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Munshi Shaukat Vs. Jamiluddin

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Court : Delhi

Decided On : Sep-17-2004

Reported in : 114(2004)DLT294; 2004(77)DRJ167

Judge : R.S. Sodhi, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1)

Appeal No. : CR 1369/2001 and CM 2884/2001

Appellant : Munshi Shaukat

Respondent : Jamiluddin

Advocate for Def. : None

Advocate for Pet/Ap. : Sunil Malhotra, Adv

Disposition : Petition dismissed

Judgement :

R.S. Sodhi, J.

1. C.R.P. 1369 of 2001 is directed against the judgment and order dated 29.8.2001 of the Additional Rent Controller (for short 'Controller') in E-152/92 whereby the learned Controller has decreed the suit on a petition filed under Section 14(1)(e) of the Delhi Rent control Act, 1958 (for short 'the Act') by the

respondent herein holding that the respondent herein has been able to satisfy the court that his requirement under Section 14(1)(e) of the Act is made out in respect of ground floor of the premises in possession of the petitioner herein.

2. Brief facts of the case, as noted by the learned Controller, are as under :

"an eviction petition filed on the ground of bonafide requirement under Section 14(1)(e) DRC Act in respect of one room, latrine, kothri, open courtyard, verandah and also one temporary room allegedly constructed illegally at the first floor by the respondent in premises No. 16358, Ward No. 14, Gali Babu Bashat, Quresh Nagar, Sadar Bazar, Delhi.

According to the petitioner the premises was let out to the respondent for residential purpose and same is required by the petitioner who is owner and landlord for occupation as a residence for himself and for family members dependent upon him and the petitioner has no other reasonably suitable residential accommodation.

It has been further explained in the petition that this property in dispute was purchased by the petitioner by his brother Zahiruddin vide sale deed dated 12.5.1986. According to the petitioner earlier he was living at T-433, Gali Oahar Wali, Ahata Kedala, Delhi and vacated the said premises and come tot he H. No. 6357, Quresh Nagar, Delhi at a rent of Rs. 300/- p.m. Owned by Sh. Zahiruddin and petitioner want to shift to his own house. According to the petitioner there are seven members in his family and petitioner needs atleast three rooms and one separate room for study of the children.

In written statement the respondent has denied the ownership of the petitioner qua the suit property. According to him the respondent is the tenant under Sh. Zahiruddin and is paying the rent to him and has never been asked to attorn to the petitioner by Zahiruddin. It has been further stated by the respondent that petitioner Along with Zahiruddin is the owner of the property No. 6357, Sadar Bazar, Delhi and petitioner is also the owner of property No. T-433, Gali Pahar Wali, Ahata Kedara, Delhi in which the petitioner is in occupation of six rooms. According to the respondent the petitioner has let out the accommodation at first

floor of the suit property vacated by one tenant Jamiluddin to one Ashfaq who is doing the business of manufacturing of leather and raxin bags. It has been further stated that the premises was let out for residential cum commercial purpose and the respondent is doing the business of gadgets in the suit premises. The plea of partial eviction has also been taken submitting the bathroom, kitchen courtyard are also the part of the tenancy premises of the respondent.

In the course of the proceedings the petitioner sought to amend the petition by incorporating the fact that at the time of filing of the petition he was living in T-433 which was owned by Smt. Kharu Nisha and the petitioner has surrendered the premises to

the landlady and has shifted to the first floor of the premises vacated by another tenant Jamiluddin. According to the petitioner this floor consist of one room and the petitioner is facing a great difficulty to accommodate the entire family therein."

3. In order to bring the petition within the ambit of Section 14(1)(e) of the Act, it was incumbent upon the landlord to prove that he was (i) the owner/landlord of the premises in dispute; (ii) premises was let out to the respondent/tenant for residential purpose; (iii) petitioner needs the suit premises for his own residence and for the residence of his family members dependent upon him; and (iv) petitioner does not have any other alternative suitable residential accommodation available with him.

4. The landlord proved on record the Sale Deed dated 12.5.1986 (Ex. PW-1/2). It was contended that the aforesaid document has not been proved as the attesting witnesses has not been examined. This aspect of the matter has been adequately dealt with by the learned Controller who has noticed that Ex. PW-1/2 is a registered document to which the landlord is one of the parties and he himself tendered the same into evidence, the same stands proved. Even otherwise, this document has not been challenged by the vendor and, thereforee, there is no necessity of calling any attesting witness to prove the same. The reasoning of the trial court cannot be faulted with specially in the proceedings under the Act which are not of the nature of establishing title to the property. thereforee, by bringing on record the Sale Deed, Ex. PW-1/2, the landlord has been able to prove that he is

the owner/landlord of the premises in question. Even intimation at the time of purchase of the property by the landlord had been sent to the petitioner herein vide letter dated 12.5.1986. This document has not been challenged.

5. As regards the purpose of letting out it is indeed the case of the tenant that the premises in question was being used for his residence as also for commercial activities and that the premises has been used as such since 1949. RW-4, Kyamuddin, admits that the nature of the construction in the disputed premises is residential. According to RW-5, the son-in-law of the tenant, the room in question measures 12' x 8' and the kothri 8' x 4' and except for one son, the entire family of the tenant including the eldest son, having four children , resides in the tenanted premises. Even the tenant himself admits in his cross-examination that the entire building is residential and that on 10.5.2000 when he made the aforesaid statement, six family members were residing in the premises in question having accommodation of one room, one kothri, kitchen and bath room.

6. From the analysis of the evidence, it appears that the tenanted property is predominantly being used for residential purpose while business activities are also conducted from the same. However, there is nothing on record to show that prior to 1988 the premises in question was being used for commercial purposes. Documents placed on record admit of the fact that sine 1988 the premises in question is being used for residential-cum-commercial purposes. This certainly does not show that from the inception of tenancy since 1949, the premises have been let out for a composite purpose. RW-1 admits that other tenants on the first floor are using the premises for residential purpose. The learned Controller held that from the evidence it shows that currently the premises is being used by the respondent (petitioner herein) for commercial purposes as also residential purposes, but there is nothing to show that the premises were let out for commercial purposes. It appears to me that the nature of the premises which is essentially residential in which such a large family is residing is predominantly being used for residential purposes and there is nothing to show that it was ever intended to be let out for commercial purposes. Consequently, the disputed remises must be taken to be let out for residential purposes.

7. As regards alternative accommodation, property No. T-433 does not belong to the landlord but to his mother-in-law. Similarly, property No. 6357 does not belong to the landlord but is essentially a commercial property consisting of one shop purchased by the landlord from one Mohd. Irfan. The same cannot be termed as 'suitable alternative accommodation' sufficient to satisfy the needs of the landlord.

8. Having considered the material on record, it appears to me that except the first floor of the said property consisting of one room, the landlord does not possess or occupy any other residential accommodation for himself and members of his family dependent upon. The family of the landlord comprises of himself, his wife, one son and four daughters who are all living with him and are dependent upon him. The accommodation available is insufficient.

9. In this view of the matter, the landlord has been able to prove his bona fide requirement of the premises in possession of the tenant which is one room, kothri, latrine, bath room, kitchen and court-yard on the ground floor. The learned Controller having elaborately gone into the matter returned his finding in favor of the landlord which have been re-examined by this court, I find that the judgment of the learned Controller suffers from no infirmity, illegality, impropriety, perversity and/or jurisdictional error. C.R.P. 1369 of 2001 and C.M. 2884/2001 are dismissed. No order as to costs.

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