

Mr. Krishan Gopal and ors. Vs. Mr. Ram Phal Yadav and ors.

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Court : Delhi

Decided On : Jul-25-2014

Judge : Valmiki J. Mehta

Appellant : Mr. Krishan Gopal and ors.

Respondent : Mr. Ram Phal Yadav and ors.

Advocate for Def. : Mr. Gaurav Kumar Singh, Mr. Nagender Yadav

Advocate for Pet/Ap. : Ms. Beenashaw N. Soni

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RC REV No.324/2012 25th July, 2014 % MR. KRISHAN GOPAL & ORS. Through:Petitioners Ms. Beenashaw N. Soni, Advocate. VERSUS MR. RAM PHAL YADAV & ORS. Through: Respondents Mr. Gaurav Kumar Singh, Advocate with Mr. Nagender Yadav, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) + RC. REV. No.324/2012, C.M. Nos. 12233/2012 & 18309/2012 1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) is filed against the impugned judgment of the Additional Rent Controller dated 14.2.2012 by which the leave to defend applications filed by the petitioners/tenants have been dismissed.

2. Originally, there were four respondents in the eviction petition. The original tenancy was jointly of late Sh. Barkat Ram and late Sh. Sohan Lal. Late Sh. Barkat Ram was sued as respondent no.1 in the eviction petition. He died during the pendency of the suit and was substituted by his legal heirs. Respondent nos.2 to 4 in the eviction petition were legal heirs of the deceased co-tenant Sh. Sohan Lal. Smt. Ram Pyari wife of late Sh. Sohan Lal expired during the pendency of the case and she was therefore substituted by her legal heirs including the respondent nos.3 and 4 who were her sons. The present petition has been filed by two legal heirs of late Sh. Sohan Lal, namely Sh. Kishan Gopal and Sh. Ashok Kumar who were respondent nos.3 and 4 originally in the eviction petition and who after the death of late Smt. Ram Pyari were impleaded also as legal heirs of Sh. Ram Pyari, wife of late Sh. Sohan Lal. The third petitioner in this Court is Sh. Kala Ram one son of deceased Sh. Barkat Ram. In the eviction petition at the time of passing of the impugned order on the leave to defend applications, there were a total of 10 respondents and thus only three of these persons have filed the present petition, meaning thereby, seven other respondents in the eviction petition are not challenging the eviction order.

3. As per the pleadings in the court below, including the eviction petition; applications for leave to defend; its replies and rejoinder affidavits, respondent no.1 herein Sh. Ram Phal Yadav claimed to be the owner/landlord of the suit property and he filed the eviction petition. It was stated in the eviction petition that the suit property forms a part of the entire property bearing no.8796 situated at Rani Jhansi Road, Shidi Pura, Karol Bagh, New Delhi, Municipal Ward No.90. The tenanted premises comprised of two shops. The respondent no.1/landlord was the son of late Sh. Phool Singh Yadav, the original owner of the suit property. The property no.8796 fell to the share of the respondent no.1 pursuant to a decree for partition passed by the High Court in the suit no.367/1970 in the year 1972. In the Local Commissioners report which was filed for bringing about partition of the properties of the father Sh. Phool Singh Yadav, one of the properties was the property bearing no.8796 and Sh. Barkat Ram was shown as a tenant in the list of tenants. At the request of Sh. Barkat Ram, Sh. Sohan Lal was added as a co-tenant in the suit property. Landlordrespondent no.1 has four sons. Three sons are married having children and respondent no.1 is living jointly with his sons. The

third son Sh. Surender Yadav aged about 38 years is unemployed and wants to open a hardware and paint shop in the suit premises.

4. Leave to defend applications were filed and it was disputed that respondent no.1 was the owner/landlord of the suit property. It was also pleaded that the respondent no.1 is not the owner of the suit property which is pleaded to be owned by the Government. It was further pleaded that the site plan filed by the respondent no.1 was defective as there is no proper description of the tenanted premises and various areas have been merged though certain areas as shown in site plan are not in the tenancy of late Sh. Barkat Ram and late Sh. Sohan Lal now represented by his legal heirs. It was also pleaded that the respondent no.1/landlord has various properties and therefore the alleged need is not a need for bonafide necessity. These very aspects have also been argued before this Court.

