

**Pradeep Kumar Sethi Vs. Rajender Kumar Sethi**

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**Court :** Delhi

**Decided On :** Jul-18-2011

**Judge :** P.K.Bhasin, J.

**Acts :** [Delhi Rent Control Act,1958](#) - Sections 25-B(8), 14(1)(e)

**Appeal No. :** RC.REV.No. 127/2010

**Appellant :** Pradeep Kumar Sethi

**Respondent :** Rajender Kumar Sethi

**Advocate for Def. :** Mr. A.K Singla; Mr. Ashwin Vaish, Advs.

**Advocate for Pet/Ap. :** Mr. Mohinder Madan; Mr. Shyam Dev Lal, Advs.

**Judgement :**

1. This is a petition under Section 25-B(8) of the [Delhi Rent Control Act,1958](#) against the order dated 25.01.10 passed by the learned Additional Rent Controller whereby the petitioner-tenants application for grant of leave to defend the eviction petition in respect of first floor of premises no. H-68, B.K.Dutt Colony, New Delhi(hereinafter to be referred to as „the tenanted premises) filed against him by his landlord(respondent herein) has been dismissed and eviction order has been passed against the petitioner.

2. The petitioner is the brother of the respondent. The respondent had filed the eviction petition against the petitioner on the allegations that he was the owner of the tenanted premises comprising of two rooms, kitchen, latrine and bathroom and he had let out the same to his brother at a monthly rent of Rs.1500/- w.e.f. 31.03.98 and now he requires the premises in the possession of his brother bona fide for his residence and that of his servant. It was pleaded in the eviction petition by the respondent that he was residing in the house of his daughter in South Extension and since his daughter wants to sell her house she has requested him to vacate the premises in his occupation in that house. He had no other residential house in Delhi except the tenanted premises in occupation of the petitioner.

3. Since it was a case of eviction under Section 14(1)(e) of the [Delhi Rent Control Act,1958](#) the petitioner had to seek the leave of the trial Court for defending it and, therefore, he had moved an application seeking the leave. The petitioner had claimed that he was the joint owner of the tenanted premises along with his brother(respondent herein) and further that there was no relationship of landlord-tenant between the parties and the document of lease dated 16.03.98 filed by the respondent had been obtained from him by playing fraud and undue influence by their mother. In order to appreciate effectively the pleas raised by the petitioner it would be appropriate to re-produce relevant portions from different paras of the application for leave:-

**"1. That there does not exist any relationship of landlord and tenant between the respondent and the petitioner. The applicant/respondent is residing in the property in dispute as its co-owner/co- parcener. Late Kaviraj Anand Prakash Sethi, father of the applicant/respondent and the petitioner migrated to Delhi from Lahore at the time of partition of the country in August, 1947 along with his father, brother Shri Sushil Kumar Sethi and their respective family members. Kaviraj Anand Parkash Sethi with the funds provided to him by his father late Lala Mathura Dass Sethi, which was brought by the family from Lahore, paid for the acquisition of a shop-cum-flat No. 3, Main Market, Lodhi**

Colony, New Delhi, which was allotted to Kaviraj Anand Parkash Sethi vide letter dated October 21, 1982. From the funds provided by late Lala Mathura Dass Sethi the business of Chemist under the name and style of Kaviraj & Company was also started at the said shop cum flat No. 3, Main Market, Lodhi Colony, New Delhi. The father of the petitioner and the respondent was employed with M/s. Delhi Chemicals having its Office at Darya Ganj, New Delhi and the said joint family business was looked after by the grandfather of the petitioner as well as Uncle (Chacha) namely Shri Sushil Kumar Sethi who was a qualified person having a licence for running the shop of Chemist. The father of the petitioner and the respondent used to look after the patients in the evening and also helped in managing the affairs of the said joint family business of Chemist.

