

Mast Ram Vs. Suresh Kumar

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Court : Delhi

Decided On : May-07-1997

Reported in : 1997IVAD(Delhi)517; 68(1997)DLT362; 1997RLR475

Judge : Usha Mehra, J.

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

Appeal No. : Civil Revision Appeal No. 678 of 1995

Appellant : Mast Ram

Respondent : Suresh Kumar

Advocate for Pet/Ap. : D.N. Goverdhan and; R.K. Sharma, Advs

Judgement :

Usha Mehra, J.

(1) The respondent Mr. Suresh Kumar, sought eviction against the present petitioner, on the ground of bonafide requirement. This prayer was allowed by the Additional Rent Controller (in short the ARC) vide the impugned order dated 1st April, 1995. Petitioner herein felt aggrieved by the impugned order because according to him the respondent was not the owner of the premises nor filed any title document to prove his ownership. In the absence of which his petition ought to have been dismissed. Moreover, by family settlement, the respondent could not

become the exclusive owner. After the demise of his father, his brothers became co-owners of the property in question. Even his father was not the owner nor any title deed in the name of his father produced. In the absence of ownership proof there was no question of inheritance by the respondent of this property nor by the purported family settlement respondent could inherit the property. Reliance by the learned Arc on the alleged family settlement was misplaced. Leave ought to have been granted when the title of the respondent on the property in question was under challenge. The other co-owner having not been imp leded the petition was liable to be dismissed. Respondent/landlord has alternative residential accommodation available with him in Pahar Ganj bearing House No. 1667, Phatak Mishri Khan, Pahar Ganj, Delhi and House No. 9466, Mata Wali Gali, Mohalla Tokri Wala, Pul Mithai, Delhi. His need was not bonafide. Moreover, respondent has re-let a room on the ground floor 4-5 months before filing of this petition. These questions raised by the petitioner required consideration as these were triable issues and could only be decided after recording evidence.

(2) Contesting this petition. Counsel for the respondent/landlord contended that the facts narrated by petitioner are contrary to the record. There are only two rooms on the ground floor besides a small room used as bath room. That small room on the ground floor is in possession of the respondent which he uses as bath room. The other living room is with another tenant namely Smt. Ra) Rani. Except these two living rooms there is no third room on the ground floor. Hence re-letting a room on the ground floor never arose. It was denied that any room was let out to Ram, Lakhan. Small room on the ground floor measures 8 x 5 ft. can never be used as living room. Moreover, respondent/landlord has been using it as bath room. There is thus no concealment of any fact. The fact that there are only two living rooms on the ground floor out of which one is in possession of the petitioner and other with Smt. Raj Rani are admitted by the petitioner.

(3) I have heard Mr. D.N. Goverdhan, Counsel for the petitioner and Mr. R.K. Sharma for the respondent. I have also perused the record. Contention of Mr. Goverdhan that the respondent is not the owner of the premises and this fact requires determination, to my mind, has no force. In his leave to defend affidavit this petitioner has admitted that the mother of this respondent Smt. Sumitra Devi,

was the owner of this premises. He also admitted that Smt. Sumitra Devi has since expired. Smt. Sumitra Devi left behind two daughters and three sons i.e. the respondent herein, his brothers Duli Chand and Nathu Ram besides two sisters. One of the sisters expired five years before the filing of the petition. Thus on the basis of these admitted facts it is clear that respondent inherited this property after the death of his mother along with other legal heirs. Respondent's case was that his one brother and two sisters relinquished their right in his favor as well as in favor of his elder brother Duli Chand. Thereafter respondent and his brother Duli Chand partitioned the property. Tenanted premises fell to the share of this respondent. Petitioner has not pointed out that if the father and after him, Smt. Sumitra Devi was not the owner/landlord then who was the owner/landlord of the premises in question? Rather petitioner admitted that he had been paying rent to the respondent herein. Having attorney to the respondent it does not lie in the mouth of the petitioner now to challenge the relationship of landlord and tenant or the ownership of the respondent. The respondent had by placing on record the family settlement dated 19th September, 1988 established that he is owner of this property. This family settlement is a registered document showing that other co-owners had relinquished their right in favor of the present respondent and his brother. The family settlement shows that the respondent herein became the exclusive owner of the property in question. In view of- these detailed facts having come on record, the mere denial by the present petitioner of the title of respondent to my mind, did not raise any triable issue nor required any determination. To arrive at this conclusion reference can also be made to the rent receipt filed by this very petitioner in the Trial Court. In this receipt it has been specifically mentioned that the respondent is the owner of the premises. This receipt produced by this petitioner/tenant supports the contention of the respondent that he is the owner of the premises in question. Another rent receipt filed by the respondent herein also shows that he is the owner of the premises in question. Having admitted that Shri Shankar Lal, father of the present respondent was the owner of the premises in question, natural consequences follow that after his death respondent being legal heir inherited the property in question. It does not require any adjudication nor registered family settlement thereby relinquishing of the right by other co-owner in favor of respondent can be called a sham transaction. This was admitted by the

petitioner that he was inducted as a tenant by late Shri Shankar Lal, father of the respondent herein and, therefore, became tenant of the present respondent after he inherited the property in question. The learned Arc on the basis of the decision of the Supreme Court in the case of Swadesh Ranjan v. Hardev Banerjee, 1992 Sc 392, rightly concluded that no case had been made out for adjudication or for trial. It is well settled principle of law that eviction petition for bonafide requirement even by a co-owner is admissible. therefore, on this count leave was rightly declined.

(4) So far as the Kothari on the ground floor is concerned, there had been some confusion regarding its measurement. In the plan, it was mentioned that the Kothari on the ground floor measured 13 x 6 ft where as the affidavit filed in this Court shows the exact measurement of that Kothari to be 8x5 ft. It is being used as bath room. The mention of correct measurement now does not require any determination or adjudication. That Kothari is being used as a bath room and is not habitable. The site plan filed shows that there are only two living rooms on the ground floor. One is in occupation of the present petitioner and the other 'in occupation of another tenant, Smt. Raj Rani. She was inducted as a tenant way back in 1975. Against her eviction order was passed under Section 14(l)(a) of the Act, but given benefit under Section 14(2) of the Act. therefore, she is still in occupation of that other room on the ground floor. That other room is also not available to the respondent. therefore, on this count also, to my mind, the learned Arc rightly concluded that there was no triable issue. There is no construction on the second floor. To bring home his point the Counsel for the respondent gave an offer to the petitioner to shift to the room on the second floor in lieu of the room on ground floor. This was recorded by this Court in its proceeding of 13th January, 1997. This offer was repeated by the respondent even in his affidavit. Counsel for the petitioner after seeking instructions declined to accept this offer and admitted at the bar that there is no room on the second floor. In this view of the matter, this contention of sufficiency of accommodation with respondent has no force nor require adjudication in view of the admitted fact on record.

(5) The family of the respondent herein consists of himself, his wife and two children. He has only one living room on the first floor beside two tin shed and a

bath room on the ground floor mentioned as 'Kothari' measuring 8x5 ft. Respondent is a Government employee. Keeping into consideration the number of his family members dependent upon him for the purpose of residence the respondent requires minimum 3 to 4 rooms i.e. a room for himself and his wife, one room each for his two children. One room as drawing-cum-dining and for visitors, relations and guests. Taking these factors into consideration, the conclusion arrived at by the learned Arc cannot be called erroneous. The need of the petitioner appears to be bonafide. He is not possessed of sufficient accommodation. The leave was rightly declined. It is a well written and reasoned order, does not require any interference as the reasoning given by the learned Arc cannot be faulted. Petition is accordingly dismissed.

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