

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.6905 of 2016 (O&M)

Date of decision: 28.03.2017

Bhagwan Dass

....Petitioner

Versus

Asha & others

...Respondents

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

Present: Mr.C.B.Goel, Advocate, for the petitioner.

**G.S. SANDHAWALIA, J. (Oral)**

The present revision petition, filed under Section 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973, is directed against the concurrent findings of the Courts below whereby ejectment has been ordered by the Rent Controller, Jhajjar, on 17.04.2012, on the ground of *bona fide* requirement. The said order has been upheld by the Appellate Authority on 30.07.2016 by holding that Mahesh Garg, the son of the landlord required the premises *bona fidely* and for personal necessity.

Counsel for the petitioner has submitted that there was a dispute, as such, qua the relationship of landlord-tenant and therefore, the rent petition was not maintainable and it has been wrongly allowed.

A perusal of the record summoned would go on to show that eviction was sought from the shop in question, boundaries of which were given in the site-plan annexed and also described in the eviction petition, on the ground that father of the landlady-Jagdish Prasad along with respondents No.2 to 5, were the owners of the land in question, as per the judgment and decree dated 03.02.1995. The grandfather of the present petitioner, Ami Chand was the tenant since 1953 and the tenancy rights were inherited by Munsiri Ram, the father of the present petitioner. The rent had been increased from Rs.4/- per month to Rs.170/-, in a compromise in appeal, titled as *Jagdish Prasad Vs.*

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*Bhagwan Dass*, decided on 28.01.1997, by the Appellate Authority, Rohtak. Munsu Ram had died on 05.10.1998 and the relationship of landlord-tenant had also been held in CA-124-2002, titled as *Jagdish Prasad Vs. Bhagwan Dass*, which was, thus, between father of the landlady and the present petitioner. Jagdish Prasad had expired on 08.05.2004 and the landlady along with respondents No.2 to 5 were owners-cum-landlord of the disputed shop and thus, the relationship was held doubtful. Ejectment was sought on the ground that there were arrears of rent from 01.04.1991 to 31.01.1997 @ Rs.170/-. Secondly, the landlady's son, Mahesh Garg, being a student of Electrical Engineering and studying in the C.R.College of Engineering at Murthal in District Sonapat, at that point of time, required the disputed shop for carrying on his business. The necessary averments regarding the non-occupation or vacation of similar shop in the urban area of District Jhajjar or of the District Rohtak, were also incorporated in the eviction petition.

In the defence taken by the petitioner, there was denial of the relationship and the boundaries of the shop. However, the factum of Ami Chand, the grandfather of the present petitioner being a tenant in the disputed premises vide rent deed dated 20.12.1953 was admitted and that the tenancy rights were inherited by Munsu Ram and thereafter, on account of his death on 05.10.1998, by the present petitioner. The factum of the increase in rent to Rs.170/-, in view of the decision dated 28.01.1997 was also admitted. The death of Jagdish Prasad on 08.05.2004 was denied and even the fact that he was the father of the landlord and respondents No.2 to 5 and thus, the maintainability of the petition was questioned and therefore, the relationship,

as such, *inter se* between the parties was disputed. Rent petition was contested to avoid eviction and regarding the *bona fide* necessity, it was denied that Mahesh Garg was son of the landlady and that she was the daughter of Jagdish Prasad. It is pertinent to note that respondents No.2 to 5 admitted to the claim of the landlady.

In replication filed, the eviction petition's contents were reiterated. It was pleaded that the landlady and respondents No.2 to 5 were impleaded as legal representatives of Jagdish Prasad in Civil Appeal No.124 of 2002, decided on 01.09.2005 and therefore, the case was set up. Similarly, Ex.P3 dated 07.12.2004 was brought on record whereby the application for being impleaded as legal representatives, was allowed in the presence of the counsel of the present petitioner, who was an Advocate in Civil Appeal No.124 of 2002.

The landlady examined herself and Mahesh Garg as PW2, whereas the petitioner examined himself as a sole witness.

