

**\IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.7907 of 2011

Brinderjit Singh

... Petitioner

Versus

Harjit Singh

... Respondent

(2)

Civil Revision No.2595 of 2012 (O&M)

Kulwant Singh

... Petitioner

Versus

Dr. Ranjit Singh (through his L.Rs.)

... Respondents

(3)

Civil Revision No.572 of 2014 (O&M)

Mohan Lal

... Petitioner

Versus

Brinderjit Singh

... Respondent

Reserved on: 25.05.2017

Decided on : 07.07.2017

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

Present: Mr. Vikas Mohan Gupta, Advocate
for the petitioner in CR-7907-2011.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Vaibhav Sehgal, Advocate for the petitioner
in CR-572-2014.

Mr. Bhuwan Luthra, Advocate
for the petitioner in CR-2595-2012 and
for the respondent in CR-7907-2011.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for the respondent (s)
in CR Nos.2595 of 2012 and 572 of 2014.

G.S. Sandhawalia, J.

The present order shall dispose of three revision petitions i.e

Civil Revision Nos.7907 of 2011, 2595 of 2012 and 572 of 2014.

The building in question as such is common bearing Municipal No.B-XVIII/1051 (Private No.575), Model Town, Ludhiana and the tenanted premises are three shops which belong to late Dalip Singh and his sons namely Barinderjit Singh, Dr. Ranjit Singh and Harjit Singh who are seeking eviction of the tenants in question under petitions filed under Section 13-B East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') on the strength of being Non-Resident Indians and seeking summary eviction.

In **CR-7907-2011**, vide order dated 18.08.2011 passed by the Rent Controller, Ludhiana the leave to contest has been granted to one tenant, namely, Harjit Singh who is in occupation of shop No.8 in the said building. On the other hand regarding two tenants namely Kulwant Singh who is in possession of shop No.5 and Mohan Lal who is in possession of shop No.13 leave to contest had been declined on 09.02.2012 and 27.11.2013, respectively in CR-2595-2012 and CR572-2014. Resultantly, tenants are in revision petition challenging the said orders and praying for leave to contest, whereas the landlord has approached this Court impugning the order dated 18.08.2011 whereby leave to contest was granted to Harjit Singh.

The shops in question are abutting the residential house bearing No.597 which is situated on the southern side of the shops. The petition was filed on the basis that Dalip Singh left a registered Will dated 11.11.1965 in favour of his three sons. Under a family settlement shop No.5 had been taken by Ranjit Singh, shop No.7 had been taken by Gurdeep Singh and shops No.8 and 13 had been taken by Brinderjit Singh. There was a passage as such between shops No.5 and 7. The tenants had been inducted and the sons had gone to USA and were settled there. Ranjit Singh one of the brothers who is now deceased and his L.Rs. had been brought on record vide order dated 05.07.2011 was a doctor who was a specialist in Radiation Oncology. It has desired they want to open a Centre of Oncology for treatment of cancer as one of their sister suffered from the same ailment. It was, accordingly, the case of one of the landlords, namely, Brinderjit Singh that he in collaboration with his brother Gurdeep Singh and now deceased brother Dr. Ranjit Singh intended to open a centre for treatment of the cancer. Ludhiana had only one Oswal Cancer Hospital, which was exclusively catering to the needs of the cancer patients and, therefore, there was a scope for serving the ailing humanities.

An application under Section 18-A for permission to leave contest was filed. The plea was taken that neither they were owners nor landlords and the property had been taken on rent from Surinder Kaur wife of Dalip Singh in the year 1992. The rent had been increased and she had been pressing them to vacate the premises. She had died on

20.12.2007 and nobody had turned up to collect the rent thereafter. The relationship on account of being the son of Dalip Singh was contested and strict proof was to be shown. The existence of the Will was denied and the relationship of the brothers was also questioned apart from requirements of the shops in question. Resultantly, even the family settlement as such *inter se* the brothers was also questioned.

The application was accordingly contested by the landlords on the ground that it was a malafide contest. The Will was a registered document more than 30 years old and the relationship *inter se* father, mother and brothers could not be objected to by the tenants. The sister had been sent to USA for her treatment and resultantly it was pleaded that even otherwise the tenant had not disclosed what was the status and how he was occupying the property. The factum of the mother having installed the electricity connection as such in the premises in question had also been admitted by the tenant. It was also objected to that it would not advance the case of the tenants to grant leave to contest.

