

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

**CR No.1509 of 2015 (O&M)
Date of decision : 01.05.2015**

Luxmi Devi

.....Petitioner

Versus

Ravinder Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Mohamad Yousaf, Advocate,
for the petitioner.

GURMIT RAM, J.

1. This revision petition is preferred by the petitioner-Luxmi Devi, who was tenant before the learned Rent Controller against the order dated 15.02.2012 passed by the learned Rent Controller, Malerkotla vide which the ejectment petition filed for evicting the respondent (tenant) from the demised shop was accepted and the judgment dated 11.11.2014 passed by the learned Appellate Authority, Sangrur vide which the appeal preferred by the petitioner herein (tenant) against the aforesaid order dated 15.02.2012 of learned Rent Controller was dismissed.

2. The case of respondent No.1 herein who was petitioner before the learned Rent Controller in brief was that Des Raj and others residents of

Ahmedgarh, Tehsil Malerkotla were originally the owners/landlords of the demised shop. Mam Raj (since deceased) resident of Ahmedgarh took the demised shop on rent from aforesaid Des Raj and others on 01.01.1989 for a period of one year at the rate of ₹20/- per month vide a rent note. After getting the shop on rent said Mam Raj started the business of selling vegetables in it. The rent was later on mutually enhanced from ₹20 to ₹25 per month. The said Mam Raj, original tenant had expired on 23.10.1993 and after his death respondent Nos. 1 and 2 who were his widow and daughter respectively inherited the tenancy rights, who occupied the demised shop being legal heirs of said Mam Raj. In a family settlement dated 07.04.1996, the demised shop fell to the share of respondent No.1 herein (landlord) Ravinder Kumar and since then he is the owner/landlord of this shop. Petitioner herein (tenant) alongwith respondent No.2 herein as such became tenant under him in the demised shop, hence there exists relationship of landlord and tenant between the parties qua demised shop.

It was further case of the respondent No.1 herein/landlord that petitioner and respondent No.2 herein had sublet the demised shop to respondent No.3 (herein) about three years back without his consent. They delivered exclusive possession of the demised shop to said respondent No.3 as sub-tenant, who at present is exclusively running the business as vegetable merchant in this shop. It was also the case of the respondent No.1 herein (landlord) that he requires the demised premises for his personal use and occupation, since he is intending to start his own business in the demised shop. Hence was the ejectment petition.

3. On receipt of notice, petitioner herein (tenant) put her appearance in the Court and in her written statement she had denied that Desraj etc. were originally the owners/landlords of the demised shop. But in this regard it was admitted by her that Mam Raj, her husband and father of respondent No.2 was the tenant in the demised shop who took the same on rent about 40 years back from Des Raj. Then it was also admitted that original tenant Mam Raj had expired and after his death, the tenancy rights were inherited by petitioner (tenant) and respondent No.2 herein. Respondent No.2 is stated to be married and residing in her in-laws house. Since there was no male member to support petitioner herein (tenant), so she was selling vegetables in the demised shop in order to earn her livelihood after death of her husband. It was denied that demised shop had come to the share of Ravinder Kumar in a family settlement. The rent note as well as family settlement as alleged by the respondent No.1 herein (landlord) were stated to be forged and invalid documents and not admissible in evidence. It was specifically pleaded that respondent No.1 herein is neither the owner/landlord of the demised shop nor petitioner and respondent No.2 herein were tenants under him. Relationship of landlord and tenant between the parties qua the demised shop was also denied. Then it was also denied that respondent No.1 herein (landlord) required the demised premises to run his business in it. Rest of the averments were also denied.

After completion of the pleadings, nine issues in total were framed. Issues No.1, 2, 6 and 7 were not pressed at the time of the arguments by the parties concerned. On the issue No.4, the findings were

recorded that there exists relationship of landlord and tenant between the parties. On issue No.5 it was concluded that demised shop is required by respondent No.1 herein (landlord) for his own use and occupation. So the ejectment petition filed by the respondent No.1 herein (landlord) for ejectment of the (tenant) from the demised shop was accepted by the learned Rent Controller, Malerkotla vide impugned order dated 15.02.2012. Then the present petitioner (tenant) filed an appeal before the learned Appellate Authority, Sangrur which was dismissed vide the impugned judgment dated 11.11.2014.

