

Deepak and Anr Vs. Maya Devi and Ors

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Court : Delhi

Decided On : Feb-10-2015

Judge : Mukta Gupta

Appellant : Deepak and Anr

Respondent : Maya Devi and Ors

Advocate for Pet/Ap. : Mr. Baljeet Singh

Judgement :

\$ * IN THE HIGH COURT OF DELHI AT NEW DELHI + RC.REV. 64/2015
Decided on:

10. h February, 2015 % DEEPAK & ANR Through: Petitioner Mr.Dhananjay Kumar Singh and Mr. Baljeet Singh, Advocates. versus MAYA DEVI & ORS Through: None. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA Respondents MUKTA GUPTA, J (ORAL) CM No.2367/2015 (Exemption) Allowed, subject to all just exceptions. RC.REV. 64/2015 and CM No.2366/2015 (stay) 1. Aggrieved by the order dated 2nd September, 2014 the Petitioner has preferred the present petition whereby his leave to defend application in an eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short the DRC Act) filed by the Respondents was dismissed.

2. In the eviction petition the Respondents pleaded that a shop measuring 10ft x 7.6 ft on the ground floor in Premises No.1656, Gali No.119, Shanti Nagar, Tri

Nagar, Delhi-110035 was let out to Mahender Nath, father of the Petitioners at a monthly rent of Rs. 1,200/- per month since the year 1990 for non-residential purposes by the erstwhile owner. The Respondents became the owners on the basis of the Will executed by the erstwhile owner. In 1993 the father of the Petitioners died and thus the Petitioners started their own business in the name and style of M/s Pradeep Seat Cover. The Respondents stated that Maya Devi was an old lady and residing in a room at the ground floor of the suit property. Smt. Sunita Devi and Usha Devi, the widow and the daughter of the deceased son of Respondent No.1 were residing in a room on the first floor of the suit premises. Smt. Beena and Smt. Prem Lata married daughters of Respondent No.1 also visit the suit property occasionally and stay with Respondent No.1. One room on the first floor was in possession of the other tenant Shri Kailash who was residing there. The Respondent No.2 Vijay Pal who was working in Punjab and Sind Bank whose family comprises of his wife and two sons namely Vikas Rawat and Rakesh Rawat, aged 28 years and 27 years respectively was also staying in the suit property. Vijay Pal with his wife has been residing in a small room at the ground floor. Vikas Rawat along with his wife and children was residing in a room at the first floor. Rakesh Rawat was residing in a room on the second floor. The Respondent No.3 and his wife owned a house in Uttam Nagar and were living there with a large family consisting of himself, his wife and two sons and one daughter, one son being married. Further Respondent No.4 with his wife and one son and daughter was also residing in the suit property in a single room on the ground floor of the suit property. The Respondent No.5 along with his family consisting of his wife and two sons aged 7 years and 6 years was also residing in one room on the first floor. Earlier the Respondent No.5 was mending puncture of scooters and cars on road side but now as the work has been stopped he is jobless. Thus according to the Respondents they require additional rooms. The suit property consists of three shops, three rooms, one kitchen, one bathroom, one toilet and one verandah on the ground floor. Out of the three shops, one shop is in possession of the Petitioners. The other shop is in possession of the Respondent No.3 and the third shop was in possession of the other tenant. The mezzanine floor had a small store which was used for keeping goods. The first floor of the suit premises has four rooms, one tin shed kitchen, one store and open space and on

the second floor, there was only one room and open terrace. Thus due to paucity of space, the tenanted premise was required.

3. In the leave to defend application filed by the Petitioners it was stated that the Respondents have sufficient accommodation to meet their requirements. No Will was executed in favour of the Respondents by the erstwhile owner late Ram Kishan and all the legal heirs of late Ram Kishan have not been joined as parties. The widow and daughter of the deceased son of Respondent No.1 were not residing in a room on the first floor. Further the daughters of the Respondent No.1 also did not visit and stay in the suit property. It was denied that any of the rooms on the first floor was on tenancy. Thus the main contention of the Petitioners was that there was no bona fide requirement of the Respondents. In the leave to defend no plea was taken that the Respondents have any alternative accommodation available except the house at Uttam Nagar wherein Respondent No.3 is living with his family which the Respondents mentioned in the eviction petition.

4. On hearing the parties the learned ARC considering all the facts and various rooms in occupation of the different family members held that all the rooms being in occupation of the family members no room was left if the married daughters visited the Respondents occasionally. It was further held that all the legal heirs of the deceased owner of the premises or the deceased tenant were not required to be brought on record and hence the leave to defend application was dismissed.

5. Before this Court again the grounds of maintainability of petition and that there was no bona fide need of the tenanted shop rather the same was a desire, were urged. It is stated that the suit property is a half story building on a plot of 120 sq. yards and thus there was sufficient accommodation available with the Respondents and no other additional accommodation was required. Though no plea was taken that the Respondents have another property a LIG Flat in Rohini allotted by the DDA in the leave to defend application however, the same was urged for the first time before this Court. Thus there being no assertion in the leave to defend application and even before this Court the same being a bald assertion with no particulars, the same cannot be looked into.

6. As noted above the family of the Respondents comprising of eighteen members live in seven rooms. The same cannot be said to be sufficient accommodation. How the landlord has to adjust his requirement cannot be dictated either by the tenant or by this Court. The paucity of space with the Respondents cannot be denied.

7. It is trite law that all the co-owners are not required to be impleaded for filing an eviction petition. Whether or not Ram Kishan left a Will in favour of the Respondents would not raise a triable issue because even if no Will had been left behind, the Respondent No.1 is the wife of late Ram Kishan and Respondent Nos.2 to 5 his sons. No objections have been raised by the other legal heirs and it is well settled that co-owners can maintain petition for eviction. (Kanta Udharam Jagasia vs. C.K.S Rao, 1998 (1) SCC403 and Mohinder Prasad Jain vs. Manohar Lal Jain, 2006(2) SCC724) 8. As regards all the legal heirs of late Shri Mahender not being impleaded in the eviction petition it was clearly stated that in the year 1993 Shri Mahender died and thus Deepak and Pradeep the present tenants started their own business. There is no denial to this averment in the leave to defend application. Merely by saying that all the legal heirs of Mahender which included the two daughters besides the Petitioners herein having not been made party would not affect the maintainability of the petition when it is not even the case of the Respondents in the leave to defend application that the two sisters were joint tenants with the Petitioners.

9. No triable issue having been raised, the learned Judge rightly rejected the leave to defend application.

10. In view of the aforesaid discussion, I find no illegality in the order impugned.

11. Petition and application are dismissed. (MUKTA GUPTA) JUDGE
FEBRUARY 10 2015 vn

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