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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 20.05.2024
Judgment pronounced on: 27.05.2024

+ **RC.REV. 203/2023 & CM APPL. 37572/2023 (stay)**

SATPAL SHARMA & ANR.

..... Petitioners

Through: Mr. Abhik Kumar, Mr. Rinku Mathur, Mr. Deepak Kumar and Ms. Vaishali Sharma, Advocates.

versus

SADHNA ARORA

..... Respondent

Through: Counsel for respondent

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioners/tenants have assailed the eviction order passed by the Additional Rent Controller, North District, Delhi, under Section 14(1)(e) of the Act, after full dress trial. On service of notice of these proceedings, respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.



2.1 The present respondent, claiming herself to be the owner of one ground floor shop in premises bearing no. C-21, Model Town III, Delhi (hereinafter referred to as “the subject premises”), shaded with red colour in the site plan, filed eviction petition pertaining to the same against the present petitioners, pleading that father of the present petitioners was inducted as tenant in the subject premises by its erstwhile owner, from whom her mother purchased the subject premises by way of registered sale deed, so father of the present petitioners started paying rent to her mother; that after death of father of petitioners, tenancy *qua* the subject premises devolved upon the present petitioners; that by way of written family settlement, she has become owner of the subject premises as well as landlord of the present petitioners; that she is a postgraduate and her sons have attained the age of majority but they are studying and she has no independent source of income, so she wants to start a boutique from the subject premises; that her husband also is in the business of readymade garments; that she does not have any reasonably suitable alternate accommodation.

2.2 On service of summons in the prescribed format, the present petitioners filed application for leave to contest, pleading that the present respondent is neither owner nor landlord of the subject premises as the alleged memorandum of family settlement is fake; that mother and brother of the present respondent are in possession of five vacant shops, out of



which four are lying vacant for past more than 15 years while the fifth one was got vacated recently; that the present respondent is residing with her family in Ahmedabad and is employed there, so sole purpose of getting the subject premises vacated is to sell away the same at higher price.

2.3 The present respondent filed reply to the application for leave to contest, denying its contents. After hearing both sides, learned Additional Rent Controller allowed the application of the present petitioners, thereby granting them leave to contest the eviction proceedings.

2.4 But despite repeated opportunities, the present petitioners opted not to file written statement, so opportunity to file the same was closed by the learned Additional Rent Controller vide order dated 13.08.2018, which order on being challenged was upheld by this court vide order dated 27.11.2018, followed by the Hon'ble Supreme Court vide order dated 04.08.2022. With this background, trial was conducted before the learned Additional Rent Controller in which opportunity was granted to the present petitioners to cross examine the present respondent, but they opted not to put any question, so evidence of the present respondent was concluded and since there was no written statement, no opportunity to lead evidence of the present petitioners was granted.

2.5 After hearing both sides, the learned Additional Rent Controller allowed the eviction petition of the present respondent by way of detailed



judgment traversing through the oral as well as documentary evidence adduced on behalf of the present respondent. Hence, the present petition.

3. During final arguments, learned counsel for petitioners/tenants in all fairness admitted that not just pleadings of the present respondent but even the evidence led by her remains unchallenged. Learned counsel for the present petitioners contended that the family settlement Ex.PW1/6 is liable to be discarded because the same is not a registered instrument. It was also argued on behalf of the present petitioners that the present respondent owns a number of other properties which can be used by her for running a boutique.

4. On the other hand, learned counsel for the present respondent supported the impugned eviction order and contended that the present petition is completely devoid of merits.

5. So far as ownership of the present respondent over the subject premises and *jural* relationship of tenancy between the parties is concerned, there is no challenge from the present petitioners that their father had been inducted as tenant in the subject premises by the erstwhile owner, who sold away the subject premises by way of registered sale deed (*Ex.PW1/2*) to mother of the present respondent. There is no challenge to the pleadings and evidence that mother of the present respondent was accepted by the present petitioners as their landlord, to whom they paid rent.



6. The said family settlement (*Ex. PW1/6*) is in fact not an instrument of partition but a documentary record of settlement arrived at between mother of the present respondent and her children, so as to avoid any property disputes in future. The said document duly signed by the mother and siblings of the present respondent declares transfer of different portions of the premises No. C-21, Model Town-III, Delhi to different family members, and the subject premises thereby fell to the share of the present respondent.

7. It is settled legal position that in the proceedings of the present nature, the eviction petitioner is not required to establish absolute title over the subject premises. What is required to be established by the eviction petitioner is a title better than that of the tenant. In the present case, the petitioners are admittedly tenants in the subject premises while the respondent acquired the ownership over the subject premises through a Sale Deed registered in favour of her mother, followed by the memorandum of family settlement *Ex.PW1/6*. It is not the present petitioners but only the mother and siblings of the present respondent, who have *locus standi* to challenge the title of the present respondent through challenge to the said memorandum of family settlement.

8. Further, in view of proviso to Section 49 of the Registration Act, even the unregistered memorandum of family settlement *Ex.PW1/6* can be



received in evidence, the present case being a case of collateral transaction not required to be effected by registered instrument.

9. So far as the argument of the present petitioners that the present respondent owns a number of properties from where she can run a boutique, no specific particulars of the same have been furnished. The other portions of the said larger premises No. C21, Model Town-III, Delhi are owned not by the present respondent but by her mother and brother, so the same cannot be treated as premises available with the present respondent.

10. In nutshell, what remains is that the pleadings as well as evidence of the present respondent remain unchallenged as despite opportunity, the present petitioners opted not to file written statement and/or to cross examine the present respondent. The learned Additional Rent Controller in the impugned order has delved deeply into the entire material on record.

11. In view of above discussion, I find no infirmity in the impugned order, so the same is upheld and the petition as well as the pending stay application are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

MAY 27, 2024/ry/as