

Sapna Vs. Mukesh Gupta

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Court : Delhi

Decided On : Nov-14-2014

Judge : Valmiki J. Mehta

Appellant : Sapna

Respondent : Mukesh Gupta

Advocate for Def. : Mr. Raman Kapur, Mr. Abhinav Tyagi, Mr. F.Hasan

Advocate for Pet/Ap. : Mr. D.K.Rustogi, Mr. B.S.Bagga, Mr. Ishaan Saraswat

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RC. REV. No.523/2012 & CM Nos. 18103/12, 4751/14 & 7833/14 14th November , 2014 % SAPNA Through:Petitioner Mr. D.K.Rustogi, Mr. B.S.Bagga and Mr. Ishaan Saraswat, Advocates. VERSUS MUKESH GUPTA Through: Respondent Mr. Raman Kapur, Sr. Adv. with Mr. Abhinav Tyagi and Mr. F.Hasan, Advocates. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This rent control revision petition is filed under Section 25 B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) impugning the judgment of the Rent Controller (RC) dated 2.5.2012 by which the Rent Controller has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the bonafide necessity eviction petition filed

under Section 14(1)(e) of the Act with respect to the suit premises RCR5232012 being the front side portion of the shop Page 1 of 9 no.3, Gandhi Market, Mirdard Road (back side Ranjit Hotel), New Delhi. The back side portion of the shop is already with the respondent-landlord who carries on the business of a chemist store from the same.

2. As per the bonafide necessity eviction petition, respondent/landlord claimed that he is a bachelor and he had five brothers and all the brothers of the respondent are unmarried. The respondent pleaded that he had a shop which forms the back portion of the shop which is on tenancy with the petitioner and he needs the tenanted shop so that he can open his office in the tenanted portion and also rest in the same during the day time because the respondent and his brothers carry on the business of a chemist shop which has long hours running into about 12 hours or so in a day and therefore rest during the day time is required because they cannot go to their residential premises which is a few kilometers away from the tenanted shop. As already stated above, in the adjacent shop at the back of the tenanted shop, the respondent/landlord is carrying on business of a chemist shop.

3. In a bonafide necessity eviction petition under Section 14(1)(e) of the Act, three aspects are required to be seen by the court for decreeing the eviction petition. Firstly, there must be a relationship of landlord and tenant between the parties and the landlord must be the owner of the tenanted premises. Second aspect which is to be seen is whether the landlord requires the tenanted premises for his bonafide need and/or the need of his family members. Thirdly, it has to be seen whether the landlord has an alternative suitable accommodation.

4. Learned counsel for the petitioner has argued before this Court the following aspects:(i) Respondent is not the owner/landlord of the premises and therefore the bonafide necessity eviction petition could not have been filed. (ii) The respondent owns an alternative suitable accommodation being property No.46, Gandhi Market, Meer Dard Road, New Delhi and which should satisfy the need of the respondent. (iii) Respondent/landlord claims that the residential premises where he alongwith his brothers is living is not owned by him but reply to RTI queries obtained by the petitioner shows that it is the respondent who is the owner of the

residential premises because the respondent is paying house tax of that property. The respondent thus is guilty of concealment of facts/stating false facts and therefore leave to defend should be granted.

5. All the arguments urged on behalf of the petitioner are wholly misconceived and lacking in substance and therefore the same are rejected as also this rent control revision petition. 6(i). So far as the first aspect that whether the respondent/landlord is or is not the owner of the property is concerned, learned counsel for the petitioner very vehemently argued that the title documents which are relied upon by the respondent being the agreement to sell, power of attorney, Will etc, all dated 26.3.1990, executed by Sh. Ashok Kumar son of Smt. Raj Rani Gupta are not valid documents, this argument is misconceived for the reason that it is not disputed that Smt. Raj Rani Gupta was the admitted original owner of the suit property. Not only it is admitted that Smt. Raj Rani Gupta was the owner of the suit property, it is also admitted that Sh. Ashok Kumar was the son of Smt. Raj Rani Gupta who is said to have transferred the suit shop to the respondent/landlord. It is also admitted that Smt. Raj Rani Gupta had various legal heirs including Sh. Ashok Kumar and also that Sh. Ashok Kumar had various legal heirs. It is fact appearing on record that no legal heir of either Smt. Raj Rani Gupta or Sh. Ashok Kumar is in any manner challenging the title of the respondent/landlord, and which legal heirs would be the only persons to question the title of the respondent/landlord, I do not think that in law the petitioner is entitled to put himself into the shoes of the legal heirs of Smt. Raj Rani Gupta and Sh. Ashok Kumar and create a dispute with respect to the title of the suit shop of the respondent (purchased decades back in 1990) although none of the legal heirs of Smt. Raj Rani Gupta and Sh. Ashok Kumar are at all raising such a dispute. I therefore find the argument besides being misconceived, to be a very strange argument, because, the argument means that imaginary disputes must be deemed to exist between the legal heirs of Smt. Raj Rani Gupta and Sh. Ashok Kumar with the respondent/landlord, and that too for transfer of title documents which have been executed way back in March 1990. Further it is relevant to note that it is not the case of the petitioner/tenant that the legal heirs of Smt. Raj Rani Gupta or Sh. Ashok Kumar are in any manner claiming rent with respect to the suit shop from the petitioner. (ii) For the sake of completion of narration, I must refer to the

