

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 235 of 2013 (O & M)

Reserved on: 22.01.2015

Date of decision: 11.02.2015

Vinod Kumar

....Petitioner(s)

Versus

Neelam Chhabra

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Gaurav Chopra, Advocate,
for the petitioner.

Mr. Puneet Jindal, Sr. Advocate,
with Ms. Sakshi, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

This judgment shall dispose of two civil revision petitions i.e. C.R. Nos. 235 of 2013 and 3190 of 2011, as common questions of facts and law are involved in both the revision petitions. For dictating the judgment ***C.R. No. 235 of 2013, Vinod Kumar vs. Neelam Chhabra*** is being taken up.

Challenge in the present revision petition i.e. C.R. No. 235 is to the order dated 22.11.2010 whereby, the Rent Controller, Jalandhar allowed the eviction petition of the respondent and ordered ejectment on the ground of bona fide personal necessity. The said order has been upheld in appeal by the Appellate Authority, Jalandhar on 18.10.2012 and the same is also subject matter of revision. In C.R. No. 3190 of 2011 filed by the landlady, the order dated 01.02.2011 passed by the Appellate Authority denying the landlady the mesne profits after the ejectment order had been passed is a

subject matter of consideration.

The dispute in question pertains to the eviction of the petitioner-tenant from the shop in question described in detail in the heading of the eviction petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act'). The shop was part and parcel of property No. IE 80 U and bearing No. 236-A, Phagwara Gate, Jalandhar. The pleaded case of the respondent was that her father Sahib Dita Mal had rented out the shop to the present petitioner-tenant and he had been paying rent. During his lifetime, the father executed a Will dated 21.12.1987 (Ex.A-3) in favour of his legal representatives. It was alleged that the Will was admitted and acted upon by the said legal representatives and the petitioner was made owner of the shop in dispute. However, as per the recital of the Will, the wife of the deceased being the mother of the petitioner namely Jiwan Devi was entitled to get the rent of the shop personally or through the petitioner or through anybody and that was the maintenance to her. The rent had thus been realized through the mother or other persons from the tenant. On account of non-payment of rent, the petitioner and Jiwan Devi had been forced to file ejectment application and also through the attorney/authorized person Mrs. Latika Ahuja. The ejectment application was filed by Mr. Latika Ahuja with the consent of respondent no. 1 as well as Jiwan Devi which had led to the realization of the arrears. A family arrangement dated 21.10.2004 (Ex.A-2) had been entered into on account of some financial difficulties faced by respondent no. 1 and she had shared the same with her mother Jiwan Devi and her brothers. In view of the unemployment of the said respondent, the shop was required by her for running of business and earn her livelihood and,

therefore, all the concerned admitted to the terms and conditions of the family arrangement and being the owner/landlord of the property, the petition was filed on the ground of bona fide personal requirement and on account of non-payment of rent from 01.04.2003 @ ₹750/- per month. The ground of material impairment and value utility and making additions and alterations was also alleged by specifically pleading that petitioner neither owned or possessed or had vacated any such property in the municipal area of Jalandhar and accordingly, the petition was filed on 01.12.2004.

The petitioner-tenant denied the relationship of landlord-tenant between the parties. However, he admitted that the father of respondent no. 1-Sahib Dita Mal had leased out the property and after his demise, Smt. Latika Ahuja had succeeded to the said property and he had become a tenant under her. The respondent had no right, title or interest as the rent was being paid to Sahib Dita Mal and thereafter to Smt. Latika Ahuja. Arrears of rent from 01.04.1993 to 28.02.1998 @ ₹750/- were realized by her and thereafter fresh ejectment application had also been filed claiming arrears from 01.03.1998, in which rent was also tendered. The allegation that on the basis of the Will, respondent no. 1 had become the owner of the suit property was denied and it was claimed that Latika Ahuja was the landlord/land owner and was realizing the rent on her own right and the story had been coined. It was mentioned that the arrears of rent claimed had been paid to avoid any legal complications and the tenant reserved his right to recover the amount. The factum of material alteration or impairing the value was denied. The factum of family arrangement was denied and it was alleged that the respondent had no right in the suit property nor Jiwan Devi had any right and Latika Ahuja was the owner/landlord.