4. Being aggrieved from the order/judgment passed by both the Courts below, the petitioner (tenant) has come up before this Court vide the instant revision petition.

5. Counsel for the petitioner was heard and record was also perused.

6. The learned counsel for the petitioner has contended that both the learned Courts below have not properly appreciated the evidence on record and pleadings of the respondents while passing the impugned order / judgment. In the ejectment petition, respondent No.1 herein (landlord) has simply mentioned that demised shop is required by him for his personal use, without disclosing any particulars of his personal requirement. The Courts should not have allowed the petition on the basis of this sole averment, when there is no evidence corroborating the same. Then it is further contended that it has come on the record in the statement of respondent No.1 herein (landlord) that he has three sons, who all are settled. His own

age as has come on the record is about more than 64 years. Then he has also submitted that statement of AW-2 Om Parkash recorded in his chief cannot be looked into for deciding the matter in issue since this witness did not come to face cross-examination. The plea of respondent No.1 herein (landlord) that he has become the owner of the demised shop on the basis of family partition dated 07.04.1996 has remained un-proved on the record since the said family settlement has not been duly proved on the file nor there is any other evidence to show that respondent No.1 herein (landlord) is owner of the demised shop. Since this respondent No.1 has failed to prove his ownership qua the demised shop, so the instant ejectment petition on his behalf is not tenable. Lastly he has contended that it was also not proved on the record that there exists relationship of landlord and tenant between the parties, since it is the admitted case of both the parties that Mam Raj, husband of the present petitioner (tenant) had taken the demised shop on rent from Des Raj and not from respondent No.1 herein (landlord).

7. In the case in hand, it is an admitted fact that shop in dispute was taken on rent by Mam Raj-husband of petitioner herein (tenant) about 40 years back from Des Raj. On this point, it is the case of respondent No.1 herein (landlord) that originally Des Raj and others were the owners / landlords of the demised shop, whereas this fact is denied by the present petitioner (tenant). Then it was also the stand of petitioner herein (tenant) that the demised shop was not taken on rent from the present respondent No.1/landlord. Death of Mam Raj, the original tenant was admitted. Then it was also admitted that after his death the tenancy rights qua the demised

shop were inherited by petitioner-tenant and respondent No.2 herein being the legal heirs of Mam Raj (since deceased) and they came into possession of this shop. Statement of AW-4 Rakesh Kumar is found to be most material to decide the abovesaid controversy between the parties. It is in his statement that Des Raj one of the previous owners/landlords of the demised shop was his grandfather. So as such, this witness might be in position to know about the material facts regarding the tenancy in question being relating to the family of Des Raj and others. It is also in his statement that Chunni Lal scribed the rent note Ex.A1 in question in his presence and that Mam Raj had put his signatures in Hindi on it, after admitting it to be correct. Then there is an entry made in the assessment register for the year 1998-99 to 2003-04 Ex.A4 of Nagar Council, Ahmedgarh, wherein Mam Raj was recorded to be in occupation of the demised shop. Then this witness is also one of the attesting witnesses of the alleged family partition/settlement Ex.A2. It is in his statement that vide this settlement the shop in dispute fell into the share of petitioner-Ravinder Kumar (respondent No.1 herein). Then the respondent No.1 herein (landlord) as AW-1 before the learned Rent Controller has also stated about this rent note Ex.A1 and family partition/settlement Ex.A2.

8. The learned Rent Controller has rightly applied the case law to this case as laid down by the Hon'ble Apex Court in ***S.C. Leekha vs. Air Commodore Mohinderjit Singh 1998 (2) RCR 304***. It was held in this case law that tenant has no right to challenge the relationship of landlord & tenant and family partition amongst the co-owners of the premises in

summary proceedings initiated for ejectment of tenant from demised premises under the Act. The family partition, if any, pleaded by the landlord is to be taken to be correct.

