

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1713 of 2015 (O&M)
Date of decision : May 08, 2015

Sunita

..... Petitioner

Versus

Pawan Kumar

..... Respondent

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 : Ms. Naveen Malik, Advocate,
for the petitioner.

Mr. Vinod Chaudhri, Advocate,
for the respondent.

GURMIT RAM, J.

1. This petition is preferred by the petitioner (tenant) against the order dated 21.07.2014 passed by the learned Rent Controller, Chandigarh vide which the ejectment petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for evicting the present petitioner (tenant) from the demised premises was accepted and the judgment dated 07.02.2015 passed by the learned Appellate Authority, Chandigarh vide which the appeal filed by the present petitioner (tenant) against the aforesaid order of the learned Rent Controller, Chandigarh was

dismissed.

2. Case of the respondent-herein who was petitioner in the Court of first instance was that he is the owner as well as the landlord of flat No.3282 ground floor, Sector 47-D Chandigarh (hereinafter to be referred as demised premises). It was purchased by him through General Power of Attorney duly registered in the office of Registrar in the year of May, 2007. He inducted the respondent in the ground floor of his house as a tenant w.e.f. 1st June, 2007 on rent in the sum of ₹6,300/- per month with condition to increase the same at the rate of 7% per annum on the last paid rent. She paid the rent only for the first three months i.e. June, July, August, 2007 on the aforesaid rate. Petition for her ejectment from demised premises was filed on the following grounds:-

- (i) That she did not pay the arrears of rent since 01.09.2007 till date.
- (ii) That she had materially impaired the value and utility of demised premises by carrying out some changes in it.
- (iii) That the demised premises is required by the petitioner for his own bona fide use.

3. Upon notice, respondent appeared and took preliminary objection in her written statement that there is no relationship of landlord/owner and tenant between the parties in this case. Rather her plea was that the alleged demised premises was purchased by her husband Shri Ram Pal Chouhan in the year 2007 and the sale consideration in this regard was paid by selling her jewellery. They could not pull on together and as such by way of settlement, the demised premises was given to her. She was never a tenant in the demised premises. Rest of the allegations were also

denied by her.

4. The learned Rent Controller after hearing learned counsel for both the parties and going through the record as well, recorded findings on issue Nos.1, 2, 4 and 5 in favour of the petitioner, on issue No.3 in favour of respondent and accepted the ejectment petition vide the impugned order dated 21.07.2014. Then the respondent (tenant) filed an appeal before the learned Appellate Authority, Chandigarh against this order of the learned Rent Controller, Chandigarh which was dismissed.

Being not satisfied with the judgments passed by both the Courts below, the petitioner herein (tenant) has preferred the instant revision before this Court, notice of which was given to the respondent-landlord. Record of both the Courts below was also requisitioned.

5. I have heard the learned counsel for both the parties and have also gone through the record as available on the file.

6. The learned counsel for the tenant (petitioner-herein) has contended that the alleged demised premises were sold to her husband Ram Pal Chouhan by the petitioner-landlord (respondent-herein) vide an agreement to sell dated 13.08.2007 in the sum of ₹1,05,000/-. Then it is also her contention that when a person by using his power of attorney enters into an agreement which is complete in terms of consideration, then the entire rights with regard to the property in question stand transferred in favour of the person in whose favour the agreement is executed. Then she has also contended that in the case in hand, it was the case of petitioner landlord (respondent herein) that original allottee had executed a General Power of Attorney in his favour along with a WILL and agreement to sell, but the alleged actual allottee Miha Singh was neither made a party in this

case nor his statement was recorded. She has also referred to the cancellation deed Ex.R10 stated to be executed by Ram Pal Chouhan thereby cancelling the agreement to sell dated 13.08.2007 executed in his favour by Pawan Kumar (respondent-herein). In order to elaborate her contention, she has also submitted that any agreement to sell could only be cancelled by the vendor and not by the vendee. Lastly she has contended that both the Courts below have failed to take note of all the aforesaid material facts, while passing the impugned judgments and as such the same are not tenable in the eyes of law.

