

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

% **Pronounced on: 29th September, 2021**

+ **CM (M) 320/2021 & CM APPL. 14054/2021 (of petitioner u/S 151 CPC for stay)**

LAXMI DEVI

.....Petitioner

Through: Mr. Varun Dhingra and Mr.
Hemant Choudhary, Advocates.

Versus

INDER DEV SHARMA & ANR

.....Respondents

Through: Mr. Rajendra Kumar Jain,
Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been filed under Article 227 of the Constitution of India against the order dated 15th March, 2021 passed by the learned Rent Control Tribunal, District-West, Principal District & Sessions Judge (RCT), whereby the appeal, filed by the petitioner against the dismissal of her objections to the execution of the order of eviction against the respondent No.2, were dismissed.

2. The facts as are relevant for the disposal of the present petition are that the respondent No.1 had filed a suit for eviction against the respondent No.2, numbered as 53/2008, under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (DRC) claiming to be the landlord of property measuring 55 sq. yards being part of property No.10/13, Gali

No.9, Anand Parbat, Delhi. The learned ARC passed the eviction order dated 24th March, 2012 and vide subsequent order dated 7th April, 2012, the benefit under Section 14(2) of the DRC Act was denied as the respondent No.2 had not complied with the order dated 14th July, 2005 passed under Section 15(1) of the DRC Act. The respondent No.2 preferred an appeal being RCT No.28/2012 which was also dismissed by the learned ARCT (West) vide order dated 9th October, 2012.

3. Thereafter, an Execution Petition No.61934/2016 was filed. It was during the pendency of the Execution Petition that the present petitioner preferred objections initially under Section 151 of the Code of Civil Procedure, 1908 (CPC) dated 15th February, 2013 followed by additional objections under Section 47 of the CPC read with Section 25 of the DRC Act claiming that she was the lawful, rightful and absolute owner in possession of the suit property and was having an independent right to the same having purchased it from Shri Mohan Lal Goyal s/o Shri Jyoti Ram vide Agreement to Sell dated 23rd May, 2003, Receipt of Payment, Possession Letter, registered General Power of Attorney as well as Will, all dated 23rd May, 2003. She has further claimed that she has been in possession of the suit property since then and had also obtained a factory licence from the Municipal Corporation of Delhi (MCD). It was further alleged that the respondent No.1 has never been the owner/landlord of the premises in question and he himself was a tenant under Shri Mohan Lal Goyal. In fact, the premises had been sub-let by respondent No.1 to respondent No.2, who had subsequently surrendered the possession in favour of Shri Mohan Lal Goyal, from whom the petitioner had received the possession.

4. The learned ARC vide order dated 30th September, 2019 concluded that the petitioner had miserably failed to prove her independent right to the suit property and dismissed the objections. In appeal being RCT No.78/2019, the learned RCT vide order dated 15th March, 2021, upheld the said findings, again looking into the evidence referred to by the learned ARC and found that the conclusions of the ARC were justified.

5. Mr. Varun Dhingra, learned counsel for the petitioner submitted that both the courts had erred in coming to these conclusions as it was overlooked that there was some previous litigation between Shri Mohan Lal Goyal and the respondent No.1 through the objector, in which certain admissions had been made to the effect that the respondent No.1 was infact a tenant of the said Shri Mohan Lal Goyal. It is Shri Mohan Lal Goyal from whom the petitioner was claiming ownership to the suit property and that inadvertent typographical errors could not have the effect of denying to the petitioner the right to protect her possession in the suit property. It was further submitted that the documents ought to have been considered by the courts below instead of going by the statement made by the petitioner. Thus, it was prayed that the petition be allowed and the possession of the petitioner be protected under Section 25 of the DRC Act, as she was clearly having an independent right to the suit premises.

