

CR No.466 of 2013 (O&M)

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

**CR No.466 of 2013 (O&M)
Date of decision:10.02.2015**

Sat Pal and others

...Petitioners

Versus

Tarsem Lal

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Chetan Mittal, Senior Advocate, with
Mr. Harsh Bunger, Advocate, for the petitioners.

Mr. K.S.Cheema, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

This petition is against the order dated 07.04.2012, dismissing the objections filed by the petitioners under Section 47 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) and order dated 08.12.2012, dismissing the application for re-calling of the order dated 07.04.2012.

In brief, respondent Tarsem Lal filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (here-in-after referred to as the “Act”) seeking ejectment of Dayal Chand (since deceased), being represented by his sons Sat Pal and Rajesh Kumar who are the petitioners herein, from the property measuring 1 kanal, comprised in khata/khatauni no.1138/1221 and 3570/594min, situated at Basti Sheikh,

Kala Singha Road, Jalandhar City shown in the site plan attached with the eviction petition and bounded towards East-house of Mangal Singh, West-Road, North-Road and South-M/s GNG Exporters. The respondent sought ejectment of Dayal Chand from the demised premises, *inter alia*, on the grounds of non-payment of arrears of rent w.e.f. 01.11.1996 @ ₹4,000/- per month and personal necessity.

According to the case of the respondent, he had purchased the suit property from Mohan Singh son of Ralla Singh vide agreement to sell dated 01.06.1992 for a consideration of ₹1,56,000/-. The entire sale consideration was paid to Mohan Singh and physical possession of the demised premises was delivered to him. The vendor executed a Power of Attorney dated 01.06.1992 in favour of Phoolwanti D/o Dewan Chand. After the purchase of the suit property, the respondent installed a saw machine and Dayal Chand, being brother-in-law of the respondent, approached him for leasing out the property to him with saw machine in order to enable him to earn his livelihood. The respondent leased out the demised premises with saw machine to Dayal Chand on a monthly rent of ₹4,000/- on 01.09.1995. Dayal Chand paid the rent upto December 1995 and, thereafter, did not make the payment of rent.

Dayal Chand denied the agreement to sell between Mohan Singh and the respondent, rather averred that he had entered into an agreement to sell with Mohan Singh with regard to property under his possession of which Mohan Singh had delivered possession to him. He also specifically denied the installation of saw machine by the respondent and

that he was a tenant on a monthly rent of ₹4,000/-/

On the aforesaid pleadings, as many as 5 issues were framed by the Rent Controller. Dayal Chand also alleged that the property in dispute is different but the Rent Controller had observed that *“unambiguously, it comes out that property alleged by petitioner and property under the possession of the respondent are one and the same and was let out by petitioner to Dayal Chand”*. Accordingly, while allowing the ejectment petition and recording finding on the issue of relief, the Rent Controller observed that *“as a sequel to findings on issue no.2 & 3 (supra), the petition of the petitioner is allowed with costs and respondent is directed to hand over the vacant possession of property in dispute as fully detailed in the head note of the petition to the petitioner within two months from the date of order otherwise petitioner can get the vacant possession by way of filing of execution”*.

The order of the Rent Controller has been upheld upto the Apex Court.

The respondent-landlord filed an application for execution to recover possession of the demised premises in which an objection was raised by the petitioners that the property in their possession is different from the property in dispute as according to them, the property in their possession is comprised in khasra nos.3564/592, 3567/593, 3592/597 and 3584/597, situated at Kala Singha Road, Basti Sheikh, Jalandhar, whereas the property in dispute forms part of khasra no.3570/594min, therefore, they cannot be evicted.

The objections were dismissed by the Executing Court vide its order dated 07.04.2012 observing thus:-

“Now by way of present objections, the Objectors are making the prayer for framing of issues with regard to pleadings of the parties in the original petition on the ground that the property as mentioned in the agreement to sell is different from the property under the possession of JD. However, after going through said objections and the judgment and decree passed by Id. Predecessor of this Court, the said ground was required to be taken at the time when reply to the ejectment petition was filed. The said ground has been assailed by the JD in the Ld. Appellate Court. However, as per certified copy of the judgment dated 08.11.2011 passed in appeal by the Court of Ld. Additional District Judge, Jalandhar, the said contention has been brought to rest and the appeal of the JD has been dismissed. The Ld. Counsel for JD has stated that he has preferred revision before the Hon'ble High Court. However, there being no stay order the said contention is not tenable. Finding no merits in the objections filed by JD, the same stands declined. Let warrants of possession be issued for 12.05.2012.”

The petitioners also filed an application for re-calling of the order dated 07.04.2012 but the said application was also dismissed on

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08.12.2012 and the operative part of the said order reads thus:-

“Thus, the only purpose behind the present objection petition is to delay the execution proceedings, though, the claim of the JD has been dismissed upto the level of Hon'ble Apex Court of Country. Even otherwise, the second objection petition on the same grounds is not maintainable, thus, from all angles, the present objection petition is devoid of merits and same is abuse of process of law. Thus, the present objection petition is hereby dismissed with costs of Rs.1,000/-.

Let warrants of possession be issued for 22.12.2012.”

It is also pertinent to mention that the petitioners had even filed a suit impleading the present respondent, his wife Santosh Rani and Mohan Singh, vendor of the respondent, as defendants seeking a declaration that they are joint owners in possession of the property built on an area measuring 20 marlas, comprised in khasra nos.3564/592, 3567/593, 3592/597 and 3584/597, situated opposite Shoor Market, Kala Singha Road, Basti Sheikh, Jalandhar and challenged the ejectment order dated 08.08.2009 passed in Ejectment Application No.3/2009 titled as “Tarsem Lal v. Dayal Chand” being illegal, null and void and having been obtained by fraud, concealment and misrepresentation of facts and also prayed for permanent injunction to restrain defendants no.1 and 2 from dispossessing them from the suit property. The said suit has also failed.

Counsel for the petitioners has vehemently argued that the

Court cannot execute the decree without identification of the property in dispute. In this regard, he has relied upon an order of the Supreme Court in the case of **Shafiqur Rehman Khan and another v. Smt. Mohammand Jahan Begum and others**, 1982(2) SCC 456 and contended that since the property in dispute is not identified, therefore, warrant of possession cannot be issued and the objections have been wrongly dismissed by the Court below.

On the other hand, counsel for the respondent has argued that there is no quarrel about the property in dispute as the respondent-landlord has claimed possession of 1 kanal land comprised in khata/khatauni no.1138/1221, khasra no.3570/594min, situated at Basti Sheikh, Kala Singha Road, Jalandhar City and has also given its boundary in the head note of his petition. The identity of the property in dispute was being challenged from the very beginning by the petitioners and a categorical finding has been recorded by the Rent Controller that the property in dispute is the same, of which the possession is sought to be recovered by the respondent-landlord, the relief has been granted in regard thereto, which is fully detailed in the head note of the petition. This order has been upheld upto the Supreme Court in which throughout the same contention has been raised by the petitioners about the identity. Even the suit filed by the petitioners for declaration has been dismissed.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no error in the orders of the Courts below which require any modification or interference

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by this Court because the case set up by the petitioners in their objections filed in the execution has already been considered by the Rent Controller and onwards by the Appellate Authorities much-less the High Court and the Supreme Court in which the petitioners have failed to prove their stand which has now been taken in the objection petition and have also lost in the civil suit filed for seeking declaration.

In view of the aforesaid discussion, I do not find any merit in the present revision petition and hence, the same is hereby dismissed.

February 10, 2015
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(Rakesh Kumar Jain)
Judge