

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

CM (M) 779/2012

Date of Decision: 13.07.2012

SHEIKH MOHD ZAKIR & ORS.

.... PETITIONERS

Through: Mr. S.H.Nizami, Advocate.

Versus

SHAHNAZ PARVEEN & ORS.

....RESPONDENTS

Through:

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. The present petition has been preferred against the order of the Ld. Rent Control Tribunal dated 06.03.2012 whereby the Ld. Tribunal affirmed the dismissal of application filed by the petitioners under Order 1 Rule 10 Code of Civil Procedure (CPC) by Ld. Additional Rent Controller(Central) vide order dated 25.08.2011.

2. The facts giving rise to the present petition in brief are that the respondent no.1 filed an eviction petition under Section 14(1)(e) r/w Section 25-B of Delhi Rent Control Act (hereinafter referred as 'DRCA') against the tenants i.e. respondent nos. 2 & 3 stating therein that she has 10/12th share in property no. 498-E, Gali Teeke Wali, Churiwalan, near Jama Masjid, Delhi and she requires the premises bonafide for herself and her family members who are dependent upon her and she has no other reasonable and suitable residential accommodation available to her.

3. Respondent nos. 2 & 3 herein filed an application for leave to defend to contest the eviction petition. During pendency of the petition, an application under Order 1 Rule 10 CPC was moved by the petitioners claiming themselves to be the co-owners of whole of the undivided property in question and it was alleged that their presence was very much necessary for

adjudication of the controversy between the parties. The Ld. ARC dismissed the said the application.

4. Thereafter, the petitioners filed appeal invoking Section 38 of the DRCA before the Ld. Tribunal.

5. While dismissing the appeal filed by the petitioners The Ld. ARC observed as under:

“15- As regards, the plea that respondent no.1 after getting the premises vacated may sell the same, the respondent no.1 being only a co-owner of undivided share of the property even otherwise cannot sell the property without the consent of the other co-owners. Under the circumstances the apprehension of appellant is unfounded. So far as the adjudication of controversy between the parties, the presence of appellant is not required. As such the impugned order does not suffer from any infirmity which calls for interference. Accordingly, the appeal is dismissed.”

6. The impugned order has been challenged in the present proceedings by the petitioners on the ground that respondent no. 1 is not the exclusive owner of the tenanted portion, which is in the possession of respondent no. 2 & 3 as there has never been formal or informal partition of the suit property between the parties. Thus, the petitioners must be allowed to be impleaded as party in the eviction petition.

7. On perusal of the records, it is evident that petitioners are claiming to be co-owners of the property in question, but they cannot disturb the eviction petition against respondent no.2 & 3. It is well settled law that in the suit between the landlord and tenant, a third person claiming to be co-owner of the property cannot intervene as the issue of ownership could not be decided in the proceedings under the DRCA.

8. The respondent no. 1 cannot be forced to implead the applicants as co-petitioners in the eviction petition. Even if it is taken to be correct that the applicants are co-owners of suit premises along with the respondent No. 1, but the petition filed as such by respondent No. 1 alone was also maintainable. It is not necessary that all co-owners need to file the petition for eviction. In *India Umbrella Manufacturing Co. & Anr. Vs. Bhagabandei Agarwalla (Dead) by LRs Savitri Agarwalla (Smt.) & Ors.* reported in (2004) 3 SCC 178 it has been held as under :-

“6..... It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners...”

9. The above mentioned principle has been reiterated by the Hon’ble Apex Court in FGP Ltd. vs. Saleh Hooseini Doctor and Anr. 2009(10) SCC223.

10. By way of the present petition, the petitioners are trying to make the eviction petition as infructuous and trying to set up a case adverse to that of respondent no.1 which cannot be permitted. The remedy that has been prayed for by the petitioners lies elsewhere and cannot be granted under the current proceedings. Consequently, I find no infirmity in the order of the Ld. Tribunal. The petition being without any merit is hereby dismissed in limine.

Sd/-
M.L. MEHTA, J.

JULY 13, 2012