

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

CR No. 2874 of 2005 (O&M)
Date of decision: July 29, 2015

Rameshwar Dass

...Petitioner

Versus

Smt. Shanti Devi

...Respondent

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?**

Present: Mr. DD Gupta, Advocate,
for the petitioner.

Mr. Pawan Kumar, Senior Advocate with
Mr. Abhimanyu Batra, Advocate,
for the the respondent.

K. KANNAN, J. (Oral)

1. The revision petition is at the instance of a tenant, who has been ordered to be evicted on a plea by the landlord that she required the premises for her adopted son. According to her, the adopted son was her grandson through her daughter and the adoption was brought about through a registered instrument dated 18.07.1983. The landlord's contention was that the grand was unemployed and he had been brought up by her right from his infancy and she wanted to set up a business for him at the demised premise. The tenant entered a contention that adoption deed was a fabrication and that in any event, it cannot be valid, for, admittedly the so called adopted son was more than 15 years of age at the time when the document was brought about. The tenant would, therefore, contend that

there could not have been a valid adoption. The further contention was that the grandson was actually associated in a saree business with her brother-in-law but he had abandoned the same only for claiming possession of the suit property and the requirement cannot be pressed for the benefit of such a grandson.

2. The Rent Controller found that the adoption had been established and brought an inference under Section 16 of the Hindu Adoption and Maintenance Act to observe that a registered instrument which brings about an adoption must presume the validity of the ceremonies of adoption if such an adoption is brought through a customary mode. The Court also observed that the document of adoption had been brought about more than 14 years prior to the institution of the petition and there could have been no occasion for the parties to fabricate a document only for the purpose of petition. The Court held that adoption had been established and considering the fact that landlady had expressed that the property was necessary for the purpose of his grandson who was unemployed, the requirement of the landlord must be taken as having been established. The Appellate Court affirmed that finding and made also reference to the judgment of the Supreme Court in **Joginder Pal Vs. Naval Kishore Behal** **2002(5) SCC 397** that contained an expansive meaning for the expression “his own use” as contained under Section 13 (3)(a)(iii) of the East Punjab Urban Rent Restriction Act.

3. Learned counsel appearing on behalf of the petitioner points out to me several circumstances to show that an adoption cannot valid. The counsel refers to Section 10 of the Adoption and Maintenance Act which states in Clause 4 that the person adopted should not have completed the

age of 15 years, unless there was a custom or usage applicable to the parties which permitted persons who had completed the age of 15 years from being taken in adoption. The counsel would argue that there was no such custom established and would also refer to the other circumstances to show that the adoption could not be valid. In the college records which was summoned before the Court, it was revealed that the grandson had been still referred to as the son of his biological father subsequent to the so-called adoption and in yet another transaction of a complaint registered against the grandson, he had been referred to only as the son of the natural father. According to him, the grandson himself did not take the witness stand and that was sure pointer to the fact that so-called adoption could not be true.

4. Learned senior counsel appearing for the landlord would read to me at length the judgment of the two Courts below that dealt with the issue relating to the validity of the adoption by the fact that there was a reference to the distribution of *gur* in the evidence and there had been ceremonies of adoption already conducted and that was sufficient to prove the adoption.

5. On an issue of adoption, I am surely convinced that the Courts below were in error. There could have been no valid adoption of a person beyond 15 years of age and if there is such an adoption, it is invalid in law unless customs provides otherwise. There was no attempt anywhere at the time of evidence that there was any custom. On the other hand, the attempt was that adoption had taken place earlier. Earlier in point of time could be even by a day. It is neither here nor there. If the adoption which had been brought about at a time when he was not 15 years of age and the ceremonies accompanying the adoption had taken place more than six

months prior to the registration of adoption document. The same must have been recited in the document or there ought to have been specific oral evidence therefor. The Courts below were in error in holding that the adoption had been established. It is one thing to state that grand mother had great affection for her grand child but quite another to say that there had been a legally valid adoption. There was no such proof. I discard the findings rendered to that effect and hold that the lower Courts were in error in finding adoption.

