

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1844 of 1998 (O&M)

Date of decision:11.03.2015

Sudhir Kumar Jain

... Petitioner

versus

Smt. Vijay Kumari (since deceased) and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.D. Bansal, Advocate,
for the petitioner.

Mr. Shamsheer Singh, Advocate,
for Mr. Harkesh Manuja, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The petition for eviction was brought by a person claiming to be a landlord under oral tenancy with the respondents.

The petitioner sought to contend that the rent was ₹80/- per month and it was stopped being paid from the year 1981. The respondents denied the tenancy and pleaded that their father Khillu Ram got possession of one room on permission from one Mam Chand who had migrated from Pakistan to India at the time of partition. They also set up some pleas regarding a purchase of property. The court

found that the oral tenancy was not established. The appellate court confirmed the same. The revision is against the orders of the courts below.

2. The learned counsel for the petitioner would submit that the defendant had admitted a tenancy of 2/3rd share from the petitioner's predecessor Mam Chand and the courts below had not properly considered the same. The counsel would also argue that the defendant set up a case of purchase of the properties in the year 1987 but they had failed to produce the document. The courts below did not also refer to the fact that the municipal records made reference as petitioner's predecessor Mam Chand as the owner and the defendant's predecessor Khillu Ram as the occupier which was a corroborative evidence of the petitioner's plea on tenancy.

3. Before the courts below, the defendant had also examined. DW3, one Mam Chand, who referred to the property as the property belonging to his predecessor and that the property had been transferred in favour of the respondent through registered instrument. While the petitioner examined three witnesses, each one of them claiming to know the tenancy, the respondents examined three independent witnesses. While analyzing the evidence given by the witnesses, the lower appellate court referred to the evidence of PW2, 3 and 4, each one of them admitting in the cross-examination about the lack of knowledge of any such tenancy arrangements. Of

the respondents' evidence, the lower appellate court observed that DW3's evidence was crucial, for, he, as a person, who claimed a right under the original owner Manphool stated that he had transferred the property and the respondents themselves were owners of the same. No doubt the original sale deed had not been produced but when the court was considering about the quality of evidence tendered by the petitioner on whose shoulder lay the burden of proof of establishing the jural relationship, the court found the evidence on the side of the petitioner to be grossly deficient.

4. I only wanted to examine whether there was any form of admission by the respondents relating to the tenancy in their favour or their predecessor's favour which would make possible to treat himself as a landlord. The admission is in the first place not unequivocal. If there is a reference to a lease in favour of their father by one Mam Chand, it is in the context of saying that Mam Chand was a Document Writer and being a clever person, he had got several documents executed in his name from their father Khillu Ram. The devolution of interest in favour of the petitioner and the recognition of the respondents and tenants under the petitioner has not been admitted anywhere. On the other hand, the petitioner attempted to say that Mam Chand had executed a Will in his favour and the document was filed as P2. The court had observed that the Will had not been proved in accordance with law but also added that

the proof itself was not very relevant since the court was not deciding on title and it was concerned only with proof of jural relationship between the petitioner and the respondents. There has been no evidence of attornment of tenancy by the respondents in favour of the petitioner. There is no pleading anywhere that there was any form of attornment in favour of the petitioner and there is no proof that any rent was paid by any of the respondents to the petitioner at any point of time. Indeed, the petition itself is founded on a plea that the respondents have not paid the rent at all and they should be evicted on that ground as well.

5. The issue relating to the lack of proof of jural relationship is essentially a question of fact and if any inference could be drawn on oral evidence, it ought to be on the basis of concrete and unassailable evidence that could be placed before the court below. Both the courts found that there was no such material evidence to secure the petitioner's relief which he was seeking for. I find no serious error for an intervention in the revision petition.

6. The orders of the court below are maintained and the petition is dismissed. The petitioner is at liberty to resort to an action for establishing his title and for recovery of possession which will consider the fact of the respondents not filing the document of sale claimed by them which surely was not relevant for consideration before the Rent Controller or the appellate Court, in

the same way as the petitioner himself did not find it necessary to offer proof of the Will, for the case was wholly tested on the proof of tenancy which was not done.

7. The revision petition is dismissed but with the above observations.

(K.KANNAN)
JUDGE

11.03.2015
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