

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

133

CR No.8582 of 2017 (O&M)

Date of decision: 01.11.2018

Pardeep Kumar

..... Petitioner

Versus

Rajesh Bhanot and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Divanshu Jain, Advocate  
for the petitioner.

Mr. A.P.S. Sandhu, Advocate  
for respondent No.1.

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**ANIL KSHETARPAL, J. (ORAL)**

Tenant-petitioner is in revision petition against the order passed by the learned Rent Controller ordering his eviction upheld by the Appellate Authority in appeal.

The premises in question is part of a residential house and the landlord had sought eviction on the ground that his son is of marriageable age and his daughters who are married also visit their parental house and stay. It was pleaded that they do not have any drawing room for accommodating/entertaining guests. Learned Rent Controller as well as Appellate Authority after considering various aspects and contentions raised have ordered eviction.

Learned counsel for the petitioner has made following submissions:-

1. The sale deed through which the landlod claims title has

not been produced.

2. There is no relationship of landlord and tenant as tenant has never attorned the tenancy.

3. The petition filed by the landlord was result of concealment of fact and therefore, liable to be dismissed.

On the other hand, learned counsel for the respondents has pointed out that the sale in favour of the landlord by Smt. Kusum was never disputed by the tenant while filing the written statement. A vague reply was given wherein the tenant took a stand that if at all, the respondent has purchased property, he becomes owner to the extent of 2/3<sup>rd</sup> share only. Learned counsel has further pointed out that when landlord appeared in evidence, he has specifically stated that he has brought certified copy of the sale deed executed in the year 1998 in his favour.

This Court has considered the submission of learned counsel for the parties and have gone through the records.

As regards submission of learned counsel for the petitioner-tenant that sale deed has not been produced, it will be noticed that title of the landlord never seriously disputed by the tenant. In the present case, the landlord purchased 2/3<sup>rd</sup> share in the property vide sale deed dated 02.09.1998. There was some error in the sale deed and a correction deed was also got registered. Thereafter, the landlord also filed a suit for declaration claiming that he has become owner. The aforesaid suit was decreed. No doubt, challenge to the decree is pending in this Court. However, the validity of the sale deed in favour of the landlord is not in dispute. In such circumstances, non-production of the sale deed is immaterial.

As regards submission of learned counsel that there is no relationship of landlord and tenant between the parties, it will be noted that as per Section 109 of the Transfer of Property Act, by operation of law, the tenant has become tenant under the transferee. Section 109 of the Transfer of Property Act provides that if the lesser transfers the property leased in absence of a contract to the contrary the transferee shall possess all the rights. Learned counsel for the petitioner submitted that there is no attornment by the tenant in favour of the landlord. In this context, it is to be considered that whether consent of the tenant is required for attornment or not. Section 109 of the Transfer of Property Act does not require any positive action on the part of the tenant for attornment. There is no need for a consensual attornment. Attornment is brought about by operation of law. Attornment by a tenant is not a condition precedent to create a relationship of landlord and tenant between the transferee landlord and the existing tenant in possession of the tenanted premises. Section 109 does not operate only if the tenant has attorned. Once the transfer of the ownership of the property which is already on lease has been transferred, the tenancy stands transferred in favour of the transferee. In view of the aforesaid, there is no substance in the second submission of learned counsel.

As regards next submission, it will be noted that both the authorities below have found that there is no concealment of fact and the other property which was purchased by the landlord is not residential property and is in fact used for commercial purpose. RW-1, Jasbir Singh who appeared on behalf of the tenant, has also admitted that the landlord has purchased a shop dealing in mobile phones from a shop at Katra Moti Ram. Learned counsel further submitted that the aforesaid property is part

of the residential building. In the considered view of this Court, once the property is being used for commercial purpose, the tenant of a residential premises cannot be permitted to raise an argument that there is concealment of fact.

In view of the discussion made above, this Court does not find any good ground to interfere in exercise of its revisional jurisdiction.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Revision petition is dismissed.

**01.11.2018**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No