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Court : Delhi

Decided On : Nov-01-1995

Reported in : 1996RLR64

Judge : Arm Kumar, J.

Acts : Delhi Rent Control Act - Section14(1)

Appeal No. : Criminal Revision Appeal No. 293 of 1988

Appellant : Parvati Devi

Respondent : Mahender Singh

Advocate for Pet/Ap. : Ravinder Sethi and; Sumeet Bansal, Advs

Judgement :

Arm Kumar, J.

(1) The petitioner filed an eviction petition on the ground contained in S. 14(l)(e) read with S. 25-B of the Delhi Rent Control Act (the Act) on 5.6.84. The respondent is stated to be tenant with respect to two rooms, one kitchen on the first floor and a barsati on the second floor with common use of W.C. etc. forming part of property no. 296/4. Than Singh Nagar, New Delhi. The case of the petitioner landlady is that she requires the premises for her own residence and also for the residence of members of her family dependent on her for that purpose

and that she has no other reasonably suitable residential accommodation. Leave to contest the eviction petition was granted. The respondent tenant contested the eviction petition. He filed his w/s wherein apart from disputing the ownership of the petitioner of the property in suit, the tenant denied the bona fide requirement of the petitioner qua the tenancy premises. Another plea taken by the tenant was that the petition was for partial eviction since according to the tenant the terrace on the first floor was part of the tenancy premises and it was not included in the eviction petition.

(2) By the impugned order dated 6.1.1988, the learned Additional R.C. upheld the case of the petitioner on the question of bona fide requirement. However, it was held that the petitioner had failed to prove that she was the owner of the property in suit. The other plea of the tenant that the petition was for partial eviction was also accepted. It was held that the terrace on the first floor was part of the tenancy premises and since the same was not included in the eviction petition, the petition was liable to be dismissed. Thus, on the question of ownership as well as of petition being for part of tenancy premises, the petition was dismissed. The landlady has challenged the said order of the Arc by way of the present petition under Section 25-B(8) of the Act.

(3) So far as the question of ownership is concerned, the only plea of the respondent tenant in his w/s as also in his statement as a witness in support of his case is that one Billo is the owner of the premises. It has been proved in evidence on record that this person Billo is the son of the petitioner landlady. His real name is Chander Mohan. Chander Mohan appeared as a witness in his capacity as son of the petitioner as well as her general attorney. He has specifically stated that the petitioner is the owner of the property and he was only managing the property on her behalf. In view of this clear statement made before the Arc by the son of the petitioner, I am unable to accept the finding of the Controller that the petitioner had failed to prove that she is the owner of the premises. The statement of Chander Mohan, son of the petitioner read in the light of the plea of the respondent that the owner of the property is Billo (Chander Mohan) is sufficient for holding that the petitioner is the owner of the property and not Billo, alias Chander Mohan. The allegation of the respondent tenant was that Billo (Chander Mohan) is the owner of

the premises. This person is none else than the son of the petitioner. Moreover, when Chander Mohan has stated in his evidence that the petitioner is the owner of the property, that statement should have been taken as final because nobody will make a statement against his own interest. By the said statement, Chander Mohan was telling the court that his mother was the owner of the property and not he himself. I may mention that a photo copy of the sale deed with respect to the property in suit in favor of the petitioner had been filed before the trial court though it was not proved in evidence. The petitioner has filed a certified copy of the sale deed on record of this petition along with an application under Order 41 Rule 27, CPC. There is yet another aspect which has to be considered in this behalf. It is now settled law that the ownership for purposes of Section 14(1)(e) of the Act has not to be proved in absolute terms by the petitioner. The purpose behind the requirement of ownership as contained in the said provision is to ensure that the provision is not misused by unscrupulous persons. Normally, in such cases so far as the question of title to the property is concerned, it has to be viewed in the light of the fact that the tenant is never a rival claimant of title to the property. Therefore, the title to the property is not to be proved in the absolute sense of the term ownership. In the facts of the present case, there is sufficient evidence to show that the petitioner is owner of the property and for purposes of Section 14(1)(e), the petitioner has established on record that she is the owner of the property. Therefore, the finding of the Arc on this aspect of the case is liable to be set aside. The same is hereby set aside and it is held that the petitioner is the owner of the property in suit.

(4) Coming to the question of eviction petition being for partial eviction, I fail to appreciate how non-mention of an open terrace will make any difference to the eviction petition. The cases of eviction petitions being for partial eviction are really those where some substantial portions of the tenancy premises, i.e., a room or a bath room forming part of exclusive tenancy to the tenant concerned, are excluded from the eviction petition. A terrace in the property is not a place which can be used for substantial residential purposes. Merely because the petitioner has not included the terrace of the first floor in the eviction petition is not sufficient to disentitle the petitioner to seek eviction of the respondent. The respondent cannot use the terrace alone if he is evicted from rest of the tenancy premises. In such

cases, the court has to look to the substance rather than to form.

(5) Both the findings of the Arc against petitioner landlady are thus set aside. The Arc has already held that the case of the petitioner for bona fide requirement is made out. Accordingly, I pass an eviction order in favor of the petitioner and against the respondent with respect to the tenancy premises consisting of the entire first floor and second floor of house no. 296/4, Than Singh Nagar, New Delhi. However, in view of provisions of Section 14(7) of the Act, the petitioner will not be entitled to execute this order for a period of six months from today.

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