

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1532 of 2015 (O&M)

Date of Decision.20.07.2015

Kuldip Kaur

.....Petitioner

Versus

Swaran da Dhaba and another

.....Respondents

Present: Mr. Sukhraj Singh, General Power of Attorney
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

-.-

K. KANNAN J. (ORAL)

C.M. No.13378-CII of 2015

The applicant seeks for Court's permission for acting in the capacity as a power of attorney for the petitioner and not as an advocate. Permission is granted.

Application is allowed.

C.R. No.1532 of 2015

1. I found no merit in the revision petition founded on two grounds namely that the tenant has been guilty of sub tenancy in favour of his son and that he has ceased to occupy the premises and he has taken to rickshaw pulling as his main avocation.

2. The tenant's son came up with the plea that his father had become insane and that he should be appointed as guardian by resorting to provisions of Order 32 Rule 5 CPC. A medical examination was done and it was found that he was not insane and the application filed by the

son for appointing him as guardian came, therefore, to be withdrawn.

3. In the manner of consideration of whether there had been a subletting, there is bound to be a proof of whether there had been a transfer of possession from a tenant to another person with an intent to create sub tenancy. The transfer must be such as to operate to lose the legal possession in favour of sub tenant. In this case, it is the father who is reported to have allowed his son to carry on the business of Dhaba and he has himself taken to rickshaw pulling. Though it cannot be stated as joint possession with son, there cannot be a subletting between father and son or between near relatives in a particular situation where the letting was for carrying on a small business in Dhaba and the tenant-father allows the son to be associated with him and he carries on an avocation of rickshaw pulling, I think it is a respectable way of living. I will not treat this as an issue of transfer of tenancy in favour of his son. If this ground fails, yet another ground taken was that the tenant has ceased to occupy the premises and he is taken to a different avocation. If the association of the son were to be treated as not constituting a sub tenancy, the continuance in possession of the son there would itself be treated as not making available a plea of cessation to occupy the premises. Both the grounds cannot avail to the landlord and correctly dealt with by the Courts below.

4. I find no occasion for making an interference. The revision petition is dismissed.

(K. KANNAN)
JUDGE

July 20, 2015
Pankaj*