

**IN THE COURT OF SH. DINESH KUMAR SHARMA
PRINCIPAL DISTRICT & SESSIONS JUDGE /
RENT CONTROL TRIBUNAL, PHC, NEW DELHI**

RCT No. 16/17

Janpath Guest House & Ors. Vs.

Late Sh.Banwari Lal (Through LRs) & Ors.

06.01.2021

Order

1. Vide this order, I propose to dispose off the application u/O 1 Rule 10 CPC r/w Section 151 CPC dated 05.03.2019 whereby the appellants have prayed that Sh.Rajinder Kumar Gupta be also impleaded being a son of Late Sh.Banwari Lal Gupta. It has been submitted that Sh.Rajinder Kumar Gupta is a necessary party. The plea of the appellant is that vide registered will dated 19.06.2000 of Sh.Devi Charan Gupta i.e. brother of Late Sh.Banwari Lal Gupta, it was revealed that he had three sons namely Rajiv Gupta, Sanjay Gupta and Rajinder Kumar Gupta. Sh. Rajinder Kumar Gupta was adopted by his brother Sh.Banwari Lal Gupta on 09.12.1957 and therefore after 09.12.1957 Sh. Rajinder Kumar Gupta became the adopted son of Late Sh. Banwari Lal Gupta. It has been submitted that at the time of death of Late Sh. Banwari Lal Gupta, he had left behind two legal heirs namely adopted son Sh. Rajinder Kumar Gupta and daughter Smt.Shakuntala Gupta. It has been submitted that the respondents/ landlord deliberately concealed this fact that Late Sh. Banwari Lal

Gupta is also survived by his adopted son Sh. Rajinder Kumar Gupta. Sh. Rajinder Kumar Gupta being the LR of Late Sh. Banwari Lal Gupta, original landlord is the necessary party to the present proceedings. It has been submitted that on account of this concealment of fact, the order dated 15.05.2017 is a nullity.

2. The respondents have filed a detailed reply to the application. It has been submitted that the tenant has no authority to challenge the ownership/title of the landlord. In the reply, the respondents have denied that Sh. Rajinder Kumar Gupta was adopted by Late Sh. Banwari Lal Gupta on 09.12.1957. It has been denied that Sh. Rajinder Kumar Gupta become the adopted son of Late Sh. Banwari Lal Gupta. In the reply, the respondents have also submitted that Sh. Rajinder Kumar Gupta had filed a suit for partition against Late Sh. Banwari Lal Gupta, his wife Late Smt. Shanti Devi and their daughter Late Smt. Shakuntala Gupta. The claim of Sh. Rajinder Kumar Gupta was denied by the defendants therein. Thereafter, a settlement dated 22.07.1971 took place between Sh. Rajinder Kumar Gupta on the one hand and Late Sh. Banwari Lal Gupta, his wife Late Smt. Shanti Devi and their daughter Late Smt. Shakuntala Gupta on the other hand. In terms of the said settlement, Sh. Rajinder Kumar Gupta was left with no right, title or interest in any of the property or estate of any kind owned by either Late Sh. Banwari Lal, his wife Late Smt. Shanti Devi or their daughter Late Smt. Shakuntala Gupta existing at that time or in future which

included the demised property no.82, Janpath, New Delhi. The respondents have submitted that the present application may be dismissed.

3. Sh.Satvinder Singh, Ld. Counsel for the appellants has submitted that Sh. Rajinder Kumar Gupta is a necessary party and the respondents/landlord concealed this fact from the court and have committed a grave irregularity. It has been submitted that if Sh. Rajinder Kumar Gupta is not impleaded, it will cause a serious prejudice to the appellants and in the absence of Sh. Rajinder Kumar Gupta, the order dated 15.05.2017 is also nullity. It has been submitted that the application u/O 1 Rule 10 CPC r/w Section 151 CPC may be allowed.

