

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

CR No. 3394 of 2015 (O&M)
Date of decision: 31.1.2019

Dr. Kiran Pal Mangla

...Petitioner

Versus

Sarwan Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sharad Aggarwal, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

This revision seeks to challenge the order of the Appellate Authority, Gurgaon, dated 19.3.2015, whereby the order passed by the Rent Controller dated 11.4.2014 dismissing the ejectment petition filed by the petitioner under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 was affirmed.

The petitioner herein sought to dispossess her brother—respondent herein on the grounds that he was in arrears of rent of ₹10,800/- from 1.3.2000 to 28.2.2003 at the rate of ₹300/- per month and the respondent has effected unauthorized material alterations in the demised shop without consent of the petitioner, as he had removed the wall and fixed iron shutter therein and consequently changes have impaired the value and utility of the demised premises; that the demised premises required for the petitioner's married son Naveen Mangla.

On notice, the respondent appeared and contested the petition taking a preliminary objections of maintainability of the rent petition, the cause of action and locus standi of the petitioner to file the same. It was contended that there was no relationship between the petitioner and the respondent of a landlord and tenant. It was contended that both the petitioner and the respondent and one Dr. Dharampal Mangla along with their late father Laxmi Chand constituted a Joint Hindu Family and out of the joint funds, the demised shop was purchased by the father of the parties. The respondent was a minor at the relevant time and the plot had been purchased in the name of the petitioner and Dr. Dharampal Mangla out of the joint family funds. It was submitted that the father of the parties had also purchased two other shops vide sale deed dated 23.3.1974, apart from other properties that were purchased. It was contended that after the death of their father various disputes arose and an oral family settlement took place between the parties and the respondent was in possession of the said property on the basis of the family settlement.

Evidence was led and on the basis of the evidence so adduced, the Rent Controller came to the conclusion that the respondent has been in possession over the property in dispute since the year of its construction and there was no question of him having inducted as a tenant as alleged by the petitioner. It was further held that the petitioner has failed to prove the relationship of landlord and tenant between the parties or that the respondent is in arrears of rent. The appeal too came to be dismissed on the ground that there is no evidence on the record to establish the relationship of landlord and tenant between the parties.

Learned counsel appearing on behalf of the petitioner contends that both the courts below have erred in dismissing the ejectment petition.

I have heard learned counsel for the parties and have perused the pleadings of the parties. The case of the petitioner herein is that there is relationship of landlord and tenant between him and the respondent, who is his brother. However, he has not been able to prove as to how and to what extent he was owner over the shop in dispute and as to when he had been given the shop on rent to the respondent. He has admitted that there is no rent deed that was executed between the parties. Therefore, in the absence of the petitioner being able to prove that the respondent herein had been inducted as a tenant in the property that has been purchased from the joint Hindu funds, the eviction petition itself was not maintainable. The impugned orders by the courts below are well considered and I find no infirmity in the same warranting interference in the instant revision.

Dismissed.

31.1.2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No