
(2011) 9 AD 374

Delhi High Court

Case No: R.C. Rev. No. 125 of 2011 and CM No. 13041 of 2011

Bijender Gupta

APPELLANT

Vs

Pushpa Devi

RESPONDENT

Date of Decision: Oct. 20, 2011

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1), 25(B)
- Evidence Act, 1872 - Section 116

Citation: (2011) 9 AD 374

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: N.R. Sharma, for the Appellant; S.C. Kalra, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

The order impugned before this Court is the order dated 27.01.2011 vide which the application for leave to defend filed by the tenant in a pending petition u/s 14(1)(e) read with Section 25-B of Delhi Rent Control Act (DRCA) had been dismissed.

2. Record shows that the petitioner is the landlady of the suit premises i.e. property bearing No. C-31, New C Block, Acharya Kriplani Road, Adarsh Nagar Extension, Delhi which has been leased out on a monthly rental of Rs.295/- to the tenant Bijender Gupta. Tenancy had been created in the year 1979; the petitioner whose family comprised of 8 members had now increased to 15; requirement of bonafide was evidenced in the eviction petition seeking prayer of eviction u/s 14(1)(e) of the Delhi Rent Control Act (DRCA).

3. Application for leave to defend had been filed by the tenant. His contention was that the premises were not owned by the petitioner; wrong address had been mentioned of the disputed premises; details of the legal heirs and persons dependent upon the

landlady had also not been detailed; landlady has failed to disclose that property bearing No. C-29, Shankracharya Road comprises of eight rooms, two kitchens, bathroom, toilet on the first floor and eight rooms, two kitchens, bathroom and toilet on the second floor as also the same accommodation on the ground floor is also owned by the landlady; besides this she also owned another property bearing No. A-214, Majlis Park, Adarsh Nagar which comprises of four rooms; this petition is an abuse of the process of the Court.

4. These submissions were denied on affidavit by the landlady.

5. Record has been perused. The relationship of landlord and tenant was not in dispute; u/s 116 of the Evidence Act once the tenant has attorned to the landlord, the tenant cannot question the ownership of the landlord; he is estopped from doing so. The Apex Court has noted this proposition in [Atyam Veerraju and Others Vs. Pechetti Venkanna and Others](#), . The petitioner being one of the legal heirs of the earlier landlord and the tenant having attorned to the petitioner, this argument has no force.

6. Before this Court the only other contention raised by learned counsel for the petitioner is that vide order dated 28.09.2010, the Additional Rent Controller had allowed the tenant to introduce and bring on record certain subsequent facts; subsequent facts were to the effect that the petitioner had been granted possession of shops No.1 and 2 which in turn he had sold on 14.07.2010 vide a sale deed to one Ravinder; contention being that need of the landlady was definitely not bonafide as had it been bonafide, she would not have sold the aforementioned two shops on 14.07.2010 i.e. during the pendency of the eviction petition; further contention being that these subsequent facts have not been dealt with; they have been ignored in the impugned order.

7. Submission of learned counsel for the petitioner qua the factum of subsequent events having been brought on record vide order dated 28.09.2010 is not in dispute. The impugned order has however dealt with these subsequent facts. It had correctly noted that although the aforementioned two shops had been delivered to the landlady yet because of financial crisis she had been constrained to sell these two shops; financial crisis being for the reason that she had become a widow and needed money. This was held by the trial court to be a "justifiable explanation". The Apex Court in the judgment reported in [Prativa Devi Vs. T.V. Krishnan](#), has noted that the landlord is the best Judge as to what is his bonafide need and what is not; it is for the tenant to discharge the onus that the need of the landlord is not bonafide or it is merely fanciful; this the tenant has failed to do in this case; the vehement contention that the sale of two shops by the petitioner destroys her bonafide need has no basis; bonafide need is a changing need; the petitioner has explained the financial crisis she was undergoing as a result of which she had been constrained to sell these two shops; this would not take away the bonafide need of the landlady for which she had filed the eviction petition on 03.11.2008. In 155 (2008) DLT 681 Dharam Pal Gupta and Others VS. Anand Prakash a Bench of this Court has noted that the bonafide need has to be noted on the date when the suit is instituted. Impugned order suffers from no infirmity.

8. Reliance by learned counsel for the petitioner on the judgment of Amarjit Singh Vs. Smt. Khatoon Quamarain 1987 (1) RCR 192 is misplaced. The impugned order has taken into account the subsequent events which had been permitted to be taken on record vide order of the ARC dated 28.09.2010. Reliance upon 2002 VI AD (Del) 885 Banarsi Dass Sodhi Vs. Shri Om Prakash is also misplaced. Ratio of the case being that the owner/landlord cannot himself create paucity of residential accommodation and then plead that he has a bonafide need for additional accommodation. Admittedly the sale of the two shops in this case was made after filing the eviction petition; this was vide sale deed dated 14.07.2010; eviction petition had been preferred on 03.11.2008. Ratio of this judgment is wholly inapplicable. Petition is without any merit.

9. Dismissed.