

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

CR No. 816 of 2018(O&M)

Date of decision: 28.2.2018

Rakesh Kumar

.....Petitioner

VERSUS

Som Chand and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Kunal Mulwani, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 07.12.2017 passed by the Rent Controller, Bathinda whereby application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') filed by the petitioner for impleadment as a party in the pending eviction application has been dismissed.

Som Chand and Raj Kumar son of Som Chand have filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for eviction of Brij Mohan – respondent No.3 (performa) from a shop detailed in head-note of the application (Annexure P-1) on the ground of non-payment of rent and personal requirement of Raj Kumar – respondent No.2. In the said case, Brij Mohan – respondent No.3 filed reply (Annexure P-2) and admitted relationship of landlord and tenant between the parties. The petitioner filed the instant application (Annexure P-3) for impleading him as respondent No.2 by claiming himself to be co-

owner of the suit property on the basis of allegations raised in the application in regard whereof he has filed civil suit titled **Rakesh Kumar Vs. Som Chand and others** pending in the Court of Additional Civil Judge (Senior Division), Bathinda.

After having heard counsel for the parties, in view of the averments raised in the application (Annexure P-3) and reply thereto by the contesting respondents (Annexure P-4), Rent Controller dismissed the application by relying upon various judgments of Hon'ble the Supreme Court and Punjab and Haryana High Court.

Counsel for the petitioner has not disputed the settled proposition in law that landlord may not be owner of the premises as per definition of landlord under Section 2(c) of the Act. He has also not denied that the Rent Controller is a fora having limited jurisdiction and cannot adjudicate upon question of title to the premises in question. He has not disputed the ratio laid down in various judgments referred to in the impugned order. However, he has pressed claim of the petitioner for being impleaded as a party by referring to the judgment of this Court **Pritpal Kaur Vs. Bharti Cellular and others along with other connected cases, 2010 (59) RCR (Civil) 235**. In addition, it is argued that in case plea of the petitioner for being impleaded as a party is not accepted, the Court below may be directed to decide the application for eviction as well as title suit by way of consolidation or the proceedings in the application for eviction may be stayed pending decision of the civil suit. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Baldev Singh Vs. Punjab National Bank and others, 1998 (8) SCC 466**.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to deal with the judgment in **Pritpal Kaur's case** (supra) wherein this Court allowed impleadment of Pritpal Kaur as a party in eviction petition filed by respondents No.2 and 3 against respondent No.1. In the said case, Pritpal Kaur filed the application under Order 1 Rule 10 CPC seeking impleadment on the premise that Gurpartap Singh Sekhon had executed Will about his share on 22.07.2005 and alleged Will dated 17.03.2005 in favour of the original petitioners/respondents No.2 and 3 has no effect. The dispute as to whether which of the Wills is genuine is subjudice before the Civil Court. It is further averred by the applicant admitting her as owner/landlord of the tenanted property to the extent of 1/3rd share earlier owned by Gurpartap Singh Sekhon. The Rent Controller rejected the application. This Court by relying upon judgment of the Apex Court in **Satish Kumar Grover and others Vs. Surinder Kumar Grover and others, 1998(7) SC 508** has held that in the opinion of the Court, facts before the Apex Court in **Satish Kumar Grover's case** (supra) are almost identical, hence, relying upon judgments of the Apex Court in the matter of **Satish Kumar Grover's case** (supra), the petition is allowed. In the case at hand, the petitioner has questioned correctness of Will dated 27.04.1955 of Thakar Mal, Will dated 13.05.1968 of late Kanshi Ram and Will dated 22.08.1980 of late Shanti Devi but he has also challenged various judgments and decrees documents of transfer in the civil suit pending adjudication before the Court. The petitioner has not claimed any right in his favour on the basis of a Will either by Thakar Mal

or late Kanshi Ram or Late Smt. Shanti Devi. The facts and circumstances of the present case are entirely different from the referred authority, therefore, the petitioner cannot derive any advantage to his contention from the judgment in **Pritpal Kaur's case** (supra) which was decided by this Court on the basis of judgment of Hon'ble the Supreme Court in **Satish Kumar Grover's case** (supra).

Brij Mohan, tenant in the premises in question, has not denied relationship of landlord and tenant between respondents No.1 and 2 and himself, as per the reply to the application for eviction filed by him. As the tenant has not disputed the relationship of landlord and tenant between the parties to the eviction proceedings pending before the Court and did not claim in the reply that he has attorned to Rakesh Kumar to be his landlord after death of Kanshi Ram, the petitioner cannot derive advantage to his contention from the referred authority wherein Pritpal Kaur had raised a plea that the tenant has admitted her to be the landlord to the extent of 1/3rd share earlier owned by Gurpartap Singh Sekhon and as such is also paying rent to the applicant.

So far as plea of the petitioner either to stay the proceedings in the pending eviction application or consolidation of both the cases, plea with regard to consolidation is misconceived and liable to be rejected. There is no question of consolidating a civil suit with that of rent proceedings which required to be decided by following different procedure. As has been rightly conceded by counsel for the petitioner, eviction proceedings are summary in nature and the question of title is not amenable to be adjudicated upon by the Rent Controller which rather would be the subject matter of decision by the Civil Court in the suit filed

by petitioner Rakesh Kumar. So far as stay of the eviction proceedings, there is no such ratio laid down by Hon'ble the Supreme Court in **Baldev Singh's case** (supra) that as and when an application is filed before the Rent Controller raising a question of title and seeking impleadment on the basis thereof, proceedings before the Rent Controller are liable to be stayed. Hon'ble the Supreme Court stayed the proceedings in the peculiar facts and circumstances and in exercise of its jurisdiction under Article 142 of the Constitution of India. In this view of the matter, contention raised by the petitioner either for stay of the eviction proceedings or consolidation of the two proceedings is not tenable and accordingly rejected.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*. However, nothing stated hereinbefore shall cause prejudice to the petitioner in the pending civil suit.

FEBRUARY 28, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no