

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

CR No. 2851 of 2002 (O&M)
Date of decision: July 29, 2015

Niranjan Dass

...Petitioner

Versus

China Singh alias Chinda Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of 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. SK Singla, Advocate,
for the petitioner.

Mr. Arun Singla, Advocate,
for the LRs of respondent No.3.

K. KANNAN, J. (Oral)

1. Respondent 3(i) duly served.
2. Respondent 3(ii) served through mother and respondent 3 (iii) served through son. Service deemed sufficient. None appears.
3. 2nd respondent has also expired and his wife-respondent 2(i) and one son-respondent 2(ii) have been served. Yet another son, namely, Nikku-respondent 2(iii) and daughter, namely, Charno-respondent 2(iv) have not been served. I dispense with notice to respondents 2 (iii) and (iv), taking note of the fact that the presence of widow and son i.e. respondents 2(i) and (ii) is sufficient representation.
4. 4th respondent has died and two of his sons Kandi and

Lohra i.e. respondents 4(iii) and (iv) have not been served, however, his widow Sito and yet another son Ghasa i.e. respondents 4 (i) and (ii) have been served. I take their representation as sufficient and dispense with notice to other respondents i.e. respondents 4(iii) and (iv).5.

5. The revision petition is at the instance of the landlord whose petition for ejectment succeeded before the Rent Controller, but reversed in appeal. The Appellate Authority found that the tenant was entitled to protection of his possession as a displaced person having occupied the property soon after partition in the year 1947.

6. The counsel appearing on behalf of the petitioner points out that there was no plea by respondent No.1 that he was entitled to the benefit as displaced person under any of the statutory provisions. No document was shown by the respondent for any allotment and admittedly even the tax entries did not bear the respondent's name. The court was reversing the decision of the Rent Controller without any valid basis. The property was required by the petitioner for his own personal need and the court has not properly considered his contention that the property let out by him to the 1st respondent had been sub let to respondents No. 2 to 4. The ejectment order passed already ought to have been restored.

7. I have examined the statement taken in defence. The respondent has denied that there was any form of tenancy, as pleaded by the petitioner. On the other hand, it is contended that the property has been in the possession of the respondents right from 1947 in their own right. The most crucial issue for consideration before the Rent Controller must have been, therefore, to examine whether there was proof of jural relationship of landlord and tenant between the petitioner and the 1st respondent. The

petitioner has filed a sale deed in his favour and the municipal entries stood in his name. The Rent Controller has observed that the respondent admitted in his cross-examination that there was no sale deed in his name and that he had not paid any property tax. The Rent Controller, therefore, held that the respondent failed to prove his ownership. The issue of ownership was wholly irrelevant. The Rent Controller went on to further observe that the petitioner's contention that the property had been let out to the tenant at the rate of Rs. 175/- has not been disputed by the respondent. I find the observations to be wrong. The plea in defence and the substantive evidence are only with reference to the fact that there was no tenancy in favour of the 1st respondent and that he had not paid any rent. The parties knew what they were contesting and what was required to be proved before the Rent Controller. The petitioner has set out no detail about when the tenancy commenced and how the property was let out to the 1st respondent. There was no information about any other person in the town as knowing the transaction of lease between the petitioner and the 1st respondent. All that can be noticed is that the petitioner is a resident of Delhi and he wanted the property at Moga for his own need. One would expect the petitioner to disclose as to how he came to know the 1st respondent and under what circumstance the property was allowed to be in possession of the respondent even without taking a document from him. I can understand parties in the same town or village granting a property on lease orally. All that can be seen is that the petitioner was said to be originally a resident of Moga had shifted Delhi during the period of political disturbance in the State. This also does not provide any credible basis for oral tenancy. The Appellate Authority which has modified the order has found that the respondent was

in possession from 1947 and has proceeded to hold that he is entitled to retain his possession as a displaced person. I find this to be, as contended by the petitioner, to be a wild observation without any legal basis. Even while finding that the Appellate Authority's observation regarding the right of the respondent as having been fructified as a displaced person to be erroneous, I will not still interfere with the ultimate dispensation dismissing the petition for eviction. This is so in view of the fact that I find that the Rent Controller's finding of tenancy was on a fragile foundation that could not be supported by any acceptable evidence.

8. The order of the Appellate Authority is sustained, although for different reason. The petitioner will be at liberty to bring a suit on title and if such a suit were to be filed, none of the findings entered by the Rent Controller and the Appellate Authority will conclude the issue regarding title. The same will be decided without in any way being fettered by the observations of the authorities constituted under the Rent Restriction Act.

9. The revision petition is dismissed but subject to the above observations.

July 29, 2015
prem

(K.KANNAN)
JUDGE