

**(2011) 05 DEL CK 0346**  
**In the Delhi High Court**  
**Case No : C.R.P. No. 969 of 2001**

Sh. Amit Gupta and Others APPELLANT  
Vs  
Sh. Dwarka Nath @ Mast Ram through his LRs and Others RESPONDENT

**Date of Decision :** 06-05-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7  
Delhi Rent Control Act, 1958 — Section 14(1)(6), 17(2), 25B(8)  
Penal Code, 1860 (IPC) — Section 302  
Slum Areas (Improvement and Clearance) Act, 1956 — Section 19

**Citation :** (2011) 5 AD 444

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Advocate :** Sheetesh Khanna, for the Appellant; Anuj Gupta, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Anil Kumar, J.—The Petitioners, the alleged unauthorized sub-tenants have filed the above, noted revision petition, challenging the order of eviction passed in respect of suit premises No. 1271(Old No. 442), Vakilpura, Bazaar Guliyan, Near Daribakalan, Delhi u/s 14(1)(e) read with Section 25(B) of the Delhi Rent Control Act, 1958 in Eviction Petition bearing No. E-57/1994 titled as "Sh. Dwarka Nath and Anr. v. Smt. Angoori Devi and Ors.," wherein by order dated 3rd March, 2001 the Additional Rent Controller allowed the eviction petition and directed the Petitioners to vacate the premises within six months.

2. The brief facts to comprehend the dispute between the parties are that, an eviction petition bearing No. E-57 of 1994 was filed u/s 14(1)(e) read with Section 25B of Delhi Rent Control Act, 1958. The Petitioners, Dwarka Nath and Mahinder Nath, filed the eviction petition contending that Smt. Angoori Devi, Smt. Veena Gupta, Smt. Bimla Gupta, Master Amit Gupta, Kumari Monika Gupta, Kumari Daisy Gupta, Smt. Usha Gupta, Smt. Nisha Gupta and Smt. Niti Gupta were the tenants and Shri Dhruv Kumar Gupta, Shri Dushyant Gupta, Smt.

Vidyawati Jain, Shri Virender Kumar Jain, Shri Jagdish Narain and Smt. Kanta Devi "were the unauthorized sub tenants.

3. According to the landlords/owners, the premises were let out for residential purposes at the rate of Rs. 168/- per month comprising of one dallan, two rooms, four stores, two kitchens and one bathroom on the ground floor; four rooms, three stores, three bathrooms, two kitchens and one puja room on the first floor and three rooms, one kitchen, one store and one verandah on the second floor and the entire basement.

4. The premises were let out to Sh. Sri Kishan Dass and after his demise his legal representatives became the tenants as detailed hereinabove. The landlord contended that the tenancy of late Sh. Sri Kishan Dass had been terminated during his life time, however, the copy of the notice was not traceable. While the legal representatives of Sh. Sri Kishan Dass were residing in a portion of the property as the tenants, the other portion of the property was in the occupation of the unauthorized occupants/sub-tenants.

5. According to the Petitioners/landlords, the premises were let out for residential purposes by Smt. Sona Devi to Sh. Sri Kishan Dass at a monthly rent of Rs. 115/- and a rent note dated 29th November, 1943 was executed. It was also asserted that the different portions of the demised premises had been further sublet to the Respondents 10 to 15 (of the eviction petition) without permission in writing or otherwise and an eviction petition on the ground of subletting has also been filed against the unauthorized sub tenants after obtaining permission u/s 19 of Slum Areas (Improvement and Clearance) Act, 1956.

6. Regarding the ownership of the property, the landlords contended that the property was owned by Sh. Jagannath and by a family settlement dated 29th August, 1938 the property in dispute came to the share of Smt. Sona Devi, mother of the landlords, who thereby had become the absolute owner. Apart from the Respondents Smt. Sona Devi had a son named Sri Onkar Nath, and three daughters named Smt. Shanti Devi, Smt. Radha Rani & Smt. Jamuna Devi. Smt. Sona Devi died in 1964 and Shri Onkar Nath, her son died on 18th June, 1992 as a bachelor leaving behind no legal heirs. Shri Mahender Nath had also filed a civil suit No. 44/80 for partition of the suit property and the suit premises had come to the share of Shri Onkar Nath and the three sisters of Shri Dwarka Nath and Mahender Nath. Thereafter the sisters had relinquished their rights in the property by a deed dated 4th August, 1992 in favor of the landlords/ Respondents.

7. Regarding the aspect of the purpose of letting, the landlords had contended that in the rent note dated 29th November, 1943, the purpose of letting was mentioned as "Waste Sakoonat", i.e., for residence. It is also contended that the entire property is residential.

8. The tenants and sub-tenants had contested the eviction petition on the ground that Shri Mahender Nath and Shri Dwarka Nath were neither the owners nor the

landlords of the suit premises. The plea was also taken that the eviction petition without obtaining the permission from the competent authority, Slum, was not maintainable. Regarding the sub tenants, it was pleaded that they were in occupation of different portions since before 1952 and the site plan filed was not correct. Regarding the sub tenancy created by Sh. Sri Kishan Dass, it was contended that the property was let out 53 years back and he was authorized to let out the various portions of the suit property. Regarding the purpose of letting, it was contended that the premises were let out for residential-cum-commercial purpose and is also being used for the same purpose as of now. The tenants denied the validity of the rent note dated 29th November, 1943 and family settlements dated 29th August, 1938 and 14th July, 1981. A specific assertion was made that the different portions were let out by late Sh. Sri Kishan Dass prior to 9th June, 1952 and therefore the Respondents No. 10 to 15 (of the eviction petition) are lawful sub tenants. Relinquishment of the rights in the suit property by the sisters of Shri Dwarka Nath and Mahender Nath by relinquishment deed dated 4th August, 1992 was also denied.

9. Regarding the aspect of bonafide requirement as argued by the landlords and their family members, dependent upon them, it was alleged that the eldest son of Shri Dwarka Nath is living separately and he is also having separate business and mess. Regarding the accommodation with Shri Mahender Nath, it is contended that he has eight rooms, four stores, barsati room on the top floor and two bathrooms and a kitchen besides shops in his house and therefore the accommodation available with him is more than sufficient and suitable for him. The alleged unauthorized sub tenants also contested the eviction petition on the ground of bonafide requirement on similar pleas as were raised by the tenants. It was rather contended that the landlords want to let out the premises at enhanced rates after getting huge pagree, or to sell the same for a huge amount. The alleged unauthorized sub tenants also pleaded that the late Sri Kishan Das had inducted Shri Radhey Shyam in a portion of the property comprising of a basement, two rooms, two kottas, kitchen, bathroom and latrine with another deceased Sh. Nand Kishore in the courtyard, common passage, dehliz on the ground floor and use of the top floor at a rent of Rs. 28.50 paisa who died in the year 1990 and thereafter the above noted Respondents No. 10 to 15 became the sub-tenants under Smt. Angoori Devi and others on the same terms and conditions at the rate of Rs. 23.50 paisa.

