

Lal Chand Vs. Maya Devi

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Court : Delhi

Decided On : Feb-04-2015

Judge : Mukta Gupta

Appellant : Lal Chand

Respondent : Maya Devi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RC.REV. 101/2011 & CMs. 13378/2011, 22349/2011 Decided on:

4. In February, 2015 % LAL CHAND Through Petitioner Mr. Arvind Kumar Tiwary, Adv. versus MAYA DEVI Through Respondent Mr. Praveen Kr. Singh, Navlendu Kumar, Advs. Coram: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. The petitioner impugnes the order dated 2nd November, 2010 whereby the leave to defend application filed by the petitioner in an eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short the DRC Act) was dismissed.

2. Possession of the tenanted premises has already been handed over to the respondent in execution petition, however vide order dated 26 th September, 2013 this Court directed that the respondent shall not sub-let or create any third party interest in the suit property.

3. In the eviction petition the respondent stated that the suit property i.e. 11841, Gali No.8, Sat Nagar, Karol Bagh, Delhi was purchased by her on 16th December, 1998 through a General Power of Attorney duly registered with the office of Sub-Registrar. The petitioner had already been inducted as a tenant by the previous owner namely Shri Hari Kishan in respect of one room (in short the tenanted premises) purely for residential purpose on a rent of ` 1200/- per month excluding water, electricity and other charges. Despite repeated reminders the petitioner did not pay the rent. It was further stated by the respondent that she needed tenanted premises for her and her family members bona-fidely as she was not having sufficient accommodation. According to the respondent she along with her husband and three children was living in one room accommodation. In the eviction petition she also disclosed the rooms available with each member of the joint family.

4. In the leave to defend application the main ground of attack of the petitioner is with regard to ownership of the suit property by the respondent, though he neither disputed the members of her family or the joint family and the accommodation available. Only assertion in this regard is that the respondent was living comfortably in her present joint family house for the last 20 years and thus there was no bona-fide requirement. The monthly rent was also denied and it was stated that monthly rent of the tenanted premises was `38.50 paise and that since the inception of the tenancy in 1959 the petitioner was working as a tailor in the tenanted premises and the premises was taken from late Hari Kishan for residential-cum-commercial purpose.

5. The learned ARC held that the respondent has been able to show that she is the owner of the premises, however since there was a dispute whether the premises was let out for residential purposes or commercial purposes leave to defend was granted vide order dated 10 th September, 2007. The parties thus led their evidence and vide the impugned judgment the learned ARC again upheld the bona-fide requirement and non-availability of alternative accommodation in favour of the respondent. It also upheld that the respondent has been able to show that she is the owner of the premises as per the requirement of DRC Act. Further in view of the decision rendered by the Supreme Court in Satyawati Sharma Vs.

Union of India (2008) 5 SCC287 the plea whether the premises was let out for residential or commercial purposes was no longer required to be gone into and hence eviction of the petitioner from the tenanted premises was directed. 6 The only issue urged before this Court is with regard to ownership of the respondent in the suit property. Learned counsel for the petitioner contends that though the General Power of Attorney Ex.PW-1/1 and Special Power of Attorney Ex.PW-1/2 have been executed by late Hari Kishan in favour of Gora Devi, however Will Ex.PW-1/3 and Agreement to Sell dated 30th May, 1993 Ex.PW-1/4 were executed in favour of Daya Ram, Lekh Raj, Nar Singh and Praveen and that the possession of the suit property was not handed over by late Hari Kishan who continued taking rent from the petitioner till his death on 30th May, 1993. As noted above the petitioner does not dispute that Hari Kishan was the erstwhile owner of the suit property and he took the tenanted premises on rent from Hari Kishan.

7. The respondent and her husband appeared as PW-1 and PW-2 and deposed that the property had been purchased from Smt. Gora Devi and her sons who had purchased the same from its previous owner Shri Hari Kishan. The petitioner did not bring on record anything to show that Hari Kishan did not sell the property in question to Gora Devi and Smt. Gora Devi did not sell the property to the respondent. No material was placed on record by the petitioner to show that the GPA Ex.PW-1/1 and SPA Ex.PW-1/2 in favour of Gora Devi and another GPA Ex.PW-1/12 and Special Power of Attorney in favour of the respondent were forged and fabricated. Further Daya Ram, Lekh Raj, Nar Singh and Parveen executed Will in favour of the petitioners husband who deposed that the petitioner was the owner of the suit premises. In view of the documents exhibited the respondent has been able to demonstrate that she has a better title to the property than the petitioner. Admittedly the petitioner was inducted as a tenant in the premises.

8. It is trite law that in an eviction petition under Section 14(1)(e) of the DRC Act the landlord has not to show that he is the absolute owner of the property and if he is able to show that he has a better claim on the property than the tenant then he is entitled to an order in his favour. In Shanti Sharma Vs. Ved Prabha AIR 1987 SC2028 the Supreme Court held that the word owner in Section 14(1)(e) DRC Act

has not been used in the absolute sense and would include persons who have taken plot of land from Govt. or DDA on lease and built a structure on the same. Owner is one who is something more than the tenant.

9. In *Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.* 155 (2008) DLT383 it was held:

12. It is settled law that for the purpose of Section 14(1)(e) of Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. In this case, the landlady had placed on record the documents by which she became owner. The attornment given by the erstwhile landlord in her favour as well as an admission made by the tenant by filing petition under Section 27 of Delhi Rent Control Act acknowledging the landlordship of landlady. Thus, the conclusion arrived at by the ARC regarding ownership and relationship of landlord and tenant were based on sound legal position and the cogent material before it.

10. Thus there is no merit in the petition. Petition and applications are dismissed. (MUKTA GUPTA) JUDGE FEBRUARY04 2015 ga

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