

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

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Civil Revision No.4804 of 2016 (O&M)

Date of Decision: October 06, 2016

Yash Pal

.....Petitioner

Versus

Vijay Kumar

....Respondent

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Vipin Mahajan, Advocate
for the applicant-petitioner.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.14706-CII of 2016

Prayer in this application is for exemption from filing true typed copy of order dated 07.03.2014 and judgment dated 04.03.2016 and the grounds of appeal dated 01.04.2014.

Application is allowed.

Exemption from filing true typed copy of aforesaid documents is granted subject to just exceptions.

CR No.4804 of 2016

Challenge in this revision petition is to the order dated 07.03.2014 passed by the Rent Controller, Pathankot, whereby petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, for eviction of the shop in question, has been allowed on the grounds of personal necessity, although the plea of non-payment of rent was also taken and since the petitioner had deposited the rent, the said plea did not sustain. Appeal against the said order was dismissed by the Appellate Authority, Pathankot, by order dated 04.03.2016 resulting in filing the present revision petition.

2. It is the contention of learned counsel for the petitioner that respondent-Vijay Kumar is not landlord of the petitioner, in fact, the landlord is Karam Chand, who is the real brother of Vijay Kumar and since Karam Chand has not preferred any eviction petition, the present petition is not maintainable. That apart, he asserts that it has come on record and in evidence that Karam Chand is the owner of adjacent shop and, therefore, for obvious reasons, he could not have filed a petition for eviction of the shop in question on the ground of personal necessity and, therefore, a novel method has been resorted to by the respondent by projecting an oral family partition, according to which Vijay Kumar has now been projected as owner of the shop and, therefore, the landlord. Counsel, thus, contends that the present petition has been filed without *bona fide* and, therefore, the order of ejectment as passed by the authorities below cannot sustain and deserve to be set aside.

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

4. What is asserted by the counsel for the petitioner cannot be accepted for the simple reason that originally the father of Vijay Kumar and Karam Chand was the owner of the property i.e. Shri Des Raj. The shop was given on rent by him in the year 1975 but unfortunately, he died in the year 1976. It is after the death of the father that an oral family partition took place between Vijay Kumar and Karam Chand, the two brothers, according to which Karam Chand became owner of the adjacent shop and the demised shop came to the ownership of Vijay Kumar.

It is apparent from the statement not only of Vijay Kumar, the landlord but that of Karam Chand, who appeared in the witness box as AW-2. Both these persons have in unison stated with regard to the family partition. When there is no dispute with regard to the factum of the partition which had taken place between the parties, the petitioner, who is only a tenant, cannot challenge the same. In any case, he does not have any *locus standi* for the same. Reliance in this regard has been placed by the learned Lower Appellate Authority in *State of Punjab and another Versus Rajinder Jain and another 2011 (Supplement), Civil Court Cases 830*. Reference has also been made to the judgment of this Court in *Roshan Lal Versus Ved Parkash 2003(1) Civil Court Cases 296*. In view of the settled preposition of law that a tenant cannot challenge the family partition/settlement, the plea as has been raised by the counsel for the petitioner, cannot be accepted. The authorities below have rightly taken all aspects into consideration and passed a well reasoned and speaking order.

5. There being no illegality in the orders passed by the authorities below, the present revision petition being devoid of merits, therefore, stands dismissed.

6. In view of the disposal of the revision petition, the application for stay i.e. CM No.14707-CII of 2016, stands disposed of as infructuous.

October 06, 2016

Puneet

(AUGUSTINE GEORGE MASHI)

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No