

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3209 of 2003
Date of decision: 02.09.2015

Gaja Nand

... Petitioner

Versus

Phoolwanti and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Gursheer Singh, Advocate, for the petitioner.
Mr. Sandeep Jasuja, Advocate for the respondents.

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?

ARUN PALLI J. (Oral)

Petitioner (landlord) had sought eviction of the respondents-tenants from the demised premises i.e. a room, on multiple grounds such as non-payment of rent, premises in question had become unfit and unsafe for human inhabitation as also on account of personal need or requirement of the landlord. Vide order dated 03.05.2001, Rent Controller, Fazilka, dismissed the petition, as none of the grounds for eviction was made out. Appeal preferred against the said order also failed and was dismissed vide judgment dated 09.04.2003. This is how, petitioner (landlord) is before this court.

At the outset, learned counsel for the petitioner, fairly submits that as regards the concurrent findings recorded by the courts below qua issue No.1 i.e. non-payment of rent and issue No.8 i.e. the demised premises has become unfit and unsafe for human inhabitation, no exception can be taken and, thus, he does not wish to press his petition qua those findings. However, he asserts that the Rent Controller as also the Appellate authority apparently erred to dismiss the eviction petition even on the ground of personal need/necessity of the landlord. He submits that in reference to the testimony of son of the petitioner, namely, Vimal Kumar (AW8), it was concluded by the Rent Controller, and affirmed by the Appellate Authority:

“In his cross-examination, AW8 Vimal Kumar has admitted that towards the southern side of the disputed property, a property having a length of about 70’ x 8” exists which is owned by the petitioner. He has further stated that he cannot tell the width of the said property which is lying vacant. However, from the front side it is 30’ in width and towards the rear side its width varies from 80’ to 200’. He has further stated that a tubewell kotha has been constructed in the said property in which mali Puti Ram is presently residing. He has further stated that he cannot tell as to how many shops and houses can be constructed in the said property. This witness has further stated in his cross examination that another property exists towards the eastern side of

the property in dispute which belongs to his mother and brother, the area of which must be 3/4 kanals and the said property is also lying vacant. Thus, from the cross examination of AW8 Vimal Kumar, it emerges that sufficient property belonging to the petitioner and his family members exist near quite adjacent to the demised premises which can be utilized for constructing a garage or even servant quarters and the accommodation occupied by the respondent cannot be said to be the only property which could be utilized by the petitioner for making a garage or servant quarter.”

In reference to paragraph 12 of the grounds of revision, he submits that Vimal Kumar (AW8) never admitted in his cross-examination that the property on the southern side of the demised premises was owned by the petitioner (landlord), Gaja Nand. A bare analysis of his statement reveals that the property on the southern side was indeed owned by the joint family of the petitioner. Therefore, the finding recorded in this regard is contrary to the record. And insofar as the property on the eastern side, he submits that it was concededly owned by the mother and brother of the said witness and could hardly be a factor to defeat the right of the petitioner (landlord) to seek eviction for his personal bona fide need.

Confronted with this, learned counsel for the respondents does not dispute this position. However, he submits that site plan (Ex.A1) shows that there exists another

open space, depicted as open yard, which is in occupation of the petitioner and is part of the same property i.e. house No.4018/1, and thus could well be used by the petitioner for his alleged need. However, he concedes that no argument in this regard was raised before the courts below.

During the course of hearing, a consensus emerged between the counsel for the parties that let the judgment rendered by the appellate authority dated 09.04.2003 be set aside and the matter be remitted for decision afresh as regard issue No.2 i.e. **“Whether the demised premises are required by the petitioner for personal use and occupation?”**. Further, the parties be also afforded one opportunity each to lead any further evidence in this regard, if so required.

Accordingly, the judgment dated 09.04.2003 is set aside and the matter is remitted to the Appellate Authority, Ferozepur, for decision afresh vis-à-vis issue No.2, in accordance with law. Only one opportunity, if prayed for, would be afforded to each of the parties to adduce any further evidence on the matter in issue. As the eviction petition was instituted as back as on 14.12.1996 and about 19 years have gone by, the appellate authority is requested to decide the appeal within a period of three months from the receipt of certified copy of this order. Needless to assert, that this order shall not constitute any expression of opinion on merits of the case of either party.

Petition is disposed of in the above terms.

Parties through their counsel are directed to appear
before the appellate court on 21.09.2015.

Records be returned.

September 2, 2015
Rajan

(Arun Palli)
Judge