

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.980 of 2017

Date of decision: 28.02.2017

Kundal Lal Sharma

....Petitioner

Versus

Ashok Kumar

...Respondent

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

Present: Mr.Munish Gupta, Advocate, for the petitioner.

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

Petitioner-tenant is in revision against the order dated 18.07.2016 passed by the Appellate Authority, Hoshiarpur, whereby it has remanded the case to the Trial Court, to decide issues No.2 to 6, on merits, while allowing the appeal on issue No.1.

On issue No.1, the finding was reversed and it was held that the respondent was the landlord and therefore, there existed relationship of landlord-tenant between the parties. In view of the fact that other issues had not been adjudicated upon by the Rent Controller, the matter had been sent back for fresh decision on that aspect. The other issues in question which were to be decided are on the arrears of rent, requirement for personal use and occupation, whether the petition was maintainable and cause of action and whether the landlord had no *locus standi* to file the petition.

Counsel for the petitioner has vehemently argued that the petitioner should also have been given an opportunity, as such, to rebut the case on merits regarding issue No.1 whereby the relationship of landlord-tenant had been adjudicated upon. That the matter should have been remanded, as such, in toto, rather than holding issue No.1 against him. It is submitted that an application under Order 41 Rule 27 CPC had been filed before the Appellate Authority, which has wrongly been allowed.

A perusal of the eviction petition filed by the respondent-landlord would go on to show that the claim was that the shop in question was earlier owned by Naresh Kumar and the landlord had purchased the same vide registered sale deed dated 13.11.2009. In view of the said fact the relationship of landlord tenant had come into being.

In the written statement filed, the plea taken was that there was no relationship of landlord-tenant as he was neither the owner nor the landlord. The factum of the ownership of the shop by Naresh Kumar was also denied. It was further denied that the petitioner was not a tenant under the said Naresh Kumar. It is, thus, apparent that no separate title or any independent tenancy with a third party had been set up, as such.

The Rent Controller had dismissed the application mainly on the ground that the original sale deed had not been produced and only a photocopy had been placed on record. He had also placed reliance upon the assessment register that the shop in question was earlier owned by one Inder Dass. It was, however, noticed that vide Ex.P6, Naresh Kumar had purchased the shop. An argument had been raised by the tenant that the owner was Inder Dass and therefore, exclusive ownership, as such, had to be proved. The Rent Controller had gone on to hold that Sat Pal was son of Inder Dass and in the absence of any will, the shop would also devolve upon Sat Pal. It had also gone on to hold that the boundaries, as such, of the sale deed did not tally with the shop in question, which had been detailed in the headnote.

The Appellate Authority, as noticed, had also taken into consideration the application under Order 41 Rule 27 CPC, moved by the

landlord and noticed that the shop in question was part of a larger chunk of land measuring 7 marlas 6 sarsahi. It was also noticed that the purchase from the earlier owner, namely, Maya Devi had also been proved by bringing on record the sale deed (Ex.P6). The factum of the Clerk of the Municipal Committee appearing and showing that there were 3 shops which were owned by Inder Dass, husband of Maya Devi, which now stood in the name of Ashok Kumar, Baljinder Singh and Davinder Kumar was noticed. As per the assessment register (Ex.PW3/A) a karyana shop was on rent, which was earlier in the name of Inder Ram. It was, thus, held that the shops were constructed and the property in dispute which was earlier in the name of Inder Dass and after his death, Maya Devi had sold it to Naresh Kumar and it was further sold to the landlord. Thus, the relationship of landlord-tenant was held in favour of the landlord. The stand of the tenant who had also set up one Sat Pal, son of Inder Singh, was also disbelieved on account of the fact that the sale deed had never been challenged by him, which had been executed by his mother.

An argument, which has, thus, been raised by the petitioner, is that there was dispute, as such, regarding the title *inter se* the family of Inder Dass and therefore, the petitioner should have been given an opportunity, as such, to contest the same.

The said argument, though attractive, cannot be accepted, keeping in view the pleadings *inter se* the parties. As noticed, no separate title, as such, was agitated. Even otherwise, under the rent note, only the relationship of landlord-tenant is to be seen. The word 'landlord' has a very

expansive definition under Section 2 (c) of the Act. Even otherwise the tenant is estopped from challenging the title of the landlord under Section 116 of the Indian Evidence Act, 1872. It was not the case of the petitioner that he was tenant under somebody else, in the pleadings, which has been examined in detail. In such circumstances, the findings which have been recorded keeping in view Order 41 Rule 27 CPC, is justified.

The fact that the Appellate Court has to adjudicate the controversy in question on the pleadings of the parties and therefore, the application had been rightly entertained. Because of the lapse of the petitioner-landlord before the Rent Controller in not producing the original sale deed, the same has been duly rectified by the Appellate Authority. In such circumstances, the findings which have been recorded by the Appellate Authority are well justified. It being the last Court of fact, has gone into detail while examining the site-plan, sale deed, the evidence, the assessment register and the statement of the witnesses, to come to a valid conclusion, which is not liable to be interfered in revisional jurisdiction, in the absence of any procedural lapse.

Accordingly, finding no merit in the present revision petition, the same is, hereby, dismissed in limine.

February 28<sup>th</sup>, 2017  
Sailesh

**(G.S. SANDHAWALIA)**  
**JUDGE**

*Whether speaking/reasoned:* Yes/No

*Whether Reportable:* Yes/No