

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

CR No.2006 of 2015(O&M)
Date of Decision:-17.08.2017

Punit Ahluwalia (NRI)

.....Petitioner

Versus

Gurjeewan Garewal & Anr.

.....Respondents

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Amarjit Markan and Mr. Kanwal Goyal, Advocates
for the petitioner.

Mr. A.S. Narang, Advocate
for respondent No.1.

Mr. Mansur Ali and Mr. H.S. Deol, Advocates
for respondent No. 2.

JASWANT SINGH, J.

Petitioner-NRI Landlord is in revision, aggrieved against the impugned order dated 23.02.2015 passed by Rent Controller, Chandigarh, whereby application dated 19.12.2014 (P-1) filed by respondent no 2-Arjan Singh under Order 1 Rule 10 CPC, for being impleaded as a party, has been allowed, in pending ejectment application filed by petitioner under Section 13B of The East Punjab Urban Rent Restriction (amendment) Act, 2001 for the ejectment of respondent No. 1/tenant from the entire Ground Floor including the annexe portion of House No. 169, Sector 11-A, Chandigarh.

Learned Counsel for the petitioner-NRI Landlord has argued that the Ld. Rent Controller has gravely erred in allowing the

application Annexure P-1, by completely ignoring the fact that question of title cannot be determined in ejectment proceedings and respondent no 2-Arjan Singh, being complete stranger to the said proceedings, cannot be permitted to join issues with petitioner-landlord qua ownership. It has been further argued that merely because respondent no.2-applicant asserts ownership on the basis of an oral agreement to sell, a right which is admittedly pending adjudication before civil courts, he cannot claim a right to intervene in proceedings initiated by petitioner for ejectment of his tenant-respondent no.1. Thus, it is argued that the findings returned by the Rent Controller is against settled position of law and liable to be set aside.

On the other hand, Ld. counsel for the respondent No. 1-Tenant has argued that the petitioner is neither the owner of the demised premises nor his landlord because the petitioner is claiming his right over the demised premises on the basis of sale deed dated 25.03.2003, which was in fact an outcome of a compromise entered between the original owner, namely, S.R Bawa, one Sanjeev Sharma and the present petitioner. However, this compromise has already been set aside by the Hon'ble Supreme Court vide order dated 14.05.2008 (Annexure R-2/3) and therefore, the sale deed itself is of no value in the eyes of law.

Learned Counsel for the respondent No. 2-applicant-Arjun Singh has argued that the Ld. Rent Controller had rightly impleaded him as a party because he has claimed his right on the basis of an oral

agreement to sell, qua which a suit for specific performance already stands filed against the original owner SR Bawa and therefore, he is an necessary party to the present '*lis*', as in case the petitioner succeeds in his present ejectment application then, the applicant-respondent No. 2 would be left in the lurch. Thus, prayer has been made for dismissal of the revision petition.

After hearing learned Counsel for the parties at length and perusing the paper book, this court is of the opinion that impugned order dated 23.02.2015 is liable to be set-aside and consequently, the present petition deserves to be allowed.

It is not in dispute that petitioner-Punit Ahluwalia is claiming himself to be an NRI- landlord on the basis of sale deed dated 25/03/2003. Admittedly, the said sale deed is based upon a compromise which was entered amongst S.R. Bawa, Sanjeev Sharma and the present petitioner. Sanjeev Sharma had claimed an independent right over the property (which comprises the demised premises as well) on the basis of an agreement to sell. Sanjeev Sharma filed a suit for specific performance against S.R. Bawa, in which respondent No. 2- Arjan Singh got himself impleaded as a party by order dated 18.12.1997. On or about 19.02.2003, a consent decree was passed between S.R Bawa and Sanjeev Sharma and in furtherance thereof, a deed of sale dated 25.03.2003 was also executed by S.R Bawa in favour of the present petitioner namely Puneet Ahluwalia-as a nominee of Sanjeev Sharma.

This compromise was put under challenge by respondent No. 2-Arjun Singh under Order 23 Rule 3 of CPC. The trial court allowed the said application vide order dated 21.01.2006. Aggrieved against the same, Punit Ahluwalia went in Civil Revision before this court, which was allowed and consequently, an appeal was preferred by respondent No. 2-Arjan Singh before the Hon'ble Supreme Court. The Hon'ble Supreme Court, after considering the matter in great detail, held that deed of sale dated 25.03.2003 need not be set-aside. However, the compromise was bad in law. Consequently, it was ordered that Punit Ahluwalia would not be permitted to raise a plea of bona fide purchaser in the suit for specific performance filed by Arjan Singh, as the sale is hit by provisions of Section 52 of The Transfer of Property Act as well as section 19 of Specific Relief Act. The relevant part of the judgment passed by Hon'ble Supreme Court reads as under:

“20. However, as in this case, no order of injunction was breached, the said principle has no application.

The deed of sale, therefore, need not be set aside. It will have its own effect having regard to [Section 52](#) of the Transfer of Property Act and [Section 19](#) of the Specific Relief Act.

