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

Civil Revision No.2293 of 2015
Date of decision: 16.5.2017

Asha Jindal

...Petitioner

Versus

Mukesh Kumar Mittal and others

...Respondents

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

Present: Mr. S.P.Garg, Advocate for the petitioner.

Mr. D.S.Malwai, Advocate for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-landlady is aggrieved against the order dated 10.3.2015 (Annexure P/7) whereby her application for striking out issue no.1 was dismissed.

The reasoning which prevailed with the Rent Controller, Dhuri was that evidence had already been led by the landlady and the provisional rent had been assessed since the rent was not being paid to determine the willingness of the tenant to pay the rent. The landlady had availed three effective opportunities and then concluded her evidence in affirmative. Keeping in view the stand taken by the tenant that there was a dispute as to the fact that who was the original owner of the property and on account of the fact that it was further disputed that Kanta Devi widow of Bhim Sain was the sole legatee of Bhim Sain on the basis of a will and there was a denial of ownership, it was held that relationship of landlady and tenant

between the parties was necessary to be determined.

The Rent Controller, Dhuri, committed a cardinal mistake by taking on the mantle to determine the title of parties which is beyond its jurisdiction and therefore, on the face of it, the impugned order is not sustainable.

From the averments of the eviction petition, it is clear that the case of the landlady was that the property was owned by Bhim Sain and had been leased out to one Raghbir Parkash Mittal and the respondents are the legal representatives of the said tenant. After the death of owner, his wife Kanta Devi had become owner and she sold the shop in question vide registered sale deed No.219 dated 25.4.2008 to the petitioner-landlady who was none else but the daughter-in-law of deceased Bhim Sain and on this basis eviction petition was filed on 15.7.2013. It was further mentioned that the rent was being received by her husband Sabodh Kumar @ Romi Jindal who is son of deceased Bhim Sain Jindal. The necessary averments were also made in the opening para of the ejectment petition that she was owner of the shop in question.

In the written statement filed on merits this para was admitted by the tenant. However, a perusal of other paragraphs would go on to show that dispute was raised regarding forging and fabricating the unregistered will and transfer deed to deprive the other legal heirs and to allege that Sabodh Kumar was owner of large tract of land. It has been averred that there were other legal heirs of Bhim Sain Jindal. It is further pertinent to notice that on account of pleadings interse the parties, the provisional rent had been assessed on 23.4.2014 on account of admitted relationship of

landlady and tenant as such between the parties and total amount of ₹ 5088/- were held to be arrears of rent which were to be paid on 8.5.2014. The necessary tender was made on the said date. However, it is apparent that on the said date when issues were framed, the said issue was unnecessarily framed regarding the relationship aspect.

Resultantly, though the landlady had examined herself and closed her evidence on 27.8.2014 and thereafter filed an application on 12.9.2014 (Annexure P/5) for striking out the said issue. The justification by the Rent Controller to the extent that once she had led evidence it did not lie in her mouth to seek the said relief is without any basis keeping in view the principle laid down in Order XIV Rule 5 of the CPC which provides that the Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit. The facts have been noticed in detail. It is not the case of the respondent that he is tenant qua some one else and a dispute thus has been sought to be created regarding inheritance of the property of Kanta Devi or further sale in favour of her daughter-in-law. Section 2(c) of the Act provides that even a person need not be a owner to be a landlord. In such circumstances, reasoning given by the Rent Controller, Dhuri cannot be held to be justified.

The objection which has been raised by Mr. D.S.Malwai, counsel for the respondent that the case is at the fag end, need not detain this Court to decide the matter keeping in view the error apparent on the face of the impugned order in view of the fact that the issues can be amended at any stage.

Accordingly, the present revision petition is allowed. The

impugned order dated 10.3.2015(Annexure P/7) is set aside. The Rent Controller, Dhuri shall take necessary action and allow the application in question.

May 16, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No