

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 07.11.2017****CR No.5083 of 2012 (O&M)**

Karamvir

...Petitioner

Vs.

Manjit Singh Dogra & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Naresh Prabhakar, Advocate, for the petitioner.

Mr. Atul Jain, Advocate, for the respondents.

RAJIV NARAIN RAINA, J.

1. The conclusion of the entire case of the petitioner before the Rent Controller, Sultanpur Lodhi in his petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 would depend on the evidentiary value of the rent note dated 26.09.1994 alleged to have been executed between the petitioner and respondent No.1 – Manjit Singh Dogra and to review how have both the Authorities dealt with the issue as to whether the rent note was or was not the result of deceit practiced by the petitioner on respondent No.1, the burden of which issue was on respondent No.1. The ancillary question which arises is that even if the rent note has been proved to have been executed by respondent No.1 – Manjit Singh Dogra in favour of the petitioner, then whether it was result of collusion between petitioner and respondent No.1 or not binding on respondent No.2 – Dr. Sumit Sharma, being his defence of the action.

2. On his part, respondent No.1 – Manjit Singh Dogra denied the relationship of landlord and tenant and pleaded that he had not taken any plot or shop on rent from the petitioner. Manjit Singh Dogra was a man of considerable wealth and owned a cinema hall; ran a finance business and owned 72 shops in town and looking to his financial status, he was not likely to have taken a 'dhara' measuring 4 Marlas land on rent for running a small business of *datries* and *rambas*.

3. The further twist in the story which made things more difficult for the petitioner to assert his right as landlord and owner of the disputed property was the stand of respondent No.2 – Dr. Sumit Sharma asserting that his mother had bought the property in dispute by a sale deed dated 30.06.1978 purchasing the plot situated in Katra Bazaar, Sultanpur Lodhi to the extent of 1/3rd share out of 51 Marlas land in the sum of ₹18,000/-. She had executed a Will dated 22.06.1997 bequeathing all her moveable and immoveable properties in favour of her son Dr. Sumit Sharma – respondent No.2 and after her death he has become owner in possession of the disputed plot. He further alleged that there was boundary wall up to the height of 10/11 feet and there is a construction of one room, one toilet with main gate and the lock and key of the same is with him. The petitioner has no concern or connection with the disputed plot/property. Respondent No.2 – Dr. Sumit Sharma further asserted that as per his knowledge the land in question was once owned by one Nihala son of Meer Bakash and falls within the Khasra No.1180 as per Bandobast- 1946 Bikrami and as per revenue record of the said land which reveals that the plot was lying mortgaged with Mehar Chand son of Nihal Chand and after partition of India, the property vested with the custodian Department. The case in counter set up by respondent No.2 was

that the petitioner forged the rent note and therefore, the same was liable to be ignored.

4. Parties led their evidence before the Rent Controller and the materials on record were considered by the authority while returning a finding that the due execution of the rent note was not proved. It was found that as per the rent note, the tenancy was created on 26.09.1994, which is the date of execution of rent note, but as per the evidence of AW-5, the tenancy was created three months prior to the execution of the rent note. AW-8 deposed that before he reached the spot, the agreement was already written and signatures of Manjit Singh were already on the agreement. Since the document was not executed in the presence of AW-8 nor did Manjit Singh Dogra sign in his presence, the due execution of the document was not proved. Not only this, both the Rent Controller and the Appellate Authority noticed that the rent note had been created later on and the reasons to suggest such an outcome was that the entry Ex.A2 in the register of the Deed Writer (AW-7) bears No.797 and this entry to the naked eye was the narrowest entry in the register, indicating that the written matter was squeezed in and therefore adjusted later on. The Appellate Authority concluded that as per this entry, the previously left vacant space for scribing of affidavit bore a cutting, changing the purpose of the same, from proposed affidavit to scribing a rent note.

5. As though, this evidence was not enough to dislodge the rent note, both the Authorities have harboured serious doubt on its authenticity for the reason that AW-5 stated in his evidence that he took rent for three months and after that he (petitioner) never claimed any rent from 1994 till the filing of the rent petition in the year 2000. The petitioner did not explain

why he had not filed any rent petition claiming rent for such a long time from Manjit Singh Dogra – respondent No.1. For these reasons, both the Authorities have concluded as a finding of fact that the rent note Ex.A1 is a created document. In any case, the document can have no effect on the rights of Dr. Sumit Sharma – respondent No.2 since he is owner of the property in dispute. Neither the petitioner nor respondent No.1 – Manjit Singh Dogra can challenge the testamentary will executed by the mother of Dr. Sharma. It is only the legal heirs, who may have such right and the petitioner is certainly not one of them.

6. Moreover, the argument of the petitioner that the property bearing Khasra No.1180 was mortgaged with his great great grandfather by one Mir Baksh is concerned, the same was rejected by the Authorities since Mir Baksh has never got the property redeemed and on partition qualified as Muslim property and thereafter it would vest in the Custodian General in Central Government. If the petitioner has any right over the property, then he could always assert his interest thereupon under Section 8(2) of the Administration of Evacuee Property Act, in case the mortgagee has any right in that property capable of decree. He can approach the competent authority to process his claim in accordance with law. Never having done so, the ownership of respondent No.2 cannot be questioned by the petitioner since he is neither owner nor landlord of the disputed property. There is no doubt from the record that the petitioner did not produce any evidence to establish his ownership over the property and to establish his claim to be the landlord entitled to eviction of respondent No.1 etc. The petitioner's claim to property as described by him is not identical with the boundary of the property in dispute.

7. Yet another reason to reject the claim of the petitioner is the effect produced by reading the terms & conditions of the alleged rent note. As per those terms & conditions, respondent No.1 – Manjit Singh Dogra was to construct a shop at his own expense within five months and also to get electricity connection and thereafter the rate of rent would be ₹700/- per month. As a matter of fact, no construction was carried out within those five months. There was also a stipulation in the rent note that after the construction of the shop, the respondent No. 1 shall handover its vacant possession to the petitioner within 11 months of the construction. It was hardly a thing to be believed that a tenant would raise construction with his own funds in the demised premises and then within 11 months he would handover possession back to the petitioner/landlord. If the landlord expects tenant to construct, then it will follow that the expenses incurred would be adjusted towards future rent. There is no such provision in the dubious rent note regarding adjustment towards future rent. Therefore, the Authorities were right in concluding that the terms of the tenancy itself were vague and no reasonable person/tenant would accept such terms & conditions.

8. Apart from the above, respondent No.2 – Dr. Sumit Sharma is not bound by any action of respondent No.1 – Manjit Singh Dogra or from his admission of his signatures in the rent agreement and in the register of the Deed Writer. It was for respondent No.1 to explain his conduct and the same without any basis will have no effect on the rights of respondent No.2, as there exists no relationship of landlord and tenant between the parties and, therefore, the petition for eviction was not maintainable. It has also come on record that petitioner and respondent No.1 had good relations with each

other and the rent note propounded by the petitioner to seek eviction of the respondents is nothing but a fabricated document.

9. For the above reasons, the action has failed before the two Authorities and I have no reason to differ with the findings of fact recorded after appreciation of evidence. Upon reaching this conclusion, I think that this petition is downright frivolous and vexatious and has consumed time of the court without a just cause or reason. Therefore, I deem it fit to dismiss the instant petition with costs of ₹1 lakh to be paid by the petitioner to respondent No.2 – Dr. Sumit Sharma within two months.

07.11.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>