

CR No.5945 of 2018 (O&M) 1

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

**CR No5945 of 2018(O&M)
Date of Decision: 04.09.2019.**

Sanju

.....Petitioner

Versus

Nandan

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. S.Sandhu, Advocate
for the petitioner.

LISA GILL, J(Oral).

Petitioner, is aggrieved of order dated 22.02.2017, passed by the learned Rent Controller, Chandigarh as well as order dated 06.07.2018, passed by the learned Appellate Authority, Chandigarh whereby eviction petition filed by the petitioner has been dismissed.

Brief facts necessary for the adjudication of the case are that the petitioner, filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, (for short 'Act'), seeking ejectment of the respondent from the premises as detailed therein. Petitioner, claimed to be the owner of the property in question, while pleading that the house in question was allotted by the Chandigarh Housing Board to Sh. Nathu Ram, her father-in-law. Nathu Ram, died on 25.05.1998. Petitioner's husband, Rishi Pal son of Nathu Ram, it is pleaded, succeeded to the property. However, Rishi Pal, unfortunately fell ill and ultimately died on 31.05.2004 at Government Medical College and Hospital, Sector -32, Chandigarh. As the petitioner

required money for the treatment of her husband, she came in contact with the respondent in the year 2004, itself, who offered ₹1.10 lakh as a friendly loan. It is further pleaded that in lieu thereof, he requested that the petitioner's house be given to him on rent. The rate of rent was settled as ₹5000/- per month and it was agreed that no interest would be paid by the petitioner after adjustment of the rent in the loan amount. It was further agreed that monthly rent of the demised premises would thereafter be enhanced to ₹7000/- per month. Accordingly, the petitioner, it is claimed herself shifted to a rented accommodation. After the loan amount was adjusted, the respondent defaulted in the deposit of rent to the tune of ₹5.67 lakh. It is further pleaded that the petitioner herself was residing in rental accommodation having a daughter and grown-up son, who had recently got married. Petitioner thus desired to shift to her house along with her children. Therefore, ejectment of the respondent was sought on the ground of personal *bona fide* necessity and non payment of rent w.e.f., January 2006. Accordingly, the petition was filed.

Respondent contested the petition while raising various preliminary objections. He claimed that he was a *bona fide* purchaser of the property in question and had duly purchased the same from Rishi Pal i.e., son of the original allottee. Agreement to sell, General Power of Attorney, Affidavit and will, were purportedly executed by Rishi Pal, who was the son and first class legal heir of the original allottee-Nathu Ram. Actual physical possession of the house in question, it is stated was handed over to the respondent in the year 2003 by Rishi Pal himself. The petitioner, in-fact tried to take forcible possession of the house in question in August 2012. Respondent reported the matter to the police on which the petitioner is stated to have fled from the area. No action was being taken by the police in this

regard. Respondent claimed to be depositing the electricity and water charges being the absolute owner and he claimed to have spent ₹2 lakh on construction of another floor. Dismissal of the petition was sought.

Rejoinder was not filed. Following issues were framed by the learned Rent Controller, Chandigarh:-

1. Whether there is existing relationship of landlord and tenant between the parties?OPP
2. If issue no.1 is proved, whether respondent is liable to be evicted from the demised premises on the ground of non payment of rent and personal requirement of the petitioner?OPP
3. Whether the respondent is *bona fide* purchaser of the demised premises?OPR
4. Whether petitioner has no locus standi to file the present petition?OPR
5. Whether petitioner has no cause of action to file the present petition?OPR
6. Relief.

Evidence was led by both the parties in respect to their respective stands/claims.

Learned Rent Controller, Chandigarh, on appreciation of the evidence on record and considering the facts and circumstances of the case, concluded that the relationship of tenant and landlord between the parties could not be established. Reference is made by the learned Rent Controller, Chandigarh to the cross-examination of the petitioner as well as her son, specifically in regard to the fact that the she had started residing in a rented house since the year 2003 at Panchkula as well as Manimajra. It is observed that there is no explanation as to why she started living in a rented house in the year 2003, if the demised premises were available and as to why the premises in question were rented out to the respondent and the petitioner herself shifted to rental accommodation. Learned Rent Controller, Chandigarh at the same time observed that the evidence on record did not point out to the legal transfer of the title of the house in question in favour of

the respondent. Respondent was not held to be the *bona fide* purchaser of the house in question. It is observed that the deceased Nathu Ram had not only one son i.e., Rishi Pal and a daughter Chameli, but three other sons as well, the details of whom have not even been disclosed by the petitioner in her petition. It is held that once the relationship of the landlord and tenant could not be proved, no ground was available to the petitioner to seek ejectment. Petition was accordingly dismissed.