4. Per contra, Sh.Sanjeev Behl, Ld. Counsel for the respondents/landlord has submitted that at the outset this application u/O 1 Rule 10 CPC is not maintainable. It has been submitted that a petition u/S 14 (1) (k) DRC Act can be filed by a landlord. Ld. Counsel for the respondents has also invited the attention of the court to the definition of “landlord” as defined in the DRC Act. It has been submitted that the appellants/tenant has been paying rent to Late Smt. Shakuntala Gupta and thereafter to her LRs and therefore, the appellant/tenant is estopped from denying the landlord tenant relationship between them. It has been submitted that in view of Section 116 of The Indian Evidence Act also, the appellant/tenant is

estopped from questioning the title of the landlord. During arguments, Ld.Counsel for the respondents has submitted that infact, appellants had also issued a notice to Sh. Rajinder Kumar Gupta who vide his reply stated that he has nothing to do with the property in question.

5. I have heard the submissions and have perused the record.

6. Order 1 Rule 10 CPC provides that the court has discretion to add any person as party at any stage of the proceedings, if it is necessary for the determination of the real dispute. Order 1 Rule 10 CPC reads as under:-

“ORDER I -Parties to Suits

“[**1. Who may be joined as plaintiffs.**-All persons may be joined in one suit as plaintiffs where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, where jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.]

10. Suit in name of wrong plaintiff. - (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.”

7. The object of this provision is to enable the Court in such of suit to add a person as a party when it is not able to effectively and

completely adjudicate upon and settle all the questions involved in the suit in absence of that person. The Court under this provision can also strike out an unnecessary party. It is a settled proposition that the provision should be interpreted liberally and widely and should not be restricted merely to the party involved in the case, and all the persons necessary for complete adjudication should be made party. However, the Court exercises the discretion under this provision for impleading only necessary or proper party. It is also a settled proposition that if a party seeking to be impleaded himself demonstrates that it has direct and substantial interest in the subject matter of the suit and that such interest would be effected directly by the decree, order may be passed in the suit that it must be necessary for inserting the issues arising in the suit. It is pertinent to mention here that the necessary party is one without whom no order can be effective and the proper party is one who is necessary for complete and final decision of the questions involved. If impleadment of a person changes the complex of the litigation, such person is neither necessary for the decision of the questions involved in the proceedings nor to effectively and completely adjudicate upon and seek questions involved in the case and, therefore, such a person is neither necessary nor a proper party. The touchstone for impleading a party is to ensure complete and effective adjudication of the subject matter.

8. In the present case, the plaintiff has sought to be impleaded Sh. Rajinder Kumar Gupta, whom the appellant states that he is the

adopted son of Late Sh. Banwari Lal. The respondents have denied this fact. It is also relevant to note that even if the best plea of the appellant is accepted, even for the sake of arguments, Sh. Rajinder Kumar Gupta is not a necessary party or a proper party, as the petition has been filed by the landlord.

9. The definition of landlord as provided u/S 2(e) of the DRC Act, 1958 makes it clear that if the tenant is paying rent to any individual, the tenant is estopped from denying the relationship of landlord tenant. It has not been denied that the appellants have not been paying rent to Late Smt. Shakuntala Gupta or her LRs. It is settled proposition that even the co-owner can file the eviction petition and the tenant has no right or authority to challenge the title of the owner/landlord. The respondents have specifically denied that Sh. Rajinder Kumar Gupta is an adopted son of Late Sh. Banwari Lal Gupta. In the eviction proceedings this court cannot go into the question to ascertain the adoption of Sh. Rajinder Kumar Gupta. The eviction petition is maintainable even if being filed by the landlord only. I consider that the present application is not tenable and has no substance in the eyes of law.

10. Thus, in view of the discussions made hereinabove, the application dated 05.03.2019 u/O 1 Rule 10 CPC r/w Section 151 CPC is dismissed with a cost of Rs.1000/-.

