

Lakshmi Devi vs.bimla & Ors

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Court : Delhi

Decided On : Feb-23-2017

Appellant : Lakshmi Devi

Respondent : Bimla & Ors

Judgement :

\$~A-24 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision :

23. 02.2017 RC.REV. 548/2016 & CM No.43196/2016 LAKSHMI DEVI

... Petitioner

Through Mr.Praveen Nagar and Mr.Lakshay Dhamuja, Advs. versus Through Mr.Devendra Dagar, Adv. Respondent BIMLA & ORS CORAM : HONBLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(ORAL) 1. By the present Revision Petition filed under section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) the petitioner is seeking to impugn the Eviction Order dated 22.07.2016 passed by the Additional Rent Controller (hereinafter referred to as the ARC) under Section 14(1)(e) of the DRC Act. The case of the respondents/landlords is that one room had been let out to the petitioner/tenant in property bearing No.16/312E, Ward No.16, Tank Road, Anand Puri, Karol Bagh, New Delhi. The husband of respondent No.1/father of respondents No.2 to 4 Shri Bansi Lal was said to be the owner of the property having purchased the same from the previous owner via registered sale-deed. Shri

Bansi Lal expired on 27.7.1997. It is stated that the respondents i.e. respondents No.1 to 4 are all staying in one room RC.REV.548/2016 Page 1 measuring 8 x 6 feet. They have no other property at their disposal for their residence. Hence, the tenanted premises is required for their bona fide need. Leave to defend was granted to the petitioner. The petitioner has filed his written statement. There are only two broad pleas taken in the written statement, namely, that the respondents have sold the property to one Shri Taro Devi who is the owner of the property in question. It is further stated that the respondents have no bona fide requirements. The averments made by the respondents are denied including the fact that the family of the respondent consists of respondents No.1 to 4 or that they are staying in one room accommodation measuring 8 x 6 feet.

2. Parties led their evidence. The respondents led the evidence of Shri Vijay Kumar as PW-1 (Respondent No.2), Smt.Manju PW-2 (Respondent No.4). Shri Amit Kumar PW-3 (respondent No.3). The petitioner has filed her own evidence as RW-1. She also led the evidence of Shri Manoj Kumar RW-2.

3. The ARC on the issue of title of the respondent concluded that the petitioner in her evidence by way of affidavit has admitted herself to be the tenant. However, in the cross-examination she has made contradictory statements. At one point she states that she does not know as to whether Shri Vijay Kumar (respondent No.2) and his family are residing on the same floor as of the petitioner. During subsequent cross-examination she admits that Shri Vijay Kumar and his family are residing in the same building. When site plan Ex.PW

was shown to the witness, she deposed that she cannot state whether the room at point A was occupied by the respondents. The ARC concluded that RW1 i.e. the petitioner is not RC.REV.548/2016 Page 2 a reliable witness. It also noted that though it was claimed that Smt. Taro Devi was the owner of the premises the said Smt. Taro Devi was not examined. The said contention was rejected.

4. On the issue of bona fide requirements the ARC noted the evidence of PW-1, PW-2 and PW-3 who are also the respondents that the full family is staying in one room of 8 x 6 feet. Their cross-examination did not reveal anything contrary or material. The ARC also noted that the petitioner has failed to show availability of

any other property with the respondents. Hence, it concluded that the respondents requirement is bona fide and that they do not have any other suitable alternative accommodation.

5. I have heard learned counsel for the parties. Initially learned counsel for the petitioner had submitted that he would like to try to settle the matter with the respondents. However, no settlement could be arrived at. Hence, the parties have been heard on merits.

7. I may first see the scope of the present petition. The Supreme Court in Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC222(MANU/SC/0132/1999) described the revisional powers of this court as follows:-

"11. The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having the phraseology employed by RC.REV.548/2016 Page 3 its jurisdiction with exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available 8. Hence,

this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

9. Section 14(1)(e) of the DRC Act reads as follows: tenant against of (1) 14. Protection Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant: eviction.- RC.REV.548/2016 Page 4 Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

"Xxxxx (e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation. The above provisions would in view of the judgment of the Supreme Court in Satyawati Sharma(dead) by LRs vs. Union of India & Anr., AIR 2008 SC3148 apply to commercial premises also.

10. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

10. The only contention which has been raised before this court is that the property belongs to Smt. Taro Devi and that the respondents cannot hence claim to be the owner/landlord of the property.

11. A perusal of the evidence on record would show that the only document which is relied upon by the petitioner is a decree of compromise arrived at between Taro Devi and the respondents and the application RC.REV.548/2016 Page 5 under Order 23 Rule 1 CPC for recording of compromise. It is stated in the compromise

application that the plaintiff (Taro Devi) shall have the rights of ground floor and basement of the suit property and the defendants (respondents) herein shall have right of the first floor and above over the property. No doubt, the said application is not very well drafted and does have some entries which may create confusion. Paragraph (c) of the application states that at the time of registration of the sale deed the respondents shall hand over possession of one room and kitchen on the ground floor and complete first floor to the plaintiff (Taro Devi). Clause (e) of the application states that the height of the ground floor from the floor level to the first floor would be 17 feet and the depth of the basement would be 6 feet from the ground level. The agreement further states that parties shall construct agreed respective portion of the property on their own and nobody can create any kind of interference. The proper interpretation to this is that the basement and ground floor after new construction would belong to the said Taro Devi and the first floor and above belongs to the respondents.

12. I may also see the cross-examination of RW-1 the petitioner Smt.Laxmi Devi. She admits that the ground floor portion is occupied by Taro Devi. She also states that she has never told Taro Devi regarding filing of the present Eviction Petition. She also does not possess any rent receipt issued by Taro Devi in her favour. She also admits that she has never filed any petition in court for deposit of rent. She admits that the house in question was never got reconstructed after demolition since she is in occupation. It is manifest from the cross-examination that the said RC.REV.548/2016 Page 6 petitioner has no concern whatsoever with Taro Devi. There is no relationship of landlord-tenant with the said Taro Devi. Hence, in view of the findings recorded by the ARC for the purpose of section 14(1)(e) of the DRC Act, relationship of landlord-tenant exists between the parties and is not liable to be disturbed.

13. The legal position in this regard is very clear. Reference in this context may be had to the judgment of the Supreme Court in the case of Boorugu Mahadev & Sons And Anr. v. Sirigiri Narasing Rao And Ors., (2016) 3 SCC343 where the supreme Court held as follows: 19. It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative

term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (Vide Sheela v. Firm Prahlad Rai Prem Prakash) 14. Other than the above submission, no other cogent or valid ground has been taken by the petitioner. As rightly observed by the ARC, the petitioner RW-1 has made contradictory statements in her cross-examination and is a witness whose testimony has rightly been discarded by the ARC. She admits that the tenanted room is on the first floor. She states in the cross-examination that she does not know as to whether the RC.REV.548/2016 Page 7 respondent or his family are residing on the same floor. She also denies that there is any other room on the first floor other than the room that is occupied by her. In a subsequent part of the cross-examination she admits that the respondent and his family is residing in the same building and that the building consists of premises upto the first floor. She admits that the ground floor is occupied by Smt.Taro Devi. She also admits that the room occupied by her and the room occupied by the respondents have an opening gate on the very same gali. She also admits that younger brother and sisters of Vijay Kumar i.e. respondent No.2 are also staying with him. It is manifest from the cross-examination that the respondents are residing on the first floor.

15. Clearly, the petitioners have failed to point out any infirmity in the impugned order passed by the ARC. There are no grounds for this court to exercise its revisionary power to quash the order. There is no merit in the present petition. Same is dismissed. All pending applications, if any, also stand disposed of accordingly. FEBRUARY23 2017 n (JAYANT NATH) JUDGE RC.REV.548/2016 Page 8