

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

C.R. No. 1785 of 2008 (O & M)

Reserved on: 05.05.2017

Date of decision: 05.07.2017

Kamaljit and others

...Petitioner(s)

Versus

Gurdial Singh (dead) through L.Rs. and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Vikas Bahl, Sr. Advocate,
with Mr. Nitish Garg, Advocate,
and Mr. Hitesh Kaplish, Advocate,
for the petitioners.

Mr. Kamal Sehgal, Advocate,
for respondent no. 1.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of four civil revision petitions whereby, the Rent Controllers at Phagwara have directed ejectment of the petitioners-tenants from the premises in question which are bearing property nos. 4, 4A, 4B and 4C. The civil revisions accordingly pertaining to the said properties are C.R. Nos. 1785, 1783, 1784 and 1786 respectively. The orders passed by the Rent Controllers are dated 04.12.2007 pertaining to shop no. 4 and 4B by the same Rent Controller whereas, shop no. 4A has been ordered to be vacated vide order dated 30.11.2007 and shop no. 4C vide order dated 06.02.2008.

The eviction which has been sought is under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') on the strength of the deceased-respondent-landlord being NRI on the ground that the petitioners require the property in question for their own occupation and

being the owner for the last more than 5 years of the property in question. The sale deed on the basis of which eviction was sought is dated 03.03.1970 and the tenants had disputed the ownership and the relationship of the landlord-tenant between the parties and the fact that the boundaries of the premises did not tally with the boundaries mentioned in the heading of the petition and had set up the ownership in the name of Sarkar Daulat Madar and stated that the property is in khasra no. 3827.

After taking into consideration the evidence of the landlord since leave to contest had been granted and the evidence led by the petitioners-tenants and keeping in view the fact that the tenants had raised bogey of the denial of the title and alleged that the properties fell in khasra no. 3827, it was noticed that the Local Commissioner who had been appointed to conduct the demarcation namely Hardeep Kumar, Field Kanungo, had reported that it is not possible to find out the pacca points and, therefore, the property could not be demarcated whether it fell in the said khasra number or not. Another revenue official namely Sodhi Singh, Patwari, RW-3 was disbelieved as he himself had stated that he could not ascertain the said pacca points and, therefore, since it was a residential/commercial property and under construction, therefore, the conclusion given in his report was disbelieved.

The British passport and the identity card issued in favour of the landlord were taken into consideration to note that the person was of Indian origin and settled abroad and there was an admission by the respondent himself that the said person was a citizen of England and, therefore, wanted to use the property for the use and occupation of his children. It was held that there was bona fide requirement and need of the

landlords while ordering eviction regarding shop no. 4A vide order dated 30.11.2007. Similarly, the Rent Controller in C.R. Nos. 1785 and 1784 pertaining to shop nos. 4 and 4B, proceeded to decide the issue of relationship inter the parties firstly and came to the conclusion that once the sale deed dated 03.03.1970 was on record from where the property in dispute had been purchased from its previous owner and the tenant's father namely Dev Raj had taken the property on rent as per document Ex.P1/4, it was held that the tenant was estopped as such from questioning the issue of ownership of the landlord. Reliance was also placed upon the TSI register of the Municipal Council, Phagwara and the notice Ex.RW-2/2 issued to the landlord and a copy of the order Ex.RW-2/3. It is accordingly held that, therefore, the relationship of landlord and tenant was established between the parties. Resultantly, keeping in view the principles settled by the Apex Court in ***Baldev Singh Bajwa vs. Monish Soni, 2005 (12) SCC 778***, eviction was directed. In C.R. No. 1786 of 2008 pertaining to shop no. 4C, it was noticed that there was an admission as such by the tenant regarding the ownership of the property by the landlord and similarly, the statement of Sodhi Ram, Patwari was disbelieved on the ground that he had admitted that he had not carried out the measurements as per the instructions of the Financial Commissioner (Revenue) and on the same principle that the landlord's title could not be questioned, eviction has been ordered.

