

Rajendra Kumar Gupta Vs. Sheela Devi.

Rajendra Kumar Gupta Vs. Sheela Devi.

SooperKanoon Citation : sooperkanoon.com/922570

Court : Delhi

Decided On : Oct-13-2011

Judge : P.K.Bhasin, J.

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

Appeal No. : RC.REV.No. 95 of 2011

Appellant : Rajendra Kumar Gupta

Respondent : Sheela Devi

Judgement :

1. This revision petition under Section 25-B(8) of the [Delhi Rent Control Act,1958](#) ('the Act' in short) is at the instance of a tenant who has been directed by the Additional Rent Controller to vacate the premises under his tenancy after rejecting his application filed for getting leave to contest the eviction filed against him by his widow-landlady under Section 14-D of the Act .

2. The respondent-landlady had sought the eviction of the petitioner- tenant by pleading the following facts in para no.18 of her eviction petition which was filed in August, 2010:

"18(a) (1) the petitioner and her Jethani Smt. Rattan Devi purchased a piece of land measuring 200 sq. Yds and constructed 4 shops on the front portion of the premises towards Mandoli Road. The premises bears Municipal no. 1/2321,

Mandoli Road, Shahdara, Delhi-110032. Out of these four shops two shops came into share of the petitioner and two shops in the share of Smt. Rattan Devi as per verbal family settlement made about 40 years back. As per verbal settlement made between the petitioner and her Jethani Late Smt. Rattan Devi had constructed their houses on their respective piece of land/portion.

(2) That presently sons of late Smt. Rattan Devi are residing with their family mebers in their portion of 100 sq. Yds. and are in the possession of their two shops.

(3) That out of total four shops, two shops came into share of the petitioner, one was let out by the petitioner to the respondent in the year 1992..... .

(5) That the husband of the petitioner expired on 16th May, 2008 due to his illness. During the life time of her husband petitioner has sold her residential accommodation constructed on 80 sq. yds to her elder daughter-in-law Smt. Geeta Garg wife of Shri Rajendra Kumar Garg, on 5th day of January 2007 vide registered Sale Deed duly registered before Sub-Registrar, Nand Nagri Delhi to meet out the medical expenses of her husband and other necessary expenses. The petitioner has also sold her one shop to her younger daughter-in-law Smt. Meena Devi wife of Shri Ravinder Kumar Garg, on 8th October, 2008 under compelling circumstances to meet out the outstanding dues incurred by the petitioner for the treatment of her Late husband, vide registered Sale Deed duly registered before Sub-Registrar, Nand Nagri, Delhi.

(6) That after the death of the husband of the petitioner the atmosphere in the house has changed considerably the son and dauther- in-law of the petitioner has started neglecting and hearing to the petitioner which has made the life of the petitioner very miserable and in fact it has become difficult with the petitioner to live along with her elder son and his wife. Towards the end of the life the petitioner wants to live in peace, which is not possible with her elder daughter-in-law and son.

(7) That the petitioner has no other residential or non-residential accommodation for her living except of the tenanted premises shown in red colour in the site plan attached with this application let out to the respondent. The petitioner wants to live separately from her son and daughter-in-law, in her own accommodation to pass her peaceful life. The younger daughter-in-law and son are living in a rented accommodation and has no sufficient accommodation to keep the petitioner with her/him. The premises shown in red colour in the site plan attached with this application was let out by the petitioner to the respondent is required by her for her own residence.

