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

RESERVED ON –30th May, 2022

% ***PRONOUNCED ON – 14th July 2022***

\+ C.R.P. 81/2022

CHAMAN LAL MARWAH ..... Petitioner

Through: Mr. Sunil Kumar Atrey with Mr. Hariom Gupta, Mr. Sukrit Gupta, Mr. Arnav Avasthy, Advocates.

versus

SH. NAZIR UL ISLAM & ORS. ..... Respondents

Through: Mr. Vikas Mehta with Mr. Adith Nair, Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

C.R.P. 81/2022 & CM APPL.26145/2022 (stay)

1. Present revision petition has been filed challenging the impugned order/judgment dated 25.04.2022, passed by the Rent Control Tribunal, Central District, Tis Hazari in RCT No.18/2019 titled as *Chaman Lal Marwah vs. Nazir-Ul-Islam & Ors*.

2. Learned Rent Control Tribunal vide impugned order, dismissed the appeal filed by the petitioner/objector against the order dated 29.01.2019 of the learned Additional Rent Controller. Learned Additional Rent Controller had dismissed the objections filed by the petitioner/objector in the proceedings for execution of the eviction under the Delhi Rent Control Act. The present case has a chequered history. An eviction petition was filed by

the present respondents/landlord against their tenant Smt. Urmila Devi. The eviction petition was allowed by the learned Additional Rent Controller on 18.03.2011. During the execution proceedings, the petitioner filed the objections claiming that he was in possession of the premises in dispute since the year 2004. The objections were dismissed by the learned Executing Court vide order dated 03.03.2016. The petitioner/objector pleaded that subsequently the present respondent No.4 Sh. Mohd. Tayyab executed a lease deed of the premises in favour of the petitioner/objector on 10.10.2018 for a period of 29 years from 01.03.2019 to 28.02.2038 at a monthly rent of Rs.500/-. By virtue of this lease deed, the plea of the petitioner is that he became a lawful tenant in the premises and cannot be evicted. However, the objections were again dismissed by the learned Additional Rent Controller. It was *inter alia* held that the lease deed dated 10.10.2018 relied upon by the petitioner/objector cannot be looked into as it is an unregistered and unstamped document. Learned Rent Control Tribunal also found the document to be a suspicious document.

3. Petitioner had relied upon the statement of respondent No.4 recorded under Order X CPC wherein the respondent No.4 proved on record certain documents including the lease deed dated 10.10.2018 so as to buttress his claim that he is in lawful possession of the subject premises as a tenant and therefore cannot be evicted pursuant to the eviction order passed against Smt. Urmila Devi. Plea of the petitioner is that he is in possession of the subject property since the year 2004.

4. Learned Rent Control Tribunal noted that, in his statement under order X CPC, Mohd. Tayyab/respondent No.4 had stated that he sold away

his share of 14.28 % in the subject property to Sh. Yogender Kumar vide sale deed executed on 28.12.2018. However before that he executed a lease deed dated 10.10.2018 in favour of the petitioner after receiving rent for the period from 01.03.2009 to 28.03.2019. These documents were executed by Mohd. Tayyab/respondent No.4 without consulting his brothers and sisters, i.e., the co-owners. Learned Rent Control Tribunal also noted that Mohd. Tayyab/respondent No.4 was tendered for the cross-examination and in his cross-examination he stated that the petitioner was in possession of the subject premises since the year 2004. Learned Rent Control Tribunal after relying upon the judgment in the case titled ***M/s. Kapil Corepacks Pvt. Ltd. vs. Shri Harbans Lal***, 2010 (8) SCC 452 *inter alia* held that the statement under Order X Rule 2 CPC cannot be recorded on oath, much less followed by cross-examination. Learned Rent Control Tribunal also examined the material on record and noted that the earlier objections dated 25.07.2014 were dismissed vide order dated 03.03.2016 by learned Additional Rent Controller. The petitioner aggrieved of this had filed an appeal RCT No.30247/2016, which was also dismissed vide order dated 28.11.2017. Subsequently, fresh objections were filed which were dismissed vide order dated 29.01.2019.

5. In the impugned order, learned Rent Control Tribunal *inter alia* held as under:-

> *"14. The alleged lease deed dated 10.10.2018, copy whereof was taken on record by my learned predecessor as Ex.C-II in the statement under Order X CPC of the present respondent no. 4 Sh. Mohd. Tayyab has to be discarded for the reason that the same is neither registered nor stamped despite the lease stipulated therein being for a period of 29 years. Even*

otherwise, the alleged act of inducting the appellant objector as tenant on 10.10.2018 for retrospective as well as prospective period from 01.03.2009 to 20.02.2038 sounds quite unnatural and unbelievable.

