

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

CR No.796 of 2016(O&M)

Date of decision: 17.11.2017

Kulwant Singh Saini

....Petitioner

VERSUS

Nipun Sharma and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. P.K. Mutneja, Advocate for the petitioner.

Mr. V.K. Sandhir, Advocate for respondents No.1 and 2.

REKHA MITTAL, J.

CM No.2625-CII of 2016

Application is allowed as prayed for.

Annexures P-1 to P-13 are taken on record subject to just exceptions.

Disposed of accordingly.

CM No.5433-CII of 2016

Application is allowed as prayed for.

Rent Deed is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.796 of 2016

Challenge in the present petition has been directed against the order dated 05.01.2015 passed by the Rent Controller (wrongly described to be Civil Judge (Junior Division), Amritsar) whereby respondent No.2 has been transposed as petitioner No.2 in the application under Section 13

of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for ejectment of Nipun Sharma – respondent No.1.

Counsel for the petitioner has submitted that Jaspreet Singh – respondent No.2 is the real son of the petitioner. The petitioner filed ejectment application against Nipun Sharma – respondent No.1 on the basis of rent deed (Annexure P-1). Jaspreet Singh- respondent No.2 filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (in short 'CPC') for impleadment as a party and the same was allowed by the trial Court vide order dated 29.04.2013 (Annexure P-9). The petitioner filed amended title/memo of parties on 22.07.2013 (Annexure P-10). More than 9 months from the date of passing order dated 29.04.2013 with regard to impleadment of respondent No.2, he filed the instant application under Section 151 CPC for transposition as petitioner.

After detailed reply to the application filed by the petitioner, seriously contesting claim of respondent No.2 and having heard counsel for the parties, the Court below allowed the application without appreciating the factual and legal aspects in right perspective. It is argued with vehemence that the petitioner being the master of his case cannot be forced to allow somebody else to join as a co-petitioner particularly in the circumstances that the petitioner and his son have locked horns in protracted litigation in respect of their rights / interests in the property in question. In addition, it is argued that the respondents have joined hands in order to cause loss to the petitioner and for that reason, respondent No.1 supported cause of respondent No.2 for being impleaded as a party and both the respondents have engaged the same counsel in order to contest claim of the petitioner in the present proceedings.

Counsel for the respondents, in response to order dated 07.11.2017 passed by this Court, would state that respondent No.2 may be given time to engage another counsel but he has not denied that Vakalatnama on behalf of both the respondents was filed by him. It is argued that Nipun Sharma is a tenant in the property in question and a fresh rent deed was executed between respondent No.1 and 2, on the basis whereof respondent No.1 has been paying rent to respondent No.2. It is argued that respondent No.1 is an affected party because of dispute/litigation between the petitioner and respondent No.2, therefore, respondent No.1 who is trying to save his interest in the best possible manner cannot be condemned for the same.

I have heard counsel for the parties, perused the paper-book particularly the order (Annexure P-9) and the order impugned.

There is no denial that the petitioner and Jaspreet Singh Saini, his son, are entangled in tug of war and fighting litigation qua ownership of the property in question and may be some other properties. The petitioner filed an application for eviction of Nipun Sharma, admittedly a tenant in the property in question. The petitioner has relied upon rent deed (Annexure P-1) to press his claim being landlord of the property in question in which Nipun Sharma was inducted as a tenant. Counsel for respondent No.1 has not disputed that Nipun Sharma had been paying rent to the petitioner but later he stopped paying rent to Kulwant Singh Saini. Jaspreet Singh Saini filed application for impleadment as a party and the same was allowed by the Court and the petitioner filed amended head-note/memo of parties wherein Jaspreet Singh was arrayed as respondent No.2. Later, Jaspreet Singh filed the instant application for being transposed as a petitioner.

As per the settled position in law, petitioner is the *dominus litus* and cannot be compelled to implead a person as a co-petitioner. If respondent No.2 is allowed to continue as a co-petitioner, eviction proceedings may never reach culmination in the face of situation that the petitioner and his son are at daggers-drawn and locked in serious litigation qua their rights in the property in question and respondents herein appear to have joined hands against the petitioner. Under the circumstances, I find merit in contention of the petitioner that Jaspreet Singh Saini cannot be transposed as petitioner No.2. Conversely, if Jaspreet Singh Saini wants to claim any right against Sh. Nipun Sharma, he may take recourse to appropriate remedy permissible under law. Similarly, if Nipun Sharma being not sure about as to the person competent to receive rent from him i.e. Sh. Kulwant Singh Saini or Jaspreet Singh Saini, he may take steps accordingly. This apart, once the Court below had allowed Jaspreet Singh Saini to be a party without passing any specific order that he would be impleaded as a co-petitioner and Jaspreet Singh did not raise an issue against amended head-note / memo of parties for a period of 9 months, there was no reason for the Court below to allow transposition of Jaspreet Singh from respondent to that of petitioner in exercise of inherent jurisdiction under Section 151 CPC.

For the foregoing reasons, the petition is allowed. The impugned order is set aside but without prejudice to right of respondent No.2 to take recourse to appropriate proceedings, in accordance with law, for claiming any relief against Nipun Sharma.

NOVEMBER 17, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no