

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1)CR No. 4248 of 2015 (O&M)

Date of decision: 07.02.2018

Prem Chand Bansal

..Petitioner

Vs.

Anil Kumar and Another

..Respondents

2)CR No. 4249 of 2015 (O&M)

Prem Chand Bansal

.. Petitioner

Vs.

Mange Ram and Another

..Respondents

3)CR No. 4250 of 2015 (O&M)

Prem Chand Bansal

..Petitioner

Vs.

Sheru and Another

..Respondents

4)CR No. 4933 of 2015 (O&M)

Prem Chand Bansal

..Petitioner

Vs.

Pirthi Singh and Another

..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Munish Kumar Garg, Advocate
for the petitioner.

Mr. Manoj Makkar, Advocate
for respondent No. 1.

AJAY TEWARI, J.(ORAL)

CM No. 12927-CII of 2015 in CR No. 4249 of 2015
CM No. 12928-CII of 2015 in CR No. 4250 of 2015

For the reason mentioned in the applications, the same are allowed and delay of 9 days in re-filing the petitions are condoned.

CM No. 15613-CII of 2015 in CR No. 4933 of 2015

For the reason mentioned in the application, the same is allowed and delay of 15 days in re-filing the petition is condoned.

Main Case

Vide this common order, I intend to dispose of four petitions bearing CR No. 4248 of 2015 titled as Prem Chand Bansal Vs. Anil Kumar and Another, CR No. 4249 of 2015 titled as Prem Chand Bansal Vs. Mange Ram and Another, CR No. 4250 of 2015 titled as Prem Chand Bansal Vs. Sheru and Another and CR No. 4933 of 2015 titled as Prem Chand Bansal Vs. Pirthi Singh and Another as common question of fact and law arises in them. For brevity, the facts are being taken from CR No. 4248 of 2015.

This petition has been filed against judgments of the Courts below dismissing the eviction petition filed by the petitioner.

The admitted facts are that the petitioner is owner of half share of the property in dispute and his brother is owner of another half share. The petitioner filed a petition for eviction of the respondent on various grounds and impleaded his brother as respondent No. 2. Respondent No. 1 tenant obviously opposed the petition tooth and nail. But interestingly even the co-owner brother filed the written statement denying the claim of the petitioner and praying that the eviction petition be dismissed. The petition was dismissed primarily on the ground that one co-owner could not evict the

tenant who is in possession, that is how this revision petition has been filed.

Learned counsel for the petitioner has relied upon the Full Bench judgment of Patna High Court in the case of **Sharfuddin and Others Vs. Bibi Khatija and Another** 1988(1) RCR (Rent) 549. The majority view led by **Chief Justice S.S. Sandhawalia** held that such a petition was maintainable while resenting view of **Justice Lalit Mohan Sharma** was held otherwise. As per learned counsel, the majority view of Full Bench would have greater value before a Single Bench even though in another Court. On the other hand, counsel for the respondent has relied upon **SK. Sattar Sk. Mohd. Chaudhary Vs. Gundappa Ambadas Bukate** 1997 (1) RCR (Rent) 98, wherein the Supreme Court has held as under:-

“In view of the above discussion, it is obvious that the law with regard to the splitting of tenancy is not what the High Court has set out in the impugned judgment. As pointed out earlier, a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves. Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is

the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them on behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction of overcome the rigours of Rent Control laws which protected eviction of tenants except on specified grounds set out in the relevant statute”.

In view of the above said proposition of law, it has to be held that a petition for eviction can be filed by one or several co-owners if there is an agreement between the other co-owners but where one co-owner denies the plea of eviction, the prayer cannot be ordered in a petition filed by another co-owner.

Petitions are dismissed.

Since the main case has been decided, the pending C.Ms , if any, also stand disposed of.

February 07, 2018

Poonam (II)

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No