

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

+ **CM(M) 1279/2008**

% **Date of decision: 12th January, 2010**

TAHIRA BEGUM

... Petitioner

Through: Mr. S.P. Jha, Mr. Bipin Kumar Jha & Mr. C. Salvaraj, Advocates.

Versus

SUMITAR KAUR & ANR.

..... Respondents

Through: Mr. Satya Prakash Gupta, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. This petition, originally preferred under Article 227 of the Constitution of India, was at the time of hearing on 11th November, 2009 and vide order of that date converted into a Revision petition under Section 25 B (8) of the Delhi Rent Control Act, 1958 and heard as such. The petition has been preferred by a landlord aggrieved from the order of the Additional Rent Controller granting leave to the respondents/tenants to contest the petition for eviction filed by the landlord under Section 14 (1)(e) of the Act. One of the requirement of Section 14 (1)(e) is of the landlord also being the owner of the tenancy premises. The Additional Rent

Controller has granted leave to defend to the tenants only on the ground that the pleas of the respondents/tenants qua ownership raise a triable issue.

2. The petitioner/landlord along with the petition and the respondents/tenants along with reply to the petition before this court have filed as annexures thereto, copies of the record of the Rent Controller sought to be relied upon by them and as such need is not felt to call for the records.

3. Sardar Nihal Singh being the husband of the respondent no.1 and the father of the respondent no.2 was a tenant on the ground floor of House No.6059, Gali Haider Bux, Nawab Road, Basti Harphool Singh, Sadar Bazar, Delhi (hereinafter called House No.6059) under Sh. Karam Ilahi w.e.f. 22nd May, 1960 and at a rent of Rs.25/- per month. Sh. Karam Ilahi died on 2nd October, 1970. The petitioner/landlady is the daughter of said Sh. Karam Ilahi. The petitioner/landlady in or about the year 1999 instituted a petition for eviction (hereinafter called earlier petition for eviction) of Sardar Nihal Singh on the ground of her requirement of the premises for her own residence provided under Section 14(D) of the Act. It may be mentioned that unlike Section 14(1)(e), under Section 14(D) the only requirement is of being a landlady and there is no requirement of being the owner. The petitioner/landlady in the earlier petition for eviction under Section 14(D) of the Act claimed herself to be the landlady. Sardar Nihal Singh denied that the petitioner was the landlady and contended that the brothers of the petitioner/landlady viz. Mohd. Haider Baksh & Mohd. Sultan were the landlords. Though the earlier petition for eviction under Section 14(D) of the Act was dismissed vide order dated 17th August, 2004 of the Additional Rent Controller inter alia on the ground that the premises having been not let out by the petitioner/landlady or by her husband, she was not entitled to invoke the ground of eviction provided under Section 14(D) of

the Act and also on the ground of the petitioner/landlady having not made out a case of requirement of the tenancy premises; but in the said order, the petitioner/landlady was held to be the landlady of the Sardar Nihal Singh qua the tenancy premises and also held to be entitled to the rent from Sardar Nihal Singh. The petitioner/landlady preferred RC Revision No.32/2005 to this Court against the order of dismissal of the earlier petition for eviction. At the time of hearing of the said Revision petition on 16th August, 2005, it was conceded by the counsel for the petitioner/landlady that in view of the judgment of the Supreme Court in *Nathi Devi Vs. Radha Devi Gupta* 2005 1 RCR 218 laying down that the petition for eviction under Section 14 (D) could be maintained only where the letting was by the landlady herself or by her husband, the petition for eviction on that ground was not maintainable, since the premises had been let out by the father of the petitioner/landlady. However, the counsel for the petitioner/landlady contended that the findings of the Controller qua the requirement of the tenancy premises by the petitioner may come in the way of the petitioner/landlady preferring another petition for eviction on the ground of her requirement of premises for her own residence under Section 14 (1)(e) of the Act, in which there is no requirement of letting by the landlady or her husband. The counsel for Sardar Nihal Singh contended that since the petition for eviction under Section 14 (D) was not maintainable, the findings of the Controller qua requirement shall not operate as res judicata; for the said reason he had no objection against the findings of the Additional Rent Controller qua bona fide requirement being set aside. On the said statement of the counsel for the Sardar Nihal Singh, this court though dismissing the Revision petition, set aside the findings of the Additional Rent Controller qua requirement.

