

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

Civil Revision No. 5500 of 2018 (O&M)

Date of decision : August 27, 2018

Madan Lal

.....Petitioner

Versus

Smt. Rajeshwari Shah @ Rajeshwari Pal

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Pushpinder Kaushal, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 09.07.2018 whereby his application under Order 14 Rule 5 CPC for framing additional issues has been declined as well as order dated 25.07.2018 whereby his application for recalling order dated 09.07.2018 has also been dismissed by the learned Rent Controller.

Brief facts necessary for adjudication of the case are that the respondent 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. It is averred by the respondent in her petition 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 but her father used to manage the property on her behalf. The premises in question were rented out to the tenant – petitioner for a sum of ₹3,000/- per month. Mahendra Pal passed away on 20.07.2014. It was further pleaded that the petitioner was in arrears of rent. Personal bona fide necessity has also been pleaded by the respondent. Written statement was filed.

Following issues were framed by the learned Rent Controller in this matter on 13.07.2016:-

- (i) Whether there is relationship of landlord and tenant between the petitioner and respondent? OPP
- (ii) Whether the rate of rent of the premises in question was ₹3000/- in the year 2010 and respondent is in arrears of rent from 01.01.2013 to the tune of ₹93,000/-? OPP
- (iii) Whether the premises in question are bona fide required by the petitioner as prayed for? OPP
- (iv) Whether the present petition is not maintainable? OPR
- (v) Whether the present petition is bad for misjoinder? OPR
- (vi) Relief.

Application under Order 14 Rule 5 CPC was moved by the present petitioner on 17.05.2018 for framing an additional issue with the averments that the respondent was not the owner of the property in question. Gift deed dated 18.12.1981 was alleged to be a false, fabricated, forged and manipulated document.

Following additional issues, it was prayed, should be framed:-

- (i) Whether the alleged Gift deed dated 18.12.1981 alleged to be executed by Sh. Mahendra Pal in favour of the petitioner is a false, fabricated, forged and manipulated document? OPR
- (ii) Whether the letter No. 103069/CP 1560/CIA III dated 03.03.2015 issued by the Estate Office, Chandigarh vide which ownership of rights of Booth No. 13, Sector 24C, Chandigarh have been transferred in favour of defendant No. 1 is illegal, null and void? OPR
- (iii) Whether the petitioner is landlord of the suit property Booth No. 13, Sector 24C, Chandigarh on the basis of the said gift deed dated 18.12.1981? OPP
- (iv) Whether Sh. Rupendra Pal son of late Sh. Mahendra Pal being son and legal heir of late Sh. Mahendera Pal has become owner and landlord of the suit property on the basis

of law of succession?OPR

The said application was resisted by the respondent. This application was dismissed by the learned Rent Controller vide impugned order dated 09.07.2018 while specifically observing that the present application has been filed with an object to delay the proceedings and furthermore the Rent Controller has no power to adjudicate regarding the ownership/title of the property in question. Thereafter, an application under Section 151 CPC was moved for recalling of order dated 09.07.2018 while submitting that the counsel could not appear on the said date, therefore, the order be recalled. The said application was also dismissed by the learned Rent Controller on 25.07.2018. Hence aggrieved, present petition has been filed.

Learned counsel for the petitioner vehemently argues that the tenant is entitled to challenge the derivative title of the landlord. He relies on the judgments of the Hon'ble Supreme Court in **A.V.G.P. Chettiar and sons versus T. Palaniswamy Gounder 2002(5) SCC 337**, **Bismillah Be (Dead) by LRs versus Majeed Shah 2017 (2) SCC 274**, **Apollo Zipper India Limited versus W. Newman and Co. Ltd. 2018 AIR(SC) 2847** and **Makhan Lal Bangal versus Manas Bhunia and others 2001(2) SCC 652**.

It is submitted that a specific issue in this regard should be framed.

Heard, learned counsel for the petitioner at length and have gone through the file.

Learned counsel for the petitioner does not deny that a separate civil suit has been filed by the petitioner seeking declaration that Gift deed dated 18.12.1981 is an illegal, forged and fabricated document. The said civil suit is pending. In the present eviction proceedings initiated by the

respondent, the petitioner has challenged the relationship of landlord and tenant between the parties. Though issuance of certain cheques in favour of the respondent are not in dispute, it is sought to be explained that the same were issued under some misrepresentation. Petitioner asserts that derivative title of the respondent has been challenged and the petitioner has not attorned in favour of the respondent. Separate suit challenging the title of the landlord with the property in question is admittedly pending. The issues, which arise for adjudication in the present proceedings, on the basis of the pleadings of the parties, indeed stand covered under issue No. 1, which already stands framed by the learned trial Court on 13.07.2016.

The judgements relied upon by learned counsel for the petitioner are not relevant in the facts and circumstances of the case. Much stress has been laid by learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court in **Makhan Lal's** case (supra) to urge that a specific issue should be framed in regard to the title of the landlord. The Hon'ble Supreme Court in **Makhan Lal's** case (supra), while dealing with an election petition has held that when various corrupt practices are alleged, one omnibus issue as regards corrupt practices would not be proper. There can be no quarrel with the ratio of this decision. However, in the factual matrix of the present case dealing with the eviction of the petitioner – tenant from the premises in question, as discussed in the foregoing paras, the issue which already stands framed squarely covers the controversy involved in the eviction petition.

Learned counsel for the petitioner is unable to point out any illegality and infirmity in the impugned orders dated 09.07.2018 and 25.07.2018 which calls for interference in exercise of revisional jurisdiction

by this Court.

Present petition is, accordingly, dismissed.

August 27, 2018
rts

(Lisa Gill)
Judge

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