

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8006 of 2014 (O&M)
Date of Decision: January 14, 2015

Kashmiri Lal Chawla and another

...Petitioners

Versus

Roshan Lal and another

...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. Amit Jain, Advocate
for the petitioners.

Ms. Ekta Thakur, Advocate
for the caveator-respondent No.1.

R.P. Nagrath, J.

The petitioners have invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 30.10.2014 (Annexure P-5) passed by the Civil Judge, Junior Division, Chandigarh, whereby third party objections filed by the petitioners have been dismissed by the Executing Court.

2. The facts briefly stated are that respondent No.1 is

owner of H.No.307, Milk Colony, Dhanas, UT, Chandigarh. Petitioner No.1 is brother-in-law of this respondent and petitioner No.2 is wife of petitioner No.1. Respondent No.2 is the son of the petitioners.

3. Respondent No.1 filed rent petition No.1013/2009 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of respondent No.2 from the premises described as ground floor consisting of three rooms, two bath-cum-latrines, kitchen and front and back courtyards of the aforesaid house No.307 on the ground that respondent No.2 was tenant of respondent No.1 vide rent note dated 10.09.2009. As per terms of the agreement, the tenancy was created for the period from 01.09.2009 to 31.7.2010 whereunder respondent No.2 agreed to pay rent at the rate of ₹ 5000/- per month excluding electricity and water charges. The eviction was sought on the ground of non-payment of rent with effect from October, 2009 till the date of filing of the eviction petition which was instituted in December, 2009. The other ground of eviction was that the premises was required for bonafide need of respondent No.1 as he wanted to shift his daughter who has two children of the age of three years and nine years, in the said house. The daughter of respondent No.1 was residing in a government house allotted to her husband and she was not in a financial position to make payment of the rent. Husband of daughter of

respondent No.1 suffered a serious accident in October, 2006 and had become physically a crippled person. It was stated that respondent No.1 himself was residing in House No.1266, Sector 34-C, Chandigarh alongwith his family and the first floor of the said house is owned by the wife of respondent No.1. Respondent No.2 seriously contested the eviction petition but the learned Rent Controller passed the eviction order dated 29.04.2014. The Rent Controller held the relationship of landlord and tenant to be proved and ordered eviction on the ground of non-payment of rent and bonafide requirement of respondent No.1 for accommodating his daughter.

4. I have heard learned counsel for the petitioners and respondent No.1, perused the impugned order and the paper book.

5. Notice of the instant petition to respondent No.2 is dispensed with as the petitioners are parents of respondent No.2 and have raised the objections which were taken in the written reply filed by respondent No. 2 to the eviction petition. Caveat was filed for respondent No.1.

6. Learned counsel for the petitioners vehemently contended that the learned Executing Court has summarily rejected the objection petition without affording them opportunity to lead evidence to support their contentions. It was stated by the petitioners in objection petition (Annexure P-3) that they are

residing on the ground floor of the house since 1986-87 and at that time only ground floor of the house was constructed. Respondent No.1 in the witness box even admitted that petitioner No.1 alone was residing in the house for the past about 10-12 years and thereafter he brought his family also. In this way, respondent No.1 admitted the exclusive possession of Kashmiri Lal since the year 2000 onwards.

7. There was also the ration card issued on 30.06.1989 in the name of petitioner No.1 pertaining to this very house in which the names of other members of his family are entered. These family members are petitioner No.2-Rekha Rani and respondent No.2-Rajesh Chawla. Respondent No.2 was only 15 years old at that time. Since the petitioners never surrendered possession of the house to respondent No.1, the question of creating tenancy in favour of respondent No.2 would not arise as the tenancy can be created only by delivery of possession.

