

HIGH COURT OF DELHI : NEW DELHI

RCR No. 157/2010 & CM No. 12556/2010

% Judgment reserved on: 22nd July, 2010

Judgment delivered on: 2nd August, 2010

Sh. Ashok Kumar Mehra,
Since deceased
through his legal heirs.

- (i) Mrs. Usha Mehra,
W/o Late Sh. Ashok Kumar Mehra,
R/o XIV/11152/8, Rashid Ahamad Building,
New Rohtak Road,
New Delhi.
 - (ii) Mrs. Shiva Anand,
W/o Shri Amit Anand,
R/o 20/26, Old Rajender Nagar,
New Delhi.
 - (iii) Smt. Aditi Sethi,
W/o Sh. Vikram Sethi,
14/8923, Shidipur,
New Delhi.
2. Shri Vijay Kumar Mehra,
S/o Late Shri Kushal Chand Mehra,
R/o XIV/11152/8, Rashid Ahamad Building,
New Rohtak Road,
New Delhi.
 3. Shri. Ravi Mehra
S/o Late Shri Kushal Chand Mehra,
R/o XIV/11152/8, Rashid Ahamad Building,
New Rohtak Road,
New Delhi.
 4. Mrs. Krishna Vohra,
W/o Sh. Baldev Vohra,

R/o 30/22, 3rd Floor,
East Patel Nagar,
New Delhi.

.....Petitioners

Through: Mr. Rajesh Kumar, Adv.

Versus

Shri Kuldeep Kumar Mehra,
S/o Late Shri Ranbir Lal Mehra
R/o 111, Ground Floor, Prashant Vihar,
Delhi-110085

.....Respondent

Through: Nemo.

C oram:

HON'BLE MR. JUSTICE V.B.GUPTA

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

V.B.Gupta, J.

This revision petition under Section 25B (8) of Delhi Rent Control Act, 1958 (for short 'Act') has been filed by the petitioners against judgment dated 17th September, 2009, passed by Additional

Rent Controller, Delhi, vide which respondent's eviction petition was allowed and eviction order was passed in favour of respondent and against the present petitioners.

2. Brief facts are that respondent (Petitioner-Landlord in the trial court) filed an eviction petition in respect of one room, one verandah, one store, one kitchen, one bathroom, one latrine, one room with asbestos sheet roof in the court yard, open court yard on the ground of floor and two rooms, one kitchen, covered terrace on the first floor of the building bearing No. XIV/11152/8, Rashid Ahmed Building, New Rohtak Road, New Delhi; against petitioners (Respondent-Tenant in the trial court).

3. It is stated that respondent is the owner/landlord of the premises in question. This property was purchased by father of the respondent, namely Sh. Ranbir Lal Mehra on 16.3.1967. Predecessor-in-interest of the petitioners along with the petitioners were already in occupation of the building and using the same as tenant for the purpose of residence and by operation of law the said predecessor-in-interests of the petitioners became tenants of the father of respondent, on the same terms and conditions. The ownership of respondent and

his mother Smt. Pushpa Mehra over the premises in question, stands conclusively proved by the judgment and decree passed by Sh. D. K. Malhotra, Civil Judge, Delhi in suit bearing No. 728/96, decided on 18.1.1997.

4. After demise of Smt. Pushpa Mehra on 6.8.2000, respondent being her sole legal heirs has become the sole owner-landlord of the premises in question. Family of respondent comprises of his wife, school going son and daughter of the aged 9 years and 16 years respectively. Respondent along with his family was living in their own house till 27.8.2001, situated adjacent to the property in question only on 17 Sq. yds. bearing No. XIV/11152/7, Rashid Ahmed Building, New Rohtak Road, New Delhi-110005, having one small room, one store and one latrine and stairs on the ground floor and one room, one bath, covered open space used for kitchen on the first floor of the said building. Said house was very old construction and in dilapidated condition and as the family of the respondent grew and his children required more space and separate rooms for their living and studies, the accommodation in the said building was found to be inadequate they were living in the said house with great discomfort

and difficulty. As such, respondent had no advantage to retain the said property and he sold the same to Smt. Manjit Kaur vide registered Sale Deed dated 27.8.2001.

5. Thereafter, respondent with his family members shifted to a rented house bearing no. D-173, (Ground Floor), Prashant Vihar, Delhi-110085 and is presently living in the said rented accommodation w.e.f. 1.9.2001.

6. Respondent bonafidely wants to live with his family comfortably in his own house, being the suit premises as respondent has to shell out a substantial amount of Rs.5100/- per month as rent for his rented accommodation and also it is more suitable financially for comfort of respondent and his family members dependent upon him. Respondent has no other reasonably suitable residential accommodation.

7. During pendency of the proceeding, Sh. Ashok Kumar (who was respondent no. 1 in the trial court) expired and his legal heirs have been brought on records, who are petitioners in the present petition.

8. In the written statement petitioners took the plea that present petition is not maintainable as respondent has filed two contradictory

site plans of the premises. The premises in question is a residential-cum-commercial property and petitioner no. 1 was carrying on the commercial activities of Car rentals and sale and supply of auto/motor parts and repair work shop from the said premises.