7. At the time of the arguments, the learned counsel for the petitioner was asked regarding the status of the petitioner qua the alleged demised premises. In this regard her plea was that the alleged demised premises was purchased by her husband vide an agreement to sell Ex.R11 from Pawan Kumar by paying the entire sale consideration. It is further her contention that the petitioner and her husband could not pull on together as husband and wife, and as such, they started living separately from each other and by way of an adjustment, the alleged demised premises was given to her by her husband. But except this agreement to sell Ex.R11, she could not produce any other document to establish her claim of ownership qua demised premises. It is the settled law that no title/right of ownership is transferred by an agreement to sell. Moreover the alleged agreement Ex.R11 is in between Pawan Kumar, the present respondent and Ram Pal Chouhan. The present petitioner is not a party to it. Even the present petitioner has also failed to bring on the record any substantial and reliable evidence to prove her alleged marriage with Ram Pal Chouhan. Photographs Ex.R1 to Ex.R7 and Ex.R12 to Ex.R16 cannot be held to be

reliable and sufficient proof of their alleged marriage. Then there is also letter Ex.R9 available on the file stated to be written by Ram Pal Chouhan wherein he had stated that he was never married to Sunita, anybody who will deal with her, he/she would do so at his/her own risk. Then in the present petition, the petitioner herein (tenant) has shown herself to be wife of one Julfikar.

8. Then there is also photocopy of a document Ex.R10 vide which Ram Pal Chouhan had cancelled the sale agreement Ex.R11 dated 13.08.2007 executed in his favour by Pawan Kumar. It is mentioned in this document that he is unable to arrange the funds and he already owed a sum of ₹3 lacs to Sh.Pawan Kumar. Then it has also come in the cross-examination PW-2 Ram Pal Chouhan that demised premises was of ₹12 lacs and the balance amount was payable to the Housing Board, Chandigarh. Any party to any document can cancel the same unless the same is objected to by the adverse party or is prohibited by law. In this case there is nothing on record to show that Pawan Kumar had ever raised any objection regarding cancellation of agreement to sell Ex.R11 by Ram Pal Chouhan vide document Ex.R10. Even under the law, there was no bar for Ram Pal Chouhan to cancel this agreement. Reason mentioned in the document Ex.R10 is that the alleged vendee could not arrange the requisite funds and he already owed a sum of ₹3 lacs to Pawan Kumar. Then it has come in the cross-examination of RW-1 Sunita that her marriage with Ram Pal Chouhan was solemnized as per Hindu Rites but as abovesaid, she had failed to bring on record any reliable proof to prove it. She knew that she cannot contract any second marriage without the dissolution of her first existing marriage. Then she has also failed to bring on record any document to show regarding

sale of her jewellery for the alleged payment of sale consideration of demised premises. Then she has shown her ignorance as to whether the agreement to sell Ex.R11 was got cancelled by Ram Pal Chouhan due to non-payment of the amount. Then it is also in her cross-examination that her second husband was involved in litigation regarding booth No.4, Sector 49-A, Chandigarh, wherein she was running the business of beauty parlour. Then it is also in her cross-examination that said booth was also got vacated by the Court order.

9. I have carefully gone through the judgments of both the Courts below and have found that all the points raised herein by the counsel for the petitioner (tenant) are properly discussed by both the Courts below. The evidence has also been properly appreciated.

10. Respondent (herein)/petitioner before the learned Rent Controller has produced General Power of Attorney Ex.P1, Will Ex.P2 and agreement to sell Ex.P3. All the three documents are executed by Miha Singh, original allottee of the demised premises in favour of the present respondent (landlord) Pawan Kumar.

I have carefully gone through these documents and the same are found to be sufficient to hold that Pawan Kumar is the landlord of the demised premises. Admittedly petitioner (tenant) is in possession of demised premises and she has not paid any rent qua the same since September, 2007. Her claim that she is in possession of this premises as the owner is found to be falsified. Miha Singh, the original allottee has never come forward to deny the execution of the aforesaid documents Ex.P1 to Ex.P3 by him in favour of Pawan Kumar, present respondent (landlord).

11. In the light of the above discussion, both the impugned

judgments passed by both the Courts below are held to be correct and well reasoned. This revision petition being devoid of any merit stands dismissed and disposed of accordingly.

12. Lower Court record be sent back to the quarter concerned along with copy of this judgment.

May 08, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE