

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CR No.5525 of 2014 (O&M)

Ravinder Kumar		Petitioner
	Versus	
Jarnail Singh		...Respondent

(2) CR No.5527 of 2014 (O&M)

Vijay Kumar		Petitioner
	Versus	
Jarnail Singh		...Respondent

(3) CR No.5587 of 2014 (O&M)

Ravi Kumar		Petitioner
	Versus	
Jarnail Singh		...Respondent

(4) CR No.5917 of 2014 (O&M)

Rajinder Pal		Petitioner
	Versus	
Jarnail Singh		...Respondent

(5) CR No.5918 of 2014 (O&M)

Surjit Singh		Petitioner
	Versus	
Jarnail Singh		...Respondent

Reserved on: 22.05.2017
Date of decision:02.06.2017

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

Present: Mr.Anil Chawla, Advocate, for the petitioner(s).

Mr.Sunil Chadha, Sr.Advocate
with Ms.Swati Verma, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The present judgment shall dispose of 5 revision petitions, bearing CR-5525, 5527, 5587, 5917 & 5918-2014, involving common questions of law and facts. However, to dictate orders, facts have been taken from CR-5525-2014 titled *Ravinder Kumar Vs. Jarnail Singh*.

The petitioner-tenants challenge the orders dated 15.04.2014, passed by the same Rent Controller, Amritsar whereby their applications under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') have been dismissed on the ground that no triable issue is made out and resultantly, eviction was ordered under Section 13-B of the Act, from the premises in question.

Counsel for the petitioner has submitted that the custodian was the owner of the property in dispute and the landlord had no title, as such, and therefore, the action of the Rent Controller in not granting the leave to contest was not justified.

The reasoning which prevailed with the Rent Controller would go on to show that the necessary ingredients, as such, regarding the sale deed, should the requisite ownership of 5 years prior to the institution of the petitions, which were instituted on 30.01.2013, was available, in the facts and circumstances, since it was dated 16.06.1961, in favour of the mother, Pritam Kaur. The landlord wanted to come back to India and needed the property for his own use and relying upon the principles laid down in **Baldev Singh Bajwa Vs. Monish Saini (2005) 12 SCC 778** that there would be a presumption in favour of the NRI landlord, regarding the *bona fide* requirement, the applications for leave to contest were, accordingly, dismissed while ordering ejectment.

A perusal of the ejectment applications would go on to show that the case of the respondent-landlord was that he was born at Delhi on 30.07.1947 and had shifted to England in the year 1962 and had become a

British National and was holding such passport. Thus, it was apparent, as such, that he was a person of Indian origin, as defined under Section 2 (dd) of the Act and resultantly, he was justified in filing the applications seeking ejectment of the tenants on the ground that his mother had purchased one house No.1960/2, situated inside Mahan Singh Gate, Amritsar, from one Mela Ram on 16.06.1961. The mother had expired on 04.07.1972 in England leaving behind his son and one of his legal heirs and he had become co-owners along with his brothers-Surjit Singh, Harbans Singh, Manjit Singh and sisters-Kartar Kaur, Rabinder Kaur and Kulwant Kaur. He had, thus, let out the property in the year 1976 which was of 2 rooms as in the case of the tenant-Ravinder Kumar @ Rs.100/- per month and thereafter, on return to India, he filed various petitions whereby there was mention of the 5 tenants to whom the 10 rooms had been let out in all and their names were Vijay Kumar, Ravi Kumar, Surjit Singh and Rajinder Pal, who were tenants in the same building, which was required for his own use and occupation.

An application under Section 18-A of the Act came to be filed that the petitions were not maintainable as the landlord was co-owner of the property and that he alone could not file the petitions and he had not taken any objection from the other co-owners. It was pleaded that the landlord was only a co-owner and therefore, could not seek eviction, as the consent of the others had not been taken and therefore, triable issues, as such, was sought to be raised. The landlord's intention to come back to India was, accordingly, doubted and therefore, leave was

sought, on these grounds.

Counsel for the petitioners has vehemently relied upon the Annexure P5, which is the deed of conveyance, executed on 31.01.1968, whereby Durga Dass had purchased the property under the Displaced Persons (Compensation & Rehabilitation) Act, 1954, to contend that information had been supplied that allotment of house No.1960/2 had not been made to the respondent-landlord. Resultantly, he submits that in such circumstances, triable issues were raised, as the ownership was doubted.

The said argument is not liable to be accepted on the ground that firstly, no such issue had been raised in the applications for leave to contest under Section 18-A. Rather, the factum of the landlord being the co-owner is the only issue and thus, the tenancy, as such, stands admitted. Even otherwise, under Section 116 of the Indian Evidence Act, 1872, the tenant cannot question the title of the landlord. In a petition under Section 13-B of the Act, similar issue also arose in the case of **Kamaljit Singh Vs. Sarabjit Singh 2014 (4) RCR (Civil) 252** and the Apex Court has held that a tenant cannot question the title of the landlord once he has taken the property on rent. Relevant observations read as under:

“16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter’s title to the property. Section 116 clearly lends itself

to that interpretation when it says:

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

17. A three-Judge of this Court in *Sri Ram Pasricha v. Jagannath and Ors.*, 1976 (*) R.C.R. (Rent) 832: (1976) 4 SCC 184 reiterated the principle that a tenant in a suit for possession was estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord, declared this Court, even otherwise irrelevant in a suit for eviction of the tenant. The only exception to the rule of estoppel as stated in Section 116 (supra) may be where the tenant is validly attorned to the paramount title holder of the property or where that the plaintiff-landlord had, during the intervening period, lost his title to the property. We are not, however, dealing with a case where the respondent-tenant claims that the property is vested in anyone else who could be described as the paramount title holder or there was any extinction of the title of the appellant on any count whatsoever since the induction of the respondent as a tenant into the premises. We need not, therefore, be detained by any one of those considerations. What is important is that so long as a jural relationship exists between the respondent-tenant and the appellant and so long as he has not surrendered the possession of the premises in his occupation, he cannot question the title of the appellant to the property. The inevitable inference

flowing from the above proposition would be that (*viz-a-viz* the respondent) the appellant was and continues to be the owner of the premises in question since the year 1992 when the respondent was inducted as a tenant. Reckoned from the year 1992 the appellant has established his ownership of the premises for a period of five years before the filing of the eviction petition thereby entitling him to invoke the provisions of Section 13-B of the East Punjab Urban Land Restriction Act, 1949.

18. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act.”

The above principles would be directly applicable to the facts and circumstances of the present cases and therefore, it would not lie in the mouth of counsel for the petitioners, to contend to the contrary.

The issue of a co-owner filing a petition and his entitlement, as such, to file, has been upheld by the Division Bench of this Court in **Smt. Bachan Kaur and others Vs. Kabal Singh and another, 2011 (2) RCR (Civil) 886** by holding that the co-owner would be entitled to file a

petition and it would not, as such, make out a triable issue. Relevant observation reads as under:

“A co-owner is owner of each part of the property in husband like manner with other co-owners. He is entitled to seek ejectment of tenant in premises for benefit and for the benefit of all other co- owners. Such right is subject to one exception that none of the remaining co-owner objects to such action of the petitioning co-owner. If one of the owners happens to be a NRI, he does not relinquish his character and status as that of co-owner. Thus an order of ejectment obtained by a NRI - co-owner will bind other co-owners but will not entitle other NRI and/or an co-owner to seek ejectment of tenant from another building either owned solely by such co-owner or jointly with other persons as co-owner in exercise of right of eviction granted to an NRI by [Section 13-B](#) of the Punjab Act. Thus in respect of first question of law, it is held that a co-owner, who is Non-Resident Indian, even when other co-owners are not Non-Resident Indians, can maintain a petition for ejectment for the benefit of all the co-owners.”

As noticed, the property having been inherited by the landlord from his mother on account of her death, had devolved upon him as succession had opened up and the Rent Controller was well justified in declining leave to contest as after 1972, the legal heirs of Pritam Kaur had become co-owners of the property in question. As noticed, the tenancy was created, thereafter, by the landlord and in such circumstances, it is not for the tenants, now, to turn around and question the title of the landlord to seek summary eviction. The principles having been laid down in **Baldev Singh Bajwa** (supra) have further been upheld

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by the Three Judges Bench of the Apex Court in **Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452** and in such circumstances, the order impugned does not suffer from any infirmity which would warrant interference by this Court under revisional jurisdiction. The only indulgence which this Court can give, in such circumstances, is that since the tenancy is 40 years old, the tenants would be permitted to stay till 31.12.2017 and the landlord would not be entitled to seek possession in execution prior to that.

With the observations made above, the present revision petitions stand dismissed.

02.06.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*