

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

**Civil Revision No.7383 of 2016 (O&M)
Date of Decision: November 07, 2016.**

Darshan Singh

.....PETITIONER(s).

VERSUS

Bansi Lal

...RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sachin Jain, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This revision petition has been filed against the concurrent findings recorded by the Rent Controller and Appellate Authority, Bathinda holding that the revision petitioner is a tenant in the demised premises i.e. House (old No.R-135 and new No.29323) situated at Gali No.6/1, Santpura Road, Janta Nagar, Bathinda and discarding his plea that he is in possession of demised premises as a mortgagee.

2. The respondent-landlord filed ejectment petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the revision petitioner from the demised premises with the plea that he was inducted as tenant therein at monthly rent of ₹1,000/- per month. He had not paid the rent since 01.04.2003 and has not proved himself to be a good tenant. He owns house bearing MC No.29155 situated near U-Like Model School, Janta Nagar, Bathinda. Respondent-landlord is employed in Punjab State Electricity Board and is going to retire shortly and wants to shift in the demised premises. He has a son aged 26 years and a daughter aged 21 years. As his both children are of marriageable age, he required the house

for their marriage. Revision petitioner was asked to vacate the demised premises and pay the arrears of rent, which he refused, leading to the filing of instant eviction petition.

3. In reply, revision petitioner-tenant denied the relationship of landlord and tenant between the parties and alleged that this house was mortgaged by respondent-landlord in favour of revision petitioner for ₹6 lacs on 15.08.2000 in the year 1998 in presence of witnesses namely Darshan Singh and Sulakhan Singh. The mortgage was oral and possession of the revision petitioner over the demised premises is as mortgagee and not as tenant.

4. Both the authorities under the Rent Act, accepted the plea of respondent-landlord that the revision petitioner is in possession of the demised premises as tenant and not as mortgagee. Admittedly, there is no mortgage deed ever executed by the respondent-landlord or any corroborating evidence to prove the status of the revision petitioner as mortgagee. Both the Courts below have taken note of the fact that revision petitioner while moving application for setting aside ex parte order, had taken the plea that the property in dispute was mortgaged to him for ₹1 lac, while in the written reply, he raised the plea that the property was mortgaged for a sum of ₹6 lacs. The title of the respondent-landlord over the suit property is not denied. The Courts below on examination of the oral statement of the parties concluded that no person of ordinary prudence will take the property on mortgage after paying huge amount of ₹6 lacs in the year 2000, without executing any document. The above findings were affirmed by the Appellate Authority.

5. Learned counsel for the revision petitioner has argued that the mortgage could be oral in the State of Punjab and both the courts below have wrongly referred provisions of Section 59 of Transfer of Property Act to draw the presumption that mortgage was required to be registered.

6. As per revision petitioner, the disputed house was mortgaged on 15.08.2000. Learned counsel for the revision petitioner has relied on the observations in case of ***Dhan Raj and others Vs. Satpal and others 2015(3) PLJ 597***, wherein a Co-ordinate Bench of this Court observed as follows:-

“11. The matter has been settled by the authoritative pronouncement of the Hon'ble Supreme Court in ***Sampuran Singhand others Versus Smt. Niranjana Kaur and others, 1999 (2) Civil Court Cases 519 (S.C.)***, wherein the Apex Court held that the oral mortgage is valid as the possession was also delivered to the mortgagor. The matter was also considered by this Court in ***Amar Nath (Dead) through LRs Versus Sarwan Singh and others, 2005 (4) RCR (Civil) 654***, where in a case pertaining to State of Patiala and PEPSU, it was held that the State of Patiala and PEPSU became the part of State of Punjab with effect from 1.11.1956 and that during that time and earlier, the oral mortgage was permissible. The similar views were expressed by a Full Bench of this Court in ***Siri Chand and others Versus Nathi, AIR 1983 Punjab and Haryana 171 (FB)***. The mortgage was made compulsorily registrable only when the provisions of Transfer of Property Act were made applicable to the State of Punjab. Admittedly, in 1972, the provisions of Transfer of Property Act were not made applicable to the State of Punjab.....”

7. Above observations are not applicable to the facts of this case

as here the appellant failed to prove that any mortgage was ever created. His plea that in the year 2000, house in dispute was mortgaged with him for a sum of ₹6 lacs, has rightly been discarded by Courts below and has no substance or merit. He initially claimed the mortgage amount as ₹1 lac in his application seeking setting aside of ex parte proceedings against him but in reply to petition and statement as RW-1, he described mortgage amount as ₹6 lacs, which indicates that this plea is a made up story just to resist the claim of respondent-landlord and also to avoid the payment of rent. A person who has paid ₹6 lacs can never default to say that he paid ₹1 lac while creating alleged mortgage.

8. Learned counsel for the revision petitioner further argues that the respondent-landlord in his cross-examination stated that the premises was let out by his wife, while in the eviction petition, he alleged that the same was let out by him.

9. The Appellate Authority has taken note of this discrepancy and has rightly ignored the same in the absence of any pleading by the revision petitioner that wife of respondent is his landlord. Even otherwise, respondent is owner of the disputed house and is entitled to seek ejectment of the revision petitioner.

10. In view of my discussion above, I find no merits in this revision petition.

Dismissed.

November 07, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No