

Shiv Ram vs.anand Kumar

Shiv Ram vs.anand Kumar

SooperKanoon Citation : sooperkanoon.com/1225962

Court : Delhi

Decided On : Oct-15-2019

Appellant : Shiv Ram

Respondent : Anand Kumar

Judgement :

\$~44 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

15. 10.2019 RC.REV. 593/2019 SHIV RAM ANAND KUMAR versus

... Petitioner

..... Respondent Advocates who appeared in this case: For the

... Petitioner

: Mr. Ram Niwas Buri and Mr. Lalit Narayan Singh, Advocates For the Respondent: None. CORAM:-

"HONBLE MR JUSTICE SANJEEV SACHDEVA JUDGMENT SANJEEV SACHDEVA, J.

(ORAL) 1.

... Petitioner

impugns judgment dated 05.07.2019 whereby the petition filed by the petitioner for eviction of the respondent on the ground of bonafide necessity under Section 14 (1) (e) of Delhi Rent Control Act, 1958 has been dismissed after trial.

2. Subject eviction petition was filed by the petitioner with regard to one room out of the residential building in property bearing No.D- 1/230, Nand Nagari, Delhi. The defence taken by the respondent was that he is not a tenant Page 1 of 6 3. RC.REV. 593/2019 in the property and that the property was jointly allotted to the petitioner as well as the father of the respondent i.e. late Shri Shanti Swaroop in the year 1976 by the Delhi Development Authority (DDA) and being the son of Shri Shanti Swaroop he is a co-owner of the subject property and in possession of the said shop in his own right.

4. In response the petitioner contended that Shri Shanti Swaroop had died issueless and his wife Smt. Maya Devi had deserted him and started living with one - Narayan Singh.

5. Learned counsel for the petitioner seeks to place reliance on the school record of the respondent to contend that at the time of the admission in the school, the name of his father was shown as Narayan Singh and his date of birth was shown as 15.05.1979.

6. Learned counsel further contends that the respondent has relied on the date of birth entry in the Register of Municipal Corporation dated 30.06.1978 in which the date of birth is allegedly shown as 26.06.1978.

7. Learned counsel submits that the register produced showed that the entry is made on information provided by the petitioner and allegedly bears his signatures and thumb impression. He submits that the handwriting expert confirmed that the alleged signature and thumb impression are not of the petitioner. Hence, it is contended that the respondent had falsely pleaded that he is son of late Shri Shanti RC.REV. 593/2019 Page 2 of 6 Swaroop.

8. Rent Controller in the impugned judgment has noted that it is not in dispute that the property, in which the tenanted premises is situated was allotted by DDA jointly

to the petitioner and the deceased Shanti Swaroop. It is also not in dispute that Shanti Swaroop was married to Smt. Maya Devi. It is also not in dispute that Smt. Maya Devi is the mother of the respondent.

9. Rent Controller has noted that the case of the respondent is that he is born out of the wedlock of Shri Shanti Swaroop and Smt. Maya Devi and he is the biological son of Shri Shanti Swaroop and accordingly is the legal heir and that the possession of the said shop was given by the petitioner to the respondent being a co-owner.

10. Rent Controller has noted that the copies of the Birth Certificate and record of the Birth Register produced by the MCD showed that the date of registration as 30.06.1978 and name of the child born as Anand Kumar. The date of birth of child recorded is 26.06.1978 and the names of mother and father of the child recorded are Maya Devi and Shanti Swaroop, respectively and the address mentioned is that of the subject property.

11. The relevant Births and Death Register of the Municipal Corporation (Exb. RW4/A) is more than 30 years old document and has been produced from proper custody and is a public document. RC.REV. 593/2019 Page 3 of 6 12. It is not the case of the petitioner that the said document has been manipulated or prepared later. The only contention raised by the petitioner to doubt the authenticity of the said document is that there was no corresponding contemporaneous application available on record based on which the entry is made in Exb. RW4/A.

13. It is observed that the entry in the Register is a public document and has been produced from a public source i.e. from the custodian of the records of Births and Deaths. The entry in the Register is of the year 1978 and which is more than 30 years old and the Court has to presume the genuineness of the said document. The Register categorically records the name of the parents as Maya Devi and Shanti Swaroop and the address of the subject property. The name of the respondent is recorded as the child born on the said date.

14. AS noticed by the Rent Controller, there is no requirement in law for the Municipal Corporation to preserve and maintain record of the contemporaneous

documents based on which the entry is recorded in the Register.

15. Further, it is not possible for someone to have forged and fabricated a document as far back as in the year 1978 with an intention to use it after 40 years to defend and application for eviction. There is no basis to raise a doubt on the authenticity and veracity of the entry recorded in the Register.

16. Merely because in the school records the name of the father of RC.REV. 593/2019 Page 4 of 6 the respondent is recorded as Narayan Singh is no ground to doubt the genuineness and veracity of the entry contained in the Register of Births.

17. The Rent Controller has rightly held that since the allegations is that Maya Devi was residing with Narayan Singh, there is a probable explanation as to why the name of the Narayan Singh figures in the school record. The case set up by the respondent is that because Narayan Singh has taken the responsibility of a father and guardian after the marriage of Maya Devi with Narayan Singh, the name of the Narayan Singh figures in the records of the school as the father.

18. Further, it may be seen that the respondent has also proved on record his Ration Card, Voter Identity Card as well as other contemporaneous public document which mention the name of the father as Shanti Swaroop.

19. Further, it may be noted that petitioner had also filed a suit for recovery of rent in the year 2006 contending that respondent was a tenant. Respondent had filed his written statement to the suit specifically denying the relationship of landlord and tenant and contended that he was in possession of the subject property as an owner thereof being son of Shri Shanti Swaroop. It is contended by learned counsel for the petitioner that the said suit was dismissed for non prosecution.

20. Since the defence raised by the respondent in the Suit for RC.REV. 593/2019 Page 5 of 6 recovery of rent filed by the petitioner was that he is the owner of the subject property and in possession thereof as an owner of the same and the said Suit has been dismissed, the principles of issue estoppel will clearly debar the petitioner from once again agitating that the Respondent is his tenant or that there

is relationship of landlord and tenant between the parties.

21. In view of the above, I find no infirmity in the view taken by the Rent Controller that the petitioner has not been able to even prima facie establish that relationship of landlord and tenant exists between the parties and that respondent is not a tenant in the shop under the petitioner and accordingly the petition is liable to be dismissed.

22. Since I find no infirmity in the impugned order, I find no merits in the petition. The petition is accordingly dismissed. OCTOBER15 2019 rs SANJEEV SACHDEVA, J RC.REV. 593/2019 Page 6 of 6

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com