

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1343 of 2011 (O&M)
Date of Order: 27.08.2018

Gurcharan Singh and others

..Petitioners

Versus

Mandir Shri Kaliji and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioners.

Mr. Prateek Mahajan, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Tenants-petitioners are in the revision petition against the order passed by the learned Rent Controller, affirmed by the learned Appellate Authority.

The only ground surviving on which ejectment has been ordered is raising of construction by the tenants without written permission of the landlord as provided in Section 13(2)(iii) of the Haryana Urban (Control of Rent & Eviction) Act, 1973, which is extracted as under:-

“13. Eviction of tenants.--

§(1)	XX	XX	XX
(2)	XX	XX	XX
(i)	XX	XX	XX
(ii)	XX	XX	XX

(iii) *that the tenant has committed or caused to be committed such acts as are likely to impair materially the value or utility of the building or rented land.”*

It is provided that if the tenant has committed or caused to be committed such acts as are likely to impair materially the value or utility of the building or the rented land, the tenant shall be liable to be ejected.

In the present case, the learned Appellate Authority has found that the tenant has tried to hoodwink the court. The learned first appellate authority noticed that initially the relationship of landlord and tenant was denied. However, after having lost before the learned Rent Controller, in the grounds of appeal filed before the appellate authority, tenancy was admitted. The learned Appellate Authority further found that the receipts Ex.D1 to D7 prove the payment of the rent by the tenant to the landlord. Still further it is not disputed that father of the present Pujari had filed a petition claiming himself to be Mohatmim-Pujari of a religious institution, whereas father of the present petitioners had tendered the rent on 26.03.1963.

In these circumstances, the learned Appellate Authority found that the tenants have not come to the court with clean hands.

While issuing notice of motion on 25.02.2011, this court had passed order, which is extracted as under:-

“CM No.5395-CII-2011

This is an application for seeking exemption from filing certified copies of documents Annexures P-1 to P-4 and placing on record the same, which are stated to be exhibited documents.

Application is allowed as prayed for.

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Learned counsel for the petitioners, *inter alia*, contends that the only ground of eviction which survived before the Court below was of impairment of value and utility of the demises premises by raising a partition wall. It is submitted that neither there is any foundation of the said wall nor it reaches up to the roof and is a temporary structure, which can be removed at any time. He also submits that there is no evidence on record led by the landlord that with the construction of the said wall the value and utility of the demised property has been impaired. The Court below, however, allowed the eviction petition only on the ground that the said wall has been constructed without permission.

Notice of motion for 14.3.2011.

Dasti only.

In the meantime, status quo regarding possession shall be maintained.”

Thereafter, when the revision petition was admitted, this court noticed the contention of counsel for the petitioner, which is as under:-

“Counsel for the tenants submits that it is an admitted case of the parties that the father of the petitioners/tenants had been inducted as tenant on vacant plot with permission to construct the house. After his death, brothers-petitioners have inherited the tenancy and are co-tenants in the demised premises. To have privacy between two families, they have raised a partition wall within the house. It is further contended that both the Courts below without any evidence or recording a finding that the said partition wall has reduced the value or utility of the demised premises have illegally

proceeded to order the eviction. It is further pointed out that the tenants are regularly paying the determined mesne profit by this Court. After hearing learned counsel for the parties, I find that debatable points are involved in this petition, which require consideration.

Admitted.

Meanwhile, dispossession of tenants shall remain stayed subject to payment of determined mesne profit in advance by every 7th of each calendar month.

To be heard within one year.”

From the reading of the order dated 02.08.2012, it is apparent that the petitioners-tenants had admitting raising of the partition wall after the death of their father who died on 31.01.2005, whereas the petition for eviction was filed on 18.08.2005.

During the pendency of the petition, this court initially directed the petitioners-tenants to produce photographs of the demised premises which were not produced and later on vide order dated 08.02.2012, the landlord was permitted to take photographs and produce before the court.

Further a lay out plan has been produced by the landlord which shows that a wall has been constructed in between the entire length of the house which is about 90 feet. The lay out plan is available at page 41 of the paper book. Even photographs, which have been produced prove that one premises have been divided into two. In such circumstances, the arguments of learned counsel for the petitioners that it is only the temporary construction and without foundations is factually without any basis. Such division of the property in the entire length of the property has materially

impaired the value and utility of the building.

In view thereof, this court does not find any good ground to interfere with the findings of fact arrived at by the courts below.

The revision petition is disposed of.

August 27, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No