

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

Civil Revision No.1160 of 2014 (O&M)

Date of decision: 20.04.2015

Jaswant Singh son of Shri Amar Singh

... Petitioner

versus

Jagjit Singh Mangat son of Shri Sadhu Singh Mangat.

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Bahl, Senior Advocate,
with Mr.Divanshu Jain, Advocate,
and Mr. Nitish Garg, Advocate,
for the petitioner.

Mr. Nitin Thatai, Advocate,
for the respondent.

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 civil revision is against the order declining the leave to defend in a petition filed by the person claiming to a landlord under Section 13-B of East Punjab Urban Rent Restriction Act of 1949. The landlord was the brother-in-law of the person said to be a tenant. The petition was rested on a plea that the tenant had surrendered possession of the property in the year 2003 but re-entered possession unlawfully with the assistance of 30 to 35 persons that led to lodging of a criminal complaint. The landlord

would state that the criminal case ended in a conviction against the tenant. The landlord's contention is that the demised premises was a part of a larger complex of buildings comprising of 38 shops and he has been able to secure possession of only some of the shops and he would require the demised property also to demolish all the buildings and erect new structures for his own business.

2. The learned senior counsel for the petitioner would contend that in the light of the landlord's own contention that the defendant is a trespasser, an action for ejectment under Section 13-B does not lie. His further contention is that if the landlord had taken possession of some of the buildings and he would require the remaining, it would partake the character of requirement of additional accommodations, in which case, the court shall normally grant leave to defend in the light of law laid down in **Santosh Devi Soni Versus Chand Kiran-2001(1) SCC 255**. The counsel for the respondent would support the order passed by the court below to say that the criminal court, while convicting the tenant, has held his own status to be only that of a tenant and he cannot be permitted to take up an inconsistent version as it is sought to be done now.

3. An ejectment petition will be considered on what the landlord says as regards the subsistence of the status of tenancy. If the defendant-tenant, therefore, seeks for leave to defend pointing out to the landlord's version, it must be at least taken that there is a

prima facie defence which would merit consideration and cannot be thrown out at the threshold. It may be that the landlord has an explanation to offer or a circumstance to resile from admission made to the statement made by him in his petition denying the respondent's status, but it will be wrong to deny the tenant a right of defence in a case, which on its face cannot be prosecuted with the kind of assertions made by the person claiming to be a landlord. I will make no observations about the effect of the criminal court judgment on its finding regarding jural relationship. I will not also enter into an issue of whether the tenant can claim a right of purchase or plead that his own continuance in possession could be in any character other than as tenant, when the tenancy is not from the present landlord but from the tenant's father-in-law. Those contentions could be taken only in the written statement which shall be permitted to be filed and the case taken up and disposed of in accordance with law. The fact that the case is one of additional accommodation for the landlord is also a good ground to allow the defendant to be permitted to file his written statement for a consideration of the whole case on all the material particulars.

4. The order passed already is set aside and the civil revision is allowed. It is stated that the landlord is 70 years of age and the Rent Controller will consider the case for expeditious disposal.

5. There is an application in CM No.4218-CII of 2014 for determination of mesne profit. That application would not be considered now on merits, for, if I have given an opportunity to defend, the question for determination of mesne profit does not arise. Application is dismissed.

(K.KANNAN)
JUDGE

20.04.2015
sanjeev