

Babu Lal vs.nirmala Devi

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Court : Delhi

Decided On : Apr-18-2018

Appellant : Babu Lal

Respondent : Nirmala Devi

Advocate for Def. : Mr. Abhimanyu Singh

Advocate for Pet/Ap. : Mr. Ashish Kapur, Ms. Chhavi Luthra, Mr. Anmol Kapur

Judgement :

\$~ 10 IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:-

"18th April, 2018 + RC. REV. 268/2015 and CM APPL.10168/2015 (stay) BABU LAL

... Petitioner

Through: Mr. Ashish Kapur, Advocate with Ms. Chhavi Luthra & Mr. Anmol Kapur, Advocates versus NIRMALA DEVI Respondent Through: Mr. Abhimanyu Singh, Advocate CORAM: HON'BLE MR. JUSTICE R.K.GAUBA ORDER (ORAL)
1. The respondent had instituted a case (E. No.858/2014) on 23.05.2013 against the petitioner for eviction on the ground of bona fide need under Section 14 (1) (e) of Delhi Rent Control Act, 1958 in respect of a premises described as shop forming part of ground floor of property bearing No.16/605-E, Tank Road, Bapa Nagar, Karol Bagh, New Delhi-110005, as shown in colour red in the site plan filed with the eviction petition.

2. The petitioner does not dispute his status vis--vis the subject premises as that of a tenant. On being served with the summons under Section 25-B of Delhi Rent Control Act, 1958, he filed an application for leave to defend. The said application was considered by the additional rent controller, but dismissed by order dated 15.01.2015 in RC. Rev.268/2015 Page 1 of 5 the consequence whereof an eviction order was granted in favour of the respondent. The petition at hand challenges the correctness, legality and propriety of the said order.

3. The prime contention on which the petitioner (tenant) seeks permission to contest is that the respondent (landlady) is not the owner of the subject property, there being no relationship of landlady and tenant between him and her. This contention must be rejected for the simple reason that in his application for leave to contest (particularly in para

3) he had pleaded that the respondent is not the exclusive and only owner of the property in question, reference being made by him to two other legal heirs of late Shri Lekh Raj. It may be noted in this context that it is an admitted case of the parties that the property in question was originally owned by Shri Lekh Raj.

4. It is also not disputed that the premises in respect of which eviction order is sought comprises of three portions as shown in colour red in the site plan which were filed with the eviction petition (page 151 of the trial court record). The said three portions are concededly in use and occupation of the petitioner tenant, one of them opening on the main road and the access to the other two, each separated by partition walls - being through a passage that runs alongside. It is not disputed by the respondent that the petitioner had been inducted as a tenant in one of the said portions (the corner one) by the original owner, Lekh Raj in 1980 at Rs.250/- per month, the second shop (one at the other end) having been added to his tenancy six months thereafter at a monthly rent of Rs.200/- and further that the middle RC. Rev.268/2015 Page 2 of 5 portion was also let out in 1981 at Rs.200/- per month, rent having been paid by the petitioner to Lekh Raj and his son Nanak Chand. The respondent is the sister of said Nanak Chand. She claims ownership of the said property on the basis of relinquishment deed executed by her siblings - other legal heirs of Lekh Raj - on 23.11.1990 in her favour, copy of the said

registered document having been submitted with the eviction petition. In a case of this nature, the tenant cannot be permitted to question her authority to institute the eviction case, he having conceded impliedly that she is at least a co- owner, if not the exclusive and absolute owner of the property, after the demise of the original owner - (landlord), namely, Lakh Raj.

5. The next contention of the petitioner is that each of the three portions shown as one premises to seek eviction, form part of separate tenancy agreements. It is his submission that the cause of action in respect of three tenanted portions could not have been joined in one case. This argument must be rejected with reference to the settled law on the subject, as noted at length in the decision of a learned Single Judge of this court in *Puran Chand Aggarwal vs. Lekh Raj*, (2014) 210 DLT131 with reference to *Chander Parkash Chawla vs. K.K. Kapoor*, 64 (1996) DLT614 *S.M. Gopalakrishna Chetty vs. Ganeshan*, AIR 1975 SC1750 *Gobind Ram vs. Godha Ram*, 1979 (2) RCR; and *Jamiluddin vs. Shamsuddin*, AIR1999 All 150. A single eviction petition can be maintained by the landlord against a tenant in respect of different portions of the property, particularly as the cause of action pleaded is same, the questions of fact and law respecting RC. Rev.268/2015 Page 3 of 5 each portion also being common, the provision contained in Order II Rule 3 of the Code of Civil Procedure, 1908 (CPC) permitting such joinder of causes of action.

6. The further argument raised is that two other shops forming part of the same very premises have fallen vacant, the respective tenants having vacated such premises. The reference is being made to the portions shown in colour yellow and blue in the site plan filed with the eviction petition, the pleadings in the eviction case describing such portions to have been then in tenancy of other persons named Bal Ram and Leela Chauhan respectively. The vacation of such other portions, however, will not adversely impact the case set up by the respondent. She has described at length the circumstances in which she is placed after her marriage had run into rough weather in 1996, to which there is no contest. It is not disputed that she is earning her livelihood by selling cooked food using a tandoor (clay oven) set up (in 1996) in the public street. She is owner of the property interest wherein of other legal heirs of her late father has been relinquished in her

favour by her siblings. She intends setting up eatery business from the property and requires the entire ground floor portion for such purposes, her plan being to use the portion vacated by tenant Bal Ram (shown in yellow) for kitchen, the portion vacated by tenant Leela Chauhan (shown in blue) for washing utensils and storage of raw-food and the rest of the portion, particularly the portion in tenancy of the petitioner (shown in red) for sitting of the patrons of her eatery business. RC. Rev.268/2015 Page 4 of 5 7. Thus, the vacation of only two portions does not satisfy the needs for which she had filed the case for eviction against the petitioner.

8. In the above facts and circumstances, the grounds on which the impugned order was challenged do not appeal to this court. The learned additional rent controller has taken an appropriate view of the matter to decline leave to contest to the petitioner., 9. This court finds that the impugned order does not suffer from any error or infirmity. In the result the petition is dismissed and the applications filed therewith also stand disposed of. R.K.GAUBA, J.

APRIL18 2018 vk RC. Rev.268/2015 Page 5 of 5

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