

**Mcd Vs. Harish Chander and ors.**

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**Court :** Delhi

**Decided On :** Jul-20-2004

**Reported in :** 115(2004)DLT481

**Judge :** R.S. Sodhi, J.

**Acts :** Delhi Rent Control Act - Sections 14(1) and 14(2)

**Appeal No. :** Civil Miscellaneous Main 468/1998

**Appellant :** Mcd

**Respondent :** Harish Chander and ors.

**Advocate for Def. :** A.P. Aggarwal, Adv. for R-1 and R-2 and ; J.K. Chawla, Adv. for R-3 in Civil Miscellaneous Main 468/199

**Advocate for Pet/Ap. :** Amita Gupta, Adv. in Civil Miscellaneous Main 468/1998 and; J.K. Chawla, Adv. in Civil Miscellaneous Ma

**Judgement :**

**R.S. Sodhi, J.**

1. This petition is directed against the judgment and order of the Additional Rent Control Tribunal, Karkardooma in RCA No. 62/1997, whereby the learned Tribunal while appreciating the appeal from the judgment and order dated 5.8.1995 of the

Rent Control Tribunal declining eviction on the ground of Section 14(1)(a) of the Delhi Rent Control Act (for short the Act) has held that respondent nos. 1 and 2 are landlords and are entitled to receive rent. The Tribunal has, therefore, passed an order giving benefit of Section 14(2) of the Act to the tenant.

2. Brief facts of the case as have been noted by the Additional Rent Controller are as follows:

'.....the respondent No. 1 is the tenant in respect of one room, one kitchen on the ground floor, a main in between the ground floor in the property bearing No. E-8A/10, Krishna Nagar, Delhi (hereinafter known as the suit premises) at a monthly rent of Rs. 100/-. The petitioner filed the eviction petition under Section 14(1)(a) DRC Act on the plea that Shri Tek Chand Setia was the owner/landlord of the property in dispute who died on 16.08.1981 and left behind the petitioner No. 2 as his heir. Said Shri Tek Chand Setia executed a Will on 22.03.1980 which was registered on 07.04.1980 with the office of Sub-Registrar Krishna Nagar, Delhi and by virtue of the said will petitioner No. 1 became the owner of the property and he became entitled to recover the rent. Smt. Neelam Sharma, petitioner No. 2, accepted the alleged will and the petitioner No. 1 as the owner of the property. Petitioner No. 2 has also no objection if the respondent No. 1 pays the rent to petitioner No. 1.

It is also alleged that respondent No. 1 has failed to pay or tender the arrears of rent w.e.f. 01.01.1980 within two months of the service of the demand notice dated: 01.06.1985. Hence, the present eviction petition.

Respondent No. 1 filed the written statement with the preliminary objection that there is no relationship of landlord and tenant between the parties; that the respondent is paying the rent to the MCD by virtue of the Gift dated: 24.07.1977 that there is no document in respect of the adoption of petitioner No. 2 by Tek Chand Setia; that MCD is the necessary party in this case as he is paying the rent to the MCD. On merit the alleged Will dated 22.03.1980 executed by Shri Tek Chand Setia is denied. It is also alleged that the petitioner never claimed any rent from the respondent prior to 01.06.1985.

The petitioner filed the replication denying the version of the respondent and reasserting his claim made in the petition. It is alleged that no gift deed was executed by Shri Tek Chand Setia during his lifetime. The payment of rent by the respondent to the MCD if any is illegal.'

3. It is contended by counsel for Municipal Corporation of Delhi that Shri. Tek Chand Setia had by way of gift on 24.7.1977 transferred the property in question to open and maintain Charitable Ayurvedic Dispensary and, therefore, the property having been gifted away in 1977, there was no question of a will dated 22.3.1980 having been set up by the first and second respondent.

4. Counsel for Municipal Corporation of Delhi submits that possession of the premises was taken over and a charitable dispensary is functioning in the premises in question. On the other hand, counsel for respondent nos. 1 and 2 contends that by way of a will dated 22.3.1980 the first and second respondent had become owners of the premises in question and, therefore, were entitled to maintain eviction petition.

5. Heard counsel and perused the judgments under challenge. The learned Rent Controller has returned a finding that the Municipal Corporation of Delhi is the landlord/owner of the premises in question by virtue of the gift deed dated 24.7.1977 which finding has been reversed by the Tribunal on the ground that the gift deed has not been proved, although the original produced but the same was not exhibited/proved. The Tribunal also held that the Municipal Corporation of Delhi did not participate actively in the proceedings. Consequently, basing its judgment on the will the Tribunal has gone on to hold that the first and second respondent are the land-lords entitled to maintain the petition.

6. Having given my careful consideration to the material on record, I am of the opinion - where there are contesting claims of title i.e. one claiming through a gift and the other through a will and also another by way of inheritance, it would not be proper for the Rent Controller or the Tribunal to adjudicate thereon, since a title is a basic question which will have to be gone into. That being the case the parties would have to have the title determined by recourse to a Civil Court before taking recourse to the Rent Act. Consequently, I set aside the order of the Rent Control

Tribunal as also of the Additional Rent Controller and relegate the parties to have the title established by a Civil Court.

7. CM(M) 468/1998 is disposed of.

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