

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

CR No.6297 of 2017 (O&M)
Date of decision : 08.10.2018

Maman Singh and others

...Petitioners

Versus

Manohar Lal Saini (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Mukesh Rao, Advocate for the petitioners.

Mr. Pritam Singh Saini, Advocate for the respondents.

ANIL KSHETARPAL, J.

Arguments were heard on 06.10.2018 and the judgment was pronounced. The detailed reasons are as under:-

Landlords-petitioners are in the revision petition against the judgment passed by the Appellate Authority dated 24.04.2017 while reversing the judgment passed by the Rent Controller ordering the eviction of the respondents-tenants from the shop in question on the ground of non-payment of rent and building having become unfit and unsafe for human habitation.

The only issue which is pressed before this Court as well as before the Appellate Authority is whether there is a relationship between the petitioners-landlords and the respondent-tenant.

Both the Courts have concurrently found that this property was purchased by Sultan Singh vide registered sale deed dated 28.04.1955, Ex.PW4/1. Sona Devi, wife of Sultan Singh filed a suit against Sultan Singh on the basis of a family settlement, whereby the shop alongwith other property had come to the share of Sona Devi. The aforesaid suit was decreed in favour of Sona Devi vide judgment and decree dated 05.06.1989. The decree in favour of Sona Devi was challenged by nephews of Sultan Singh through a Civil Suit instituted on 24.07.2001 which was dismissed on 16.09.2008. The landlords-petitioners claimed that they have purchased the property from Sona Devi vide registered sale deed dated 10.12.2001.

The landlords after purchasing the property filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 on 28.03.2006. The eviction was sought on two grounds, firstly, the tenant has failed to pay the rent since 01.01.2002 i.e. immediately after the purchase of the property by the landlords-petitioners, secondly, the shop in dispute is around 100 years old and unfit and unsafe for human habitation being in dilapidated condition. It was pleaded that iron links have rusted away, plaster from the roof of the walls is falling, various cracks have appeared on the walls and the eastern wall towards the street is about to fall. The first floor of the shop in question is also about to fall.

The respondent-tenant contested the petition and denied not only the ownership of the landlords but also the relationship of the landlords and tenant.

Learned Rent Controller, after appreciating the evidence, ordered the eviction of the tenant on both the grounds, however, learned

Appellate Authority has reversed the judgment passed by the Rent Controller after recording a finding that the landlords are owners of the property, however, the relationship of landlords and tenants is not proved and, therefore, the petition is not maintainable. It may be significant to note that the tenants pleaded that they have become owners by way of an adverse possession. However, learned First Appellate Court has rejected the aforesaid contention of the tenants and declared that the petitioners-landlords are the owners of the property.

Learned Appellate Authority while reversing the judgment passed by the Rent Controller have given following reasons:-

1. No evidence has been led by the petitioners to prove as to when Manohar Lal-tenant was inducted as such by their vendors Sona Devi or by original owner of the shop namely Sultan Singh. The witnesses produced by the landlords-petitioners could not disclose when Manohar Lal was inducted as a tenant.
2. The records of the Municipal Committee does not prove that Manohar Lal was the tenant in the property in dispute.
3. No rent note or receipt has been produced to prove the relationship of the landlords and tenant.
4. The statement of the brother (Sher Singh) of the tenant-Manohar Lal in separate civil suit cannot bind the tenant.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

In the considered opinion of this Court, there is overwhelming

evidence available on the file which has been ignored by the Appellate Authority to record a finding that Manohar Lal-respondent was a tenant in the shop in question. The same are as under:-

