

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R No. 6856 of 2015 (O&M)

Date of decision : May 19, 2016

Shakila @ Shila

..... Petitioner

v.

Rupinder Kaur @ Rupinderjit Jit Parmar,

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. AK Chopra, Sr. Advocate
with Mr. Harminder Singh,
for the petitioner.

Mr. Amit Jain, Advocate
for the respondent.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This petition has been filed against the order of the Rent Controller dated 9.9.2015 declining leave to defend and ordering eviction of the petitioner from the demised premises.

The first argument raised by learned counsel for the petitioner is that the respondent is not an Indian citizen and is, thus, not covered under the definition of NRI under Section 2(dd) of the East Punjab Rent Restriction Act, 1949 (for short "the Act"). This issue has already been decided by this Court against the tenant, vide detailed judgment dated

9.5.2015 passed in CR No.3509 of 2014, Krishan Kumar vs Kamla Devi.

The second argument raised by the learned counsel for the petitioner is that in this case condition of Section 13-B of the Act regarding ownership for five years is not met. As per him, there are two gray areas. First is that the transfer certificate is dated 28.02.2012 and a period of five years had not expired from the date on which the transfer certificate was issued. Secondly, even if it is held that the transfer certificate would not be indicative of the date of ownership and the ownership would pass on the date of death of the last owner yet the averments in the eviction petition filed by the respondent themselves would give rise to a dispute because the respondent has stated that by virtue of some alleged oral family settlement, she has become exclusive owner of the first floor, and at another place in the petition she has asserted that she was a co-owner with the legal representatives of the landlord. As per him, the bald averment cannot be taken to be a gospel truth, moreover when in the certificate it is only mentioned that she and her two children are owners of 1/3rd share and rather under the Capital of Punjab (Development and Regulation) Act, 1952 and the rules framed thereunder, partition of a residential property by metes and bounds is impermissible.

Counsel for the respondent, on the other hand, has contended that as regards the linking of ownership with the date of transfer certificate, the same is not legally required because the transfer certificate ultimately recognizes the shares of different legal representatives in the instance of the death of the landowner. It is well known that title is never in a vacuum though it may take as much as time as may be for settling that issue. I find myself in agreement with counsel for the respondent on this ground.

As regards the averments to the effect that the respondent had become exclusive owner of the first floor of the demised premises, counsel for the respondent has argued that even if this statement is not correct, yet these averments can only be disputed by the other legal representatives but in any case once the tenant is not in a position to deny that the respondent is one of the co-owners, it would not lie in his mouth to rake up the dispute regarding the parameters or the modalities of the title of the respondent. I find myself in agreement with counsel for the respondent on this ground also. Consequently, finding no merit in this petition, the same is dismissed.

(AJAY TEWARI)
JUDGE

May 19, 2016
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