

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4736-2018 (O&M)

Date of decision:06.09.2018

Madan Lal

... Petitioner

Versus

Smt.Rajeshwari Shah @ Rajeshwari Pal

... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

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

...

TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the order dated 26.04.2018 (Annexure P-3) passed by the learned Rent Controller, Chandigarh, whereby an application under Order 6 Rule 17 of the Civil Procedure Code filed by the petitioner seeking amendment in the written statement has been declined.

2. Briefly, it may be noticed that the respondent herein filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act seeking eviction of the petitioner from the demised premises i.e. Booth No.13, Sector 24, Chandigarh. In the petition, it was averred that the property in question was earlier owned by her father, namely, Mahendra Pal. Gift deed dated 18.12.1981 was executed in her favour. Her father used to manage the property on her behalf. The premises in question was rented out to the tenant/petitioner for a sum of Rs.3000/- per month. Mahendra Pal passed away on 20.07.2014. It was pleaded that the petitioner was in arrears of rent. Personal bonafide necessity was also pleaded by the respondent seeking eviction of the petitioner.

3. Petitioner filed written statement to the rent petition. Thereafter, an application under Order 6 Rule 17 read with Section 151 CPC was filed seeking amendment in the reply by inserting the following lines in para 3:

“In fact after the death of late Sh. Mahendra Pal on 20.07.2014 Sh Rupendra Pal being son and legal heir of the premises in question became the landlord/owner of the same and the premises in question now vest in Sh. Rupendra Pal and the respondent shared a good relationship with Sh. Mahendra Pal. The respondent used to meet him regularly from the last 40 odd years on festivals like Holi, Diwali, Ram Naumi etc. Sh. Mahendra Pal used to reside at House No.100, Sector 23, Chandigarh alongwith his son Shri Rupendra Pal. To the best knowledge of the respondent, Sh. Mahendra Pal had only one son namely Shri Rupendra Pal son of Shri Mahendra Pal resident of House No.100, Sector 23, Chandigarh. The wife of Sh. Mahendra Pal had died in the year 2010 and thereafter, to the best of the knowledge of the respondent Sh. Mahendra Pal has been succeeded by Sh. Rupendra Pal exclusively. Since the petitioner is alleging that she became owner of the property on the basis of alleged gift deed since 1981. She is attempting to cast a shadow of doubt on the legal status as well as the owner status of Shri Mahendra Pal qua the premises in question. That since Shri Mahendra Pal has died on 20.07.2014, his estate, both movable and immovable would be succeeded to by the aforesaid son namely Shri Rupendra Pal son of Late Sh. Mahendra Pal resident of House No.100, Sector 23, Chandigarh and after the death of Sh. Mahendra Pal, the title of ownership and landlord of the suit property would now vest in Shri Rupendra Pal being son of Sh. Mahendra Pal. It is also worth mention here that even the respondent has got verified the signatures of the Late Sh. Mahendra Pal upon the alleged gift deed from the handwriting

and finger print expert on 25.07.2016, which also gives an opinion that the signatures of late Sh. Mahendra Pal upon the alleged gift deed are not the genuine signatures and have not been written by the same person. Copy of the opinion is attached herewith as Annexure R-1, which substantiate the pleas raised by the respondent that the alleged gift deed is forged document. The petitioner has therefore, no right to claim herself as transferee/landlord/owner on the basis of said gift deed. That the respondent is ready and willing to pay rent to Shri Rupendra Pal since he is the landlord being legal heir and son of Late Shri Mahendra Pal. That the respondent is a poor and has studied 5th standard, & was therefore, easily misled by the false projections of the petitioner. After the death of Sh. Mahendra Pal in 2014 the petitioner started making false projections to the respondent by saying that she had become owner of the said booth by virtue of some alleged Will/Deed but no such document was shown to the respondent at that time. The respondent being a rustic person believed the said representation of the petitioner as true. It was only when the respondent saw the alleged signatures of Sh. Mahendra Pal on the alleged gift deed that the respondent realized that the petitioner had been misrepresenting, defrauding and hoodwinking the respondent and that she had manipulated the alleged gift deed in connivance with Budhishwar Pal that due to the fraud played and misrepresentation made by the petitioner, respondent initially issued some cheques in favour of the petitioner.”

4. Application seeking amendment in the written statement stands declined vide impugned order dated 26.04.2018 passed by the learned Rent Controller, Chandigarh at Annexure P-3.

5. Counsel representing the petitioner has argued that the law of amendment has to be construed in liberal terms. It was the duty of the Court to ensure that substantial justice is delivered. Counsel urges that the

application seeking amendment in the written statement ought to have been allowed as it would not have caused any irreparable loss or prejudice to the respondent. It is further contended that the application has been dismissed on the ground that an application moved by the petitioner earlier in point of time under Order 1 Rule 10 CPC to implead Rupendra Pal in the present case was dismissed. Counsel submits that dismissal of an application under Order 1 Rule 10 CPC was not relevant, as the scope of Order 6 Rule 17 CPC clearly envisages that an amendment can be allowed at any stage of the trial.

6. Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

7. The amendment which was being sought by the petitioner herein in the written statement essentially is on the basis that after death of Mahendra Pal on 20.07.2014, Rupendra Pal being son and legal heir became the landlord/owner of the premises in question. Essentially, petitioner is attempting to raise a question with regard to vesting of title of the property in the name of the respondent herein.

8. Concededly, a separate suit has already been filed by the petitioner seeking declaration that gift deed dated 18.12.1981 in favour of the respondent for the property in question is illegal and forged. Such civil suit is still pending.

9. Undoubtedly, while passing the impugned order, the Rent Controller has taken specific note that an earlier application filed by the petitioner under Order 1 Rule 10 CPC for impleading Rupendra Pal as a party has been dismissed, yet the reasoning further adopted was that in a rent petition seeking eviction, the question of title is not to be decided and it is only the relationship of landlord and tenant that is to be proved. There

would be no quarrel with the proposition that the onus of proving relationship of landlord and tenant in an eviction petition would be on the landlord.

10. In the considered view of this Court, the Rent Controller has rightfully declined the application filed by the petitioner under Order 6 Rule 17 CPC as the amendment sought does not relate to and does not involve the actual issue raised in the rent petition.

11. No merit.

12. Petition dismissed.

06.09.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| 1. | Whether speaking/reasoned? | Yes/No |
| 2. | Whether Reportable? | Yes/No |