4. The petitioner had in the earlier petition for eviction under Section 14(D) of the Act claimed herself to be the landlady by pleading that her father Karam Ilahi had during his lifetime gifted the property to his sons Mohd. Haider Baksh & Mohd. Sultan; that the said Mohd. Haider Baksh & Mohd. Sultan being the brothers of the petitioners had vide oral gift dated 1st January, 1994 (and which is permissible under the Mohammedan Law) gifted the property to the petitioner; that the rent receipts w.e.f. February, 1997 were also issued to Sardar Nihal Singh by the petitioner through her son/attorney. Sardar Nihal Singh had contested the said claim of the petitioner by contending that there was no gift of 1st January, 1994 by the brothers in favour of the petitioner; that to constitute a valid gift, the same must be accompanied with the delivery of possession of the property; that in the present case, there was no delivery of possession, even constructive of the property, inasmuch as Mohd. Haider Baksh & Mohd. Sultan who had been realizing rent from Sardar Nihal Singh had at no time after 1st January, 1994 being the date of the oral gift given any notice to Sardar Nihal Singh to attorn to the petitioner as landlady; that there was no explanation as to why, if there was an oral gift on 1st January, 1994, Mohd. Haider Baksh & Mohd. Sultan continued to receive the rent till January, 1997; that in fact the rent receipts w.e.f. February, 1997 also though stated to have been issued by the petitioner through her son / attorney were without knowledge of Sardar Nihal Singh, being in Urdu language and which language was not known to Sardar Nihal Singh. The petitioner rejoined by contending that Sardar Nihal Singh was orally informed of the gift; that between 1st January, 1994 and February, 1997 rent was collected by Mohd. Haider Baksh & Mohd. Sultan on behalf of the petitioner; it was denied that Sardar Nihal Singh did not know Urdu language.

5. The Additional Rent Controller, in the earlier petition for eviction under Section 14 (D) of the Act held the petitioner to be the landlady because Mohd. Haider Baksh & Mohd. Sultan had appeared as a witness and confirmed the gift to the petitioner on 1st January, 1994; it was held that a tenant/stranger could not challenge the validity of the gift; that possession could be delivered subsequent to the gift also and which had been done in the present case; that the brothers of the petitioner had also in 1997 executed registered deeds of declaration confirming / affirming that they had gifted the property to the petitioner on 1st January, 1994; that the property also stood mutated in the records of the MCD in the names of the petitioner. It was thus held that at least in 1997 the petitioner became the owner of the property and the rent receipts with effect there from were admittedly by the petitioner and thus on the date of institution of the earlier petition for eviction under Section 14(D) of the Act on 10th May, 1999, the petitioner was the landlady of the premises.

6. The petitioner during the pendency of the earlier petition for eviction under Section 14(D) of the Act also instituted a suit for declaration of her title to the tenancy premises; her two brothers Mohd. Haider Baksh & Mohd. Sultan and the tenant Sardar Nihal Singh were impleaded as defendants to the suit. The said suit was dismissed vide judgment and decree dated 15th December, 2004 (i.e. shortly after the order of the Additional Rent Controller in the earlier petition for eviction under Section 14 (D) of the Act and before the order dated 16th August, 2005 in RC Revision No.32/205 (supra)) of the Civil Judge, Delhi. The Civil Judge held that Sardar Nihal Singh had not attorned to the petitioner as landlady w.e.f. 1st January, 1994; that there was no oral gift of the tenancy premises by the brothers in favour of the petitioner on 1st January, 1994 since it was not accompanied by

delivery of possession inasmuch as the brothers continued to realize the rent from Sardar Nihal singh till 1st February, 1997; that the issuance of rent receipts by the petitioner through her son / attorney thereafter was also without knowledge of Sardar Nihal Singh; that mutation in the MCD was only for the purpose of collection of tax. It was thus held that the petitioner had not become the owner / landlord of the property and the suit was held to have been instituted by the petitioner in collusion with her brothers.

