommodation available with her on the first floor, second floor and the third floor. The landlady had also failed to prove the ownership of the property as documents relied upon by the landlady could not have transferred ownership in her favour. The learned ARC wrongly concluded that landlady bonafidely needed the premises for her and her family's bonafide needs.

10. Section 25-B was inserted by the legislature in Delhi Rent Control Act as a special provision for eviction of the tenants in respect of specified category of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which dis-entitled the landlord from seeking eviction. Where a tenant pleads, in leave to defend preposterous prepositions and makes such averments which are palpably false and the landlord in his reply affidavit to leave to defend is able to show to the ARC that all facts stated in leave to defend, were palpably false, ARC is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. If the tenant in its leave to defend pleads that landlord was owner of another premises with which landlord had nothing to do, mere filing of affidavit is not sufficient. The tenant has to place before the learned ARC such documents which show that the landlord was owner of that premises. If no such document is placed on record by the tenant, the learned ARC is not required to consider the ownership of the landlord of such a premises. If the leave is granted on mere assertions that landlord was owner of the premises, of which he is not, then in every case the tenant would get leave by just naming any premises with which landlord has no concern. In the present case, the landlady has specifically shown that the premises about which tenant made allegations that she was co-owner, did not belong to her and she placed on record documents showing that she had no share in the premises and premises was a house of 50 square yards in occupation of 22 adult persons among others whose names appeared in the voter list. There is no reason why the learned ARC should not considered these documents. Similarly tenant falsely alleged that the landlady was owner of the second floor of the premises in question without placing on record any documents regarding ownership of second floor by the landlady. The landlady had a right to show to the ARC at a very first stage that the second floor was not owned by her, but owned by someone else.

11. The tenant in this case denied relationship of landlord and tenant and the ownership of the landlady despite the fact that it had admitted this relationship by filing two petitions u/s 27 of Delhi Rent Control Act. Where a tenant denies ownership of landlord, he is obliged to disclose who was owner/landlord and to

whom rent was being paid. The tenant made preposterous claims in respect of accommodation available with the landlady and included in this the areas which were not owned and not in possession of the landlady. He included second floor of the property which was owned by some other person and was in possession of other person. He included adjoining property which was not owned by landlady and was owned by other persons. Thus, the affidavit filed by the tenant was shown to be false by the landlady on the basis of documents placed by it. No Rent Controller is supposed to grant leave to defend to the tenant on the basis of a false affidavit and false averments and assertions. Such affidavit should be outrightly rejected by the Rent Controller. Only those averments in the affidavit are to be considered by the Rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed, the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false.

12. It is settled law that for the purpose of Section 14(1)(e) of Delhi Rent Control Act, a 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. In this case, the landlady had placed on record the documents by which she became owner. The attornment given by the erstwhile landlord in her favour as well as an admission made by the tenant by filing petition u/s 27 of Delhi Rent Control Act acknowledging the landlordship of landlady. Thus, the conclusion arrived at by the ARC regarding ownership and relationship of landlord and tenant were based on sound legal position and the cogent material before it.

13. There is no dispute about the family of the landlady. She has seven married daughters, two unmarried daughters, one unmarried son. Her seven married daughters are bound to visit her at times and she needs a guest room for them. Her three grown up children who are not married are all studying in higher classes and each of them namely two daughters and one son need one room each. She herself needs one bed room. She needs a drawing-cum-dining room and study rooms for the children. The accommodation in her possession which consists of one room, kitchen on second floor, WC on third floor were hardly sufficient for herself and family. She had purchased this property about 14 years ago. She had every right to ask the tenant to vacate the premises so that she and her family can live therein.

14. It is also settled law that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are living in the property or not. It is sufficient for

the landlord to implead only those persons who are living in the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those LRs who are in occupation of the property is sufficient for the purpose of filing Eviction Petition. An eviction petition against one of the joint tenants is an Eviction Petition against all the joint tenants and all joint tenants are bound by order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.

15. I therefore find no infirmity in the order of the learned ARC. The petition is hereby dismissed.