15. Besides, clause 13 of the alleged lease deed stipulates the inspection of the premises carried out to find the working condition of fittings and fixtures; it fails to appeal to reason as to why the alleged tenant would carry out inspection of the premises at the time of executing the alleged lease deed on 10.10.2018, if he was already in possession since the year 2004 as claimed by him. Further, according to the case set up by the appellant objector, the subject property was sold away by the present respondent no. 4 Sh. Mohd. Tayyab to the extent of his share therein to Sh. Yogender Kumar by way of sale deed registered on 28.12.2018; and the said sale deed was executed on some day in September, 2018 as appears from a copy of the same filed on record. If in September, 2018, the present respondent no. 4 Mohd. Tayyab had sold away his share in the subject property, there is no explanation as to how he could execute the lease deed dated 10.10.2018 thereby inducting the appellant objector as a tenant therein, that too for a period of 29 years.

16. The other documents relied upon by the appellant objector are the copies of the cheque Ex.C-III and the rent receipt Ex.C-IV, both for a sum of Rs. 54,000/- towards rent for the period from 01.03.2009 to 28.02.2019. In contrast, in the earlier filed objections (especially para 8 thereof), the appellant objector had pleaded that he had been paying/depositing rent till May, 2014. If till May, 2014 the appellant objector had already paid rent, it fails to appeal to reason that he would again pay the rent by way of cheque for the period from 01.03.2009 till May, 2014 and thereafter till February, 2019 against the rent receipt. Therefore, the said rent receipt and cheque appear to be sham documents created by the appellant objector.

17. In the above circumstances, the documents brought on record by the appellant objector in order to prima facie

establish strength of his objections appear to be totally sham and fabricated documents.

18. Going a step deeper, I have also examined the claim of the appellant objector that the eviction order stood settled between the parties through the act of the present respondent no. 4 Sh. Mohd. Tayyab inducting the appellant objector as tenant in the subject property.

19. The provision under Order XXI Rule 2 (3) CPC contemplates that an adjustment, which has not been certified or recorded in terms with sub-rules (1) and (2) of Order XXI Rule 2 CPC, shall not be recognised by any court executing the decree. It is stipulated under Order XXI Rule 2 (1) and (2) of the Code that where a decree of any kind other than money decree is adjusted in whole or in part to the satisfaction of the decree holder, the decree holder shall certify such adjustment before the executing court, which shall record the same accordingly; and the judgment debtor or surety also may inform the execution court about such adjustment so that the execution court issues notice to the decree holder to show cause why the adjustment should not be recorded as certified.

20. Admittedly, till date neither side has approached the execution court with the claim of adjustment and now such claim has already become time barred vide Article 125 of the Limitation Act, counting the period of 30 days from 10.10.2018 when the appellant objector was allegedly inducted as tenant by the present respondent no. 4 Sh. Mohd. Tayyab.

21. In that regard, reference can be drawn from the judgment of Hon'ble Supreme Court in the case of ***Lakshmi Narayanan*** *vs.* ***S.S. Pandian,*** *VI (2000) SLT 565. Therefore, claim of the appellant objector to adjustment of the eviction order cannot be accepted because it was not recorded under Order XXI Rule 2 CPC and even the alleged lease dated 10.10.2018 for a period of 29 years is not a registered document as required in view of provisions under Section 107 of the Transfer of Property Act and Section 17 of the Registration Act.*

22. Lastly, as rightly submitted by learned counsel for the present respondents landlords, merely by one of the

landlords switching sides to join hands with the appellant objector, the remaining landlords cannot be deprived of the fruits of litigation by nullifying the eviction order. In that regard, reference can be drawn from the judgments in the cases of ***Atul Chhabra vs. Satpal Gurnani,*** *CM (M) 682/2014 decided on 21.07.2014 by the Hon'ble Single Judge of the Delhi High Court;* ***Surendra Kumar Jain*** *vs.* ***Attar Chand Jain,*** *112 (2004) DLT 914 DB; and* ***Ram Gopal*** *vs.* ***Suraj Bairam Sawhney,*** *1983 RLR 356, in which cases it was held that a co-owner has no right to withdraw the consent which was granted at the time of filing of the eviction petition; that a co-owner cannot create tenancy without consent of the other co-owners and if he does so, the remaining co-owners are not bound by that act; and that during pendency of partition suit, a co-owner cannot let out the joint property without consent of others and even if such letting out is not collusive, other co-owners are not bound by it.*

23. In conclusion, it is found that claims of the appellant objector that he has been in possession of the subject property since the year 2004 but was deliberately not impleaded in the eviction petition and that he was inducted as a tenant in the subject property by the present respondent no. 4 through lease deed dated 10.10.2018 are found to be absolutely false, bogus and legally not sustainable.

