

(2008) 11 DEL CK 0134
In the Delhi High Court
Case No : CM (M) 1604 of 2007

S. Makhan Singh

APPELLANT

Vs

Smt. Amarjeet Bali

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Court Fees Act, 1870 — Section 7
Delhi Rent Control Act, 1958 — Section 14, 50
Transfer of Property Act, 1882 — Section 111

Citation : (2008) 154 DLT 211 : (2008) 106 DRJ 705

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

Bench : Single Bench

Advocate : L.K. Singh, for the Appellant; D.P. Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner is aggrieved by an order dated 22nd November, 2007 passed by the learned Trial Court whereby an application of the petitioner under Order 7 Rule 11 CPC was dismissed.

2. The brief facts relevant for purpose of deciding this petition are that the respondent filed an Eviction Petition alleging that the petitioner was a tenant in respect of premises at Rs. 500/- per month including water and electricity charges. This tenancy was from month-to-month. The petitioner stopped paying rent to the respondent from January, 1989. The respondent then sent a legal notice dated 17.10.2000 claiming arrears of rent and terminating the tenancy of the petitioner.

3. This notice was duly replied by the petitioner vide reply dated 9th November, 2006 wherein petitioner denied the title of the respondent over the suit property and set up a title in himself and his wife. After this denial of title by the petitioner herein, the respondent filed a suit for possession of the property in Civil Court. During the pendency of this suit, the petitioner filed an application under Order 7

Rule 11 on the ground that the Civil Court had no jurisdiction in view of Section 50 of Delhi Rent Control Act. The other ground pressed by the petitioner was that the plaintiff/respondent had not valued the suit properly for purpose of court fees and jurisdiction. The Trial Court observed that since the petitioner had denied the very title of the respondent and relationship of landlord and tenant, the petitioner could not take a plea that he was a protected tenant under Delhi Rent Control Act. Similarly, the Trial Court observed that since the plaintiff had claimed possession from erstwhile tenant who was a tenant by sufferance, the valuation of suit has to be done on the basis of annual rent the property was fetching and the valuation was not bad in law.

4. The petitioner has assailed the judgment on the ground that the Trial Court overlooked the fact that respondent has admitted that the petitioner was a tenant in the suit premises at a monthly rent of Rs. 500/-. It is stated that once this admission is made, the suit would be barred in view of Section 50 of Delhi Rent Control Act. The other ground taken is that the Trial Court wrongly observed that the Court fees would be on the basis of annual rent. If the petitioner was a trespasser and possession was sought to be recovered from the petitioner as a trespasser, the respondent/plaintiff was liable to value the property at market value.

5. A tenant has been given protection under Delhi Rent Control Act from eviction only where the jural of tenant and landlord was not disputed and the tenant claims himself to be the tenant and not the owner. A perusal of Section 14, which gives protection to a tenant against eviction, clearly shows that this protection is available only to the person who is undisputedly a tenant and does not claim himself to be the owner of the premises. The moment a person refuses the title of the landlord and claims title in himself he ceases to be a tenant in the eyes of law and the protection of Delhi Rent Control Act is not available to him. Section 111(g) of Transfer of Property Act provides that a lease of immovable properties come to an end by forfeiture in case of lessee renouncing his character as such by setting up a title in a third person or claiming title in himself. Thus, once a lease stands forfeited by operation of law, the person in occupation of the premises cannot take benefit of the legal tenancy. This provision u/s 111(g) is based on public policy and the principle of estoppel. A person who takes premises on rent from landlord is estopped from challenging his title or right to let out the premises. If he does so he does at his own peril and law does not recognize such a person as legal tenant in the premises. A lease may come to an end by termination of lease by or by efflux of time. Where the rent is below Rs. 3,500/-, a landlord cannot recover possession from tenant whose term of lease comes to an end or whose tenancy is terminated by a notice because such a tenant is a protected tenant. The landlord can recover possession only if the case falls within the ambit of Section 14 of DRC Act. Where a tenant repudiates the title of the landlord and does not recognize him as landlord or as a owner of the premises, the protection from eviction under Delhi Rent Control Act is not available to him. Where the tenant does not recognize anyone as landlord or

owner and claims ownership in himself he cannot seek protection of Delhi Rent Control Act against the true landlord or owner. The Trial Court therefore rightly held that the petitioner was not entitled to protection u/s 50 of Delhi Rent Control Act.

6. Where the tenant continues in occupation after he repudiates the title of the landlord, lease comes to an end by operation of law because of the repudiation of title and the landlord/owner can file a suit for possession in Civil Court. The valuation of such a suit has to be on the basis of annual rent in view of Section 7(xi)(cc) of Court Fee Act.

7. I find no infirmity in the order of the Trial Court. The petition is hereby dismissed.