

Asif and Naim Vs. Allahwala and anr.

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Court : Delhi

Decided On : Jul-02-2014

Judge : Najmi Waziri

Appellant : Asif and Naim

Respondent : Allahwala and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

02. 07.2014 + RC. REV. 283/2010 & CM No.8007/2011 (stay) ALLAHRAKHA & ANR. Petitioners Through: Mr. V.B. Andley, Senior Advocate with Mr. Rajiv Duggal and Mr. Aly Mirza, Advocates. Versus ALLAHWALA & ANR. Respondents Through: Mr. Vinod Malhotra & Mr. Nikhil Malhotra, Advocates. + RC. REV. 297/2010 & CM No.8009/2011 (stay) ASIF & NAIM Petitioner Through: Mr. V.B. Andley, Senior Advocate with Mr. Rajiv Duggal and Mr. Aly Mirza, Advocates. Versus ALLAHWALA & ANR. Respondents Through: Mr. Vinod Malhotra & Mr. Nikhil Malhotra, Advocates. CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI % MR. JUSTICE NAJMI WAZIRI1 This petition impugns an order of 07.09.2010 which allowed the respondents application under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (for short the Act) and ordered the eviction of the petitioner from premises No.4234, Gali Qutubuddin, Gali Shahtara, Ajmeri Gate, Delhi.

2. It has been the case of the landlord that for a family consisting of 13 members there were merely three rooms, one kitchen, two toilets and an open courtyard available which was woefully insufficient for their requirement. Hence, they require the suit premises for their residential use. It was also contended that the two sons of landlord No.1 who were of marriageable age i.e. 24 to 26 years, were constrained from planning their marriage due to insufficient accommodation. Similar was the case of the two sons of the second landlord who too were of marriageable age being around 27 to 32 years, but, again were constrained from entering into marriage due to acute lack of space. It is further stated that they were the owners of the premises, having purchased it vide registered sale deed of 03.03.2003, and it was their sole residential accommodation property. Hence, on the ground of bonafide need the eviction petition was allowed.

3. In the leave to defend application, tenant had contended primarily, that landlords ground of bonafide need lacked merit; they had sufficient alternate residential accommodation as the landlord owned two other properties i.e. property bearing No.4426-27, Phatak Risaldar, Gali Shahtara, Ajmeri Gate, Delhi, being on an area of more than 100 square yards and another property bearing No.4217, Gali Faizul Hasan, Gali Shahtara, Ajmeri Gate, Delhi on an area of more than 200 square yards. Therefore, the petition was filed mala fidely and only to harass the tenants. However, apart from the bald averments of ownership of these two properties, no documents were adduced by the tenant to show that the above said properties were owned by the landlord.

4. In the reply to the leave to defend application, the landlords denied ownership of the aforesaid two properties. Therefore, the argument of additional accommodation being available with them became untenable. The other argument which was raised by the tenant and could be treated as a triable issue is that the landlords are not the owners of the suit premises since the sale deed is a document based upon fraud. Learned Senior Counsel for the tenants, Mr. V.B. Andley, contends that the landlord claims ownership of the premises on the basis of a registered sale deed of 03.03.2003, however, (i) this document would not pass any right, title or interest in the suit premises because the alleged seller herself had no such right, title or interest to be transferred to anyone; (ii) that fraud

is writ large upon the face of the document itself insofar as it seeks to confer and thereafter transfer title upon the seller Smt. Anno by virtue of a decree passed by Honble Court of Sh. J.P. Sharma, Administrative Sub Judge, First Class, Delhi on 07.01.2003 against the case No.429.

