

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.3307 of 2017 (O&M)

Date of decision: 10.05.2017

Avtar Singh

....Petitioner

Versus

Harish Kumar

...Respondent

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

Present: Mr.Ashish Gupta, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-tenant, is directed against the concurrent findings recorded by the Courts below whereby ejectment order dated 02.05.2016, passed by the Rent Controller, Zira has been upheld by the Appellate Authority, Ferozepur on 23.11.2016, on account of the need of the respondent-landlord who wants to open an insecticide shop in the premises in question, which had been used for the same purpose by the petitioner-tenant.

Counsel for the petitioner has based his argument on the ground that there was an issue, as such, that there was no relationship of landlord-tenant between the parties and it is, accordingly, submitted that there was a registered gift deed dated 10.08.2009, executed in favour of the respondent-landlord by his father. The petition was filed on 19.07.2012 and the rent was being paid till that time, to the father and there was no relationship, as such, with the respondent and that eviction has wrongly been ordered.

The said argument, though attractive at the first blush, is not liable to be accepted, keeping in view the below facts and circumstances.

The case of the respondent-landlord is that Jagdish Chander, his father, was the owner of the shop which was rented about 12 years back,

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@ Rs.400/- per month, before filing of the eviction petition. As noticed, the property was transferred vide registered gift deed and it was averred that there was a relationship of landlord-tenant between the parties. The respondent-landlord was carrying on business of insecticides and pesticides under the name and style of M/s Guranditta Mal Tara Chand in the shop owned by Alka Rani, wife of Kewal Krishan, his younger brother, which was around 50 yards away from the shop in dispute. On her insistence, he had to vacate the shop and therefore, he required the premises in question.

It is also the case of the landlord that the present petitioner has left the business in the demised shop and the said shop is lying vacant for the last 3-4 years and it is only opened once or twice. A suit for permanent injunction was also filed against Jagdish Chander, which was dismissed as withdrawn whereby statement was made that the tenant would not be dispossessed illegally. The stand of the present petitioner is that the gift deed had never come to light and had been acted upon and no notice was sent to him and the rent was sent by money order to Jagdish Chander and he had received the rent for the last time on 24.11.2012. The father and son were joint in residence and the benefit of the gift deed was, accordingly, contested by taking the plea that Shri Guranditta Mal, grandfather of the respondent, was the original owner. He had expired, leaving behind 5 sons and 3 daughters and therefore, there was no such family settlement. A water connection had also been taken in the year 1991 which was with the permission of Guranditta Mal and Jagdish Chander and the father had received rent during his lifetime as the

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attorney of Guranditta Mal. Resultantly, the following issues were framed:

- “1. Whether the respondent is liable to be ejected from the demised shop on the ground of personal necessity? OPA
2. Whether the applicant has concealed the material facts from this Court? OPR
3. Whether the applicant has no cause of action to file the present case? OPR
4. Whether there is no relationship of landlord and tenant between the parties? OPR
5. Relief.”

The respondent examined as many as 2 witnesses to prove the gift deed as Ex.A1 and the licence for selling insecticides as Ex.A2. The petitioner also examined 2 witnesses and brought on record as many as 126 documents.

The Rent Controller noticed that the shop had been given firstly by Guranditta Mal who had died in September, 1994 and thereafter, the father of the petitioner was receiving the rent being the power of attorney, after December, 2012. It was noticed that the relationship of the father and son was there and the requirement, as such, was proved, on account of the need of the demised premises. It was held that the transfer deed, as such, could not be challenged by placing reliance upon various precedents and that prior notice was not tenable, by keeping in mind the judgment in **Hazari Vs. Vinod Kumar (now deceased) through LRs & others 2015 (4) RCR (Civil) 688** and accordingly, ejectment was ordered.