7. The petitioner preferred an appeal against the aforesaid judgment and decree. However, during the pendency of the said appeal, the brothers of the petitioner executed and got registered on 17th January, 2005 a deed of release / relinquishment. In the said deed, it was mentioned that upon the demise of Karam Ilahi his widow Muglani Begum, the aforesaid Mohd. Haider Baksh & Mohd. Sultan and the petitioner inherited inter alia the tenancy premises; that the petitioner was widowed on 22nd October, 1994; that the brothers did not want to continue to be the co-owners / co-sharers along with the petitioner and out of love and affection on 1st January, 1994 made oral gift of the tenancy premises in favour of the petitioner and subsequently on 10th February, 1997 also registered a deed of declaration confirming the said gift; however since the suit for declaration filed by the petitioner had been dismissed and as a result of findings wherein the status of the property is deemed to have remained the same i.e. Mohd. Haider Baksh & Mohd. Sultan are deemed to have continued to remain the co-owners and co-landlords of the tenancy premises, they were out of natural love and affection for the petitioner relinquishing their rights in the tenancy premises in favour of the petitioner.

8. The petitioner on 18th December, 2006 made a statement in the appeal preferred against the judgment and decree in the suit, withdrawing the

appeal for the reason of execution and registration of the registered relinquishment deeds dated 17th January, 2005 and also for the reason of the findings of the petitioner being the landlady in the order of the Additional Rent Controller in the earlier petition for eviction under Section 14(D) of the Act and which finding had not been disturbed in the order dated 16th August, 2005 in RC Revision No.32/2005.

9. In the meanwhile, Sardar Nihal Singh died. The petitioner thereafter instituted the petition for eviction under Section 14 (1)(e) of the Act and from which the present Revision petition arises against the widow and son of Sardar Nihal Singh. In the said petition for eviction, the petitioner gave the narration of the orders in the earlier petition for eviction under Section 14(D) of the Act and the Revision preferred there from and the judgment / decree in the suit and the registered relinquishment deeds dated 17th January, 2005 and on the basis thereof claimed to be the landlord and owner of the property.

10. The respondents/tenants applied for leave to contest. It is inter alia their plea that the petitioner could not take advantage of the relinquishment deeds dated 17th January, 2005 executed on the premises of the petitioner being a co-owner of the tenancy premises on the demise of her father Sh. Karam Ilahi for three reasons. Firstly, the petitioner having in the previous proceedings contended that Sh. Karan Ilahi in his lifetime gifted the property to Mohd. Haider Baksh & Mohd. Sultan and who were alleged to have gifted the property on 1st January, 1994 to the petitioner; it was pleaded that thus there could be no question of the petitioner being a co-owner. Secondly, it was contended that if at all Sh. Karam Ilahi had not gifted the property to his two sons then Sh. Karam Ilahi had besides the petitioner and Mohd. Haider Baksh & Mohd. Sultan left other children also and all of

whom would become the co-owners and the petitioner on the basis of the relinquishment deeds executed by only two of her brothers could not acquire title to the property. Thirdly, it was contended that if at all the petitioner was claiming her title to the property on the basis of the relinquishment deeds of 17th January, 2005, the bar under Section 14 (6) of the Act would come in the way and the petitioner having acquired the title to the property for the first time vide relinquishment deeds dated 17th January, 2005 could not institute the petition for eviction for five years i.e. till 16th January, 2010. It was also contended that the petitioner had been taking contradictory stands.

11. It is in the aforesaid state of affairs that the Additional Rent Controller has held the pleas of the respondents/tenants challenging the ownership of the petitioner, to be raising a triable issue and granted leave to defend to the respondents / tenants.

12. At the outset, I may state that in view of the aforesaid state of pleadings and documents, the challenge by the respondents/tenants to the claim of the petitioner of being the owner is not such which requires a trial. It only needs adjudication. An issue of fact requires trial when it cannot be adjudicated without examination and cross examination of witnesses. However, in the present case, we have the pleadings and the orders / judgments in the two earlier legal proceedings between the parties, one under Section 14(D) of the Act and the other being the suit for declaration, besides the registered deeds of declaration of 1997 and the registered relinquishments deeds of 2005. The brothers of the petitioner appearing as witness in the earlier legal proceedings had admitted the execution of the deed of declaration of 1997. As far as the registered relinquishment deeds of 2005 are concerned, there is no challenge as to the execution thereof. The

only challenge is as to the effect, impact and validity thereof. Thus qua ownership there is no fact for which the petitioner or the respondents are required to enter into witness box themselves or to produce any other witness.

