

Civil Revision No.630 of 2018

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

Civil Revision No.630 of 2018
Date of decision: 24.09.2019

Smt. Renu and another

.....Appellants

versus

Lajpat Rai Gupta and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sanjay Vij, Advocate, for the petitioners.
Mr. Sudhir Aggarwal, Advocate, for respondent No.1.

RAMENDRA JAIN, J. (ORAL)

Through this revision under Article 227 of the Constitution of India, petitioners have laid challenge to order dated 04.12.2017 (Annexure P-1) of the Rent Controller, dismissing their application under Order 1 Rule 10 of the Code of Civil Procedure to implead them as party.

Briefly, father of respondent No.1, namely, Ram Kanwar Aggarwal, rented out demised shop to deceased father of the petitioners, namely, Ram Mehar, who died on 23.10.2007 leaving behind four daughters and two sons. In the year 2013, respondent No.1-landlord filed eviction petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 against respondent No.2 being successor of original tenant Ram Mehar and in exclusive possession of the demised shop, who after notice filed written statement on 09.05.2014.

From the pleadings of the parties, Rent Controller framed necessary issues.

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Respondent No.1 concluded his evidence in affirmative. While it was turn of respondent No.2 to lead evidence in affirmative, petitioners in the year 2017, after four years of the filing of eviction petition against their brother, moved application under Order 1 Rule 10 CPC to implead them as party, which on contest by respondent No.1 – landlord has been dismissed vide impugned order dated 04.12.2017 (Annexure P-1).

Learned counsel for the petitioners relying upon judgment of the Hon'ble Supreme Court in ***Gian Devi Anand v. Jeevan Kumar and others***, (1985) 2 Supreme Court Cases 683 inter alia contends that the Rent Controller failed to appreciate that petitioners being legal heirs of original tenant Ram Mehar were to be impleaded as necessary party in the eviction petition filed by respondent No.1, because any decision of the Rent Controller in their absence would affect their tenancy rights inherited by them from their father. Rent Controller failed to appreciate that respondent No.1-landlord took contradictory stand in his eviction petition and reply to the application under Order 1 Rule 10 CPC inasmuch as in his eviction petition he pleaded that deceased Ram Mehar was inducted as tenant, but in reply, he took contradictory stand that respondent No.2 was inducted as tenant and not Ram Mehar.

On the other hand, learned counsel for respondent No.2 – landlord, relying upon judgment of this Court in ***Om Parkash v. Ram Kumar and others***, 2011(4) R.C.R.(Civil) 455 and refuting above submissions contends that petitioners were not necessary party, because they were/are not in possession of the demised shop after the death of original tenant Ram Mehar.

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Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

With due respect, this Court has no dispute with the proposition of law laid down in ***Gian Devi Anand's*** case (supra) that upon death of a tenant after expiry of contractual tenancy, his legal heirs inherit the tenancy rights. However, the Hon'ble Supreme Court in ***Pushpa Rani v. Bhagwanti Devi and another***, 1994(2) R.C.R.(Rent) 298 has held that in case, a tenant dies leaving behind a number of heirs, the heir continuing in occupation of the demised premises and carrying on business shall only be a necessary party and it can be inferred that other heirs had surrendered their tenancy rights. They cannot challenge the decree at the time of execution against the person in possession. A Co-ordinate Bench of this Court in ***Om Parkash's*** case (supra) has also held that in case, a tenant dies leaving behind two sons, out of whom one came into possession of the demised premises and paying rent to the landlord, eviction petition is maintainable against him only, without impleading other son, not in possession, he being not necessary party. Order of eviction can be passed against the person in possession.

The petitioners in their application under Order 1 Rule 10 CPC have mentioned their address of Village Khijuriwas, Tehsil Tijara, District Alwar (Rajasthan), whereas the demised shop is situated at Gurugram (Haryana). They have not pleaded in their application that they are also conjointly running barber's shop with their brother proforma respondent No.2 – Mukesh. Therefore, by any stretch of imagination, petitioners

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cannot be termed as necessary party.

Admittedly, original tenant Ram Mehar died in the year 2007. Eviction petition against proforma respondent No.2 was filed in the year 2013 i.e. after six years of death of Ram Mehar. Notice of eviction petition was served to proforma respondent No.2 by the Rent Controller. Had the petitioners been in joint occupation of demised shop, they must have come to know about filing of eviction petition against them in the year 2013, itself. However, they filed their application under Order 1 Rule 10 CPC in the year 2017, after four years of filing of eviction petition against their brother proforma respondent No.2, which itself speaks volumes about their act and conduct that they never remained in possession of the demised shop. They must have surrendered their inherited tenancy rights in favour of their brother, who was independently running barber's business in the demised shop in exclusion to the petitioners.

Three other legal heirs of Ram Mehar i.e. two sisters of the petitioners and one brother till date have not come forward to implead them as party. They may come before the Rent Controller with similar application at a later stage with a view to delay the proceedings before the Rent Controller against proforma respondent No.2 with his connivance inasmuch as he is enjoying possession of demised shop at a very meagre rent. Therefore, his endeavour would always be to retain possession of the demised shop for maximum long time as far as he would be able to manage. Instant application has also been filed by the petitioners to gain maximum time to retain possession of the demised shop by their brother respondent No.2 on nominal rent by delaying decision of the eviction petition.

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Petitioners, undisputedly are married and residing in their matrimonial homes in Rajasthan. It is not possible for them to come and run the business of barber at Gurugram (Haryana) leaving their matrimonial homes. From this angle also, their application under Order 1 Rule 10 CPC can be termed as a *mala fide* device to prolong the litigation.

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioners has not been able to show any such infirmities in the impugned order of the Rent Controller.

No question of law much less substantial has been raised in this revision.

Dismissed.

(Ramendra Jain)
Judge

September 24, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No