Shri Anand Parkash Sethi died at Delhi on 30.3.1966 intestate leaving behind besides the appellant/respondent and the petitioner, his wife Smt. Usha Rani Sethi and another son Shri Ravi Kant Sethi as his only legal heirs. The applicant/respondent alone was a minor at the time of demise of his father aged about 6 years. The applicant/respondent completed his diploma in Pharmacy from Hamdard College of Pharmacy in the year 1980 and he was registered as a Pharmacist on 21.11.1980 with Delhi Pharmacy Council and the name of the applicant/respondent was added in the Drug Licence No. 15(32)20, 21 as qualified person to run the joint family business run under the name and style of Kaviraj & Co. at shop cum flat No. 3 Main Market, Lodhi Colony, New Delhi and the applicant/respondent started looking after the shop under the guidance of his Uncle namely Shri Sushil Kumar Sethi. The applicant/ respondent along with his family was residing with his mother Smt. Usha Rani Sethi and the other brother Shri Ravi Kant Sethi in flat No. 3, Main Market,

Lodhi Colony, New Delhi while the petitioner was residing with his wife and step daughter at R-31 South Extension, Part II, New Delhi. The medical practice of the petitioner did not pick up at Sheikh Sarai, New Delhi and he could not earn adequate sum to maintain routine life as well as pay the rent of the rented premises, therefore, under a family arrangement a decision was taken by the elders including the uncle of the petitioner and the respondent i.e. Shri Sushil Kumar Sethi and the petitioner was advised to shift his practice to the shop cum flat No. 3, Main Market, Lodhi Colony, New Delhi, which the petitioner did in the year 1982 and he was provided space/cabin in the said shop to pursue his medical practice as a Homeopath.

That the joint family business run under the name and style of Kaviraj & Co. with the efforts and hard work put in by the applicant/ respondent, the petitioner along with his mother and other brother Ravi Kant Sethi proposed to the applicant/respondent to shift into a joint family property bearing No. H-68, B.K. Dutt Colony, Jor Bagh Lane, New Delhi, comprising one small room, one kitchen and bath and WC as common which was purchased by the father of the applicant/respondent and the petitioner during his lifetime in the year 1965 out of the ancestral funds provided to him by the grandfather of the applicant and the petitioner which they had brought at the time of migration from Lahore, Pakistan to Delhi. The father of the petitioner and the applicant/respondent, however, purchased the said property in the name of petitioner. The said property has been let out from time to time to different people and the rent from the said property was collected by the father of the applicant/respondent and the petitioner during his lifetime and thereafter by Smt. Usha Rani Sethi, mother of the applicant and the respondent herein. The applicant/respondent submits that till he was minor, Smt. Usha Rani Sethi, Shri Ravi

**Kant Sethi and the petitioner together acted in fiduciary capacity and so did late Kaviraj Anand Parkash Sethi, father of the applicant and the petitioner in respect of the income from the joint family business and joint family property and they continued to act in the same capacity even thereafter. The applicant/ respondent lived in the flat above the shop bearing No. 3, Main Market, Lodhi Colony, New Delhi along with his wife and children with his parents.**

**That in the year 1998 due to lack of sufficient space and growing size of the applicant/respondents family, he was advised by all the elders in the family to reside in another family premises i.e. H-68, B.K. Dutt Colony, New Delhi-03, the property in dispute.**

**Smt. Usha Rani Sethi, mother of the applicant and the petitioner herein, before the applicant shifted to H-68, B.K. Dutt Colony, New Delhi made him to sign on some stamp papers without permitting him to read the contents thereof. The applicant/respondent now understands that by committing fraud and taking undue advantage of the condition of the applicant then prevailing Smt. Usha Rani Sethi, mother of the applicant and the petitioner by exercising undue influence obtained signatures upon the document which the petitioner is now falsely relying upon as an Agreement of Lease in respect of the premises in dispute. The applicant/respondent submits that the said lease deed which is purportedly dated 16-3- 1998 is of no legal value and it was never acted upon nor was it ever contemplated that it would be acted upon. The applicant did not ever pay any rent to the petitioner or to anybody and the applicant/ respondent is residing in the property in dispute as a co-sharer/co- parcener.**

**That the property tax of the said flat is paid to NDMC as self occupied property and the same has been paid by the**

applicant/respondent ever since the year 1999. The petitioner under his signatures filed property tax return with NDMC for the year 2003-04 dated 15.10.2003 which clearly shows that there is no tenant in the property in dispute and the property tax for the said year was also paid as a self occupied property after taking a rebate @ 25% for „self occupancy. Photocopy of the returns for the year 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004 are collectively filed herewith a ANNEXURE A. It is, therefore, submitted that the eviction petition for want of relationship of landlord and tenant is not maintainable and is liable to be dismissed. It is further submitted that neither the petitioner nor the witnesses whose signatures appear on the alleged lease deed dated 16.3.1998 signed the same in the presence of the applicant/respondent. It is submitted that their signatures have been obtained subsequently at the back of the applicant/respondent as it appears from the alleged lease deed, on 31.3.1998. It is submitted that the alleged Lease Deed is, therefore, an interpolated document not worthy of being relying upon. It is further submitted that on the plain reading of the alleged lease deed dated 16.3.1998 would show that the same never came into operation and the applicant/respondent submits that the same was obtained by Smt. Usha Rani Sethi, mother of the applicant and the petitioner to usurp the rights of the applicant/respondent illegally, unlawfully in collusion with the two brothers of the applicant namely Shri Ravi Kant Sethi and the petitioner herein, which the subsequent facts would reveal.

