

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 4260 of 2016 (O&M)
Date of Decision : 14.07.2016

Sewa Singh

....Petitioner

Versus

Raman Kumar Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. C.S. Bakhshi, Advocate
for the petitioner.

Mr. Arun Jain, Senior Advocate
with Mr. Raman Kumar, Advocate
for the caveator.

Surinder Gupta, J.

This is revision petition against judgment of learned Rent Controller, Chandigarh whereby ejectment of petitioner from the demised premises i.e. house no. 1043, Sector 37-B, Chandigarh, was ordered on the ground of non-payment of rent and personal *bona fide* necessity of respondent-Raman Kumar Sharma.

2. Learned Ist Appellate Court affirmed the order of learned Rent Controller on appeal and allowed three months' time to the petitioner to vacate the demised premises.

3. Learned counsel for the petitioner has assailed the judgment of Courts below on two grounds. Firstly, the application seeking ejectment of petitioner filed by respondent-Raman Kumar Sharma was not maintainable as he was only a co-owner having 50% share in the suit property and other co-owners have not joined in this proceeding.

Secondly, learned Rent Controller assessed arrears of rent from

13.04.2013 to December, 2015 while the respondent had purchased the suit property vide sale deed dated 01.10.2014. He placed reliance on the observations of Full Bench judgment of Gujarat High Court in case **Nanlal Girdharlal and another vs. Gulamnabi Jamalbhai Motorwala and others, 1972 RCJ 889.**

4. Mr. Arun Jain, Senior Advocate while appearing for respondent-caveator has referred to observations of Apex Court in cases **Dhannalal vs. Kalawatibai and others, 2002 (6) SCC 16** and **Mohinder Prasad Jain vs. Manohar Lal Jain, 2006 (2) SCC 724** has argued that one of the co-owners can file petition for ejectment and it is not necessary to join all the co-owners or to obtain consent of other co-owners. Regarding arrears of rent, he has argued that the petitioner has not paid even a single penny towards rent after filing of the suit. He has further argued that the petitioner claims to be in arrears of rent w.e.f. 01.07.2013 or even from the date of purchase of suit property by the respondent. He has no objection if he pays rent from either date as main concern of the respondent-landlord is his dire need of demised premises as he has to shift his office there to meet his professional requirements.

5. On giving a careful thought to submissions of learned counsel for the parties, I find no merit in pleas raised by learned counsel for the petitioner.

6. Full Bench of Gujarat High Court in ***Nanlal Girdharilal's case (supra)*** had answered to references as follows:-

“Whether some only out of several co-owners of property can effectively determine tenancy by giving notice to quit

and the other is, whether a suit to evict a tenant can be filed by one or more co-owners without joining other co-owners in the suit.”

7. Hon'ble Full Bench of Gujarat High Court observed in para 20 as follows:-

“20. We must, therefore proceed to consider whether under the ordinary law of landlord and tenant, one co-owner can file a suit for recovering possession of the property from the tenant without joining the other co-owners in the suit. Now a lease usually contains a covenant on the part of the lessee to deliver up the premises on the determination of the tenancy, but even where such express stipulation is absent, the tenant is under an implied covenant to restore possession of the premises to the landlord on the determination of the tenancy. This implied covenant is recognized in Section 108 Clause (q) of the Transfer of Property Act which provides that, in the absence of a contract or local usage to the contrary, the lessee is bound, on the determination of the lease to put the lessor into possession of the property. It is, therefore, obvious that when a lease is determined by any of the modes provided in Section 111 of the Transfer of Property Act, the landlord is entitled to possession of the property under the implied covenant contained in the

*lease. It is this implied covenant which is sought to be enforced by the landlord when he files a suit to recover possession of the property from the tenant. Now where there are two or more co-owners, this implied covenant would obviously be in favour of all of them and they would all be jointly entitled to enforce this implied covenant vide Section 45 of the Contract Act. They must therefore all join in filing a suit to recover possession of the property from the tenant in enforcement of this implied covenant. This view that all co-owners must join in a suit to recover possession of the property from the tenant has prevailed with the Courts over the last eighty years since the date when it was decided by a Division Bench of the Madras High Court in **K.P. Kanna Pisharody vs. V. M. Narayanan Somayajipad, (1881) ILR 3 Mad 234** that except "where, by a special provision of law, co-owners must join in a suit to recover their property. Co-owners may agree that their property shall be managed and legal proceedings conducted by some or one of their number, but they cannot invest such person or persons with a competency to sue in his own name on their behalf, or if sued, to represent them." The ratio of this decision of the Madras High Court was followed by a*