10. Bonafide requirement of the landlords was also challenged on the ground that Shri Dwarka Nath. had alternative accommodations at property No. 982, Chhota Chhipiwara, Chawri Bazar, Delhi which, is a residential property, and at property No. 3865, Charkhewalan, Delhi-110006, which were not disclosed by him. Another accommodation at 6/2753, Chuna Mandi, Pahar Ganj, Delhi-5 was also alleged to be the property of Shri Dwarka Nath.

11. During the trial, the landlords, Dwarka Nath and Mahender Nath, proved the rent note as Exhibit AW1/1 and relinquishment deed dated 4th August, 1992

executed by Smt. Jamuna Devi, Smt. Shanti Devi and Smt. Radha Rani as Exhibit AW1/2 to Exhibit AW1/4. The counter foils of rent receipts were proved as Exhibit AW1/5 to Exhibit AW1/11. The site plan was proved as Exhibit AW1/5. The landlords also proved the ration cards as Ex. AW 1/17 and the site plan of the property No. 3865 was proved as Ex AW1/18 and the site plan of property No. 2753/6, Chuna Mandi, Pahar Ganj, Delhi-5, where the son of Shri Dwarka Nath, Shri Vishwanath, was residing was proved as Ex AW1/19. Shri Mahender Nath, the landlord, had also appeared as AW3, Sh. M.K. Garg AFD Sr. Clerk DVB was examined as AW4. While the tenants/Petitioners examined Smt. Bimla Devi as RW1 and Sh. Jai Kishan as RW2.

12. The Additional Rent Controller after considering the pleas and contentions of both the parties, allowed the eviction petition by order dated 3rd March, 2001 u/s 14(1)(e) read with Section 25B of Delhi Rent Control Act, 1958 holding inter alia that since Section 2(1) defines "tenants" which includes sub tenants, therefore, the order of eviction on the ground of bonafide requirement shall be binding on all persons who are in occupation of the premises. The Additional Rent Controller also held after considering the testimonies of the parties and the documents, relying on the rent note, Exhibit AW1/1, that the purpose of letting was residential and that the Respondents had failed to establish that the premises were let out for residential-cum-commercial purpose. On the basis of the rent note describing Smt. Sona Devi as the owner, the learned Additional Rent Controller also held that the landlords have been able to establish that they are the owners of the property. The Additional Rent Controller also rejected the pleas of the Respondents/ tenants contending that the petition was barred u/s 14(6) of Delhi Rent Control Act on the ground that the landlord had acquired the premises in 1992 and filed the petition on 28th February, 1994 before the expiry of five years. The Additional Rent Controller had held that Shri Dwarka Nath and Mahender Nath had acquired the property as co-owners and, therefore, it could not be held that they acquired the property only in the year 1992 on the death of Shri Onkar Nath and thus held that Sh. Dwarka Nath and Sh. Mahender Nath are the co-owners and that the petition is not barred u/s 14(6) of Delhi Rent Control Act, 1958.

13. The Petitioners/tenants have challenged the order of eviction passed against them inter-alia on the grounds that the Respondents/ landlords have not pleaded their bonafide requirement as contemplated u/s 14(1)(e) of Delhi Rent Control Act, 1958. According to the Petitioners, the Respondents have not specifically pleaded as to how much accommodation is required by them. It was also pointed out that the dependants of the landlords have not expressed their desire to live with their parents, as the sons of the Respondents have even filed civil suits against them regarding partition of the premises. In the circumstances, the wish of the landlord to live with his son cannot be termed to be bonafide.

14. The Petitioners have challenged the plea of bonafide requirement of Respondents on the ground that they are not the sole owners of the premises.

According to the Petitioners the premises where the demised property is situated had been partitioned. This fact was asserted by the Petitioners on the basis of an additional affidavit dated 30th June, 2007 disclosing that recently before filing the additional affidavit dated 30th June, 2007 they came to know that Sh. Dwarka Nath and Mahender Nath had partitioned the property among themselves and that they had even executed a partition deed. The Petitioners also produced a copy of the partition deed dated 7th April, 1993, however, they did not produce a copy of the plan filed along with the partition deed showing the areas which had fallen in the respective shares of Mahender Nath and Dwarka Nath pursuant to the partition. The Petitioners also asserted that late Sh. Dwarka Nath and his son Deepak Kumar after his demise have concealed the fact that Sh. Deepak Kumar had filed a suit for partition in respect to the property in dispute against Late Sh. Dwarka Nath and his wife Usha Rani and his other two sons namely Vishwanath and Rajneesh Kumar. The Petitioners contended that even an allegation was made by Sh. Deepak Kumar that late Sh. Dwarka Nath was trying to sell the property in collusion with his son Rajneesh Kumar. The Petitioners by additional affidavit also deposed that the wife of Sh. Dwarka Nath was murdered and an FIR u/s 302 of Indian Penal Code was also registered against Mr. Rajneesh Kumar the youngest son of late Sh. Dwarka Nath, for which he has been arrested and a case is pending against him. In the circumstances, it has been pleaded that the requirement of the Respondents is malafide and cannot be termed to be bonafide and in any case they have failed to establish that they are the owners. It was also asserted that the concealment of the fact regarding the partition in itself is sufficient to dismiss the eviction against the Petitioners.

15. The Petitioners have also contested the eviction petition on the ground that the eviction is sought in respect of a part of the tenancy premises and consequently the eviction order could not be passed for the portion of the property which was not demised to the tenant. In support of this plea the Petitioners have alleged that the Petitioners themselves have stipulated in the eviction petition that the basement was not a part of the tenancy premises, however, the learned Additional Rent Controller has passed the eviction order in respect of the basement also and thus has committed grave material illegality.

16. The Petitioners further contended that concealment of the particulars of other properties owned by the landlords/ Respondents has also been made. According to the Petitioners the properties 982, Chawri Bazar, Delhi-110006, 2707, Churi Walan, Delhi-110006 and 2753/6, Chuna Mandi, Paharganj, New Delhi-110005 are allegedly owned by Sh. Dwarka Nath. Reliance for this is made on the will dated 15th November, 2002 by Sh. Dwarka Nath and in the circumstances it is contended that the Respondents have suitable alternative accommodation available to them and therefore the ground for bonafide requirement is not made out, hence they cannot seek eviction of the Petitioners from the demised premises. In support of their submissions the learned Counsel for the Petitioners has relied on *O.P. Gupta v. R.K. Sharma*, 90 (2001) DLT 276 and *S.K. Dey Vs. D.C. Gagera*,

17. In O.P. Gupta (supra) it was held that in case necessary and relevant facts are concealed, the opposite party would not be entitled to any relief. In this case the mother of the Petitioner had expired before the eviction petition was filed however, this fact was not disclosed by him, nor he disclosed that he is one of the co-owner of the another property situated at Delhi. This was construed as serious concealment of necessary and relevant facts and the Additional Rent Controller had dismissed the eviction petition. While in S.K. Dey Vs. D.C. Gagera, a Division Bench of this Court had held that dependency cannot be stretched to include the need of any other member of the family simply because he needs accommodation, when he is not dependent on the owner of the house. To stretch the interpretation of the meaning to be given to the word "dependent" in such a manner would make the second part of the clause otiose because this would mean that if any relation of the owner, even if totally independent financially would be covered within the meaning dependent on the facile reasoning that as he is in need of accommodation he should be deemed to be dependent for that purpose on the landlord. The interpretation is against the plain meaning of the clause and against the very purpose, is and would run counter to the meaning of dependent accepted by this Court, and cannot be accepted.