4. That on 13.11.1999 in the afternoon the mother of the applicant/respondent and the petitioner and the other brother Shri Ravi Kant Sethi, told the applicant/respondent that he had failed in promoting the joint family business of chemist at Shop cum flat No. 3, Main Market, Lodhi Colony, New Delhi and that the family business should henceforth be looked after by Shri

**Ravi Kant Sethi, the other brother of the parties to this petition. Disputes having arisen within the family i.e. applicant/respondent, the petitioner, their other brother Shri Ravi Kant Sethi and mother Smt. Usha Rani Sethi, the shop remained closed from the afternoon of 13.11.1999 till evening of 18.11.1999. The applicant/respondent did not want to be seen as seeking partition of the joint family assets and business and was keen on maintenance of harmony within family, he, therefore, decided to take up employment and allowed his brother Ravi Kant Sethi to look after the joint family business as desired by the petitioner and their mother Smt. Usha Rani Sethi..... That behavior of petitioner, the other brother Ravi Kant Sethi and their mother Smt. Usha Rani Sethi towards the applicant/respondent continued to deteriorate and they colluded to alienate the applicant/ respondent from the family.....**

**5. That Smt. Usha Rani Sethi, Dr. Rajender Kumar Sethi, the petitioner herein, Shri Ravi Kant Sethi, the other brother, sold the shop cum flat No. 3, Main Market, Lodhi Colony and delivered its possession at the back of the applicant/respondent clandestinely to one Shri Pramod Gupta and Shri Puran Mal Gupta, both residents of A-328, Defence Colony, New Delhi and ever since their whereabouts are unknown and even in the suit pending before the Court of shri Gurdeep Kumar, ADJ, Delhi, service was effected on the petitioner, Shri Usha Rani Sethi and Ravi Kant Sethi by substituted means i.e. by publication and they have been proceeded exparte. The petitioner is not residing at R-31, NDSE, Part II, New Delhi, as is claimed by him in the eviction petition. The applicant/respondent has learnt that the petitioner along with his brother Ravi Kant Sethi and the mother Smt. Usha Rani Sethi have purchased a property out of the sale proceeds of flat cum shop No. 3, Main Market, Lodhi Colony,**

**New Delhi, details whereof are unknown to the applicant/respondent and they are residing together and are avoiding process of law.....**

**6. That the property bearing No. R-31, NDSE Part II, New Delhi is available to the petitioner for residence where he has been residing earlier and he continues to occupy the same till date but is absconding....."**

4. The learned trial Court dealt with these pleas of the petitioner and also considered the reply thereto filed by the respondent and rejected the leave application.

5. The pleas which only were urged before this Court are dealt with in para nos. 6,7 & 9 of the impugned order and the relevant portions of which are re-produced below:-

**" 6. The respondent in the application has disputed the contention of the petitioner that he is a tenant of the petitioner. The petitioner has placed on record the copy of the lease deed which described the respondent as lessee. The case of the respondent is that lease deed dated 16.03.98 is a false document. The respondent alleged that his signature on the said lease deed were obtained by his mother by misusing undue influence. It is highly unbelievable that a mother will play fraud and will use undue influence on her son so as to obtain his signature on some documents. The respondent himself has stated in his application for leave to contest the eviction petition that he is an educated person. No educated person is supposed to sign on a vital document like lease deed without reading the contents thereof. Therefore, the story put forth by the respondent that his signatures were obtained on the lease deed by his mother by keeping him in dark about its contents cannot**

be believed.

