

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 7769 of 2014 (O&M)

Date of Decision: July 16, 2015

Ujjwal Sahrawat through GPA Tammanna R. Sahrawat
.....Petitioner

Vs.

State of Haryana and others
.....Respondents

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

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Present:- Dr. Tammanna R. Sahrawat, GPA holder of the petitioner.
Mr. R.K. Makkad, DAG, Haryana.
Mr. Sarwan Singh, Sr. Advocate with
Mr. N.S. Rapri, Advocate for the applicants.

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M.M.S. BEDI, J.

Mrs. Ujjawal Sahrawat wife of Sh. Ravee Sahrawat had sought ejectment of respondents No.2 and 3 from shop Nos. 1 to 4 situated in Daulta Market, Model Town, Rohtak on the ground of non-payment of rent, claiming that shop Nos. 5 to 15 were owned by her mother Sunehri Devi and shop Nos. 1 to 4 were owned by the petitioner as per the judgment of the Civil Court dated November 27, 1971. Petitioner claims that she had been receiving rent of shop No.1 to 3 before the death of her mother Sunehri Devi. Smt. Sunehri Devi had executed a registered Will dated June 16, 1993 by which she bequeathed her share in the shops in favour of the petitioner and that respondents No.2 and 3 had accepted the petitioner to be

the owner and landlady of shop Nos. 4 to 10 by virtue of a registered Will of Sunehri Devi and had been paying rent in the bank account of petitioner at Rohtak. The petitioner had sought ejectment of the respondents from shop Nos. 4 to 10 out of shop Nos. 1 to 15 situated in Daulta Market, Model Town, Rohtak.

The respondents had filed a written statement claiming that the petitioner is not the owner of shop Nos. 4 to 10 and that they have already vacated the shops in dispute and handed over the possession to the petitioner and other claimants on March 1, 2012 and April 24, 2012 and that the rent had been deposited in the bank account till November 2011 and the remaining rent for three months could not be deposited in the bank account of Smt. Sunehri Devi as the account had been closed by bank. It was pleaded that the ownership of the petitioner regarding shop Nos. 4 to 10 was not accepted.

In view of the pleadings of the parties, the Rent Controller had framed issue No.1 regarding relationship of landlord and tenant between the petitioner and respondents and Issue No.2 to the effect that whether the tenants were liable for ejectment on the ground of non-payment of rent. The Rent Controller held that the petitioner was not able to establish the ownership of the property in dispute on the basis of the Will and had failed to establish that she was exclusive landlady of the shops in dispute. Under issue No.2 it was held that rent amount had already been deposited in the

bank account of Sunehri Devi and consequently, the ejectment petition was dismissed.

The petitioner filed an appeal before the Appellate Authority, Rohtak under Section 15 (2) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, for short 'the Act' against the order passed by the Rent Controller claiming herself to have derived title on the basis of a Will from her mother and her relationship with the tenant/ respondents. The Appellate Authority decided the appeal holding that since a civil suit is pending regarding the validity of the Will in favour of the petitioner which was allegedly executed by Sunehri Devi and the claim of the petitioner to be the landlord on the basis of the alleged Will, she cannot be held to be exclusive landlady as Sunehri Devi had two sons also, namely, Bulganin Daulta and Brijinder Daulta, alongwith petitioner who was the daughter. The Appellate Authority observed that the petitioner held a power of attorney on behalf of her mother and later on she executed a power of attorney in the name of Tammanna Sahrawat. The operative part of the judgment of the Appellate Court reads as follows:-

“As per my sequel discussion it has come on the record that the Will has been executed by Ms. Sunehri Devi in favour of appellant and more so after the death of Sunheri Devi appellant has become co-owner qua her share being one of the legal heirs of deceased Sunheri Devi with regard to property in question. In case the

Will is not proved in favour of the appellant then also appellant is co-owner in the property in question, so this Court is of the considered opinion that there is illegal infirmity in the finding of learned Rent Controller and same is perverse and is hereby set aside as appellant has succeeded to prove on record that appellant is Landlord of the premises in question. However, it is made clear that if legality of the Will is not decided in favour of appellant in Civil Court then the appellants would not have any right as sole owner over the property in question as a landlord on the basis of the Will and this judgment shall have not any effect on the rights of the appellant qua the premises in question if she will not succeed in the civil suit on the basis of the Will in question.”

