

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ESA No.54 of 2017(O&M)
Date of Decision-08.01.2018

Neelam ... Appellant
Versus
Kamla Sharma and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Dishant D. Tuteja, Advocate
for the appellant.

Mr. Amit Parashar, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Appellant has preferred this appeal against the order dated 17.02.2016 passed by Civil Judge (Junior Division), Chandigarh and judgment dated 11.08.2017 passed by Additional District Judge, Chandigarh vide which objections filed by the appellant were dismissed and appeal filed against the said order was also dismissed by the Lower Appellate Court.

[2]. Appellant Neelam filed objections claiming herself to be wife of original allottee of demised premises namely Dharam Singh. She further alleged that decree holder Ashwani Kumar was power of attorney of her husband. Husband of the appellant died on 20.03.2005 and thereafter, the said attorney was automatically terminated, but the decree holder kept on pursuing the ejectment petition, appeal and revision and thereafter, filed execution of the order of eviction against the tenant without any

authority of the original allottee. Decree holder had filed an eviction petition against Vijay Bhatti and the same was allowed by the Rent Controller vide order dated 07.11.2006 on account of non-payment of rent. The order of eviction was maintained in appeal, which was dismissed by the Appellate Authority on 04.08.2007 and even by the High Court when the revision petition was dismissed vide order dated 11.01.2010.

[3]. The objections filed by the appellant were contested by the decree holder and decree holder even disputed the factum of the appellant being wife of late Dharam Singh. The decree holder claimed that he filed the eviction petition in his individual capacity and thereafter, persuaded the litigation in his individual capacity upto the High Court. Tenant Vijay Bhatti was ordered to be evicted on 07.11.2006. The execution was filed by the decree holder in his individual capacity and not as power of attorney of Dharam Singh. The decree holder further claimed that he being landlord of the premises is not necessarily to be owner of the same. The status of the decree holder as landlord has already been accepted upto the High Court, therefore, he denied the assertions made by the objector/appellant. The case of the objector/appellant is that her deceased husband was owner of the demised property and after his death, she has inherited the same. Stallionjit Singh is in possession of the property under her authority.

[4]. Perusal of the record would show that earlier Stallionjit Singh filed third party objections, which were dismissed by the Executing Court vide order dated 06.11.2012. Executing Court has also recorded a finding that the judgment debtor had connived with Stallionjit Singh in order to scuttle the proceedings of the execution. Order dated 06.11.2012 was maintained in appeal and revision. Thereafter, third party objections were filed by the appellant on the same premise. Executing Court/Civil Judge (Junior Division), Chandigarh dismissed the objections vide order dated 17.02.2016 by holding that the findings of collusion have not been set aside by any of the competent authority till date. The plea of the objector that Stallionjit Singh is in possession of the demised premises under her authority as tenant has already been rejected. The objections filed by the appellant have been termed as desperate attempt of the appellant to stall the execution proceedings. The Courts have not given any finding in respect of status of the appellant viz-a-viz the property in question on the premise that question of title cannot be decided in the rent petition as the landlord is not necessarily to be owner of the property. Order dated 17.02.2016 was maintained by the Lower Appellate Court vide judgment dated 11.08.2017.

[5]. Learned counsel for the appellant submitted that the decree holder has allegedly filed the eviction petition in his individual capacity without disclosing his status as to whether he

was owner or attorney of the original owner. Decree holder has not claimed himself to be owner of the premises, but has claimed to be landlord. In any case, decree holder is answerable to the original owner for which his pleadings are totally silent. Learned counsel placed reliance upon **N.S.S. Narayana Sarma Vs. M/s Goldstone Exports P. Ltd., 2002(1) RCR (Civil) 752** and **Har Vilas Vs. Mahendra Nath and others, 2011(15) SCC 377** and submitted that third party objections under Order 21 Rule 97 CPC have to be decided by the Executing Court after following proper procedure as triable issues have been raised by the appellant. All questions have to be decided in the same proceedings which have arisen between the parties.

[6]. On the other hand, learned counsel for the respondents placed reliance upon **Amar Singh and another Vs. Dalip, 1981 PLR 649, Shamim Akhtar Vs. Iqbal Ahmad, 2000(2) RCR (Rent) 509, E Parashuraman (D) by LRs Vs. V. Doraiswamy (D) by Lr, 2005(2) RCR(Rent) 590** and **Md. Nooman and others Vs. Md. Javed Alam and others, 2010(2) RentLR 539** and submitted that decision rendered by the Rent Controller upon relationship of landlord and tenant would not operate as *res judicata* and will be opened to challenge in an appropriate proceedings between the parties. The question of title would be left open for decision by the competent Court. The tenant by merely denying the relationship with the landlord cannot avoid eviction under the Rent Act. The question whether landlord

or some other person was owner of the property is not a relevant factor in considering the question whether there existed the jural relationship of landlord and tenant between the parties. Landlord need not be the owner of the premises. Ordinarily, decision of Rent Controller on question of title will not operate as *res judicata*, but where the question of title was directly decided in the proceedings by the Rent Controller, then the decision would be *res judicata*.

[7]. In the instant case, the Courts below have not commented upon title of the property, rather decided the status of the decree holder being landlord.

[8]. Order 21 Rule 97 CPC provides remedy to the third party who creates resistance in obtaining possession by the decree holder. The application can be filed by the person complaining of dispossession from the immovable property. Pursuant to such application, the executing Court has power to adjudicate upon all questions relating to rights, title and interest in the property arising between the parties including those of stranger. In Order 21 Rule 35 CPC, the provisions have been made thereby empowering the executing Court to deliver possession of the property to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In the instant case, appellant herself has not

claimed that she is in possession, rather claimed that she had rented out the property to Stallionjit Singh.

[9]. Evidently, the scope of execution arising out of rent proceedings would not involve any such determination qua title to the property in view of ratio laid down in **Amar Singh and another's case (supra)** and **Shamim Akhtar's case (supra)**. The findings recorded by the Rent Controller would not operate as *res judicata* between the parties in a subsequent suit, if filed for determining title qua the property.

[10]. In view of facts and circumstances of the case, such issues need not be decided in the execution arising out of rent petition where the scope is only to consider the status of parties as landlord and tenant. The question of ownership would be left open to be determined by the competent Court in appropriate proceedings, if initiated by any of the parties.

[11]. It is a settled principle of law that all objections are not necessarily to be decided by way of framing proper issues. It is true that in view of ratio laid down in **M/s Sunil Auto Service Vs. Parikshant Suri and others, 2011(1) RCR (Rent) 452**, the executing Court is not obliged to decide all irrelevant objections by way of following proper procedure of framing issues and then allow the parties to lead evidence. Such objections can be rejected summarily.

[12]. In view of aforesaid facts and attending circumstances of the case, I dismiss this revision petition with a liberty to the parties to get the title decided qua the property in some appropriate Forum in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

08.01.2018

Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No