5. The learned Senior Counsel further contends that upon persistent investigation it came to the tenants knowledge that no such decree was ever passed by a Judge of that name in a said case with that title and number. That according to the information received, there was indeed no such Presiding Officer working as Administrative Civil Judge, First Class, Delhi in 2003. That RTI sourced information has revealed that Shri Ravinder Dudeja was the Administrative Civil Judge in 2003, whereas Mr. J.P. Sharma occupied that position from 1983 to 1986. The learned counsel submits that, therefore, the said recital in the sale deed was either a fraud played by the seller upon the present respondent or it was collusion between them so as to have the fraudulent sale deed registered purporting to transfer the right, title and interest in the suit property. Counsel further contends that the properties bearing No.423435, Gali Qutubuddin, Gali Shahtara, Ajmeri Gate, Delhi were purchased by one Chhottey and his brother Bulla, sons of Babban in 1926. The property was partitioned in 1936 with Chhottey getting 4234, Gali Sahtara, Bazar Ajmeri Gate, Delhi which was confirmed in Civil Suit No.60 of 1957 by the Court of Shri Joginder Nath, Sub Judge, 1 st Class in Re:

Chhottey (Mst. Hiro) vs. Mst. Piro. He contended that vide sale deed of 30.06.1960 Chhottey had sold his property in favour of Perma Nand @ Perma Chand and Itwari Lal son of Panna Lal. The latter served a legal notice dated 16.04.2008 upon Smt. Anno claiming ownership rights, to which there has been no reply.

6. In reply the learned counsel for the landlord contends that no triable issues were raised by the tenant and all the issues now being sought to be canvassed are only to obfuscate the issue solely to delay the proceedings so as to deny the use of the suit premises which are urgently required by the already large and otherwise expanding family of the landlords. Counsel states that the landlords had purchased the property vide the aforesaid registered sale deed of 03.03.2003 with

the tenants in situ. A legal notice was issued to the tenants on 19.05.2003 intimating them of the purchase of the said property and demanding rent from them. Reply was given by the tenants stating that Smt. Anno was their landlady and they were paying rent to her regularly. The tenants also issued a legal notice to Smt. Anno asking her whether she had sold the said property to the present respondents claiming to be the landlords. Smt. Anno confirmed the sale whereby the respondents became the present owners and landlords and that they were entitled to recover the rent from the tenants in their own right. In the subsequent three proceedings decided by Sh. Anil Kumar Sisodia, ARC, Delhi on 27.10.2007, the tenants admitted the relationship of landlord and tenant with the present landlords and started paying rent to them.

7. The learned counsel further submits that thereafter, with the growing up of the children of the landlords a bona fide need was felt for additional space to accommodate the immediate family members who were of marriageable age etc., the eviction petition was filed which resulted in the eviction orders impugned in the present petition. Learned counsel for the landlords submits that the tenants argument that the sale deed is a forged document is misleading and untenable since recital in the sale deed apropos court proceedings when discovered to be wrong and it was specifically rectified without much ado vide a rectification deed registered on 03.11.2012 to read inter alia:

By virtue of Sale Deed, duly registered in the office of the Sub-Registrar, Delhi, document regd. As No.1330, in Addl. Book No.I, Volume No.1432, on pages 207 to 211, red. On 02.06.1926 and an order / Decree dated 16.11.1973, passed by Sh. B.B. Gupta, the then Senior Civil Judge, Delhi in RCA No.34 of 1972 and a subsequent Order/ Decree dated 09.08.1976 and 03.02.1976, passed by the Court of Sh.A.K. Garg, the then Sub-Judge, Delhi, in case No.60 of 1957 (Old) and 01 of 1976 (New), titles a Mst. Heero & Ors. Versus Mst. Peero. The execution proceeding in the case dismissed the default on 13.12.2002. (This Rectification deed and previous rectification deed shall form part of aforesaid Sale Deed dated 5.3.2003).

