

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2135 of 2014 (O&M)

Date of decision: 29.03.2017

Amrik Singh

....Petitioner

Versus

Avtar Singh

...Respondent

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

Present: Mr.Vikas Bahl, Sr.Advocate
with Mr.Nitish Garg, Advocate, for the petitioner.

Mr.M.K.Chaudhary, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-tenant, is directed against the order dated 21.01.2014, whereby leave to contest has been declined by the Rent Controller, Shaheed Bhagat Singh Nagar, on the ground that there was no triable issue, as such, and the petition had been allowed. The Rent Controller has rejected the argument raised by the petitioner that the landlord is the real uncle of the respondent and that he has coparcenary rights in the property. The petitioner has been relegated to the Civil Court, on the ground that the status of the respondent is of a tenant as he had executed rent note in favour of Pritam Singh, the father of the respondent-landlord.

The reasoning which has, thus, been given by the Rent Controller does not appeal to this Court. The fact remains that in the petition filed by the respondent-landlord itself, it was averred that the original owner was Pritam Singh, his father, who had executed a registered Will in favour of the mother, Rattan Kaur on 02.01.1989 and after the death of Pritam Singh, she had become the owner. She had executed a Will dated 06.02.2001 in favour of the respondent along with his two brothers, namely, Balbir Singh and Pritpal Singh. The present petitioner is son of Pritpal Singh. It was also further mentioned in

the petition that the father had inducted the respondent as a tenant. It is, thus, apparent that the petitioner herein is a nephew of the respondent herein, who rightly seeks protection from summary eviction under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act').

In the application filed under Section 18-A of the Act, specific objection had been raised that the property in question was a joint Hindu family coparcenary property and the respondent was also the legal heir by way of survivorship as his right to the property exists from his grandfather. The said issue has, thus, been totally side-stepped to that extent, on the ground that coparcenary right is not to be considered by the Rent Controller. It is settled proposition that if a triable issue, as such arises and once the parties are closely related, therefore, whether one of the co-owners can be vacated by resorting to summary procedure under Section 13-B of the Act, would be justified or not. The Rent Controller, by allowing the petition under Section 13-B of the Act and by dismissing the application, filed under Section 18-A of the Act, thus, has not acted within the prescribed judicial parameters and the impugned order dated 21.01.2014, thus, cannot be held to be justified and the same is, hereby, set aside and leave to contest is granted.

Revision petition stands allowed in the above-said terms.

29.03.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*