Moreover, the present petitioner (tenant) is not a party to the alleged family settlement Ex.A2 nor she is co-sharer in the demised shop. None of the alleged co-owners has come forward to challenge the validity of this family settlement. So even if statement of AW-2 (Om Parkash) is not to be considered for the reason that he did not come forward for his cross-examination, even then statements of respondent No.1 herein as AW-1 and of AW-4 are found to be sufficient to hold that respondent No.1 herein is the owner/landlord of the shop in dispute on the basis of the family settlement Ex.A2 w.e.f. 07.07.1996. Since this respondent No.1 has become owner/landlord of the demised shop w.e.f. 07.07.1996 so as such petitioner (tenant) and respondent No.2 herein had become tenant under him by operation of law qua this shop. Moreover for filing a petition for ejectment of the tenant from the demised premises on the ground of personal necessity, it is not required that the alleged landlords are to be owners of the said premises. A landlord can maintain such like petition even without being owner of the demised premises.

9. The plea of petitioner herein (tenant) that alleged rent note Ex.A1 and family settlement Ex.A2 are forged and fabricated is not substantiated on the record since she has failed to bring on the file any reliable and cogent evidence to prove the same except her own bald statement. So, as such the findings recorded by the both Courts below that

there exists relationship of landlord and tenant between parties qua demised shop are held to be correct.

10. Regarding personal necessity of the landlord, it is not required for him to disclose the type/nature of business he is going to start in the demised premises after getting it vacated from the tenant. Then it is also not required from him to show his own experience with regard to the business which he is going to start in the demised premises. In the case in hand respondent No.1 herein/landlord as AW-1 has stated in clear words that he requires the demised shop to run his own business. Then it is settled law that landlord is best judge to see as to which accommodation is suitable and required from him as well as his family members for the purpose of residence or to start any work. Neither the Court nor the tenant can suggest him any alternative solution for ignoring his claim of his personal use and occupation qua demised premises. The only duty of the Court is to see as to whether the alleged personal necessity of the landlord qua the demised premises for his own use and occupation is the bona fide one or otherwise. In the case in hand, there is nothing on the file to say that the alleged requirement of respondent No.1 herein (landlord) is either malafide or tainted with any ulterior motive. The sole statement of landlord that he requires the demised premises for his personal use and occupation is sufficient to prove his claim unless the same is rebutted by the tenant by bringing on record cogent and sufficient evidence to dislodge his claim. The learned Rent Controller has rightly applied the principle as laid down in case laws titled as ***Smt. Kala Wati vs. Ram Piari and others, 2005(3) CCC***

9 and P.Suryanarayana (D) by LRs vs. K.S. Muddugowramma 2004(1)

RCR 395 to the present case by holding that the alleged personal necessity of the landlord qua the demised shop is justifiable one. Then in a latest authority of this Court **Narinder Kumar Dureja vs. Jugraj Singh Kang, 2014(1) RCR (Rent) 353**, it has been laid down that the landlord is best judge qua his need/requirement. In the case in hand, it has also not come on the record that respondent No.1 herein/landlord was having property other than demised shop within the municipal limit of Malerkotla at the time of filing of instant ejectment petition. The only protection which is granted under the Act in order to safeguard the interest of the tenant is that if the landlord does not occupy the premises which he has got vacated from the tenant within the prescribed period, then tenant can approach the learned Rent Controller for restoring his possession over the demised premises as per the provision of sub-Sections 4 and 4-A of Section 13 of the Act as the case may be.

11. There is nothing on record to say that any evidence on file was not considered by both the Courts below, while recording the impugned judgments. So the above entire contentions of the learned counsel for the petitioner are declined and disposed of accordingly. Consequently both the impugned judgments passed by both the Courts below are found to be correct and in order, as per the record on the file.

12. So this revision petition stands dismissed and disposed of.

13. Then it is submitted by the learned counsel for the petitioner (tenant) that she is an old widow lady aged about 90 years earning her

livelihood by selling vegetables in the demised shop. There is no male member in family to support her. So in these circumstances as well as in the interest of justice, the petitioner (tenant) is granted six months time from the date of passing of this order to vacate the demised premises in order to enable her to find out some suitable alternative accommodation in the meanwhile, subject to condition that she will continue to pay the monthly rent regularly during this period by 11th of each month.

14. It is however made clear that if the respondent No.1 herein (landlord) feels any grievance with regard to the grant of this time, then he will be at liberty to approach this Court for the revival of the revision petition.

May 01, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE