

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

RANJIT SINGH AND ANOTHER ...PETITIONERS
VS
AVTAR SINGH BHATOS AND ANOTHER ...RESPONDENTS

BIMLA DEVI ...PETITIONER
VS
AVTAR SINGH BHATOS AND OTHERS ...RESPONDENTS

SUNITA RANI AND OTHERS ...PETITIONERS
VS
AVTAR SINGH BHATOS AND ANOTHER ...RESPONDENTS

- AJAY TEWARI, J. (Oral)**

Ashish
2016.05.27 17:27
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authenticity of this document
Chandigarh

the petitions are decided by the common order since the issue involved are the same.

The respondents had filed nine petitions for eviction of the petitioners and other occupants under Section 13(B) of the Act (as extended to Chandigarh) on the ground that the respondent No.1 was the Non-Resident Indian and the owner of the property in dispute and wanted to come back to India to set up a legal practice. In the petitions, admittedly the property was described as follows:-

Room bearing No.6 in red colour, measuring 11x12 bounded from East: with room No.7 of the petitioners, West: with the houses of villages, North: with the road, South: with courtyard of the petitioners, fully shown as WXYZ in the attached map, situated opposite the Flour Mill of Kuldip Singh, Ex-Sarpanch, within the abadi deh of Village Kajheri, U.T., Chandigarh.

The petitioners filed an application under Section 18-A of the Act raising various pleas including that the respondent No.1 being foreign citizen was not covered under the definition as prescribed for Non-Resident Indian under Section 2(dd) of the Act. Suffice it to say, that contention has been rejected by this Court in ***CR-3509-2014, titled as Krishan Kumar vs. Kamla Devi, decided on 09.05.2016***. Apart therefrom inter-alia the plea of the petitioners were that i) the land on which their rooms/shops were situated had already been acquired by the Chandigarh Administration, ii) the sale deed in favour of respondent No.1 was of some different land.

It would be relevant to mention here that some of the other occupants did not take up all the pleas and rather admitted the relationship of landlord and tenant between the parties while the present petitioners denied that also. The issue before this Court is whether these pleas raised

the triable issue before the Rent Controller. To my mind, the answer to this has to be in the positive. A perusal of the headnote of the eviction petition itself shows that the description of the property in dispute is deliciously vague. In fact no property can ever be identified in any village in India with this description because the only fixed point as mentioned in the headnote is the Flour Mill of Ex.Sarpanch. It has not been shown as the house of which villagers abuts the property in dispute on the other side, nor as to which road abuts on another side. This vagueness of the boundaries of the property in dispute coupled with the plea of the petitioners that in fact the sale deed presented is of a different land definitely raised a triable issue, more so when there is neither any rent note nor rent receipt on the record and it is the case of the respondents that the tenancy was oral and the rent received in cash without any regular receipt.

Learned counsel for the respondents has argued that a heavy burden lays upon a tenant to dislodge the strong presumption in favour of the landlord as held by the Hon'ble Supreme Court in the case of ***Baldev Singh Bajwa vs. Monish Saini, passed in Appeal (Civil) No.6131 of 2005, decided on 05.10.2005*** and also by this Court in the case titled as ***Krishan Kumar Vs. Kamla Devi (supra)***.

In my opinion, there can be no dispute with the aforesaid proposition but here the issue raised is more basic as that of the identification of the property in dispute. In any case, even under Section 13-B of the Act it would be incumbent upon the landlord to identify the property in dispute with reasonable certitude before any presumption is

raised in his favour. If the first condition is not met the limitations on the rights of the tenants do not kick in.

In the circumstances, the Rent Controller erred in dismissing the application for leave to defend. Resultantly, the revision petitions are allowed. The impugned order is set aside and the petitioners are granted leave to defend the eviction petition.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 23, 2016
ashish

(AJAY TEWARI)
JUDGE