- i) In the sale deed executed by Sona Devi in favour of the petitioners on 10.12.2001 refers to Manohar Lal as tenant in possession of the premises.
- ii) Sona Devi was declared owner of the premises in dispute vide judgment and decree dated 05.06.1989 Ex.P10 passed against Sultan Singh, the original owner. At that time, the petitioners-landlords were not in picture. The aforesaid judgment and decree in favour of Sultan Singh was challenged by nephews of Sultan Singh vide Civil Suit filed on 24.07.2001. In the aforesaid suit, Lekh Ram, as also Sher Singh (brother of Manohar Lal-tenant) appeared and specifically stated that on the ground floor of the premises is a shop and Manohar Lal is tenant since 1955. It was claimed that the tenancy is oral and he started running the shop for making and selling the sweets from the premises in question.
- iii) As per municipal record produced by the petitioners from the year 1977-78 onward prove that Sultan Singh is owner of the property and it is in possession of the tenant. No doubt the name of tenant has not been recorded but it is apparent that shop in question is in possession of a tenant and respondent is only person who is claiming possession.
- iv) Ashok Kumar son of Dr. Krishna (who was landlord on the first floor of the shop in question) has appeared and has stated that his father was a tenant on the first floor whereas Manohar Lal was the tenant on

the ground floor but they vacated the premises as the petitioners filed a petition in which compromise took place.

Now let us deal with the reasons given by the Appellate Authority while reversing the judgment of the trial Court.

First reason is erroneous as the petitioners are derivative title holders. Originally the shop was given on rent somewhere in the year 1955 whereas the present petition was being filed in the year 2006. Hence, the witnesses or the landlords could not be in a position to disclose as to when Manohar Lal was inducted as tenant. The date of induction as tenant has no relevance for the purpose of decision of the present case particularly when the grounds for eviction have no relevance for the period of tenancy. The Appellate Authority has also taken an adverse inference of the fact that non-payment of rent is being claimed from 01.01.2002 i.e. immediately after the date of purchase and, therefore, there is no payment of the rent to the landlords. As per Section 8 of the Transfer of Property Act, 1882, the owner becomes entitled to recover the rent only from the date he has become owner. In the present case, this is what was claimed by the landlords. The petition was filed after a period of 4 years. Hence, the bona fides of the landlords could not be disputed.

The second reason assigned by the Court is that the municipal record does not prove that Manohar Lal is tenant in the shop. It may be noted that as per the municipal record, right since the year 1977 proves that Sultan Singh was owner of the property and the shop is in possession of the tenant at the rate of ₹67.50 paise per month. This municipal record continues in 1980-81 and 1981-82, therefore as regards the shop being on

rent is proved. Manohar Lal has claimed that he is in possession of the property as the owner. Both the Courts have already rejected the plea setup by the tenant that he has become owner. Once, the tenancy is of the year 1955, derivative title holders cannot be expected to be in possession of any rent note.

Next reason assigned by the Appellate Authority is that the statement of Sher Singh, brother of the tenant, in the previous suit is not binding on him. No doubt, the statement is not binding, however, the statement of the brother of the tenant at least a piece of evidence which proves that Manohar Lal is tenant on the property in dispute. This statement date 10.09.2002 was in a previous litigation when the petitioners were not in picture. Still further, as noted, a petition for fixation of fair rent was filed against the tenant-Dr. Krishna on the first floor of the shop in question. He compromised and vacated the premises in favour of the petitioners. Ashok Kumar son of Dr. Krishna has appeared in evidence and has deposed that his father was the tenant on the first floor and Manohar Lal was the tenant on the ground floor. Apart from that even Hukam Chand, neighbour has appeared and also deposed about Manohar Lal being tenant in possession in the shop in question.

Still further, if one carefully reads the statement of Ganga Ram son of Manohar Lal, who has appeared as RW9, it is apparent that he is not a reliable witness. A suggestion was given to him that electric connection in the shop in question is in the name of Sultan Singh, deceased. He feigned ignorance by stating that his son deposits the rent. He even goes to the extent by stating that he does not know whether Sona Devi is wife of Sultan

Singh or not. He even denies who is Dr. Krishna. Still further, although, it is not proved on the file that the document is only marked but there is an agreement between Manohar Lal and Hari Om dated 05.07.2001 wherein he undertook to vacate the premises in question within three years after charging hefty amount of ₹14,00,000/- for his possession out of which ₹1,05,000/- was received as earnest money.

In view of the aforesaid overwhelming evidence, the reasons assigned by the learned Appellate Authority while reversing the finding of the Rent Controller were wholly erroneous. Hence, the order passed by the learned Appellate Authority is set aside.

Revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No