

Delhi District Court

Sripal Jain vs Shri Dinesh Kumar Jain on 15 December, 2014

Author: Sh. Deepak Sherawat

IN THE COURT OF Sh. DEEPAK SHERAWAT: ACJ-cum-CCJ-cum-  
ARC (SOUTH-WEST): DWARKA COURTS: NEW DELHI.

E.P.-53/09

Sripal Jain  
S/o Late Gopal Dass Jain  
R/o 11/57-58, Sadar Bazar,  
Delhi Cantt.

.....Petitioner

versus

1. Shri Dinesh Kumar Jain
2. Shri Deepak Kumar Jain

Both S/o Shri Lakhmi Chand Jain  
Shop No. 11/58/1, Sadar Bazar,  
Delhi Cantt.

.....Respondent

Date of Institution: 23.09.09

Date of Judgment: 15.12.14

#### JUDGMENT:

1. By virtue of this Judgment, Eviction petition U/s 14(1)

(e) moved on behalf of petitioner is being disposed of.

2. Brief facts of the petition are as under:

The premises bearing no. 11/135 (new No.11/61/1), Sadar Bazar, Delhi Cantt. was built on Survey no. 49/14 and was let out by Late Gopal Dass Jain to Late Bishamber Dayal, grandfather of respondent who has since expired and thereafter the tenancy was inherited by his son late Lakhmi Chand who was running the Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 photographer business under the name & Style of B. Dayal Photographers, who has also expired and the respondent being the son is running the photographic business in the name same name and style. It is further averred that the premises in respect of which tenancy was initially

created were exchanged by father of plaintiff with premises of Late Sh. N.D.Verma who was owner of present premises and Late Lakhmi Chand also shifted in present premises, therefore, now respondent is tenant @ Rs.10/□per month in premises No. 11/58/1, which is owned by petitioner having inherited from his father. It is further averred that Late Gopal Dass Jain and his widow Smt. Kailash Wati Jain has already expired who were survived by one daughter and one son Smt. Gunmala Jain and Shri Sri Pal Jain but Smt. Gunmalal Jain has executed a relinquishment deed in favour of petitioner and thus, the petitioner is the sole and absolute owner of the property in question.

It is further averred that the petitioner has two grown up sons of working age namely Shri Manoj Jain and Shri Manish Jain and the petitioner has only one small shop bearing no. 11/57/1 and as no other premises are available for running the business, the petitioner and his two grown up sons had to work in the said shop together and they are unable to even sit properly in the shop where they are running the electronics business under the name & Style of "Jain Electronic". It is further averred that the petitioner and his sons are assessed to income tax and have sufficient income and want to expand their business and requires additional space and thus, the petitioner requires the premises bonafidely for himself and his dependent family members for their Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 business as the present premises are short of area where the petitioner can not sit even properly to work and can not store their merchandise. It is further averred that the shop in question is adjacent to the shop of the petitioner and is more suitable for extending the business and that the petitioner does not have any other alternate accommodation available to them, other than the shop in question. It is , therefore, prayed that an eviction order be passed against the respondent and in favour of the petitioner in respect of 11/58/1, Sadar Bazar, Delhi Cantt. with costs.

3. Leave to defend application of respondent was allowed vide order dated 30.01.2010 and respondent was permitted to file written statement.

4. Written statement has been filed on behalf of respondents wherein it is stated that the petitioner is not the owner of the property. It is specifically mentioned that in case of a bonafide requirement, it is not the relationship of landlord and tenants which is essential, but it is the ownership which is most important factor. The Lease deed of the present premises has already been over for the last 10 years and the same has not even been renewed and as such the petitioner can not call himself as owner of the suit property. The factum has himself been admitted by the petitioner that the lease deed has already been over and as such he can not be called as the owner of the suit property. Further more, the property belongs to Shri Ganesh Dass Jain and the petitioner is not the son of the Late Shri Gopal Dass Jain.

It is further stated that the actual tenants are M/s Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 B.Dayal & Sons and not the respondent alone and in this regard, a receipt/ NOC has already been filed alongwith leave to defend application. Further more, the petitioner on 21.02.95, gave a receipt for Rs 25/□stating that he has received the rent of shop from M/s B. Dayal & Sons

and as such the petition is not maintainable. It is further stated that the actual owner of the property are Sh. Afzal Peshawari & Sons and in this regard they have issued even a rent receipt to Sh. Bishamber Dayal on 06.07.1947 which is also part and parcel of official records. It is further stated that in receipt no. 57, dated 21.05.1947 Sh. Afzal Peshawari & Sons have stated that they are the owner of the property and they have received rent from Shri Bishamber Dayal.