The learned Trial Judge, however, was right in holding that the purported compromise was bad in law. It was unlawful being without any written consent of all the parties. We need not go into the question as to whether the same was fraudulent or not, but indisputably not only the

same was not binding on the parties, the court in a case of this nature while considering the appellant's case shall not take note of the fact that any deed of sale has been executed pursuant thereto. Respondent No.3, as a logical corollary of these findings, would not be entitled to set up the plea of being bona fide purchaser for value without notice. The court may also pass such other order or orders, as it may deem fit and proper keeping in view its discretionary jurisdiction under [Section 20](#) of the Specific Relief Act, 1963. To that extent the judgment of the learned Trial Judge must be upheld and that of the High Court must be set aside.”

It is not in dispute that subsequently, Punit Ahluwalia contested the suit filed by Arjan Singh (after getting himself impleaded) and claimed title on the basis of the sale deed dated 25.03.2003. It is also a conceded fact that the said suit filed by Arjan Singh stands dismissed vide Judgment dated 09.09.2015 and an appeal has been filed by Arjan Singh, which is now pending consideration.

It has come on record that the present ejectment application under section 13-B of the East Punjab urban rent restriction (amendment) act, 2001 has been filed by the petitioner on 4-10-2010 i.e after a period of more than 5 years from the date execution of sale deed. In the ejectment application, the stand taken by respondent No. 1-tenant is that she is not a tenant under Punit Ahluwalia and

consequently, the relationship of landlord tenant stands denied. It is further not in dispute that leave to contest was granted to respondent-tenant and thereafter, evidence of the petitioner-landlord was underway when the application **Annexure P-1** was filed by respondent No. 2 for being impleaded as a party. The Rent Controller has allowed the said application vide impugned order which is now under challenge.

It is a settled position of law that in an ejectment application, question of title cannot be decided. Petitioner-Punit Ahluwalia is claiming himself to be an NRI landlord on the strength of sale deed dated 25.03.2003, which has not been set aside by any court of law till date and the consequent mutation dated 23.04.2003 in his favour by the Estate Office, Chandigarh. In an ejectment application filed under section 13 B, the Rent Controller is only required to adjudicate as to whether the ingredients of Section 13B are fulfilled or not. The question of title is beyond the scope of adjudication in rent applications. Therefore, the Rent Controller had erred in allowing the application Annexure P-1, filed by Arjan Singh for being impleaded as a party.

Seen from another angle, Arjan Singh, at present is claiming himself to have a semblance of right on the basis of an oral agreement to sell. The said oral agreement to sell has been discarded by the Single Bench of Himachal High Court in its judgment dated 09.09.2015 and it has been held that in fact, there was no concluded contract amongst the parties and further, a doubt was created on the

alleged oral agreement to sell itself. It is stated that on appeal has been filed i.e OSA No. 7 of 2015 before the Hon'ble Division Bench of Himachal High Court. Merely because the applicant-Arjan Singh has been claiming a right on the basis of an agreement to sell, which, has not fructified into a full-fledged title of ownership till date, the applicant cannot be permitted to join issues with the petitioner in the present ejectment application, who has a legal and valid sale deed (and consequent mutation), as of today, in his favour and thus, has a right to maintain a petition under section 13 B of the Act. Hence, the arguments raised by Ld. Counsel for respondent No. 2-Arjan Singh are without any merit and therefore rejected.

As far as the argument raised by Ld. counsel for the respondent No. 1-tenant is concerned, I'm afraid the said arguments are completely misplaced. A perusal of the judgment passed by the Hon'ble Supreme Court, as has been referred by this court in preceding paragraphs, clearly shows that the sale deed has not been set aside and the petitioner has only been precluded from raising a plea of bona fide purchaser. Thus, it has nowhere been held that sale deed is not valid and in fact, it has been clearly stated by the Hon'ble Supreme Court that the sale deed is not being set-aside.

At this stage, Ld. counsel for respondents No. 2-Arjun Singh has pointed out that the Division Bench of Himachal High Court has, while admitting the 1st appeal filed by him against judgment and decree dated 09.09.2015, observed in its order dated 01/04/2017 that

any collateral proceeding pending in any other court qua the property in dispute may continue, however, final order be not passed without the permission of the Himachal High Court. From this order, it is being projected that the proceedings pending before this court, being collateral in nature, cannot be decided in view of the order dated 01/04/2017. I'm afraid that this argument is also without any merit and liable to be rejected. In the opinion of this court, the collateral proceedings, as mentioned in the order dated 1st of April 2017 would only mean the proceedings pending qua title. Ejectment application, as preferred by the petitioner cannot be deemed to be a collateral proceeding, especially when question of title is not required to be gone into between Arjan Singh and Punit Ahluwalia. In any case, this court at present is dealing with an adjudication done by the Rent Controller, Chandigarh on an application filed under Order 1 Rule 10 CPC and is not deciding the main ejectment application. Thus, this court is not precluded from deciding the present Civil Revision Petition.

In view of the above, present petition is allowed, by setting aside the impugned order dated 23.02.2015 and consequently, application filed by respondent No. 2-Arjun Singh dated 19/12/2014 (Annexure P-1) is dismissed.

(JASWANT SINGH)
JUDGE

August 17, 2017
Vinay/dk kamra

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>