Senior counsel for the petitioner has submitted that there were no specific pleadings as such regarding the fact that respondent-landlord was an NRI and it was not one building from where the tenants were being sought to be evicted and no finding had been recorded on the said issue and neither any averment had been made that it was one building. Accordingly,

it is submitted that eviction could not be sought from different buildings. The relationship of landlord-tenant being missing, it is contended that eviction was not justified and on account of the death of the landlord, subsequent events had to be taken into consideration and, therefore, eviction order was not sustainable. The property belonged to Sarkar Daulat Madar and, therefore, reliance was placed upon the statement of the revenue witness that it was falling in khasra no. 3827.

On the other hand, Mr. Kamal Sehgal, counsel for the respondent has submitted that the eviction order is well reasoned and the premises were one consolidated building in which different tenants were sitting. It is accordingly contended that from a perusal of the site plan, it would be clear that the boundaries had been given in the sale deeds and the tenants were sitting in different portions. It is further submitted that the requirement at the time of filing of the petition was to be seen and, therefore, subsequent events would not as such over-shadow the need as such on account of the fact that litigation had consumed a lot of time. The argument could not be raised which was never pleaded in the application under Section 18-A for leave to contest and, therefore, reliance was also placed upon the judgment of another tenant namely Harbhajan Singh who had been ordered to be evicted from the same building in question and his revision petition had already been dismissed on 03.02.2006 which has been reported as *Harbhajan Singh vs. Gurdial Singh, 2006 (2) PLR 23*.

The petition under Section 13-B of the Act filed qua shop no. 4 would go on to show that the boundaries of the sale deed were described as a private lane existing on the eastern site and on the west, Loha Mandi Road was present whereas, on the north, there was a property of another which is

the shop of Brij Lal as per the site plan. On the south, there was a godown of Sh. Gaimda Mal Handa. Accordingly, the boundaries of the shops were shown as on the east, it was the property of the landlord himself, on the west was the Loha Mandi Road and on the north, again was the property of the landlord and similarly on the south also, it was the property of the landlord. The site plan was attached alongwith the eviction petition and it has been averred that the shop had been let out @ ₹170/- per month. A specific averment was made that the landlord used to reside in Essex, London (England) and was an NRI as defined under the Act and being the landlord had put the tenant in possession of the tenanted premises as shown in the site plan. The landlord had come back to India and decided to run his own business in the property in question after demolishing the previous construction and, therefore, sought possession under the provisions of Section 13-B of the Act. The entitlement as such was objected to on the ground that a British citizen is a foreigner and, therefore, was not entitled to seek eviction under Section 13-B and the passport having not been surrendered and not having obtained Indian citizenship, the petition was not maintainable. The landlord did not have his roots in the Indian society as his family was permanently settled abroad and the children were also married there and held properties there. The plea of personal requirement was contradictory as he had attained the age of superannuation and, therefore, it was not possible for him to start his business. The sale deed relied upon did not pertain to the property in question and he was not the owner of the property and there existed no relationship of landlord-tenant as the premises had never been rented out. The correct details had not been given and the property did not tally with the sale deed. It was further

alleged that the petitioner owned and possessed further more properties within the municipal limits of Phagwara and he had already got vacated and sold other properties and also owned residential house bearing No. 609 and 610, Guru Hargobind Nagar, Phagwara.

The wife of the landlord Surjit Kaur appeared as a witness and stood by plea taken in the eviction petition and the fact that the husband had filed 13 ejectment petitions against different tenants. It was specifically averred that his return from England was on 09.10.2004 and out of the four houses which they owned in England, they had rented out three houses. The area of the building was stated to be 16 to 17 marlas and it was also admitted that there was a residential house measuring 8 marlas bearing no. 609, as was the plea of the tenants. Suggestion that the business could be run in that house was accordingly denied. It further came out in the cross examination that they use to stay at their village Chachrali with their parents. The factum of other properties of plot measuring 5-1/2 marlas was also elicited in the cross examination apart from the duration of the visit. The landlord in his affidavit which was tendered into evidence also specifically alleged that he had now come back after staying abroad for a number of years and accordingly stood by his pleadings in support of his eviction application. It further came on record that he was residing in Kenya prior to 1965 and had left for England thereafter, where he used to work as a Carpenter. The suggestion that the tenancy was with one Vasudev was denied and the fact that he was not owner of the property and the factum of filing different ejectment applications against different tenants was reiterated and it was admitted that no other litigation had been initiated against the tenants. Similarly, in the cross examination, it had come that he

was not doing any business in England and living retired life since 1994 and that he had put one property on sale. It was denied that there was any intention to sell the property.

A perusal of the record produced by the counsels, since the original record was burnt, would go on to show that as per Ex.P-1/1, there was an identity card issued by the NRI Sabha having its sub-division at Phagwara in favour of Gurdial Singh and his passport was exhibited as Ex.P-1/4 depicted that he was a turbaned Sikh gentlemen who had been born in Nairobi, Kenya, which is in consonance with the evidence which has come on record regarding the fact that he was residing in Kenya prior to 1965. Similarly, the cross examination of the wife would go on to show that they used to stay in village Chachrali with their parents and, therefore, the argument which had been raised that because the place of birth is Nairobi and the person is not of Indian origin is of no value.

Second argument which has been raised that the premises are different and not part of one building is also baseless in view of the fact that the description on the sale deed shows the composite description of the complete property which is occupied by many tenants and it had also been noticed that as many as 13 eviction petitions were filed. The description in the rent petitions are accordingly of the individual tenancies and the portions occupied by each respective tenant and, therefore, there is a variance as such with the description given in the sale deed dated 03.03.1970. There is no dispute as such that the property is bounded on by two roads, one the Loha Mandi Road and other a private lane which is a 5 ft. wide and is connected with an open yard which is passing through the property in question and opening on both the roads with tenanted premises

inside having access to the open yard. Thus, it is one building in question and in the case of another tenant *Harbhajan Singh's case (supra)*, as noticed, this Court has already dismissed the revision petitions of as many as 8 tenants wherein also, the sale deed was dated 03.03.1970 and the property was facing the Loha Mandi Road. A perusal of the said judgment would go on to show that the landlord had appeared alongwith wife as AW-2 and the building in question is the same. This Court, while relying upon the definition of Section 2(a) of building, held that it is an integrated building whereby, the tenants were inducted and, therefore, under Section 13-B of the Act, the landlord has a right to seek ejectment from one building which is in possession of the tenants. The relevant observations in *Harbhajan Singh's case (supra)* reads thus:-

“8. Therefore, the mere fact that each of the petitioners has been inducted in a separate defined area or in part of the premises as a tenant will not disentitle the landlord to seek eviction of the tenants from the entire building. To seek eviction, each part let out would be building so as to maintain an eviction petition under the Act. But to determine the requirement of landlord for use of the building for his bona fide personal requirement, it would be integrated building of which the tenant was inducted in part. It is not the case of the tenants that each of the portion let out has been assigned separate Municipal number and the site plans in respect of such portions were sanctioned separately. Thus, it is a case of one integrated large building portions of which were let out to different tenants. Therefore, under Section 13-B of the Act, the landlord has a right to seek ejectment from a building which is in possession of the tenants.

9. As a matter of fact, reading of Sub-section (1) of Section 13-B of the Act shows that right is given to the landlord to seek immediate possession of such building or buildings, as the case may be. The use of word "buildings" suggests that the right of the landlord to seek eviction is not restricted in respect of the premises of one tenant but in respect of more than one tenant inducted in one large integrated building. In fact, a Division Bench of this Court in *Sardarni Sampuran Kaur and Anr. v. Sant Singh and Anr.* (1983) 85 Punjab Law Reporter 449, has held that the building as defined under Section 13-B of the Act will mean large integrated building. It was held to the following effect:-

...the definition of the word "building" in Section 2 of the Act is not in terms absolute but is subject to contextual limitations. The very opening part of the said section makes it explicit that the definition is to apply only if there is nothing repugnant in the subject or the context. Consequently, the use of the word 'building' in Section 13(3)(a)(iii) has to be viewed in its particular textual context and not with any inflexible absoluteness of the literal terms of Clause (a) of Section 2 of the Act. Therefore, it would be possible to construe the word 'building' as used in Section 13(3)(3)(a)(iii) of the Act to include the integrated larger building as a whole rather than the part thereof demised to a particular tenant alone....

