

CR-3067-2015 (O&M)

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

CR-3067-2015 (O&M).

Decided on: May 26, 2015.

Norangi and another

..... Petitioner(s)

Versus

Ram Niwas and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Alok Jain, Advocate,
for the petitioners.**

M.M.S. BEDI, J (ORAL).

Ejectment order has been passed against the petitioners and respondent Nos.5 & 6 on the ground that the premises in dispute had been sub let without the written consent of the landlord- respondents.

Counsel for the petitioners has, inter alia, argued that the ejectment application was not maintainable through the power of attorney on the date when it was filed as the landlord had already died when the ejectment petition was filed.

It has also been vehemently contended by the counsel for the petitioners that in the written statement a specific plea had been taken regarding the non-maintainability of the rent petition. Though an issue was framed on the basis of said pleadings but no fair adjudication of the same is apparent from the record.

With the assistance of learned counsel for the petitioners, I have gone through the cross-examination of the attorney of the landlord wherein no suggestion has been given to the attorney of the landlord that at the time of filing of the petition, the landlord had died. Even in the statement of the petitioner as a witness it was not stated that landlord had died when the petition was filed. The onus to establish that the petition was not maintainable was on the tenant- petitioners. There is concurrent finding of fact given by the Courts below regarding the sub tenancy.

Counsel for the petitioners has contended that an application for substituting the LRs of deceased Mohan Lal landlord was filed by the LRs before the Appellate Authority on 20.5.2012 but the Appellate Authority had despite objections raised by the tenant-petitioners permitted the impleadment of LRs of Mohan Lal. Revision petition No.CR-3379 of 2014 filed by the petitioners was withdrawn on 14.5.2014 seeking liberty to raise the plea of maintainability of the main petition at appropriate stage.

I have gone through the order passed by the Appellate Authority. In paras 15 and 16, the objection raised by the petitioner regarding maintainability of the ejectment petition through attorney of one of the landlords Mohan Lal has been discussed.

After hearing the counsel for the petitioners and going through the entire record with his assistance, I am of the considered opinion that even if it is presumed that Mohan Lal who is

now represented through his LRs had not filed the ejectment petition in an appropriate manner through his attorney still the ejectment petition was maintainable on behalf of the other landlords Ram Niwas etc. as the petition had been filed on behalf four landlords.

In view of said circumstances, the plea of non-maintainability of the ejectment petition raised before the Appellate Authority as well as before this Court does not have any force.

Counsel for the petitioners has also argued that the landlord having not approached the Rent Controller with clean hands and having described Ginni Devi and Champa Devi as daughters of Bhani Ram though they were daughters-in-law of said Bhani Ram, would disentitle the landlords to seek ejectment.

I have considered the said circumstance also and I am of the opinion that the relationship of said ladies with Dhani Ram for the purpose of adjudication of the ejectment petition is immaterial and would not cause any prejudice to the petitioners for the purpose of determination of their status as sub tenants in the premises in dispute.

Counsel for the petitioners has also contended that vide EX.P6 judgment dated 16.5.2001, it had been held that original tenant had not ceased to occupy the shop and that the business was being run through Norangi, petitioner No.1 herein. He has also made an attempt to convince this Court to interfere in the finding of fact regarding sub letting contending that finding in EX.P6, the earlier

CR-3067-2015 (O&M)

judgment would demolish the case of the landlord- respondents regarding the petitioner being a sub tenant.

I have heard the counsel for the petitioners and carefully gone through the findings given by the Courts below. It is settled principle of law that when the landlord is able to establish that some person other than the tenant is in occupation, onus shifts upon the person in possession requiring him to establish his status as tenant under the landlord. In the present case no evidence seems to have been produced by the petitioners to establish the relationship of tenants and landlord with the respondents.

No ground is made out for interference in the concurrent finding of fact given by the Rent Controller as well as the Appellate Authority regarding the ground of subletting without written consent of the landlord.

The petition is dismissed. However, taking into consideration the fact that the petitioners have been in possession of the premises for a long duration, in the interest of justice, a period of three months is granted to vacate the premises subject to clearing entire arrears of rent/mesne profits.

May 26, 2015.
rka

(M.M.S. BEDI)
JUDGE