

CR No. 4072 of 2016 (O&M)

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

CR No. 4072 of 2016 (O&M)

Date of Decision: July 04, 2016

Vijay Kumar Phutela & another

...Petitioners

Versus

Smt.Krishna Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Jain, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this revision petition is to the order passed by the Rent Controller, Sirsa, dated 30.09.2014, whereby, the rent petition preferred by the respondent Smt. Krishna Rani, has been allowed and the petitioners have been directed to vacate the demised premises and hand over the vacant possession to the respondent within a period of three months as also the order dated 04.05.2016 passed by the Appellate Authority, Sirsa, dismissing the appeal preferred by the petitioners and upholding the order passed by the Rent Controller, Sirsa.

It is the contention of the learned counsel for the petitioners that there is a dispute with regard to the relationship of landlord and tenant as the petitioners are the owners of the demised premises (shop) which they had purchased vide registered sale deed No.6603 dated 18.10.2014 from one Shri Suraj Rattan son of Nebh Raj. He, thus, contends that the title of the demised premises is involved and therefore, the Courts below should have

refrained themselves to proceed with the matter and further the respondent has failed to establish the relationship of landlord and tenant which onus to prove was on her. His further contention is that as per the evidence led by the respondent, the demised premises in possession of the petitioners is not the same as the descriptions do not tally. That apart, he asserts that the Courts below have returned wrong findings that the respondent is the owner of the demised premises as also the landlord by wrongly discarding the registered sale deed dated 18.10.2004 executed in favour of the petitioners. He, thus, contends that the impugned orders passed by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the impugned orders.

As per the evidence led by the respondents, the property in question originally was owned and possessed by Smt. Kako Devi widow of Santu Ram son of Shri Topan Dass, was mortgaged by her son Nebh Raj, her General Power of Attorney, to M/s Rajender Kumar Anil Kumar, Sirsa, through Mahabir Prasad son of Seth Beni Gopal, vide mortgage deed dated 01.04.1976 which was registered on 02.04.1976 (Ex.P-4). Thereafter, Mahabir Prasad mortgaged the premises in question with possession to father-in-law of the respondent, Shri Daulat Ram vide mortgage deed dated 16.12.1980 (Ex.P-1). Shyam Lal son of Shri Daulat Ram became the mortgagee of the premises in question by inheritance after the death of his father Shri Daulat Ram. This Shyam Lal let out the premises in question to

Kanshi Ram son of Isher Dass who was father of the petitioners at the rate of ₹ 300/- per month. On the death of Kanshi Ram, the petitioners became the statutory tenants over the premises in question being his sons and continued to pay the rent at the rate of ₹ 300/- per month. On the death of Shri Shyam Lal, respondent and her son inherited the premises in question and became mortgagee in possession. Petitioners were doing the business of cycle repairing in the premises in question. Petitioners stopped paying rent from the year 2007 onward and thus, were in arrears w.e.f. 01.12.2007 till date.

Petition for eviction was filed by the respondent on the grounds of arrears of rent and for *bona fide* necessity and use of the demised premises for her son in order to start his business in the premises in question. As per the mortgage deed executed by Nebh Raj in favour of M/s Rajender Kumar Anil Kumar, Sirsa, dated 02.04.1976 (Ex.P-4), the description of the shop is given as 8'x8' and the same description is further given in Ex.P-1 dated 16.12.1980 which was a mortgage deed executed by Mahabir Prasad in favour of Shri Daulat Ram, father-in-law of the respondent. Ex.P-3 is the assessment register of the Municipal record and the property number as per record is 21/97. The documentary evidence placed on record has been duly proved on the basis of the evidence led by the respondent. Further, petitioner No.1 Vijay Kumar Phutela, who appeared as DW-3 has admitted that the premises which is in question is in his possession for the last 10 years and the number of the suit property is 97.

Location of the property has also been disclosed by him. He has also

admitted that his father Kanshi Ram was tenant over the premises in question and he alongwith DW-2 Sardari Lal Phutela has disclosed the description of the property which matches with the description of the premises in question as recited in the mortgage deeds Ex.P-1 and Ex.P-3. This establishes that the shop, which is the property in question and in possession of the petitioners is the same which is the subject matter of the two mortgages of which the respondent is established to be the owner and the petitioners are tenants therein because they have inherited the tenancy and have become statutory tenants on the death of their father Kanshi Ram.

Petitioners are claiming ownership over the premises in question on the basis of the sale deed. Mere execution of the sale deed would not be enough to establish their ownership especially when as per their assertion, the sale deed dated 24.02.2004 of the premises which have been bought by them has been executed by Suraj Rattan son of Nebh Raj. It would not be out of way to mention here that no document/evidence as to how Nebh Raj again became owner of the mortgagee rights of the property which were sold by him vide mortgage deed dated 02.04.1976 (Ex.P-4) being General Power of Attorney of Smt. Kako Devi, the original owner of the premises to M/s Rajender Kumar Anil Kumar, Sirsa, through Mahabir Prasad, who in turn mortgaged the property to Shri Daulat Ram, the predecessor-in-interest of the respondent. That apart, father of the petitioners Kanshi Ram was a witness of mortgage deed dated 16.12.1980 executed by Mahabir Prasad in favour of Shri Daulat Ram, father-in-law of the respondent. PW-3 Rajinder Kumar Ganeriwala had admitted that the

CR No. 4072 of 2016 (O&M)

mortgage deed was executed by his father in favour of Shri Daulat Ram, father-in-law of the respondent. The signatures of Kanshi Ram upon the mortgage deed Ex.P-1 have not been denied by the petitioners which establishes that the tenants were in the knowledge of the mortgage deed. All this clearly establishes the relationship of landlord and tenant between the parties. The findings as recorded by the Courts below about the relationship of landlord and tenant of the demised premise between the parties, cannot be faulted with.

In view of the above, the respondent being the owner and landlord of the demised premises and petitioners the tenants, they were required to pay the rent to the respondent. It being an admitted case of the petitioners that they have not paid rent of the demised premises, the finding recorded by the Courts below that the petitioners are in arrears of rent, stands established.

Finding no merit in the present revision petition, the same stands dismissed.

CM No.12406-CII of 2016

In view of the order passed in the main revision petition, no order is required to be passed in the present application for staying the operation of the impugned judgments as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

July 04, 2016