18. In order to buttress the point that the Respondents have suitable and sufficient accommodation it is also asserted that another tenant namely Sh. Ramesh Chand occupying property No. 1271A, owned by Sh. Mahender Nath was evicted and consequently the Respondent No. 2 Sh. Mahender Nath is in possession of the entire property No. 1271A consisting of 31/2 storeys and, consequently, the bonafide need of the Respondent No. 2 does not survive.

19. Invoking Section 14(6) of Delhi Rent Control Act, it was asserted that the property was acquired by Sh. Dwarka Nath and Sh. Mahender Nath, Respondents pursuant to the relinquishment deed dated 4th August, 1992, whereas the eviction petition was filed on 28th February, 1994 before the expiry of five years from the date of acquisition and consequently in view of Section 14(6) of Delhi Rent Control Act, 1958 the eviction petition u/s 14(1)(e) of Delhi Rent Control Act is not maintainable. Reliance has been placed by the Petitioners on Shiv Dutt Sharma Vs. Prem Kumar Bhatia, According to the Petitioners relinquishment amounts to transfer and for that reliance has been placed on Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another,

20. The Petitioners have also relied on the subsequent events as the tenants and allegedly all the lawful sub-tenants except for the Petitioners had entered into a compromise with the Respondents and had even vacated their respective portions, i.e. all other portions in possession of other persons except the legal representatives of Sh. Radhey Shyam namely Petitioner No. 2 and 3 that is Sh. Dhruv Kumar Gupta and Dushyant Gupta had vacated their respective premises. Subsequently it was asserted that the major portions of the property have become available to the Respondents comprising of 9 rooms, 6 stores, 4

kitchens, 3 bath rooms and 2 toilets. It was also contended that the family members of the Respondents have changed since the institution of the eviction suit, as the late Sh. Dwarka Nath, Respondent No. 1 had died on 24th February, 2005 and his wife was murdered on 14th January, 2005 and their son Rajneesh Kumar was even arrested in connection with the murder of the wife of late Sh. Dwarka Nath. Since late Sh. Dwarka Nath had pleaded his personal requirement, the same did not exist anymore. The Petitioners placed reliance on Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina, , Amarjit Singh Vs. Smt. Khatoon Quamarain, and Pasupuleti Venkateswarlu Vs. The Motor and General Traders, Therefore the Petitioners contended that the subsequent event ought to be taken into consideration.

21. The pleas and contentions of Petitioners are contested by the Respondents contending inter-alia that they are the owners and landlords of the premises and the Petitioners are the unauthorized subtenants. It is pleaded that since their bonafide requirement is made out, the unauthorized subtenants are also liable to be evicted. The Respondents have relied on the testimonies of Sh. Dwarka Nath, AW-1; Sh. Shatrughan Poddar, AW-2; Sh. Mahender Nath, AW-3 and Sh. M.K. Garg, AW-4. The Respondents also contended that during the pendency of the revision petition Respondent No. 1 Mr. Dwarka Nath had expired and his legal representatives have been brought on record.

22. Refuting the pleas raised by the Petitioners in the additional affidavit, an affidavit dated 6th August, 2007 was filed by Sh. Mahender Nath on behalf of the Respondents contending inter-alia that the deposition of Sh. Dhruv Kumar Gupta Petitioner No. 2 by affidavit dated 30th June, 2007 is to be removed from the Court record as the same had not been attested before the Oath Commissioner as the deponent of the said affidavit had not been identified by an appropriate counsel. The additional deposition of Petitioner No. 2 Sh. Dhruv Kumar Gupta was also objected to on the ground that the alleged subsequent facts could not be taken on record as no prior permission had been taken from the Court. The Respondents further asserted that on an earlier occasion as well an additional affidavit was filed by the Petitioners in order to delay the disposal of the revision petition. The Respondents also asserted that Sh. Dhruv Kumar Gupta is guilty of suppression of material facts as he is in unauthorized occupation of the premises in his possession and he has not even put to use the same premises which is instead lying in a locked condition as he is residing at 1275, Vakilpura, Delhi-110006. According to the Respondents the brother of Sh. Dhruv Kumar Gupta namely Sh. Dushyant Gupta also left the premises long ago and is residing at 2431, Chipiwara Kalan, Delhi-110006. It was further deposed on the affidavit filed by Sh. Mahender Nath that the other Petitioners in the petition had vacated the premises under their respective possession and had shifted to other premises. A specific averment was made that Sh. Dushyant Gupta brother of Sh. Dhruv Kumar Gupta is no more interested in contesting and the Petitioner Sh. Dhruv Kumar Gupta is continuing the proceedings with an aim to extort money/ illegal gratification from the landlords. An allegation was also made that Sh.

Dhruv Kumar Gupta had demanded a huge sum of money to vacate the premises in his possession.

23. The allegation against the murder of the wife of Sh. Dwarka Nath by Mr. Rajneesh Kumar his son was denied. In any case it was asserted that the murder and death of the wife of Sh. Dwarka Nath has no bearing on the eviction petition of the Respondents against the Petitioners, who are in any case unauthorized subtenants. It was further reiterated by Sh. Mahender Nath that Sh. Rajneesh Kumar son of Sh. Dwarka Nath is residing in the property in dispute. Regarding the disconnection of the electricity to the portion under the possession of Sh. Rajneesh Kumar, it has been asserted that the electricity could not be restored on account of paucity of funds and more particularly for the reason that the fresh fittings to be installed after the vacations, of the other premises under the possession of the Petitioners was not possible since it was kept locked by them. Regarding the water charges, deponent Mahender Nath asserted that some of the contesting Petitioners refused to pay the water charges which led to arrears, however, this does not reflect on the fact that the premises is not being used by the Respondents.