In the rejoinder to the reply of the tenant, respondent no. 1 again reiterated the allegations and took the plea that on the death of Sahib Dita Mal, she had become owner/landlord qua the petitioner and have been realizing the rent through herself or through her authorized person and Latika Ahuja was not the landlord. The locus standi of the tenant in questioning the validity of the Will was also challenged as it had been admitted by all the legal representatives of the deceased and that the rent had been collected at the instructions of respondent no. 1. The factum that there was no relationship of landlord-tenant was denied and it was averred that since the rent had been tendered on the first day of hearing, there was a relationship and there would be no occasion to tender in case there was no relationship. It was denied that the Will was forged or fabricated or manipulated.

On the basis of the pleadings, the following issues were framed by the Rent Controller:-

“1. Whether respondent is in arrears of rent as prayed for?OPP

2. Whether respondent has materially impaired the value and utility of the suit property?OPP

3. Whether shop in question is required for personal use of the petitioner?OPP

4. Whether petitioner is entitled to eviction of the respondent from the said shop on the above ground? OPP

5. Whether there exists relationship of landlord and tenant between the parties?OPA

6. Relief.”

The petitioner examined Arun Kumar, power of Attorney as

RW-1 whereas, respondent no. 1-landlady herself stepped into the witness

box as AW-1, Ms. Latika Ahuja as AW-2 being her sister-in-law, Balbir Singh AW-3 witness to the family settlement. Joginder Ahuja, the brother AW-4, Rajinder Kumar, Clerk of the Judicial Record Room was examined for producing record, Harish Kumar Monga as AW-5 was examined who was the attesting witness of the Will but he was never cross examined as his cross had been deferred. Thereafter, Sanjay Kumar Gupta, also the neighbour of the shop did not step into witness box to face the cross examination.

On the above said pleadings, counsel for the petitioner has based his arguments on issue no. 5 regarding the relationship inter se the parties and argued that since the Will was not proved in accordance with law under Section 63 of the Indian Succession Act, 1925 and Section 68 of The Evidence Act, 1872 and merely by placing the same on record, the right of ownership was not proved in favour of the respondent. Reliance was placed upon the judgment of the Apex Court in ***S.R. Srinivasa and others vs. S. Padmavathamma, 2010 (5) SCC 274*** to submit that the attesting witnesses had not been examined and, therefore, the Will could not be held to be proved. It was submitted that the Courts were in error in coming to the conclusion that the ownership was of the respondent or that she was the landlady. A contention was raised that since as per the Will there was a right of payment of maintenance to the wife Jiwan Devi and the same would blossom into an absolute right and the eviction petition having been filed during the lifetime of Jiwan Devi who died on 22.03.2009, the same was not maintainable at the instance of the daughter. Reliance was placed upon Section 14 of the Hindu Succession Act, 1955 and judgments of the Apex Court in ***V. Tulasamma and others vs. Sesha Reddi (D) by L.Rs., 1977 (3)***

SCC 99 and *Raghubar Singh vs. Gulab Singh, 1998 (6) SCC 314* which have been followed in *Balwant Kaur vs. Chanan Singh, 2000 (6) SCC 310* and *Santhosh and others vs. Saraswathibai and another, 2008 (1) SCC 465*. Accordingly, it was submitted that the family settlement dated 21.10.2004 (Ex.A-2) giving the right to the daughter to manage the property would not give her any right to institute the petition during the lifetime of the mother and that Sahib Dita Mal being the owner, no estoppel was being claimed as tenant under him. Mrs. Latika Ahuja having filed two ejectment applications claiming herself to be the landlady, the Courts below were not justified in directing eviction at the instance of the respondent. Accordingly, reliance is placed upon the judgment of the Apex Court in *Sheela vs. Firm Prahlad Rai Prem Prakash, 2002 (3) SCC 375* to contend that the title was not being set up and the tenant was entitled to raise the issue of the relationship as such and was not challenging his character of possession. It is accordingly submitted that the entitlement to receive the rent of respondent no. 1 was not there and only Jiwan Devi could have preferred the petition in view of the fact that ownership of the shop had become hers in view of the law laid down by the Apex Court.