3. As required under Section 25-B(4) of the Act the petitioner-tenant sought leave to contest the eviction petition but the same was declined by the Additional Rent Controller vide impugned order dated 22 nd December, 2010. The main plea raised by the petitioner tenant for getting the leave to contest the eviction petition as noticed by the learned Additional Rent Controller in the impugned order was that the alleged sale transactions between the respondent-landlord and her two daughters-on-law were not genuine transactions. The relevant portions from that order where this pleas of the petitioner-tenant has been, dealt with and rejected are re- produced below:-

"6. Though the respondent has called the registered sale deeds dated 05.01.2007 and 08.10.2008 as mere paper transactions, he has not questioned the veracity of these documents. These two registered sale deeds show that Smt. Sheela Devi is not the owner of the residential accommodation and one shop. The expenses incurred on the treatment of the husband of the petitioner is ignored, it cannot be denied that on the day of filing of the present petition, the petitioner was the owner of the tenanted shop only. Now she wants to live separately in peace in the tenanted premises as she is no longer in good terms with her elder son and daughter in law. The court concurs with the argument that it is for the petitioner to decide in what manner she must use her property.

8. It has been argued that the husband of the petitioner died on 16.05.2008. The sale deeds in respect of the residential accommodation and one shop were executed by the petitioner on 05.01.2007 and 08.10.2008. The present petition

was filed on 16.08.2010. Contrary to the contention of the respondent, it goes on to show that the respondent did not exploit the factum of her becoming a widow to evict the respondent, until it became necessary for her to do so.....

9. The respondent has failed to show that the plea of self occupation put up by the landlady is a mere pretense or an arbitrary demand. The application of the respondent for grant of leave to defend the eviction petition is, therefore, dismissed. The petitioner is entitled to an eviction order forthwith."

4. Feeling aggrieved, the petitioner-tenant has knocked the doors of this Court by invoking the revisional jurisdiction of this Court conferred under Section 25-B (8) of the Act. It was contended by the learned counsel for the petitioner-tenant that the learned Additional Rent Controller has crossed to a great extent the limited jurisdiction vested in him under Section 25-B(5) of the Act for disposal of tenants' applications for leave to contest the eviction petitions filed by special category of landlords including a widow-landlady by rejecting the pleas raised by the petitioner- tenant for reasons which could be given only after the landlady's bona fides had been tested during evidence on behalf of the tenant by cross- examining her.

5. On the other hand, learned counsel for the respondent - landlady supported the impugned order of the learned Additional Rent Controller and contended that the same could not be faulted and no interference in the same is called for in this revision petition.

6. After having given my thoughtful consideration to the rival contentions and going through the reasons given by the learned Additional Rent Controller for rejecting the plea of the petitioner - tenant that the sale transaction between the respondent - landlady and her two daughters-in- law were sham transactions I find that the same cannot be sustained. The observation of the learned Additional Rent Controller that the petitioner - tenant had not questioned the veracity of the sale deeds is contrary to the facts pleaded by the petitioner - tenant in his leave to contest application a perusal of which shows that he had clearly challenged the veracity of the sale deeds relied upon by the respondent - landlady. The question

whether those sale deeds were, in fact, genuine or sham transactions could only be decided after recording evidence and giving an opportunity to the petitioner - tenant to establish that those were not genuine transactions. In case the petitioner - tenant succeeds in establishing that the two sale transactions between the respondent - landlady and her two daughters-in-law were sham transactions the respondent - landlady would become disentitled to claim eviction of the petitioner - tenant from the tenanted premises on the ground of her bona fide requirement since in that event it will have to be held that the requirement of the tenanted premises in the occupation of the petitioner - tenant was self created only to make a ground for his eviction who admittedly is a tenant for over ten years. In this regard, a useful reference can be made to a judgment of the Supreme Court in "Devi Dass vs. Mohan Lal", (1982) Vol. I SCC 495 wherein also the aggrieved tenant had sought to challenge the genuineness of the sale deed relied upon by his landlord but he was not permitted to do so by the trial Court as well as the High Court. The Supreme Court, however, came to the conclusion that the tenant had a right to establish his claim that the sale deed being relied upon by his landlord to establish his ownership of the tenanted premises was a sham transaction.

7. This petition, therefore, is allowed. The impugned order passed by the learned Additional Rent Controller is set aside. The matter is remanded back to the trial Court for trial in accordance with law. The parties shall appear before the learned Additional Rent Controller on 29th October, 2011 at 2 p.m.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com