24. Regarding the partition of the suit property it was contended that a suit No. 44/ 1980 was filed for partition of the properties" left behind by Smt. Sona Devi, mother of the Respondent. On partition, the property bearing No. 1271, Vakilpura, Delhi-6 came to the share of Mr. Onkar Nath, elder brother of the Respondents who died in 1992. His rights in the property devolved upon the Respondents and their sister. Thereafter, the sisters of the Respondents executed relinquishment deeds dated 23rd November, 1992 and their rights in the property were relinquished by them, namely Smt. Jamuna Devi, Smt. Radha Rani and Smt. Shanti Devi in favour of Respondents. The Respondents further contended that with a view to avoid future disputes, they divided the property among themselves by way of an oral family settlement and this settlement was executed during the life time of late Sh. Dwarka Nath in the form of a partition deed, however, as per the understanding between the Respondents, they remained as joint owners since the settlement deed/partition deed was executed for future purposes only and it had not been acted upon at the time it was executed nor was it intended to be acted upon as there has been extreme intimacy, cooperation and coordination among the Respondents, in respect of entire property No. 1271, Vakilpura, Delhi. The allegation that the sons of Dwarka Nath do not want to evict the Petitioners was also denied by the landlords/Respondents.

25. The Respondents/landlord have also contested the revision petition on the ground that the scope of interference of u/s 25(B)(8) of the Delhi Rent Control Act, 1958 is limited and order of the Rent Controller has to be assessed on the touch stone of "whether it is according to law Or not? Relying on Manju Swaroop and Ors. v. Vinay Shankar Singh, 2010 IV AD (D.H.C.) 481 : 167 (2010) DLT 637 the Respondents have contended that the scope of revisional power is limited



and the High Court will not re-appreciate the evidence led before the Rent Controller as the power is limited to find out if any material consideration or evidence has been overlooked. In *Sumitra Devi Vs. Raj Rani Sehdev*, it was observed as under:

It is also well settled that while exercising powers u/s 25-B(8) of the Act the High Court has to test the orders of the Rent Controller on the touch- stone of "whether it is according to law" or not. The High Court must not substitute its own opinion in place of the view taken by the Controller unless the view taken by him betrays lack of reason or objectivity or appears to be so unreasonable that no prudent man could have taken that view.

Similarly, it was held in *J.K. Saxena Vs. Shri Madan Lal Khurana, and Akhtari Begum and Ors. v. Abdul Qadir*, RCR No. 60 of 2008 decided on 21st August, 2008, that the High Court cannot substitute its own judgment in place of the judgment of learned ARC. The eviction order can be set aside only if there is a manifest error either of facts or of law on the face of judgment and the error must be a glaring one which will vitiate the order itself. This is so because the power of High Court u/s 25-B(8) is supervisory in nature and it is intended to ensure that Rent Controller conforms to law when he passes the order. It was further held that High Court will not be justified to interfere with the decision of the Rent Controller merely because on the same evidence, the High Court is likely to come to a different conclusion. It was further held that the High Court, however, shall be entitled to interfere in case material considerations have been overlooked in assessing the need which can be termed as material irregularity.

26. Hence according to the Respondents the Petitioners have not been able to pin point any material irregularity. Reliance has also been placed on *Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another*, ) to contend that even in respect of commercial premises, the petition on the ground of bonafide requirement can be maintained. In *Satya Wati (Supra)* the Supreme Court had held that the discriminatory portion of Section 14(1)(e) of the Act was liable to be struck down making the explanation" of Section 14(1)(e) redundant and consequently, there could not be any classification between the premises let out for residential and nonresidential premises. It was further held that a legislation which might have been quite reasonable and rational at the time of its enactment, it's possible that after the passage of time and/or due to change of circumstances it might become arbitrary, unreasonable and violative of doctrine of equality. The court in subsequent litigation can strike down such law, if the rationale for classification has become non-existent. In the circumstances, it was held that even if a premise has been let out for commercial purposes, the eviction can be sought of the tenant from such a premise u/s 14(e) of the Delhi Rent Control Act, for bona fide requirement of the landlord. Consequently, the purpose of letting becomes irrelevant. It is, therefore, pleaded that the premises which was let out for residential purpose in terms of the rent note in favor of the tenant, the plea that the premises was not let out for residential purposes cannot

survive. The bonafide requirement established against the tenant as it has not been contested by them would also be binding on the subtenant and for this, reliance has been placed on A.S. Sulochana Vs. C. Dharmalingam, and Imdad Ali Vs. Keshav Chand and Others,

27. Regarding the change in the circumstances on account of the demise of late Sh. Dwarka Nath and the murder of his wife, it is contended that the bona fide need of the landlord has to be examined as on the date of institution of the eviction petition, and if a decree of eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenants will make no difference. Reliance was also placed on Carona Ltd. Vs. Parvathy Swaminathan and Sons,

28. The learned Counsel for the Respondents has relied on the cases of 2008 (1) RLR 63 Usha P. Kuvelkar and Ors. v. Ravindra Subrai Dalvi, wherein the Supreme Court had held that in a case filed by a landlady on the ground of bona fide requirement despite the death of the landlady during pendency of the eviction proceedings, her heirs will be fully entitled to depend on the estate. Reliance was placed by the Supreme Court on Shakuntala Bai and Others Vs. Narayan Das and Others, , where it was observed that the bona fide need of the landlady has to be examined as on the date of institution of the proceedings and if a decree for eviction passed, the death of the landlady during the pendency of the appeal preferred by the tenant would make no difference as his heirs are fully entitled to depend on the estate.

29. This Court has heard the learned Counsel for the parties in detail and has perused the eviction petition and the other pleadings and the affidavit filed by the Petitioners regarding the subsequent event. In Manju (Supra) a Single Judge of this Court had held that under the revisional jurisdiction u/s 25-B(8) of Rent Control Act, the High Court does not sit in appeal and would not re-appreciate the evidence ordinarily. However, the evidence can be re-appreciated for the purpose of assuring itself that order of the learned Additional Rent Controller is in accordance with the evidence and does not suffer from any jurisdictional or material irregularity. However, if the findings of the Additional Rent Controller are perverse or such that no prudent person can come to that conclusion or interference drawn are contrary to record are based on absolutely no evidence, High Court would be entitled to interfere under the said provision.