On the other hand, senior counsel Mr. Puneet Jindal contended that it is admitted fact that there is a relationship of landlord-tenant with the father of respondent no. 1 and as per the rent application, specific allegations were made that there was a family arrangement inter se the parties. Therefore, there being no dispute regarding the estate of Sahib Dita Mal from the legal heirs, the tenant was no-body to question the title of respondent no. 1. It was submitted that the Will had been brought on record after the additional evidence had been allowed by the Rent Controller on

10.01.2009 and the revision petition filed by the tenant before this Court had been dismissed on 04.11.2009 with the consent of the tenant and, therefore, he could not raise the argument that the Will did not stand proved.

It is further submitted that Section 14 of the Hindu Succession Act, 1955 was not applicable and the wife only had a right to the rent and the family settlement had duly protected the right of the wife and not interfered with the succession which any ways gave the shop in question to respondent no.

1. It was further submitted that in view of the judgment of the Apex Court in *Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCC 78*, this Court was not to examine the evidence sitting as a Court of Appeal and there being no illegality or misreading of evidence, the concurrent eviction order was duly justified. The Rent Controller, under issue no. 5, held that since this Court vide order dated 04.11.2009 had allowed the landlady to tender the Will dated 21.12.1987 and the sale deed dated 19.05.1992 without leading any oral evidence and since the witness of the Will has not been produced for cross examination in normal circumstances, the Will would not be held to be proved. It was noticed that Joginder Ahuja AW-4, brother of the respondent-landlady had admitted the factum of the Will and the family settlement and, therefore, it is established that she was the landlady by way of operation of the Will and the family settlement being the daughter of the deceased and one of the legal heirs. Even if the Will was ignored, she was entitled for natural inheritance being legal heir and would become a co-owner. Any co-owner could file the rent petition and the tenant could not deny the title of the landlord nor could challenge the family settlement. Reliance was placed upon judgment of the

Apex Court in *Joginder Singh vs. Smt. Jogindro, AIR 1996 SC 1654* and

judgment of this Court in *Vijay Kumar vs. Sushil Kumar, 2005 (1) PLR 855* and *Ganesh Misra vs. Mrs. Savita Devi Sahajpal, 2009 (3) PLR 213*.

The issues of material impairment were held against the landlady and keeping in view the relationship, issue no. 3 was decided in her favour and she was held entitled for possession on the account that she required it for starting her own business.

The Appellate Authority examined the issue in greater detail and came to the conclusion that a tenant was not authorized to raise any objection regarding the proof of the Will and the sister-in-law had also put in appearance to give the statement in favour of respondent no. 1, that she had earlier filed ejectment application only on her authority. However, it is apparent that wrongfully, reference was made to the statement of AW-5 Harish Kumar Monga that the Will was proved since admittedly the said witness has not been cross examined. It was accordingly held that the family settlement could not be contested by the tenant and reference was made to judgment of this Court in *Ram Lal vs. Harbhagwan Dass, 1995 (1) PLR 368*. The statements of the sister-in-law and the brother were taken into consideration. It was also noticed that the tenant himself had not put in appearance and only his power of attorney had appeared and, therefore, adverse inference should be drawn against him as he had shied away from the witness box. The family arrangement not requiring registration and oral partition not being prohibited, the Appellate Authority found no ground to discard the family arrangement and the tenant having no locus standi to challenge the same. Resultantly, the eviction order was upheld on the ground that the bona fide requirement stood proved as the landlady herself stepped into the witness box.