7..... The respondent admits that the demised property was purchased in the name of the petitioner. In other words the respondent accepted the petitioner as the owner of the demised property. The contention of the respondent that the demised property was purchased by the father of the petitioner and the respondent out of the actual funds provided by the grandfather of the respondent and the petitioner does not give rise to a triable issue. What the Court has to see is whether the petitioner is the owner of the demised property or not. The Court is not concerned with the process on the manner by which the petitioner became the owner of the demised property. The property tax records maintained by the public authorities cannot be considered while deciding whether the respondent is the tenant of the petitioner or not. These records are relevant for the purpose for deciding the question whether the house tax or the property tax for a particular period with respect to particular property has been paid to the Municipal Authority or not. Therefore, the description of the demised property in the property tax record maintained by the NDMC is of no consequence.

9. The last contention of the respondent in the application seeking leave to contest the eviction petition is that property bearing No. R 31 First Floor, South Extension Part II, New Delhi is available with the petitioner for residence. The petitioner in the petition itself has stated that he is presently residing in his daughters house at R 31 First Floor, South Extension Part II, New Delhi. However, the petitioner has also stated that now the daughter of the petitioner wishes to sell this property and has requested the petitioner to vacate and hand over the possession of the said property. Therefore, the property bearing No. R 31 First Floor, South Extension Part II, New Delhi is not available

**with the petitioner.**

6. Before proceeding further it would be appropriate to note what guidelines have been laid down by the Supreme Court for dealing with such like applications of the tenants for leave to contest the eviction petition filed on the ground of bonafide requirement 14 (1) (e).

7. The Supreme Court had in "Inderjeet Kaur Vs.Nirpal Singh", [2000]Supp 5 SCR 707, laid down the following guidelines to be followed by the Courts while deciding the applications for leave to contest filed by the tenants under Section 25(4) of the [Delhi Rent Control Act,1958](#):-

**"11. As is evident from Section 25B(4) & (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in Clause (e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.**

**12.xxx.**

**13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act, Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord**

to recover possession of the premises from a tenant under Clause (e) of the proviso to Sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under Clause (e) of the proviso to Sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the

eviction petition by cross-examination. It may also be noted that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25B(7) speaks of the procedure to be followed in such cases. Section 25B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Section 25B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.

14. This Court in *Charan Dass Duggal v. Brahma Nand* (1983)1SCC301 while dealing with the question in the matter of granting leave to defend to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:

"5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see *Santosh Kumar v. Bhai Mool Singh*). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions

and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case."

15. In the same judgment, in para 7 it is further observed:

"7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave: May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally

**improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits....."(emphasis supplied)**

8. In another judgment rendered by the Supreme Court in the case of "Liaq Ahmed vs Habeeb-Ur-Rehman", AIR 2000 SC 2470 it was observed by the Court that:-

**"2. Rent Control legislations have been acknowledged to be pieces of social legislation which seek to strike a just balance between the rights of the landlord and the requirements of the tenants. Such legislations prevent the landlords from taking the extreme step of evicting the tenants merely upon technicalities or carved grounds. This Court in Mangat Rai v. Kidar Nath.(1980) 4 SCC 276: (AIR 1980 SC 1709) held that where the Rent Acts afford a real and sanctified protection of the tenant, the same should not be nullified by giving a hypertechnical or liberal construction to the language of the statute which instead of advancing the object of the Act may result in its frustration. The Rent Acts have primarily been enacted to give protection to the tenants.**

**3.xxx**

**4.xxx**

**5. From the scheme of the Act it is evident that if tenant discloses grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The enquiry envisaged for the purpose is a summary enquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings**

**to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts. In the instant case the Controller as well as the High Court appear to have completely ignored the object of the Rent Control legislation and the scheme of the Act while dealing with the case of the appellants."**

9. Same view has been reiterated by the Supreme Court in a recent judgment in "Rachpal Singh and Ors.Vs. Gurmit Kaur and Ors.",

(2009)15 SCC 88, in para no.12 which is re-produced below:-

**"12. If some triable issues are raised then the controversy can be properly adjudicated after ascertainment of truth through cross- examination of witnesses who have filed their affidavits and other material documents. Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when the status of the respondent has been specifically challenged and also when the landlord-tenant relationship is in question. Therefore, we do not see any infirmity in the common order passed by the High Court in civil revision petitions 4096 of 2007 and connected matters dated 28.04.2008".**

10. In "Devi Dass Versus Mohan Lal ",AIR 1982 SC1213 the Supreme Court was dealing with the plea of the tenant that his landlord was not the owner of the tenanted premises as the sale deed in his favour was a sham document and which was not entertained by the court below and it was observed by the Supreme Court that:

**"3. The Appellate Authority rejected the tenant's case on the view that tenant could not challenge the validity of the sale deed executed in favour of Mohan Lal because the tenant was not a**

**party to it. We do not think this was a correct view to take. An allegation had been made that in reality there was no sale and the sale deed was a paper transaction. The court had to record a finding on this point. The Appellate Authority however did not permit counsel for the tenant to refer to the evidence adduced on this aspect of the matter. The High Court also did not advert to it. We, therefore, allow this appeal, set aside the decree for eviction and remit the case to the trial court to record a finding on the question whether the sale of the building to respondent Mohan Lal was a bona fide transaction upon the evidence on record. The trial court will allow the parties to adduce further evidence on the point if the court considers it necessary."**

11. Now, I come to the facts of the present case and the legality of the decision of the trial court keeping in mind the aforesaid decisions of the Supreme Court. From the narration of facts culled out from the revision petition and the submissions made by the counsel for the parties during the course of hearing as well as the already -quoted paras of the impugned order, it becomes clear that there are serious family disputes between the petitioner, respondent and their other family members regarding some family business as well as the ownership of property No. H-68, B.K. Dutt Colony. This property was purchased in the year 1965 in the name of the respondent when he was still studying in school. The learned senior counsel for the respondent did not dispute that the respondent was studying in the school at the time of purchase of the property.

12. Shri A.K. Singla, learned senior counsel for the respondent had contended that since it was not denied by the petitioner at any time before the filing of the eviction petition that he had been paying rent regularly to the respondent his denial of relationship of landlord - tenant in his leave to defend application is an afterthought and has been rightly not found favour with the learned Additional Rent Controller. However, in my view considering the fact that in view of the denial of landlord - tenant relationship between the parties in the case of Rachpal Singh vs. Gurmeet Kaur(supra) the Supreme Court had found that denial of the relationship by the person whose leave to defend application was rejected to be a triable issue, the

learned Additional Rent Controller in the present case was, therefore, not right in not considering this plea of the petitioner to be a triable issue.

13. Learned senior counsel for the respondent had also contended that the petitioner's plea that the premises in question was not the exclusive property of the respondent has also been rightly rejected by the learned Additional Rent Controller since that did not raise any triable issue in view of the fact that the petitioner had not taken any steps at any stage to have a declaration from any competent Court that purchase of property and the execution of the Conveyance Deed in the name of his brother exclusively was illegal and that dispute can not be resolved by the Rent Controller. This argument also, in my view, cannot be accepted at this stage considering the fact that the respondent had claimed the property in question to be self-occupied in the year 1999 when he had filed a return in respect of its assessment for the purposes of levy of property tax. It was rightly submitted by learned counsel for the petitioner that if the property in question was actually the exclusive property of his brother, the respondent herein, he would not have claimed in his property tax return in the year 1999 that it was self-occupied and instead would have shown it to be under the tenancy of the petitioner. The judgment of this Court in the case of "Ram Chander vs. Ram Pyari" reported as 109 (2004) DLT 388 relied upon by the learned senior counsel for the respondent is of no help to him since in that case the dispute about the title was not between two brothers and that is why it had been held by this Court that the eviction petition could not be converted into a title suit on the basis of plea raised by the tenant that he had become the owner of the premises in question by adverse possession. The present eviction petition having been filed under Section 14(1)(e), the respondent can get the eviction order only in case he establishes that he is the owner of the tenanted premises also besides being its landlord qua the petitioner herein and in the process of establishing his ownership the petitioner can elicit during his cross-examination some the facts which may establish his plea that the respondent was not the exclusive owner of the premises in question. In view of the judgment of the Supreme Court in the case of "Devi Dass vs. Mohan Lal"(supra) it cannot be accepted that in eviction proceedings the party arrayed as a tenant can never challenge that the person claiming to be the owner of the premises in question was not, in fact, its owner.

14. I am, of the view that the impugned order of the learned Additional Rent Controller cannot be said to be in accordance with law and consequently this revision petition deserves to be allowed. Therefore, the impugned order of the learned Additional Rent Controller declining leave to defend to the petitioner is set aside and he is granted the leave sought for. The matter is remanded back to the trial Court for trial in accordance with law after giving an opportunity to the petitioner for filing of written statement and adducing evidence in support of his pleas. The parties shall now appear before the trial Court for receiving further directions on 30th July, 2011 at 2 p.m.

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