

108 (2 cases)

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

Date of Decision : 19.02.2018

1) C.R. No.8971 of 2017 (O&M)

Smt. Krishna Kumari (deceased) through LR's and another
..... Petitioners

Versus

Gurdas through attorney Harpal Singh
.... Respondent

2) C.R. No.8972 of 2017 (O&M)

Smt. Krishna Kumari (deceased) through LR's and another
..... Petitioners

Versus

Gurdas through attorney Harpal Singh
.... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. K.B. Raheja, Advocate
for the petitioners.

AJAY TEWARI, J. (ORAL)

These two revisions have been filed against the judgments of the Appellate Authority reversing those of the Rent Controller and allowing the eviction petitions filed by the respondent against the petitioners.

The case of the respondent as set out in the eviction petitions was that he was an attorney of one Gurdas by virtue of power of attorney dated 18th July, 2002 and had inducted the petitioners as tenants and sought their ejectment on the ground of non-payment of rent. On notice the petitioners appeared and denied the relationship of landlord and tenant between them. Their case was that in the year 1999 (3 years prior to the power of attorney executed by the owner in favour of the respondent) the respondent represented himself to be the owner of the property and entered into an agreement to sell with the petitioners of both the premises under which the petitioners paid a substantial amount and were put in possession as intending purchasers. Further as per the petitioners there was a clause in the agreement to sell as per which they were to pay a certain amount of interest for the remaining consideration price in case the sale deed could not be executed and it was as a component of interest of the unpaid price that the petitioners were paying certain amounts to the respondent. In the replication, the respondent denied executing the agreement to sell and reiterated his claim. The Rent Controller held that the agreement to sell executed by the respondent in favour of the petitioners was proved and therefore even though the agreement to sell was not registered yet it could be used for the collateral purpose of showing that the petitioners were at least not in possession as tenants and consequently dismissed the eviction petition.

In appeals filed by the respondent the Appellate Authority firstly did not accept the agreement to sell propounded by the petitioners because there was a difference of opinion between two handwriting experts

had not examined the sole attesting witness. Second and more important, the Appellate Authority held that the agreement to sell was executed in the year 1999 and at that time admittedly the respondent (attorney) had no right, title and interest in the property and thus discarded that agreement to sell as a waste piece of paper. In the absence of the agreement to sell, what was before the Appellate Authority was that despite their protestations regarding their status, the petitioners had admitted that they were paying a monthly amount to the respondent who had inducted them in the premises. On the strength of this admission, the Appellate Authority held that the only relationship which could be determined between the parties was that of landlord and tenant and allowed the appeal of the respondent on the ground of denial of relationship.

Counsel for the petitioners has argued that during his testimony the respondent had represented himself to be the owner and thus could not have been stated to be acting for the real owner and was setting up a hostile title in himself and therefore the Rent Controller's findings were correct and those of the Appellate Authority were wrong. In my opinion, as regards the case of the petitioners is concerned, the crucial point is as to what capacity were they in occupation of the premises. If the agreement to sell in their favour to be a valid contract it would have to be held that they were in possession as intending purchasers and not as tenants. If on the other hand the agreement to sell could not be taken to be proved or, even if proved did not create a valid contract the position would be different. Admittedly in the year 1999 the respondent had no right, title or interest in the property and thus any agreement to sell which he may have executed had to be turned

in the property in dispute qua petitioners. As regards the argument that during his testimony he had represented himself to be the owner would not determine his status in the face of the admitted power of attorney placed by him on the record. Moreover, the finding of the Appellate Authority that the execution of the agreement to sell itself was not proved cannot be faulted since the two handwriting experts differed in their opinion and the petitioners did not examine the sole attesting witness. Consequently, once the petitioners were not able to prove that they were in possession as intending purchasers and had admitted that they were paying a monthly amount to the respondent, the only relationship which could have taken to be proved between them was that of tenant and landlord and having denied that relationship they were rightly held to be liable for eviction by the Appellate Authority.

Petition is dismissed.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

February 19, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No