30. This has been established that Smt. Sona Devi had let out the property to the tenant late Sh. Sh Sri. kishan who had executed a rent note dated 29th November, 1992, Ex. AW1/A on a monthly rent of Rs. 115/-. The property was owned by Sh. Jagannath, the maternal grandfather of the Respondents and by registered family settlement deed dated 29th August, 1938 Ex. AW2/1. The property came to the share of Smt. Sona Devi, the mother of the Respondents. Smt. Sona Devi had four sons and one daughter. Her eldest son Sh. Rameshwar Nath's whereabouts were not known since 1948 and he had left behind his wife named Smt. Shanti Devi and a daughter named Smt. Radh Rani. The second son

of Smt. Sona Devi was Sh. Onkar Nath and he died as bachelor on 18th June, 1992 and did not leave behind any children. The third son of Smt. Sona Devi was late Sh. Dwarka Nath who died during the pendency of the present proceedings on 23rd February, 2005 and his legal heirs were brought on record by order dated 1st March, 2006 in an application being CM No. 11076 of 2005. The fourth son of Smt. Sona Devi is Sh. Mahender Nath, Respondent No. 2. The only daughter of Smt. Sona Devi also died on 15th August, 1993. From the evidence on record, it is also established that late Sh. Dwarka Nath used to collect the rent on behalf of all the legal heirs of late Smt. Sona Devi. The suit property was partitioned among the legal heirs of Smt. Sona Devi in a suit bearing No. 44 of 1980 and the property had fallen into the share of Sh. Onkar Nath. As Sh. Onkar Nath had expired interstate on 18th June, 1992 and his sister Smt. Shanti Devi, Smt. Radha Rani and Smt. Jamuna relinquished their rights vide relinquishment deed dated 4th August, 1992, the Respondents late Sh. Dwarka Nath and Sh. Mahender Nath became the sole owners of the property. Therefore, it cannot be held that the eviction petition would be barred u/s 14(6) of the Delhi Rent Control Act as the eviction petition was filed on 28th February, 1994. The precedents Kuppaswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, is distinguishable as though by relinquishment deed, the rights of the sisters of the Respondents were transferred in favor of the Respondents, however, they themselves also had rights in the property prior to the relinquishment. Consequently, the plea of the Petitioners that the eviction petition was premature and was barred u/s 14(6) of the Delhi Rent Control Act is rejected.

31. The eviction petition on the ground of bona fide requirement was filed by the Respondents against the legal representatives of the deceased tenants of late Sh. Sri Kishan and all the sub tenants as well. It was not essential to implead the sub tenants as party to the eviction petition filed u/s 14(1)(e) of the Delhi Rent Control Act. In case the sub tenants had not been included in the eviction petition and the orders of eviction petition on the ground of bona fide requirement had been passed against the tenants, had the subtenants been unlawful, the eviction order passed only against the tenant would not be binding against the unlawful subtenants. If the subtenants would be lawful, then they would only be entitled to claim that the bona fide requirement be also established against them as on passing an eviction order against the tenants, and by virtue of Section 18 of Delhi Rent Control Act, 1958 they would become a direct tenant under the landlords/owner; However in the present case the Petitioners who are the subtenants were impleaded as parties to the eviction petition, therefore the ground of bona fide requirement has also been established against them. The Petitioners, admittedly did not give any notice u/s 17(2) of Delhi Rent Control Act, 1958 and therefore, on passing of an eviction order against the tenant, they would not become a direct tenant under the Respondents u/s 18 of the Delhi Rent Control Act, 1958. In the present case all the tenants and sub tenants were impleaded as parties and the landlords have established their bonafide requirement as against the tenants and the sub

tenants. Therefore, the present Petitioners who are the sub tenants would also be liable for eviction in case the bona fide requirement of the Respondents is sustained and is not set aside on the grounds alleged by the Petitioners.

32. From the testimonies of the AW1, late Sh. Dwarka Nath, AW2 Sh. Shatrughan Poddar, AW3 Sh. Mahender Nath, AW4 Sh. M.K. Garg a witness from the Electricity Department and considering the evidence of the Petitioners RW1 Smt. Bimla Devi and RW2 Sh. Jai Kishan, it has been established that the Respondents are the owners and thus, the landlord of the premises, as the premises was let out by Smt. Sona Devi to late Sh. Shi Kishan who had further sub let the premises to the Petitioners. This also cannot be disputed that the term "Owner" u/s 14(1)(e) of the Delhi Rent Control Act does not contemplate an absolute owner. The Courts have held that the eviction petition on the ground of bona fide requirement can be maintained even by a co-owner.

33. The revision petition filed by the Petitioners cannot succeed on the ground that the Respondents have other residential accommodation available in other properties as detailed hereinabove because it is apparent from the evidence that the property No. 982 Chawdi Bazaar, Delhi-6 is a commercial property and not a residential property and therefore, no residential accommodation is available to the Respondents. Besides making the allegations that property No. 2707 Churi Walan, Delhi-6 and property No. 2753/6 Chuna Mandi Paharganj, Delhi-5 are residential properties and are owned by the Respondents and their family members, no cogent evidence has been led by the Petitioners which would show that the said properties are the properties of the Respondents. Consequently, on the allegation that the Respondents have not disclosed all the residential properties available to them and they are not entitled for eviction order on the ground of bona fide requirement cannot be accepted and this plea of the Petitioners is rejected.

34. The Petitioners have also sought dismissal of eviction petition on the ground that the order of eviction also includes the basement which is not a part of the tenancy premises. On account of the subsequent events, the legal representatives of the tenants and various sub tenants except the Petitioners had vacated the different portions of the property in dispute, and the Respondents had filed an additional affidavit dated 26th February, 2011 along with a site plan Annexure R2/A showing the portions in possession of the Petitioners. The portions in possession of the Petitioners are shown in red in the said plan. The plan is of the building bearing Nos. 1271 and 1271-A (Old Nos. 442 and 442A) Ward (IV) situated at Vakilpura, near Jama Masjid, Delhi-110006. A copy of the affidavit dated 26th February, 2011 and the plan Annexure R2/A which was prepared by B.B. Associates & Architects, was duly signed by them and by Sh. Mahender Nath, which was given to the Petitioners and thereafter the Petitioners had also sought time to file the response to the additional affidavit dated 26th February, 2011 and the plan Annexure R2/A. Despite opportunity given to the Petitioners, they did not file the response. Consequently, the depositions of

Respondent No. 2 regarding the subsequent event and the plan Annexure R2/A have remained un-rebutted. In the circumstances, the plan Annexure R2/A showing the portion now in possession of the Petitioners is exhibited as Exhibit RW 2/A. From the evidence on record it is inevitable to infer that the basement also formed a part of the tenancy premises. In the written statement filed by the tenants it was categorically stipulated that the basement formed a part of the tenancy premises. The Respondents had also filed an eviction petition on the ground of unauthorized sub-tenancy by the tenants in favor of the Petitioners. In the said petition also a Civil Misc Petition being CM (Main) 1675 of 2006 was filed by the Petitioners wherein they had taken the same plea that the eviction order was passed in respect of basement which did not form part of the tenancy premises. In the said petition it has been held by this Court as under:

48. The learned Counsel for the Petitioners had also contended that the eviction petition was filed in respect of a part of the tenancy premises and thus the decree for eviction could not be passed for a portion of the premises in the property, which was not let out to late Sh. Sri kishan tenant. According to the learned Counsel for the Petitioners, the basement was not a part of the tenancy premises. The plea of the learned Counsel for the Petitioners, however, in the facts and circumstances has to be rejected as it was categorically stipulated in the written statements filed by the tenant and the sub-tenants that the basement was part of the tenancy premises. Consequently, now the Petitioners cannot raise the plea that the eviction petition was in respect of a part of the tenancy premises and therefore could not be passed against the Petitioners. In any case on account of subsequent events, as except for the Petitioners, everyone i.e. the legal representatives of deceased tenant Sh. Sri Kishan and the other sub-tenants had been evicted from the premises pursuant to their compromise with the Respondents, and a plan showing the premises in possession of the Petitioners was filed along with an affidavit showing the premises under their occupation, which specifies the basement and the dalan portion of the premises which has been exhibited as Exhibit X. Despite the ample opportunity given to the Petitioners, reply to the additional affidavit was not filed nor was the correctness of the plan showing the demised premises under the occupation of the Petitioners denied. The plan showing the premises under the tenancy of the Petitioners was exhibited as exhibit X. In the circumstances it cannot be held that the eviction" petition was filed in respect of a part of the demised premises and hence was not maintainable. In 150 (2008) DLT 339, Suman Sodhi and Ors. v. Yogender Sharma, it was held that merely because a tenant/sub-tenant or unauthorized occupant without express consent or authority of landlord/owner raises construction in a portion of the tenanted premises, he cannot object to delivery of possession on the ground that such portion did not form part of the eviction order. It was further held that if such an argument is accepted it would be putting premium on the illegality of tenant/sub-tenant and they cannot be allowed to take advantage of their own wrong. Consequently, the plea of the Petitioner that the eviction petition was in respect

of the part of the tenancy premises and the portion of the premises in occupation of the Petitioners did not form part of the tenancy premises cannot be accepted. This plea has to be rejected as it is not the case of the Petitioners that the portion in their possession except the basement was given on sub-tenancy by Sh. Sri Kishan to their predecessor, Sh. Radhey Shyam and Sh. Radhey Shyam later on illegally and unauthorisedly occupied the basement. The property in fact was let out to Sh. Sri Kishan who had inducted the sub-tenant including late Sh. Radhey Shyam. Therefore, in the totality of facts and circumstances this plea has to be rejected.....

In the circumstances the plea of the Petitioners that the eviction order has been passed in respect of premises which did not form part of the tenancy premises is repelled and on this ground the eviction order passed u/s 14(1)(e) of Delhi Rent Control Act, 1958 is not liable to be set aside.

35. Petitioners have also sought rejection of the petition on the ground that the facts pertaining to the partition of property between Sh. Mahender Nath and Sh. Dwarka Nath, the landlords had not been disclosed by the Respondents, though the partition was effected prior to the institution of the eviction petition. This is true that the fact that there had been a partition between Sh. Mahender Nath and Sh. Dwarka Nath had not been disclosed, but had been admitted to by the Respondents only when they were confronted with the photocopy of the partition deed produced by the Petitioners. Rather the plea raised by the Respondents was that though there was a partition by virtue of a registered partition deed, however, it was not acted upon. Considering the facts and circumstances, however, the eviction petition cannot be dismissed on the ground of suppression of the partition between Sh. Mahender Nath and Sh. Dwarka Nath, because of the fact that even after partition portions of the premises demised to late Sh. Sri Kishan continued under both the landlords as this cannot be disputed in law that tenancy of Late Sh. Sri Kishan could not be divided pursuant to partition between the co-owners. A copy of the plan along with the partition deed was filed, which shows that a portion of the tenanted premises remained in the ownership of late Sh. Dwarka Nath whereas another portion had fallen into the share of Sh. Mahender Nath. The plan which was a part of the partition deed dated 7th April, 1993 which was registered as document No. 2041 in Additional Book No. 1 Vol. 6132 at Pages 76-84 showing the portions in yellow which fell in the share of late Sh. Dwarka Nath and portions in green which fell in the share of Sh. Mahender Nath. A copy of the partition deed dated 7th April, 1993 was filed on behalf of the Petitioners alleging subsequently that the fact about the partitioning of the property between the deceased Respondent No. 1 and Respondent No. 2 had not been disclosed, and therefore, the eviction petition should be dismissed. As the copy of the plan which was a part of the partition deed dated 7th April, 1993 was not filed therefore, the Respondents were directed to file the certified copy. Pursuant to which the said copy of the plan was filed in index dated 23rd July, 2010 and 24th July, 2010. Perusal of the said plan categorically reveals that though the portion of the property No. 1271 on the ground floor, 1st floor and

2nd floor and Barsati Floor had been partitioned between late Sh. Dwarka Nath and Sh. Mahender Nath, however, the tenancy portion had fallen in the share of late Sh. Dwarka Nath and Sh. Mahender Nath both. On account of partition of property No. 1271 between late Sh. Dwarka Nath and Sh. Mahender Nath, the entire tenancy premises had not fallen in the exclusive share of either late Sh. Dwarka Nath or Sh. Mahender Nath. In the circumstances, the tenancy premises could not be divided on the ground of partition between late Sh. Dwarka Nath and Sh. Mahender Nath by partition deed dated 7th April, 1993, nor is the eviction petition liable to be dismissed on this ground as the eviction petition has been filed by both late Sh. Dwarka Nath and Sh. Mahender Nath.

36. The partition of the property between Sh. Dwarka Nath and Sh. Mahender Nath could have impact on the requirement propounded by both of them, however, it has been contended by the Respondents that though the partition deed was executed however, the property has not been divided by meets and bound either by Sh. Dwarka Nath or after his life by his legal heirs with Sh. Mahender Nath. An additional affidavit dated 30th June, 2007 was filed on behalf of the Petitioners by Sh. Dhruv Kumar alleging the partition between Sh. Dwarka Nath and Sh. Mahender Nath. In reply, a counter affidavit dated 6th August, 2007 was filed by Sh. Mahender Nath, Respondent No. 2 contending categorically that in order to avoid any differences between the children of Sh. Dwarka Nath and Sh. Mahender Nath, an understanding via an oral family settlement was arrived at and that, acting on legal opinion at the time, the partition deed dated 7th April, 1993 was executed. However, despite the execution of the partition deed, it has not been acted upon between the Respondents due to the intimacy, cooperation and coordination amongst the Respondents. It has also been asserted that the partition deed was not even filed with the Municipal Corporation of Delhi, nor was the property divided by meets and bound.

37. The Respondents also contended that the Petitioners are taking mutually destructive pleas as they have alleged that the Respondents are not the owners of the property and on the other hand they have also contended that the Respondents are the owner of the different portions of the property bearing Nos. 1271, relying on the partition deed, which reflects the mala fide on the part of the Petitioners.