8. It was pleaded in the objection petition that petitioners are living in the house in question on the permission granted by respondent No.1 not only for the purpose of residence but also to carry out the construction upto double story level. At the most, the petitioners' possession can be termed as a licensee who could not be thrown out without termination of the licence. It was further pleaded that respondent No.1 also filed a civil suit for permanent injunction in which he admitted that the petitioners

were letting out the first and second floors of the house in question to various tenants and that they were also operating PG (paying Guest) in the said house. That suit was, however, withdrawn subsequently before the passing of the ejectment order. In fact, respondent No.2 was serving with respondent No.1 as Block Manager for a considerable long time and finally when he left the job, respondent No.1 had projected the rent agreement dated 10.09.2009.

9. Respondent No.1 filed a detailed reply to the objection petition. It was stated that the petitioner-objectors had been appearing before the Rent Controller during the proceedings in eviction petition throughout. It was reiterated that the petitioners were residing with their son-respondent No.2 and had been helping him to defend the eviction petition.

The learned Executing Court observed as under: –

“Both the objectors, Sh.Kashmiri Lal and Rekha Rani as per own admission of the JD, were not only residing with the JD-Rajesh Chawla but they were also in the knowledge of the proceedings of the case from very beginning. Instead of getting themselves to be impleaded as party in the case, they kept on watching the proceedings of the case. No attempt whatsoever was made by them to get themselves impleaded as a party. In his cross-examination in the rent petition, respondent-

Rajesh Chawla has admitted that his mother is sitting in the court and she had been coming throughout in the hearings of the present case. Page no.5 of cross-examination of Rajesh Chawla bears the testimony to the same. For the sake of reference, the same is being reproduced hereinafter. "My mother is present today in the court and had been coming throughout hearing in the present case". This goes to show that his mother, Rekha Rani was having knowledge of the proceedings of the case and they preferred to keep silent and waited for the final decision of the case and have now filed objections. It is relevant to see that this court has already decided the relationship of the parties is governed by the rent agreement dated 10.9.2009."

10. I am of the view that the learned Executing Court could not have thrown away the objection petition filed by the petitioners without giving them opportunity to prove their contentions. It seems that the Executing Court was swayed with the finding returned in the eviction case with regard to proof of rent agreement for the year 2009. There are numerous documents attached by the petitioners in support of the objections. Annexure P-6 is copy of ration card in the name of petitioner No.1 obtained in the year 1997 with his address of House No.307, Milk Colony, Dhanas, UT, Chandigarh. At that time, age of petitioner No.1 was 36 years; petitioner No.2, 30

years and respondent No.2, 15 years old. There is also voters' list for the years 1993 to 2008 which is part of Annexure P-7 (colly) showing petitioners to be registered voters at this address since the year 1993. Annexure P-7 also contains voters' I-card of petitioner No.1 at his address of House No.307, Milk Colony, Dhanas, UT, Chandigarh which was issued on 18.09.1994. Annexure P-8 is a notice issued by the Superintendent of the Estate Office, UT, Chandigarh dated 31.1.2007 addressed to respondent No.1 being lessee of the premises and petitioner No.1 the occupier. This notice was issued under Rule 10(3) & 19 (15) of the Chandigarh Milk Colony, Dhanas, Allotment of Site Rules, 1979.

11. Learned counsel for the petitioners further submitted that the licence in favour of petitioner was irrevocable as certain constructions were raised by them. This contention was ruled out by the Rent Controller in the eviction order by observing that respondent No.2 was unable to establish that he could spent an amount of ₹ 10,00,000/- to 15,00,000/- on the construction because he was earning only ₹ 7000/- per month. Prior to that, respondents No.2 was drawing ₹ 2000/- per month as wages. That would be inconsequential as objectors have not been afforded opportunity to prove their version. The voluminous documentary record would bring prima-facie support to the contention of petitioners that they were residing in this house for

many years before filing of the eviction petition and respondent No.2 who is stated to be a tenant, was just about 15 years old in the year 1997.

12. The eviction order was passed by the Rent Controller on 29.04.2014. It was admitted during the course of arguments that possession of the property in question has since been obtained by respondent No.1 on the strength of eviction order, on 26.11.2014. It is thus submitted that the possession of the disputed property may also be restored to the petitioners.