Harjit Singh tenant in his application for leave to contest had also taken the plea that the petitioners were also occupying 2500 square yards property behind the shop and admitted that the Surinder Kaur had become the landlady who was to collect the rent.

The said plea was rebutted by filing counter that the said property could not be used for the purpose of opening a centre. If any portion of the residential house was required for expansion of the Centre, then they could use the portion of the said Centre. The property behind

the shop was not a commercial property but is residential property.

The Rent controller while allowing the application in Harjit Singh's case came to the conclusion that though the landlords were NRIs, but in the Will there is no mention that which shop had been given to which son. Reference was made to one gift deed regarding property No.1051-B-18, Model Town Ludhiana, whereby property had been gifted in the name of Barinderjit Singh who had given shops No.11 and 12. Since it was the case of the Barinderjit Singh that he had got shops No.8 & 13 and gift deed showed that he had shops No.11 and 12 also. It was a matter of evidence that the petitioner was owner of which shop in dispute for which he was seeking eviction. Resultantly, it was held that since a triable issue was being raised he was entitled to leave to contest as it was alleged that the petitioner owned the demised premises and, therefore, evidence is required.

It is pertinent to mention that in a petition under Section 18-A there was no such ground raised regarding the gift deed of the two shops bearing No.11 and 12 in favour of Barinderjit Singh which had been executed by the father during his lifetime. In spite of that the Rent Controller has granted leave to contest on this ground though it is settled principle of law that only the triable issues which are raised in the application for leave to contest are to be taken into consideration. Reference can be made to the judgment of the Apex Court in '**Precision Steel and Engineering Works Vs. Prem Deva Niranjana Deva Tayal**' **1982 (2) RCR (Rent) 544** on this aspect, wherein it has been held that

leave is to be granted on the disclosure of facts in the affidavit, which would disentitle the landlord to obtain possession.

Thus, it is apparent that the order dated 18.08.2011 passed in CR-7907-2011 suffers from the legal infirmity and which is against the settled principle and the Rent Controller has taken the landlord by surprise on a document which has been placed on record by the tenants, which could not have been adverted to as has been done by the Rent Controller and therefore this Court is of the opinion that the order dated 18.08.2011 is not liable to be sustained.

It is also to be noticed that two other Rent Controllers have followed the settled principle and rightly declined leave to contest.

A perusal of the order dated 09.02.2012 in the case of Kulwant Singh in CR-2595-2012 would go on to show that the reasoning given by the Rent Controller was it could not be disputed that petitioners were co-sharers in the property and property has fallen in the share of the landlords by virtue of Will executed by Dalip Singh. Reliance was placed upon the judgment passed in ***'Lakhwinder Kaur Vs. Pavitter Kaur (dead) through L.Rs. 2010 (3) RCR (Civil) 279*** to hold that a co-owner could file a petition under Section 13-B for eviction. Similarly, even reliance was rightly placed upon the Division Bench judgment in ***'Bachan Kaur and others Vs. Kabal Singh and another 2011 (1) RCR (Rent) 368*** wherein the said principle was duly upheld by placing reliance upon the judgments of the Apex Court in the case of ***'India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwala (dead) L.Rs. Savitri***

Agarwalla' (2004) 3 SCC 178.

Resultantly, the argument that the need was not bonafide was also rightly rejected on the ground that Dr. Ranjit Singh himself was highly qualified and specialist in Radiation Oncology and, therefore, the desire was as such could not be said that it was not bonafide and there was a presumption in favour of the landlord. Accordingly, it was held that there was no dispute as such the petitioners were settled abroad and, therefore, keeping in view the judgment of the Apex Court in '**Baldev Singh Bajwa Vs. Monish Saini' 2005 (4) RCR 492 SC**, whereby the four necessary ingredients as such were required to be fulfilled, eviction was ordered. The ejectment order was passed by noting that the ownership for the last five years was present and the landlord was a Non-Resident Indian as defined under Section 2(dd) and had returned to India. It was also further noticed that there was a protection clause as such under Section 13-B (3) and the safeguard was provided in case of not utilizing the property and not using the building by the landlord and resultantly leave to contest was declined and eviction was ordered.