38. In the circumstances, it is apparent that there is no evidence that despite the partition of the suit premises by partition deed dated 7th April, 1993, the Respondents have not acted upon the same and also no evidence has been produced by the Petitioners proving that the property has been divided physically by Sh. Dwarka Nath and Sh. Mahender Nath. Had it been so, the Petitioners, who were the only occupants left in the property would have known and would have produced some evidence to prove the same. In any case on this ground, it cannot be held that there is such concealment of facts which would entail dismissal of eviction petition in the facts and circumstances. The Respondents in their counter affidavit dated 6th August, 2007 also disclosed that the Petitioners

though in possession of the premises shown in red in the site plan Ex.R2/A which includes the basement, they however are not residing in the property in dispute and are only contesting the bonafide requirement of the Respondents with a view to extort money from the Respondents for vacating the premises. It was also contended that Sh. Dhruv Kumar had demanded a huge sum of money to vacate the premises which had led to the dismissal of the appeal filed by the Petitioners against the order of the eviction passed u/s 14(1)(b) on account of sub letting or parting of possession with cost of Rs. 10,000/-.

39. Even if the partition between the Respondent No. 1 and Respondent No. 2 is considered and considering the accommodation available with them in their respective portions and their family members, the requirement of the Respondents is made out and there does not appear to be such error which would require any interference by this Court. Perusal of the pleadings reveal that the family of late Sh. Dwarka Nath, at the time the eviction petition was filed, consisted of himself, his wife and three sons, namely, Vishwanath, Deepak Kumar and Rajneesh Kumar. Two sons namely, Vishwanath and Deepak are married and have their own families. The family of Vishwanath comprises of his wife, a son and a daughter, namely, Nikhil and Nitika, whereas the family of the Deepak Kumar comprises of his wife and a daughter named Shruti. The third son of the Respondent No. 1 Rajneesh Kumar is unmarried and residing in the property in dispute in a portion which was vacated by the tenants and subtenants later on. Sh. Dwarka Nath, Respondent No. 1 had died during the pendency of the present revision petition and during his lifetime, his wife Smt. Usha Rani had also been murdered.

40. The married son of Sh. Dwarka Nath, namely, Sh. Vishwanath is residing in a rented house bearing No. 6/2753, Rajpur Road, Chuna Mandi, Pahar Ganj in one room with a small kitchen and a bathroom. The plan of the rented property which is in occupation of Sh. Vishwanath is Ex. AW1/19. This cannot be disputed that the said son after the demise of his father has become co-owner/landlord. If the landlord is living in a rented accommodation he would be entitled to shift the residential accommodation owned by him and the rented accommodation cannot be construed to be suitable for him and therefore his requirement would be bona fide. Thus the requirement of Sh. Vishwanath son of Late Shri Dwarka Nath would be bona fide. The other son, namely, Sh. Deepak Kumar, was residing with his father Sh. Dwarka Nath and his family in a rented property bearing No. 3865, Charkhewalan, Delhi in an accommodation comprising of one room, a kitchen, latrine on the first floor of the said property. Site plan of the said property showing the premises in possession of late Sh. Dwarka Nath and his son Deepak is Ex. AW1/18. The said son is also entitled to live in his own property and his requirement cannot be termed to be not bona fide nor can it be held that he has reasonably suitable accommodation available to him which is a rented premise.

41. At the time of the institution of the eviction petition, Petitioner No. 2 Sh. Mahender Nath was residing in adjacent residential accommodation bearing No.



1271A, Vakilpura, Delhi comprising of a Duchhatti and a store on the ground floor; two rooms, one small store, one kitchen, one bathroom and one urinal on the first floor and two rooms, two small stores and one bath room on the second floor and a Barsati on the top floor.

42. The family of Respondent No. 2 comprised of his wife and a married son and two minor children. The other son of Respondent No. 2 Arun Kumar, though was unmarried at the time of institution of the present eviction petition, he had gotten married subsequently has two minor children. Consequently, the family of Respondent No. 2 comprise of ten members, out of which the wife of late Sh. Dwaraka Nath, namely, Usha also expired during the pendency of the present petition.

43. The property in dispute where the demised premises is situated comprised of three floors. After partition, the rooms which have fallen into the share of Sh. Dwarka Nath on the ground floor are two rooms with two stores, part of the common courtyard, a portion of kitchen; on the first floor comprised of two stores, two bathrooms, one kitchen, one pooja room, one hall and a part of the passage around the jaal.

44. On the second floor, the area which has fallen to the share of the deceased Respondent No. 1 comprised of one bath room, one room measuring 13'3" x 9'6" and one barsati. The portion of the house which had fallen to the share of Respondent No. 2 Sh. Mahender Nath Gupta comprised of one room measuring 12'6" x 6'8", a store, bathroom, two kitchen, WC and urinal on the ground floor; one room measuring 12'6" x 7" besides two bathrooms, one kitchen and one store and one room measuring 12'9" x 7"; one store and one kitchen with a warrandah on the second floor and 12'7" x 18'3" Barsati and open terrace on the barsati floor.

45. Since the property No. 1271A is adjoining to property bearing No. 1271, if one takes into consideration the accommodation available to Sh. Mahender Nath in property bearing No. 1271A and 1271, the total number of rooms, which would be available to Sh. Mahender Nath would be 9 rooms, and six small stores measuring about 6'8" x 8'4". Exhibit RW 2/A shows the portion in possession of the Petitioners in red and the other portions of property No. 1271 and 1271 A, the Ground Floor, First Floor, Second Floor and Barsati Floor and the basement. This cannot be disputed by the Petitioners that a room of less than 100 sq. feet cannot be considered to be room fit for living. This has been laid down in a number of judgments by the Courts in Delhi. In Brij Mohan v. Sri Pal Jain 1993, Rajdhani Law Reporter 190 this Court has held that a tenant cannot claim that a room of a size of less than 100 sq. feet is a living room. Similarly, in Uttam Chand Suri v. Smt. Ram Murti 1980 (2) RCJ 410 it was held that a room or a Kotha, area which is less than 100 sq. ft would not fall within the definition of a living room. The Delhi Municipal Corporation (Building) Bye-laws 1959 as amended from time to time prescribes the requirements regarding the minimum size of a habitable room. By-law 20 prescribes that no habitable room shall have a floor

area of less than 100 square feet. The relevant portion of is as follows:

The store measuring 7'-7"x5'-5" over which there is loft cannot be said to be a living room but the tenant/Appellant in his anxiety to show that the landlady has sufficient accommodation described the store as a room. By any stretch of imagination the store cannot be treated as a living room. As regards the room which is being used as a kitchen its area is less than 100 sq.ft. The local commissioner's report is that this room under the main was being used as a kitchen and is so held by the Tribunal after considering the evidence on record. The question for decision is whether this room is a living room. The answer is in negative. The Delhi Municipal Corporation (Building) Bye-laws 1959 as amended from time to time prescribe the requirements regarding minimum size of a habitable room.-Bye-law 20 prescribes that no habitable room shall have a floor area of less than 100 square feet.

