

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

CR No.2441 of 2015 (O&M)

Date of decision: 08.04.2015

Jaspal Singh

..... Petitioner

VERSUS

Avinder Singh & another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajbir Singh, Advocate for the petitioner.

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)

The tenant, who faces an action for ejectment passed by the Appellate Court is the revision petitioner before this Court.

The tenant took a plea that there was no jural relationship of tenancy between him and the landlord herein but took a plea that he was only a licensee under the original owner, who was contesting suit for specific performance brought at the instance of landlord. The Rent Controller took note of the fact that the suit for specific performance itself was not concluded and the case was pending before this Court in Regular Second Appeal, where right claimed by the landlord under the agreement was still awaiting final adjudication. The Rent Controller did not find the evidence satisfactory and was prepared to accept the defence and held that the landlord has not proved his ownership and even the tenancy was not

established and dismissed the petition.

The Appellate Court reversed the decision holding that the issue of title or ownership was irrelevant in rent control proceedings and the crucial issue was only whether the landlord had established the jural relationship. He relied on the evidence of the landlord himself, who spoke about the form of tenancy with reference to a portion of the property which he claimed to have agreed to purchase and in respect of another portion, it was stated to have been let out to Gurdev Singh. The Appellate Court observed that the tenant did not even examine himself and the oral version of the landlord stood unrefuted. The tenant had merely made available the evidence of the original owner of the property, who was examined to say that the tenant was really his licensee. The Court drew an adverse inference on the fact that the tenant failed to examine himself and referred to the decision of the Supreme Court in *Iswar Bhai C. Pate @ Bachu Bhai Patel Vs. Harihar Behera & Anr. 1999 (2) Civil Court Cases 01* to hold that a person who had not entered in the witness box to support of his own pleadings must be taken as a person who was not willing to stand by his assertions and an adverse inference was bound to be drawn. He proceeded, therefore, to rely on the evidence given by the landlord and ordered eviction reversing the judgment of the Rent Controller.

Learned counsel appearing on behalf of the petitioner-tenant states that the landlord had not proved his ownership and his case is pending before this Court in Regular Second Appeal. He would place reliance on the evidence of RW-1, who was the father of the original vendor, who stated that the tenant was only one of his licensee. Learned counsel would also argue that the petitioner could not examine himself only because he was

kept in confinement in jail in some criminal case. According to him, a case of oral tenancy could not be believed since his case has been already spoken by the landlord. If the tenancy was said to be oral and the landlord gives an assertion of what he pleads for, the minimum that ought to have been placed at the trial to adjudge the correctness and otherwise of the oral assertion would be to examine how the tenant stood by his own version in Court. If the tenant would avoid the Court witness stand and would throw weight on the statement of the father of the landowner, he was surely exposing himself to serious vulnerable attack that betrayed fragility of his version. His plea that he was kept confinement is an assertion without any basis. Neither in the grounds nor in any observation of Courts' orders below in such an explanation available. If the case must only explained on the basis of oral evidence and surrounding circumstances and the Appellate Court was relying on the assertions made by the landlord and an adverse inference was drawn against the tenant, the ultimate finding must be taken to be based on a proper forensic approach to the quality of evidence led by the respective parties. It would turn out to be essentially an inference on the question of fact that leaves no scope for Court's interference, unless such an inference was perverse or grossly erroneous by adopting a procedure not known to law. I find none of the fallabilities could be attached to the judgment of the Appellate Court. The order is maintained and the revision is dismissed. Time for eviction two months.

08.04.2015*Bhumika***(K.KANNAN)
JUDGE**