

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No. 222 of 2016 (O/M)
Date of decision : 15.5.2018

Kamla Devi

..... Appellant

Versus

Chand Kaur through LRs and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashish Aggarwal, Senior Advocate, with,
Mr. Kartik Gupta, Advocate,
for appellant.

Mr. Vikas Bahl, Senior Advocate, with,
Mr. K.P. Singh and Mr. Rahul Jain, Advocates,
for respondents-caveators.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH J.

Impugned in present execution second appeal is judgment dated 26.10.2016, passed by learned Additional District Judge, Gurgaon, affirming the order dated 26.2.2016, passed by learned Additional Civil Judge (Senior Division), Pataudi, vide which objections, filed by Kamla Devi (appellant) to warrants of possession, were dismissed.

ESA No. 222 of 2016 (O/M)

It is necessary to reproduce the background of controversy. The Rent Controller, Gurgaon, vide judgment dated 29.3.2012, in petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973, filed on behalf of LR of Capt. Shish Ram, ordered the ejectment of respondent Hindustan Petroleum Corporation Limited (in short 'HPCL') from demised premises, which is the land used for petrol station and lubrication service station. In the said case, it was pleaded that Capt. Shish Ram, predecessor of appellant, had leased out land, situated on Delhi-Rewari Road, Pataudi, Tehsil Pataudi to Esso Standard Eastern Inc., vide sale deed dated 30.6.1965, for a period of ten years on 30.6.1965, commencing from 10.11.1962. Petition was contested by HPCL. The learned Rent Controller allowed said petition. Appeal filed by HPCL was dismissed by appellate authority, vide judgment dated 7.2.2014. It was in pursuance to said ejectment order that execution was filed by successful landlord. In said case, when warrants of possession were issued, one Kamla Devi filed objections under Order XXI Rule 97 read with Rule 101 CPC, 1908, requesting for framing issues and allowing objector to prove her case. In objection petition (Annexure-A-11), the plea was taken that somewhere in the year 1976, husband of objector, namely, Om Prakash Yadav, to whom appellant was married in the year 1970, purchased a petrol pump from its erstwhile owner located on Gurgaon-Rewari Road, Pataudi, built on an area of 1111 sq. yds and raised permanent structure and was carrying on the business of selling petroleum products under the name and style of Haryana Filling Station. This was known to late Capt. Shish Ram, predecessor interest of decreeholders. Even after death of Capt. Shish Ram in 1992, objector remain in actual physical possession of said building of petrol pump openly, peacefully and

ESA No. 222 of 2016 (O/M)

uninterruptedly and to the knowledge and notice of decreeholders and his LR's. Therefore, it had ripened into that of ownership by way of prescription and he had become owner thereof.

In the said objections, findings of Rent Controller were also assailed. It was stated that HPCL is not in actual physical possession of land in question. It was pleaded that alleged tenant HPCL was in collusion to obtain ejectment order dated 29.3.2012. Ejectment is nullity and it was obtained by playing misrepresentation and fraud upon Rent Controller. It was stated that husband of objector died on 28.12.2000 and since then, she is in possession of said petrol pump and building.

Decreeholders contested said objections and stated that objector got no right in demised premises. At no stage, Om Prakash Yadav and his sons came in possession of suit property. Decreeholders also pointed out to sale deed No. 1406 dated 5.8.2014, executed by Sanjay Thakran son of Attar Singh in favour of objector Kamla Devi regarding his 1/6th share wherein objector Kamla Devi admitted rent petition against HPCL.

After hearing both the parties, the learned Additional Civil Judge (Senior Division), Pataudi, dismissed the objections. Order was upheld in appeal.

I have heard learned senior counsels for parties and have also carefully gone through file.

It is to be noted that lease agreement is of 30.6.1965. It was executed by Capt. Shish Ram in favour of predecessor of HPCL for period of ten years, starting from 10.11.1962. It was after death of Capt. Shish Ram that his LR's filed ejectment petition before Rent Controller. The objector has taken plea that it was somewhere in the year 1976 that her

ESA No. 222 of 2016 (O/M)

husband Om Prakash Yadav purchased land for petrol pump and established petrol pump thereon. However, sale deed was never produced before two Courts below and even not before this Court. It was stated at the time of arguments that said sale deed is not traceable. On further questioning by Court, it was also stated that even copy of same is not traceable from the office of Sub Registrar. Therefore, it is assumed that said assertion that Om Prakash Yadav purchased petrol pump from its erstwhile owner somewhere in the year 1976 was rightly discarded by both the Courts below.