13. The purport of the summary procedure prescribed under Section 25B of the Rent Act was to avoid trial necessarily in cases for eviction on the ground of personal requirement of the premises. The onus has been placed on the tenant to show to the Controller such facts which if proved in trial would disentitle the landlord to an order of eviction on the said grounds. In a given case, the tenant may in the application for leave to defend raise pleas disputing the claim of the petitioner. The said pleas may not necessarily require trial. Merely because pleas have been raised and which if successful may disentitle the landlord from an order of eviction would be no ground to grant leave to contest if the pleas are such which do not require any trial. The Controller is then required to proceed to decide the said pleas at the stage of considering the application for leave to contest itself. If the Controller grants leave to contest merely because pleas have been raised even though not requiring trial, the same would negate the purpose of a summary procedure. Section 25 B (5) requires the Controller to give to the tenant leave to contest, if the affidavit of tenant declares such “facts” as would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e). The intent is that “facts” would require to be proved. However, if what is disclosed is a legal defence or a legal plea, not required to be proved, the same has to be adjudicated immediately & decision of such legal plea not to be deferred by granting leave to contest to the tenant.

14. The order of the Additional Rent Controller in the present case is found to be suffering from the said malady only. The Controller has in the

impugned order held that the petitioner is trying to come out of the judgment and decree of the civil court by relying upon the relinquishment deeds of 17th January, 2005 and is shifting her stand and if her two brothers are trying to make her the owner by way of relinquishment by shifting their stand, then the petitioner cannot invoke Section 14(1)(e) of the Act at least for a period of five years from the date of becoming the owner; it has further been observed that the relinquishment deeds can be made only in favour of the person who has right, title or share in the property. Having said so, the Controller has observed that a triable issue has been raised. However, the Controller has failed to discuss as to trial on what aspect is required. It was for the Controller to decide the claim of the petitioner of ownership on the basis of the admitted facts before him.

15. A purely legal plea capable of adjudication without examination and cross examination of witnesses ought to be adjudicated at the stage of leave to contest only without directing the parties for a trial which is in fact not required.

16. In the present case, in view of the parties have thrashed out the aspect of ownership in two previous proceedings and in the face of there being no challenge to the execution of the registered documents and the challenge being to their effect and validity only, the Controller did not act in accordance with law in granting leave to contest. The Controller did not notice that grant of leave to contest in such cases not only vexes the parties but also consumes the precious time of the courts. The adjudication as to whether the petitioner can in the aforesaid state of facts and circumstances be said to be the owner within the meaning of Section 14(1)(e) of the Act or not is possible without any trial. Neither of the counsels were at the time of hearing able to tell as to what evidence besides the aforesaid facts would

they lead on the aspect of ownership. An adjudication has to be made on the basis of the existing admitted material. If on the basis thereof it has to be held that the petitioner is not the owner, no purpose would be served by dragging trial. Similarly, if on the basis of the said material, the petitioner is found to be the owner, in the absence of any other ground for leave to defend, again no purpose would be served in putting the parties to trial. The Rent Controller has merely pushed the decision on the basis of available facts to a subsequent date perhaps three to five years, negating the very purpose of introducing the summary procedure.

17. I am satisfied that the question of ownership can be adjudicated on the basis of existing material and does not require any evidence. As aforesaid, the counsels have also relied upon the said material only and no other plea requiring evidence in support of their respective pleas has been cited.

18. The undisputed facts are:-

(i) The premises were let out to the predecessor of the respondent by Karam Ilahi who continued to receive rent and issued receipts in his lifetime.

(ii) After the demise of Karam Ilahi the rent was paid to his widow Muglani Begum and after her demise to Mohd. Haider Baksh and Mohd. Sultan being only two of the several other natural heirs of Karam Ilahi.

(iii) No other natural heir of Karam Ilahi has in the last over 40 years since his demise come forward to claim rent from the respondents or their predecessor or to claim adversely to the petitioner or to the said Mohd. Haider Baksh & Mohd. Sultan.