After hearing arguments and examining the record in detail, it is to be noticed that there is no denial as to the factum of the status of the petitioner, who is admittedly a tenant in the premises under Sahib Dita Mal. The original landlord left behind a Will dated 21.12.1987 wherein, he had bequeathed the shop in question by way of Will dated 21.12.1987 to his daughter. The relevant recitals of the Will, though not strictly proved in accordance with the provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872 on account of the absence of the attesting witnesses deposing read thus:-

“Therefore, I while enjoying my right five senses and with my free will execute my will that after my death, my daughter Neelam Chhabra will be owner of one shop measuring (15' x 10') which is towards South out of these shops in property No. I.E. 80 towards Phagwara Gate which is given to Vinod Kumar on rent (AV Enterprise) and my sons Siri Ram-Joginder Kumar will be owner of shop measuring (15' X 10') adjoining to aforementioned shop which is prior to the Deori of the factory towards the south to the extent of equal share. My daughters Ram Kali Juneja and Raj Nagpal will be owner of my third shop (20” x 8”) to the extent of the equal share which is on rent and is towards the North of the deori of the factory. My wife will be receiving the rent of all three shops throughout her life and thereafter my legal heirs will be receiving the same.”

Sahib Dita Mal died on 09.02.1988 and thus, the Will came into operation and even if it is not taken into consideration, succession opened and the legal representatives entered into a family arrangement keeping in mind the Will in question on 21.10.2004 wherein, it was agreed inter se that

the shop in question which was leased out to the petitioner and the rent of which was entitled to be received by the wife could be got vacated by the respondent for her personal business for her bona fide need as she did not have any source of income. The amount of ₹750/- was to be received by the wife in any case. The other members of the family did not have any objection to this arrangement even during the lifetime of Jiwan Devi and even Jiwan Devi herself was a signatory to the said family arrangement which was witnessed by Balbir Singh AW-3, who was duly examined to prove the said family arrangement. The family arrangement reads thus:-

“This agreement has been scribed in between Smt. Jeewan Devi wd/o Sh. Sahib Ditta s/o Sh. Bhag Mal, r/o H. No. 132, Shaheed Udham Singh Nagar, Jalandhar known as first party, Smt. Neelam Chhabra d/o Sh. Sahib Ditta Mal w/o Sh. Vishav Chhabra, r/o H. No. 767, Sota Singh Nagar, Jalandhar known as second party and Siri Ram Ahuja, Joginder Ahuja and Sh. Amar Ahuja sons of Sh. Sahib Ditta Mal s/o Sh. Bhag Mal after keeping in view family circumstances.

1. That Sh. Sahib Ditta Mal was owner of property bearing no. E.K.263-A in property No. 1.E.80 n Phagwara Gate, Jalandhar. He had transferred his property in the name of his legal heirs through will executed by him on 21.12.1987 and after his death, the legal heirs have agreed for the right given to them while admitting the will to be correct. That in the abovementioned property, a shop which was given to rent to Sh. Vinod Kumar s/o Sh. Bihari Lal at that time, the rights of ownership were transferred to Smt. Neelam Chhabra second party d/o Sh. Sahib Ditta Mal, by Sh. Sahib Ditta Mal subject to the condition that his (Sh. Sahib Ditta Mal) wife Smt. Jeewan Devi First

party will be entitled to receive rent of shop which was given to rent to Vinod Kumar at that time for her maintenance. As per that condition, Jeewan Devi, is continuing receiving rent through her attorney Smt. Latika Ahuja.

2. That today all the members made discussion about family circumstances. All the members gave their consent at the request made by Neelam Chhabra. Neelam Chhabra and Jeewan Devi also admitted the same to be correct that Neelam Chhabra has no property of her own and she has no source of income, therefore, Neelam Chhabra and Vishav Chhabra admitted that they would be bound to pay sum of Rs.750/- per month (maintenance) to Jeewan Devi first party throughout her life time equivalent to the rent of the shop which was to be charged from Vinod Kumar at that time and that shop was required to them for their personal business and they have no other place for running business. Therefore, they are in dire need of that shop. All the legal heirs of Sh. Sahib Datta Mal including Jeewan Devi admitted this to be correct while showing their consent that Neelam Chhabra can get the shop vacated for his personal business which is inherited by her through will. She could use the shop for her maintenance any how she wanted to do. None of the members have any objection at this. Neelam Chhabra as an owner can get the shop vacated and use it. Neelam Chhabra second party will be bound to pay amount equivalent to rent further to Jeewan Devi first party after getting possession. Jeewan Devi will continue to receive rent through Latika Ahuja like earlier and she can receive or she can receive the rent through Neelam Chhabra till the time possession is not

delivered to Neelam Chhabra.