Now, second plea is regarding adverse possession. Objector claims that she is in possession of said land, on which petrol pump was established in the year 1976. Her possession is open, peaceful and uninterrupted and, therefore, she has become owner of said petrol pump and building. Copy of dissolution deed dated 15.6.1982 (Annexure-A-1) between Om Prakash, husband of objector and one Kailash Nath shows that it was admitted in said dissolution deed that there was a petrol pump under dealership of HPCL since 2.12.1976. Through said dissolution deed, second party, Kailash Nath had retired. Accordingly, HPCL addressed a letter dated 21.9.1982 (Annexure-A-2) whereby they approved appointment of Om Parkash as sole proprietor of subject dealership. Therefore, it is clear that Om Prakash, husband of objector, was a dealer of HPCL and was in possession as a licensee of HPCL. It is to be noted that after decision of ejectment petition, on 7.2.2014, present objector purchased 1/6th share in said property, vide sale deed dated 5.8.2014 from one Sanjay Thakran. Since husband of objector was a dealer of HPCL and thus, a licensee, therefore, objector who has stepped into shoes of her husband, cannot claim adverse possession, nor she can claim independent right which might have accrued to

ESA No. 222 of 2016 (O/M)

her after purchase of 1/6th share in disputed property after passing of judgment by appellate authority. Lease agreement was between Capt. Shish Ram and HPCL. Therefore, LRs of Capt. Shish Ram are rightly held to be entitled to possession. Objector, if she is proved to be purchaser in said property, can only claim partition by way of separate suit. The licence or tenancy of HPCL will not merge into ownership as held by Hon'ble Supreme Court in *T. Lakshmipathi and others Versus P. Nithyananda Reddy and others*, 2003 (2) RCR (Rent) 117 and by this Court in *Sukhdev Rai Kaushal Versus Gokal Chand Mittal*, 2014 (2) CivilLJ 897.

The learned counsel for appellant has vehemently argued that objector was not made party.

I am of the view that husband of objector was merely a dealer of HPCL. He was a licensee. Therefore, he was not required to be made party. Reference may be made to authority of this Court in *Shiv Dayal Versus Smt. Sulochana Devi*, 1992 (2) RCR (Rent) 669. Admittedly, husband of objector was licensee of HPCL and once the main tenant is ejected, the licence under the said tenant will also go.

I do not agree with the contention of learned senior counsel for appellant that present order cannot be executed against co-owner on account of fact that objector has purchased 1/6th share in said property after the passing of order by the appellate authority.

I am of the view that terms 'owner' and 'landlord' are two different concepts. The ejectment order has been passed in favour of landlord and if objector has got any claim for partition, she can always institute separate suit to claim partition which is to be decided independently. The decree against HPCL can well be executed against a

ESA No. 222 of 2016 (O/M)

licensee of HPCL.

The learned senior counsel for appellant has relied upon authority of Hon'ble Supreme Court in *Mohinder Prasad Jain Versus Manohar Lal Jain*, 2006 (2) RCR (Civil) 36 to claim that decree cannot be executed against co-owner. He has further referred to authority of Hon'ble Supreme Court in *Ram Chandra Verma Versus Jagat Singh Singhi*, 1996 (2) RCR (Rent) 328 and authority of this Court in *Harkesh Versus Smt. Parkash Rani Sharma and others*, 2002 (2) RCR (Rent) 676 to claim that sub lessee is necessary party.

I am of the view that facts of present case are different. Present appellant was a licensee under HPCL and it has been so held by both the Courts below. Merely by purchasing share in disputed property after passing of order by appellate authority, appellant cannot claim that her possession over the entire land cannot be disturbed. Appellant has merely stepped into shoes of vendee. Decree can be executed against tenant HPCL.

HPCL, on the other hand, has not denied that objector was a licensee under them. So far as plea of collusion is concerned, judgments of Rent Controller and appellate authority shows that HPCL contested both cases before the Rent Controller and appellate authority. These cases were decided on merits and there was no collusion between the parties.

The learned senior counsel for respondent/DH has pointed out the plight of decreeholders-respondents stating that after dismissal of appeal on 7.2.2014, Execution Petition No. 24 was filed on 8.8.2014, JD filed objections, which were dismissed on 5.10.2015. Then co-sharers claim the part of rent which was also disposed of on 22.11.2015, warrants of possession were issued on 9.12.2015 and present objections were filed on

ESA No. 222 of 2016 (O/M)

14.12.2015 which are yet to be finally decided. It has been pointed out that son of objector has got executed another sale deed regarding share of suit land on 26.5.2016 to frustrate decree.

It comes out from interim order dated 8.8.2017, passed by this Court that possession has already been delivered to decreeholders. I am of view that there is no illegality or infirmity in orders of both the Courts below. Consequently, present execution second appeal is dismissed. Since execution second appeal is dismissed, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

15.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No