

In the High Court of Punjab and Haryana at Chandigarh

CR No.6298 of 2016 (O&M)

Date of decision: September 20, 2018

Mohd. Aslam

..... Petitioner

Versus

Nabeela Parveen

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunny K. Singla, Advocate for the petitioner.
Mr. H.S. Deol, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Tenant-petitioner is in the revision petition against order passed by the Appellate Authority ordering his eviction on the ground of bonafide requirement of the landlady-respondent. Nabeela Parveen filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the tenant from shop and varanda. It was pleaded by her that previously her father-in-law Mohammad Bashir was owner of the premises, who has originally gifted the premises to the landlady-respondent and she requires the premises for running a boutique shop. Tenant contested the petition and submitted that story of oral gift is forged and fabricated. There is no gift by Mohammad Bashir in favour of the landlady.

Learned Rent Controller dismissed the petition. However, in appeal learned Appellate Authority allowed the eviction proceedings while reversing the judgment of the trial Court.

Learned counsel appearing for the petitioner

contended that as per Muslim Law there are three essential ingredients of oral gift. He referred to para 149 of the principles of Mohammadan Law. These three ingredients are (i) declaration of the gift by the donar, (ii) acceptance of the gift expressed or implied by or on behalf of the donee and, (iii) delivery of possession of the gift by the donar to donee as mentioned in para 150.

Learned counsel for the petitioner has submitted that the third essential requirement of the gift i.e. delivery of possession is missing in the present case since property is in possession of the tenant. Hence, he submitted that there cannot be any gift of the property.

On the other hand, learned counsel for the respondent has pointed out that in case the owner is not in actual/physical possession, then the gift can be by delivery or symbolic possession. He submitted that delivery of possession as mentioned in para 149 read with second para 150 is to be read as actual or constructive because in para 150 the words used are actually or constructively. He further drew attention of the Court to the statement of the official from the Municipal Committee, who has admitted that application for transfer of property on the basis of gift deed has already been moved by the landlady. The aforesaid application is signed by the donar and donee both. Mutation is only for fiscal purposes to update the record. Mutation of the property does not confer any title. Once the property is in possession of tenant, the delivery of possession can only be symbolic. In the present case, the father-in-law (donar), daughter-in-law (donee) do not dispute regarding completion of the gift. Still further, tenant in the considered view of this Court does not have right to challenge the gift deed made by father-in-law in favour of his daughter-in-law. Tenant is only entitled to protection as available in the rent laws.

Learned counsel for the petitioner further submitted that gift was in fact in order to get eviction against the tenant. He

submitted that father-in-law is already running a manufacturing unit and is also owner of certain other properties. The argument is wholly without substance because as per the Rent Act landlord/owner is not only entitled to eviction on the ground of own use and occupation but also for use and occupation of his emanations as used by the Hon'ble Supreme Court. The daughter-in-law would fall within the definition of natural emanations. Hence, in the present case, it cannot be said that gift is only with a view to secure order of eviction.

In view of the aforesaid, there is no ground to interfere.

Dismissed.

(ANIL KSHETARPAL)

JUDGE

September 20, 2018

jt

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