(Dinesh Kumar Sharma)
Principal District & Sessions Judge/RCT
New Delhi/06.01.2021

**IN THE COURT OF SH. DINESH KUMAR SHARMA
PRINCIPAL DISTRICT & SESSIONS JUDGE /
RENT CONTROL TRIBUNAL, PHC, NEW DELHI**

RCT No. 16/2017

Janpath Guest House & Ors. Vs. Banwari Lal (Through LRs) & Ors.

06.01.2021

ORDER

1. Vide this order, I propose to dispose of an application under Order 1 Rule 10 read with Section 151 CPC dated 19.12.2019, whereby the appellants have submitted that the NDMC is necessary party for the just decision of the case and, therefore, the NDMC may be impleaded.

2. It has been submitted that on 14.11.2019, the appellants came to know about Circular No. 24(372)/2000-CDN dated 24.06.2003 issued by the Ministry of Urban Development & Poverty Alleviation L&DO, in which at point No. III under the head of Misuse and Unauthorized Construction, it has been provided as below:

**“III. MISUSE AND UNAUTHORIZED
CONSTRUCTION**

As already decided, the unauthorized construction and misuse of the building shall continue to be taken care by the NDMC/MCD/DDA etc. under their bye-laws/regulations. The DDA and the local bodies

should take coordinated action to curb violations and unauthorized construction. Accordingly, the lease administering authorities may permit conversion of all leased properties irrespective of any building violations or use violations that may exist, subject to recovery if misuse charges/damages charges as applicable under the guidelines of the lease administering authorities whether earlier demanded or not.”

3. It has been submitted that in view of the clear and unambiguous wordings of the above circular, it is crystal clear that the NDMC is the just and necessary party to the present proceedings, since the NDMC is the authority to decide the unauthorized construction and misuse of the property as admittedly the property in question i.e. 82, Janpath, 2nd Floor, New Delhi falls under the jurisdiction of NDMC.

4. Sh. Satvinder Singh, Ld. Counsel for the appellants has submitted that the NDMC is the just and necessary party to the present proceedings in view of Circular No. 24(372)/2000-CDN dated 24.06.2003. It has further been submitted that if the NDMC is not impleaded as party, it would be difficult for this Court to reach to the just decision of the case.

5. Per contra, Sh. Sanjeev Behl, Ld. Counsel for the respondents has submitted that the present application is malafide. It has further been submitted that in fact this Court has dismissed RCT

Appeal No. 210/2016, whereby the order dated 28.01.2010 was upheld. It has further been submitted that the only question left to be decided is misuse charges and the eviction order pursuant to the same. It has further been submitted that even during the pendency of the proceedings for ascertaining the misuse charges, the appellant had moved an application for summoning the NDMC, which application was dismissed by Ld. ARC vide order dated 17.08.2016 against which a separate Appeal No. 221/2016 is pending before this Court. It has further been submitted that there is no need to implead the NDMC as party in the present proceedings.

6. Ld. Counsel for the appellant has submitted that the application moved before the Ld. Trial Court for summoning the NDMC was only in regard to the site plan and, therefore, the order dated 17.08.2016 and Appeal No. 221/2016 has no bearing on the present application.

7. I have considered the submissions and perused the record carefully.

8. Order 1 Rule 10 CPC provides as under:

“ORDER I - PARTIES TO SUITS

[1. Who may be joined as plaintiffs.-All persons may be joined in one suit as plaintiffs where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or

transactions is alleged to exist in such persons, where jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.]

10. Suit in name of wrong plaintiff. - (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.”

9. The object of this provision is to enable the Court in such of suit to add a person as a party when it is not able to effectively and completely adjudicate upon and settle all the questions involved in the suit in absence of that person. The Court under this provision can also strike out an unnecessary party. It is a settled proposition that the provision should be interpreted liberally and widely and should not be restricted merely to the party involved in the case, and all the persons necessary for complete adjudication should be made party. However, the Court exercises the discretion under this provision for impleading only necessary or proper party. It is also a settled proposition that if a party seeking to be impleaded himself demonstrates that it has direct and substantial interest in the subject matter of the suit and that such interest would be effected directly by the decree, order may be passed

in the suit that it must be necessary for inserting the issues arising in the suit. It is pertinent to mention here that the necessary party is one without whom no order can be effective and the proper party is one who is necessary for complete and final decision of the questions involved. If impleadment of a person changes the complex of the litigation, his or her person is neither necessary for the decision of the questions involved in the proceedings nor to effectively and completely adjudicate upon and seek questions involved in the case and, therefore, such a person is neither necessary nor a proper party. The touchstone for impleading a party is to ensure complete and effective adjudication of the subject matter.