It is further stated that in the year 1950, the property was attached by the Authorities and the respondent paid the rent to the Government through Shri Bishamber Dayal, a receipt of the same has already been filed alongwith the leave to defend application. It is further stated that now petitioners are asking to increase the rate of rent to Rs 2,000/□per month.

It is further stated that the petitioner has himself stated that his father has exchanged the property with one Shri N.D.Verma. By exchanging the properties from one hand to another, the parties can not become the owner of the property as the ownership of the property has been defined in the Transfer of Property Act.

In reply on merits, it is stated the petition is bad for non joinder of parties as legal heirs of Late Sh Bishamber Dayal has Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 not been made party and Shri Chunni Lal Jain, Babu Dayal, Meena Jain, Saroj Jain and Veena Jain are the legal heirs of Late Shri Bishamber Dayal who have not been made party to this petition. It is, therefore, prayed that the present petition be dismissed with heavy costs.

5. Replication has been filed on behalf of petitioner to the written statement filed by respondents wherein contents of the plaint have been reiterated and allegations levelled against him in the WS have been denied as false and incorrect.

6. The petitioner has examined himself as PW□. He has reiterated the averments made in the plaint in his evidentiary affidavit Ex.PW1/A. He has proved sale deed, Exchanged deed, Relinquishment deed and site plan as ExPW1/1 to ExPW1/4 respectively. He has further proved the copy of adoption deed and photographs of ceremonies are Marked as Mark A & B respectively. He has further proved copy of receipt dated 10.01.95 as Mark C . He has further proved the copy of receipt dated 12.01.95 filed by the respondents as Mark D. He has lastly proved the income tax returns as ExPW1/9 to Ex. PW1/11 respectively. He has been cross examined by Ld counsel for respondents.

Thereafter plaintiff evidence was closed vide order dated 15.09.12.

7. In respondent evidence, total two witnesses have been examined.

(i)

Respondent no.1 Sh. Dinesh Kumar Jain has been

examined himself as RW□. He tendered his evidence by way of evidentiary affidavit and same is Ex. RW1/A. He has been proved the photographs as Ex. PW1/R□ to ExPW1/R□2 respectively. He has been cross examined by Ld counsel for the petitioner.

(ii) Respondent no.2 Sh. Deepak Kumar Jain has been examined himself as RW□. He tendered his evidence by way of evidentiary affidavit and same is Ex. RW2/A. He has been cross examined by Ld counsel for the petitioner.

Thereafter respondent evidence was closed vide order dated 31.05.13.

8. I have heard the arguments and have perused the material on record.

9. To get an eviction order U/s 14(1) (e) DRC Act, a petitioner is required to prove that there is relationship of landlord and tenant between him and the respondent and the requirement for the premises in question is genuine and real, i.e bona fide. He further needs to prove that he owns no other alternative suitable property to accommodate the said bona fide requirement.

10. So far as the issue of relationship of landlord and tenant between the parties goes, the respondent has not denied that the petitioner is landlord and he is tenant. However, he has taken the objection that the petitioner is not the owner of the property and contended that in a case for bona fide requirement what is important is the ownership and not the landlord□tenant Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 relationship. According to respondent, the petitioner can not be said to be owner of the property, firstly because the lease deed is already over and secondly because the suit property belongs to Late Gopal Dass Jain and the petitioner is not his son since he has not placed on record any adoption deed.

11. The grounds urged by the respondent are not tenable both in terms of relevant law and evidence in the case. First of all, the term "owner" as used in the section 14(1)(e) of the DRC Act does not connote the same meaning as in the case of a title suit for property. The petitioner need not prove the absolute ownership. This interpretation of the word "owner" has been accepted by Hon'ble Supreme Court in Smt. Shanti Sharma and others vs. Smt. Ved Prabha and others□(1987) 4 SCC 193. Under the Delhi Rent Control Act, the word "owner" occurring in clause (e) of the proviso to Section 14 (1) is not used in the sense of absolute owner. It is only used in contradistinction with a landlord as defined, who is not an owner but holds the property for the benefit of another person. A landlord as defined, who is holding the property for himself and for his own benefit and not for the benefit of another person, is certainly the owner/ landlord. The similar view has been expressed by the Delhi High Court in Kanwal Kishore Chopra vs. O.P.Dwivedi and others□AIR 1978 Delhi 53.

12. The petitioner, in this case, has placed on record the sale deed whereby his father purchased the property bearing No. 11/58/1, Sadar Bazar, Delhi Cantt and the same is proved as Ex.PW1/1. The said property was exchanged by the father of petitioner and the Exchange Deed has been proved by petitioner as Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 Ex.PW1/2. After death of his father, petitioner and his sister inherited the property. The petitioner has also duly proved the relinquish deed made by his sister in his favour as Ex.PW1/3. RW1 and RW2 have even identified the photographs of petitioner and his sister on the relinquish deed. Thus, the petitioner is holding the property for himself and for his own benefit and must be deemed to be the owner.

