

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.1871 of 2017 (O&M)

Date of decision: 16.05.2017

Prem Singh Gupta

....Petitioner

Versus

Sunil Kumar Gupta & another

...Respondents

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

Present: Mr.Sudhanshu Makkar, Advocate, for the petitioner.

Mr.Rahul Garg, Advocate, for respondent No.1.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 01.02.2017 (Annexure P1) whereby the Rent Controller, Kalka has declined the application under Order 1 Rule 10 CPC, filed by the petitioner-applicant, to be impleaded as party in the eviction petition filed by respondent No.1 against respondent No.2.

The reasoning given by the Rent Controller is based on the judgments in Anil Kumar Vs. Chaudhary Ram 1994 (1) PLR 507 and Jagjit Singh Vs. Ajit Lal 2013 (4) PLR 561, to hold that in eviction proceedings, as such, if a person is setting up his title and claims to be the owner of the tenanted premises, he can get it settled by way of filing a suit. It is pertinent to mention that eviction petition was filed on 04.02.2015 in which respondent No.2 filed a written statement denying the factum of the relationship of the landlord-tenant and set up the relationship with the present applicant.

A perusal of the ejectment application would go on to show that it was the case of the respondent-landlord that the property had come from Ram Chander, son of Ralla Ram, who was his grandfather and had been transferred by way of Will dated 28.04.1995. After the death of his

grandfather, he had become the owner of the shop in question and it was alleged that Ram Chander had let out the property to one Sham Lal, who was the elder brother of the tenant, respondent No.2 herein. Resultantly, eviction was sought on account of non-payment of rent, *bona fide* requirement of his son-Pankaj Kumar and the building being unfit and unsafe for human habitation.

An application for impleadment, thereafter, came to be filed on 04.11.2015 by Prem Singh-petitioner, on the ground that the applicant was a land-owner and the shop in question was joint between the parties and had not been partitioned by metes and bounds. It was further alleged that Puran Chand, the father of the applicant executed the Will in the name of the applicant and partitioned the property to the extent of half share and the electricity connection was also in the name of Puran Chand. The plea regarding the status of the tenant was the same that Sham Lal, the real brother of respondent No.2 was the tenant. Resultantly, impleadment was sought as respondent.

The same was resisted by filing reply, taking the plea that on an earlier occasion, Dina Nath, son of Kesho Ram had filed a Civil Suit against the father of the landlord, namely, Sant Ram, which was dismissed on 21.11.2012 and the appeal was also dismissed on 01.03.2014. Resultantly, it was pleaded that the applicant was neither the necessary party nor a proper party and the petitioner was the master of his suit and if he does not want to implead him, his application could not be allowed. It was further pleaded that the application was filed in collusion

with the respondent-tenant, in order to delay the proceedings. Resultantly, the impugned order was passed, rejecting the application.

Counsel for the petitioner has vehemently argued that the petitioner was the necessary party and placed reliance upon the judgment of the Apex Court in Aliji Momonji & Co. Vs. Lalji Mavji 1996 (5) SCC 379, to contend that the order is not sustainable and he should not have been impleaded as a respondent.

On the other hand, counsel for the respondent has supported the order saying that it is well justified and is not liable to be interfered with.

After hearing counsel for the parties, this Court is of the opinion that the impugned order is justified in the facts and circumstances. The principle of *dominus litis* as such would come into play. The respondent is not seeking any relief, as such, against the applicant. The family table of the parties is as under:

Ralla Ram

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Ram Chand____Puran Chand____Kesho Ram

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Sant Ram Om Parkash__Prem Singh Dina Nath____Devi Dayal

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(Applicant)

Sunil Kumar

(Alleged landlord before Rent Controller)

It would, thus, go on to show that there was litigation *inter se* the family between the grandsons of Ralla Ram and the perusal of the

judgment passed by the Civil Court dated 21.11.2012 would go on to show that there was some compromise at an initial point of time regarding the 4 shops bearing Nos.524, 525 and how the shops had been partitioned. The suit of Dina Nath had been dismissed, which had been filed against the father of the petitioner, as noticed and the appeal has also been dismissed.

It is, in such circumstances, this Court is of the opinion that if there is any title dispute, as such, the same has to be settled *inter se* the applicant and the respondent in a separate set of proceedings. The Rent Controller has rightly observed that in case it is found that there was no such relationship of landlord-tenant, the eviction petition would, as such, be dismissed. The rent petition could not be converted into a fight regarding the title of the parties.

Reliance can be placed upon the judgment of the Apex Court in '**Ram Parkash Vs. Amar Nath and another'** 1985 (1) RCR (Rent) 21 wherein it has been held that where the dispute of ownership was raised by the brother of the vendor, he could seek remedy in Civil Court for his ownership and could file a separate application of ejectment and his application under Order 1 Rule 10 CPC was dismissed, while allowing the civil revision.

Similarly, in **Ranbir Singh Vs. Asharfi Lal** 1995 (6) SCC 580, the Apex Court has held that the Rent Controller is only to go into the relationship of the landlord and tenant and it is not to go into the issue of title. It is only for the Rent Controller to see whether the tenants denial

of title of the landlord is *bona fide*.

Similarly, in **Rajendra Tiwary Vs. Basudeo Prasad 2001 SCR 243**, it was held that Rent Act is a special enactment and there is only limited jurisdiction to try the proceedings and pass decree for eviction for the grounds provided and specified. The order of the High Court remanding the case to the First Appellate Court for recording the findings on the question of title, was held to be unwarranted and unsustainable, being beyond the scope of the enquiry.

In similar circumstances this Court in '**Subhash Chander and others Vs. Lala Baij Nath Aggarwal and others' 1993 (2) PLR 460, Anil Kumar (supra), 'Kamla Devi and others Vs. Surinder Kumar and others' 2006 (3) PLR 371 and Jagjit Singh (supra)** has also held to that extent that normally the plaintiff is the master of his suit. It has been categorically held that the third party claiming ownership in the suit property is not a necessary party in the rent proceedings.

The authority in **Aliji Momonji (supra)** relied upon by counsel for the petitioner, would not be applicable to the facts and circumstances of the present case, since it was a case where the Apex Court had held that in the case where the Municipal Corporation had issued notices under the Municipal Act, for demolition of the building, the landlords were necessary and proper parties and were rightly impleaded by the Trial Court. The said judgment was not under the provisions of the Rent Act and therefore, keeping in view the above discussion, the same would not be applicable to the present case.

Resultantly, keeping in view the settled principle, the present revision petition, being devoid of any merit, is, hereby, dismissed. Needless to say that any observation made herein are only for the purpose of deciding the present revision petition and shall not prejudice the parties in the Courts below, in any set of proceedings.

16.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*