

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CR-948-2013 (O&M)
Date of Decision : 10.08.2018

M/s Hot Millions and another Petitioners

Versus

Jasinder Singh and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Chetan Mittal, Sr. Advocate
with Mr. Kunal Mulwani, Advocate
for the petitioners.

Mr. Vikas Bahl, Sr. Advocate
with Mr. Narinder Kumar Vadehra, Advocate
for the respondent No.1.

AJAY TEWARI, J. (Oral)

This revision has been filed against the order of the Rent
Controller declining an application for leave to defend.

The admitted facts are that the property in dispute was
originally owned by three persons i.e. Rupinder Kaur, Gurinder Singh and
respondent No.1-Jasinder Singh. By a lease deed dated 09.04.1996,
Rupinder Kaur let out the premises in dispute (being one bay on the ground
floor of SCO No.198, Sector 17-C, Chandigarh) to the petitioners. In the
year 2011, the respondent No.1 who is an NRI filed the instant petition for
eviction under Section 13(B) of the East Punjab Urban Rent Restriction Act
(As adopted by the Chandigarh Administration) (*hereinafter referred to as*

were taken. The first was that actually since Rupinder Kaur had let out the property representing herself to be 'absolute owner' of the premises, this was an indication that there was an internal partition between the co-owners and after the coming into force of Section 13(B) of the Act, a dishonest petition was filed by the partner – respondent No.1 who actually was neither the landlord nor the owner, in view of the assertions made in the lease deed. The second argument taken was that the respondent No.1 had admittedly put this property in the HUF and consequently the HUF had become the owner and even on this ground he could not file this petition. The Rent Controller having dismissed the application the petitioners are before this Court.

Learned Senior Counsel appearing for the petitioners has argued that apart from the assertion made in the lease deed (to which reference has been made above) another factor which would show that there was a partition between the three co-owners was the fact that till the year 2009 the rent was paid by the petitioners to Rupinder Kaur and it is only after 2009 (when Section 13(B) of the Act was extended to Chandigarh) that, to create the ground, the evidence was also created, whereby Rupinder Kaur started transmitting 1/3rd of the rent to the respondent No.-1.

To counter this argument, the learned Senior Counsel for the respondent No.1 states that once it is not disputed that the title document shows the respondent No.1 as co-owner, the mere fact that Rupinder Kaur was getting the rent would be hardly germane because now it is beyond the pale of any controversy that any co-owner can maintain a petition under Section 13(B) of the Act. To support his arguments, he has relied upon the Division Bench judgment of this Court in the matter of ***Smt. Bachan Kaur***

and others vs. Kabal Singh and another, 2011(1) RCR (Rent) 368. As per him, whatever internal arrangements there may be between the landlords regarding the rent, would not derogate from their status as co-owners. By way of illustration, he has pointed that there may be a case where a man builds a house leaving behind three sons. Two of the sons are living abroad and one son is living in India and even if that one son has been repeatedly letting out portions of that house and appropriating the rent to his own use, it can not enable the tenant to turn around and say that merely because that one son had let out the premises to him or that he was paying rent to that one son, the other co-owners have no right in the property. He has further pointed out that even in the lease deed the word used was 'absolute owner' of SCO No.198 (One Bay), Sector 17-C, Chandigarh. As per him, the word 'absolute' here signifies that there was no cloud on the title and the words 'SCO No.198 (One Bay)' were mentioned only to define the property which was let out & these can not give rise to any conclusion that Rupinder Kaur claimed to be the sole owner; and in any case any ex-parte claim made by her could not bind the other co-owners.

In my considered opinion, the argument of counsel for the respondent has to be accepted. The argument that merely because Rupinder Kaur had let out the premises and was accepting the rent and this would constitute a partition, is a pure conjecture and cannot be taken to be such material with the tenant as to justify a claim for leave to defend under the strict provisions of Section 13-B of the Act.

As regards the second argument, the contention of the learned Senior Counsel for the petitioners is that once the respondent No.1 had

himself put the property in HUF he could not have taken the benefit of his NRI status because under Section 13(B) of the Act only the owner NRI can file a petition and here the owner was the HUF.

On the other hand, the learned Senior Counsel for the respondent No.1 has argued that merely because the respondent No.1 put the property in the HUF would not give rise to the conclusion that he was not a co-owner as a member of that HUF and once the argument regarding the entitlement of the co-owner has been accepted by this Court in the previous part of the judgment, the mere fact that respondent No.1 had put the property in HUF would not detract from his status as a co-owner and for the purpose of Rent Act at least there is no contradiction between the co-owner simpliciter and a co-owner under an HUF. Moreover, as per the learned Senior Counsel for the respondent No.1, once the respondent No.1 is reflected in the revenue record and the documents of title as co-owner and has put it in the HUF and he acts in any particular manner which may be taken to be detrimental, only a member of that HUF can turn around and challenge the action, but an outsider who knew that he was the co-owner can not turn around and say that since the respondent No.1 – Jasinder Singh had put the property in the HUF, he does not continue to be a co-owner.

I find myself in agreement with the arguments of the counsel for the respondent No.1. It cannot be gainsaid that all members of an HUF are also co-owners of the property and merely by virtue of being members of the HUF it cannot be held to derogate from the factum of co-ownership.

In the circumstances, the petition is dismissed.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 10, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No