

IN THE COURT OF MS SURYA MALIK GROVER,
ADDITIONAL DISTRICT JUDGE-01 (SOUTH EAST),
SAKET COURTS, NEW DELHI

CS. No. 11167/16

1). Kamal Arora

S/o Sh. Pran Nath Arora
R/o D-17, Amar Colony
Lajpat Nagar-IV
New Delhi-24

2). Mrs. Veena Jhamb

D/o Sh. Pran Nath Arora
R/o F-154, Mansarover Garden,
New Delhi

3). Mrs. Sangeeta Arora

W/o Kamal Arora
R/o D-17, Amar Colony
Lajpat Nagar-IV
New Delhi-24

.... Plaintiffs

Vs.

1). M/s R.K. Bhutani & Sons (HUF)

Through Karta Mr. Raj Kmar Bhutani @ R.K. Bhutani
S/o Sh. Ram Bhutani
R/o D-70A, 2nd floor, East of Kailash
New Delhi-65

2). Mr. Manish Gulsia
S/o UdeskKumar Gulsia
R/o D-69, East of Kailash
New Delhi-65

... Defendants

ORDER

06.12.2018

1) By virtue of this order, application under Order 39 Rule 10 CPC seeking directions to defendant no. 1 and 2 to deposit last drawn admitted rent is being disposed of.

2) It is argued by Ld. Counsel for plaintiffs that they have filed a suit seeking partition, possession and damages with respect to first floor of property bearing no. 9, Community Center, East of Kailash, New Delhi (**henceforth referred to as suit property**). Plaintiffs claim to be owners of the 60% undivided share in the suit property while defendants are 40% owners of the same. It is further argued that the suit property was under the tenancy of Sh. Tika Ram Jaiswal who was inducted by the plaintiffs and predecessor in interest of defendants.

3) Further, a suit seeking injunction was filed against the said tenant by defendant no.1 purchaser of 40% share of suit property

alongwith defendant no. 2 and subsequently a settlement was arrived at between the parties and possession of the tenanted premises was handed over by Sh. Tikam Jaiswal to the defendant no. 1. It is further submitted that property was having a monthly rental of Rs. 23,000/- till 31.12.2008 and thereafter, there was enhancement of rent @ 15% per annum, on account of which the premises lastly fetched a rent @ Rs. 26,450/- from 01.05.2009 onwards. Hence, it is submitted that the defendants are enjoying the rent of the entire suit premises after the collusive settlement with the previous tenant and retaining 60% of the rent which otherwise has to fall to the share of the plaintiffs. Hence, it is prayed that defendants may be directed to pay 60% of the last admitted rent of the suit premises i.e. Rs.15,870/- from February 2014 onwards @ 15% p.a. till final disposal of suit on merits alongwith annual enhancement.

4) Application has been resisted by the defendant no. 1 on the grounds that plaintiffs have concealed true facts from this Court that Sh. Raj Kumar Bhutani who is the Karta of defendant no. 1 HUF had made a payment of advance consideration amount of Rs. 2.5 lacs in favour of plaintiff no.3 under an oral Agreement dated 10.06.2008 towards the purchase of alleged 60% share of the plaintiffs in the suit property. However, the transaction of sale had to be kept in abeyance on account of dispute with the erstwhile tenant Sh. Tikam Jaiswal as also pendency of dispute raised by Sh. A.K. Gupta, HUF who is

falsely claiming mezzanine floor as first floor. Moreover, the factum of vacation of suit property to defendant no.1 was intimated by Sh. Tikam Jaiswal to the plaintiffs as also defendant no. 2 alongwith relevant documents and same had been got vacated after paying a hefty consideration of Rs. 15 lacs as also loan of Rs. 2 lacs and therefore, the plaintiffs are not entitled to any share in the rent received from Sh. Tikam Jaiswal or any other subsequent tenant. Hence, application is liable to be discussed.

5) I have given careful consideration to the submissions advanced in the light of the judicial record.

6) It is undisputed that plaintiffs were owners of 60% undivided shareholding in the suit property and defendants had acquired around 40% shareholding in the said property. Further, it has also been admitted by defendant no.1 that he had got the tenanted premises vacated from Sh. Tikam Jaiswal, erstwhile tenant on 25.01.2014 for a settlement amount of Rs. 15 lacs and a further loan amount of Rs. 2 lacs. As such, defendant no. 1 has conceded that he is in possession of the entire suit premises. However, parties are at dispute as regards whether or not any oral Agreement to Sell had been entered into between the plaintiff no.3 and defendant no.1 on 10.06.2008 for a consideration amount of Rs. 2.5 lacs. In my considered opinion, same is a matter of trial, which can be adjudicated only after detailed

evidence is led. Meanwhile, defendant no.1 having admitted that they are drawing the rent of the entire suit premises, being in possession of the same since February 2014, I deem it appropriate to direct defendant no. 1 to deposit 60% of the last admitted monthly rent i.e. Rs.15,870/- in the Court for a period of 59 months from February 2014 onwards till December 2018 alongwith 15% annual enhancement of rent from January month of each successive year within four weeks from today. Defendant no.1 is further directed that he shall deposit the rent on a monthly basis from January 2019 onwards in the Court by the 7th day of each consecutive month till final disposal of the suit on merits. Needless to say, release of the same shall be subject to the final outcome of suit on merits.

7) Nothing herein shall tantamount to my expression on the merits of the case.

8) Accordingly, application is disposed of.

**Announced in open court
on 06.12.2018**

**(Surya Malik Grover)
ADJ-1(South East) Saket Court
New Delhi**