

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

C.R. No.2377 of 2014 (O&M)

Date of Decision.20.05.2015

Jaswant Singh

.....Petitioner

Versus

Vijay Kumar Walia

.....Respondent

Present: Mr. Ashok Singla, Advocate
for the petitioner.

Mr. Vikram Anand, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. In a petition filed under Section 13B of the Rent Act by a person claiming to be a purchaser from the owner through a transaction of the year 2007, the leave to defend was sought amongst several grounds including a ground that he had been a tenant only under Savita Walia and he had never been informed about any transfer by his landlord Vijay Kumar Walia who is the present landlord. If there is no attornment shown prior to the institution of the proceedings then the maintainability of petition itself would be suspect and if such defence is taken, it would require a proper adjudication in the light of evidence that may be necessary of whether there had been an attornment or not. The observation made here is only for the propose of disposal of this application and not to be taken as concluding an issue whether there existed an attornment or not. There is certainly a defence which would require to be considered by allowing the defendant right of defence.

Singh Vs. Ajit Singh where the Court was stating that in order that person proves himself to be landlord under Section 13B, he is required to prove four aspects namely (i) he is a NRI; (ii) he has returned to India permanently or for a temporary period; (iii) requirement of accommodation is genuine and (iv) he is the owner of the property for the last five years before institution of the proceedings. According to the learned counsel, there is no requirement for a person to prove that he is a landlord where there is relationship between the person claiming to be the landlord and the tenant.

3. I hold that the aforesaid judgment cannot be used to exclude yet another requirement which must be understood as giving the basis for taking any action before any Rent Tribunal. It will be an absurd argument to propound that a person need not show the relationship as landlord but if he shows his ownership, he will be able to obtain ejectment under Section 13B. The rule of ownership under Section 13B must be taken only as additional requirement of landlord having to prove the jural relationship of tenancy. A person who is an owner can not maintain an action for ejectment if he does not prove that he is a landlord vis-a-vis a tenant by tenancy arrangement, express or implied. The reliance on the judgment in Avtar Singh's case (supra) is not appropriate.

4. The order passed rejecting the same is set aside and the civil revision is allowed. Written statement shall be filed in accordance with law and the disposal of the rent petition will then be taken up in accordance with law.

(K. KANNAN)
JUDGE

May 20, 2015
Pankaj*