This Court notices that the impugned order considered the fact that the legal notice of 16.04.2008, referred to by the tenant, did not match with the particulars of the tenanted property; that the tenant had admitted Smt. Anno to be the their landlady and owner of the property in question from whom the current landlords had purchased the property; this sale were confirmed by Smt. Annos letter dated 10.07.2003; that sale deed on record purporting Shri Perma Nand to be the owner thereof does not derive title from Smt. Anno in respect of the suit premises, of which, according to tenants themselves - Smt. Anno was the owner; therefore, the said document/sale deed apropos Shri Perma Nand could not be relied upon; and finally, that the tenants had already admitted to the landlord and tenant relationship of the eviction-petitioner by virtue of orders passed in D.R. petition No.1010/2006 titled Sh.Ajmeri vs. Allahwala & Anrs.

And D.R. No.1012/2006 titled as Allahrakha Vs. Allahwala & Anrs.

The Trial Court, relying on the decision in the case of Ramesh Chand vs. Uganti Devi. 157 (2009) DLT450 held that the only thing required to be seen by the Court is that the landlord has been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord is receiving rent for himself then he is to be considered as the owner howsoever imperfect his title over the premises may be; that the imperfectness of the title to the premises cannot stand in the way of an eviction petition under Section 14(1) (e) of the DRC Act; neither is the tenant allowed to raise the plea of imperfect title nor raise a plea that the title is not vested in the landlord, and that too when the tenant has been paying the rent to the landlord. Furthermore, Section 116 of the Indian Evidence Act creates an estoppel against such a plea by a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the tenanted premises. In fact, such a tenant who denies the title of the landlord to whom he has been paying rent qua the premises, acts dishonestly.

8. The Trial Court further relied upon the case of Rajender Kumar Sharma & Ors. vs. Leela Wati & Os. 155 (2008) DLT383 which says that leave to defend not be (sic) granted to tenant on basis of false affidavit and false averment and assertions and only those averments in affidavit are to be considered by Rent Controller

which have some substance in it and are supported by some material.

9. In the present petition, the need or bona fide has not been argued. The case has been argued primarily on the point of landlord not having the locus to file the eviction petition i.e. non-ownership for the premises by the eviction-petitioner. The learned counsel for the tenants states that this was a triable issue and leave to defend ought to have been granted and that the Trial Court ought to have recorded a finding as to the ownership of the premises by the eviction petitioner. He relies upon *Devi Das v. Mohan Lal*, AIR 1982 SC1213 to contend that where allegations have been made that there was in reality no sale and at best the said sale was a paper transaction. He argues that the Trial Court ought to return a finding on this point i.e. whether it was a bona fide transaction upon the evidence on record. However, from a perusal of the afore cited judgment, it appears that it was not passed under any special statute, such as a Rent Control Act, as in the present case, where scheme of the Act provides for summary proceedings for eviction of tenants. Therefore, the precedent is not relevant and the ratio would not be applicable to the facts of this case.

10. In the revisionary jurisdiction, which has been invoked under Section 115 of the CPC, this Court has to see whether the impugned order falls foul to any of the three ingredients of Section 115 of the CPC. It is not for this Court to re-appreciate the entire facts. Section 115 of the CPC reads as under:

(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears (a) To have exercised a jurisdiction not vested in it by law, or (b) To have failed to exercise a jurisdiction so vested, or (c) To have acted in the exercise of its jurisdiction illegally or with material irregularity. The High Court may make such order in the case as it thinks fit: [Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding.]. (2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal

lies either to the High Court or to any court subordinate thereto. (3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

11. All that the Trial Court was required to see was whether there was a landlord-tenant relationship between the parties, which it did find. On the basis of the discussion hereinabove it stands proven that the landlords need was indeed bonafide and that no alternate accommodation was available to them. It is also a matter of record that the petitioners/tenants had already accepted the respondents as landlords in DR Petition Nos. 1010 and 1012 of 2006. The parameters for grant of an order for eviction under section 14(1)(e) of the DRC Act were clearly met. Therefore, the eviction order was rightly passed.

12. For the reasons mentioned hereinabove, this Court finds that there is no infirmity in the order impugned in the petition and there is no reason for any interference with it. The petition is dismissed as being without merit. NAJMI WAZIRI (JUDGE) JULY02 2014 acm

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