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(2008) 12 DEL CK 0178

Delhi High Court

Case No: RC Rev. No"s. 28 and 29 of 2007

Sh. Bhagwat Prasad Sharma	APPELLANT
Vs	
Smt. Pinky Aggarwal and Another	RESPONDENT

Date of Decision: Dec. 10, 2008

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1), 25B(8)

Citation: (2008) 12 DEL CK 0178

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

Bench: Single Bench

Advocate: S.P. Kalra and Om Prakash Verma, for the Appellant; Anshu Aggarwal, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.
The petitioner has assailed an order dated 12th January, 2007 whereby an Eviction petition filed by the respondents u/s 14(1)(e) of Delhi Rent Control Act was allowed after contest and eviction order was passed in respect of the premises in his occupation.

2. The respondents filed two Eviction Petitions against the petitioner in respect of the premises in his occupation in property No. 621, Katra Asharfi, Chandni Chowk.

3. The Eviction Petition E-397/2006 was in respect of one room with store within the room with tin shed in front of room, bath, one store, Kolki in stairs, common use of open Verandah, WC, one kitchen on the second floor.

4. The other Eviction Petition was also in respect of one room with a tin shed in front of the room, common use of open Varendah, WC, bath and kitchen on the second floor in

occupation of the petitioner.

5. Both the petitions together showed the total accommodation in possession of the petitioner was two rooms, tin shed before them, one store, bath/store, kolki in stairs and open Verandah, WC, Kitchen. Site plan of the accommodation in possession of petitioner was filed by the respondent/landlord (the petitioner hereinafter shall be referred as tenant and the respondent as landlady).

6. The landlady contended that she required the above tenanted premises for her own and family''s bonafide necessities. Her family consisted of herself, her husband, one son studying in college and other daughter studying in standard 11. She had no other alternative, suitable, residential accommodation available to her. Presently, she along with her family was living in a rented accommodation in house No. 2680, Chooriwalan, Delhi-6 rented by her husband. The rented accommodation consisted of only one living room and two small store rooms inside the living room. One of the store rooms measuring 5''x 4'' had fallen down as the construction was old. The petitioner had put a cloth curtain so as to use it as a dressing-cum-store room. This rented accommodation was highly insufficient and uncomfortable for her and her family as the single room was being used as a drawing-cum-dining room in the day time and as a bed room in the night. Her family was living in great hardship in this rented accommodation as there was no study room for children and no bed room for her and her husband or for grown up son and daughter, both of whom needed separate bed room. A curtain was being used in the single room to divide it into two portions in the night so that family can sleep in some privacy. She had no guest room. There was no ventilator or window in the store room. The common latrine and bath room of the rented accommodation in her possession were situated on the ground floor. She pleaded that her necessity was grave and dire.

7. Leave to defend application moved by the tenant was allowed and thereafter trial took place.

8. In the WS, tenant had denied the relationship of landlord and tenant, the ownership of the landlady and denied the letting purpose being residential. He contended that the premises was let out for composite purpose namely residential-cum-commercial. A stand was taken that the premises was let out to Kishan Lal, the original tenant, who died in year 1975 and after his death all his legal heirs including petitioner became tenants-in-common and they were necessary parties in the petition but had not been joined, so the petition was liable to be dismissed. It was also averred by tenant that landlord had concealed the facts that Rakesh Kumar, the husband of petitioner No. 1, was the owner of property No. 565-566, Katra Asharfi, Chandni Chowk constructed on 65 sq. yds., comprising of ground floor, second floor and third floor. This property was purchased jointly by Rakesh Kumar, husband of landlady but the other co-owners had subsequently relinquished their rights in favour of Rakesh Kumar and he had become sole owner and landlady had got enough accommodation in the said property. Rakesh Kumar also owned a shop on ground floor just adjacent to the property in dispute.

9. On bonafide requirement it was pleaded by the tenant that the landlady and her family were living happily in the premises in their occupation having more than 3 living rooms, bed rooms and the property in occupation of tenant at second floor was not having any living room. The requirement was not bonafide. It was also averred that Rakesh Kumar husband of landlady being the only son of Dr. Jogeshwar Nath was supposed to look after his old aged father and need not shift to the premises in question.

10. The learned ARC after considering the evidence led by both the parties came to conclusion that the landlord had sufficiently proved her ownership by placing on record sale deed in respect of the property in question and the relinquishment deeds of other co-owners relinquishing their rights in her favour. She also successfully proved that the tenant, in response to her notice dated 16.4.2001 (Ex.PW-1/4), sent a reply(ex.PW-1/7) and along with reply he sent rent money orders for both the tenanted portions and also sent increased rent for both the tenancies with 10% statutory increase. The learned ARC concluded that since the title was complete and the attornment of tenancy has also been proved, issue of ownership and relationship stood proved. Even otherwise, the landlord was not supposed to prove absolute title and what is required to be proved is that he was something more than the tenant. The ownership of the premises and relationship of landlord and tenant was considered established by the learned ARC.