13. Besides, the respondent has not denied the relationship of landlord and tenant between himself and the petitioner. Nor has the respondent denied the payment of rent to the petitioner. According to para 3 of his own written statement "Now the petitioners are asking to increase the rent to Rs 2,000/□per month." The admitted rent is stated to be Rs 10 per month. The respondents have also admitted the payment of rent to petitioner when both of them in their respective evidence as RW1 and RW2 state that the petitioner is surviving on the income of the respondent/ tenant. Respondent no.2 has very categorically stated in his cross examination that they have been paying rent to the petitioner. Otherwise also, in their affidavits as evidence Ex.PW1/A and PW2/A, the respondents have attributed the increase of rent as motive behind the present case. The payment of rent by the respondent to the petitioner shows that he has attorned to the petitioner as successor in interest of paramount title, namely Sh. Gopal Dass Jain, adoptive father of the petitioner which acts as estoppel against him and he can not deny the title of the petitioner to the suit property.

14. The law as to estoppel of a tenant has been enacted in Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 section 116 of the Indian Evidence Act which, inter alia, predicates that no tenant of immovable property shall, during the continuance of tenancy, be permitted to deny that landlord of such tenant had, at the beginning of the tenancy, title to such property. In the present case, the petitioner was not the landlord at the beginning of the tenancy and the property was leased by his adoptive father from whom the petitioner has succeeded to the property. As such, the title of the petitioner to the suit property is derivative. The estoppel of a tenant is primarily in relation to his landlord who had let him into possession and that, accordingly, such tenant is not precluded from questioning the alleged derivative title of a person claiming to be the successor to, or assignee of, the property, for want of proof of the vestitive facts on which the claim for attornment is based. However, even in such cases of derivative titles, the tenant may be estopped from the denying the title of the landlord on the ground of attornment or payment of rent. Similar view was expressed by Judicial Committee in Kumar Krishna Prosad Lal Singha Deo vs. Baraboni Coal Concern Ltd. [AIR 1937 PC 251]. Their Lordships observed:

"The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel e.g., by attornment, acceptance of rent etc....."

15. The said decision has been followed the Supreme Court in Tej Bhan Madan vs IInd ADJ, (1988) 3 SCC 137.

The defendant has also tried to set up the plea of just Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 tertii to deny the title of the petitioner. He has claimed in his written statement that the actual owner of the property is certain Afzal Peshwari who even issued a rent receipt on 06.07.1947 to the predecessor in interest of the respondent. However, the plea appears to be totally preposterous. The respondent himself has admitted in Ist para of his written statement that suit property belongs to Shri Gopal Dass Jain, the adoptive father of the petitioner. On the other hand PW1, in his cross examination has deposed that Afzal Peshawari sold the property to his father and he has also proved the sale deed as Ex.PW1/1. Again, the petitioner has been receiving the rent from the respondent in his own right and not on behalf of someone else. He has been receiving the rent without any objection from any person and for that matter from successors of Afzal Peshwari. This fact is sufficient to show that he is the owner of the suit premises.

16. The Supreme Court in *Sheela and ors. Vs Firm Prahlad Raj Prem Prakash* (2002) 3 SCC 375 has clarified the position holding that the concept of ownership in a landlord-tenant litigation governed by rent control law has to be distinguished from the one in a title suit. Ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit.

17. In *M.M. Quasim vs. Manohar Lal Sharma* [(1981) 3 SCC 36] it was held that an "owner-landlord" who can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own.

18. In *Dilbagrai Punjabi vs. Sharad Chandra* [(1988) Supp SCC 710], the Apex Court while upholding the ownership of the landlord having been proved on the basis of an admission of the ownership of the plaintiff made by the defendant in reply to the notice given before the institution of the suit and the recital of the name of the plaintiff as the owner of the property contained in the receipts issued by the landlord to the tenant over a period of time, laid down that the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the plaintiff.

19. In the WS, the respondent has taken a specific defence that the petitioner is not the owner of the

property in question but he has not led any evidence in this regard. On the other hand, the petitioner proved on record the sale deed and other documents. The respondent also admitted the landlordship of the petitioner. In case of "Rajender Kumar Sharma & Ors vs. Leela Wati & others, 155 (2008) DLT 383", it was laid down that a landlord is not required to prove absolute ownership as required under Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 Transfer of Property Act and he is required to show only that he is more than a tenant. Further the High Court of Delhi made important observations in the decision given in the case titled as "Ramesh Chand vs. Uganti Devi, 157 (2009) DLT 450" in following terms:

"It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises can not stand in the way of an eviction petition under Section 14 (1) (e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord qua the premises, to whom he is paying rent, acts dishonestly....."

