

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

**Civil Revision No.224 of 2017 (O&M)
Decided on : 27.01.2017**

Vijay Kumar and others

... Petitioners

Versus

Bhupinder Singh

... Respondent

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

Present : Mr. RPS Ahluwalia, Advocate
for the petitioners.

G.S. Sandhawalia, J. (Oral)

CM-1136-CII-2017

Application for placing on record Annexures P-2 to P-5 is allowed, subject to all just exceptions. Annexures P-2 to P-5 are taken on record. Office to tag the same at appropriate place.

CM stands disposed of.

Main Case

The present revision petition has been filed by the petitioners-tenants against the order dated 02.09.2016 (Annexure P-1) passed by the Rent Controller, Ambala, whereby the application for amendment of written statement was declined.

The petitioners in the application were seeking the amendment to the extent that the other legal heirs of Moti Ram had not been impleaded, since he had five sons and two daughters. After his death one son, namely, Manmohan @ Mohini had also died leaving behind his wife, son and daughter and, therefore, it was the case of the petitioners-tenants that they were also necessary parties and the petition is not maintainable without impleading all the legal heirs as stated above.

The Rent Controller vide the impugned order dated 02.09.2016 came to the conclusion that it was not necessary to implead them as they were not having occupation and interest in the litigation. The legal representatives were to only step into the shoes of the deceased and even if some of the heirs were not impleaded there was a presumption that the others had surrendered their right of tenancy.

A perusal of the pleadings which have now been placed on record would go on to show that the respondent-landlord filed ejectment application alleging that Moti Ram, the father of the petitioners was a tenant under his father Gurcharan Singh. After the death of the original tenant, the petitioners herein had become the tenants under his father and after the death of his father, the petitioners had become tenants under him. Resultantly, the respondent-landlord had filed the ejectment application on various grounds including non-payment of rent and bonafide requirement.

The defence taken by the present petitioners was that all the legal heirs of the Moti Ram were not impleaded and they were in occupation and possession of the shop. Resultantly, the amendment application was, thereafter filed as noticed above.

It is pertinent to notice that a specific stance was taken by the respondent-landlord that the daughters of Moti Ram, namely, Anju and Sudesh were married long back during the lifetime of the Moti Ram and they were well settled in their homes and were not in occupation of the shop in question in any manner. Similarly, the deceased son of Moti

Ram, namely, Manmohan @ Mohini had expired in the year 1998 and his wife also expired in the year 2014. The daughter of the said Manmohan @ Mohini was also married and living at Ludhiana and the son Shivam had no concern with the business run in the shop.

It is not disputed that the respondent-landlord had arrayed the other four sons as such in the rent petition who are now the present petitioners. Thus, in view of the above facts, once the other legal representatives were not in occupation of the shop in question and the relief was claimed only qua the persons in occupation, the Rent Controller is well justified in declining the application for amendment on the ground that the other legal heirs are not necessary at this stage.

Reference can be made to the principles laid down by the Full Bench in '**Biru Vs. Suraj Bhan**' 1983 PLR 568, wherein the issue of common identical interests of the co-sharers and the representation of one would bind the others in the absence of fraud and collusion were laid down. It was, accordingly, held that once effective hearing is given to one, in the eyes of law it would be hearing given to all as the interests were in identical. The relevant portion reads as under:-

*“11. Lastly the concept of representation of the whole estate by one or some out of the many legal representatives has not only been generally accepted but finally sanctioned in **Harihar Prasad Singh and others v. Balmiki Prasad Singh and others**, A.I.R. 1975 Supreme Court 733. Therein it has been held that even where only some of the legal representatives of the deceased were brought on the record, they would represent the whole estate and the other legal representatives as well, and the judgment would be binding on all in the absence of any fraud or collusion or on the*

ground of very special circumstances, showing that indeed the trial had not been fair or real against the absent heir at all or where there was a special case which was not and could not be tried in the proceedings. The rule deducible from the observations of the final court appears to be that where the interest is common and identical then one or such persons having such common and identical interest may well represent the others and also bind them. However, the inarticulate premise of this well settled rule is that there should be absence of a fraud or collusion and a fair and real trial of the issue. If the aggrieved party can establish that in fact the proceedings were vitiated by fraud or collusion or that there was no fair or real trial at all, then alone the representation concept can be ousted and the decision can be held to be not binding.”

Even otherwise the observations made by the Rent Controller qua the other legal heirs would not be binding upon them as they are not parties to the litigation and, therefore, the argument as such raised by the counsel that their interest has been jeopardized is without any justification.

Accordingly, there is no illegality and irregularity in the well reasoned order passed by the Rent Controller, which would warrant interference by this Court. Accordingly, the present revision petition is dismissed.

JANUARY 27, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No