(iv) Mohd. Haider Baksh & Mohd. Sultan continued to receive the rent from the respondents/their predecessor till 1st February, 1997.

(v) Though the rent thereafter was received by the petitioner against receipt but it has been held in the judgment of the civil court that the same was without knowledge of predecessor of the respondents. The said finding of the civil court has attained finality and would be binding in a rent control proceedings. Thus the petitioner cannot take any benefit of the findings in the earlier petition for eviction under Section 14D of the Act.

(vi) The case of the said Mohd. Haider Baksh & Mohd. Sultan having gifted the property to the petitioner on 1st January, 1994 has also been disbelieved in the judgment/decree of the civil court and which has also attained finality and would be binding in these proceedings.

(vii) That the property stands mutated with the consent of Mohd. Haider Baksh & Mohd. Sultan in the exclusive name of the petitioner in the records of the MCD since the year 1997 i.e. for over 12 years prior hereto.

(viii) Mohd. Haider Baksh & Mohd. Sultan have vide registered deeds of declaration of 1997 and of relinquishment deeds of 2005 disclaimed any right, title, interest or share in the property and affirmed the exclusive title of the petitioner to the property.

(ix) The respondents / their predecessors, as transpires from the judgments in the earlier petition under Section 14(D) and in the suit for declaration not disputed Mohd. Haider Baksh & Mohd. Sultan to have become the exclusive owners of the property after the demise of

Sh. Karam Ilahi and his wife and had only disputed the gift by them in favour of the petitioner.

19. It is the effect of the aforesaid admitted facts which has to be digested and a finding has to be returned whether on the basis thereof the petitioner can be said to be the owner of the tenancy premises within the meaning of Section 14(1)(e) of the Act or not.

20. It has been held by the Supreme Court in *Shanti Sharma Vs. Ved Prabha* AIR 1987 SC 2028 that for the purpose of Section 14(1)(e) of the Act, ownership is not to be understood as absolute ownership but only as a title better than the tenant. So what has to be seen is whether on the basis of aforesaid facts it can be said that the petitioner has any title to the property, a title better than the respondents.

21. This court in *Milk Food Ltd. Vs. Kiran Khanna* 51 (1993) DLT 141 in relation to Section 14(1)(e) has held that a title to the property can also be acquired by adverse possession. In that case, also the tenant was averring the father of the petitioner to be the owner. The father had however by way of various acts but not by way of any registered conveyance deed declared the petitioner/daughter to be owner. The father had also appeared as a witness in the petition for eviction confirming the title as of his daughter and disclaiming any right in the property. This had been going on for over 12 years including during the pendency of the eviction case. The Additional Rent Controller held the petitioner to have become the owner of the premises by way of adverse possession merely for the reason of the person, whom the tenant was averring to be the owner having declared and affirmed the title of the petitioner. The said judgment applies to the facts of the present case on all fours. Here also it will be seen that Mohd. Haider Baksh

& Mohd. Sultan who are averred by the respondents/their predecessors to be the owner have affirmed the title to the petitioner since 1st January, 1994. More than 12 years have passed since then. In confirmation of the said title Mohd. Haider Baksh & Mohd. Sultan got the property mutated with the MCD in the exclusive name of the petitioner w.e.f. 1997, allowed the petitioner only to realize the rent and issue rent receipts, in 1997 and 2005 executed registered documents disclaiming any rights in the property and affirming the said rights to be with the petitioner. The petitioner even otherwise has been openly and continuously declaring herself to be the owner of the property for the last more than 12 years. In these facts the petitioner if by nothing else, has become the owner by adverse possession.

22. The counsel for the respondents/tenants is right in contending:-

(i) That the findings in the earlier petition for eviction under Section 14(D) of the Act of the petitioner being the landlady are not binding. The said findings were returned in a petition for eviction which was ultimately dismissed for the reason being not maintainable. It is the settled legal position that when the final order in a legal proceeding is on the ground of non maintainability of the proceedings or for the reason of any other technical defect therein, the findings even if returned on merits therein do not become res judicata in subsequent proceedings. Even otherwise, the final order in the earlier petition for eviction under Section 14(D) of the Act being in favour of the respondents/their predecessors they had no opportunity to challenge the findings against them and for which reason also the same cannot be res judicata. However, I have as aforesaid held the petitioner to be the owner by way of adverse possession and not for

the reason of the findings in the earlier petition for eviction under Section 14 (D) of the Act.