10. In the present case, the appellant has submitted that the NDMC is necessary party in view of Circular No. 24(372)/2000-CDN dated 24.06.2003, whereby it has been decided that unauthorized construction and misuse of the building shall continue to be taken care by the NDMC/MCD/DDA etc. under their bye-laws/regulations. I consider that merely on the basis of this circular, the NDMC cannot be impleaded for the simple reason that the said circular is a public document and the Court can always take judicial notice while deciding such issues. It is also pertinent to mention here that as far as the unauthorized construction and misuse of the premises are concerned, the order dated 28.01.2010 passed by Ld. ARC has been upheld and the Appeal No. 210/2016 has been dismissed.

11. In view of the above discussion, there is no substance in the present application and the same is dismissed with a token cost of Rs.1000/-.

(DINESH KUMAR SHARMA)
Principal District & Sessions Judge/
Rent Control Tribunal, PHC
New Delhi/06.01.2021

**IN THE COURT OF SH. DINESH KUMAR SHARMA
PRINCIPAL DISTRICT & SESSIONS JUDGE /
RENT CONTROL TRIBUNAL, PHC, NEW DELHI**

RCT No. 16/2017

Janpath Guest House & Ors.

...Appellants

Versus

Banwari Lal (Through LRs) & Ors.

...Respondents

06.01.2021

ORDER

1. Vide this order, I propose to dispose of an application dated 12.09.2019, whereby direction has been sought for Respondent No. 2/L&DO to file response/reply to the appeal and to the applications filed by the appellant.

2. It has been submitted that R-2/L&DO, in order to give undue advantage to Respondent No. 1, has not filed reply to the appeal and to the applications nor have they clarified the true facts before this Court. It has further been submitted that R-2/L&DO may be directed to give appropriate reply to the appeal and other applications filed by the appellant in order to proceed

with the matter in fair manner.

3. Sh. B.C. Bhatt, Ld. Counsel for R-2/L&DO has submitted that the relevant document has already been filed. It has further been submitted that with direction of the Court, other documents, if required, would be filed. It has further been submitted by Ld. Counsel that as per the instructions received, he does not wish to file reply to the appeal and other applications filed by the appellant.

4. Sh. Satvinder Singh, Ld. Counsel for the appellant has invited attention of the Court towards the order dated 02.11.2020, wherein Ld. Counsel for R-2/L&DO stated that notice may be issued to R-2/L&DO to produce the relevant record on the next date. It has further been submitted that in pursuance to the order dated 02.11.2020, Ms. Katyani Mathur and Sh. V. Ramakrishna, Superintendents, L&DO had appeared. It has further been submitted that the document brought by these officials may be taken on record.

5. Sh. B.C. Bhatt, Ld. Counsel for R-2/L&DO has already made statement at bar that he has instructions and he does not want to file reply to the appeal or other applications. It has further been submitted that the relevant document have already

been filed and if required, other documents would be filed as per directions of the court.

6. I have considered the submissions and perused the record carefully.

7. In the application, there is no mention of any particular document. I consider that if the Court would require assistance of L&DO during disposal of the appeal on merit and those documents may be called specifically. I consider that in view of the statement of Sh. B.C. Bhatt, Ld. Counsel for L&DO, there is no substance in the present application and the same is dismissed.

(DINESH KUMAR SHARMA)
Principal District & Sessions Judge/
Rent Control Tribunal, PHC
New Delhi/06.01.2021