10. Learned Counsel for the petitioners has also argued that under Section 13-B of the Act, the landlord who has inducted the tenant alone entitled to seek eviction and not the person who has purchased the

properly when the tenants were already in possession. The said argument is without any merit. A right to seek eviction has been given to the Non-resident Indian, who has owned the building for a period of five years. The right to seek eviction is related to building and not to tenant. The reading of the statutory provisions does not lead to any such inference so as to entitle the Non-resident Indian to seek eviction in terms of the provisions of Section 13-B of the Act.”

The Rent Controllers have been well justified in allowing the evictions and rejecting the plea that the property fell in khasra no. 3827 and the onus of which was upon the tenants. RW-3 was rightly disbelieved on the ground that the pacca points would not be located and, therefore, his report that the property fell in khasra no. 3827 was of no consequence once the demarcation was not as per the standing orders of the Financial Commissioner.

The principle that the landlord's title cannot be challenged by the tenants has been laid down by the Apex Court in a petition under Section 13-B of the Act itself. The Apex Court in ***Kamaljit Singh Vs. Sarabjit Singh 2014 (4) RCR (Civil) 252***, held that Section 13-B is a beneficial provision, intending to provide speedy remedy to the Non Resident Indians and allowed the Civil Appeal, whereby the Rent Controller had taken the view that the NRI owner had failed to prove that he was the owner of the property in dispute since the sale deeds could not be correlated to the shops in question which view had been upheld by this Court. It was noticed that the tenancy part was not denied and once that was so, the title of the landlord could not be questioned under Section 116 of the Evidence Act, 1872. Relevant observation reads as under:

“11.It is trite that the doctrine of estoppel is steeped in the principles of equity and good conscience. Equity will not allow a person to say one thing at one time and the opposite of it another time. It would estop him from denying his previous assertion, act, conduct or representation to say something contrary to what was implied in the transaction under which he obtained the benefit of being let in possession of the property to be enjoyed by him as a tenant.

12. Lord Edward Coke, Chief Justice of the Kings Bench and 17th Century English Jurist explains estoppel thus: “Cometh of the French Word ‘estoupe’, from where the English word stopped; and it is called an estoppels or conclusion, because a man’s own act or acceptance stoppeth or closet up his mouth to allege or plead the truth.” [Co. Litt. 352a]

13. Law Lexicon (Second Edition, Page 656) defines estoppel in the following words:

“An Estoppel is an admission, or something which the law treats as an equivalent to an admission, of so high and conclusive a nature that any one who is affected by it is not permitted to contradict it.” [11th Edn p. 744 in the note to the Dutchess of Kingston’s case]

“An admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted to be questioned by the parties or their privies.”

“The preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, on his own part, or on the part of those under whom he claims.”

14. Black’s Law Dictionary (9th Edn., page 629) describes Estoppel as :

“A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.”

15. Section 116 of the Evidence Act deals with estoppel against tenants and of licensees or persons in possession. Estoppel under this provision falls in the category of estoppel by contract and is relatively a recent development. The rule embodied in Section 116 simply prevents the tenant in occupation of the premises from denying the title of the landlord who let him into possession, just as it applies to a mortgagor or a mortgagee, vendor or a vendee, bailer or a bailee and licensor or a licensee. The rationale underlying the doctrine of estoppel against the tenant's denial of title of his landlord was stated by Jessel. M.R. in *Re: Stringer's Estate*, LR Ch 9 as under:

“Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title. This is perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract.”