(ii) That the petitioner has in the present petition for eviction taken a stand in consistent to the stand taken in the earlier proceedings. The earlier proceedings were instituted by the petitioner by pleading a gift by Sh. Karam Ilahi in his lifetime in favour of Mohd. Haider Baksh & Mohd. Sultan and the said persons having become exclusive owners of the property and having orally gifted the property on 1st January, 1994 to the petitioner. The petitioner having taken the said stand cannot now be permitted to turn around and ignore the earlier pleading of gift by Sh. Karam Ilahi in favour of Mohd. Haider Baksh & Mohd. Sultan and proceeding on the premise that Sh. Karam Ilahi had died intestate.

(iii) Even if the petitioner is permitted to so turn around, there is no explanation as to what happened to the share of other heirs of Sh. Karam Ilahi, if he had died intestate. However, I may add that the same would not come in the way of the petitioner inasmuch as the petitioner would in that case also be a co-owner and be entitled to maintain a petition for eviction.

However, as aforesaid, the said pleas do not come in the way of the reasoning by which this court has held the petitioner to have become the owner of the property.

23. I have also considered whether the petition for eviction can be said to be lacking in bona fides essential in a case under Section 14(1)(e) of the Act, for the reason of the petitioner taking shifting stand. However, I am unable to hold so. On the contrary, what the facts show is that the petitioner and her

brothers since 1997 have been doing all that they may have been advised from time to time, to transfer the title in the property exclusively to the petitioner and to perfect the title of the petitioner thereto. The reason is not difficult to fathom. The petitioner was widowed in 1994. From the facts it is borne out that the petitioner along with her children is residing in a house in the same locality where the tenancy premises are situated. In that house besides the petitioner and her children, the other family members of the deceased husband of the petitioner are also residing. The petitioner is having lesser accommodation than her requirement in the said house. It appears to have been decided between the brothers and the petitioner and the petitioner that the tenancy premises would be transferred to the petitioner to enable the petitioner to evict the tenant and to occupy the same. The petitioner was advised the route of oral gift permissible under the Mohammedan Law and confirmation thereof by the registered deed of declaration of 1997. Upon the same not finding favour in the judgment in the civil court, the petitioner appears to have been advised the route of registered relinquishment deeds. All that can be deciphered from the said conduct is an attempt to avoid payment of stamp duty if the property had been transferred in the normal course. However, an attempt to avoid the payment of the stamp duty would not impinge on the requirement of the petitioner of the tenancy premises and would not make the said requirement mala fide. The aspect of bona fide is to be considered vis-à-vis requirement only and not qua the mode in which the petitioner acquires title to the property.

24. From the several acts aforesaid to vest the title of the property in the petitioner and to declare the petitioner as the owner of the property, it cannot be said that the same are as a result of collusion between the petitioner and

her brothers or only for the purpose of seeking the eviction of the tenant. The brothers of the petitioner have by executing the documents aforementioned lost complete title to the property and will now not be able to turn around and claim back the title from the petitioner. Moreover, the proceedings are being now pursued by the petitioner through her son and not through her brothers. On this account also, no mala fides are found.

25. Since I have not accepted the title of the petitioner on the basis of relinquishment deeds of 2005, the question of bar of Section 14(6) also does not come in. However, I may mention that the said term of five years is also now nearly over.

26. Though the application for leave to defend appears to have been contested before the Additional Rent Controller merely on the aspect of ownership but the counsel for the respondents before this Court also urged that there are other heirs also of Sardar Nihal Singh against whom no petition for eviction has been filed. However, the other heirs are the married daughters of Sardar Nihal Singh who are residing in their matrimonial home and not permanently residing in the tenancy premises. It is not the case that the respondents are not capable of representing the interest even if any of the other heirs. It is settled law that one heir of the tenant is capable of representing the entire estate unless shown to be in collusion with the landlord. See *Surayya Begum Vs. Mohd. Usman* (1991) 3 SCC 114. That is not the position here. The respondents have contested the case before the Additional Rent Controller and before this Court tooth and nail. Thus, the said ground cannot constitute a ground for grant of leave to defend.