24. I am unable to find any infirmity in the impugned order, so the same is upheld. The appeal is found to be completely frivolous and an effort to protract the execution of the eviction order, so the same is dismissed with cost of Rs. 20,000/-, to be paid within one week by the appellant objector to the respondents landlords through respondent no. 2 towards their cost of litigation of this appeal, estimated on conservative side."

6. Learned counsel for the petitioner has submitted that learned Rent Control Tribunal has fallen into a grave error by ignoring the lease deed dated 10.10.2018 whereby the premises was let out to the petitioner for the

period from 01.03.2009 to 28.02.2038**.** Learned counsel for the petitioner has submitted that this lease deed clearly mentioned that the petitioner was in possession of the subject property even prior to the filing of the eviction petition. It was submitted that even in the sale deed executed by respondent No.4, the possession of the petitioner was acknowledged. Learned counsel for the petitioner has submitted that the statement recorded on oath under Order X Rule CPC was wrongly rejected by learned Rent Control Tribunal.

7. Reliance has been placed upon the judgment of this Court in ***Uma Shanker Sharma vs. Rajesh Sharma***: 2015 SCC OnLine Del 9757, wherein it was *inter alia* held that the statement under Order X CPC has to be recorded under oath. Learned counsel for the petitioner has submitted that the statement recorded under Order X Rule 2 CPC is a part of pleading and is binding on the parties.

8. Learned counsel for the petitioner further submitted that learned Rent Controller has wrongly discarded the lease deed dated 10.10.2018 merely because it was unstamped and unregistered. Learned counsel for the petitioner submitted that it is a settled law that even an unregistered document can be used as an evidence for collateral purposes in view of proviso to Section 49 of the Registration Act. Reliance has been placed upon the judgment of Hon'ble Supreme Court in ***K.B. Saha and Sons Pvt. Ltd. vs. Development Consultant Ltd.:*** *(2008) 8 SCC 564.*

9. Leaned counsel for the petitioner submitted that learned Rent Control Tribunal has also misinterpreted the provisions of Order XXI Rule 2(3) CPC. It was submitted that Order XXI Rule 2(3) CPC was not applicable to the objections of the petitioner as the petitioner was neither a party to the

eviction proceedings nor the execution proceedings. It has further been submitted that Order XXI Rule 2 deals with the payment in adjustment to the Decree Holder only and the said adjustment is that of money.

10. Learned counsel for the respondents has submitted that the Trial Court has rightly rejected the appeal filed by the petitioner. It has been submitted that the petitioner is abusing the process of law by obstructing the execution filed by the respondents herein. Learned counsel for the respondents has submitted that the first objections dated 25.07.2014 were dismissed by the Executing Court on 03.03.2016. The appeal filed by the petitioner was also dismissed on 28.11.2017. Thereafter the petitioner again filed the objection dated 28.12.2018 raising the similar pleas. These objections were dismissed vide order dated 29.01.2019. Learned counsel for respondents has submitted that against this order, learned Rent Control Tribunal vide the impugned order has rightly dismissed the objections and the lease deed set up by the petitioner being unregistered and unstamped document has rightly been discarded. Learned counsel for the respondents has submitted that in view of concurrent findings of learned Additional Rent Controller and learned Rent Control Tribunal, there is no scope of this Court to interfere in exercise of the revisional jurisdiction.

11. I have heard learned counsel for the parties and perused the record. Before proceeding further, it is necessary to examine the scope the jurisdiction of this Court as conferred under Section 115 of the Code of Civil Procedure.