The Appellate Authority also thrashed out the issue in detail

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and came to the conclusion that there was no dispute qua the relationship between Harish Kumar and Jagdish Chander, which had been duly admitted by the petitioner. There was no other property available with the landlord and he had already applied for grant of licence for running the business of insecticides and pesticides from the concerned department. Reliance was, accordingly, placed upon the judgment in **Raghubir Chand Mahajan Vs. Indian Bank 2015 (4) RCR (Civil) 156,** wherein it has been held as under:

“6. While understanding the whole controversy, it must be remembered that the bank was not the original landlord of the tenant. The bank was claiming right to the property as transferee through a compromise decree. It is perhaps a moot point whether a compromise decree could transfer right in the immovable property without registration, but this is not a case for declaration of title and I, therefore, refrain from commenting about the validity of a claim by the bank that it obtained ownership of the property. A landlord's status does not require proof of ownership but merely a jural relationship that may exist between the two persons, one claiming as landlord and another as tenant. If this is a case of assignment, even if invalid, if the tenant attorns the tenancy to the assignee that will create the relationship. However, attornment is also required to be conform to the requirement of law and the source of such consideration would obtain through the principle contained under Section 109 of the Transfer of Property Act (hereinafter referred to as 'the Act'). It enacts a rule of attornment of tenancy and reads as under:-

“109. Rights of lessor's transferee.—If the lessor transfers the property leased or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all

the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they

disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.”

This provision makes possible for a transferee, in the absence of a contract to the contrary to possess all the rights and if the lessee so elects be subject to the liability of the lessor to the property transferred. The proviso is important that a transferee shall not be entitled to arrears of rent due before the transfer and that if lessee not having reason to believe that such transfer has been made pays rent to the lessor, the lessee would not be liable to pay over again to the transferee. We have seen here that notice has been issued and received by the tenant only on 4.10.1991 about the transfer on compromise and demand of the bank to attorn the tenancy to the bank. If the tenant had contended that he had been paying rent to Veena Devi, the duty to recognize Veena Devi as landlord can cease and the assignee can obtain a right to demand rent from the date subsequent to the notice, if the tenant chooses to attorn. The attornment itself takes place by two means, one by operation of law and by conduct

of party. In a typical situation of death of a landlord when the property survives to the legal representatives, the attornment to the respective legal representatives shall be taken as by operation of law. If, on the other hand, a transfer is made by the original landlord and transferee seeks for recognizing himself as landlord and the transferor also consents to such attornment, the tenant is bound to recognize the transferee. However, in a situation where the transferee makes a demand and the original landlord does not consent to the same, there can be truly an issue of bonafide dispute which a tenant may not be able to confront. He may direct either of the landlords to seek for an adjudication for the respective rights or may himself resort to an interpleader suit to secure an adjudication about who the landlord is . In this case, we must notice that the original landlord Kartar Devi and Inder Singh have both died. Their daughter Veena Devi continued to exercise the rights of ownership and claim her status as a landlord. The counsel for the respondent points out that Veena Devi herself was a party to the compromise and her conduct in treating the tenant as her tenant was not proper. The daughter's conduct is wholly irrelevant. After all, the tenant was not a party to the decree. He has a right to insist that the landlord or a person claiming as a transferee settles their own differences. I will not, therefore, make much of issue that Veena Devi was a party to the compromise.”

It was further noticed that receipts had been issued by the Water & Sanitation Department, in the name of the father of the landlord and the respondent had filed a recovery suit whereby the present petitioner had paid the amount without any grudge and resultantly, once the tenant had admitted and attorned the tenancy, the relationship, as such, was made out. Keeping in view the evidence on record and the

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statements made, the findings of *bona fide* requirement were, accordingly, upheld.

A perusal of the order which has been referred to by the Appellate Authority would go on to show that during the pendency of the present proceedings also, in a petition instituted on 10.02.2014, the petitioner had tendered arrears of rent before the Rent Controller and the petition, was, accordingly, got dismissed as withdrawn on 14.08.2014 by the respondent. The petitioner had tendered the amount w.e.f. 01.01.2013 to 31.08.2014, to the tune of Rs.8000/- along with interest and the costs of Rs.500/-. It is, thus, apparent that in view of the said deposit, the petitioner had accepted the factum that the respondent was none else but his landlord. The argument, thus, raised that it was during the pendency of the petition, would be without any basis. The said amount was not deposited under protest and the matter was never, as such, contested. Resultantly, the petitioner, is, thus, bound by the principle of estoppel as he had admitted the factum of the relationship and therefore, the findings recorded by the Courts below do not suffer from any material irregularity or illegality which has occasioned a failure of justice which would warrant interference by this Court, in revisional jurisdiction.

Accordingly, finding no merit in the present revision petition, the same is, hereby, dismissed in limine.

10.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No