27. The counsel for the petitioner has also contended that in the Revision petition earlier preferred against the dismissal of the earlier petition for

eviction under Section 14 (D) of the Act, the finding of the Additional Rent Controller of the petitioner having not established her requirement for the tenancy premises had been set aside. However, the petitioner cannot take any advantage thereof. The said finding was set aside on the statement of the counsel for the respondent that it was not res judicata for the reason aforementioned. Thus merely on that ground the petitioner cannot claim res judicata qua requirement.

28. The case of the petitioner is that her family comprises of herself, her un married daughter aged 45 years residing with her, her two other sons, the widow and children of her pre deceased son also residing with her, their wives and children besides four married daughters. They are all residing in House No.7518 Qureshi Nagar, Sadar Bazar, Delhi, wherein other members of the family of the deceased husband of the petitioner are also residing. The case of the petitioner is that she has paucity of accommodation in House No.7518 and while some of the family members will continue to reside in that house, others would shift into the tenancy premises if vacated.

29. A perusal of the application for leave to defend and the affidavit filed there with shows that the material pleas in the petition for eviction qua the number of members of the family of the petitioner and the accommodation available to the petitioner have not been controverted. There is only a bare statement that the petitioner does not require the premises and is comfortably residing in her own accommodation and the petition is actuated for commercial reason. No other alternative suitable accommodation, if any, available to the petitioner has also been pleaded. Another plea taken is that the accommodation available to the petitioner in her existing accommodation is more than the accommodation in the tenancy premises. It was in fact the said plea which had succeeded in the order on the earlier

petition for eviction under Section 14 (D) of the Act. The Additional Rent Controller had then held that the petitioner along with all her family members could not be expected to shift to a smaller accommodation. However, in the present petition for eviction, the petitioner has clarified that whilst some of her family members would continue to reside in the existing accommodation, others would occupy the tenancy premises if vacated. Thus the said plea also does not come in the way of the requirement of the petitioner. The petitioner also satisfies the requirement of being the landlord as owner is necessarily the landlord under Section 2(e) of the Act.

30. From the non traverse by the respondents of the case for requirement made out in the petition for eviction, I hold that the respondents did not seek leave to defend on the said ground. In fact the counsel for the respondents during the hearing before this court fairly admitted that only the title as owner of the petitioner is challenged and not the ownership.

31. I may also add that though in the application for leave to defend as well as in the affidavit filed by them there with, it is also pleaded that the purpose of letting was orally changed from residential alone to residential cum commercial but in view of the judgment of the Supreme Court in *Satyawati Sharma Vs. Union of India* AIR 2008 SC 3148, there is no need to return any finding on the said aspect also.

32. The counsel for the respondents in support of his contention of a release / relinquishment deed being possible only amongst co-owners and not to transfer /title in favour of a person who earlier had none, relied upon *Kuppuswami Chettiar Vs. A.S.P.A. Arumugam Chettiar* AIR 1967 SC 1395 and *Senthathikalai Pandiya Chinnathambiar Vs. Varaguna Rama Pandia Chinnathambiar* AIR 1954 Madras 5. However, since I have for

holding the petitioner to be the owner, not relied upon the relinquishment deeds save as perfecting title of petitioner by way of adverse possession, need is not felt to discuss the said aspect of the matter.

33. Having found the petitioner to be the owner of the tenancy premises within the meaning of Section 14(1)(e) of the Act and there being no other ground as aforesaid on which leave to contest is sought, this petition succeeds. The order of the Additional Rent Controller granting leave to contest the petition for eviction to the respondents is set aside. The application of the respondents for leave to contest is dismissed and the petitioner having found to have satisfied all the ingredients of Section 14(1)(e) of the Act, an order of eviction is passed in favour of the petitioner and against the respondents with respect to the premises as described in paras 1,2,8 & 20 of the petition for eviction and shown in the site plan filed with the petition for eviction. However, in accordance with law, the respondents are granted six months time to vacate the premises. The order of eviction shall be unexecutable for a period of six months from today.

34. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

January 12, 2010
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