12. In the judgment of this Court in ***M/s Bawa and Ranny vs. Delhi Sainik Coop. Housing Bldg. Society Ltd***.: 1996 (38) DRJ , it was *inter alia*

held as under:-

> *"(14) In contra-distinction to appellate jurisdiction, which is re-hearing of the matter, the whole matter is at large before it, and the Court is competent to re-appraise the evidence, the scope of revisional jurisdiction under Section 115, CPC is very limited. The Section empowers the High Court to satisfy itself on three matters that: (i) the order of the Subordinate Court is within its jurisdiction, (ii) the case is one in which the Court ought to exercise jurisdiction and (iii) in exercising jurisdiction the Court has not acted illegally, that is in breach of some provision of law, or with material irregularity, that is some error of procedure in the course of trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on the three matters, it has no power to interfere merely because it differs, howsoever strongly, from the conclusion of the lower court on question of fact or law."*

13. Hon'ble Supreme Court in ***Shiv Shakti Coop. Housing Society vs. Swaraj Developers*** : (2003) 6 SCC 659 while examining the scope of revisional jurisdiction, inter alia, held as under:

> *"13.First aspect that has to be considered is the respective scope of appeal and revision. It is fairly a well settled position in law that the right of appeal is a substantive right. But there is no such substantive right in making an application under Section 115. Though great emphasis was laid on certain observations in Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat (AIR 1970 SC 1) to contend that appeal and revision stand on the same pedestal, it is difficult to accept the proposition. The observations in the said case are being read out of context. What was held in that case related to the exercise of power of a higher court, and in that context the nature of consideration in appeal and revision was referred to. It*

was never held in that case that appeal is equated to a revision.

14. Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court for relief. The scope for making a revision under Section 115 is not linked with a substantive right.

15. Language of Sections 96 and 100 of the Code which deal with appeals can be compared with Section 115 of the Code. While the former two provisions specifically provide for right of appeal, the same is not the position vis--vis section 115. It does not speak of an application being made by a person aggrieved by an order of subordinate court. As noted above, it is a source of power of the High Court to have effective control on the functioning of the subordinate courts by exercising supervisory power.

16. An appeal is essentially continuation of the original proceedings and the provisions applied at the time of institution of the suit are to be operative even in respect of the appeals. That is because there is a vested right in the litigant to avail the remedy of an appeal. ..... The right of appeal, where it exists, is a matter of substance and not of procedure (Colonial Sugar Refining Co. vs. Irving (1905 AC 369).

17. Right of appeal is statutory. Right of appeal inhered in no one. When conferred by statute it becomes a vested right. In this regard there is essential distinction between right of appeal and right of suit..... But in the case of revision, whatever powers the revisional authority may or may not have, it has no power to review the evidence, unless the statute expressly confers on it that power. It was noted by the four Judge Bench in Hari Shankar vs. Rao Girdhari Lal Chowdhury (AIR 1963 SC 698) that the distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of re-hearing on law as well as fact, unless the statute

> *conferring the right of appeal limits the re-hearing in some way, as has been done in second appeals arising under the Code. The power of hearing revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. Reference was made to Section 115 of the Code to hold that the High Court's powers under the said provision are limited to certain particular categories of cases. The right there is confined to jurisdiction and jurisdiction alone."*
>
> (emphasis supplied)

15. Thus the revisional jurisdiction of the Court is limited to the extent as to whether the subordinate Court has exercised the jurisdiction in a proper manner. It is a settled proposition that the Revisional Court has no power to interfere merely because it differs from conclusion of the Lower Court on the question of fact or law.

16. Learned Rent Control Tribunal has rejected the statement under Order X Rule 2 CPC relying upon the judgment of Hon'ble Supreme Court in ***Kapil Corepacks Private Limited and Ors. vs. Harbans Lal (since deceased) Through LRs.:*** (2010) 8 SCC 452. However, learned counsel for the petitioner has relied upon the judgment of this Court in ***Uma Shankar Sharma*** (supra). In ***Uma Shankar Sharma*** (supra), this Court while taking into account the subsequent amendment in CPC with effect from **01.06.2002** under Order VI Rule 15(4) CPC *inter alia* held that the statement under Order X Rule CPC has now to be recorded in both. However, *de hors* the statement under Order X CPC, I consider that the petitioner has no case in his favour.

