

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

CR No.2294 of 2008 (O&M)

Date of decision: 05.08.2015

Ajit Kumar

... Petitioner

versus

Manjinder Pal Singh

.... Respondent

2. CR No.273 of 2010 (O&M)

Surjit Singh

... Petitioner

versus

Ajit Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. C.B. Goel, Advocate for the petitioner.

Mr. Pritam Saini, Advocate for the respondent.

K.Kannan, J.

The landlord is in revision against the order allowing the appeal filed by the tenant. He had obtained an order of eviction before the Rent Controller on a plea that he required the premises for settling his son in his cloth business. The petition for eviction was filed along with yet another petition of another adjacent shop. The property in the hands of the tenant and another tenant which is the subject matter of revision in CR No. 273 of 2010 comprised of dimension of small size, namely 7'-2" x 4'-9"

for the tenants in the instant case and 9'-9" x 4'-11" for the tenant which is the subject matter in CR No. 2294 of 2008. The landlord's contention was that the son had been unemployed and since the property was still in the hands of the tenant he had established shop in the passage immediately adjoining the shops in the hands of the tenants in the instant case. According to him the property was required for bonafide necessity.

The tenant contended that the landlord's son had established the shop which has shutters and of premises larger in dimensions than that of his own shop. The tenant was relying on several documents of orders and receipts from the public authorities like Electricity Board, Commercial Tax office etc. to show that landlord's son was having a cloth business which was even larger in size than his own and only out of the business rivalry and jealousy the landlord was seeking for ejectment of a tenant of a small portion.

The Rent Controller found the need to be genuine on a reasoning that the shop in the hands of the landlord's son was at the passage and made reference to the rough plan filed along with the petition to assess its location and the evidence given by the father on behalf of the son.

The Lower Appellate Court reversed the decision to hold that the rough plan was not authenticated and the person who had drawn the plan was not examined. The photographer who had taken the photographs had also not been examined. The son on whose behalf the need was set forth was also not examined. The property was also not shown to be the part of the passage and the evidence showed that the landlord son was

having his business in cloth in larger premises than the tenanted premises. The Appellate Court, therefore, rejected the contention of the landlord and reversed the decision of the Rent Controller who had ordered the eviction.

Learned counsel appearing on behalf the landlord argues that the aspect to the case which is not even disputed at the trial was taken centre-stage by the Appellate Authority to make reversal of the decision. The counsel would refer me to paragraph No.3 of the petition where he had stated that his son Parveen Kumar was residing with him and since he was without any work he got him started in cloth shop in a passage which was not possible to run the business and that except this place and business, he had no other source of income. The counsel would refer me to the fact that this aspect of the case that the shop had been established in makeshift place and that it was in a passage was not even denied in the reply filed by the tenant. He would refer to the plan filed which shows that the place where the landlord has located his son for establishing a shop is a passage that runs alongwith the tenant's shop and heads towards the residential portion of the house. It would seem that it is a narrow alley and the landlord would place his requirement as genuine by reference to the fact that as a owner of shops which he had rented out when his son had not come of age cannot allow for a permanent forceful abdication of his right to his own premises when imperatives of eviction became obvious when the son was required to be suitably prepared to set up his own life.

The learned counsel appearing on behalf of the tenant points out to the fact that the shop which he is occupying is a small one and he caters to the needs of the small time customers and it will be too harsh to

eject him out of the premises. He would even make an argument apart from reading the observations of the Appellate Court that found the tenant's contention to be true that he would be willing to shift himself to the shop that has been vacated by yet another tenant and allow for the landlord to retain the passage and the shop in his occupation so that the landlord would have one large piece of property. I will not take this to be a concession made by the tenant giving up his right but I would see this to be a willingness to accommodate himself if he can allow for continuance of his business.

I put it up to the counsel appearing on behalf of the landlord whether the proposal given by the tenant is acceptable but he would stand his ground and say that he had never disturbed the tenant at any time so long as there was no need for establishing their own business and when the occasion came when the son had gained his status at a very modest level and when he had to be set him up in his life, he required the premises for the bonafide need of his son and the tenant cannot hold on to the property any longer. If parties cannot help themselves to involve in meaningful dialogue I feel only constrained to examine the case from a very limited prospective of assessing whether the need of the landlord to be genuine or not. It might seem harsh if the tenant who occupies a small portion, to be asked to go but if it is brought under a situation where the landlord has located his son only in the passage leading to his house and causes inconvenience which he was prepared to suffer due to inevitable circumstances when the tenant was in possession under the prospect of securing eviction. If his petition were to be allowed, the proposal cannot

be used against the landlord to say that he ought to got accustomed to the inconvenience that he inflicted on himself. I find no logic in an approach by the Appellate Court that the property was not a passage when it was not denied in the reply. It was also not correct for the Appellate Court to say that the person that drew the plan or who took the photograph was not examined. I have not been shown through any particular part of the evidence where the plan was found to be wrongly drawn or the photograph did not depict the actual physical feature of the property as shown. These were literally trivial matters for the Appellate Court to take for a reversal of the ruling of the Rent Controller. The Appellate Court is a court of fact and if he makes reversal of the decision of a Court below which has also assessed the facts, it ought to be on substantial variation between the evidence and pleadings or inconsistencies in versions of the witnesses themselves. There exists no such serious fallibility in evidence or appreciation of evidence by the Rent Controller for subjecting the decision for modification. There are also certain approaches from our Court itself that if the landlord seeks for eviction for his son, the son must also be examined. In my view, it would be stretching a logic too far for a requirement could not be any more than proving that what would apply to him ought to apply for the son as well. They would mean if the landlord is required to prove that he did not own any other property nor did he vacate any property without reasonable cause, the same requirement ought to be for his son as well, viz, that son had no other property or he had not disabled himself by deliberately vacating the property without reasonable cause. In such an eventuality the son might be required to explain his own

conduct and non-examination would obtain relevance. There can be no compulsion for the son to be examined at all times where the father who is in the know of things and who wants to establish the business for his son gives evidence on his behalf. There is nothing particularly unique about the evidence that is required for the personal necessity for establishing a small size shop to require the evidence of son also. Situation might be different where the business sought to be run is in some way a technical job and the bonafides of setting up such an avocation could be spoken more competently by the person who is going to establish a shop. The road side shop with access directly from the pavement requires no greater skill, except perhaps adequate capital and the necessary propensity to talk to customers and attract business. I therefore, find it wholly inappropriate for the Appellate Court to find that the son's non-examination was material to reverse the finding of the Rent Controller.

I find the decision of the Appellate Court to be erroneous and the reversal made on wholly inadequate grounds pointed out above. The order of the Appellate Court is set aside and the order of eviction passed by the Rent Controller is restored. Time for eviction 3 months.

The counsel for the landlord says that tenant is in arrears for several months. It is open for the landlord to obtain the arrears in the manner known to law.

CR No. 273 of 2010

The counsel for the landlord states that he has taken the possession of the property. Perhaps the tenant is under belief that the case could not be argued on merits under the present circumstances when he

has lost possession.

The civil revision petition is dismissed in default for non-prosecution.

(K.KANNAN)
JUDGE

05.08.2015

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