

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-4871-2014 (O&M)

Date of decision: 22.1.2015

Karnail Singh and another

..... Petitioners

Versus

Paramjit Singh Marwah and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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. Sandeep Arora, Advocate for the petitioners.

R.P. NAGRATH, J. (ORAL)

The instant revision under Section 15 (5) of the East Punjab Urban Rent Restrict Act, 1949 has been filed to challenge the eviction order passed by the learned Rent Controller, Hoshiarpur and affirmed by the Appellate Authority, holding that there existed relationship of landlord and tenant between the parties, which in fact was being denied by the petitioner. The eviction of the tenants was claimed on the grounds *inter alia* that the tenants were in arrears of rent w.e.f. 1.5.2004 and the premises was required by the landlord for his *bona fide* use and occupation as he intended to start his own business in the premises in question. The eviction petition was instituted on 17.10.2001. Petitioners and proforma respondents are the successors-in-interest of Late Khushi Ram. Khushi Ram, executed rent deeds dated 6.6.1969, 11.5.1970 and

26.3.1975 in favour of Sh. Hukam Singh, as the rent used to be increased from time to time. The rate of rent as per latest rent deed was ₹ 55/- per month. Respondent No. 1 is the son of Hukam Singh. The petitioners and proforma respondents denied the existence of relationship of landlord and tenant between the parties. It was denied that Sh. Khushi Ram ever executed the rent notes in question.

2. Learned Rent Controller, framed the following issues and additional issues from pleadings of the parties:-

“1) Whether applicant is entitled to ejectment? OPA

2) Relief.

Additional issues

1A) Whether there exists no relationship of landlord and tenants between parties? OPR

1B) Whether applicant has no locus-standi to file this application? OPA

1C) Whether application is liable to be dismissed for want of complete information regarding identity of ownership of property? OPR

1D) Whether Rent Controller has got no jurisdiction to try this application? OPR

3. I have heard learned counsel for the petitioners and perused the orders passed by the Courts below and also the paper book.

4. Learned counsel for the petitioners vehemently contended that Sh. Khushi Ram, predecessor of the petitioners and proforma respondents purchased the property vide sale deed dated 8.8.1988 from

Smt. Kailalsh Kaur who was owner to the extent of 1/4th share in khasra No. 268 of which the disputed property forms part. The petitioners relied upon the sale deed dated 8.9.1988 and jamabandies for the years 1986-87 and 1996-97, Exs. R-1 and R-2, respectively, in support of their ownership of the Kiosk in question. During evidence, the petitioners also relied upon two more sale deeds dated 3.3.1989 and 25.5.1989. However, it is an admitted fact that in a suit for permanent injunction a decree was granted by the Civil Court holding that the petitioners are the tenants under Hukam Singh, father of respondent No. 1. It was found that Khushi Ram father of petitioners and also the predecessor of the proforma respondents was inducted as tenant in the disputed premises under Hukam Singh father of respondent No. 1 was in fact the admission in absolute terms about the existence of relationship of landlord and tenant between the parties, from which the petitioners cannot wriggle out.

The learned Appellate Authority observed as under:-

“14. The appellant Jagan Nath has appeared in the witness box as RW1 to prove the contention raised by them and testified on affidavit thereby proving jamabandi for the year 1986-87 of Khasra No.268 as Ex.R1 and 1996-97 as Ex.R2, 2006-07 as Ex.R3, copy of sale deed dated 8.8.2008 as Ex.D1 and copy of the sale deed dated 3.3.1989 as Ex.D2 and copy of sale deed dated 24.5.1989 as Ex.D3. The respondents/appellants have tried to prove their ownership over the property in dispute by virtue of these documents

but in my view, they have not been able to prove that the property subject matter of the petition bears Khasra No.268 and that said property is the same property which is subject matter of sale deed Ex.D1 to Ex.D3. No doubt the site plan similar to the site plan produced on record by the petitioner as Ex.P 54 is annexed along with the sale deeds but despite the fact that all these sale deeds are of different dates, same site plan has been annexed with these sale deeds just changing the date on the same. So it is clear that site plan attached with the sale deeds Ex.D1 to Ex.D3 are not correct as per the area and boundaries mentioned in the body of the sale deeds. Even otherwise, the whole of the case of the appellants have been thrashed in the cross-examination of RW1 Jagan Nath who in his cross-examination has admitted that his father Khushi Ram died about 7/8 years back and he used to run the business of sale of vegetables in the property in dispute. He admitted it as correct that this Khokha was (being) taken by Khushi Ram from Hukam Singh and that Paramjit Singh petitioner is son of Hukam Singh. He also admitted it as correct that Khushi Ram earlier used to pay the rent of the Khokha @ Rs.22/- per month to Hukam Singh. He also admitted that Khushi Ram had executed rent deed

