

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

CR No.2852 of 2012 (O&M)

Date of decision: 30.05.2017

Suresh Kumar

....Petitioner

Versus

Parminder Singh Kalley & others

...Respondents

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

Present: Mr.Karanjit Singh, Advocate, for the petitioner.

Mr.A.S.Gill, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition, filed by the petitioner-tenant, is to the order passed by the Rent Controller, Jalandhar dated 13.10.2011 whereby ejectment has been ordered after full-fledged trial, after grant of leave to contest under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act').

The eviction petition was initially filed by Balvir Kaur (deceased), for ejectment of the petitioner-tenant from portion of kothi No.187, shown in red colour in the site-plan attached with the petition, situated at Lajpat Rai Nagar, Jalandhar. In the boundaries it was also mentioned that the tenanted premises were having a common courtyard and the portion of the house had a common passage etc. The site-plan is also on record as Ex.P8, whereby the tenanted premises have been shown in red colour. Eviction was sought on the ground that the accommodation was not sufficient for them and they could not adjust in the common bedrooms as each child demanded separate bed room for him on arrival in India as per their habits and nature. Resultantly, possession was sought of the tenanted premises.

Prior to the issues having been framed, the landlady expired on 29.07.2008 and her death certificate has been brought on record as Ext. P7 and the legal representatives who are the sons, have been arrayed as respondents, came on record and contested the petition. One of the son, who is also an NRI, stepped into the witness-box as PW1 and also examined another witness-Jatinder Singh.

The Rent Controller noticed that the transfer in the name of the original landlady was dated 19.03.1967 (Ex.AW2/1) and it is not disputed that she was an NRI because the stand of the petitioner is also that there was no intention, as such, to return to India. It has also come on record that her death certificate had been obtained from the King George Hospital Goodmayes. As per the passport also, her place of birth has been shown as Punjab and therefore, there is no doubt regarding the fact that she was an NRI, as defined under Section 2(dd). On account of the fact that a registered Will had been left by her dated 09.05.2007, the property was transferred in the names of the legal representatives on 24.06.2010 (Ex.AW2/2) and thereafter, a sale deed was also executed on 25.06.2010 (Ex.AW2/A), in the name of the respondents.

In such circumstances, eviction was ordered on account of the fact that the necessary ingredients had been made out regarding being an NRI, as defined under Section 2(dd); having returned to India; ownership of 5 years and the *bona fide* presumption, as such, keeping in view the principles laid down in **Baldev Singh Bajwa Vs. Monish Saini** **2005 (12) SCC 778.**

Counsel for the petitioner has sought to argue that on account of the death of the landlady, the need, as such, does not exist and therefore, the revision petition is liable to be allowed.

The said argument cannot be accepted. The principle of law is settled that the need is to be seen at the time of the filing of the petition and due to the delay which took place on account of the lengthy litigation process, the subsequent events can be taken into consideration but are not the binding factors. The son has also stepped into the witness-box and deposed regarding the necessary averments that the tenanted premises are situated in the midst of the rest of the premises and the requirement is of the family, as such, as and when they visit India and therefore, it cannot be said that the order suffers from any infirmity.

The requisite conditions having been fulfilled, this Court is of the opinion that the order passed by the Rent Controller does not suffer from any infirmity and accordingly, the present revision petition, being bereft of any merit, is, hereby, dismissed.

30.05.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No