Similarly reasoning given by another Rent Controller vide order dated 27.11.2013 passed in CR-572-2014 was on the basis of the commercial driving licence issued by California authorities and the copy of the Will and the fact that there was a sale deed dated 20.03.1970 in favour of Surinder Kaur and the fact that there was a passport issued by United State of America in favour of the landlord, namely, Barinderjit Singh, the leave to contest was declined on the ground that there was no

triable issue. It was held that intention of legislation was to provide immediate remedy to the landlord who is an NRI to get the premises vacated, in case he wants to come back and settle in India and, therefore, the arguments raised that merely because Dr. Ranjit Singh had died the necessity would not come to an end as Centre could be opened by other persons and service of another expert could be engaged. Even otherwise, it was held that subsequent events as such would not come into play and the act of the Courts would not prejudice any man. It is to be noticed that in the said case the application for leave to contest was filed on 15.11.2007 and the matter was only finalized on 27.11.2013. Reliance was, thus, rightly placed upon the judgments passed in '**Kamleshwar Prasad Vs. Pradhumanju Aggarwal (dead) by L.Rs. 1997 (1) RCR (Rent) 591, 'Pratap Rai Tanwani Vs. Uttam Chand' 2004 (2) RCR (Rent) 436 and 'Shakuntala Bai and others Vs. Narayan Das and others' 2004 (3) Civil Court Cases 206** to dismiss the application for leave to contest under Section 18-A.

The argument which has now been raised that on account of the subsequent events and in view of the death of the landlord, need has evaporated would be of no help. The Apex Court, in a string of judgments, has held that the controversy has to be decided with reference to the pleadings of the parties on the date of institution and on account of the litigation lingering on, subsequent developments are not necessary and relevant for the adjudication of the case. Reliance can be placed upon judgment of the Apex Court in **Vallampati Kalavathi vs. Haji**

Ismail, 2001 (2) SCR 691. In Carona Ltd. vs. M/s. Parvathy Swaminathan and Sons, 2007 (10) SCR 656, it was held that the right which had accrued to the landlord could not be set at naught and the date of filing of the suit is ordinarily to be taken into consideration. In Shakunatala Bai (supra) which is under the Madhya Pradesh Accommodation Control Act, 1961, it has been held that the legal representatives are entitled to defend the further proceedings and the benefit has to accrue to them and the bona fide need cannot be held to have elapsed on account of the act of the Court. It was further held that it would erode the faith of the people in judicial system and prompt them to resort to extra judicial methods to recover possession of their property. The relevant observations read thus:-

“11. In Shantilal Thakordas v. Chimanlal Maganlal Telwala 1976 (4) SCC 417, a larger Bench overruled the decision rendered in Phool Rani v. Naubat Rai Ahluwalia (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in

any manner affect the view expressed in *Phool Rani* (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of *Shantilal Thakordas* (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In *Kamleshwar Prasad v. Pradumanju Agarwal* 1997(4) SCC 413 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In *Gaya Prasad v. Pradeep Srivastava* 2001 (2) SCC 604 it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in *G.C. Kapoor v. Nand Kumar*

Bhasin 2002 (1) SCC 610. Therefore, the legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.

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13. The limited question for consideration in this case was whether a decree which had attained finality would become unexecutable on account of death of the landlord and this question was answered in favour of the landlord and against the tenant basically on the principle that the executing court cannot go behind the decree. For the decision of the appeal it was wholly unnecessary to examine the question as to the effect of death of the landlord during the pendency of the appeal preferred by the tenant after a decree for eviction has been passed. The decisions rendered in Phool Rani (Supra) and Shantilal Thakordas (supra) were not brought to the notice of the Bench. We are, therefore, of the opinion that the observations made in the aforesaid case that "events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final Court determining the rights of the parties", which are more in the nature of obiter do not represent the correct legal position."

The undisputed fact remains that on account of the registered

Will dated 11.11.1965 and on account of the death of the father in the year 1994 succession had opened up. Even if the father had gifted shops

No.11 and 12 to one son exclusively qua the other shops all three sons became owners alongwith their mother who expired on 20.12.2007. It is admitted by the tenants that the property was leased out by Surinder Kaur and, thus, they were independent tenants and there is no dispute as such regarding the status of the occupation. The succession had opened on death of Dalip Singh and his wife. The property would actually devolve on its survivors and being co-owners they could seek possession.

In similar circumstances, the said issue was dealt with in a petition filed under Section 13-B in '**Inderjit Singh Vs. Moti Lal' 2009 (4) PLR 85**, wherein it was held that the property would not remain in vacuum and son would inherit the property and unless the father had not taken away the right of the son in the property by executing some documents. The relevant part reads as under:-

“5. As regards the contention that the landlord had not shown himself to be the owner of the property, the admitted case is that the property is one of six shops, two of which belonged to the father and the father had died on 08.01.1986. He claimed himself to be a heir to the father and there was no document that the father had made any disposition in his favour or he had cast his other relatives as a heir to him by any instrument inter vivos. It is precisely this point, which is taken up by the counsel for the petitioner to state that in the absence of an document, it could not be stated that the landlord had become the owner of the property as heir to the father. He pointed out to the fact that the municipal assessment has not been shown to be mutated in the name of the landlord. There was no other document of transfer from the father. This submission also,

in my view, is not legally sound for a title to the property cannot hang in vacuum. It has to reside somewhere and if the father had a son, who is the legal heir, it ought to be taken as obvious that the son inherited the property unless the succession to the property is shown to have been defeated by some instrument of transfer by the father during his lifetime. The fact that the assessment has not been made in the name of the son after the lifetime of the father cannot take away the right of the son in the property and an entry in the tax assessment register of a municipal committee is a method of collecting revenue for the State but does not deflect from the title residing in the person who claims as a heir. The ownership to the property of the person claiming to be the landlord as a heir to his father cannot, therefore, avail to the tenant. At worst, he could have been a co-heir along with his mother but even a fractional ownership of the property is sufficient for a landlord to invoke the claim under Section 13-B. The contention in that regard is, therefore, not accepted.”

The said view was followed in '**Hari Ram Vs. Harjinder**

Singh' 2013 (1) PLR 811. The relevant part reads as under:-

“6. The objection of the learned counsel that the property stands registered still in the name of Dalip Singh in the revenue records also could have no effect on the devolution of interest that takes place by operation of law. On the death of the father by virtue of operation of the Hindu Succession Act, the title devolves on the widow and children. The petitioner's status as a son of Dalip Singh itself is not in dispute. The revenue entries or the mutation that take place is only for the purpose of collection of revenue by the public bodies and will not defeat the devolution of interest from taking place. It is axiomatic that the title does not hang in the air and the

devolution operates co instanti to the legal heirs the moment the last owner dies. If the landlord therefore became a heir to the father, it is immaterial that the public records have not carried out the corrections, for mutation in public records is merely an evidence of title and not a document of title itself. In this case, document of title is the title that stands in the name of the father and if the title of the father was an established fact, the claim to status as an owner of the son is indefeasible at least so far as the resistance to such claim is made by the non-heir, such as a tenant.

In '**S.S. Fertilizers and another Vs. Kultaran Singh and others'** 2015 (2) PLR 264 the revision petitions filed by the tenants against the orders, whereby leave to contest was declined were dismissed on the ground that succession had opened up and succession never remains in abeyance and would not as such debar the landlords from seeking eviction under Section 13-B as the requisite period of five years had elapsed.

In the present case the passport of Barinderjit Singh would go on to show that he was born in India and similarly in the case of deceased Dr. Ranjit Singh it was his categorical case that he was of Indian origin and had gone abroad in 1971 after taking MBBS degree from Christian Medical College, Ludhiana and, therefore, he was a person of Indian origin and was residing abroad and who had expired in the State of Pennsylvania as per the death certificate dated 05.03.2013 (Annexure A-1) placed on record. His birth place is shown as Ludhiana alongwith Social Security Number by the Pennsylvania Department of

Health.

Accordingly, in such circumstances, this Court is of the opinion that the order dated 18.08.2011 passed by the Rent Controller is not sustainable and is, accordingly, set aside and **CR-7907-2011** filed by Barinderjit Singh is allowed. The Rent Controller shall also pass the formal order of eviction forthwith.

Accordingly no fault can be found in the impugned orders declining leave to contest in **CR-2595-2012 on 09.02.2012** and in **CR-572-2014 on 27.11.2013**. Resultantly, the said revision petitions are dismissed.

JULY 07, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No