

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

CR No.479 of 2015 (O&M)
Date of Decision: 04.02.2015

Sarpinderjot Singh

. . . .Petitioner

Versus

Surinder Singh and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is aggrieved against the order of the Lower Appelalte Court dated 8.1.2015 by which the appeal filed against the order dated 22.2.2014 has been allowed and his objection has been dismissed.

In short, Surinder Singh and Sheel Kumar filed a suit for specific performance of the agreement to sell dated 18.1.1988 against Niranjn Singh. During the pendency of the suit, Rajinder Kaur alleged wife of Niranjn Singh become party to the Suit and contested it. The suit was decreed on 21.9.1998 and defendant No.1/Niranjn Singh was directed to execute the sale deed qua the property in dispute in favour of the plaintiffs after accepting remaining consideration. The said decree was upheld upto the Supreme Court. However, in the judgment dated 21.9.1998, the Civil Court had found that defendant No.2/Rajinder Kaur is not the legally wedded wife of Niranjn Singh. Niranjn Singh was stated to

be unheard off, therefore, in execution, the Court directed the Reader of the Court to execute the sale on behalf of the decree-holder. The petitioner has alleged that he is in possession of the demised premises as a tenant having been inducted by Rajinder Kaur vide lease deed dated 22.4.2002 for a period of 5 years and filed objections in the execution to resist the attempt to dispossess him for the purpose of taking possession by the decree-holders. His objection was allowed by the trial Court on the ground that the decree-holder can take symbolic possession in terms of Order 21 Rule 36 of the Code of Civil Procedure, 1908 [for short 'the CPC] as the actual physical possession could not be delivered because he was found to be the tenant over the property in dispute. However, in appeal, the Appellate Court had dismissed the objection on the ground that not only the document dated 22.4.2002 was executed to thwart the attempt of the decree-holder to recover possession in terms of the decree but also the document i.e. rent deed dated 22.4.2002 having been executed for a period of five years, was not registered and therefore, not admissible in evidence. Aggrieved against the said order, the present revision petition has been filed.

Learned counsel for the petitioner has vehemently argued that his possession is there on the demised premises, which is otherwise in possession of the SDM, in view of the proceedings under Section 145 of the Code of Criminal Procedure, 1973 [for short 'the Cr.P.C.'] initiated by 3rd party, who are alleging themselves to be the owner of the property in dispute. He has also submitted that on the one hand, the Civil Court had ordered that Rajinder Kaur is not the legally wedded wife of Niranjan Singh and on the other hand, the sale deed has been executed and registered in

favour of the decree-holder on 5.9.2011 by the Local Commissioner referring Rajinder Kaur as the wife of Niranjana Singh. Thus, once Rajinder Kaur happens to be the wife of Niranjana Singh, she was allowed to let out the property during the pendency of the civil proceedings and in pursuance thereof, she executed document dated 22.4.2002 inducting the present petitioner as a tenant. It is also submitted that once a tenant is always a tenant until and unless he is evicted in accordance with law. It is further argued that once the petitioner is a tenant of the judgment-debtor, he would automatically become tenant of the decree-holder, who may seek his eviction on the ground available under the East Punjab Urban Rent Restriction Act, 1949.

I have heard learned counsel for the petitioner and after perusing the record, am of the considered opinion that the only stand taken by the petitioner, in order to protect his possession over the property in dispute, is on the basis of rent deed Ex.D1 purported to have been executed by Rajinder Kaur in his favour. It is not disputed that the said document is not registered. As per Section 107 of the Transfer of Property Act, 1882 a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument and as per Section 49 of the Registration Act, 1908, no document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered, shall affect any immovable property comprised therein; or confer any power to adopt; or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Since, the document dated 22.4.2002 is admittedly not registered, therefore, it could not have been taken into evidence and once there is no evidence with the petitioner to prove his tenancy as nothing has been brought on record by way of rent receipt etc. the petitioner cannot claim himself to be a tenant over the property in dispute though he may be in possession in any other capacity.

In view thereof, there is no error committed by the Court below while dismissing the objection filed by the petitioner and hence, the present revision petition is hereby dismissed.

04.02.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**