The following issues were framed by the Rent Controller:

- “(1) Whether the respondent is liable to be ejected from the demised premises shown in red colour marked by letters ABCD in the site plan, fully detailed in para No.1 of the petition on the grounds alleged in para No.4 of the petition? OPP
- (2) Whether the petitioner has no locus standi to file the present petition? OPP
- (3) Whether the petition is not maintainable? OPR
- (4) Whether the petition is false and frivolous and respondent is entitled to special costs under Section 35-A of CPC? OPR
- (5) Relief.”

The Rent Controller noticed that the payment of rent had been made and therefore, the ground did not survive and neither the landlady pressed the same. Regarding the relationship and the discussion on the *bona fide* requirement, it was held that the application had been allowed in Civil Appeal No.124 of 2002, directing the landlady and respondents No.2 to 5, to be impleaded as the legal representatives of Jagdish Prasad and at that point of time, no objection had been raised by the present petitioner and therefore, they were estopped to raise the said objection in the present petition. The petitioner had examined nobody else in the locality except himself to dispute the relationship. Resultantly, keeping in view the fact that the requirement was there for the son, Mahesh Garg, eviction was ordered while placing reliance upon **Joginder Pal Vs. Naval Kishore Behal 2002 (5) SCC 397**, after taking into account the certificates (Ex.P5 to P8) of the technical qualifications of Engineering of the son of the landlady. The said order, as noticed, has been upheld in appeal, by taking note of the said facts.

A perusal of Ex.P3 would go on to show that Jagdish Prasad had filed the appeal whereby his suit for possession and for recovery of the mesne profits against Bhagwan Dass, had been dismissed and wherein he had alleged that the shop was mortgaged with possession and the contractual tenancy rights of the grandfather of the present petitioner stood automatically terminated after the expiry of 6 months and the relationship of landlord-tenant did not subsist. The defence of the present petitioner was that the legal representatives of Munsiram had inherited the tenancy rights and they were tenants. Reliance was also placed upon the judgment dated 28.03.2002, *inter*

se the parties. Keeping in view the said defence, the suit was dismissed.

In appeal, the Court had come to the conclusion that a compromise had been arrived at and therefore, fresh creation of landlord-tenant had come into being as a new rent deed was there. Resultantly, the appeal was also dismissed on 01.09.2005.

As noticed, the landlady along with respondents No.2 to 5 had been brought on record in the said appeal as legal representatives of Jagdish Prasad, without any objection, as such, being raised, vide Ex.P4. The findings records read as under:

“So in view of this compromise a relationship of landlord and tenant with new terms was created. According to the appellant-plaintiff no relationship of landlord and tenant was created. But his arguments is devoid of any merit, because by perusal of this statement in the compromise Ex.P6, it is clearly mentioned that the respondent has admitted his ownership and rent was enhanced from Rs.4/- to Rs.170/- per month. It was not merely a case of enhancement of rent, rather, it was a creation of fresh tenancy. The authorities cited by the counsel for the appellant-plaintiff are of no help to the appellant-plaintiff in any way as the authority Gurbir Kaur's case (supra) and Shri Mukand Lal's case (supra) are distinguishable to the facts, because there was no compromise, here by compromise the new tenancy was created. So this arguments of the counsel for the appellant-plaintiff that mere enhancement of rent does not create new tenancy is of no help to him, because due to compromise a fresh creation of landlord and tenant and rent was fixed, it amounts to creation of a new contract between landlord and tenant.”

In view of the above, once there was admission that the premises were taken from Bhagwan Dass itself and that there was tenancy *inter se* with the father and that on 07.12.2004, they had been brought on record as legal representatives, it would not lie in the mouth of the petitioner to contest the eviction petition, which was filed on 15.12.2005, on the ground that there was no such relationship between the parties and that the landlady was not even the daughter of Jagdish Prasad. A factual finding of the relationship has, thus, been rightly recorded by the Courts below, which would not require any interference by this Court. The son of the landlady had appeared in the witness box to express his needs, which was on the strength of the fact that he had been doing his technical course, at that point of time and therefore, the *bona fide* requirement has not been repelled.

In view of the above discussion, this Court is of the opinion that there is no merit in the present revision petition and the same is dismissed in limine.

However, a request has been made by the counsel that since it is a old tenancy, some time may be given to vacate the premises.

Accordingly, keeping in view the above request, the petitioner is permitted to vacate the premises by 30.09.2017.

28.03.2017  
Sailesh

(G.S. SANDHAWALIA)  
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No