This agreement has been scribed today in between the parties and in the presence of witnesses. All the parties have appended signatures after admitting the same to be correct. Nobody else will have any objection regarding ownership and taking possession of the shop by Neelam. Hence, this agreement has been scribed today i.e. on 21.10.2004 which may serve as an authority.”

From the above recitals of the agreement which duly stand proved in view of the testimony of Balbir Singh AW-3, who was duly cross examined and who stated that the agreement was got typed from the Court complex and he knew the contents of the same. He had further deposed that the agreement was got dictated by one Siri Ram Ahuja, who is none else but the brother of the respondent. He had further deposed that the relations between all the legal heirs of Sahib Dita Mal were cordial and at the time of execution, Jiwan Devi, Ram Ahuja, Joginder Ahuja, Amar Ahuja, Neelam Chhabra and he were present. It is also to be taken into account that Joginder Ahuja, another legal representative, has also appeared as AW-4 being the brother of the respondent and has supported her case. Similarly, even Latika Ahuja being the wife of Amar Ahuja has also appeared as AW-2 in support of the respondent. Thus, there is no inter se dispute between the family of the deceased regarding the ownership of the shop in question. For the tenant, to escape the issue that the ownership would devolve upon Jiwan Devi by falling back upon the provisions of the Hindu Succession Act are thus, beyond the scope of the controversy in question. In the absence of any dispute arising inter se the legal heirs of deceased Sahib Dita Mal, it is not open to suggest or claim that Jiwan Devi would become the absolute

owner and the petition was not maintainable during her lifetime. Reliance can be safely placed upon ***Bakhtawar Singh vs. Gurdev Singh and another, 1996 (6) SCC 370*** wherein, it was held that a family settlement was not required to be registered and the brothers of the landlord had appeared to support the case of the landlord. The relationship of the landlord-tenant could not be denied at the instance of the tenant. Similarly, in ***Naresh Kumar vs. Lalit Mohan, 2005 (1) PLR 721***, it was held by this Court that a tenant cannot challenge an oral partition inter se the members of the family.

In the present case, even if the Will is not taken into consideration or the family arrangement is not taken into consideration on the death of Sahib Dita Mal in the year 1988, all the legal heirs became co-owners and it is settled principle that one co-owner can always file an ejectment petition on behalf of the other co-owners. Even a co-owner can file an application for ejectment of the tenant on account of being the landlord. In similar circumstances, this Court in ***Asharfi Devi @ Sarwati Devi vs. Shankar (D) through L.Rs., 2000 (3) PLR 36*** held to this effect that the wife being one of the legal heirs of the deceased-landlord was entitled to maintain the eviction petition under the Rent Act specially in the absence of challenge by the other legal heirs. The relevant observations read thus:-

“12. Considering all the above authorities may not be necessary in this case, because the petitioner is widow of Matadin, the original landlord. Even if there was a will or not, it cannot be disputed by the tenant that she was one of the heirs of the landlord. Moreover, the will is not shown to have been

challenged by the other heirs and, therefore, rent court could decide the petition and could have decided the appeal on merit in this particular case. Therefore, I do not find it proper to uphold the observation of the lower appellate court for not going into the question. The finding of the Rent Controller in this regard is, therefore, upheld.”

This Court in *Ganesh Misra's case (supra)* has also held to the same effect. The relevant observations read thus:-

“8. I do not find any merit in the argument raised by the learned counsel for the petitioner. No doubt, the landlady claims herself to be an exclusive owner in the eviction petition. But even if she is the co-owner of the property, then as a co-owner, she is entitled to seek eviction of a tenant. Mere fact that the landlady has asserted herself to be an exclusive owner in the eviction proceedings, does not make the eviction petition not maintainable. The pleadings of the parties are required to be appreciated on the basis of evidence led.