6. Notwithstanding finding of the invalidity of the so called adoption, matter still has to be seen as to whether landlord has proved the requirement of law for personal necessity. Admittedly, it is a non-residential building and the Haryana Urban (Control of Rent and Eviction Act), 1973 requires that there is a proof in the case of rented land that the landlord requires it “for his own use” as per Section 13 (3) (b) of the Act. The statement in the petition is that the petitioner requires it for herself and for her 'adopted son', who is unemployed and who is hovering around the village without work. The expression “for his own use” has been considered by the Supreme Court in a case arising under the Punjab Rent Restriction Act while dealing with Section 13 (3) to hold that it should be read expansively to include not only the landlord but also any other member of the family. The judgment in Joginder Pal's case (supra) paraphrases in para 33 the law crystalized by the Supreme Court, when the Supreme Court said “...The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the

requirement as 'his own' and the person who would actually use the premisses, (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim". The court was, therefore, allowing for a practical and meaningful approach to dictate what the "own requirement" must be understood as. In this case the person who was said to be adopted was her grand son. She had only one daughter and even if the adoption were not to take effect in law, her blood ties cannot cease. The filialty expressed by her for her grand child in what she believed was as much intense relationship as adopted son. She had clearly expressed that the property was necessary for the business which he will establish for making a living. In yet another judgment of this court coming under the Haryana Act itself, in Zile Singh Versus Om Parkash and another 2005 (1) R.C.R. (Rent) 206, the court was holding that word 'own use' would include the requirement of wife, husband, sister children including son, daughter, a widowed daughter and her son, nephew etc. This expansive understanding was brought to fore by referring to the judgment in Joginder Pal's case, referred to above. The inclusion of relations such as nephew was thought of as necessary to cope with the realities of life. It cannot be stated as a matter of law that the need of any grand son or the nephew at all times to be accommodated. It all depends on the proof of actual state of affairs of

the person for whom the benefit of eviction was sought. In this case, eviction was being sought by the landlady for the benefit of her grand son whom she had brought up from his childhood and for whose welfare she had definitely a concern. I, therefore, accept the contention of the counsel for the respondents that the need of the grand son of the landlord was surely relevant for appreciating the ground for ejection.

7. The matter still cannot come to close without squarely confronting the argument placed by the counsel appearing on behalf of the petitioner referring me to two decisions of the case rendered recently in Rajiv Gupta Versus Jiwan Ram 2015 (1) RLR 454 and Brij Bhushan and another Versus Sanjay Harjai and another 2015 (1) RLR 198. The courts were expressing that if the personal requirement of landlord was to be examined and it was sought to be brought at the evidence that the requirement was not really of the landlord but that of the son, the non-examination of the person on whose behalf the eviction was sought would be fatal. In both the cases, there was no reference about the requirement of the person other than that of the landlord. The courts were considering the cases of the evidence being brought for the first time, which was not pleaded. In this case, on the contrary, there is surely a pleading about how the grand son was being actually brought up by the landlady herself and that the grand son was unemployed and the property was sought in ejection for finding a source of living for the grand son. I cannot, therefore, draw any strength from the two citations, referred to above by the counsel. Even

otherwise we need to set the law differently for the rent petitions. The establishment of Tribunals are a method of loosening the procedural rigmarole. The conduct of the trial ought to allow for certain flexibility in the matter of pleadings or evidence. It has been held in several decisions that strictness of pleadings ought not be invoked in every Rent Control jurisdiction. I will not fetter myself, with respect, meaning no violation to the pronouncements given by my brother Judges, that if there is no pleading regarding requirement of son or daughter, non-examination would turn out to be fatal. If the relationship of the person for whose behalf the eviction is sought is admitted, then the issue must only be considered from the point of view of whether the landlord was trying to set up a ruse by introducing the name of some person when he cannot prove his own requirement. Here there was no doubt that there was a pleading and there was also adequate reason for accommodating the plea on behalf of the grand son at the premises. The landlady has also expressed during the pendency of the petition and the grand son alone has sought for continuance of proceedings as a legal representative in CM No. 11920 of 2011 which is also allowed.

8. The orders of the courts below are sustained. Eviction ordered already passed is approved and the revision petition is dismissed. The petitioner is granted two months' time to vacate the premises.

July 29, 2015
pankaj/prem

(K.KANNAN)
JUDGE