13. Learned counsel for the petitioners relied upon the judgement of this Court in ***Surjit Kaur Vs. Balwinder Kaur, 2005(4) RCR(Civil) 644***. The principle of law held in that case was that a suit for mandatory injunction is maintainable after termination of the licence by issuing a notice, when the licensee refuses to hand over the vacant possession. This judgement cannot support the petitioners as the question before this Court was whether a suit for mandatory injunction could be maintained in the facts and circumstances of the case or a suit for possession was required to be instituted.

14. Learned counsel for the petitioners also relied upon the judgement of the Delhi High Court in ***Thomas Cook (India) Limited Vs. Hotel Imperial and others, 2006(127) DLT 431***, in which it was categorically held that if the possession of the person is prima-facie shown to be that of licensee he is not

entitled to seek injunction against the true owner. In the said case, the question posed was that when a party approaches a court seeking a protective remedy such as injunction and it fails in setting up a good case, can it be said that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? It was held that the recourse to law stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Despite holding so, Delhi High Court held that **the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law.** It was, therefore, contended that the petitioners have been forcibly dispossessed from the premises in question and this is in violation of the settled principle of law (emphasis laid).

15. It is worth noticing, as was submitted by learned counsel for the parties, that appeal against the eviction order at the instance of respondent No.2 is still pending but no stay has been granted in his favour, and that is presumably because the arrears of rent as claimed were not paid, as the very existence of tenancy was disputed.

16. I am of the considered opinion that the fact that petitioners knew about pendency of the eviction petition and did not file any application for becoming party to the said petition, cannot be of much importance as respondent No.2 had already set up the plea in the written statement that respondent No.2 was residing with his parents who were in permissive possession of the premises in question. If that be so, respondent No.1 should have himself impleaded the petitioners also as parties in the eviction application.

17. In **Thomas Cook's case (supra)**, the Delhi High Court discussed the case law on the subject and it was observed that thread of reasoning running through these decisions seems to be that although a person may be in unlawful possession of a property he cannot be dispossessed without recourse to law and, if he is dispossessed by use of force then, even though his occupation/possession was hitherto unlawful, he would still be entitled to be put back in possession in view of Section 6 of the Specific Relief Act. The Delhi High Court, however, refused the injunction in favour of the plaintiff as he was merely a licensee and it was observed in the said case that a different question emerges and that is whether a person who is in unlawful occupation can approach the Court for an injunction order restraining the lawful owner from dispossessing him. It was, however, observed that there was a distinction

between this situation and the situation which arises post dispossession. In one situation the unlawful occupant has not yet been dispossessed, in the other he has already been dispossessed. In so far as, the latter case is concerned, the aforesaid decisions make it clear that such person is entitled to be put back in possession in terms of the provisions of Section 6 of the Specific Relief Act.

18. Rule 99(1) of Order XXI of the Code of Civil Procedure says that where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or where such property has been sold in execution of a decree by the purchaser thereof, he may make an application to the Court complaining of such dispossession. Sub-rule (2) further says that where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

19. Rules 100 and 101 of Order XXI of the Code read as under: –

“100 . Order to be passed upon application complaining of dispossession— Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined— All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

20. In view of the disputed questions of facts arising from the objections filed by the petitioners, the petitioners were supposed to have been granted opportunity to prove their case.

21. The instant petition is, therefore, allowed. The impugned order is set aside and the matter is remitted to the Executing Court to dispose of the objection petition, in accordance with law after framing the issues on the objection petition and affording opportunity to the parties to lead their respective evidence. The parties are directed to appear before the Executing Court on 09.02.2015. The Executing Court would dispose of the objections expeditiously and preferably within a period of six months from 09.02.2015.

22. Any further transfer of possession of the property in question shall always be subject to adjudication on merits of the objection petition filed by the petitioners.

January 14, 2015
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(R.P. Nagrath)
Judge