

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

**Civil Revision No.8925 of 2015(O&M)
Date of decision : 28.03.2016**

Suman

..... Petitioner

versus

Smt.Veena Rani

..... Respondent

**Civil Revision No.8926 of 2015(O&M)
Date of decision : 28.03.2016**

Krishan Lal Thareja

..... Petitioner

versus

Raj Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Girish Agnihotri, Sr. Advocate
with Mr.Saurabh Gulia, Advocate for the petitioner/s.

Mr.V.K.Jindal, Sr. Advocate
with Mr.Akshay Jindal, Advocate for the respondent/s.

1. Whether Reporters of local papers may be allowed to see the judgment?/Yes
2. To be referred to the Reporters or not?/Yes
3. Whether the judgment should be reported in the Digest?/Yes

AJAY TEWARI, J. (Oral)

The aforesaid two petitions have been filed against the concurrent orders of the Courts below allowing the petition/s for eviction filed by the respondent/s. Since common questions of law and fact are involved, both are being decided by this common

order. For ready reference, facts of petition No. 8925 of 2015 are being taken.

The case of the respondent was that she had purchased the property in dispute from the petitioner who was the owner and had permitted the petitioner to continue staying there as a tenant. However, since the rent was not paid she filed the petition for eviction. The case of the petitioner on the other hand was that the sale deed/s executed by her and her husband actually did not intend to convey any title and as a matter of fact the petitioner and her husband had obtained loans from the respondent and these sale deed/s were executed as a security for the said loans and therefore, there was no relationship of landlord and tenant. The following issues were struck:-

1. Whether there is landlord and tenant relationship between the petitioner and the respondent?OPP
2. Whether the respondent is liable to be evicted?OPP
3. Whether Krishan Thareja, husband of respondent is owner of the suit premises?OPP
4. Whether the application for ejectment is not maintainable?OPR
5. Whether the Rent Controller has got no jurisdiction to entertain and try the present application?OPR
6. Whether the petitioner has not come to the court with clean hands?OPR
7. Relief.

The petitioner appeared in support of her case but her husband did not appear at all. After going through the evidence both the Courts below held that the petitioner had not led evidence to show that the sale deed/s executed by her and her husband did

not intend to convey any title and were only executed as a security for loan transaction. Before this Court an application for additional evidence bearing CM No. 3619-CII of 2016 has also been filed seeking to place on record affidavits of three persons one of whom was witness of the loan transaction and the remaining two were neighbours of the petitioner who state that they also have personal knowledge that the real transaction was not a sale transaction but was a security transaction. Valuation report has also been sought to be placed on record to show that the sale value of the property is much higher than the value reflected in the sale deed/s and the rent amount was an equated monthly instalment. As regards the parameters of Order 41 Rule 27 C.P.C. it has been alleged in the application that the deponents of the three affidavits were not willing to give the testimony and have now been persuaded to come forward. However, as regards the valuation report no reason is forthcoming as to why the same could not be placed on record earlier. As regards the application for additional evidence, learned senior counsel for the respondent has argued that in any case the valuation report is ex facie not admissible in evidence because no reason has been given as to why the same could not be placed on record earlier and as regards the affidavits of the three persons also, the argument raised is that the ground that earlier those persons were not inclined to give testimony can never be taken into consideration unless it be shown as to what was the reason because of which they were not inclined to give their testimony earlier and what was the reason which prevailed upon them to now come forward because only then could the Court come to the conclusion whether that evidence could be led after due diligence.

In my opinion the argument of learned counsel for the respondent carries more weight. The mere argument that the

witnesses were earlier disinclined and have now changed tack would not be enough to satisfy the rigorous conditions of Order 41 Rule 27 CPC. No doubt the provisions of CPC are not strictly applicable but the principles behind the same have been repeatedly held to be applicable to the proceedings under the Rent Act. In the circumstances the application for additional evidence i.e. CM No. 3619-CII of 2016 is declined.

Learned senior counsel for the respondent has further argued that it was proved on record that earlier also, for pressing financial requirement, the petitioner had executed similar sale deed/s in favour of other persons and after the loan was repaid that person had re-transferred the property back to the petitioner. As per him this fact conclusively proves that the present document was also not intended to convey title and was a security for loan. As regards this both the Courts below have held that even if the previous transaction was of this nature, yet for the petitioner to have succeeded in the present case she would have to prove that the present transaction was also of a similar nature and this could not have been concluded as a matter of course. As per learned senior counsel apart from the self serving statement of the petitioner there is no other evidence on the file which may indicate that the sale deed/s were not intended to convey title and were executed only as a security for a loan transaction. I agree with this argument also. The mere fact that previously the petitioner had entered into some transaction with a third person could not lead to the conclusion that the subsequent transaction with another person would partake the same character in the absence of any credible evidence to the same.

The third argument of learned senior counsel for the petitioner is that no issue has been struck with regard to the

validity of the sale deed/s and this is a material error which goes to the root of the case and consequently prays that an issue to this effect would have been struck off and the matter be remanded back.

In my opinion even this argument cannot prevail . Issues No. 1, 3, 4, 5 and 6 all deal with this issue. In any case in view of the positive case set up by the petitioner, she could well have led evidence even if the exact issue was not there. The non-formulation of this exact issue has not caused any prejudice to the petitioner.

The last argument of learned senior counsel for the petitioner is that petitioner Suman Thareja herself is battling a terminal illness and prays for grant of some time more than what is normally granted by the Courts. Learned senior counsel for the respondent-landlord, however, argues that the Rent Controller had granted a period of two months as far back as on 24.12.2014 and, therefore, the petitioner has now overstayed in the premises for 15 months but in view of the nature of the arguments raised by learned senior counsel for the petitioner he would not oppose grant of some reasonable time.

In the circumstances the petitions are dismissed. However, the petitioners are granted three months time to vacate the premises.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 28 , 2016
sunita