
(2014) 08 DEL CK 0186
In the Delhi High Court
Case No : RC Rev No. 386/2012

Ram Gopal

APPELLANT

Vs

Purshottam Dass

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

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

Citation : (2014) 08 DEL CK 0186

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Sonal Sinha, Advocate for the Appellant; Sunil Lalwani, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.

C.M. No.3801/2014 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ RC. REV. No.386/2012 and C.M. Nos.3800/2014 (stay) & 13589/2012 (stay)

2. No doubt, this Court in routine receives various challenges to orders which are passed by the Additional Rent Controller, and number of them are frivolous, however, the present petition is a height of dishonesty and lack of bonafides of an unacceptable nature. This I am observing because the admitted fact is that the petitioner/tenant has not paid even nominal, the admitted rent @ Rs.60/- per month way back from the year 1979. Not only the nominal admitted rent is not paid, but, the facts discussed below will show that the petitioner/tenant is resorting to falsehood of denying the ownership of the respondent/landlord and who is the son of Sh. Vijay Narain although to Sh. Vijay Narain petitioner/tenant admits that he had paid the rent and hence Sh. Vijay Narain was the landlord of

the petitioner. Therefore for around 35 years, petitioner is staying in the tenanted premises comprising of one room on the ground floor, without paying a single rupee as charges for use and occupation. Also, this eviction petition on the ground of bonafide necessity has been decreed after trial and it is not as if the eviction petition was decreed by refusing leave to defend. With the aforesaid introductory statement, let me turn to the facts of the present case.

3. This revision petition u/s 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Controller dated 4.5.2012 by which the bonafide necessity eviction petition u/s 14(1)(e) of the Act has been decreed. The respondent/landlord filed the eviction petition for bonafide necessity with respect to the tenanted premises of one room on the ground floor of the property bearing No.5166(part)/5167, 5167-A and 5168, Basant Road, Pahar Ganj, Delhi-110055. The entire property is constructed on a very small area of land of about 76 sq yds. The family of the respondent/landlord comprises of himself, his wife and his son of marriageable age. Besides these family members, the respondent/landlord has two married daughters and for whom a guest room is required as the married daughters regularly visit the respondent/landlord. When we compare the family members of the respondent to the accommodation which is available to the respondent, it is seen that the respondent/landlord has on the ground floor of the premises, besides the tenanted room, one shop which is being used by him as a general store (kiriyana). On the first floor, there are two rooms plus a store room (less than 100 sq feet) alongwith kitchen, bathroom, WC and open space. There is one small barsati room and WC on the second floor. The respondent needs one bed room for himself, one bed room for his son, one bed room as guest room for his married daughters, one drawing room, one store room and one puja room i.e. a total of four big rooms besides amenities of a store room, puja room, kitchen and WC, however, the respondent/landlord has only two rooms and one store room and hence there is an additional requirement of two big rooms and a puja room. At this stage itself I may note that the tin shed on the barsati/second floor cannot be used as a room and which aspect is discussed subsequently because the roof of the said room on the second floor is made of T-iron.

4. The petitioner/tenant contested the petition and stated that the respondent was not the owner of the suit premises. The bonafide need of the respondent for himself and his family members was denied including by stating that there existed two rooms plus one room and which third room is only a store room on the first floor and also allegedly that two rooms existed on the second floor. Also, one room was said to be available to the son of the respondent/landlord in a nearby premises bearing no.5174, Basant Road, Pahar Ganj, Delhi.

5. In a petition for bonafide necessity, three aspects are required to be proved. First is the existence of the relationship of landlord and tenant and that the landlord is the owner of the tenanted premises. Second is that the landlord requires the tenanted premises for use of himself and/or his family members and

third is that the landlord has no other alternative suitable accommodation.

6. (i) So far as the first aspect is concerned, the Additional Rent Controller has held that the respondent is the owner/landlord of the premises by referring to the sale deed dated 21.01.1971 executed by the original owner in favour of the respondent/landlord which is Ex.PW1/2. The Additional Rent Controller also notes the fact that the petitioner himself admits that he was paying the rent to the father of the respondent/landlord, and therefore the fact that the respondent is the son of Sh. Vijay Narain to whom the petitioner was paying the rent, the same would show that the respondent is also the landlord of the premises after the death of his father.

