

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

Civil Revision No.5575 of 1999 (O&M)

Date of decision:04.03.2015

Krishan Lal son of Kharaiti Lal, resident of Panj Pir, Manimajra,
UT, Chandigarh.

... Petitioner

versus

Mohd. Yasin son of Mohd. Gulzar, resident of Panj Pir, Manimajra,
UT, Chandigarh.

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Chetam Mittal, Senior Advocate,
with Mr. Kunal Mulwani, Advocate,
for the petitioner.

None for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The tenant is in revision before this court against the concurrent findings of the Rent Controller and of the appellate Court directing eviction on the ground of non-payment of rent. The petitioner's contention was that the property was rented out to the tenant about 7/8 years prior to the filing of the petition. The landlord tendered his own evidence and relied on a jamabandi for the year 1991 to explain that for the year 1984-85, he was shown to

be in possession of 2 kanals 2 marlas of land. One of the witnesses as PW1 spoke about the fact that the rent had been paid in his presence 2 or 3 times, but in the cross-examination, he had admitted that he did not remember whether the rent of ₹350/- was paid 6 months or 8 months or 12 months earlier.

2. The tenant sought to contend that he had never taken the property on rent from the person claiming to be a landlord but he had taken the property from the Wakf Board. He also sought to contend that the person claiming to be the landlord had no right at all in the property and that his own suit for possession under Ex.P3- a document which the landlord himself was relying on showed that his suit had been dismissed and yet another suit instituted by him on 14.01.1985 against one Prem was also dismissed. The court rejected the defence and relied on the documentary evidence of entry in the jamabandi and the evidence of the witness regarding the payment of rent by the tenant as establishing the tenancy and ordered eviction. The appellate Court also made reference to an action taken by the Notified Area Committee against the landlord when by a decision dated 07.10.1993, the landlord's possession was allowed to be continued till an appropriate action for ejectment was taken against the landlord. It is against these decisions that the tenant has preferred this revision.

3. There are several documents on record relating to the previous suit and proceedings by the landlord or some third parties including the Wakf Board and the Maharaja of Faridkot in relation to the very same property. In some of those decisions, the landlord's claim to be in possession or person who was said to be managing the property, had been rejected. The learned senior counsel appearing on behalf of the tenant would argue that PW1 was examined for some time in the year 1996 and if he was giving evidence that the rent was paid before him some months earlier, it could not be with reference to any payment of lease since the petition for eviction was filed in the year 1994 and the PW1's evidence does not state that the payment as possible before the institution of the petition. The counsel would also urge that a stray entry in the jamabandi for the year 1984-85 could not have been relied on since for all the years and for subsequent years, the landlord's name was not present and the fact that the landlord was himself filing an action for recovery of possession under the document which was filed before the appellate court showed that he was not in possession of the property at all.

4. I must hold that if the case hinges on an issue of oral tenancy and the landlord was trying to establish such an oral arrangement by the fact that in the jamabandi immediately prior to the institution of the petition, he was shown to have in possession and in yet another judicial proceeding initiated by the Notified Area

Committee, the landlord's possession was seen, I would not look for any further evidence of whether the landlord could establish his possession or show his title against the Wakf Board or the erstwhile Maharaja of Faridkot. The issue of title or ownership is alien to proceedings except in situations where there is a denial of title and the documentary evidence to such denial are examined only to assess if an eviction could be passed on such a ground in certain legislations which allow for eviction for denial of title which is not bona fide. In all other situations, the most crucial aspect is the issue of jural relationship of the landlord and tenant. PW1's evidence cannot be dissected in an artificial way of his recall of a few months earlier as an occasions when he knew the rents were paid as meaning that the rent was paid only subsequent to the petition. If a person says that he knew the rent as having been paid in his presence and in the cross-examination, he responded to queries that the rent should have been 3 month, 6 month or 9 month before it will be wrong to make an inference that he was alluding to the period of 3, 6 or 9 months as the period before his evidence. I will discard such an argument and take what the two courts below have concurrently found that the tenancy had been established and the plea of the landlord as regards the tenancy must be upheld.

5. The only ground on which the eviction was sought was non-payment of rent. The landlord contended that he was paying

₹350/-, while the tenant stated that he took the property on lease for ₹50/- from the Wakf Board. The two courts below observed that the payment of lease to the Wakf Board was not proved and they directed the ejectment for non-payment in the manner required to be done by the tenant. The learned senior counsel argues that ever since the commencement of the proceedings, he had deposited ₹50/- which was the rent which, according to him, was payable and if there was any amount still payable, the court could not have directed the ejectment without assessing the rent as ₹350/- as contended by the landlord and giving the opportunity to the tenant to make the payment within the time prescribed when the court was passing the final order. This, according to him, is the procedure to be followed in terms of the decision of the Supreme Court in **Rakesh Wadhawan Versus M/s Jagdamba Industrial Corporation-2002(1) RCR (Rent) 514**. Although this was a decision that came about subsequent to the decision of the Rent Controller, I will not find this principle to be applicable to this case at all. The determination of what is the rent payable would arise only in situations where the tenant admitted tenancy and the dispute is only with reference to the quantum of rent payable. If the tenant pays the rent, but still denies the petitioner in the rent petition as his landlord and persists an argument during all the proceedings, there is simply no occasion for a court to determine the actual rent payable and calling upon the

tenant to make the payment. If that was a procedure, then it was already available to the tenant when the court accepted the landlord's contention about the jural relationship and if the Rent Controller also accepted the rent payable was ₹350/-. The tenant could have accepted the persons as the landlord and sought a direction from the Rent Controller himself that the proceedings for ejectment must stop and he would make the payment. A tenant who denies at all times the jural relationship upto this court cannot seek for the application of the principle in **Rakesh Wadhawan** (supra) that still an opportunity must be given to make the payment after the determination of rent at ₹350/-. That opportunity will not be available to a person who denies the status of the landlord and the decision in **Rakesh Wadhawan** (supra) does not apply in such situations.

6. The counsel says that the rate of rent was not established and it was merely on the *ipse dixit* of the landlord. If that was how the two courts below have held, I will make no venture into the redetermination of the rent payable, for, such a facility must be available only to tenant whose status as a tenant is still to be examined by this court on any finding that is deficient. The counsel ventures a guess that the tenant could have paid ₹350/-. If he had paid ₹350/-, he will not have any further liability to pay. If he has not paid, the shortfall would still be taken as a liability subsisting

against him. There are some documents relating to previous proceedings regarding title, all of which are, in my view, irrelevant. All the applications for reception of documents are dismissed as unnecessary.

7. The revision petition is dismissed on the above terms.

(K.KANNAN)
JUDGE

04.03.2015
sanjeev