

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

CR No.3215 of 2015(O&M)

Date of decision: 1.10.2018

Varinder Pall Singh Walia

.....Petitioner

VERSUS

Satpal Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Varun Sharma, Advocate for the petitioner.

Mr. Sanjeev Roy, Advocate for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 05.03.2015 passed by the Rent Controller, Jalandhar whereby application for leave to contest under Section 18-A (4) and (5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as 'the Act') in eviction application under Section 13-B of the Act filed by the petitioner has been allowed and respondent has been directed to file reply/written statement.

The petitioner filed application under Section 13-B of the Act for ejectment of respondent from one shop situated near Lamba Pind Chowk, Hoshiarpur Road, Jalandhar built over portion of khasra No.689, Chak Husaina shown red in site plan attached, detailed in head-note of the application, by claiming that he is owner of suit property and is entitle to seek eviction being NRI landlord as he is a citizen of USA. The

respondent/alleged tenant filed application for leave to contest on certain grounds raised in sub-paras (i) to (xii) of para 2 of the application (Annexure P-2). One of the pleas raised by the respondent is that the petitioner is not owner of the property in question and does not fall within the definition of Non Resident Indian under Section 2 (dd) of the Act. It is averred that the petitioner sold away his alleged share of 5 marla 70 square feet to Smt. Indu Dhir vide sale deed No.6854 dated 03.11.2008. The remaining about 1½ marlas belonging to the petitioner has come under passage left by him and his brothers. The petitioner has got no right, title or interest in the property in question.

The petitioner filed reply and contested the application for leave to contest.

Having heard counsel for the parties in the light of materials on record, impugned order was passed whereby it has been held that in civil suit filed in the year 2011, Harvinder Pal Singh, brother of the petitioner suffered a statement that he shall not dispossess the applicant (respondent herein) from the shop in dispute illegally or forcibly. Statement of Harvinder Pal Singh supports contention of the applicant/respondent that Harvinder Pal Singh has been claiming ownership as well as rent of the demised premises. The sale deed produced by the petitioner pertains to the year 1974. The petitioner sold major part of property purchased vide sale deed of 1974, in 2008.

Counsel for the petitioner has submitted that the petitioner purchased 7 marlas of land vide sale deed, placed on record. He has sold only 5 marla 70 square feet to Smt. Indu Dhir vide sale deed dated

03.11.2008 but still he was left with ownership of area measuring 1½ marlas. It is further argued that in the sale deed dated 03.11.2008 executed in favour of Smt. Indu Dhir, there is no reference that land sold to her has a shop constructed thereon, therefore, the respondent cannot derive any advantage to his contention that the petitioner is not the owner of suit property by relying upon sale deed dated 03.11.2008.

Another submission made by counsel is that the respondent filed an inter-pleader suit wherein he has admitted relationship of landlord and tenant between the parties. It is argued with vehemence that the Rent Controller committed a serious error by placing reliance upon statement of Harvinder Pal Singh, his brother in a suit for injunction filed by the respondent because any such statement made by Harvinder Pal Singh is neither binding upon the petitioner nor can cause prejudice to his right to claim ownership of the suit shop.

Counsel representing the respondent has supported the impugned order with the submission that as there is a serious dispute between the parties with regard to the petitioner being owner of shop in question, the application filed by the respondent seeking leave to contest raises a triable issue and the Rent Controller has rightly allowed the same and proceeded to decide the case on the basis of evidence to be adduced by the parties.

I have heard counsel for the parties, perused the paper-book and records.

Perusal of the application for eviction filed under Section 13-B of the Act in November 2010 would reveal that in para 2 of the

application it is averred that the petitioner purchased the property measuring 7 marlas comprised in khasra No.689 situated in village Chak Husaina vide registered sale deed dated 18.10.1974. Later, construction was raised of one shop (demised premises) and residential accommodation. It is further averred that residential portion is in possession of Harvinder Pal Singh, brother of the petitioner.

The respondent filed the application for leave to contest and in sub-para (ii) a specific plea was raised that the petitioner sold away 5 marlas 70 square feet of his alleged share to Smt. Indu Dhir vide registered sale deed dated 03.11.2008 and the remaining 1½ marla has come under passage left by the petitioner and his brothers. In reply to sub para (ii) of the application, the petitioner did not give any specific reply in respect of sale deed executed in favour of Indu Dhir much less to say that shop in question is still with him even after sale in favour of Smt. Indu Dhir. However, it is denied that property owned by the petitioner has come under passage with the averments that no separate passage was left by the petitioner and common passage between petitioner and his brother Harvinder Pal Singh was already in existence.

The very fact that in the eviction application, the petitioner has not disclosed the factum of sale of land measuring 5 kanal 70 square feet in favour of Indu Dhir effected about 2 years prior to filing of eviction application, coupled with that he has not given any reply to that fact pleaded in sub para (ii) of para 2 of the application for leave to contest goes a long way to show that the petitioner has not approached the Court with clean hands and he is guilty of concealing material facts.

Counsel for the petitioner would contend that sale deed in favour of Indu Dhir does not make reference to existence of a shop on the area sold in her favour. Perusal of the sale deed in favour of Indu Dhir would reveal that the same does not make reference to any construction on the plot measuring 5 marla 70 square feet (1106 square feet) sold to her. As per plea of the petitioner in para 2 of the petition, he constructed one shop and residential accommodation after purchase of 7 marlas vide sale deed dated 18.10.1974. As the sale deed in favour of Indu Dhir does not make reference to any construction whatever, the petitioner cannot be heard to say that since the sale deed in favour of Indu Dhir does not make reference to a shop being constructed thereon, the said area has not been sold to Indu Dhir. This apart, after sale of 5 marla 70 square feet to Indu Dhir, the petitioner is left with area measuring 1½ marla. Perusal of the site plan appended with the eviction application would reveal that the same does not make reference to dimensions or area of the shop in question. Even the eviction application is silent as to what is the area of shop in question. In the given scenario, there is no material to record a definite finding that the shop in question is in existence over area which is left to be ownership of the petitioner after sale of 5 marla 70 square feet in favour of Indu Dhir. In view of the above, in my considered opinion, there is a triable issue involved in the case with regard to ownership of the petitioner in the property in question and as such no error much less infirmity can be found in the impugned order that would call for intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed with costs. However, nothing stated hereinbefore would cause

prejudice to either of the parties at the time of final disposal of the case by the Rent Controller.

OCTOBER 1, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no