20. Thus, the plaintiff has ample evidence to his side to substantiate his ownership requisite to maintain the present suit. So far as his adoption by his father is concerned, he has proved the adoption deed as Ex. PW1/5 and photographs of ceremony as Ex.

PW1/6 without any exception from the respondent. RW1, in his cross examination has admitted that Smt. Gunmala, who is daughter of adoptive father of petitioner, is petitioner's sister. RW2 has gone to the extent of admitting in his cross examination that Smt. Gunmala is not real sister of petitioner because petitioner is adopted son of Late Gopal Dass. There remains lease doubt that petitioner is adopted son of Late Gopal Dass and he has inherited the suit property as owner.

21. Next comes the question whether requirement of the property by petitioner is bona fide or not. A bona fide requirement can be said to be a felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord. Reference in this respect may be had to decision of the Apex Court in Shiv Sarup Gupta vs Dr. Mahesh Chand Gupta, (1999) 6 SCC 222. In the case of Adil Jamshed Frenchman (Dead) by LRs vs. Sardar Dastur Schools Trust, (2005) 2 SCC 476", the Supreme Court advance a proposition that:

"The question to be asked by a judge of facts by placing himself in the place of landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life."

22. On applying the proposition to the present case, it is found that need of the petitioner for more space is genuine and Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 real. The petitioner is having two grown up sons and he needs the suit premises for their business. The petitioner, who had examined himself as PW1, has deposed that he has only one small shop bearing No. 11/57/1 and no other premises for starting the business of his sons are available with him. Currently, the petitioner and his both sons are running an electronic business in the said premises which is not sufficient for expansion of their business. The rest of the property available with the petitioner is residential and can not be put to commercial use. He has further deposed that the remaining property is not even sufficient to accommodate his family. The respondent has not produced any evidence to contradict the claim of petitioner. In their affidavits by way of evidence which are Ex.RW1/A and RW2/A, both the respondents have claimed that the one of the sons of the petitioner is working with a sports Channel. The petitioner has admitted this fact in his cross examination but he has explained that the service of his son with the channel is on contract basis.

23. The respondent has stated nothing about the other son of the petitioner. Though in their written statement they have stated the younger son is a painter, yet the same is merely a bald statement with no evidence in support. It is nobody's case that the sons of the respondents are not of working age. Evidently, the petitioner, being their father, should help them set up their business by providing proper and convenient space to them. The suit premises being adjacent to the shop of the petitioner, by all means, seems to be the most convenient and suitable place for the business of petitioner's sons. As such, the respondents have come up with no concrete ground to dislodge the plea of bona fide need Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 of the petitioner. On the contrary, respondent no.2 in his cross examination has deposed that petitioner helps his children in running the shop of electronic goods which shows that both the sons of the petitioner have no proper employment.

24. The respondents have also not been able to bring on record any alternative premises which may be available as suitable alternative for expansion of petitioner's business to accommodate his sons. In *M.L.Prabhakar vs. Rajiv Singhal* [(2001) 2 SCC 355] while relying on *Ram Narain Arora vs Asha Rani* [(1999) 1 SCC 141], the Supreme Court has observed that suitability of alternative accommodation has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background. In the present case, the family of petitioner consists of himself, his wife and his two sons. The respondents have not placed on record detail of any alternative place which may be vacant and available to petitioner for expansion of his business. In their written statement, they have alleged that first floor of the property of the petitioner is being occupied by his elder son, while



his younger son is living on first floor. Thus, respondents have not pointed out any vacant place in the possession of the petitioner. Otherwise also, the petitioner requires space for commercial purpose and not for residence and he can not be supposed to convert his residential occupied space into a shop.

25. Last but not the least, the respondent has no authority to dictate to the petitioner to set up business for his sons at some Sripal Jain Vs. Dinesh Kumar Jain & Anr.

EP No.53/09 inconvenient place. These observation has been made by the Delhi High Court in Anil Bajaj vs Vinod Ahuja 2014 (6) SCALE 572, stating that a tenant can not dictate to the landlord to carry out his business from a less convenient location once the landlord wants to carry on his business/ work from a more suitable accommodation.

Accordingly, eviction petition is passed in favour of petitioner and against the respondents thereby directing the latter to vacate the tenanted premises i.e 11/58/1, Sadar Bazar, Delhi Cantt., as shown in red lines in site plan filed by the petitioner in terms of Section 14 (1)(e) r/w Section 25 B of the Delhi Rent Control Act. However, as per stipulation u/s 14 (7) DRC Act, the Landlord shall not be entitled to obtain possession thereof before the expiry of a period of six months from the date of this order.

No order as to costs.

File be consigned to record room, after due compliance.

Announced in the open  
court on 15.12.2014

(Deepak Sherawat)  
ACJ/CCJ/ARC/DWK/ND