17. The petitioner is relying upon an unregistered and unstamped lease deed dated 10.10.2018. Section 107 of the Transfer of Property Act clearly

stipulated that a lease of immovable property from year to year or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. Section 17 of the Registration Act also provides that the lease of immovable property from year to year or any term exceeding one year, or receiving a yearly rent is required to be registered compulsorily. Reference can also made to Section 23 of Indian Contract Act which says that any contract which is forbidden by law cannot be looked into. Thus, the contract between Mohd. Tayyab/the respondent No.4 and the present petitioner, being the unregistered document, cannot be looked into as having been forbidden by law. I consider that the petitioner also cannot take benefit of proviso to Section 49 of Indian Contract Act in view of the peculiar facts and circumstance. When the document itself does not inspire the confidence of the Court, there is no question of looking at it. Even otherwise, if the lease deed is examined on the scale of probability, it would look very strange that Sh. Mohd. Tayyab/respondent No.4 would execute an unregistered lease deed before selling his share and that too with the retrospective effect.

18. In the judgment of Delhi High Court in ***Surendra Kumar Jain & Anr. vs. Attar Chand Jain & Ors.***, 2004 (78) DRJ 229 (DB), it was *inter alia* held as under:-

> *"9.....Not only that, a co-owner will not be in a position to create the tenancy without consent of the other co-owners it is also not pleaded or shown that Nem Chand, if at all, had taken permission of the other co-owners. Reliance has been placed in the case of Ram Gopal Sawhney v. Suraj Balram Sawhney and Sons and Others, I (1996) ELT 520 (SC), that a co-owner cannot*

create a tenancy of joint property without the consent of the other co-owners. If one co-owner does so, others are not bound by that act."

19. Similarly, this Court in ***Ram Gopal Sawhney vs. Suraj Balram Sawhney & Sons***: 1982 SCC Online Del 235 has *inter alia* held as under:-

"19. Whatever be the collusive nature of these tenancies, the question arises whether one of the co-owners who has not been put into management of the property by other co-owners, can let out any portion of the property without their consent, and whether such tenancy can bind any of those co-owners to whom the property has fallen after partition. This controversy arose before G.C. Jain, J. of this Court in E A. No. 69 of 1979, decided on 26-5-1982 (Nand Lal Patel v Shiv Saran Lal). The learned Judge has made reference to two Full Bench decisions of the Calcutta and Patna High Courts in the cases Niranjan v. Soudamini Dasi, (AIR 1926 Calcutta 714) and Bibi Kaniz Fatma v. Sk. Hossuinuddin Ahmed, (AIR (30) 1943 Patna 194). In the former it was recognised that the general principle is that a co-sharer in joint property cannot by dealing with such property affect the interest of the other co-sharers therein. The question that arose was whether a person to whom a parcel of land had been allotted by a decree for partition took it subject to a permanent lease granted by his former co-owners without his concurrence when the land was joint inter-se them. It was answered in the negative. The Patna High Court too observed that such tenant inducted by a co-sharer could certainly not be treated as tenant of the entire body of co-sharer. The Delhi High Court as well in a Division Bench decision in Hari Kishan Rathi v. Ranjan Dupatta House & Ors., (EFA (OS) No. 3/1972, decided on October 30, 1975), took the same view. In the decision it was observed that a co-sharer has no right to put a stranger in exclusive possession of the property, and if he does so, the other co-sharer can object to it and can seek his dispossession, G. C. Jain, J. too held

that a tenancy created prior or during the pendency of the suit for partition by one of the co-sharers cannot bind others and the co-sharer to whom the property is allotted on partition, is entitled to dispossess the tenant. However, it was taken note that if there is any element of authorisation or agency created which can show that one of the co-sharers had been put into the management of the property by the other co-sharers, the lease created prior to the institution of the suit, can be binding on them. This has not been the position in the present case inasmuch as, as already noted above, the family had fallen out in 1970-71 and Krishan Gopal Sawhney too had published a notice in a newspaper in 1970 that Ram Gopal Sawhney had no authority to induct third persons in the joint properties."

20. It is pertinent to mention here that in the present case it is not the case of either of the parties that respondent No.4 has been put into the management of the property by other co-sharers.

21. In view of the discussion made hereinabove, this Court is of the view that there is no infirmity or illegality in the order of learned Rent Control Tribunal, Central District, Tis Hazari. Learned Rent Control Tribunal has passed a very detailed and reasoned order and there is not even an iota of material to say that either learned Rent Control Tribunal, Central District, Tis Hazari has exercised the jurisdiction not vested nor has exceeded the jurisdiction. This Court feels there is no infirmity in the order of learned Rent Control Tribunal.

22. The present petition along with pending application is, accordingly, dismissed.

DINESH KUMAR SHARMA, J

JULY 14, 2022/st