11. The learned ARC also considered the evidence on question of purpose of letting. The rent receipt issued to the tenant showed that it was for a "Kamra" (room). The water connection in the suit property was domestic. The water bills were proved on record. The evidence of tenant also showed that the petitioner, Mr. Bhagwat Prasad, was working as General Manager in Mehta Group of companies. He could not have done any business as this was barred under his employment conditions and he did not engage himself in any business. The entire evidence led by the parties showed that the premises was used by the tenant for residence of himself and the family. The rent receipts executed by previous owner also showed that only a room was let out under each tenancy and ARC came to conclusion that the accommodation was let out for residential purpose and not for residential-cum-commercial purpose. However, I consider that the issue whether the tenancy was for residential or for residential-cum-commercial purpose has become redundant in view of the judgment of Supreme Court in Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another, wherein the Supreme Court has laid down that even a premises let out for commercial purpose can be got vacated for bonafide requirement. The distinction between residential and commercial purpose as envisaged u/s 14(1)(e) has been held to be ultra vires of the Constitution.

12. The learned ARC also considered the averment made by the tenant about ownership of the alternate premises bearing No. 565-566, Katra Asharfi, Chandni Chowk by Rakesh Kumar, husband of the landlady and the averment that landlady and her family were living happily in property No. 2680, Chooriwalan, Delhi in 3 rooms, as alleged, on top floor. While tenant led no evidence except bare statement of RW-1, landlady proved by testimony of PW-1 and PW-2 that the accommodation in her possession was a rented

accommodation. The rent receipts were proved on record as exhibit PW-1/20 and PW-1/22.

13. The learned ARC also considered the proceedings in suit No. 148/1991 filed in the Court of Shri D.C. Anand, the then Civil Judge and observed that from the proceedings and from the documents it was clear that Rakesh Kumar was a tenant on the first floor in respect of one room and two stores and roof in premises bearing No. 2680, Chooriwalan, Delhi-6. The Court observed that civil proceedings were filed about 12 years before filing of Eviction Petition and it was not possible that the husband of landlady could have manipulated the documents almost 12 years before filing of the Eviction Petition. A man may lie but circumstances never do, so the ARC inferred that the entire evidence showed that landlady with her family was living in a tenanted premises and not in a premises owned by the family.

14. Regarding bonafide requirement, the learned ARC observed that the extent of the family of the landlady has not been disputed. The landlady sufficiently proved that the accommodation in her possession was highly insufficient. She had two grown up children, studying in college and school at the time of trial and the requirement of the landlady was at least one bed room for husband and wife, one room for son, one room for daughter, one study room for each child, one drawing room, one guest room and one pooja room. Thus, their requirement was at least 3 bed rooms, two study rooms, one drawing-cum-dining room, one pooja room and one guest room. The accommodation in their possession was highly insufficient and the requirement of the landlady was bonafide.

15. The petitioner/tenant had also raised a plea before learned ARC that the premises was situated in a purely commercial area and hardly any property was being used for residential purpose. The area becomes deserted at night and there was security risk to the people residing there. The property under tenancy of the petitioner was therefore not fit for living purpose. This plea was rejected by the learned ARC.

16. Almost same arguments have been addressed before this Court to justify the interference of this Court in this Revision Petition.

17. It is settled law that this Court while exercising powers u/s 25-B(8) does not sit in appeal and can re-appreciate the evidence only for the purpose of assuring itself that the order of the learned ARC was in accordance with the evidence and does not suffer from any jurisdictional error or material irregularity.

18. The plea raised by the petitioner regarding ownership is not tenable in view of the evidence produced by the landlord showing her title and attornment of rent. The petitioner contended that the landlady had purchased the property in 1992 along with others while the relinquishment deed/release deed in her favour by other co-owners were executed on 18.6.1997 and 29.8.2000 respectively. Thus, she became sole owner only in August, 2000 and the Eviction Petition was filed on 8th December, 2003, i.e., before lapse of

period of 5 years. Therefore, the Eviction Petition was not maintainable. I consider this argument must fail on two grounds, one this argument was not raised before the Trial Court and second a co-owner has a right to file Eviction Petition on the ground of his bonafide necessity. Even if a property owned jointly by 3 or 4 persons, so long as property has not been partitioned among them, each one of them is a owner of the entire property and has a right over the entire property. An Eviction Petition would lie in respect of bonafide necessity of any one of the co-owners in such a case.

19. The petitioner/tenant also raised a plea before this Court that the tenancy of the petitioner was a "thekedari" tenancy through Deep Chand who was granted such right by the erstwhile landlord. This argument cannot be considered by this Court . No such plea was ever raised or proved before the learned ARC. Moreover, there is no concept of "thekedari" tenancy and payment of rent by the petitioner/tenant to the landlord in response to the notice proves the relationship of landlord and tenant of the petitioner with the respondent beyond doubt.

20. The plea of the petitioner that the area was commercial area and becomes deserted during night is also not tenable. The landlord is the master of his choice. If he wants to live in his own premises because of bonafide necessity, whether the premises is in jungle, or in slum or situated in criminal infested area or in a deserted area, he has a right to live there. The tenant cannot dictate terms to the landlord that he should not live in a broadly commercial area or in dangerous area or slum area. I find no force in these petitions. The petitions are hereby dismissed.