9. Relationship of landlord-tenant between the parties was denied stating that petitioners have become owners of the suit property by way of adverse possession, as they are in possession of the suit property since 1958 and are enjoying the uninterrupted possession of the suit property.

10. Petitioners denied that the ad-joining portion of suit property, bearing no. XIV/11152/7, Rashid Ahmed Building, New Rohtak, New Delhi-110005 was constructed only on 17 sq. yds. It is alleged that respondent has converted his said ad-joining portion into a commercial complex and sold the same at a high premium. Now his evil eyes are on the petitioners' property.

11. It is further alleged that respondent has concealed the fact that he has been allotted a residential accommodation by DDA, where he is an employee.

12. It has been denied that respondent is residing at Prashant Vihar in rented accommodation. It has been further denied that respondent is the owner of the property in question and respondent requires the suit property bonafidely for residence for himself and his family members. Had there been a bonafide requirement of the respondent to live in property in question, he would have instead of disposing off and selling the adjoining portion would have decided to club both portions to make a bigger house to live in.

13. It is contended by learned counsel for the petitioners that property in question was never let out by the respondent or his father to the petitioners at any point of time. Petitioners have become owner by way of adverse possession and as such there is no relationship of landlord and tenant, between the parties.

14. Other contention is that respondent was earlier residing in his own property adjacent to the suit property and the said property was sufficient for respondent and his family members. This property was sold by respondent, vide sale deed dated 27th August, 2001, just before filing of the present eviction petition. The said property was sufficient

for respondent as he is having his wife, one son and one daughter and as such there is no bonafide requirement for the purpose of residence.

15. The law is well settled that in order to evict a tenant under the provisions of Section 14 (1) (e) of Act, the following ingredients have to be satisfied;

- (a) The applicant has to be a landlord;
- (b) He has also to be an owner;
- (c) The premises in question should have been let out for residential or commercial purpose or both;
- (d) The said premises are required bonafide by the landlord for occupation as a residence for himself or his family dependent upon him and;
- (e) That the landlord or such person dependent upon him has no other reasonably suitable residential accommodation.

16. With regard to the ownership, case of petitioners is that they have become owner by way of adverse possession and were never the tenant.

17. There is nothing on record to show as to how petitioners became the owners of suit property by virtue of adverse possession.

In this regard findings of trial court which are relevant are reproduced as under;

“However, the respondents have failed to prove on record that they have become the owners of suit property by virtue of adverse possession and petitioner is not the owner/landlord of the suit property. There is no evidence in this regard. Moreover, testimonies of RWs are important in this regard. Although, RW-1 Sh. Vijay Kumar Mehra, in his cross-examination had denied the suggestion that petitioner’s father purchased the suit property from its previous owner Smt. Aziza Khatoon vide registered Sale Deed dated 16.3.1967, but by way of voluntary, he has stated that the suit property was purchased by the father of the petitioner and he does not know as to when he purchased the same. He has further stated that he has not seen any title document in favour of the petitioner’s father, but by way of voluntary he has stated that his mother has seen it. RW-1 has further admitted in his cross-examination that, “It is correct that petitioner’s father purchased the suit property vide registered Sale Deed which is already exhibited as AW-1/1.” In view of aforesaid statement of the RW-1, it is clear that even the respondents admit that the petitioner’s father has purchased the suit property vide registered Sale Deed Ex. AW.1.

So far the plea of the respondents that they have become the owners of the suit property by virtue of adverse possession, is concerned, the RW-2 has stated in his cross-examination that, “It is correct that I am not in possession of any documentary proof about the alleged ownership of the suit property in the name of Sh. Khushal Chand Mehra.” He has further stated that, “I do not know

as to in whose name the suit property stand mutated since 1967 till date,” He has further stated that, “It is correct that neither my father nor we have paid any house tax pertaining to the suit property to the MCD.” Similarly, RW-3, Smt. Usha Mehra has stated in her cross-examination that, “It is correct that we do not have any documentary proof to show that we are the owners of the suit property.” As such, in view of aforesaid statements of RW-2 and RW-3, it stands established that petitioners’ father purchased the suit property vide registered Sale Deed Ex. AW-1 and the respondents have failed to prove that they have become the owners of the suit property by virtue of adverse possession.