16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must

first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

"116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

*17. A three-Judge of this Court in **Sri Ram Pasricha v. Jagannath and Ors. (1976) 4 SCC 184** reiterated the principle that a tenant in a suit for possession was estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord, declared this Court, even otherwise irrelevant in a suit for eviction of the tenant. The only exception to the rule of estoppel as stated in Section 116 (supra) may be where the tenant is validly attorned to the paramount title holder of the property or where that the plaintiff-landlord had, during the intervening period, lost his title to the property. We are not, however, dealing with a case where the respondent-tenant claims that the property is vested in anyone else who could be described as the paramount title holder or there was any extinction of the title of the appellant on any count whatsoever since the 13 Page 14 induction of the*

respondent as a tenant into the premises. We need not, therefore, be detained by any one of those considerations. What is important is that so long as a jural relationship exists between the respondent-tenant and the appellant and so long as he has not surrendered the possession of the premises in his occupation, he cannot question the title of the appellant to the property. The inevitable inference flowing from the above proposition would be that (viz-a-viz the respondent) the appellant was and continues to be the owner of the premises in question since the year 1992 when the respondent was inducted as a tenant. Reckoned from the year 1992 the appellant has established his ownership of the premises for a period of five years before the filing of the eviction petition thereby entitling him to invoke the provisions of Section 13-B of the East Punjab Urban Land Restriction Act, 1949.”

In the present case, sufficient evidence has come on record that apart from the ownership on the strength of the sale deed dated 03.03.1970, property had been leased out as such to the petitioner-tenants and in one case, to their father Dev Raj and, therefore, now they cannot turn around and say that the landlord is not the owner of the property.

The last argument which has now been raised that on account of the subsequent events and in view of the death of the landlord, need has evaporated would be of no help. The Apex Court, in a string of judgments, has held that the controversy has to be decided with reference to the pleadings of the parties on the date of institution and on account of the litigation lingering on, subsequent developments are not necessary and relevant for the adjudication of the case. Reliance can be placed upon

judgment of the Apex Court in ***Vallampati Kalavathi vs. Haji Ismail, 2001***

(2) *SCR 691*. In *Carona Ltd. vs. M/s. Parvathy Swaminathan and Sons, 2007 (10) SCR 656*, it was held that the right which had accrued to the landlord could not be set at naught and the date of filing of the suit is ordinarily to be taken into consideration. Similarly, in *Shakunatala Bai and others vs. Narayan Dass and others, 2004 (5) SCC 772*, which is under the Madhya Pradesh Accommodation Control Act, 1961, it is held that the legal representatives are entitled to defend the further proceedings and the benefit has to accrue to them and the bona fide need cannot be held to be elapsed on account of the acts of the Court. It was further held that it would erode the faith of the people in judicial system and prompt them to resort to extra judicial methods to recover possession of their property. The relevant observations read thus:-

“11. In Shantilal Thakordas v. Chimanlal Maganlal Telwala 1976 (4) SCC 417, a larger Bench overruled the decision rendered in Phool Rani v. Naubat Rai Ahluwalia (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in Phool Rani (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are

entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In Kamleshwar Prasad v. Pradumanju Agarwal 1997(4) SCC 413 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In Gaya Prasad v. Pradeep Srivastava 2001 (2) SCC 604 it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in G.C. Kapoor v. Nand Kumar Bhasin 2002 (1) SCC 610. Therefore, the legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.

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13. The limited question for consideration in this case was whether a decree which had attained finality would become unexecutable on account of death of the landlord and this question was answered in favour of the landlord and against the tenant basically on the principle that the executing court cannot go behind the decree. For the decision of the appeal it was wholly unnecessary to examine the question as to the effect of death of the landlord during the pendency of the appeal preferred by the tenant after a decree for eviction has been passed. The decisions rendered in Phool Rani (Supra) and Shantilal Thakordas (supra) were not brought to the notice of the Bench. We are, therefore, of the opinion that the observations made in the aforesaid case that "events which take place subsequent to the filing of an eviction petition under any [Rent Act](#) can be taken into consideration for the purpose of adjudication until a decree is made by the final Court determining the rights of the parties", which are more in the nature of obiter do not represent the correct legal position."

Accordingly, keeping in view the above discussion, this Court is of the opinion that the findings which have been recorded by the three different Rent Controllers are well justified in the facts and circumstances. The orders passed directing eviction of the tenants cannot be said to be suffering from any procedural infirmity or illegality which would warrant interference in revisional jurisdiction and accordingly the present petitions are dismissed.

05.07.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