(ii) In addition to the aforesaid aspects of proof of ownership by means of the sale deed, as also the fact that since the petitioner/tenant was paying rent to the father of the respondent/landlord and hence the respondent would also become the landlord of the premises, it is required to be noted that once the respondent is taken as the landlord, his ownership also cannot be disputed in view of Section 116 of the Evidence Act, 1872. It is also required to be stated that it has been held by this Court as also by the Supreme Court in a catena of judgments that the 'ownership' in a bonafide necessity petition is an expression only to mean that the landlord has a title to the tenanted premises which has to be better than that of the tenant. It is the law that the expression 'ownership' is not to be interpreted to mean absolute ownership. Not only that the respondent/landlord has only to prove a better title qua the tenant but also, it has now been repeatedly held that a negative defence of a tenant that the landlord is not the owner/landlord of the suit premises is not permissible because if the landlord is not the owner/landlord of the suit premises then who is the owner/landlord of the premises must be stated by the tenant and which is not stated by the petitioner in this case. In the present case therefore since the respondent/landlord has a title better than the petitioner/tenant, in view of the sale deed Ex.PW1/2 hence it has to be held that the respondent is the owner-landlord of the suit premises. Also, it is relevant to note that no one else other than the respondent/landlord is claiming ownership of the suit premises and the petitioner/tenant has not proved by any evidence as to who is the other person who allegedly is the owner/landlord and who claims title to the suit premises. It is further required to be noted that as per Section 2(e) of the Act, the expression 'landlord' is defined to include a person who is receiving the rent. Since the petitioner admits that rent was being paid to the father of the respondent Sh. Vijay Narain, and since the respondent is the son of Vijay Narain, therefore, the respondent will be the landlord of the suit premises. For all these reasons, including for the reasons given by the Additional Rent Controller, I do not find that there is any error with respect to the Additional Rent Controller concluding that the respondent is the owner/landlord of the tenanted premises.

7. (i) Counsel for the petitioner/tenant argues that the respondent is not the owner/landlord of the premises because in two earlier cases it has been held

against the respondent that he has failed to prove his ownership and relationship of tenancy with the petitioner, and therefore the Additional Rent Controller according to the counsel for the petitioner ought to have held that the respondent is not the owner/landlord of the suit premises in view of the principle of res-judicata. The reference which is made by the petitioner/tenant in this regard is firstly to a judgment dated 8.12.1983 in a bonafide necessity eviction petition which was filed by the respondent herein, and which holds that the respondent herein (petitioner in that case) had failed to prove his ownership. The second judgment which is relied upon is the judgment in a suit for recovery of rent of Rs.2160/- filed by the respondent herein against the petitioner and in which suit no.556/1984 it was held by the Civil Judge by judgment dated 3.11.2000 that the respondent herein (plaintiff in that suit) had failed to prove the relationship of landlord and tenant with the present petitioner.

(ii) The arguments urged on behalf of the petitioner on the first impression appeared to carry weight, however, when we examine the argument deeply, it is found that the arguments are completely without substance because the aspect as to the respondent not being an owner of a premises for the same to be held continuously for all times against the respondent/landlord can only be if ownership of the respondent/landlord would have been extinguished including by means of adverse possession. It is not the case of the petitioner that he has become owner of the suit premises by adverse possession. Ownership is a continuous cause of action to claim eviction on the ground of bonafide necessity and unless ownership is extinguished by adverse possession or in some other legal manner, it cannot be held that judgments in earlier proceedings will operate as res judicata to extinguish ownership rights of the respondent/landlord. The judgments in earlier judicial proceedings will bind the parties only so far as the cause of action in those proceedings are concerned. With respect to a continuous cause of action based on ownership rights the principle of res judicata cannot apply inasmuch as the issue of ownership can always be asserted and established in accordance with law in a subsequent judicial proceedings. In the present case, ownership aspect in my opinion has been sufficiently established by proving the sale deed in favour of the respondent/landlord as Ex.PW1/2 taken with the fact that the petitioner admits that even earlier to the sale deed he was paying rent to the father of the respondent Sh. Vijay Narain and as a result of which the respondent who now steps into the shoes of his father would undoubtedly be the landlord of the suit premises and the respondent is hence the owner also by virtue of Section 116 of the Evidence Act, 1872.