5. So far as the aspect that whether the respondent no.1 is the owner/landlord of the property, in my opinion, the same is not validly raised as firstly this aspect has been duly proved in terms of the judgment and decree passed by the High Court in a partition suit whereby the suit property fell to the share of the respondent no.1 as he was the son of late Sh. Phool Singh Yadav. Secondly, even for the sake of arguments, if the respondent no.1 is not taken as the sole owner of the suit property, he would definitely be a co-owner because he is the son of late Sh. Phool Singh Yadav, and, now it is settled law that eviction petition can always be filed by one co-owner once there is no objection of the other co-owners. In the present proceedings, there are no objections of the other legal heirs of late Sh. Phool Singh Yadav to the claim of the respondent no.1 as the owner/landlord of the suit premises. Thirdly, I may also note that respondent no.1 in the eviction petition stated categorically that after receipt of legal notice, the petitioners had paid rent by money order from 1.5.2001 to 31.5.2004, however, in the applications for leave to defend and the affidavits in support thereof, this aspect is not disputed. I therefore hold that there is no illegality in the conclusion of the Additional Rent Controller that the respondent no.1 is the owner/landlord of the premises.

6. So far as the argument that the Government is the owner of the suit property, and not the respondent no.1 or his father late Sh. Phool Singh Yadav, this argument merits rejection for the simple reason that if Government was the owner of the property, it would have claimed possession of the entire property bearing no.8796 including the tenanted premises which form part of property no.8796, however, nothing is filed on record to show that the Government has ever claimed any rights in the property no.8796 or have filed any proceedings for possession against the respondent no.1 or any other person including the other legal heirs of late Sh. Phool Singh Yadav claiming rights and possession to the property no.8796. Accordingly, the argument that the Government is the owner of the suit property is a frivolous argument and is rejected.

7. The third argument that the respondent no.1 has filed a site plan which has mixed up tenancies of various persons and the site plan does not correctly show the area with the legal heirs of late Sh. Barkat Ram and late Sh. Sohan Singh because the area which was not in their tenancy has been included in the site plan, all that is required to be stated is that the respondent no.1 has filed a specific site plan colouring the area in the tenancy with late Sh. Barkat Ram and late Sh. Sohan Lal who are now represented by legal heirs and which in the opinion of this Court is sufficient because there are no separate municipal numbers for different parts of the property bearing no.8796. This aspect has to be taken with the fact that if the respondent no.1 is assumedly seeking possession of portions in the tenancies of other tenants, then, it is for such other tenants to have come and who would have come and objected to this petition but have not. In any case, such third person can always object after passing of the decree under Section 25 of the Act, however, merely because the tenants/petitioners state that allegedly other portions of other tenants have been mixed in the tenanted premises shown in the site plan filed alongwith the eviction petition cannot give any substance to this argument for creating a triable issue.

8. The next argument which is urged by the petitioners was that the respondent no.1 has many other properties and which are therefore alternative suitable accommodation. The Additional Rent Controller while rejecting this argument has rightly noted that what are the other properties which are owned by the respondent

no.1 are not stated in the leave to defend applications and therefore such a vague plea cannot be considered.

9. Learned counsel for the petitioners has sought to draw the attention of this Court to the judgment and decree passed by the High Court which showed other properties falling to the share of the respondent no.1, however, the argument is without merit because the judgment and decree is way back of the year 1972 and the eviction petition was filed in the year 2009 i.e after about 37 years after passing of the decree and it was therefore necessary that the petitioners in the leave to defend applications should have specifically averred as to the other property forming part of judgment and decree of the High Court as continuing to be available to the respondent no.1, and only if that was done, the respondent no.1 would have got sufficient opportunity to explain/contest this position but since such a plea was not taken in the applications for leave to defend, now a surprise cannot be sprung on to the respondent no.1 for treating the position in the year 1972 as the position prevailing as many as 37 years later in the year 2009. Also, after the passing of the judgment by the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC15 no ground which is not taken within the inflexible statutory period of 15 days for filing of the leave to defend application, can be subsequently urged for granting leave to defend.

10. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs. JULY25 2014 Ne RC REV No.324/2012

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