judgment relied upon by the petitioner in the case of Subhash Chandra Vs. Mohammad Sharif & Ors. (1990) 1 SCC252 and which has been cited by the petitioner to claim that petitioner can always challenge a derivative title, however, the issue is not whether the petitioner is entitled to challenge a derivative title, but the issue is lack of any strength in this argument challenging the derivative title ie the subsequent derived title of the present respondent from the original landlady Smt. Raj Rani Gupta and through her son Sh. Ashok Kumar who has executed in favour of the respondent the documentation dated 26.3.1990. I therefore fail to understand as to how the judgment in the case of Subhash Chandra (supra) can in any manner help the petitioner/tenant. Therefore the argument urged that the respondent/landlord is not the owner of the suit property is misconceived and is rejected.

7. The issue which then is raised is even if the respondent/landlord is the owner of the suit shop, whether the respondent is a landlord because the case of the petitioner is that since 1993 petitioner has not paid rent to anyone including to the respondent. This argument of the petitioner/tenant is also without substance because when we refer to the definition of landlord as found in Section 2(e) of the Act, it is found that all owners are automatically landlords because landlord is defined by/as per Section 2(e) of the Act as a person entitled to receive rent, and, an owner is automatically a landlord because owner is a person who is entitled in law to receive rent and thus an owner of the property is also a landlord of the suit property. This argument of the petitioner is also therefore rejected that the respondent on account of not having been paid rent by the petitioner, hence the respondent cannot be said to be the landlord of the suit shop.

8. The second argument urged on behalf of the petitioner was that respondent has an alternative suitable accommodation being property No.46, Gandhi Market, Meer Dard Road, New Delhi and for which purpose reference is made to para 7 of the leave to defend application and the reply thereto. However, when we refer to these paras of the pleadings in the leave to defend application, it is found that the respondent has categorically denied that he owns the property no.46, Gandhi Market as alleged by the petitioner/tenant. So far as the aspect that even if respondent is not the owner, but he is having possession of the property No.46,

Gandhi Market, the respondent filed an affidavit before the Rent Controller dated 28.4.2012 as per which the property no.46 is in possession of the tenants. On a pointed query, learned counsel for the respondent on instructions states that the property no.46 does not belong to the respondent and the respondent is ready to be prosecuted for perjury or any other offence under IPC if it is found that the respondent even has a 1% ownership rights in the property no.46, Gandhi Market, Meer Dard Road, New Delhi. Therefore, in my opinion, self serving bald averments that the respondent/landlord also owns the property no.46 cannot create a triable issue. The second argument urged on behalf of the petitioner is also therefore rejected.

9. The third argument of the respondent being the owner of the residential premises where he is living urged on behalf of the petitioner is to be rejected for three reasons. Firstly, the argument which is now urged was not supported by the requisite documents which are now being relied for the first time before this Court and Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC15 has made it clear that whatever has to be filed for seeking leave to defend ie whether an affidavit or a document supporting the affidavit, the same has to be filed within the 15 days statutory period, and there cannot be extension of even one day beyond the statutory period of 15 days in filing of the leave to defend application supported by the requisite documents. Possibly therefore, the documents which are relied upon for the first time before this Court cannot be looked into because they have been filed beyond the 15 days statutory period. The second reason and the main reason for rejecting this argument is that the documents which have been relied upon by the petitioner only show payment of house tax by the respondent, but, that payment is not because the respondent is the owner but as a tenant as he was asked to deposit the rent with the local municipal authority by the said municipal authority. It may be noted that in case the owner of a property does not pay the house tax payable, then, the tenant of a property can be called upon to deposit the rent payable by the landlord before the municipal authorities in satisfaction of the dues claimed by the municipal authorities towards the property taxes. Therefore, mere payment of property tax would not in any manner make the respondent the owner of the residential premises. Thirdly and finally, I fail to understand how at all ownership of a

residential premises by the respondent, even if it exists, can make any difference because the bonafide necessity which is projected in this case is not for a residential premises but for a commercial premises being the suit shop with the petitioner/tenant. Therefore, even assuming for the sake of argument that the respondent owns a residential property the same cannot in any manner affect the issue on the grant of leave to defend.

10. In view of the above, there is no merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs. VALMIKI J.

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