9. The argument that the eviction petition is not maintainable as one co-owner has objected to the eviction is not available to the tenant. The petitioner was inducted as a tenant by the mother of the respondent. After the death of the mother, the respondent is one of the legal heirs and also entitled to receive rent. The petitioner cannot deny title of his landlord. Therefore, the plea raised by another alleged co-owner that the petitioner is a caretaker in fact, contradicts the stand of the person, under whom the petitioner was admittedly inducted as a tenant. It is not the case of the petitioner that he is a licensee or a caretaker. The inter-se dispute(s) of the owners cannot be raised in the eviction proceedings as the Rent

Controller has to examine the question of relationship of landlord and the tenant between the parties and to examine whether the landlady requires the premises for her bona-fide use and occupation.

10. The claim of the respondent is that of exclusive ownership on the basis of Will of Shri Guru Dutt Sharma. Even if in a civil suit in respect of estate of Guru Dutt Sharma, is to be decreed, the status of the respondent herein, will be that of a co-owner. As a co-owner, the respondent has a right to seek eviction of the tenant and such eviction order will enure for the benefit of all the co-owners. The petitioner, as a tenant, in any case, cannot be permitted to espouse the cause of a co-owner, who filed an application before the learned Appellate Authority. The judgment in M/s India Umbrella Manufacturing Company's case (supra), nowhere debars a coowner to seek ejectment in such circumstances. The judgment of Madras High Court in M. Chinnian's case (supra), is on its own facts without discussing any of the precedents on the subject. I, with respect, am unable to persuade myself with the view taken in the aforesaid case."

The stand of the petitioner that Latika Ahuja is the landlord in view of the earlier rent petitions being filed by her is of no consequence as admittedly, Latika Ahuja herself, as noticed, has appeared in the witness box and supported the case of the respondent wherein, she has clarified that Jiwan Devi was her mother-in-law and she was residing with her and that the respondent had right in the suit property and she had the locus standi to file the eviction proceedings. She also deposed regarding the agreement executed between the respondent and her brothers and her mother-in-law.

Thus, the stand taken by the tenant that Latika Ahuja is the landlord is not

tenable in any manner merely because Latika Ahuja had earlier filed rent petition to realize the rent for the benefit of her mother-in-law Jiwan Devi and it would not in any manner make her the landlord. Rather, a perusal of the earlier eviction petition which has been exhibited as R-1 would show that she herself in the said petition dated 04.01.2003 had specifically mentioned that the shop in question had been bequeathed to the respondent for the purpose of ownership and Jiwan Devi was authorized to collect the rent for her maintenance. That it had been mutually agreed that she had been authorized to collect the rent on behalf of her mother-in-law from the tenant and the ownership vested with the respondent. The said petition had though been contested on this aspect regarding the ownership with the respondent or the factum of the Will, however, the tenancy under Sahib Dita Mal was never denied and rent had been tendered by the petitioner in the earlier petition on 14.03.2003. The Apex Court in **Anar Devi vs. Nathu Ram, 1994 (4) SCC 250** has held that a tenant cannot be permitted to deny the title of landlord in view of Section 116 of the Indian Evidence Act during the continuation of the tenancy. The Apex Court recently in **Kamaljit Singh vs. Sarabjit Singh, 2014 (10) JT 134** also placed reliance upon Section 116 of the Evidence Act to hold that once the aspect of tenancy was not denied, the title of the landlord could not be questioned and if that was to be done then, firstly possession had to be surrendered. The relevant observations read thus:-

“15. Section 116 of the Evidence Act deals with estoppel against tenants and of licensees or persons in possession. Estoppel under this provision falls in the category of estoppel by contract and is relatively a recent development. The rule embodied in Section 116

simply prevents the tenant in 11Page 12 occupation of the premises from denying the title of the landlord who let him into possession, just as it applies to a mortgagor or a mortgagee, vendor or a vendee, bailer or a bailee and licensor or a licensee. The rationale underlying the doctrine of estoppel against the tenant's denial of title of his landlord was stated by Jessel. M.R. in Re: Stringer's Estate, LR Ch 9 as under:

“Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title. This is perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract.”