in favour of Hukam Singh regarding the Khokha above said. This statement of the appellant Jagan Nath himself proves the case of the petitioner/respondent/landlord Paramjit Singh. Even otherwise, in the earlier civil suit between the same parties titled as Paramjit Singh Vs. Karnail Singh, Karnail Singh while appearing as DW2 in his cross-examination has also admitted it as correct that Khokha was belonging to Hukam Singh who was father of Paramjit Singh petitioner and earlier his father used to pay Rs.30/- per month to Hukam Singh and then he used to pay Rs.55/- per month for that Khokha. He has also admitted that his father used to pay above said money as rent to Hukam Singh and then to his heirs. He has also admitted it as correct that his father was tenant earlier of Hukam Singh and then his widow and heirs of Hukam Singh. He has also admitted it as correct that Paramjit Singh is owner of the property situated on Railway Road left by Hukam Singh and then by Krishna Devi. He has also admitted that it is correct that his father has executed rent deed in favour of Hukam Singh. Relying upon said statement made by Karnail Singh as DW2 in that suit which is proved on record as Ex.A66, judgment Ex.A67 was passed in that suit for permanent

injunction between the same parties and so these material documents go to the root of the case and when there is sufficient evidence on record admitted by the appellants themselves, there was no necessity for the petitioner/respondent/landlord to prove the sale deed in favour of Hukam Singh regarding the property in dispute. So the statements made by these witnesses do not prove the stand taken by the appellants. Learned counsel for the appellants has relied upon the law as laid down by Hon'ble High Court in case titled as Sukhdev Singh & others Vs. Sudershan Sewa Trust & others 2013(3) RCR (Civil) page 588 wherein it has been held that when the parties are already litigating amongst themselves for the decision qua ownership of the demised premises, in such a situation Rent Controller cannot go beyond its jurisdiction while exercising its powers and can dismiss the rent petition. However, in the present case, no other proceedings and litigation regarding the title of the property in dispute is pending between the parties and the earlier litigation, it was suit for permanent injunction which has already been decided in favour of the respondent no. 1/landlord and in the present rent petition, same ground was taken by the respondent/tenant but even in the evidence recorded

in the present petition independently, the appellants have failed to prove their contention that they are owners of the property in dispute. It is settled law that a tenant cannot deny title of his landlord however, defective it may be so long as he has not openly restored the possession by surrender to his landlord. In this, I am supported by the case law of Hon'ble Apex Court in case titled as Bhogadi Kannababu & others Vs. Vuggina Pydamma & others 2006(3) CCC page 348. In the present case also, the appellant in the cross-examination has admitted that his father was tenant in the property in dispute and therefore, once it is admitted and they have not restored the possession till now, they cannot deny the title of their landlord.....”

(emphasis laid)

5. It is not disputed that the petitioner-tenants did not tender rent on the first date of hearing obviously because the existence of relationship of landlord and tenant was denied. In that situation, the learned Rent Controller, was not obliged to provide another opportunity to the tenants to tender the arrears of rent.

6. The Appellate Authority, on this aspect observed as under:-

“it has been held by our Hon'ble Court in a series of case law including case law titled as Narinder Singh Vs. Sarabjit Singh Vol.CXL VI (2007-

2) The Punjab Law Reporter page 405, Harish Chand Vs. Mohinder Singh 2009(1) RCR Page 680, Sandeep Shahi Vs. Asha Rani, 2010(2) Haryana Law Reporter page 604, S.K.Kalia Vs. Om Parkash & others 2011 (1) Haryana Law Reporter page 255 that once the respondent/ tenant denied the relationship of landlord and tenant, there would be hardly any justification for the Rent Controller to frame an assessment order in pursuance to the provisions to proviso to section 13(2) (1) of the Act and that no opportunity can be given to the tenant at that stage to make good deficiency in the arrears of rent. So, in my view learned Rent Controller has rightly held that there exists relationship of landlord and tenant between the parties and the bonafide requirement of the petitioner/respondent is also established besides that the respondents/appellants are in arrears of rent since May, 2000 and therefore, on these grounds they are liable to hand over the vacant possession of the demised premises to the petitioner/landlord/ respondent no. 1.”

7. Five Judges Bench of Hon'ble Supreme Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, (2014) 9 SCC 78**, held that the consideration or examination of the evidence by the High Court in revisional jurisdiction under the Rent Control Act is confined to find

out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. To satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

8. With the aforesaid observations and findings, there is no escape from the fact that relationship of the landlord and tenant has been established and this is a finding of fact on correct appreciation of evidence by both Courts below for which there is no scope of interference by this Court in exercise of its revisional jurisdiction.

9. Dismissed.

January 22, 2015
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(R.P. NAGRATH)
JUDGE