*Division Bench of the Bombay High Court in **Balkrishna v. Moro, (1897) ILR 21' Bom 154** and Partons J. speaking on behalf of the Division Bench pointed out in this case that a co-sharer who is manager cannot, even with the consent of his co-sharers, maintain a suit by himself and in his own name to eject a tenant who has failed to comply with a notice calling on him to pay enhanced rent. The principle of agency has no application in such a case. No one can be authorized to use in his own name to enforce a cause of action vested in another. The suit must be instituted by the person in whom the cause of action is vested. That is the invariable rule of procedure. All co-owners must, therefore, be parties in a suit to recover possession of the property from the tenant on the determination of the tenancy."*

8. The question as to whether one of the co-owners can file suit or petition seeking ejectment of tenant has already been set at rest in catena of judgments by Apex Court. In case of **Dhannalal (supra)**, Apex Court observed in para 16 as follows:-

*"16. It is well settled by at least three decisions of this Court, namely, **Sri Ram Pasricha Vs. Jagannath and Ors., (1976) 4 SCC 184, Kanta Goel Vs. B.P. Pathan and Ors., (1977) 2 SCC 814 and Pal Singh Vs. Sunder Singh (dead) by LRs. and Ors. (1989) 1 SCC***

~~444~~ that one of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant to question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit. When the property forming subject matter of eviction proceedings is owned by several owners, every co- owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of tenant without joining the other co-owners if such other co-owners do not object. In **Shri Ram Pasricha's case (supra)** reliance was placed by the tenant on the English rule that if two or more landlords institute a suit for possession on the ground that a dwelling house is required for occupation of one of them as a residence the suit would fail; the requirement must be of all the landlords. The Court noted that the English rule was not followed by the High Courts of Calcutta and Gujarat which High Courts have respectfully dissented from the rule of English law. This Court held that a decree could be passed in favour of the plaintiff though he was not the absolute and full owner

of the premises because he required the premises for his own use and also satisfied the requirement of being "if he is the owner", the expression as employed by Section 13(1)(f) of W.B. Premises Tenancy Act, 1956."

9. Similar observations were made in case of **Mohinder Prasad Jain (supra)** in para 10 of the judgment, which reads as follows:-

"10. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co- owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein."

10. In view of settled proposition of law, the plea raised by learned counsel for the petitioner that a co-owner without joining other co-owners or without taking their consent cannot initiate proceedings for ejectment of a tenant in the joint property, is without merit and is discarded.

11. Learned counsel for the petitioner, though tried to make out that petitioner can pay rent as and when so directed, had candidly admitted that no rent was paid by the petitioner during pendency of the

suit.

12. Learned counsel for the respondent-caveator has argued that concern of the respondent is to get the premises vacated for his office. He is an advocate and immediately requires the demised premises to set up his office as he is facing professional difficulties. He has submitted that the respondent has no objection if the tenant as per his statement pays rent from 01.07.2013 or even from 01.10.2014. However, he must pay the rent for the period he remained in possession of the demised premises.

13. In view of the submission of learned counsel for the petitioner, order passed by learned Rent Controller regarding non-payment of rent by the petitioner from 13.04.2013 is modified and the ejectment of petitioner is allowed for non-payment of rent from 01.10.2014 to December, 2015. The respondent shall also be entitled to further mesne profit equal to rate of rent as held by learned Rent Controller from 01.01.2016 till vacation of premises.

14. With the above modification of order of learned Rent Controller, the instant revision petition is dismissed being without merit upholding order of Rent Controller and Appellate Authority that landlord-respondent needs demised premises for his personal *bona fide* necessity.

July 14, 2016
jk

(SURINDER GUPTA)
JUDGE