8. Learned counsel for the petitioner/tenant argues that the respondent/landlord has failed to prove the sale deed Ex.PW1/2 however it could not be disputed by the counsel for the petitioner that no objection was raised to exhibiting of the sale deed at the time the sale deed was proved and exhibited, and therefore today no objection can be raised to the exhibiting of the sale deed in view of the ratio of the judgment of the Supreme Court in the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, .

9. (i) That takes us to the issue of whether there exists bonafide necessity of the respondent/landlord. Bonafide necessity is challenged essentially on the ground of existence of a third room on the first floor, two additional rooms on the second floor, and finally one room belonging to the son of the respondent/landlord in another premises no.5174.

(ii) So far as the alleged third room on the first floor is concerned, the said room cannot be used as a room because of the settled law in terms of the innumerable judgments passed by this Court that a room which is less than 100 sq feet cannot be used as a bedroom. Also, this room, really is a store room, has an entrance only through one bedroom, and therefore the same not having any independent entrance, accordingly this small store room only cannot be called and used as a bedroom. Therefore, I hold that the Additional Rent Controller rightly held that there are only two bedrooms on the first floor and not three bedrooms as was the case of the petitioner/tenant as per his written statement.

(iii) That takes us to the issue as to whether there are two rooms existing on the second floor of the premises. The case of the respondent/landlord is that he was in fact trying to construct the two rooms on the second floor but he was stopped constructing the same by the municipal corporation. I may note that since the entire premises are situated on a plot of land which is 76 sq yds, obviously construction on the second floor would be illegal because no sanction plan would be given for construction on the second floor. Also, the respondent/landlord has filed and proved photographs of the "construction" on the second floor as Ex.PW1/12 to Ex.PW1/16, and these photographs show that the walls are not plastered and these so called rooms are not fully constructed. Therefore, the alleged two rooms as is the case of the petitioner/tenant on the second floor, do not really exist and at best there is only a room having a T-iron roof and which room with iron roof cannot be taken and used as a bedroom as held in various judgments passed by this Court.

(iv) Therefore as compared to the need of the respondent/landlord for three bedrooms, one drawing room, one store room and one puja room i.e. four big rooms and two small rooms, the respondent/landlord has just two bed rooms, and one store room. Therefore, I do not find any illegality in the conclusion of the Additional Rent Controller that the respondent/landlord has only two rooms and he needs the room in tenancy with the petitioner.

10. I may also state that the Additional Rent Controller has rightly refused to take the room in ownership with the son in another premises bearing no.5174 as an alternative accommodation because again it is settled law that a landlord is not expected to partition his family for the convenience of the tenant.

11. Learned counsel for the petitioner/tenant argued that the respondent/landlord has not entered into the witness box and therefore bonafide necessity is not proved, however, it is seen that the son of the respondent has appeared in the witness box. It is not the law that a landlord necessarily must step into the

witness box, inasmuch as, evidence is led in a case by any person who is personally having knowledge of the facts of the case, and surely the son of the respondent/landlord who is living with the respondent/landlord being personally aware of the facts of the case could surely have deposed with respect to the facts of the case. This argument therefore urged on behalf of the petitioner/tenant is also rejected.

12. In view of the above, it is clear that the petitioner/tenant by hook or by crook wants to illegally continue to stay in the tenanted premises. Not only that, as stated above, the petitioner/tenant has not paid any user charges or rent from the year 1979 i.e. from 35 years. Therefore, this petition is dismissed with costs of Rs.1 lakh, to be paid within four weeks. Costs essentially in this case have partly the flavour of recompense to the respondent/landlord for the stay of the petitioner/tenant in the suit premises without paying even the nominal rent of Rs.60/- per month. I also order that in view of the ratio of the judgment of the Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., , that, the petitioner/tenant from the date of the order in the eviction petition on 4.5.2012 would be liable to pay charges for use and occupation at Rs.3,000/- per month in view of the order passed by the learned Single Judge of this Court on 20.3.2013 and which order will stand confirmed in terms of today's judgment. 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 in certain frivolous litigation appropriate costs must 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. It is clarified that the petitioner/tenant will be liable to continue to pay the charges for use and occupation till the time the respondent/landlord is handed over the possession of the suit premises, and whatever amounts the respondent/landlord will receive will be subject to final determination in any civil proceedings if the same are initiated.