

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

**Review Application No.137-CII of 2012 in
Civil Revision No.4673 of 1998**

Date of decision:25.02.2015

Tharu Ram and another

... Petitioners

versus

Sat Pal son of Mela Ram, resident of Mohalla Daula Nanga, Batala
.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ajaivir Singh, Advocate,
for the applicant/respondent.

Mr. Ashwani Kumar Chopra, Senior Advocate,
with Mr.G.S. Sullar, Advocate,
for the non-applicants/petitioners.

K.Kannan, J. (Oral)

1. The application for review is sought on two grounds: one, that on the date when the case was disposed of, he was not present because the name of the respondent's counsel had not appeared. The other reason is that the judgment is erroneous, in that, it makes an inference that the identity of the property has not been established when it is clearly established and even the oral tenancy has been proved by examination of witnesses.

2. On notice of application to the counsel for the petitioners, it is pointed out by the learned senior counsel appearing on behalf of the tenant that at every previous hearing also, the very

same name of the counsel which had been appearing, had also appeared on the date of hearing and if the applicant could have made the appearance on other hearings, there is no particular complaint that he could make that his name did not appear. This was a case of the year 1998 and it is a practice in this court that the list of cases which are taken up for hearing is dispatched to the Bar Association and displayed in the Bar Association's notice board, apart from the cause list being published everyday so that the counsel who have access to information about the cases that are posted for various dates and secure such information without much ado. The reference to the name of the party and their counsel is hardly relevant, for, the information ought to be accessed through the case number displayed and that is how the applicant himself has appeared on previous hearing as well. I take the present explanation given for non-appearance to be a lame excuse.

3. However, I do not want to fetter the rights of the applicant to make his case for a review but this has to be invariably stand by the test of principles of what Order 47 CPC would provide for even under rent control proceedings. The test has to be that the decision suffers from an error apparent on the face of record that would require correction. The case has been decided on an inference drawn that the petitioner was claiming the property through a sale deed on 13.07.1981 from Banarsi Dass who, in turn, had claimed it

from one Joginder Singh through a document dated 07.10.1964. The sale deed contained reference to liner measurement of 28'x3" East-West and 18'x8" South-North, while the description in suit contained reference to shorter measurement East-West as 22' and the larger measurement of 30' South-North. The counsel would attempt to make a point that the identity is not in dispute and this objection ought not to be taken. I am prepared to even take it that there was no serious dispute regarding identity but the fundamental question was whether there existed a jural relationship between the person claiming as landlord and the person against whom eviction was sought on the ground that he was a tenant. The landlord had attempted to secure evidence of two witnesses, whose quality and content, I have assessed and found to be unreliable. The Rent Controller found that there was no proof of tenancy and the appellate court had made reference to one of the witnesses who spoke about the fact that he was present at the time when the property was let on rent. The landlord was attempting to show the tenancy through some persons, who were said to have been present at the place and there was not even a single document to prove the evidence of tenancy apart from oral assertions. Yet another witness whom the landlord had produced had given a varying version that the tenant had forcibly entered into possession after the landlord purchased the property. I found this evidence to be discrepant with

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the version given by yet another witness and if the evidence on the tenancy had to stand only on oral assertions, with discrepancies looming large, I had directed that appropriate remedy would only be by means of a civil suit to seek for a declaration on title and to obtain ejectment and observed that the possession was 9 points in law and a person in possession was bound to retain the same till evicted by a person who could show better title. A suit on title was, in my view, the appropriate course that the person claiming as landlord could take, when the case of tenancy was fragile. I find no error for a reappraisal even if the judgment should be put through the test of whether it has considered every aspect of what the applicant wants to bring out now. I find no scope for modifying this judgment. The application for review is dismissed.

**(K.KANNAN)
JUDGE**

25.02.2015
sanjeev