So far as the finding on issue No.2 is concerned, it was held that tenants were not liable to be ejected on the ground of non-payment of rent as the rent stood already deposited in the bank. Appeal was thus partly accepted. Though the appeal had been partly accepted holding the petitioner to be co-landlord with the other heirs of Sunehri Devi subject to the final decision of the Will dated June 16, 1993, by the Civil Court in a civil suit pending between the parties, yet the request for ejectment of tenants for non-

payment of rent was declined. Aggrieved against the observation of the Appellate Authority, the petitioner has preferred this revision petition.

It is also important to mention that the brothers of the petitioner have also filed an application under Order 1 Rule 10 (2) CPC to be impleaded in this revision petition, to resist the claim of the petitioner regarding her exclusive right as ownership/ landlady. As the title is not to be determined, an earlier application of similar nature having been dismissed by Rent Controller and upheld by this Court in CR No. 1237 of 2014, decided on February 18, 2014, the application for impleadment is dismissed.

The revision petition was argued by Dr. Tammana R. Sahrawat on merits, the general power of attorney of petitioner by appearing in person. Ms. Tammana had vehemently urged that the finding of the Appellate Authority that the petitioner is merely a co-landlord is illegal. She has placed strong reliance on the order passed by Sabina, J., dated February 18, 2014 in CR No. 1237 of 2014 contending that Major General Brijender Singh Daulta and others had filed an application for being impleaded as party in the ejectment petition. The same was dismissed vide order dated November 7, 2013 by the Rent Controller. The said order was upheld in the revision petition vide order dated February 18, 2014. It was argued that once they have been held to be not entitled to be impleaded in the ejectment petition, it will be implied that they have no right, title and interest in the property and

they are estopped from claiming themselves to be co-landlord with the petitioner.

I have heard Ms. Tammana Sahrawat at length and with her assistance carefully gone through the documents placed on the record but I am of the opinion that the judgment passed in CR No. 1237 of 2014 affirming the order declining to implead the other co-owners as party cannot be taken to be a judgment determining the non-existence of other heirs of Sunehri Devi, who was the admitted landlady of the tenanted premises. The authorities under the Act have got no jurisdiction to determine the title of the parties. The claim of the petitioner that the petitioner should be held to be exclusive landlord qua the respondents is not acceptable as the petitioner has failed to establish that she is exclusive person falling under the definition of 'landlord'. The claim of the respondents/ tenants is that they had already vacated the premises and had paid the rent by depositing the same in the account of Sunehri Devi.

As per the definition of "landlord" under Section 2 (e) of the Act, the landlord need not to be the owner but should be entitled to receive the rent in respect of tenanted premises on his behalf or on behalf of any other person. The definition of 'landlord' reads as follows:-

"2 (e) "landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee,

guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter provided, and every person from time to time deriving title under a landlord”

So far as tenant is concerned, he is defined under Section 2 (h) of the Act, which reads as follows:-

“2 (h) “tenant” means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing, in possession after the termination of his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rental land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for ships has been framed out, or leased by a municipal town or notified area committee.”

The respondents have vacated the building in dispute as such they are not continuing in possession as such they also do not fall in the definition of exclusive tenant of the petitioner as such there is no ground for

interference in the order passed by the lower Appellate Court declaring the petitioner to be the co-landlord with other heirs of Sunehri Devi, title being under dispute.

The petition is dismissed observing that the status of the petitioner will be a co-landlord, without expression of any opinion regarding her title on the basis of the Will which is to be determined by the Civil Court where the litigation between the heirs of Sunehri Devi regarding ownership of the shops in dispute is pending.

Nothing said in this order will prejudice the rights of the petitioner or the other heirs in the civil litigation which is pending before the Civil Court.

July 16, 2015
sanjay

(M.M.S.BEDI)
JUDGE