If one is to consider the plan Exhibit RW 2/A, the habitable rooms in property No. 1270 are one on the ground floor, three on the first floor, one on the second floor. The other rooms on the ground floor, first floor and second floor are smaller rooms and can be termed as stores but cannot be considered as habitable rooms. It is this accommodation within the property No. 1271 which has been partitioned between the Respondent No. 1 and Respondent No. 2 by the partition deed, however, the plea of the Respondents is that it has not been acted upon as the property has not been partitioned by meets and bounds. The accommodation available to Respondent No. 2 in the property No. 1271 A, which is an adjoining property comprises of one room on the ground floor, two rooms on the first floor and two rooms on the second floor. Even though the barsati on the Barsati Floor Plan has an area of more than 100 sq. feet, however, it cannot be considered a habitable room.

The family of late Shri Dwarka Nath at the time of filing the eviction petition comprised of himself, his wife and three sons, namely, Vishwanath, Deepak Kumar and Rajneesh Kumar. Two sons namely, Vishwanath and Deepak are married and have their own families. The family of Vishwanath comprises of his wife, a son and a daughter, namely, Nikhil and Nitika, whereas the family of the Deepak Kumar comprises of his wife and a daughter named Shruti. The third son of the Respondent No. 1 Rajneesh Kumar is unmarried and residing in the property in dispute in a portion which was vacated by the tenants and subtenants later on. The word "himself" in Section 14(1)(e) of Delhi Rent Control Act, 1958 includes all the normal emanation of the word himself. The word "himself cannot be construed strictly as applying only to the landlord.

The need under the said section is to be seen of the family as one unit. The family of landlord is bound to live with him. Man being a social being can hardly live alone by himself. Therefore when the Respondent No. 1 propounded the requirement for himself while filing the eviction petition that included the requirement of his children even if his sons were not dependent upon him. After the death of Respondent No. 1 and his wife, the requirement of his sorts and

their family members would survive. The youngest son though accused of murdering his mother is living in the said property and his requirement cannot be ignored on account of the allegation that he has been implicated in the murder of his mother. In *Shanti Lal Thakoradas v. Chimanlal Maganlal Telwala*, 1976 RCJ 828 it was held by the Supreme Court as under:

In our opinion in face of the wording of Section 14(1)(e) of the Delhi Act, the view expressed in *Phool Rani's* case as stated above, is not correct. If the law permitted the eviction of the tenant for the requirement of the landlord's for occupation as a residence for himself and members of his family, then the requirement was both of the landlord and the members of his family. On his death the right to sue did not survive to the members of the family of the deceased landlord. We are unable to take the view that the requirement of the occupation of the members of the family of the original landlord was his requirement and ceased to be requirement of the members of his family on his death. After the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family.

In the circumstances, after the demise of Late Shri Dwarka Nath the need of the surviving members of his family, his sons and their family will survive and it cannot be held that the Respondents would not be entitled to seek eviction of the Petitioners or that the requirement of the sons of the deceased Dwarka Nath cannot be considered. This is also no more *res Integra* that the effect of subsequent events can be taken into account by the Court in granting appropriate relief on the analogy of the principle embodied in Order VII Rule 7 of CPC particularly when justice requires this to be done and the facts are not in dispute

46. The Petitioners had contended about the partition between the Respondent No. 1 and Respondent No. 2 by a deed of partition dated 7th April, 1993. The Petitioners had produced a copy of the partition deed but had not produced the copy of the plan showing the different portion of the property No. 1271 which had fallen into the share of Respondent No. 1 and Respondent No. 2. Consequently the Respondents were directed to file the copy of the plan which was filed along with the partition deed showing different portion which had fallen in their respective share. The copy of the plan which was filed with the partition deed was filed by the Respondents showing the portion in yellow which had fallen in the share of Late Shri Dwarka Nath, Respondent No. 1 and portion in green which had fallen in share of Shri Mahender Nath, Respondent No. 2. The portions in pink denoted the portions that remained common to both the Respondents.

Barsati floor plan showing the portions of Respondent No. 1 and Respondent No. 2

Ground floor plan showing the portions of Respondent No. 1 and Respondent No. 2

First floor plan showing the portions of Respondent No. 1 and Respondent No. 2

Second floor plan showing the portions of Respondent No. 1 and Respondent No. 2.

47. In the present facts and circumstances, this copy of the plan which was filed by the Respondents with the partition deed dated 7th April, 1993 can be taken into consideration, as the copy of the partition deed was filed by the Petitioners in the above noted petition with an additional affidavit. Perusal of this plan and the tenancy premises demised to the tenant Late Shri Sri Kishan Dass shows unequivocally that the premises demised had fallen in the share of late Respondent No. 1 and Respondent No. 2. Therefore, since the demised premises could not be divided, the eviction petition could not be filed by any one of the Respondents without impleading the other Respondent. Since both the Respondents have propounded their requirement, considering their families, and the respective portions which have fallen in their shares, it is apparent that the residential accommodations available to them are insufficient for themselves and their family members. The family of the Respondent No. 2 comprised of his wife and a married son and two minor children at the time of institution of the eviction petition. The other son of Respondent No. 2 Arun Kumar, though was unmarried at the time of institution of the present eviction petition, he has got married subsequently and has two minor children. Consequently, the family of Respondent No. 2 comprise of ten members. Considering the accommodation available to him in the property No. 1271 A and 1270, it is apparent that the residential accommodation available to him is insufficient for himself and his family members. In the circumstances, it is apparent that the Respondents had bona fide requirement for residential premises at the time of institution of petition and their requirement for residential premises still subsists in the present facts and circumstances considering the death of Late Shri Dwarka Nath and his wife.

48. In the circumstances, it is inevitable to infer that the bona fide requirement of the Respondents still subsists and they are entitled to execute the order of eviction passed against the tenants and sub tenants including the Petitioners. As all other sub tenants and tenants have vacated their respective portions, the Respondents shall be entitled to recover the portion of the premises shown in red in plan Exhibit RW 2/A from the Petitioners as well.

49. Even after re-appreciating the evidence for the purpose of assuring whether the order of the learned Additional Rent Controller is in accordance with the evidence or not, it does not reveal any jurisdictional or material irregularity. Therefore, the inevitable inference is that no such jurisdiction or material irregularity has been pointed out by the Petitioners which will entail any interference by this Court u/s 25B(8) of Delhi Rent Control Act, 1958. The eviction order cannot be set aside as there is no manifest error either of facts or of law on the face of the judgment nor does it suffer from any such glaring error which would vitiate the order of eviction passed by the Rent Controller on the

ground of bona fide requirement of the Respondents u/s 14(1)(e) of Delhi Rent Control Act, 1958.

50. Therefore in the totality of facts and circumstances, there are no merits in the revision petition filed by the Petitioners and it is therefore, dismissed. Parties are however, left to bear their own costs.