Moreover, the petitioner has filed the certified copy of the judgment and decree dated 18.1.1997 passed by Sh. D. K. Malhotra, the then Ld. Civil Judge, Delhi in a suit for recovery of possession bearing Suit No. 728/1996 titled as “Smt. Pushpa Mehtra and the present petitioner as Plaintiffs Vs. Smt. Kailash Kumari and the present respondents as defendants as Ex.AW-3, in which it has been held by the Ld. Civil Court that Sh. Ranbir Lal Mehra was the owner of the suit premises and Sh. Khushal Chand Mehra was the tenant of Smt. Aziza Khatoon and as such Sh. Ranbir Lal Mehra, father of the petitioner was held to be owner of the suit premises. Admittedly, the respondents contested the said suit and there is no dispute regarding the passing of the said judgment as RW-1 has admitted in his cross-examination that he appeared once in the said civil suit, the judgment of which is Ex. RW-1/P-1. Similarly, RW-2 has admitted in his cross-examination that, “It is correct that petitioner and his mother filed a civil suit for recovery in the court of Sh. D. K. Malhotra, the then Civil Judge at Delhi, vide suit

no. 728/96 in Re Pushpa Mehra & Ors. Vs. Kailash Kumari & Ors. It is correct that the said suit has been disposed of.” Now, the said judgment Ex. AW-3 has not been challenged by the respondents and same has attained finality. Hence, when it has been held by the Civil Court that Sh. Ranbir Lal Mehra, father of the petitioner was the owner of the suit property and the respondents inherited the property as co-tenant, the respondents are estopped from challenging the title of the petitioner over the suit property.

In view of aforesaid discussions, the petitioner has established on record that he is the owner of the premises in question and the respondents are the tenants and there exists a relationship of landlord-tenant between the petitioners and the respondents.”

18. Now coming to the letting purpose, case of respondent/landlord is that, the premises were let out to petitioners for residential purpose only. The premise in question was let out to the predecessor-in-interests of the petitioners by the previous owner, Smt. Aziza Khatoon for residential purposes.

19. On the other hand, petitioners in their written statement took the plea that premises in question are being used as residential cum commercial purpose.

20. No evidence with regard to premises being used as residential cum commercial purpose has been led by the petitioners as apparent from the findings of trial court which states;

“Petitioners have not led any evidence to support their contention that premises in question are being used for residential cum commercial purpose.”

21. Trial court further observed;

“Moreover, after the judgment of Hon’ble Apex Court in *Satyawati Sharma Vs. Union of India III (2008) SLT 553*, the word ‘residential’ has been deleted from the Section 14 (1) (e) of DRC Act and purpose of letting has lost its significance and is no more a issue in passing an order of eviction in case of bonafide requirement.”

22. Regarding bonafide requirement of respondent, main contention of learned counsel for petitioners is that respondent sold his adjoining portion to the suit property bearing no. XIV/11152/7, Rashid Ahmed Building, New Rohtak Road, after converting the same into a commercial complex. Had the requirement of respondent being bonafide he would not have sold the same. This shows the truth and exposes the intentions of respondent.

23. In this regard RW-1 categorically stated in his cross-examination that;

“I have personally seen the property no. XIV/11152/7, New Rohtak Road, Karol Bagh, New Delhi, which was earlier owned by the respondent and the said property was built on an area of 17 sq. yard and was having ground floor and 1st floor when respondent was the owner and residing there.”

24. RW-1 also admitted that on the ground floor there was one small room, one store and WC and on the first floor there was one room, one bathroom and temporarily covered open space used as kitchen by the respondent and his family and the said construction was an old construction prior to partition in 1947. RW-1 further admitted that respondent had sold the said property to Ms. Manjeet Kaur vide registered sale deed dated 27th August, 2001. RW-1 admits that family of respondent consists of himself, his wife, daughter Shikha, son Rohan and mother of the respondent. To similar effect is the statement of RW-2.

25. In view of the statements of RW-1 and RW-2, there is no dispute with property no. XIV/11152/7, New Rohtak Road, which was earlier owned by the respondent, had been built only on 17 sq. yard. There is no dispute about the family members of the respondent or the accommodation which respondent is having. Petitioners themselves

admit that adjoining property purchased by the respondent was in dilapidated condition and is an old construction.

26. Respondent is admittedly living in a rented accommodation and has placed various documents on record. Now if respondent wants to live in his own house. i.e property in question he cannot be compelled to live in rented accommodation when his own accommodation is available even more particularly when he was no alternative accommodation in his possession. Under these circumstances, it cannot be said by any stretch of imagination that the requirement of respondent to live in his own house is not bonafide or genuine. Respondent who is presently living in a rented accommodation has all the right to shift to his own property.

27. In **Kailash Chand & Ors. Vs. Chand, 1998, RLR 603**, it has been observed that;

“If an owner is living in tenanted premises, he is entitled to seek eviction of his tenant and this desire cannot be held to be imaginary, fanciful or unnatural.”

28. Similarly, in ***Surjit Singh Kalra Vs. Union of India (UOI) and Anr. with Mahendra Raj Vs. Union of India (UOI) and Colonel Ashok Puri***, JT1991 (1) SC 417 the court observed;

“The landlord cannot be denied possession of his premises under Section 14B when he is residing in a rented accommodation”

29. In the case in hand, the respondent-landlord is living in a rented accommodation and as such the trial court rightly passed the eviction order in favour of landlord and against the petitioners.

30. There is no illegality and ambiguity in the impugned judgment passed by the trial court. There is no merit in the present petition and as such the same is hereby dismissed.

31. Copy of this judgment sent to the trial court.

CM No. 12556/2010

32. Dismissed.

2nd August, 2010
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V.B.GUPTA, J.