

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.4083 of 2014 (O&M)

Date of decision: 05.04.2017

Rajinder Kumar Kalia

....Petitioner

Versus

Raj Kumar Kalia

...Respondent

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

Present: Mr.J.C.Kapoor, Advocate, for the petitioner.

Mr.A.S.Gulati, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

Present revision petition has been filed by the petitioner-tenant against the order dated 28.03.2014 (Annexure P1), whereby ejectment has been ordered under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), from the premises in question, i.e., House No.3234, Sector 23-D, Chandigarh from 2 rooms and a kitchen on the ground floor.

It is pertinent to mention here that the parties are closely related, being brothers. The claim of the respondent-landlord, in the petition which was filed on 28.03.2002, is that the present petitioner is a tenant at a monthly rent of Rs.800/-. It is the case of the landlord that he retired as Group Instructor from the office of the Principal, ITI, Sonapat on 31.03.2001 and the petition was, accordingly, filed within a period of one year, seeking the premises in question on the strength of being a specified landlord. The claim was based on a partition *inter se* the parties on 11.09.1987.

The defence of the landlord was that a fresh partition deed dated 15.01.2002 had been executed and the ground-floor was in possession of the landlord and he had nothing to do with that portion. It is further

submitted that the sister-Sudershan Bala was in possession of the 2nd floor and all co-owners had acted upon the partnership deed and were in possession of their respective shares. The respondent was not the landlord, in view of the partition deed dated 11.09.1987, from January, 2002 and the sister-Sudershan Bala and the parties had signed on the said partition deed.

Replication was filed, denying all the allegations of the 2nd partition and it was submitted that arrears of rent had been paid by way of tender in the Court on 14.08.2002 for the period from 01.08.1997 to 31.03.2002 @ Rs.800/- per month and the partition deed had not been signed by all the co-sharers. In order to prove the case, respondent stepped into the witness-box as PW1 and also examined the official from the Department of Industrial Training & Vocational Education Haryana, namely, one Niranjana Singh as PW2, showing that the respondent had retired on 31.03.2001 (Ex.P3). The petitioner-tenant examined as many as 7 witnesses and his evidence was closed on 25.03.2014.

The Rent Controller noticed that the partition deed dated 11.09.1987 was admitted by both the parties and rent had also been tendered and thus, admission was the best proof of the relationship of landlord-tenant. Regarding the partition deed dated 15.01.2002, it was noticed that it was not signed by all the co-sharers. The tenants who had allegedly signed on the second partition deed also denied that they were party to the partition deeds. The sister-Sudershan Bala had also denied her signatures and therefore, it was held that it cannot be held that the tenant had been able to prove the family settlement dated 15.01.2002.

It is pertinent to notice that in a suit filed on 16.10.1999, much prior to the filing of the petition under Section 13-A of the Act and after the partition had taken place on 11.09.1987. The suit for permanent injunction had been preferred by the petitioner himself, seeking injunction against the respondent, on the ground that he had been inducted as a tenant in the premises in the year 1987 at a monthly rent of Rs.800/-. It is not disputed that on the strength of the said suit, injunction had been granted on 26.05.2000, in favour of the present petitioner and the respondent was restrained from taking forcible possession of the premises. It is also pertinent to notice that an application for rejection of the plaint in the eviction proceedings was also filed on the ground that there was no relationship and on various grounds that the necessary ingredients under Section 13-A, as such, were not fulfilled apart from the fact that the respondent was not the landlord of the premises in question. The application was dismissed on 11.12.2013 and CR-216-2014 was also dismissed by this Court on 27.01.2014, which has now been placed on record as Annexure R7. Once the petitioner himself has filed the suit and taken the benefit of protection that the premises would not be vacated except in due course of law, he cannot turn around and take the plea that the respondent was not the landlord and he would be estopped from taking such a stand.

The argument of counsel for the petitioner, as such, that they were brothers and there was a partition, as such, *inter se*, and the benefit should be given of the second partition, is without any basis. It is to be noticed that after the filing of the suit, the partition had been set up in the

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year 2002, just before the filing of the present petition on 28.03.2002, which has been held not to be proved, as such, rightly by the Court below. The eviction petition having been filed one year after the retirement and the necessary competent authority having proved the certificate of retirement, the ejectment has, thus, rightly been ordered under Section 13-A of the Act.

In such circumstances, the order impugned does not suffer from any infirmity which would warrant interference by this Court under the revisional jurisdiction. Accordingly, the same is, hereby dismissed. Liberty is also granted to the respondent-landlord to agitate for his rights for the claim of mesne profits application which he has filed before the Court of competent jurisdiction after the order of ejectment has been sought as it would be a matter of fact as to what would be the rate of rent in the said area and as to what a similar property might fetch, in the peculiar facts and circumstances.

05.04.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*