16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming

through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

17. A three-Judge of this Court in Sri Ram Pasricha v. Jagannath and Ors. (1976) 4 SCC 184 reiterated the principle that a tenant in a suit for possession was estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord, declared this Court, even otherwise irrelevant in a suit for eviction of the tenant. The only exception to the rule of estoppel as stated in Section 116 (supra) may be where the tenant is validly attorned to the paramount title holder of the property or where that the plaintiff-landlord had, during the intervening period, lost his title to the property. We are not, however, dealing with a case where the respondent-tenant claims that the property is vested in anyone else who could be described as the paramount title holder or there was any extinction of the title of the appellant on any count whatsoever since the 13Page 14 induction of the respondent as a tenant into the premises. We need not, therefore, be detained by any one of those considerations. What is important is that so long as a jural relationship exists between the respondent-tenant and the appellant and so long as he has not surrendered the possession of the premises in his occupation, he cannot question the title of the

appellant to the property. The inevitable inference flowing from the above proposition would be that (viz-a-viz the respondent) the appellant was and continues to be the owner of the premises in question since the year 1992 when the respondent was inducted as a tenant. Reckoned from the year 1992 the appellant has established his ownership of the premises for a period of five years before the filing of the eviction petition thereby entitling him to invoke the provisions of Section 13-B of the East Punjab Urban Land Restriction Act, 1949.”

Accordingly, keeping in view the above cumulative facts of the present case and in view of the fact that there is no dispute as such between the legal representatives of the deceased Sahib Dita Mal, this Court is of the opinion that the argument which is raised by the counsel for the petitioner-tenant that there exists no relationship of landlord-tenant and that the respondent was not the owner of the property deserves to be rejected. It has been time and again held that a truncated meaning cannot be brought in for the meaning of the term landlord as defined under Section 2(c) of the Act which provides that in a given case, the landlord can be a owner but landlord under the Act need not be the owner. The observations of the Apex Court in ***K.D. Dewan vs. Harbhajan Singh Parihar, 2002 (1) SCC 119*** read thus:-

“15. From the above discussion it follows that such a truncated meaning of the term 'landlord' cannot be imported in clause (c) of the Section 2 of the Act having regard to the width of the language employed therein and there is no other provision in the Act to restrict its meaning for purposes of Section 13(3)(a) thereof to an owner of the premises alone. The

appellant has been paying monthly rent of the premises to the respondent from 1976. The respondent is thus the landlord of the premises under the Act and is entitled to seek relief under Section 13(3)(a) of the Act. In this view of the matter, we find no illegality in the order of this High Court under challenge. The appeal is without merit and it is liable to be dismissed.”

Accordingly, C.R. No. 235 of 2013 is dismissed. However, since the petitioner is carrying on business in the premises in question since long, he is given 3 months' time to vacate the premises subject to clearance of all the arrears of rent before the Rent Controller within a period of one month from today.

C.R. No. 3190 of 2011 filed by the landlady is against non fixing of the mesne profits after the ejectment order dated 22.11.2010 had been passed by the Rent Controller during the pendency of the appeal. The Appellate Authority, though has wrongly distinguished the judgment in ***M/s. Atma Ram Properties (P) Ltd. vs. M/s. Federal Motors Pvt. Ltd., 2005 (1) SCC 705*** on the ground that the facts were not applicable. It is settled principle that once an eviction order is passed, the tenant is liable to pay mesne profits. The position has been further expounded by the Apex Court in ***State of Maharashtra and another vs. M/s. Super Max International Pvt. Ltd. and others, 2009 (9) SCC 772*** and ***Mohammad Ahmad and another vs. Atma Ram Chauhan and others, 2011 (2) PLR 711***. However, since there is no material before this Court to record any finding as to what is the rent of adjoining premises since there is no registered lease deed on record, the present revision petition filed by the landlady is allowed. The order dated 01.02.2011 is set aside and the matter

is remanded to the Appellate Authority to decide the liability of the tenant to pay mesne profits after the date of eviction from 22.11.2010 till the date the possession is retained by the tenants. It will be open to both the sides to produce relevant material to show the rate of rent in the said area and prove the same.

11.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