6. The learned counsel for the respondent No.1 however submitted, relying on the judgments of the Supreme Court in ***India Pipe Fitting Co. Vs. Fakruddin M.A. Baker*** (1977) 4 SCC 587 and ***Mohd. Yunus Vs. Mohd. Mustaqim*** (1983) 4 SCC 566 that the powers of the High Court under Article 227 of the Constitution of India were limited and the

powers of a Court of Appeal could not be arrogated to itself by the Court. Thus, the arguments based solely on the assessment of evidence by the learned ARC and the learned RCT could not be considered by this Court. Furthermore, it was submitted that the documents relied upon by the petitioner/objector had not been proved as per law. There was no chain of title that was mentioned in these documents to establish that Shri Mohan Lal Goyal himself had any right in the suit property, particularly to transfer title. In the circumstances, the concurrent findings of fact by two courts could not be interfered with, particularly in the absence of any perversity disclosed. Hence, it was prayed that the petition be dismissed.

7. The Supreme Court has laid down in *India Pipe Fitting Co.* (supra) that the scope of inquiry in a petition under Article 227 of the Constitution of India is limited. It would be useful to reproduce the same for convenience:

“5. The limitation of the High Court while exercising power under Article 227 of the Constitution is well-settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well-settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in Waryam Singh v. Amarnath [AIR 1954 SC 215: 1954 SCR 565: 1954 SCJ 290] where the principles have been clearly laid down as follows:

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR 1951 Cal 193] to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

The same view was reiterated by another Constitution Bench of this Court in Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam [AIR 1958 SC 398 : 1958 SCR 1240

: 1958 SCJ 798] . Even recently in *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* [(1975) 1 SCC 858] dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.”

This is also reiterated in *Mohd. Yunus* (supra) and various other subsequent judgements of the Supreme Court. Thus, the Court, not sitting as an Appellate Court, is precluded from reassessing and reevaluating the evidence that has been brought on record by parties. In the present matter, the learned counsel for the petitioner has tried to explain the statement made by the petitioner before the Court as a witness examined to prove her claim in the objections. Thus, the learned counsel has submitted that though in her testimony the petitioner had conceded that she had never met Shri Mohan Lal Goyal from whom she supposedly purchased the suit property, except in Court and has expected this Court to read the name as ‘Mohan Singh’ i.e. respondent No.2 instead of ‘Mohan Lal Goyal’. But such a request cannot be acceded to. Rather, the

fact that such an explanation is now being offered, itself establishes that the courts below have rightly evaluated her testimony in court.

8. With regard to the alleged admission of respondent No.1 that he was a tenant of Shri Mohan Lal Goyal, at best it may cloud his claim of ownership. As rightly observed by the courts below, a landlord for the purposes of an eviction petition on the ground of non-payment of rent, is entitled to seek eviction of the tenant and this right is not restricted only to an owner. Thus, the alleged admission does not defeat the right of the respondent No.1 to have filed an eviction petition under Section 14(1)(a) of the DRC Act against the respondent No.2. The observations of both, the learned ARC and the learned RCT, cannot be faulted with.

9. To claim that the so called admission of the respondent No.1 that he was a tenant of Shri Mohan Lal Goyal was sufficient to prove the independent right of the petitioner would be farfetched. Under Section 25 of the DRC Act, only a person who has a right independent of the tenant, who can claim protection from eviction ordered against the tenant. Clearly therefore, the onus is on the one who is claiming such independent rights. Here, the petitioner was bound to establish her independent title to the suit property. All that she has done is that she has produced Agreement to Sell, Receipts, Possession Letter, registered General Power of Attorney as well as Will, all dated 23rd May, 2003. These documents do not transfer any title to the petitioner. She has even admitted that she does not know whether Shri Mohan Lal Goyal is still alive. Thus, even the Will does not come to her aid. Mere production of these papers without proof of a transfer of title in immovable property i.e.

the suit property to the petitioner does not assist the petitioner at all. This is the conclusion of both the learned ARC as well as the RCT.

10. This Court finds no error in the appreciation of evidence by both the courts below nor do their conclusions reflect any perversity or overstepping of jurisdiction. Neither have they ignored vital evidence nor have they considered irrelevant evidence to come to a conclusion that the petitioner has not been able to establish her independent title to the suit property.

11. The petition lacks merit and is accordingly dismissed along with the pending application.

12. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 29, 2021

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