Petitioner as well as the respondent, preferred appeals against order dated 22.02.2017, passed by the learned Rent Controller, Chandigarh. Learned Appellate Authority, Chandigarh, dismissed both the appeals while upholding the finding that relationship of landlord and tenant was not proved on record. It is further observed that there is no document on record to prove that the house in question was allotted to Nathu Ram in the year 1987 by the Chandigarh Housing Board/Chandigarh Administration. The contention of the respondent that he is the owner of the property being the *bona fide* purchaser thereof from Rishi Pal, was also negated. It is specifically observed that the question of title to the property cannot be decided in an eviction petition.

Aggrieved therefrom, present revision petition has been filed by the petitioner, claiming herself to be the landlord of the demised premises and entitled to seek ejectment of the respondent on the grounds as raised in her petition.

Learned counsel for the petitioner vehemently argues that allotment of the demised premises in favour of Nathu Ram, is duly proved on record. Ex.P-1, is the allotment letter. The property in dispute, it is submitted, was let out on rent to the respondent-tenant at a monthly rent of ₹5000/-. Loan for a sum of ₹1,10,000/- had been taken by the petitioner

from the respondent. Possession of the premises were given to the respondent-tenant and the monthly rent of the demised premises was initially settled at ₹5000/- p.m., till adjustment of the loan and thereafter at the rate of ₹7000/- p.m. The petitioner herself shifted to rental accommodation at that time. It is submitted that both the learned Courts below have grossly erred in dismissing the petition filed by the petitioner seeking ejectment of the respondent-tenant from the demised premises. It is further argued that the respondent has failed to prove his ownership over the demised premises on the basis of the alleged agreement to sell/will/affidavit of Rishi Pal. Therefore, it is proved that he is the tenant of the present petitioner, who is none other but the wife of Rishi Pal son of Nathu Ram, who was the original owner. The petitioner's application to adduce additional evidence has also been wrongly dismissed by the learned Appellate Authority, Chandigarh. It is thus prayed that the present revision petition be allowed and the judgements passed by the learned Courts below be set aside.

I have heard learned counsel for the petitioner and have gone through the record with her assistance.

I do not find any ground whatsoever to interfere in this matter in exercise of revisional jurisdiction. The petitioner has indeed failed to prove the relationship of landlord and tenant between the parties. Ex.P-1, is stated to be the allotment letter. However, a perusal of the record, which was requisitioned, reveals that Ex.P-1, far from being an allotment letter, does not even give any kind of indication regarding ownership of the property in question. The said document appears to be an identity card issued on 09.08.1987 mentioning Nathu Ram to be the head of the family with the names of the petitioner and her husband Rishi Pal mentioned under the head of 'Details of Family.' Ex.P-2 is a copy of the ration card issued in favour of

Rishi Pal son of Nathu Ram wherein it is mentioned that the number of family members is four (two adults and two children). A picture of the four persons is appended. The address is mentioned as 191, New Indira Colony, Chandigarh, though admittedly the numeral 161 written earlier has been cut and 191 written. The date of validity of this ration card is not forthcoming. The plea that the petitioner's application to adduce additional evidence has been wrongly dismissed by the learned Appellate Authority, Chandigarh, therefore, manifest injustice has been caused to the petitioner, who could not prove that Nathu Ram is the original allottee of the premises in question is devoid of any merit in the factual matrix of the case. Apart from the fact that there is indeed not even a foundational fact established or document produced by the petitioner to indicate the ownership of Nathu Ram, it is to be noticed that even if ownership of Nathu Ram over the demised premises, is proved on record, there is no evidence on record to prove the relationship of landlord and tenant between the parties. There is no evidence on record to indicate the taking of a loan of ₹1,10,000/- by the petitioner from the respondent or of giving the premises on rent by her, in lieu thereof, except a bald statement by the petitioner in this regard. The conduct of the petitioner in even giving out the house on rent which she claimed to be in her possession and thereafter moving to rented accommodation, does not appeal to commonsense and neither is there an iota of evidence on record to substantiate the same. It is not the petitioner's case that she had given the said premises on rent for a higher amount and had taken other premises on rent at a lesser amount. There is no such evidence or pleading to this effect. It is rightly observed by the learned Courts below that there is no explanation as to why she even waited for such a long period to take action against the respondent and allowed a huge amount of ₹5.67 lakhs to accrue

as arrears of rent.

The anxiety of the petitioner as apparent from the arguments addressed by learned counsel for the petitioner, that title of the property in question has been decided by these proceedings, thus causing prejudice to the petitioner, is clearly misplaced. It is specifically and categorically held by the learned Appellate Authority, Chandigarh that the question of title cannot be decided in the present proceedings. It is in the wake of this settled position that the appeal filed by the respondent has also been dismissed. Needless to say, it is open to the parties to prove their title to/ownership of the property in question in appropriate proceedings, in accordance with law.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 22.02.2017, passed by the learned Rent Controller, Chandigarh and order dated 06.07.2018, passed by the learned Appellate Authority, Chandigarh, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed with no order as to cost.

04.09.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.